

Using Ethics Committees to Justify Force-Feeding Political Prisoners in Israel

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Abstract

Thousands of Palestinian prisoners are held in Israeli prisons without trial. For some of them, engaging in hunger strikes is the last resort in opposing unlawful detention and inhumane prison conditions. While mainstream bioethics deliberation, reasonable arguments, and international legal and medical professional declarations prohibit force-feeding, local ethical deliberations, professional medical guidelines, and legislation allow the use of medical judgment and clinical ethics committees to force-feed these prisoners. Until now, Israeli physicians have refused to do so, but this may change in the future. The international medical and bioethics communities need to stand behind these medical professionals, as well as prisoners. Clinical ethics committees in Israel must choose whether they serve the interests of these prisoner-patients and perhaps their political or human rights agenda, or whether they are subservient to an unjust, oppressive regime.

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“Our resistance embodies our humanity ... [which] lies in the idea of sacrifice for freedom. It is like the candle that burns and consumes itself for others ... It lights the way for the other including you, you write this research so that you can see the road ... For us this is our humanity, to sacrifice for the other. Those who have gone away [the martyrs] did not take anything with them but they just sacrifice the self for the other.”

—Hasan Safadi, a Palestinian citizen formerly arrested without trial
by Israel¹

Introduction

This paper is being written in the midst of ongoing civil unrest in Israel, where millions of people have been protesting for several months against the government’s attempt to curb the judicial power of the Israeli Supreme Court. (While our manuscript was being evaluated, war broke out in Israel. In consultation with the editors, we opted not to address the war in this paper and leave it largely in its original form). The Reasonableness Clause, which prevents the court from evaluating governmental decisions based on public reason, has in fact been introduced as law and is the first step in the process. This law practically nullifies Israel as a democratic country.

What is perhaps most striking in this civil unrest is the tension between the Israeli public’s opposition to losing political rights in a country that is no longer a democracy on the one hand, and the seeming apathy of some toward the continuous violation of political and moral rights of Palestinians living in the Occupied Palestinian Territory on the other (people in Israel have been protesting against the occupation through the years, but their numbers and impact have been dwindling).² Several major human rights organizations and scholars have indeed defined the Israeli regime in the Occupied Palestinian Territory as apartheid, and a recent report by 17 human rights organizations in Israel describes how such violations have contin-

uously worsened in the past 56 years.³ The report specifically highlights three trends: increasing violent policies (e.g., torture during investigations); increasing violence, as shown in the number of deaths among Palestinian citizens, including women and children; and increasing anti-Palestinian and anti-democratic legislation. Importantly, the report also warns against the judicial overhaul, while acknowledging that the Israeli Supreme Court has actually played an important role in backing and legitimizing Israeli policies against Palestinians.⁴

The bioethical implications of the Israeli occupation have been reviewed elsewhere.⁵ The focus here is the impending violation of the moral and political rights of Palestinians to bodily integrity and autonomy, specifically by the threat of force-feeding. Discussing force-feeding in the Palestinian context is enlightening for several reasons. First, it provides one example of the complicity of the Supreme Court in the Israeli occupation and gross violations of basic human rights. Second, it illustrates how unreasonable argumentation and a misguided interpretation of empirical data can lead to and justify unjust acts.⁶ Third, it sheds light on the current state of affairs of Israeli bioethics and how this state of affairs at once feeds into and is perhaps influenced by the political environment. Fourth, and relatedly, it demonstrates the potential of clinical ethics committees to do wrong and cause significant harm. It specifically highlights the political role that ethics committees play or might play in this and similar contexts.

This paper first reviews the political context of hunger strikes by Palestinian prisoners and force-feeding in Israel. It next critically reviews how clinical ethics committees have been used or may potentially be used to justify the force-feeding of Palestinian political prisoners. Lastly, the paper argues that the force-feeding of Palestinian political prisoners (and in fact all prisoners for that

matter) is ethically unjustified. Using the concept of “resistance,” the paper also argues that the decision of ethics committees will inevitably place them on one side of history: the wrong one (that of the oppressors) or the right one (that of the resisters). These committees’ decisions may also influence the outcome of hunger strikes as acts of resistance.

Legal, moral, and political rights

The paper greatly relies on the use of “rights” of different kinds, so in order to prevent confusion, a note of clarification is warranted. Rights in general denote entitlements of individuals that confer corresponding duties on others to do or provide something or refrain from doing something. “Basic” rights simply denote rights that are fundamental to other rights: they are the building blocks of other, non-basic rights and, in turn, are not dependent on any other rights. From a normative perspective, basic rights claims trump non-basic rights claims.

