

**Fraser v University and College Union: Anti-Zionism,  
antisemitism and racializing discourse**

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**Published version**

KLAF, Lesley (2019). Fraser v University and College Union: Anti-Zionism, antisemitism and racializing discourse. In: ROSENFELD, Alvin H, (ed.) Anti-Zionism and antisemitism : the dynamics of delegitimization. Studies in Antisemitism . United States, Indiana University Press.

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## ***Fraser v UCU: Anti-Zionism, Antisemitism, and Racializing Discourse.***

**Lesley Klaff**

In August 2011 Ronnie Fraser, a lecturer in mathematics, acting through his lawyer Anthony Julius, filed a claim in the Central London Employment Tribunal against the University and College Union, which is the UK's largest trade union for academics, lecturers and researchers. He alleged 'hostile environment harassment' by the union under sections 26 and 57 of the Equality Act 2010. The Equality Act protects individuals in the public sector from unfair treatment, including harassment and other forms of direct discrimination.

Fraser claimed that the union had created a 'hostile environment' for him as a Jewish member ('Jewish' being a 'protected characteristic' as both a 'race' and a 'religion' under the Act) by engaging in a course of 'unwanted antisemitic conduct' that was informed by hostility to Israel and the Zionist project. Such 'unwanted conduct' had the effect of 'violating his dignity' and/or of 'creating an intimidating, hostile, degrading, humiliating' and/or 'offensive environment' for him.

Fraser brought the case against the UCU because, since its formation in 2007, it had been actively pursuing an academic boycott campaign against

Israel as a response to what it perceived to be Israeli human rights abuses. Fraser experienced the boycott campaign as antisemitic in effect, if not in intent, because it treated Israel and its supporters within the union, most of whom were Jews, as pariahs and unconsciously recycled antisemitic themes and tropes. Moreover, it treated those who opposed the boycott campaign within the union, mostly Jews, as apologists for apartheid, colonialism and racism.

Specifically, Fraser's complaint alleged a course of action by the union which amounted to 'institutional antisemitism' and gave the following ten grounds as examples: annual boycott resolutions against only Israel; the conduct of the debates at which the resolutions were discussed; the moderating of the activists' list and the penalizing of anti-boycott activists; the failure to engage with people who raised concerns about antisemitism; the failure to address resignations citing antisemitism as the reason; the failure to meet the OSCE's special representative on antisemitism; the hosting of Bongani Masuku after he had been found guilty of antisemitic hate speech by the South African Human Rights Commission; and the repudiation of the EUMC Working Definition of Antisemitism. In March 2013 the Employment Tribunal unanimously dismissed all ten grounds of Fraser's complaint as unfounded and mostly time-barred.<sup>1</sup>

This chapter explores the contested meanings of anti-Zionism and antisemitism in the UK using, in part, the idea of ‘racializing discourse’. Its principal focus is an examination of the arguments and judgment in *Fraser v The University and College Union* 2013.

### Anti-Zionism

The key concepts and terms at issue here are contested terms. The concepts of ‘antisemitism’ and ‘anti-Zionism’ are neither univocal, nor can they be isolated from fields of practice and conflict as was especially evident in *Fraser v UCU*.

Zionists rightly believe that antisemitism is implicated in contemporary anti-Zionism because anti-Zionism is opposition to Zionism, which is the Jewish project of establishing, developing and protecting the State of Israel as the ancestral homeland of the Jews. This opposition is frequently expressed in the language of prejudice against Israel or the Zionist project. It was this meaning of anti-Zionism that was advanced by Fraser, his thirty-four witnesses<sup>2</sup> and his legal team in his case against the UCU. And it is this meaning of anti-Zionism which may be found in the official 2002 definition contained in the Report of the Berlin Technical University’s Centre for Research on Antisemitism, drafted for the European Monitoring Centre on Racism and Xenophobia.<sup>3</sup> It defines

anti-Zionism as “the portrayal of Israel as a state that is fundamentally negatively distinct from all others and which therefore has no right to exist.”<sup>4</sup>

Anti-Zionists, on the other hand, evade charges of antisemitism by representing anti-Zionism as merely ‘opposition to Zionism’, and by claiming that Zionism is a political movement or ideology that is unrelated to, and independent of, a person’s race or religion. This alternative version of anti-Zionism was advanced by the UCU and accepted by the Tribunal and this had a distinctly negative consequence for the outcome of Fraser’s case.

The negative outcome is because the Tribunal’s characterization of Zionism and anti-Zionism as mere ‘political’ ideologies was crucial to a central question before the Tribunal, which was whether an attachment to Israel is relevant to Jewish identity. This question was central because to succeed in a claim for hostile environment harassment, there has to be a relevant nexus between the ‘unwanted conduct’ and the claimant’s ‘protected characteristic’. In this case the ‘unwanted conduct’ was hostility to Israel and Zionism and the ‘protected characteristic’ was Fraser’s Jewish religious and racial status.

