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Boycott, Divestment, Sanctions (BDS) vs. Israel

The movement for Boycott, Divestment and Sanctions against Israel—known as BDS—has been driving the world a little bit mad. Since its founding 15 years ago, it has acquired nearly as many enemies as the Israelis and Palestinians combined.¹

BRET KINCAID

Modern-day Israel was born in conflict and has remained in extraordinary conflict: religious conflict between Haredim and secular Jews and between Muslims and Christians; political conflict between Arab-Israelis and Jewish Israelis, between Jews in Israel and Jews in the settlements, and between Palestinians in the West Bank and Israeli Jews in the Holy Land; international conflict between Israel and the United Nations, and between Israel and Iran—just to name several. Indeed, last year the Israeli government failed to form a government two times (April 2019 and September 2019) and as this is written it has been struggling for two and a half months to form a government for the third time in a bit over one year, after an almost evenly divided vote in the Knesset. Not surprisingly, the government it finally formed has a rotating Prime Ministership. It is no wonder given the deep pluralism forged by 140 years of the diasporic influx of Jews to Israel from the many and various parts of the globe. Conflict has been baked into Israeli culture.

The Boycott, Divestment, Sanctions (BDS) movement is yet another source of conflict that Israel has been forced to address. BDS is a Palestinian-led, fifteen-year old nonviolent, legitimate, decentralized and flawed, even in some respects troubling, movement. It is mobilized to pressure the state of Israel to comply with international law by 1) ending the illegal occupation of the Occupied Palestinian Territories (OPT), 2) establishing “full equality” for Arab-Israeli citizens, and 3) returning Palestinian refugees to their homes and compensating those who choose not to return. Its work is primarily carried out in North America, Europe, and in the Holy Land, though there are a few countries outside that scope. Some thousands of students, academics, artists, local governments, companies, and trade unions have engaged and been affected by BDS, both positively and negatively. Though there has been much activity

around attempts to boycott institutions and actors that serve Israel's interests, many have been successful but only a few substantively so. The Arab League instituted its own boycott against Israel in response to the 1948 war, and though it is still in place, only Syria, Lebanon, and Iran actively enforce it. There has been some divestment, but again, results are not robust. And there have been no sanctions adopted against the state of Israel.

Still, Israeli Prime Minister Netanyahu has called BDS a “strategic threat” to Israel. To address the threat, Netanyahu tasked the Ministry of Strategic Affairs and Public Diplomacy and (secondarily) the Ministry of Diaspora Affairs to combat BDS to prevent the “delegitimation” of Israel. Gilad Erdan, a politically seasoned and ambitious Israeli official, is the current Strategic Affairs minister. He apparently has “tens of millions of dollars allocated for this project.” He is getting assistance from the U.S. Secret Service, CIA, European intelligence, and of course, the Mossad, the Israeli intelligence agency. The latter organization is engaging “in efforts to actively disrupt the growing movement”,² working inside and outside Israel. Financial documents acquired by *The Times of Israel* reveal “line after line of budgetary allocations in which the recipients are marked ‘secret’.”

Micah Lakin Avni, a CEO of a publicly-traded financial institution and the son of a fatal victim of a Palestinian terror attack on a Jerusalem bus, established a “public benefit” company designed to work in a direct partnership with the Strategic Affairs department. The venture is called Concert-Together for Israel. It is, in Avni's words, a “second battlefield—in the court of public opinion, including legal forums, via diplomacy, in conventional media, and on social media—against those who misrepresent the challenges it faces and the policies it follows to meet those challenges.”³ Avni seems to have his eyes wide open as he works in partnership with the Israeli government. His “aim is, first, to build a strategic picture of who the demonizers are, what they're doing right, and how best to counter them. And then, second, to help organize, direct and fund the counter-strategy...[while] [a]cting in partnership with the Israeli government, any Israeli government, seems certain to politicize and thus immensely complicate the whole endeavor.”

One of the unique and key features of Israel that the ministry of Strategic Affairs and Concert-Together are trying to defend is Zionism while also fighting antisemitism. The latter has been haunting Jews for two millennia while Zion-

ism emerged in the nineteenth century. Zionism is nationalism that explicitly establishes preferential treatment for Jews (over non-Jews) as a matter of public policy, a feature that BDS vehemently opposes.

Zionism

The Anti-Defamation League (ADL) is quite critical of the BDS movement, both for its anti-Zionism and what the ADL perceives to be its antisemitism.⁴ Zionism was first a spiritual, religious phenomenon, but by the late nineteenth century it emerged as a political aspiration and ideology. Having experienced over two and a half millennia of increasingly frequent, brutal persecution as a Diaspora people, and with no success at assimilation, Jews needed a safe solution to the murderous antisemitism of the day.

The rising spirit of nineteenth century European nationalism began to appear to some Jews as a possible solution. A relatively small group of young Jews formed the Bilu society, a name based on Isaiah 2:5: “House of Jacob, come, let us go.” To feel the depth of meaning, I quote one of the Bilu members here:

With my own eyes I saw the terrible tragedy in one of the more beautiful and enlightened cities, in which important people were joining in. If they did not actually do the beating, they were stirring the fire and adding fuel to the flames. When I saw all this something in me snapped.... In one flash all my illusions were revealed, and all the beautiful pictures of the future, that I and my friends painted for ourselves, dissipated like smoke.

And I, a law student, a member of a cosmopolitan intellectual society, devoted to progress—I felt suddenly my unique Jewish soul, and with all my might I felt that these unfortunate people, heartbroken and at wit’s end, are my brothers and with them I am in distress from now and evermore....