Legal rights denote a legal authority’s sanctioned, or positivistic, entitlements that provide the basis for claims for and against certain conditions, resources, actions, and so forth. Legal rights arguably make sense only in the context of a legal authority such as a liberal or decent (to modify from John Rawls) state that grounds and legitimizes its normative power.⁷ Moral rights, in contrast, refer to natural entitlements that stem and draw their normative power directly from the fact of being a human being, or a person, on this planet. Moral rights exist a priori to any legal or political institution and are thus independent of such institutions. Following others, moral rights will be understood here as a dialectical shortcut to avoid the need for deeper argumentation.⁸ Thus, for most of the paper, prisoners are simply assumed to have a moral right to starve to death and not be force-fed. This moral right will be defended in the last section.

Lastly, political rights denote entitlements owed to individuals as “legal persons.”⁹ These rights

are guaranteed by often idealistic or aspirational international human rights conventions and customary law. They exist independently of any state powers; hence, any regime that does not respect them can be deemed unjust. The function of political rights is to ensure the ability of individuals to participate in the civil and political life in their countries of origin or at least to some extent in their country of residence. Article 26 of the International Covenant on Civil and Political Rights provides a good example of political rights:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*¹⁰

More abstractly, political rights are about ensuring equal access to the political space in which individuals can speak and act, in the words of Hanna Arendt.¹¹ Only in such safe spaces, where individuals are equally and adequately respected and their voices heard, can individuals fulfill their constructive role in society. Depriving one of one’s political rights deprives one from acting and speaking, from participating in the political. This deprives one of the possibility of living life to the fullest.

In what follows, political and moral rights may at times be used interchangeably since there is a significant overlap between the two.

Force-feeding in Israel

According to the Council of Europe:

A person deprived of his or her personal liberty is to be regarded as a “political prisoner”:

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human

Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;

- b. if the detention has been imposed for purely political reasons without connection to any offence;
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.¹²

The council adds that “those deprived of their personal liberty for terrorist crimes shall not be considered political prisoners if they have been prosecuted and sentenced for such crimes according to national legislation and the European Convention on Human Rights.”¹³

Palestinian political prisoners are considered by Israel to be terrorists or promoters of terrorism. They are considered by their own compatriots, other activist groups in other parts of the world, and perhaps the entire Arab world as freedom fighters. They might see themselves as part of a Palestinian resistance movement or a global resistance movement of the oppressed. Yet at the same time they cannot but be parents or children of those who await them in the Occupied Palestinian Territory. They thus want to be reunited with their family at the same time that they might want to resist what they experience as an injustice toward them and their people.¹⁴

While a limited use of imprisonment without trial—or administrative arrest—to protect the public good may at times be warranted under international law, the Office of the United Nations High Commissioner for Human Rights has determined that it is allowed only under the conditions

of several safeguards:

*The power of administrative and ministerial authorities to order detentions is highly controversial, and some experts believe it should be abolished. It is important to be aware, however, that this form of detention is not outlawed by international law, even though it is surrounded by some important safeguards.*¹⁵

These safeguards include the following: (1) non-arbitrariness; (2) arrest must be based on grounds and procedures established by law; (3) information of the reasons must be given promptly; and (4) court control of the detention, as well as compensation in the case of a breach, must be available.

Based on these criteria and other international legal instruments, the United Nations Special Rapporteur for the situation of human rights in the Occupied Palestinian Territory has berated Israel since 1967 for its excessive use of this policy, particularly in the case of Maher Al-Akhras (see below).¹⁶

With their basic human right of liberty crushed, and without any real legal recourse, Palestinian prisoners have for the past 60 years engaged in hunger strikes.¹⁷ Inspired by other freedom fighters such as members of the Provisional Irish Republican Army, Palestinian prisoners have opted to sacrifice their health and lives for a greater good: equal respect, political freedom, and basic and non-basic political human rights, including the right to a fair trial and humane imprisonment conditions.¹⁸ Their resistance to oppression is literally embodied.¹⁹ Locked in a legal and political system of oppression and despair, they see the act of hunger strike primarily as an act of hope and love toward their families and homeland.²⁰ This is well expressed in the testimony of Hanna Shalabi, a Palestinian woman who was imprisoned for 27 months in Israeli prisons without trial:

I wondered where was humanity and dignity, when all they brought was darkness and pain ...

I thought to myself, people all over the world were sleeping in peace and tranquillity, here we are in our homes, being hit by guns and sticks in the middle of the night ... I was sentenced to administrative detention without a charge against me. I had to make a decision whether to die or live in dignity. I decided to go on hunger strike until I obtained my freedom from the clutches of the occupier. As days went by, the hunger strike was taking its toll, my body was becoming weaker, I was having blackouts, my bones were protruding from my wasting body, my life was a misery. On day forty-seven I declared that I would not abandon my strike, I would not be sentenced to administrative detention seven times without charge. Oh, Allah, at last they have relented and I have achieved my liberty. Yes, sacrifice is the brother of freedom. Now I will be expelled to Gaza, away from my family and friends, but moving to a part of my homeland and freedom means everything to me.²¹