Fraser argued that an affinity with the state of Israel and the Zionist project is an aspect of the identity of the majority of British Jews, who assume a certain obligation to support Israel and to ensure its survival as the ancestral homeland of the Jewish people. This affinity does not equate to unconditional

or unstinting support for the government of Israel or its policies; rather it amounts to a sense of connection with, or an affiliation to, Israel and a sense of its importance in the context of Jewish history and the persecution of the Jewish people. For this reason, hostility to Israel engages Jews not only in conventional political terms but also because Israel is an aspect of their identity. Indeed, the reason why the majority of British Jews are usually at the forefront of movements opposing irrational, disproportionate and stereotyped hostility to Israel is because they have some kind of affinity to Israel. Accordingly, said Fraser, hostility to Israel engages his 'protected characteristic'.

The UCU, on the other hand, argued that many different positions are taken on the Israel-Palestine conflict and specifically on the academic boycott of Israel and that these are political positions which tend to be associated with distinct groups. Jews are represented in many such groups and it therefore follows that any disagreements between the groups are political and do not touch on any 'protected characteristic', that is, on any religious or racial identity under the Equality Act 2010. In other words, a person's political positions are completely independent of and not determined by their race or religion. There were witnesses for both the UCU and Fraser who demonstrated

that not all Jewish people hold Zionist beliefs and that many people who hold Zionist beliefs are Christian or of some other faith.

Fraser countered that the fact that there is a range of views within the body of Anglo-Jewry on Israel does not override the argument that his 'protected characteristic' is engaged when Israel is demonized. The existence of a group of Jews who are hostile to Israel and Zionism is not evidence for the proposition that an attachment to Israel is not an aspect of contemporary Jewish identity. These Jews are either marginal or non-normative or the form their 'protected characteristic' takes is in their hostility to Israel and Zionism.

But the Tribunal rejected Fraser's claim that an attachment to Israel is an aspect of Jewish identity. It said it could find no authority for the proposition that legal protection also attaches to "a particular affinity or sentiment not inherent in the protected characteristic but said to be commonly held by members of the protected group" (para 18). It could find no relevant authority because the case was one of first instance. The Tribunal *could* have stipulated that an 'affinity or sentiment' fell within the scope of the protected characteristic. But it preferred to accept the UCU's 'range of views' argument. Referring to a pro-BDS member of the UCU as Jewish (para. 130), the Tribunal said: "The Claimant's main contention is that the conduct of which he complains was inherently discriminatory in that it consisted of acts and

omissions concerning the conflict between Israel and Palestine and so related to *his* (although of course not every Jew's) Jewish identity and, as such, *his* Jewish race and/or religion or belief" (para 49, italics in original). The Tribunal was then able to conclude that: "It seems to us that a belief in the Zionist project or an attachment to Israel...is not intrinsically a part of Jewishness" (para 150).

This reasoning demonstrates how the UK anti-Zionist movement has successfully managed to separate Israel from Jews. It claims that Jews and Israelis or Zionists are two separate and distinct entities, so much so that hatred of Israel and hatred of Jews are considered to be unconnected. In this way, anti-Zionist expression and hostility to Israel has been normalized in the British trade union movement and on British campuses and is not recognized as antisemitic harassment under section 26 Equality Act.

Indeed, the representation of Zionism as a political movement or ideology which is unconnected to race or religion allows anti-Zionists to deny antisemitism while representing Zionism as a uniquely racist ideology which secured, and now maintains, statehood by persecutory means. In the view of the UCU anti-Zionists, Israel was established by the dispossession of the Palestinians, was enlarged by aggressive wars and is now maintained by oppression and brutality, making Israel an illegitimate state.



*This* anti-Zionism, which Anthony Julius refers to as “progressive anti-Zionism” or “the new anti-Zionism”<sup>5</sup> and Alan Johnson refers to as “anti-Semitic anti-Zionism”<sup>6</sup> is found predominantly among those on the far left of the UK political spectrum. It is these people – the far left – who dominate the UCU’s executive, its activists’ list, and its annual Congress, the place where the members propose anti-Israel motions and overwhelmingly vote to adopt them. *This* anti-Zionism conceives of Israel and the Zionist project in partial and distorted form and, as Johnson explains, relies on a “distorting system of concepts: ‘Zionism is racism’; Israel is a ‘settler-colonialist state’ which ‘ethnically cleansed’ the ‘indigenous’ people’ of Palestine, went on to build an ‘apartheid state’ and is now engaged in an ‘incremental genocide’ against the Palestinians.”<sup>7</sup> *This* anti-Zionism is firmly rooted in the global BDS movement and its political programme is the removal of Israel from the world stage.

There have been various attempts to explain the left’s hostility to Israel and Zionism. One explanation is that the values of the left are secular, collectivist, internationalist and universalist and are therefore at odds with what it perceives to be Jewish values: religious, individualist, nationalist and particularist. These left-values make leftists oppose Jewish religious and national rights. Johnson explains the hostility in terms of a phenomenon known as ‘anti-imperialist campism’, which he describes as the left’s raising of

'anti-imperialism' to an absolute value and the reframing of Israel as the key site of the imperialist system.<sup>8</sup> David Hirsh believes that 'anti-imperialist campism' has emerged "as the pre-eminent principle of the progressive movement" making hostility to Israel a key marker of political belonging.<sup>9</sup> British historian Simon Schama explains the left's hostility to Israel and Zionism in terms of "postcolonial guilt" which "has fired up the war against its prize whipping boy, Zionism, like no other cause."<sup>10</sup> This explanation would suggest that the normalization of anti-Zionism within the British trade union movement is partially explicable in terms of the left's distancing itself from a legacy of colonialism.