There is a source of hope. *Eretz Yisrael* must become our future land. Only there will our people find rest and relief. Only there will it find a place to bring its old, dry bones to life. It only needs a beginning.⁵

Something of an “intellectual vanguard”, the group of around sixty individuals made their way to *Eretz Yisrael* with the intention of asking the Sultan if

they could found and establish statehood. There was also a loosely-organized movement of Russian Jewish communities that called itself *Hovevei Zion* (Lovers of Zion) or simply “Zionism”, who sent some 20 to 30 thousand settlers to *Eretz Yisrael* by 1903, part of the first *aliya* (ascent) to Zion.⁶ Jews of this first major influx came to be known as the “new Yishuv”. Jews had already been living in Ottoman Syria for centuries (the “old” Yishuv), and before 1882—that is, before the rise of Zionism—they consisted of approximately 5 percent of the population.⁷

But political Zionism infused Jewish culture through the work of two men: Leo Pinsker and Theodor Herzl. Pinsker, a founder of *Hovevei Zion*, published *Autoemancipation* in 1882, a widely-circulated book that argued antisemitism was so much of the warp and woof of European culture that assimilation, and therefore emancipation, would never be possible. Moreover, he exhorted Jews to develop a national consciousness and work for a Jewish national homeland.

Theodor Herzl was a Hungarian-born, middle-class and assimilated Viennese Jew. His experience and observations he made while reporting in Europe convinced him, like Pinsker, that Jews as a people could never assimilate even if laws were designed to protect them. He concluded that only a state of their own—modeled after European states—would establish Jewish emancipation and security. Herzl articulated this vision in his book, *The Jewish State*, a treatise that averred the Jewish people constituted a nation in need of a sovereign state. Supporting Jewish nationalism, Herzl made the case for Jewish self-determination, the essence of Zionism.

The meaning of Zionism is multifaceted and contested. According to the World Zionist Organization, founded by Theodor Herzl in 1897, “Zionism is the national liberation movement of the Jewish people”, including “the ongoing effort, through political means, to develop and secure the Jewish people’s national existence in the land of Israel.” “National existence” includes rights “to freedom and political independence in its homeland”.⁸ There are, of course, disagreements over the full and correct meaning of Zionism, disagreements among Israelis, Jews across the globe, and others who take an interest in the nature of one of the most enduring conflicts in the modern world. For the purpose of focusing on the conflict over BDS I provide an approximate,⁹ not a comprehensive sketch of three competing types of political Zionism—two Zionist types and one Anti-Zionist type.

Neo-Zionism is a right-wing version of political Zionism. Keep in mind that as of June 2019, 65 percent of Israelis identified as right-wing, according to a national poll conducted by *The Israel Democracy Institute*.¹⁰ Neo-Zionism is ultra-nationalist, firmly supporting the nation-state law adopted in Israel in 2018, a law that demotes the Arab language from one of two national languages to merely “special status”, reserves the right to self-determination within Israel for Jews only, and establishes “Jewish settlement as a national value”, strategically not revealing where they plan to develop settlements, which raises the specter of more settlement construction in the West Bank.¹¹ If Neo-Zionists eventually get their way, they would annex all of the land “from the river to the sea”, establishing the Greater Israel. That is, they favor the annexation of Judea and Samaria, the Golan Heights and East Jerusalem. Some would favor transfers of Palestinians to other countries, such as Jordan, to ensure Jews remain a majority in Israel. They believe Israel is a Jewish democracy, which is not unusual, but they do not believe there is a significant contradiction between preferential treatment for Jews and the second-class treatment of Arabs, Druze, and Bedouins. In addition, they tend to be quite critical of many human rights organizations in Israel. For instance, *Im Tirtzu* (“If you will it”) devotes an entire section of its website to tracking and criticizing the *New Israel Fund*, the major fundraiser and distributor of monies to human rights organizations in Israel.

The other type of political Zionism is the Zionist moderate left-wingers. This group, a much smaller group than Neo-Zionists, fully supports the state of Israel and the right to self-determination of the Jewish nation. However, in contrast to Neo-Zionists, Zionist left-wingers are troubled by and generally oppose the nation-state law of 2018. Indeed, they are critical of the policy inequality of the Israeli government’s treatment of Israeli Arabs and other minorities in education, health, and land. They also oppose the Israeli occupation of the West Bank, though most favor a two-state solution, and therefore are more tolerant of the long delay in achieving a settlement that would establish it. Unlike Neo-Zionists, moderate left-wing Zionists appreciate and support the multifarious work of the many human rights organizations in Israel, Gaza, and the West Bank.

Despite their criticism of a good number of Israeli state policies, most Zionist moderate left-wingers, like prominent political theorist Michael Walzer, do

not support the dissolution of the state of Israel. In a public debate with staunch anti-Zionist Joshua Leifer, Walzer agrees,

there is much to criticize; my Zionist friends in Israel have fought for years for full equality at home and against the cruelties of the occupation and the zealotry of the settler movement. Fierce opposition to the policies of the current Israeli government...seems justified to me, the fiercer the better....I want to be recognized as a defender of Zionism but not an apologist for what people calling themselves Zionists are doing in Israel today....¹²

After criticizing the nation-state law, “invasive settlement[s], seizure of land and water, and lawless military rule”, lack of restraint against “[s]ettler thugs [who] act violently against Palestinians on a daily basis”, among other Israeli government policies, Walzer reveals why he so strongly supports the state of Israel. He writes,