Thirty Palestinian prisoners initiated a hunger strike in September 2022, protesting their unlawful administrative arrest and prison conditions. Luckily this strike ended the following month upon Israeli concessions.²² Israeli hospital physicians have so far withstood the pressure from various sources to force-feed these prisoners. But a perfect storm is brewing, as professional medical guidelines, existing legislation, a non-democratic right-wing government, and local ethical discourse place health care professionals between a rock and a hard place.²³

The Israeli Medical Association (IMA) prohibits the force-feeding of hunger strikers but allows some flexibility once a striker loses consciousness. Thus, the IMA code of ethics reads, “A physician shall not participate in forced feeding of a hunger striker.”²⁴ On the very same page, however, the code requires the physician to inform the prisoner whether she would indeed be willing to respect the prisoner’s wishes: “A physician must inform the hunger striker whether he will be willing to accept the latter’s request to refuse any food and/or liquids, including artificial feeding, if he should

lose consciousness.”²⁵ One wonders how the two statements can be true: that physicians should not force-feed and that physicians must tell prisoners whether they are willing to respect their wishes not to be force-fed, thus allowing for the possibility that some physicians would indeed insist on force-feeding.

One page later, the IMA’s true position is revealed:

If the hunger striker loses consciousness and is no longer able to express his wishes, the physician shall be free to decide to the best of his awareness and conscience how to continue to treat the hunger striker, while respecting to the utmost the views and wishes of the hunger striker as expressed to him during the hunger strike.²⁶

This is not how a surrogate decision-making process works.²⁷ The first level in such a process respects the patient’s continued autonomy as expressed while competent, either verbally or by way of some form of advance directive, a living will, or instructions for treating health care professionals. The physician should not have any say in the matter. The IMA position here is actually extreme in its divergence from mainstream bioethical scholarship.

A 2015 law in Israel allows the prison system to force-feed prisoners in case of risk to their lives. The Israeli Supreme Court has upheld the law.²⁸ Several Israeli and Jewish scholars have supported such legislation and force-feeding in general with arguments that have been debunked.²⁹ Several United Nations Special Rapporteurs on torture and the right to health have strongly opposed the law, equating force-feeding to torture.³⁰ Previously, a report by Special Rapporteur Joan Mendez specifically discussed torture in health care. Relying on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its authoritative interpretations, Mendez particularly questions the validity of the doctrine of “medical necessity,” often espoused to justify the

force-feeding of prisoners.³¹

Here we focus on the use or potential use of clinical ethics committees to force-feed political prisoners, and an argument that was actually used by an ethics committee for that purpose—namely, that a prisoner is likely to change their mind once they are force-fed. While we are not alleging torture in this instance, as discussion with the chair of the relevant ethics committee made clear that there was no intent to inflict harm and that force-feeding was considered a medical necessity, force-feeding in such a case could still be considered to meet the definition of cruel, inhuman, or degrading treatment.

Clinical ethics committees to justify the unjustifiable

Legislation, policy, and professional guidelines in Israel involve clinical ethics committees in decisions about force-feeding. Other than institutional and superior (national) research review committees, several kinds of clinical ethics committees operate in Israel, including committees that approve abortions, committees that define biological death, and the more traditional, hospital-based or health maintenance organization-based committees.

Hospital clinical ethics committees may be classified into two kinds. Statutory committees draw their authority from the Patient's Rights Act passed in 1996. The act grants these committees three main functions: approving treatment despite the patient's disagreement; allowing the withholding of private medical information to the patient to prevent unnecessary harm; and compromising confidentiality in order to reduce public health risks. By law, these committees should consist of a person with legal qualifications equivalent at least to a district court judge and who will serve as chair, two specialist physicians from different specialties, a social worker, a nurse (a late addition to the act), and a community representative. Statutory com-

mittees' decisions ought to be based on a majority rule and are legally binding.³²

A committee may be activated by clinicians, hospital administrators, or, rarely, relatives to deliberate on dilemmas arising from clinical practice. While the extent to which these committees are used varies across different institutions in Israel, a survey done more than two decades ago has revealed that most hospitals did not use or rather minimally used these committees. A recent, yet unpublished survey by the first author points to very little improvement since then. The law also dictates that members of the committees undergo periodic training in bioethics, but the same survey by the first author reveals that this is not followed.

Perhaps because these committees are somewhat cumbersome and resource intensive, an advisory committee—the second type of hospital-based committee—is the model most often used in hospitals. These committees consist of one to two members with or without medical background who may or may not have formal ethics training. Advisory committees draw their authority strictly from the hospital management. They may be consulted via the same mechanism as statutory committees.

A 2018 memo by the Israeli Ministry of Health grants a statutory hospital ethics committee the option of deliberating the case of a prisoner who engages in a hunger strike.³³ Similarly, a memo issued in January 2022 by the Israeli prison system allows the use of an ethics committee to force-feed a prisoner against his explicit refusal. What general considerations are to be weighed by the ethics committee?