### Antisemitism

The anti-Zionist separation of Israel from Jews provides the context and rationale for disagreement between Zionists and anti-Zionists as to what counts as antisemitism. This disagreement was a central issue in *Fraser v UCU*. Fraser embraced the EUMC Working Definition of Antisemitism and his case against the UCU was based in part on its repudiation by the UCU at its 2011 Congress. The EUMC Definition provides several explicit examples of how antisemitism can be manifested, when context is taken fully into account, with respect to the State of Israel. These include denying the Jewish people a right

to self-determination; applying double-standards by expecting from Israel a behavior not expected of any other state; applying the images and symbols of traditional antisemitism (e.g. the blood libel) to Israel; comparing contemporary Israeli policy to that of the Nazis; or holding Jews collectively responsible for actions of the State of Israel. It emphasizes that criticism of Israel similar to that levelled against any other state does not constitute a form of antisemitism. Motion 70 had expressed the view that the EUMC Definition “confused criticism of Israeli government policy and actions with ‘genuine’ antisemitism and was being used to silence debate about Israel and Palestine on university and college campuses” (para 74)<sup>11</sup>.

The argument that that the EUMC Definition was used by Jews in bad faith to silence criticism of Israel had even been advanced by UCU Joint General Secretary, Paul Mackney, in 2006 when he told the All-Party Parliamentary Committee of Inquiry into Antisemitism that “criticism of the Israeli government is not in itself antisemitic” and that “defenders of Israel had used the charge of antisemitism as a tactic to smother democratic debate and legitimate censure” (para 85).

Mackney’s statement and the contents of Motion 70 reflect David Hirsh’s ‘Livingstone Formulation’,<sup>12</sup> which is a very common trope of contemporary antisemitism in the UK. It was named after Ken Livingstone, the

former Mayor of London, who in 2006 wrote in *The Guardian*, “[F]or far too long the accusation of antisemitism has been used against anyone who is critical of the policies of the Israeli government, as I have been.”<sup>13</sup> The Livingstone Formulation is the allegation that those raising concerns about antisemitism are doing so in bad faith in order to silence criticism of Israel. It is a “rhetorical device which enables the user to refuse to engage with the charge made”<sup>14</sup> by responding with an ad hominem attack against the person or persons making that charge.<sup>15</sup> Fraser told the Tribunal that the key mode of harassment in the UCU was the relentless accusation of bad faith whenever Jews said they were experiencing antisemitism<sup>16</sup>. As we shall see, the same allegation of bad faith was deployed by the Tribunal in its ruling against Fraser.

The UCU considered only classical antisemitism - hatred of the individual Jew - to be ‘genuine’ antisemitism. In 2012 it formally adopted the following definition of antisemitism formulated by the Jewish academic Dr Brian Klug, who has long believed that antisemitism is hatred of Jews as Jews: “At the heart of antisemitism is the negative stereotype of the Jew: sinister, cunning, parasitic, money-grubbing, mysteriously powerful, and so on. Antisemitism consists in projecting this figure onto individual Jews, Jewish groups and Jewish institutions”.<sup>17</sup>

In the event, the Tribunal decided it was not required or prepared to rule on the meaning or definition of antisemitism, including the EUMC Working Definition. Noting that some members of the Union did not like the EUMC Definition on the grounds that it brands attacks on Zionism ‘antisemitic’, while others, such as Fraser himself, did like it, the Tribunal concluded that there are legitimately held differences of view on what constitutes antisemitism and on where the line should be drawn in relation to when criticism of Israel becomes antisemitic, and that this, moreover, is the “stuff of political debate”<sup>18</sup> (para. 51).

The Tribunal’s refusal to rule on the meaning or definition of antisemitism constitutes a denial of antisemitism. By characterizing all criticism of Israel as free political speech, the Tribunal was able to disregard as irrelevant all Fraser’s evidence of antisemitism. This evidence included all of Anthony Julius’s direct examination of Fraser and his witnesses, all of his cross-examination of the UCU witnesses, a further twenty-three bundles of evidence against the UCU, and the written statements of Fraser’s thirty-four witnesses; in other words, Fraser’s entire case. In a pointed criticism of Julius’s emphasis on antisemitism throughout the hearing, the Tribunal said, “[W]e had to remind ourselves frequently that despite appearances, we were not conducting a public inquiry into anti-Semitism but considering a lawful claim

for unlawful harassment” (para 180). Of course it was a claim for unlawful harassment, but it was also a claim for unlawful *antisemitic* harassment, and evidence of antisemitism was entirely relevant. The problem was that the Tribunal was not prepared to rule on the question of antisemitism. As a result, the UCU’s guarantees against racism and bigotry continue to exclude any form of antisemitism which can conceivably be characterized as criticism of Israel.<sup>19</sup>