...criticism of this sort has nothing to do with anti-Zionism or anti-Semitism. These are the policies of governments, but governments only rule states; they don’t embody them. Governments come and go—at least, we hope they do—while states endure for the sake of the men and women whose common life they protect. So criticizing the governments of Israel shouldn’t involve opposition to the existence of the state.¹³

The third type is not Zionist at all. They are political anti-Zionists. First, it is important to note that it is widely believed among Jewish Israelis that anti-Zionism is antisemitism.¹⁴ However, there are Jewish groups that are principled anti-Zionists, yet not antisemitic. Many of them believe that it is inappropriate, and an affront to God, for Jews to establish a state since that is the role of the Messiah only. And there are many other Jews who have an uneasy, ambivalent relationship with Zionism. Peter Beinart, a prominent Jewish Zionist, points out that,

If you look at younger American Jews today, you would probably find that there’s an even larger number of people who have significant questions about the idea of Zionism, either because traditional Jewish religious texts say that it’s incompatible with Jewish religious law, or because it violates their liberal-democratic values. In either case, those people are simply not anti-Semites.¹⁵

Anti-Zionists believe that Zionism is fundamentally illegitimate. A liberal interlocutor of Michael Walzer in the Fall 2019 issue of *Dissent Magazine*, Joshua Leifer, argues for a “strong version” of anti-Zionism. This “version” does not rely on the nature of Israel’s historical development or on the “essence” of Zionism for political legitimacy but “derives instead from a values-based assessment of the political reality on the ground in Israel-Palestine, from a principled opposition to what the writer Adam Shatz has called ‘actually existing Zionism’.”¹⁶

Insisting that a legitimate state must uphold freedom, democracy, and equality, Leifer notes that Walzer mistakenly subordinates these values “to the higher end of a Jewish state.”¹⁷ Rather than deny Leifer’s claim, Walzer describes the common occurrence of states with oppressive governments that citizens try to reform rather than overthrow their state. And to Leifer’s point, Walzer also asserts, “Israel within the green line is a democracy, imperfect, no doubt, but democratic still. And a state of the Palestinian people would be worth having even if it wasn’t a democracy.”¹⁸ Clearly Walzer’s differentiation of governments and states is critical to his support for Zionism even as he severely criticizes the current Israeli government.

Leifer “does not reject two-states or the idea of a Jewish state as such,”¹⁹ but he will only support a state configuration that manifests freedom, equality, and democracy. Rather than simply critique Zionism though, Leifer offers a few practical ideas for pressuring Israel to abandon violations of human rights, such as persuading the U.S. government to “end unconditional aid to the Israeli government as long as it maintains the military occupation of the West Bank and the siege of Gaza.”²⁰ In addition, he highlights the rights-based goals of the BDS movement and criticizes the “unconstitutional anti-boycott laws” designed to thwart it. Leifer firmly rejects the idea that “critical support for the BDS movement, in practice means rejecting Israel’s ‘right to exist’.” Instead, he claims that support for BDS merely offers Israel a choice: “end more than half a century of military rule in the occupied territories or democratize by giving all Palestinians living under Israeli rule full equality and the right to vote.”²¹

BDS Demands

Though the founding date of BDS is not agreed upon, the most common view is that it was established on the one-year anniversary of the International

Court of Justice's ruling against the Israel's construction of a wall surrounding the West Bank, June 9, 2005.²² However, the seeds were planted four years earlier at the UNESCO-sponsored 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR). This event was the third of its kind and included, *inter alia*, the main conference and an NGO Forum.

The main conference was attended by 163 countries. There were several parallel meetings as well, but the NGO Forum, consisting of about 4,000 NGOs, was the most prominent. It seemed also to be the most critical of Israel, but much of the conference climate was clearly anti-Zionist, which the U.S. and Israel anticipated and therefore sent only mid-level diplomats.²³ The Youth Summit was particularly severe in its condemnation of Israel. For instance, some 200 student participants wore T-shirts that displayed the official conference logo and a slogan accusing Israel of being an "apartheid" state. In addition, large banners displayed the message "STOP THE MASACRE OF THE PALESTINIANS" and "RACISM=...ISRAELI RULE, an implicit reference to the very controversial defamatory phrase "Zionism is Racism", a phrase the Conference leadership discouraged participants to use or include in the conference documents.²⁴

There were occasions of blatant insults. According to one report, "...the Arab Lawyers Union displayed posters and distributed pamphlets filled with grotesque caricatures of hook-nosed Jews depicted as Nazis, spearing Arab children. The Jews dripped blood from their fangs, and missiles bulged from their eyes. Nearby, pots of money were depicted strewn on the ground."²⁵

Still, Jewish participants were ostracized as if Israel and Jews were the same thing. When it was time for each "victim group" to report their experiences of victimization, an anti-Israel coalition of NGOs "proposed language that labeled Israel a 'racist apartheid state', revived the equation of racism and Zionism, recommended sanctions against Israel, and demanded an end to the 'ongoing Israeli perpetration of racist crimes, acts of genocide and ethnic cleansing'." But the Jewish Caucus attempt to hold a discussion of antisemitism as a form of racial discrimination and intolerance was unsuccessful because the Arab coalition disrupted it. And when the Jewish Caucus decided to hold a press conference, it was broken up by anti-Israel demonstrators. Even a session on the Ho-

locust was shut down. Finally, the Jewish Caucus tried to include “Paragraph 14” in the conference declaration, which “denounced attacks on synagogues and Jews anywhere in the world that were motivated by anti-Zionism that had spilled over to anti-Semitic acts and violence.” Despite the fact that all caucuses were invited to speak into the declaration, and that “Paragraph 14” was the only item proposed by the Jewish Caucus, it was ejected.²⁶

Two results of WCAR 2001 are particularly relevant here. First, the conference declaration included the affirmation of Holocaust memorialization, and for the first time a UN world conference produced language condemning anti-semitism. Second, at the conference students began to plan to establish a campaign on university campuses, demanding companies doing business in Israel to divest from those Israeli firms.