The Patient's Rights Act states the following regarding bypassing patients' objection to treatment:

Should the patient be deemed to be in grave danger but reject medical treatment, which in the circumstances must be given soon, the clinician may perform the treatment against the patient's will, if an Ethics Committee has confirmed that all the following conditions obtain:

1. *The patient has received information as required to make an informed choice;*
2. *The treatment is anticipated to significantly improve the patient's medical condition;*
3. *There are reasonable grounds to suppose that, after receiving treatment, the patient will give his retroactive consent.*

In September 2020, the ethics committee at Kaplan Medical Center in Israel was consulted regarding the force-feeding of Maher Al-Akhras, who at that time had been hunger striking for 46 days. Maher was protesting his unlawful arrest due to alleged links to Palestinian terrorist organizations. According to the committee's report, Maher was suffering from vomiting and nystagmus, but nothing in its reporting suggests that he lost his cognitive ability to make medical decisions. Maher did ask his physicians to treat him if he lost consciousness and told the committee that if he felt to be critically ill, he would request treatment.

Despite ostensibly acknowledging the patient's full autonomy at the time (meaning *while* Maher was fully conscious), the ethics committee allowed his force-feeding. In its approval, the committee confirmed all three criteria mentioned above:

1. Maher received the information required to make an informed choice.
2. Maher risked irreversible harm, and force-feeding him by intravenous fluid and vitamin administration was likely to improve his condition and prevent such harm.
3. Since Maher expressed his wishes to live and return to his family, there was reason to think that he would give his retroactive consent to be force-fed.

Fortunately, physicians at the hospital refused to force-feed Maher and he ended his hunger strike after 103 days, once the Israeli government promised to refrain from arresting him again.

The committee's conclusion and its cynical use of the Patient's Rights Act would be abhorring to most ethicists and clinicians, but in the current Israeli context it may be used to justify the force-feeding of other Palestinian prisoners in the future. But it should not, because the committee's conclusion was misguided.

Making a case against the force-feeding of political prisoners

To recap, Maher was deemed to be fully competent to make medical decisions by the same ethics committee that recommended his force-feeding. The ethics committee approved his force-feeding under the assumption that he would give retroactive consent. Note, however, that "retroactive consent" in clinical practice does not exist; it is rather an oxymoron. Patients may either be competent to make medical decisions—and therefore their wishes should be respected unless they clash with other considerations, such as public health—or they may not be competent, and then decisions would be based on a three-tiered model of surrogate decision-making processes.³⁴ As mentioned above, the first step in this model consists of abiding by the patient's continued autonomy either previously expressed verbally or as reflected in any form of advance directive, where the patient specifies what should be done once they lose autonomy. Even in research settings, the notion of retroactive consent is highly controversial and mostly untenable.³⁵ The alleged reliance on "retroactive consent" is simply paternalism in disguise, and in clinical care this kind of paternalism is usually unjustified.³⁶ This means that the Israeli Patient's Rights Act should be revised. This also means that the committee was mistaken in relying on it in its judgment.

In defense of the Israeli Patient's Rights Act, it has been argued that the act differs from Western law in allowing a critical evaluation of the patient's current expressed wishes against their past char-

acter, even though English courts occasionally did exactly that.³⁷ The argument given to justify this part of the law is that for various reasons the patient's current explicit wishes do not really reflect their authentic autonomy. This argument has received some backing in the mainstream bioethics and medical literature.³⁸ Our response to such an argument is threefold: First, patients are allowed not to be "authentic" in the sense of making medical decisions in a fashion that is out of character. Second, rather than referring to these patients as "not authentically autonomous," they might more simply be referred to as non-autonomous and, as such, incapable of making medical decisions. Third, even if this argument is plausible generally, it should apply only in rare cases, and the case discussed here is not one of them.

In any case, while the committee's conclusion may be aligned with the Israeli Patient's Rights Act, it is not aligned with virtually any international legal or professional guidelines regarding force-feeding, including the World Medical Association Malta Declaration.³⁹ It is also not aligned with mainstream medical ethics, where the patient's autonomy, or more specifically the principle of respect for personal autonomy, is key.⁴⁰ The normative value of this principle may be sufficiently established via any one of different pathways. It can first be established by way of a maxim, well accepted in medical ethics, even by those who advocate relational autonomy.⁴¹ It secondly may be established by relying on a comprehensive moral theory.⁴² A third pathway draws from common morality, arguably captured by a set of well-established human rights.⁴³

The International Covenant on Civil and Political Rights determines that humans have an inherent dignity, which in turn engenders several inviolable moral and political rights. Such inviolable or non-derogable rights include the right to freedom of opinion and expression, right to

privacy, right to be free from torture and inhuman treatment, and right to life, liberty, and security of person. The moral and political right over one's body—often called bodily or physical integrity—is also considered to be an inviolable right.⁴⁴ Article 10 of the covenant particularly pertains to those stripped off their liberty: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."⁴⁵ Being non-derogable means that the right must be respected under all conditions.