Indeed, at its 2017 Congress, the UCU voted to reject the IHRA Working Definition of Antisemitism, which is substantially the same as the EUMC Definition, on the grounds that its adoption would constitute explicit political interference in the affairs of the union and erode free speech. This rejection of the IHRA Definition means that Jewish members are not protected from the antisemitism in the UCU that disguises itself as criticism of Israel. The UCU was able to reject the Definition because, despite its adoption by the British Government on 12 December 2016, it has no statutory underpinning and does not have the force of law. Further, the UCU was unmoved by the fact that the Definition had received Jeremy Corbyn’s backing and had been adopted by the National Union of Students and the Union of Jewish Students. It is noteworthy that the overwhelming vote in favour of rejecting the IHRA Definition at the 2017 Congress was matched only by the overwhelming vote in favour of carrying all other anti-racist motions.<sup>20</sup>

## Racializing Discourse

The Tribunal was further able to disregard Fraser's evidence of antisemitism as irrelevant or inauthentic by 'racializing' Fraser and many of his witnesses. In her book, *An Unfortunate Coincidence: Jews, Jewishness and English Law*, Didi Herman notes the judicial practice of 'racializing' and 'orientalising' Jews and Jewish issues in a range of English cases.<sup>21</sup> She uses the term 'orientalism' to signify a particular way of characterizing Jews so as to mark them out as 'eastern' and 'un-English'. It involves comparing Jews and Jewish practices to those of other civilizations, especially Christian civilization, which is held up as eminently superior and is equated with that which is 'English'. This comparison is a racializing discourse because Jews and Jewish practices are understood and represented as inferior to Christianity and to 'Englishness.'

Accordingly, the Tribunal applied unattractive characteristics to Fraser and many of his witnesses. Herman notes that judicial assessments of 'character' are often dependent on notions of race. Their unattractiveness was found in their 'un-English' behaviour, such as 'playing to the gallery', 'scoring points', 'ventilating opinions', and behaving in a 'tactical' manner<sup>22</sup> (paras 148-149). In other words, Fraser and his witnesses were not playing fair. In an echo of Fraser's Good Jew / Bad Jew distinction,<sup>23</sup> the Tribunal indulged in a Good

Witness / Bad Witness distinction by juxtaposing *their* behavior against that of the UCU witnesses, each of whom gave “careful and accurate” evidence and stuck to the facts<sup>24</sup> (para. 149). ‘Playing fair’ is a Christian notion and a sense of ‘fair play’ is a deeply embedded English value. The exclusion of emotional witnesses for Fraser avoided the political coloring of their testimony, which was problematic for the Tribunal.

There are several other examples of racializing discourse in *Fraser v UCU*. One is the Tribunal’s deployment of the Livingstone Formulation. In an echo of the UCU’s attitude, the Tribunal characterized the case as one in which Fraser, his Jewish lawyer, and his thirty-four witnesses wanted to abrogate free political speech in the union in order to shield Israel from criticism. In ruling against Fraser, it said, “[W]e greatly regret that the case was ever brought. At heart, it represents an *impermissible attempt to achieve a political end by litigious means*. It would be very unfortunate if an exercise of this sort were ever repeated” (para. 178, my italics). This statement is a racializing discourse because it accuses Fraser and his team of playing the ‘antisemitism card’ to prevent criticism of Israel. The Tribunal thought that “Fraser was trying to mobilize a bad-faith allegation of antisemitism in order to silence good-faith critics of Israel.”<sup>25</sup> They accepted the UCU’s case that Fraser and his witnesses



who gave evidence of antisemitism in the union were really engaged in a shared plan to dishonestly silence the UCU's campaigns against Israel.<sup>26</sup>

The Tribunal's view that Fraser and his witnesses were acting dishonestly to shield Israel from criticism involves antisemitic ways of thinking because it sees a "secret agenda" behind the charge of antisemitism, which is to silence Israel's critics. As Robert Fine notes, "one dodgy presumption behind this argument is that Israel cannot be defended openly, so that its defenders have to resort to underhand tactics."<sup>27</sup> This way of thinking also invokes classic conspiracy theory because it accuses those raising concerns about antisemitism of taking part in a dishonest Jewish (or 'Zionist') plot in order to silence political speech.<sup>28</sup>

The use of the Livingstone Formulation is antisemitic for another reason, too: it singles out Jews as the only minority racial group in the UK who are not permitted to bear witness to the existence of racism against them or to the nature of their suffering. With respect to incidents involving anti-black racism, the contemporary practice is to follow the recommendation of the MacPherson Report 1999, which stipulates that a racist incident should be defined by the victim.<sup>29</sup> The MacPherson principle does not mean that somebody reporting an experience of racism must necessarily be considered to be right; but what it does mean is that it should be *assumed* that they are right

and should be taken seriously and listened to carefully so that an informed judgment can be made as to whether or not they are right. The Report of the All-Party Parliamentary Committee of Inquiry 2006 recommended the adoption of the MacPherson principle to decide the matter of antisemitism,<sup>30</sup> but it has not been adopted and the Livingstone Formulation is a clear violation of that principle<sup>31</sup>. Apart from MacPherson, since antisemitism disproportionately afflicts Jews, it is reasonable to assume that they are likely to know more about it, and recognize it more easily, than non-Jews, and The Livingstone Formulation is an outright rejection of that assumption.<sup>32</sup>