Slightly less than a year before, U.S. President Bill Clinton, Israeli Prime Minister Ehud Barak, and Palestinian President Yasser Arafat met at Camp David to attempt to negotiate a peace deal. After six years of the First Intifada (1987-1993) and seven years of a hope-filled but ultimately-failed Oslo Peace Process (1993-2000), these men tried but failed to do the seemingly impossible: achieve peace between Israel and the Palestinians. Barely two months after the Camp David talks collapsed, right-wing Likud Party leader Ariel Sharon provocatively ascended the Temple Mount—the holiest Jewish shrine and the third holiest Muslim site—with his entourage of security guards and about a thousand armed police officers to claim Israeli (shared) sovereignty over the holy site. This event sparked a Second Intifada, eventually killing at least one thousand Israelis and three thousand Palestinians by the time it ended in February 2005.

But the deep frustration and anger Palestinians felt gave rise to a nonviolent approach to pressuring Israel to bend toward justice. Omar Barghouti, one of the founders of BDS, put it this way in his book *BDS: The Global Struggle for Palestinian Rights*:

On July 9, 2005, Palestinian civil society launched what is now widely recognized as a qualitatively different phase in the global struggle for Palestinian freedom, justice, and self-determination against a ruthless, powerful system of oppression that enjoys impunity and that is intent on making a self-fulfilling prophecy of the utterly racist, myth-laden foundational Zionist dictum of ‘a land without a people for a people without

a land'. In a historic moment of collective consciousness, and informed by almost a century of struggle against Zionist settler colonialism, the overwhelming majority in Palestinian civil society issued the Call for Boycott, Divestment and Sanctions (BDS) against Israel until it fully complies with its obligations under international law.²⁷

According to the official bdsmovement.net website, 170 Palestinian civil society organizations, made up of “Palestinian unions, refugee networks, women’s organizations, professional associations, popular resistance committees” and others, were “[i]nspired by the South African anti-apartheid movement to request that “nonviolent pressure” be applied to Israel until it complies with international law by meeting three demands:

1. Ending its occupation and colonization of all Arab lands and dismantling the Wall.
2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality.
3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN Resolution 194.²⁸

From the perspective of the BDS leadership, they are wielding a rights-based approach to addressing the Israeli-Palestinian conflict. Each of these demands is anchored in international law.

The first BDS demand relates primarily to the OPT. For decades the UN Committee on the Elimination of Racial Discrimination (CERD), which monitors the implementation of the *International Convention of the Elimination of all Forms of Discrimination* (1965), has formally reminded Israel that its occupation of the West Bank, East Jerusalem, Gaza Strip, and the Golan Heights is considered illegal under international law. Most countries, most relevant international bodies, including the UN, and most international law experts believe the OPT violates Articles 2 and 49 of the Fourth Geneva Convention and otherwise restricts the Palestinians’ freedom of movement, right to work, right to self-rule, *inter alia*. And as noted above, the ICJ declared the Wall Israel built to circumscribe the West Bank is also illegal for the same reasons, directly causing hardship on the Palestinians.²⁹

The second BDS requirement is “full equality” of rights for Arab-Palestinian citizens. For many decades this has been and remains elusive. Despite the Israeli government’s and its supporter’s claims that all Arab-Palestinian citizens enjoy full equality of rights, this is simply not true. Most Israeli human rights organizations would concur. For many years CERD has called out Israel’s government about this human rights deficit, and according to the most recent reporting cycle (published January 27, 2020) Israel continues to lag behind in terms of securing full equality of rights for Arab-Palestinians. In the CERD report CERD discusses eleven specific human rights “concerns and recommendations”. Given the widespread and false claims that Arab-Palestinians already possess “full equality” of rights in Israel, it is important to describe several of the many examples of Israeli rights violations to understand the range and gravity of these violations for Arab-Palestinians.

#11. The Committee raised its concern that there is “no general provision for equality and the prohibition of racial discrimination has been included in the Basic Law: Human Dignity and Liberty (1992), which serves as the State party’s bill of rights”, and that Israel still has not established a formal “prohibition of discrimination...in a comprehensive law, which would encompass a definition of racial discrimination in line with article 1 of the Convention (arts. 1 and 2)”

#13. The Committee also declared its unease over the adverse effects of the new Basic Law: Israel-The Nation-State of the Jewish People (2018) and the settlements in the OPT. The Basic Law “stipulates that the right to exercise self-determination in Israel is ‘unique to the Jewish people’ and establishes Hebrew as Israel’s official language, downgrading Arabic to a ‘special status’.” Furthermore, the Israeli settlements “are not only illegal under international law but also an obstacle to the enjoyment of human rights by the whole population.” In the Law, the settlements are also elevated “to the status of ‘a national value (arts. 1, 2 and 5).”

#15. In addition, the Committee revealed its frustration over “the maintenance of several laws that discriminate against Arab citizens of Israel and Palestinians in the Occupied Palestinian Territory, and that create

differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property.” Another discriminatory law the Committee criticizes is Amendment No. 30 (2018) of the Entry into Israel Law, which “grants the Israeli Minister of Interior broad discretion to revoke the permanent residency permit of Palestinians living in East Jerusalem (arts. 2 and 5, and para. 22 of the present document).”