In medical practice and ethics, these basic rights translate to a patient's right to self-determination, self-authorization, and self-governance, otherwise known as autonomy.⁴⁶ Respect for autonomy means respecting the wishes of patients and their ability to make medical decisions regarding their own care regardless of the consequences to themselves. It also means respecting their bodily integrity. In clinical contexts, this right stands unless it is infringed by public health considerations. Another way of expressing this argument is that the principle of respect for personal autonomy entails both positive entitlements for something (i.e., positive rights) and entitlements against something (i.e., negative rights). As was established many years ago, "the limits on positive rights may be greater than the limits against negative rights."⁴⁷

Autonomy-based and other arguments to justify basically the right to starve to death have been articulated and defended elsewhere.⁴⁸ Since hunger striking invariably has health consequences and because these consequences are usually dealt with by health professionals, the same reasoning may be used to spell out the ethical case that applies to all prisoners, regardless of whether they stood trial.

Prisoners lose their personal autonomy but not their moral autonomy.⁴⁹ They also do not lose their ethical claim to bodily integrity.⁵⁰ If anything, since they are a vulnerable population, more attention should be devoted to respecting their

moral autonomy and bodily integrity.⁵¹ Competent political prisoners who engage in a hunger strike and become patients are entitled to make medical decisions, including dying as a result of their starvation. They do not wish to die; their goal is not death. Rather, they risk death or ill-health for a perceived greater cause—namely, equal human dignity and respect. For them, equal human dignity and respect might entail better prison conditions or general freedom of movement and from oppression. The same arguments apply to prisoners who have lost their competence, such as after losing consciousness. A surrogate decision-making process is generally used and advocated in medical practice in such situations, whereby the first step is probably the most relevant here: follow the previous expressed wishes and intentions of the prisoner, which are most likely to represent his true wishes even after losing competence.⁵²

Using perhaps less dramatic language, prisoners who hunger strike and object to feeding—forced or otherwise—are simply refusing care. Refusing care is, and should be considered, a patient prerogative. The same way patients are allowed to forego treatment in most cases (barring cases in which other considerations apply, such as directly observed therapy for tuberculosis), they should, *inter alia*, be allowed to forego food and force-feeding. Again, this applies both to prisoners under administrative arrests and those under normal (just) circumstances.

Leaving aside the language of bioethics, administrative arrests are justified only if certain safeguards are in place. In the Israeli context, the safeguards are inadequate, thus making the policy unjustified and unlawful according to international law. Regardless, legal persons who lose their freedom—even legitimately—still warrant respect and still maintain their non-derogable political rights. Force-feeding, then, is arguably more of a biopolitical issue than a bioethical one.⁵³

The biopolitics of hunger strikes

Non-derogable political rights include freedom of expression and protest. Hunger strikes fit comfortably alongside almost all mainstream conceptualizations of protest or resistance, with clear opposition in mind and often with clear political motivation.⁵⁴ They are also a form of protest that shines a light on the intersection of health and protest. Protest and health intersect in a variety of ways, from how health knowledge is contested, to how health is used to frame or motivate acts of resistance.⁵⁵ Not only are hunger strikes a form of protest that has health consequences, but they also leverage health and well-being to communicate suffering, make demands, or even disrupt. Ashjan Ajour, in a book based on interviews with several political prisoners, captures this well:

The prisoners choose to transform their bodies into a site of revolution. The body here becomes more than the material body, for the singularity of hunger strike becomes an emblem of Palestinian self-determination and the body of the hunger striker a symbol of a communally shared body politic. From their singular encounter with colonial power, they constitute an intersubjective political consciousness of Palestinian self-determination at the collective level.⁵⁶

Thinking about hunger strikes as a political issue as opposed or in addition to a medical issue may be helpful for different reasons, but particularly relevant for this discussion are the implications for clinical ethics committees in Israel. First, conceptualizing hunger strikes as a political issue foregrounds the political nature of the decisions made by clinical ethics committees. While clinical ethics committees are independent bodies, they cannot escape influence from the broader political climate. Additionally, any decision made by a committee has political implications—that is, an ethics committee that is deliberating on such a politically motivated act of hunger striking in what is clearly

a highly politicized milieu *cannot but* play a political role.⁵⁷ One wonders, then, why clinical ethics committees should be involved in this kind of case at all—hunger strikers should be considered competent until they are clearly not, and health care professionals should simply provide them nutrition such as vitamins and water with salt if that is what patients want.