The systematic use of the Livingstone Formulation to respond to complaints of antisemitism prevents contemporary antisemitism from being recognized, acknowledged and resisted. It represents a recurrent pattern of a *refusal to even try* to recognize it.<sup>33</sup> It further keeps alive the antisemitic trope that Jews are conspiratorial, underhand and dishonest, especially within the UCU itself.<sup>34</sup>

The spectre of Jewish particularism was a strong theme throughout the judgment. The Tribunal thought that Jewish particularism was so strong that Fraser and his team had been willing to abuse the Employment Tribunal as well as misuse the Equality Act in their self-serving pursuit of preventing the union from criticizing Israel. It said “[T]he Employment Tribunals are a hard-pressed

public service and it is not right that their limited resources should have been squandered as they have been in this case” (para 178).

Specifically, the Tribunal characterized the case as one of Jewish particularism versus the universal right to freedom of expression, a right enshrined in Article 10 of the European Convention of Human Rights and protected under sections 3 and 12 of the Human Rights Act 1998 and concluded that “[T]he *narrow* interests of [Mr Fraser] must give way to the *wider public interest* in ensuring that freedom of expression is safeguarded” (para. 156, my italics). This reasoning suggests that freedom of expression cases – or cases that are *characterized as freedom of expression cases* – will, and indeed should, work against Jewish claimants. It is worth noting that although the Tribunal characterized this as a freedom of expression case, it was not a speech harassment case at all. Fraser’s primary case was that the UCU had persistently failed to do things for him contrary to its assurances that it would and was based on a series of acts and omissions.<sup>35</sup> To represent the case as one in which Fraser was trying to curtail the UCU members’ speech was to misrepresent it. In any event, the union’s relentless pursuit of an academic boycott of Israel can hardly be represented as a ‘free speech’ policy because boycotts shut speech down rather than promote it. But as Hirsh has noted, “every racist claims that anti-racists disregard their right to free speech.”<sup>36</sup>

Jewish particularism further surfaced in the Tribunal's characterization of Fraser and his team as opposed to pluralism and tolerance. The Tribunal said that "[W]e are troubled by the implications of the claim because underlying it we sense a worrying disregard for pluralism, tolerance and freedom of expression" (para. 179).

Pitting the Jew against pluralism, tolerance and freedom of expression amounts to orientalizing the Jew because these are universal rights and values that are associated with western Christian Europe.<sup>37</sup> In this way, Jews are represented and understood as inferior to Christianity and as Eastern in the sense of 'un-English.' Further, because human rights are associated with the Enlightenment and with democracy,<sup>38</sup> Jews are represented and understood as not fully enlightened and as un-democratic. The foregoing is a racializing discourse which echoes the Tribunal's view that Fraser was trying to interfere in the democratic processes within the union, which merely wanted to uphold the principle of free speech and provide an arena for members to engage with each other on matters of pressing political concern, such as the Israel/Palestine conflict.

The spectre of Jewish particularism was also responsible for the Tribunal's rejection of Fraser's claim that an attachment to Israel is relevant to his Jewish identity (para. 150). By rejecting the attachment of Jews to Israel the

Tribunal rejected Jewish nationalism and Jewish particularism in favor of a 'race-less' post-national post-Holocaust Europe with its guarantee of universal rights. Such a view reinforced the Tribunal's denial of contemporary antisemitism because in post-national, post-Holocaust Europe, antisemitism is considered to be a thing of the past, overcome by the defeat of fascism and the development of the European Convention on Human Rights.<sup>39</sup> Accordingly, Fraser and his witnesses were implicitly ascribed a Jewish particularism that was incompatible with English or European identity.

The racializing of Jews may have been one of the purposes of the Tribunal's three brief references to the Holocaust.<sup>40</sup> Herman notes that English judges frequently use the Holocaust as a "mnemonic device" in cases involving Jews to achieve certain purposes<sup>41</sup>. One purpose may be to reinforce particularly English understandings of Jews and Jewishness, such that, rather than being used to recall atrocity, a Holocaust reference acts as a 'racializing aid' to remembering what it is that English judges find 'unattractive' and alien about 'the Jew.'<sup>42</sup>

The Tribunal's Holocaust references also served to reinforce its denial of contemporary antisemitism. According to Fine and Seymour, a Holocaust reference achieves this because it associates antisemitism with state-sponsored genocide in the 'old' Europe, consigning it to history as the result of

the defeat of fascism and the rise of the 'new' post-national Europe with its emphasis on human rights.<sup>43</sup> Associating antisemitism with state-sponsored genocide constructs Jews as "deserving" victims of persecution in the past but not in the present.<sup>44</sup> A Holocaust reference further helps to portray the judges as sympathetic, or at least as not indifferent, to Jewish persecution and suffering while at the same time denying a claim for discrimination<sup>45</sup>.