#21. Given the widespread belief that Israel is an apartheid state, the Committee reiterated “its concern....that the Israeli society continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities, namely Jewish municipalities and the so-called ‘municipalities of the minorities’, which raises issues under article 3 of the Convention.³⁰ The Committee is particularly concerned about the continued full discretion of the Admissions Committees to reject applicants deemed ‘unsuitable to the social life of the community (arts. 3, 5 and 7).”

#24. Regarding family reunification, the Committee expressed “deep concern about the disproportionate and adverse restrictions imposed by the Citizenship and Entry into Israel Law (Temporary Provision), which suspends the possibility, with certain rare exceptions, of family reunification of Israeli citizens or residents of East Jerusalem with Palestinian spouses living in the West Bank or Gaza Strip.”

#26. The Committee also raises concerns about “[t]ide of racist hate speech in public discourse, in particular by public officials, political and religious leaders, in certain media outlets and in school curricula and textbooks; [and] [t]he proliferation of racist and xenophobic acts that in particular target non-Jewish minorities, especially Palestinian citizens of Israel, Palestinians residing in the Occupied Palestinian Territory and migrants and asylum seekers of African origin (arts. 2, 4 and 6).”

#38 Regarding rights to an education, to work, and to health, the Committee raised concerns “[a]bout the disproportionately high dropout rates among Bedouin students and the significant gaps in the educa-

tional achievements between Arab students and Jewish students”, and that “non-Jewish minority groups, in particular Palestinian and Bedouin communities, continue to face limitations in the enjoyment of their right to work and are concentrated in low-paying sectors”, and that Palestinian and Bedouin populations have a “disproportionately poor health status...including shorter life expectancy and higher rates of infant mortality compared with those of the Jewish population (art. 5).”

The third BDS demand is the Palestinian “right of return.” This pertains to the 700,000-800,000 Arabs who fled during the 1947-48 war between Jews and Arabs, as well as the 280,000 to 350,000 Palestinians who fled during the 1967 war. Apparently, some 120,000 to 170,000 of the 1967 refugees fled for a second time because they were part of the 1948-49 exodus as well. There are approximately 6 to 7 million refugees who have the right of return. Meanwhile, about 1.5 million Palestinians live in 58 official refugee camps (UNRWA) scattered around the West Bank (including East Jerusalem), Jordan, Syria, Gaza, and Lebanon. Many are poor and “live with high population density, cramped living conditions and inadequate basic infrastructure such as roads and sewers.”³¹ Most of the other two-thirds of the refugees live near these camps.

Many of these refugees believe they deserve to return to their homes, though most have likely resigned themselves to the fact that it is very unlikely. UN Resolution 194 is the key to their hope. This resolution, passed in the UN General Assembly in December 1948, and reaffirmed by the Assembly every year since, sets up a UN Conciliation Commission, *inter alia*, but also includes Article 11:

[The General Assembly] Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.³²

This resolution invites refugees “to return to their homes” as long as they “live at peace with their neighbours”, and they may do so “at the earliest prac-

licable date” or they would be compensated in property if they choose not to return. Resolution 194 is also cited and affirmed in several UN resolutions. In addition, Article 13 (2) of the Universal Declaration of Human Rights states that “Everyone has the right to leave any country, including his own, and to return to his country.” The UN General Assembly also passed Resolution 3232 (1974), which “reaffirms also the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return.” And UN Security Council Resolution 242 confirms that there must be “a just settlement of the refugee problem.” Israel, however, claims that UNSC Resolution 242 does not mention a right of return nor does the *Convention Relating to the Status of Refugees* (1951) mention descendants, and “there is no formal mechanism in international law to demand repatriation of refugees and their descendants in general, or Palestinians specifically. No international legislation, binding UN resolutions or agreements between Israel and the Palestinians require this.”³³

These are the three rights-based demands BDS is making on Israel, but there are also three primary BDS tactics designed to pressure Israel into compliance: boycotts, divestments, and sanctions.

The BDS choice to employ a boycott was inspired by the boycotts against South Africa’s apartheid regime, which formally began in 1965, though a Defiance Campaign, work boycotts, and university student strikes had already taken place in the 1950s. The boycott campaign lasted almost 30 years and began as an academic boycott, eventually including economic and cultural boycott dimensions, as well as divestment and sanctions. The following is a slightly abridged definition of apartheid³⁴ according to the *International Convention on the Suppression and Punishment of the Crime of Apartheid*:

Article Two: For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person; ...
- (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.³⁵

BDS leader Omar Barghouti notes that it is of “unquestionable importance and consequence” to be “legally accurate or politically astute” when describing Israel “as a state guilty of the crime of apartheid against the Palestinian people.” After all, apartheid is technically considered a crime against humanity. But rather than expect to demonstrate that Israel’s policies precisely reflect the definition of apartheid above, Barghouti avers that “Israel should be subjected

to boycotts, divestment, and sanctions in response to its persistent and grave violations of international law and Palestinian rights.” He doubles down, writing,

Those who oppose Israel’s racist and colonial policies but reject the apartheid charge, whether they view Israel’s regime over the Palestinian people as being worse or better than apartheid, should still be able to recognize that Israel’s intensifying criminality and impunity as well as the world’s—mainly Western—complicity in excusing it demand that citizens act to put an end to them.³⁶