Second and conversely, resistance opens new opportunities for action and opposition. Using the language of resistance and acknowledging the relevance of political in addition to bioethical arguments in the context of hunger strikes, clinical ethics committees should understand and make explicit that their decision places them either on the side of the oppressors or wrongdoers or on the side of resisters who in this case have the moral upper hand. The former include Israeli legislators, the Israeli Supreme Court, and those who devised and uphold institutional and professional guidelines permitting the force-feeding of political prisoners. The latter obviously include those political prisoners who engage in hunger strike, but also health care professionals who oppose pressure from their professional superiors, from various scholars, and from the Israeli government and refuse to force-feed these prisoners in accordance with the Malta Declaration.⁵⁸ In a practical sense, this could involve openly opposing force-feeding. As mentioned, health care professionals in Israel have so far resisted the political pressure to force-feed, so much so that at one point the government considered importing physicians from India to conduct the force-feeding.⁵⁹ The motivation behind their resistance is probably their perception of fundamental professional ethics as captured by formal professional ethical codes issued by the IMA or the World Medical Association, or even the Hippocratic Oath. But in Israel's increasingly conservative political atmosphere, pressure on health care professionals to engage in force-feeding is likely to increase, and health care professionals whose political position

already aligns with the government may be more inclined to do so. Clinical ethics committees may then be the only thing separating the prisoner from force-feeding.

Resistance can also involve the facilitation or enablement of more covert acts of resistance. Ethics committees could work with health care workers to enable hunger strikers in making their stand against injustice. An ethics committee, for instance, may instruct health care workers to secretly provide liquids and vitamins for sustenance while still allowing prisoners to make a public stand against injustice.

Third, and in the broader political context, consideration of the political nature of hunger strikes brings into question the decision-making processes of clinical ethics committees, which are made with little oversight and with no means to appeal. In this regard, the fact that Maher was eventually not force-fed highlights the complexity and current tensions within the Israeli health care system. Maher was caught between the law and a statutory ethics committee on the one side, warranting and recommending for his force-feeding, and health care providers on the other end, refusing to do so and opting to respect his moral autonomy. Luckily for Maher, the IMA code allowing for force-feeding did not apply here, as Maher was still conscious and competent to make medical decisions. But health care providers may indeed be more inclined to force-feed once prisoners lose their consciousness, in accordance with the IMA code and as allowed by Israeli law. It is again this type of case where an ethics committee may be the only thing separating the political prisoner from being force-fed. For this to happen, however, further training for these committees may be warranted, focusing on commonly accepted arguments in mainstream bioethics. This is also the reason why decisions by these committees should be made public and open to scrutiny by members of the public as well as the national and international bioethics community.

As in the present case, committee members could then realize that they have gotten it wrong and hopefully be better informed in similar cases in the future.

To alleviate some of the complexity described, we conclude by offering explicit recommendations to health care professionals and clinical ethics committees in Israel on the management of prisoners who engage in hunger strikes:

1. Prioritize moral autonomy, including obtaining advance directive where possible.
2. Be publicly transparent in your decisions.
3. Enable a rigorous support system for prisoners that is separated as much as possible from the prison apparatus and local security services (for example, by having a consultation by an independent health care provider).
4. Recognize the broader political context in which the hunger strike is occurring, including the patient's right to protest.
5. Be aware of your own biases and potential sources of influence. If you are somehow placed under undue political pressure to engage in force-feeding, refuse, and seek guidance by relevant organizations in Israel, such as Physicians for Human Rights or the Red Cross.
6. Leverage the media and activist groups to amplify the patient's wishes in case they are being unjustly silenced.
7. Before making a decision, consult the international literature on the ethics of hunger strikes and force-feeding and consider consulting peers with expertise in medical ethics.
8. Consider whether the decision to force-feed should even be made by a clinical ethics committee. Ethics committees may simply decide to support the clinician in her refusal to force-feed the patient.

The Israeli government, in turn, ought to allow health care professionals to opt out of their professional role in the case of force-feeding. It should reconsider the lawlessness of force-feeding and whether it wishes to stain the purity of the medical profession by expecting it to take an active role in a practice that may be more politically than medically motivated.

Conclusion

A perfect storm is brewing in Israel, with the rise of political and religious extremism and perhaps a descent of mainstream bioethics. Political pressure on clinicians to force-feed political prisoners will undoubtedly increase in this environment. More than ever, they will need the backing of the global medical and bioethical community.

The quotation that opens this paper highlights how for Palestinian prisoners in Israel, a hunger strike remains the last resort to express their resistance to oppression and to hold on to what they perceive as their fleeting humanity. Legislation in Israel is unlikely to become more friendly toward Palestinians. Clinical ethics committees will increasingly have to decide whether to be part of an unjust oppression, or rather contributors to humanity.

References

1. A. Ajour, *Reclaiming Humanity in Palestinian Hunger Strikes* (Cham: Palgrave Macmillan, 2021).
2. C. McGreal, "A Dark Day for Israeli Democracy: US Jewish Groups Denounce Netanyahu's Judicial Overhaul," *Guardian* (July 24, 2023); H. Watzman, "In Israel's Pro-democracy Struggle, the Military and Civilians Shouldn't Mix," *Haaretz* (July 23, 2023); A. Irfan, "Israel: Unpopular Judicial Reform Involves Repeal of Law Set Up Under British Colonial Rule in Palestine – Here's What That Tells Us," *Conversation* (July 26, 2023).
3. Amnesty International, *Automated Apartheid: How Facial Recognition Fragments, Segregates, and Controls*

Palestinians in the OPT (London: Amnesty International, 2023); Amnesty International, *Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (London: Amnesty International, 2022); B'tselem, "A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid" (January 12 2021), https://www.btselem.org/publications/fulltext/202101_this_is_apartheid; R. Falk and V. Tilley, "Israeli Practices towards the Palestinian People and the Question of Apartheid," *Palestine and the Israeli Occupation* 1/1 (2017); Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (Human Rights Watch, 2021); R. Muhareb, E. Rghebi, S. Power, and P. Clancy, "Persecution of Palestinian Civil Society: Epistemic Violence, Silencing, and the Apartheid Framework," *Current Issues in Depth* 9 (2022).