The Tribunal's racializing discourse reflects the nature of antisemitism in the UK, which is a phenomenon about ways of thinking about Jews. As Hirsh has noted, Jews are described, imagined, and suspected in a certain way by people who consider themselves to be just and upstanding.<sup>46</sup>

This chapter has addressed the contested meanings of anti-Zionism and antisemitism and their relationship to each other, as well as antisemitic ways of thinking, in the UK by reference to the UCU case. Unfortunately, since the election of Jeremy Corbyn as leader of the Labour Party, the UCU's understanding of anti-Zionism and antisemitism is increasingly prevalent among certain members of the Labour Party, especially those who belong to the grassroots pro-Corbyn Momentum Movement, and within the academy. It would appear that the Tribunal's antisemitic ways of thinking are engaged in by people who believe themselves to be virtuous opponents of antisemitism

and who therefore refuse to acknowledge their own antisemitism, even when it is pointed out to them. The Livingstone Formulation is systematically deployed to deny an accusation of antisemitism and to focus instead on the hidden motive for the accusation<sup>47</sup>. This practice not only assumes that those who raise concerns about antisemitism are part of a secret conspiratorial plan to silence criticism of Israel but also that all criticism of Israel, including its demonization and support for a boycott, is legitimate criticism<sup>48</sup>. Further, we can see from the judicial discourse that there are certain dominant and problematic assumptions in law. Even where there are not out-and-out racialized assumptions, there is a certain kind of ‘orientation’ that inevitably excludes, marginalizes, or silences the Jewish experience.

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<sup>1</sup> Fraser v UCU was decided by the Central London Employment Tribunal on 22<sup>nd</sup> March 2013. The full judgment can be found at: <http://www.judiciary.gov.uk/media/judgments/2013/fraser-uni-college-union>

<sup>2</sup> Fraser’s witnesses consisted of union activists, academics (including antisemitism scholars, scientists, sociologists, historians, lawyers, and philosophers), members of parliament, and members of Jewish communal organisations. These people were Jewish, Christian, Muslim, and atheist. Many of the academics had resigned from the UCU citing antisemitism as the reason.

<sup>3</sup> ‘Manifestations of Antisemitism in the European Union 2002 – 2003,’ [https://fra.europa.eu/sites/default/files/fra\\_uploads/184-AS-Main-report/](https://fra.europa.eu/sites/default/files/fra_uploads/184-AS-Main-report/) [accessed 10<sup>th</sup> February 2016].

<sup>4</sup> Ibid.

<sup>5</sup> Anthony Julius, *Trials of the Diaspora: A History of Anti-Semitism in England* (OUP 2010), p. 584. Julius describes ‘progressive anti-Zionism’ as “a semi-ideology, a boutique movement,” which takes the form of a comprehensive political stance, complete in itself. Ibid 451.

<sup>6</sup> Alan Johnson, ‘The Left and the Jews: Time for a Rethink’, Fathom, Autumn 2015: <http://fathomjournal.org/the-left-and-the-jews-time-for-a-rethink/> [accessed 15<sup>th</sup> January 2016].

<sup>7</sup> Ibid 3.

<sup>8</sup> Alan Johnson, ‘No Jeremy Corbyn is not antisemitic – but the left should be wary of who he calls friends,’ New Statesman, September 2015, <http://www.newstatesman.com/politics/staggers/2015/09/no-jeremy-corbyn-not-antisemitic-left-should-be-wary-who-he-calls-friends/> [accessed 15<sup>th</sup> February 2016].

<sup>9</sup> David Hirsh. ‘The Corbyn left: the politics of position and the politics of reason’, Fathom, Autumn 2015: <http://fathomjournal.org/the-corbyn-left-the-politics-of-position-and-the-politics-of-reason/> [accessed 2<sup>nd</sup> February 2016]

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<sup>10</sup> Simon Schama, “Why the left hates us”, *The Jewish Chronicle*, Comment, p. 37, 26<sup>th</sup> February 2016.

According to Schama, the left believes that Jewish self-determination has inflicted a colonial and alien enterprise on the Palestinian population, who have been penalised for the sins of Europe. *Ibid*.

<sup>11</sup> From the beginning of the union campaign to boycott Israeli universities in 2002, similar clauses had been included in its boycott motions in order to shield supporters of the boycott from accusations of antisemitism. For instance, Motion 54, which was passed in 2003 by the Council of The Association of University Teachers (a predecessor union to the UCU), stated that: “Council deplores the witch-hunting of colleagues, including AUT members who are participating in the academic boycott of Israel. Council recognises that anti-Zionism is not anti-Semitism, and resolves to give all possible support to members of the AUT who are *unjustly accused of anti-Semitism because of their political opposition to Israeli government policy*” (my italics), See, David Hirsh, ‘How the issue of antisemitism puts you outside the community of the progressive: *The Livingstone Formulation*’, <https://engageonline.wordpress.com/2016/04/livingstone-formulation-david-hirsh/> p. 12 [accessed 31<sup>st</sup> May 2016].

<sup>12</sup> David Hirsh, ‘Accusations of malicious intent in debates about the Palestine-Israel conflict and about antisemitism,’ *Transversal*, January 2010, Graz, Austria

<sup>13</sup> David Hirsh, ‘How raising the issue of antisemitism puts you outside the community of the progressive: *The Livingstone Formulation*’, <https://engageonline.wordpress.com/2016/04/livingstone-formulation-david-hirsh/> p. 6 [accessed 26<sup>th</sup> April 2016].