BDS Methods

Asserting its right to boycott, the global BDS movement created three kinds of boycotts by which it applies pressure on Israel: academic, cultural, and economic. The academic boycott focuses on Israeli academic institutions. The BDS website states, “For decades, Israeli universities have played a key role in planning, implementing and justifying Israel’s occupation and apartheid policies, while maintaining a uniquely close relationship with the Israeli military.” Nada Elia, author of “The Brain of the Monster”, a piece in an edited volume, *The Case for Sanctions Against Israel*, writes,

“...we must acknowledge that scholarship is not neutral, and that the academy does not exist in a bubble or an ivory tower. In fact, the more militarized a society, the more complicit its academy. And as academics, if we do not want to be part of the problem, we must be part of the solution.”³⁷

According to the BDS website, thousands of academics have signed BDS statements, including teachers, professors, teacher unions, and other associations related to the academy. The Palestinian Campaign for the Academic and Cultural Boycott of Israel (PACBI) oversees the academic (and cultural) boycott, including setting the guidelines for academic interaction consistent with BDS goals. On the BDS website, PACBI emphasizes academic freedom but also a rejection of cooperation with Israeli academic institutions.

PACBI subscribes to the internationally-accepted definition of academic freedom as adopted by the United Nations Committee on Economic, Social, and Cultural Rights (UNESCR). The BDS movement opposes all forms of racism, including Islamophobia, anti-semitism and discrim-

ination on any of the UN prohibited grounds. The institutional boycott that Palestinians have called for rejects boycotting individuals on the basis of their identity and does not call for a boycott of individual Israeli academics simply because of their affiliation to a complicit university. However, this does not exclude representatives of a complicit Israeli institution (such as a university president or spokesperson)... Supporters of justice around the world may call for a boycott or protest against an individual academic, Israeli or otherwise, in response to his/her complicity in, responsibility for, or advocacy of violations of international law or other human rights violations.³⁸

U.S. anti-BDS opponents have responded to the BDS academic boycott by legislating requirements for businesses that contract with public institutions, including state universities, that amount to a pledge to denounce BDS. The American Association of University Professors (AAUP) in 2018 came out against BDS, but also condemned state anti-BDS laws. AAUP states that,

...some public universities in those states have begun to require that external speakers invited to campus and others who contract with these universities, such as external reviewers of tenure and promotion materials, sign a statement pledging that they do not now, nor will they in the future, endorse BDS.³⁹

Though AAUP opposes BDS, its opposition “is matched as resolutely by [its] opposition to these pledges, which are nothing short of an attempt to limit freedom of speech and belief”, they are essentially “loyalty and disclaimer oaths, mainstays of McCarthyism.”⁴⁰

In addition to condemning these anti-BDS efforts, AAUP also sent a letter to the Israeli embassy in the U.S., addressing Israel’s deportation of Katherine Franke, Professor of Law, Gender and Sexuality Studies at Columbia University. She had served on the board of a pro-BDS organization, Jewish Voice for Peace, which triggered Israel’s 2017 Amendment No. 27 to the Entry Into Israel Law, “barring entry to anyone who ‘knowingly issued a public call to boycott the state of Israel,’ ‘pledged to participate in said boycott’ or acted on behalf of a group or an organization that has done so.”⁴¹

Amendment No. 27 is the same law that barred U.S. Representatives Ilhan Omar and Rashida Tlaib from a planned trip to the Holy Land, although Rep.

Tlaib was finally permitted to go because she planned to visit her ninety-year-old grandmother and was granted entrance on humanitarian grounds. However, though she agreed in writing that she would not promote boycotts against Israel, she changed her mind after feeling criticisms coming from Palestinians and others. She said, “Silencing me & treating me like a criminal is not what she wants for me...It would kill a piece of me.”⁴² Rep. Tlaib did not make the journey. The executive director of U.S. Campaign for Palestinian Rights, Yousef Munayyer “said the decision forced upon Ms. Tlaib was ‘just the smallest microcosm of the daily humiliations that Palestinians face at the hands of Israeli policies every day, when they are forced to choose between their dignity and their basic rights’.”⁴³

The BDS cultural boycott attempts to prevent cultural artists from entertaining Israelis as if there were no oppression in the Holy Land. On the BDS website is a quote from Archbishop Desmond Tutu, the winner of the 1984 Nobel Peace Prize for his critical role in ending apartheid in South Africa. He writes, “Just as we said during apartheid that it was inappropriate for international artists to perform in South Africa in a society founded on discriminatory laws and racial exclusivity, so it would be wrong for Cape Town Opera to perform in Israel.”⁴⁴ PACBI claims that thousands of artists of all kinds have decided not to perform in Israel because of its human rights violations. Indeed, on the cultural boycott page there are many testimonials that seems to make this a credible claim. There are many high-profile artists who choose to perform in Israel anyway. But efforts to discourage artists from performing in Israel are not only to avoid whitewashing. PACBI’s other goal is to open the eyes of Israelis to the profound injustice. Again, the website states,

As awareness of Israel’s oppression of Palestinians grows, more and more artists from across the world are joining the cultural boycott. Support for the cultural boycott and cancellations of performances receive very significant media exposure in Israel, showing ordinary Israelis that there is increasing opposition to Israel’s denial of Palestinian rights.