4. *State of the Occupation Year 56: A Joint Situation Report* (2023).

5. Z. Lederman, "Together We Lived, and Alone You Died: Loneliness and Solidarity in Gaza," *Developing World Bioethics* 21/1 (2021); Z. Lederman, S. Lederman, and E. S. Daniels, "A Call from Justice to Support the People in Gaza," *Developing World Bioethics* 19/2 (2019); Z. Lederman, S. Lederman, and G. Majadli, "COVID-19 in the Occupied Palestinian Territory and Israel's Duty to Vaccinate," *Journal of Jewish Ethics* 8/2 (2022); Z. Lederman, G. Majadli, and S. Lederman, "Responsibility and Vaccine Nationalism in the Israeli-Palestinian Conflict," *Developing World Bioethics* 23/1 (2023); Z. Lederman, E. Shepp, and S. Lederman, "Is Israel Its Brother's Keeper? Responsibility and Solidarity in the Israeli-Palestinian Conflict," *Public Health Ethics* 11/1 (2018).

6. Z. Lederman, "Prisoners' Competence to Die: Hunger Strike and Cognitive Competence," *Theoretical Medicine and Bioethics* 39/4 (2018); Z. Lederman and S. Lederman, "The Land of No Milk and No Honey: Force Feeding in Israel," *Monash Bioethics Review* 34/3 (2017); Z. Lederman and T. C. Voo, "The Minnesota Starvation Experiment and Force Feeding of Prisoners: Relying on Unethical Research to Justify the Unjustifiable," *Bioethical Inquiry* (2021).

7. A. Buchanan, *The Heart of Human Rights* (New York: Oxford University Press, 2013).

8. J. Harris, *The Value of Life: An Introduction to Medical Ethics* (London: Routledge, 1985).

9. P. M. Taylor, "Article 16: Recognition as a Person Before the Law," in P. M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge:

Cambridge University Press, 2020).

10. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI) (1966), art. 26.

11. H. Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958).

12. Parliamentary Assembly of the Council of Europe, "The Definition of Political Prisoner," <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>.

13. Ibid.

14. Ajour (see note 1).

15. Office of the United Nations High Commissioner for Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (New York: United Nations, 2003).

16. Office of the United Nations High Commissioner for Human Rights, "UN Expert Calls for Israel to End Practice of Administrative Detention and Immediately Release Maher Al-Akhras" (October 23, 2020), <https://www.ohchr.org/en/press-releases/2020/10/un-expert-calls-israel-end-practice-administrative-detention-and-immediately>.

17. N. Erakat, *Justice for Some: Law and the Question of Palestine* (Palo Alto: Stanford University Press, 2019).

18. N. Hashim, *A Shared Struggle: Stories of Palestinian and Irish Hunger Strikers* (Ireland: An Fhuisseog, 2021); Y. Kenny, "Force and Feeding: From Bioethics to Biopolitics in Recent Israeli Legislation about Force-Feeding Hunger-Striking Inmates," in D. Filc, H. Boas, N. Davidovitch, et al. (eds), *Bioethics and Biopolitics in Israel: Socio-legal, Political, and Empirical Analysis* (Cambridge: Cambridge University Press, 2018).

19. Ajour (see note 1).

20. Y. Barda, *The Bureaucracy of the Occupation: The Permit Regime in the West Bank, 2000–2006* (Tel Aviv: Van Leer Jerusalem Institute, 2012); Ajour (see note 1).

21. Ibid.

22. Addameer, "Thirty Palestinian Detainees Suspend their Collective Hunger Strike after 19 Days" (October 13, 2022), <https://www.addameer.org/news/4914>.

23. Lederman and Lederman (see note 6); Erakat (see note 17).

24. Israeli Medical Association, *The Ethics Board: Rules and Position Papers*, 3rd edition (Ramat Gan: Israeli Medical Association, 2018), p. 110.

25. Ibid.

26. Ibid., p. 111.

27. T. L. Beauchamp and J. F. Childress, *Principles of Biomedical Ethics*, 6th edition (New York: Oxford University

Press, 2009).