<sup>14</sup> *Ibid*.

<sup>15</sup> Jon Pike, ‘Antisemitism and testimonial injustice’, *Engage*, 31 January 2008, <https://engageonline.wordpress.com/2008/01/31jon-pikes-response-to-david-hirshs-paper-last-wednesday-antisemitism-and-testimonial-injustice/>

<sup>16</sup> Hirsh (n.15) 14.

<sup>17</sup> UCU Leaflet on Antisemitism 2012, *Challenging Antisemitism*, [www.ucu.org.uk/media/5122/UCU---challenging-antisemitism-leaflet/pdf/ucu\\_challengingantisemitism\\_leaflet\\_2012/](http://www.ucu.org.uk/media/5122/UCU---challenging-antisemitism-leaflet/pdf/ucu_challengingantisemitism_leaflet_2012/) The Union also purported to take antisemitism seriously by passing Motion 7 in 2009. This instructed the National Executive Committee (NEC) to organise an annual event to commemorate Holocaust Memorial Day.

<sup>18</sup> “So to take one of many examples, Mr Whine of the Community Security Trust, [...], did not consider that comparisons between Israel and apartheid South Africa were inherently anti-Semitic, whereas the Claimant did” (para. 151). The Tribunal thought that the different opinions of a large number of Fraser’s witnesses made the UCU’s “range of views” point (para. 149). “Without such common ground, questions put to the witnesses for the Respondents seeking to elicit a view whether such-and-such a comment ‘was’ or ‘was not’ anti-Semitic lacked any meaning” (para. 52).

<sup>19</sup> David Hirsh, ‘Defining antisemitism down: The EUMC working definition and its disavowal by the university & college union’, *Fathom*, 1 (1), pp. 30 – 39, <http://www.fathomjournal.org/policy-politics/defining-antisemitism-down/> [accessed 4<sup>th</sup> June 2016].

<sup>20</sup> Mira Vogel, ‘Jewish issues again at UCU Congress 2017’, <https://engageonline.wordpress.com/2017/5/31/jewish-issues-again-at-ucu-congress-2017/> [accessed 3<sup>rd</sup> August 2017].

<sup>21</sup> Herman, D. ‘An Unfortunate Coincidence: Jews, Jewishness and English Law’ (Oxford University Press 2011).

<sup>22</sup> Herman states that “[T]he law is the perfect English gentleman, as compared to the feminised characteristics of ‘the Jew’ revealed in his impulsive, over emotional and disruptive ‘Jewish’ voice.” *Ibid*. 44. There is a long tradition in English cases of depicting Jews as having a weak or bad character.

<sup>23</sup> Fraser attempted to explain to the Tribunal the ‘Good Jew’/ ‘Bad Jew’ dichotomy, designating the anti-Zionist Jews in the UCU as the ‘Good Jews’ and the Zionist Jews in the UCU as the ‘Bad Jews’.

<sup>24</sup> The Tribunal noted that the UCU witnesses were “called for the mundane purpose of telling the Tribunal about facts rather than ventilating their opinions [...]” (para. 149).

<sup>25</sup> Hirsh (n 15) 15. The UCU’s lawyer, Anthony White QC, subjected Fraser to two days of cross-examination in which he was relentlessly accused of crying antisemitism in order to silence criticism of Israel within the union.

<sup>26</sup> *Ibid* 14

<sup>27</sup> Robert Fine ‘On doing the sociology of antisemitism,’ *European Sociological Association Newsletter*, issue 33, winter 2012, p. 5.

<sup>28</sup> Hirsh (n 15) 6.

<sup>29</sup> William MacPherson, ‘Report of the Stephen Lawrence Inquiry’, February 24<sup>th</sup>, 1999, <http://www.archive.official-documents.co.uk/document/cm42/4262/sli-06.htm>. [accessed 13<sup>th</sup> March 2016]



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<sup>30</sup> The Report said with respect to defining antisemitism that “[W]e conclude that it is the Jewish community itself that is best qualified to determine what does and does not constitute antisemitism,” [www.antisemitism.org.uk/wp-content/uploads/All-Party-Parliamentary-Inquiry-into-Antisemitism-REPORT/](http://www.antisemitism.org.uk/wp-content/uploads/All-Party-Parliamentary-Inquiry-into-Antisemitism-REPORT/) [accessed 12<sup>th</sup> January 2016] p. 1. This being said, it is important to note that there are many prominent non-Jewish scholars of anti-Semitism, including James Parkes, Gavin Longmuir, Mary Boys, Franklin Littell, the Eckhardts, Edward Flannery, John Connelly, and others.

<sup>31</sup> More recently, a parliamentary committee set up to report on antisemitism in the UK also recommended the adoption of the MacPherson principle to decide the issue of antisemitism, see, ‘The House of Commons Home Affairs Select Committee,’ *Antisemitism in the UK*, Tenth Report of Session 2016-17, para 22: “The starting point for deciding the matter of antisemitism is the perception of the alleged victim.” The Select Committee also thought that an incident “perceived to be racist by the victim *or any other person*” is a strong basis for investigation. *Ibid.*

<sup>32</sup> “I think, therefore I am” is replaced by “I am, therefore I know,” wrote Mary Lefkowitz in ‘History Lesson’ (New Haven, NJ, 2008) p. 122 and quoted in Julius, *Trials of the Diaspora* (n 7) 586.