The BDS economic boycott attempts to pressure companies and investors engaged in business in Israel to desist. Their tactics include running high profile pressure campaigns against companies or investors, by persuading ordinary consumers to refrain from purchasing products made in Israel, or by getting investors to divest from companies that do business with Israel. An example of

the former is G4S, one of the world's largest security companies, with headquarters in the U.K. Until recently, the company worked in Israel, but it closed shop there in 2016 after years of BDS use of social media among other tactics to pressure G4S to quit Israel. When asked whether the pressure of BDS was any part of the reason for shutting down the enterprise in Israel, a G4S spokesman said it was "entirely a commercial decision."⁴⁵ On its website, BDS also provides a list of Israeli consumer products to boycott. Divestment is also encouraged. For instance, the Bill Gates Foundation sold its \$170 million portion of G4S in 2014 after protests at its offices in Seattle, London, and Johannesburg. Many organizations that divest, such as United Methodist General Board of Church and Society, the Quakers, and Mennonite Central Committee U.S., among others, are faith-based.

BDS claims that the economic boycott has had a significant negative impact on Israel's economy. This seems to be misleading. The Brookings Institution did an analysis of Israel's economy and the financial impact of BDS. It found that Israel's economy was so differentiated with high quality goods and buttressed by a strong and growing R & D component, making it "very hard to enforce a ban on commercial Israeli goods." Indeed, "the data suggests that, economically, anything short of official sanctions by important economic partners such as the United States or European Union would be unlikely to produce anything near the kind of economic pressure BDS supporters envision."⁴⁶ It is true that Israel's direct foreign investment took an almost 50 percent dive in 2014, and BDS takes credit for much of this. However, that was the year of Operation Protective Edge, a war inside Gaza that was very unpopular with people outside of Israel. Just over 2,000 Gazans were killed and over 10,000 were wounded. About half of those killed were civilians, over a thousand of them were children who were permanently disabled. Yet on its website BDS does not mention the 2014 war, only the precipitous decline in Israeli foreign direct investment.⁴⁷ It is no coincidence, too, that there was a proliferation of antisemitic incidents in Europe during the 2014 war.

In addition to these three kinds of boycotts, BDS offers several other ways of recruiting supporters and giving them a legitimate cause to identify with and participate in. Student Solidarity is one of these. It consists primarily of university students and faculty and is perhaps the most visible, tumultuous,

and disturbing facet of BDS. The Student Solidarity website page presents a compelling picture of the background and purposes of this dimension of BDS:

Israel systematically denies the Palestinian right to education of Palestinian students. Israel has bombed and raided universities and Palestinian students are denied their basic rights. Palestinian students are often at the forefront of popular resistance.

BDS is one of the key ways in which students across the world are building effective solidarity with Palestinian students. Scores of student unions and student governments across North America and Europe have voted to launch BDS campaigns demanding divestment from Israel's crimes or academic boycott.

...Student solidarity organizing is helping to build huge support for the Palestinian struggle for freedom, justice and equality among an entire generation of young people.⁴⁸

Students are offered the opportunity to learn how to make a real difference in the world by campaigning to pass resolutions to support BDS, to persuade students and administration to divest from financial ties to Israel, to convince the university food division to eliminate products produced in or for Israel, to sway fellow students to vote for or vote against political candidates, and other kinds of related activism. This is clearly an excellent opportunity to grow, mature, and become informed citizens equipped to make a helpful contribution to the world.

However, there is a dark side. Many university students gravitate toward or find themselves entering an academic environment that sometimes unexpectedly puts them in a position in which they face conflict with peers over the issues related to Israel. Of course, ideological differences between students make conflict inevitable, but adding antisemitism to the mix makes conflict even more potentially destructive. Interestingly, right-wing students tend to engage in much less antisemitic behavior than left-wing students. Jewish students particularly are put on the spot if they defend Zionism or Israel, which sometimes means they avoid getting involved. This phenomenon is more pervasive in universities or colleges with a Middle East program, though it happens at universities that do not have this type of program. And it appears, not surprisingly, that faculty play a very influential leadership role, which creates even

more challenging dynamics. Dr. William Jacobson from Cornell University has thoroughly researched this phenomenon and describes it well. On a panel of five at the U.S. Department of Justice in July 2019, he said that,

the antisemitism from the left and the Islamist antisemitism is more systematic, more pervasive, more organized and more supported by faculty. A lot of the anti-Zionism on campuses and a lot of the isolation of students on campuses comes under the leadership of faculty. And that is just a reality. They are the thought leaders. They are the ones who have a continuing presence on campus. So that is my experience, not to say that there have not been specific, horrible instances of right-wing anti-semitism on campus. But that is not the pervasive problem. It is more the antisemitism masking itself as anti-Zionism.⁴⁹

AMCHA (Hebrew for “your people”) is an organization that, *inter alia*, documents harmful incidents related to Israel that occur on U.S. university and college campuses, including BDS activity. A few moments exploring the site reveals the large amount of negative activity. One student organization in particular, a favorite of BDS, is Students for Justice and Peace (SJP). It has about 200 campus chapters across the U.S. According to AMCHA, SJP engaged in targeting Jewish students and engaging in antisemitic speech, *inter alia*. They and other anti-Israel groups on college and university campuses also participate annually in “Israeli Apartheid Week”, which happens in universities and colleges primarily in the U.S. and Europe, usually engaging in rallies and lectures about the Israeli oppression of Palestinians.

