

## “Shooting yourself in the foot”: The Anti-Boycott Law

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TANZIL-ZAMAN CHOWDHURY, JUL 23 2011

The Israeli mantra of Jewish Democracy has been an uneasy battle for democrats and egalitarians of the state. From the infamous case of *Yeredor v. Central Elections Committee for the 6<sup>th</sup> Knesset*,<sup>[i]</sup> which canonized the immortality of the state of Israel as Jewish, to the amendment of the quasi-constitutional ‘Basic Law: Knesset’ which effectively bans political parties with Palestinian Nationalist aspirations<sup>[ii]</sup>, the two share an uneasy and unfitting relationship. Indeed literature on the subject is polarised; some avowing its successful syncretism of Universalist and particularist aspects of democracy, others pronouncing it as inherently racist. With the passing of the ‘anti-boycott’ law, or to give it its full title ‘*Law Preventing Harm to the State of Israel by Means of Boycott*’<sup>[iii]</sup>, Israeli legislators aren’t making things easy for themselves.

The law defines ‘boycotting the State’ as “*deliberately avoiding economic, cultural or academic ties with another person or body solely because of their affinity with the State of Israel, one of its institutions or an area under its control, in such a way that may cause economic, cultural or academic damage*”<sup>[iv]</sup> and this is considered as a civil wrong doing, the action of which will be governed by another law (Civil Tort Law). Interestingly, a narrow derogation of the common law principle *sufficiently justified cause* exists to potentially absolve one of a civil wrong doing but boycotting Israel is not seen as such a ‘justified cause.’ Thus, the tortfeasor will be liable to pay damages, governed by the state, to the ‘victim’ independent of the actual damage cause (which means even if a call for a boycott is ineffective, the ‘victim’ can still claim remuneration).

The original complexion of the bill also introduced criminality to the conduct of boycott but this was removed. However, common law principles of fair trial including discretion of the State Prosecutor, evidence beyond reasonable doubt and judicial control of the law have been compromised. In addition Article 4 (1) aims to vilify certain organisations that support boycott, removing their entitlement to funds under the Budget Foundation Law and excluding them from receiving tax exempt donations. Such developments are uneasily reconcilable, if at all, with core values of democracy.

Boycott from within<sup>[v]</sup>, an organisation of conscientious Israeli activists maintains that this is a concerted government campaign to suppress and silence legitimate political dissent. The organisation’s very existence, who have received support from the likes of Pink Floyd’s Roger Waters<sup>[vi]</sup>, hangs in the balance following the introduction of the statute. Israel once again has thrown its democratic infrastructure into disrepute by shooting itself in the foot with a bill that undermines its apparent commitment to democratic principles. When the fervour and flavour of the Arab Spring is sweeping across the Middle-east and its people yearn for democratic aspirations, this is simply something Israel can’t brush under the carpet without inviting fierce criticism both from within and without.

It is also symptomatic of the ‘Israeli strategy’; this initially begins with the threshold of democracy above which the ethno-national discourse of Zionism lies. As forces unfold which challenge Zionist tenets, it is democracy, rather than Zionism itself, which suffers. One example is the Law of Return, which allows for automatic citizenship for *olehs* or Jewish immigrants. This stands in stark contrast to the considerably more difficult methods of citizenship acquisition for non-jews and while this offends the principles of full democratic inclusion, it is the mainstay of the Zionist *ingathering of the exiles*

We can analogise the privilege of ideology in Israel to a *jus-cogens*. A *jus-cogens* is a term used in international law

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to describe a rule from which there is no derogation. This has typically included genocide, slavery and territorial aggrandizement. Thus the Israeli strategy elevates Zionism to the status of a pre-emptory norm to which principles of democracy, should it clash with this supra-law, capitulates. A detailed look at Israeli case and statute law expounds this phenomenon.[vii]

This particular law again continues the ‘chipping away at the totem pole of democracy.’ Boycotts have been used as legitimate non-violent means to end natural violations and injustices; from the Montgomery Bus Boycotts to that in South Africa. In addition, it does nothing to solve the legitimate concerns of the minority in Israel and the population in the occupied territories and Diaspora. Quite to the contrary, this flame to the fire will not only attract criticism from those who fight tooth and nail for Palestinian self-determination but also democrats who see this as a callous attempt to quash dissent and, almost insultingly, create a culture where people quiet literally will have to pay to dissent. The Knesset, existing as the ‘sovereign’ legislature and the symbol of democratic legitimacy in the state has shot itself in the foot with this one, overriding individual and collective rights with an anxious and overbearing national security discourse.

In this bastion of democracy amongst an otherwise hostile terrain of authoritarian regimes and despotism, how do we reconcile natural democratic values of expression with this draconian law?

The answer simply is that we cannot. Israeli democracy is in tatters and such a law adds stature to this fact; with the privilege of ideology which dilutes democratic maxims, law both embraces this reality and is effected by it. The unsettling situation is that any implication in this article of sentiments showing support for BDS, were it written in Israel, could land that person in a lot of trouble. Human rights organisations have begun the battle to challenge the law but as the years unfold, it remains to be seen how such a law will pan out and how Israel will maintain its democratic illusion.

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[i] P.D. 19(3) 365

[ii] [http://www.knesset.gov.il/laws/special/eng/basic2\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic2_eng.htm)

[iii] [http://www.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf?utm\\_source=ACRI+-+Contacts&utm\\_campaign=c67227c9e8-Knesset\\_Roundup\\_July\\_18\\_20117\\_4\\_2011&utm\\_medium=email](http://www.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf?utm_source=ACRI+-+Contacts&utm_campaign=c67227c9e8-Knesset_Roundup_July_18_20117_4_2011&utm_medium=email)

[iv] [http://www.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf?utm\\_source=ACRI+-+Contacts&utm\\_campaign=c67227c9e8-Knesset\\_Roundup\\_July\\_18\\_20117\\_4\\_2011&utm\\_medium=email](http://www.acri.org.il/en/wp-content/uploads/2011/07/Boycott-Law-Final-Version-ENG-120711.pdf?utm_source=ACRI+-+Contacts&utm_campaign=c67227c9e8-Knesset_Roundup_July_18_20117_4_2011&utm_medium=email)

[v] <http://boycottisrael.info/content/we-will-not-be-silent-statement-regard-israeli-anti-boycott-law>

[vi] <http://www.youtube.com/watch?v=ICrIDP6tVZM&feature=share>

[vii] David Kretzmer “The Legal Status of Arabs in Israel” Westview Press (October 1990)