<sup>33</sup> Hirsh (n 15) 1.

<sup>34</sup> Motion 729 on ‘Palestine’ was passed at UCU’s 2016 Annual Congress. It provided as follows: ‘Congress notes: 1. Government guidance deterring Local Authority boycotts of unethical companies; 2. ‘counter-radicalisation’ to prevent campus criticism of Israel, and boycott of complicit institutions; 3. orchestrated conflation of anti-Zionism with anti-Semitism; 4. the drive by Israel to access UK campuses for state propaganda via faux debates with selected critics; 5 escalating legal threats and pressure to intimidate Israel’s critics: including UCU Congress votes for BDS (2010), non-conflation of anti-Zionism with anti-Semitism (2011), and against contact with Histadrut (2010). Congress believes a. BDS responds to Western governments’ failure to hold Israel accountable for war crimes and international law violations; b. scholars have a duty to ensure voices of the oppressed are not silenced on campus. Congress i. reaffirms its support for BDS, and for the boycott of Israeli academic and cultural institutions; ii. requires union officers to uphold Congress decisions when acting in their UCU capacity, and to resign from such external positions as create conflicts of interest’. It is clear that Motion 729 mirrors the themes of antisemitic conspiracy theory. The union ruled that the Motion would not be acted upon because to do so would be illegal.

<sup>35</sup> Fraser’s primary case was that the UCU persistently failed to comply with its assurances that it would: (1) ensure balance in the debates and meetings that it hosted and presided over on the Israel/Palestine conflict; (2) act against antisemitism among its members, including activists’ list adjudications; (3) address concerns raised by Fraser and other Jewish and non-Jewish members with respect to its own conduct (such as dealing with complaints of antisemitism against its members); (4) address resignations by Jewish and non-Jewish members who cited antisemitism as the reason for leaving the union; (5) pursue its stated objective of “campaigning against anti-Semitism” and thereby protect its own Jewish members.

<sup>36</sup> Hirsh (n. 15) 15.

<sup>37</sup> Griffin maintains that human rights are “undoubtedly” a Western product, introduced by Christians in the late middle ages and further developed in the ‘modern’ period of the Enlightenment as part of the growth of individualism and the sense of ‘the dignity of man’, see, James Griffin, ‘On Human Rights’ (Oxford University Press, 2008), p. 133. This represents the dominant view although other scholars have stressed the contribution of the non-Western world to the development of human rights, see, Upendra Baxi, ‘The Future of Human Rights’, (3<sup>rd</sup> edn, Oxford University Press, 2008), p. 33; Jacques Ranciere, ‘Who is the Subject of the Rights of Man?’, *The South Atlantic Quarterly* (2004), p. 1-2; Robert Fine, ‘Are Human Rights Western?’, <http://www2.warwick.ac.uk/fac/soc/sociology/staff/emiritus/robertfine/home/teachingmaterial/humanrights/lecturepo> (accessed 12th February 2016), p. 3.

<sup>38</sup> The ‘impossibility thesis’ links the emergence of human rights to the development of democracy and capitalism, see, Upendra Baxi, *ibid* 34.

<sup>39</sup> Robert Fine, ‘Nationalism, Postnationalism, Antisemitism: Thoughts on the Politics of Jurgen Habermas’, *Osteirreische Zeitschrift fur Politikwissenschaft (OZP)* 39 Jg.(2010) H. 4, 409 – 420; Robert Fine, ‘Fighting with Phantoms: a contribution to the debate on antisemitism in Europe’, *Patterns of Prejudice*, Vol 43, No. 5, 2009, P. 459 – 479; David Seymour, ‘Critical Theory: the Holocaust, Human Rights and Antisemitism’, *Critical Legal Theory Conference Paper*, Harvard Law School, March 2013; David Seymour, ‘Holocaust Memory: Between Universal and Particular’, unpublished paper, June 2014.

<sup>40</sup> At the beginning of the judgment, the Tribunal introduced Fraser as “[...] the child of Jewish refugees who fled Nazi Germany in 1939” and told us that “[M]embers of his family died in the Holocaust” (para. 2); and later

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made an oblique reference to the Holocaust with the words “[S]o long and terrible has been the persecution of the Jewish people through history [...]” (para. 51).

<sup>41</sup> Herman (n. 22) 100.

<sup>42</sup> Ibid 101.

<sup>43</sup> Fine; Seymour (n 39).

<sup>44</sup> Herman (n. 22) 101.

<sup>45</sup> Ibid.

<sup>46</sup> David Hirsh, “Jew hate and today’s Left,” Comment: The Jewish Chronicle, 17<sup>th</sup> March 2016, <http://www.thejc.com/news/uk-news/154672//jew-hate-and-today's-Left/> [accessed 18<sup>th</sup> March 2016.]

<sup>47</sup> With respect to allegations of antisemitism within the Labour Party, a variant of the Livingstone Formulation is the counter-accusation that the allegations are a deliberate ploy to smear the Labour Party.

<sup>48</sup> Hirsh (n 15) 2