28. Kenny (see note 18); Lederman and Lederman (see note 6).

29. M. Barilan, O. Golan, S. Glick, et al., "Position Paper: The Moral Attitude towards Hunger Strikers" (2015), <http://www.haaretz.co.il/st/inter/Hheb/images/hazana.pdf>; M. L. Gross, "Force-Feeding, Autonomy, and the Public Interest," *New England Journal of Medicine* 369 (2013); Lederman (2018, see note 6); Lederman and Lederman (see note 6).

30. Office of the United Nations High Commissioner for Human Rights, "Force-Feeding Is Cruel and Inhuman – UN Experts Urge Israel Not to Make It Legal" (June 25, 2014), <https://www.ohchr.org/en/press-releases/2014/06/force-feeding-cruel-and-inhuman-un-experts-urge-israel-not-make-it-legal>.

31. Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, UN Doc. A/HRC/22/53 (2013).

32. N. S. Wenger, O. Golan, C. Shalev, and S. Glick, "Hospital Ethics Committees in Israel: Structure, Function and Heterogeneity in the Setting of Statutory Ethics Committees," *Journal of Medical Ethics* 28/3 (2002); M. Peled-Raz, "You'll Thank Us Later: Compulsory Treatment Notwithstanding the Patient's Informed Refusal," *Attorney* 53/1 (2014).

33. Israeli Ministry of Health, "Activity of Clinical Ethics Committees in Healthcare institutions." (2018) https://www.health.gov.il/hozer/mro9_2018.pdf.

34. D. P. Sulmasy and L. Snyder, "Substituted Interests and Best Judgments: An Integrated Model of Surrogate Decision Making," *JAMA* 304/17 (2010).

35. A. Carins, D. Shaw, A. Wright, et al., "Retrospective Consent in Critical Care: How Achievable Is It?," *Intensive Care Medicine Experimental* 3/Suppl 1 (2015).

36. Beauchamp and Childress (see note 27); J. F. Childress, "The Place of Autonomy in Bioethics," *Hastings Center Report* 20/1 (1990).

37. Peled-Raz (see note 32).

38. Sulmasy and Snyder (see note 34).

39. World Medical Association, "WMA Declaration of Malta on Hunger Strikers" (December 5, 2022), <https://www.wma.net/policies-post/wma-declaration-of-malta-on-hunger-strikers/>.

40. Childress (see note 36).

41. B. Jennings, "Reconceptualizing Autonomy: A Relational Turn in Bioethics," *Hastings Center Report* 46/3 (2016).

42. Beauchamp and Childress (see note 27).

43. Ibid.

44. J. Marshall, "Bodily and Moral Integrity Rights," in A. V. Viens (ed), *The Right to Bodily Integrity* (London: Routledge, 2012).

45. P. M. Taylor, "Article 10: Treatment of Those Deprived of Their Liberty," in P. M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights: The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge: Cambridge University Press, 2020).

46. C. Mackenzie, "Three Dimensions of Autonomy: A Relational Analysis," in A. Veltman and M. Piper (eds), *Autonomy, Oppression, and Gender* (Oxford: Oxford University Press, 2014).

47. Childress (see note 36).

48. E. Buzath and Z. Lederman, "Eating in Isolation: A Normative Comparison of Force Feeding and Solitary Confinement," *Cambridge Quarterly of Healthcare Ethics* 32/3 (2023); Lederman (2018, see note 6); Lederman and Lederman (see note 6).

49. Lederman and Lederman (see note 6).

50. E. Shaw, "The Right to Bodily Integrity and the Rehabilitation of Offenders through Medical Interventions: A Reply to Thomas Douglas," *Neuroethics* 12/1 (2019).

51. Childress (see note 36).

52. Ibid.

53. Kenny (see note 18); M. D. Garasic, *Guantanamo and Other Cases of Enforced Medical Treatment: A Biopolitical Analysis* (Cham: Springer, 2015).

54. A. Guy and E. Ryan, "Self-Harm in Immigration Detention: Political, Not (Just) Medical," *Journal of Medical Ethics* (2022).

55. R. Essex, "The Intersections of Resistance and Health," in D. V. McQueen and Editorial Board, *Global Public Health* (eds), *Oxford Research Encyclopedia of Global Public Health* (Oxford: Oxford University Press, 2023).

56. Ajour (see note 1).

57. D. Filc, H. Ziv, M. Nassar, and N. Davidovitch, "Palestinian Prisoners' Hunger-Strikes in Israeli Prisons: Beyond the Dual-Loyalty Dilemma in Medical Practice and Patient Care," *Public Health Ethics* 7/3 (2014).

58. Barilan et al. (see note 29).

59. S. B. Daniel, "Netanyahu: We Will Import Doctors from India to Force Feed" Local Call (August 14, 2015), <https://www.mekomit.co.il/%d7%94%d7%96%d7%a0%d7%94-%d7%91%d7%9b%d7%a4%d7%99%d7%99%d7%94-%d7%91%d7%a2%d7%96%d7%a8%d7%aa-%d7%a8%d7%95%d7%a4%d7%90%d7%99%d7%9d-%d7%9e%d7%94%d7%95%d7%93%d7%95/>.