SJP also creates allies and collaborates with other campus groups as part of their campus outreach. Andrew Pessin and Doron S. Ben-Atar, in their edited book, *Anti-Zionism on Campus: The University, Free Speech, and BDS*—a book highly critical of the various manifestations of anti-Zionist activity on university campuses—notes the irony of SJP’s selection of allies, including progressive groups like Black Lives Matter, Latinx groups, feminist groups, LGBTQ groups, and the like. Pessin and Doron point out that these groups are more progressive than “Arab and Muslim societies that seek Israel’s destruction.” Furthermore, they assert:

...if you were to compare how well gays, women, ethnic minorities, religious minorities, and such fare in Israel (for all its many warts) com-

pared to those in the Palestinian territories or most Arab or Muslim countries, it is quite clear which side these campus groups probably ought to be supporting—that is if human rights is their driving concern. The social-justice veneer of the BDS movement is so effective, then, that it misleads groups into ultimately opposing even their own agendas.⁵⁰

Anti-Boycott Push Back: United States and European Union

Anti-boycott laws are becoming virtually ubiquitous in the U.S. Over 250 million Americans in twenty-eight states live under laws that “penalize businesses, organizations, or individuals that engage in or call for boycotts against Israel,” according to Human Rights Watch.⁵¹ Seventeen of those states go further and punish those who will not do business in the Israeli settlements.

These laws make it difficult for companies that want to abide by the UN Guiding Principles on Business and Human Rights, which has guidelines for both states and companies that help them avoid violating human rights. Airbnb’s squeeze in November 2018 illustrates the problem. The company decided to stop doing business in the territories to avoid contributing to what the company believed was “existing human suffering.”⁵² According to Human Rights Watch, “The day after it announced its decision, Israeli Strategic Affairs minister Gilad Erdan wrote to the governors of Illinois, New York, Florida, Missouri, and California, encouraging them to take action ‘in relation to commercial dealings’ with Airbnb.”⁵³ The company reversed its decision.

Between the time Airbnb announced it was delisting its properties in the OPT several states put the company on notice. Illinois determined Airbnb had violated the state’s anti-boycott law and put the company on probation for ninety days. Florida went further, banning the state’s employees from using Airbnb listings for work-related purposes. Texas, too, put the company under review and put Airbnb on a list of companies “from which the state would be required to ‘sell, redeem, divest, or withdraw all public traded securities’.”⁵⁴

Facing several lawsuits, Airbnb settled by relisting its properties in the disputed territories. However, rather than conceding that its policy was ill-advised, Airbnb refused to recant its opposition to “doing business in disputed territories around the world” and insisted that doing business in the OPT is inappropriate. Additionally, the company pledged to “donate profits generated

via settlement listings to ‘non-profit organizations dedicated to humanitarian aid that serve people in different parts of the world’.”⁵⁵

Anti-boycott legislation in the U.S. is not new. Palestinian Arabs began boycotting the Yishuv—i.e., Jews who lived in Ottoman Palestine before the establishment of Israel—beginning in the 1920s. The Arab League created a Permanent Boycott Committee and began imposing a boycott on Jewish goods in 1946. The Committee declared: “Products of Palestinian Jews are to be considered undesirable in Arab countries. They should be prohibited and refused as long as their production in Palestine might lead to the realization of Zionist political aims.”⁵⁶ However, it was not until the 1970s that the U.S. Congress passed laws that though they addressed all international boycotts, were prompted primarily by the Arab trade boycott against Israel. These anti-boycott laws were amendments to the Export Administration Act and the Ribicoff Amendment to the 1976 Tax Reform Act. They generally required “U.S. firms to refuse to participate in foreign boycotts that the United States does not sanction.”⁵⁷ These laws are still in force.

More recently, the U.S. Congress has passed resolutions specifically targeting the BDS boycott. Attempts to pass anti-boycott legislation directed at BDS were made in the 115th session of Congress but failed to materialize despite the 292 cosponsors in the House and 58 in the Senate, strong bipartisan support. Apparently, the would-be Israel Anti-Boycott Act (IABA) was stalled as the 115th session of Congress was ending. This happened partly because some House Democrats opposed it on grounds that it violated First Amendment speech and association rights. Perhaps more importantly, many of the House Republicans who supported the legislation, including Representative Peter Roskam (R), the original author of the bill, had lost re-election in November 2018.

When the Democrats took the House in the 116th session of Congress, many House Democrats and Republicans were eager to return to trying to pass anti-boycott legislation. On March 21, Representative Bradley Scott Schneider (D), with 351 co-sponsors, introduced resolution H.R. 246, which condemned the BDS movement for several aspects of its efforts. The resolution lists several operative clauses, including the following: The House of Representatives,

- (1) opposes the Global Boycott, Divestment, and Sanctions Movement (BDS Movement) targeting Israel, including efforts to target United States companies that are engaged in commercial activities that are

legal under United States law, and all efforts to delegitimize the State of Israel;

(3) affirms the Constitutional right of United States citizens to sfree speech, including the right to protest or criticize the policies of the United States or foreign governments.⁵⁸

On July 23, the House resolution overwhelmingly passed with 398 votes in favor and 17 against. Seeming to be a deliberate attempt to counter the upcoming anti-BDS vote, Rep. Ilhan Omar, Rep. Rashida Tlaib and Rep. John Lewis introduced a resolution a week before the H.R. 246 vote. The lengthy title of H.R. 496 clearly countered the anti-BDS measure: “Affirming that all Americans have the right to participate in boycotts in pursuit of civil and human rights at home and abroad, as protected by the First Amendment to the Constitution.”⁵⁹ The preamble of H.R. 496 reminds readers that the U.S. boycotted Imperial Japan, Nazi Germany, the 1980 Summer Olympics, and South Africa. It also includes language from two unanimous Supreme Court opinions, one which underlined the constitutional centrality of “criticism of government” and the other which stated, “[t]he right of the States to regulate economic activity could not justify a complete prohibition against a nonviolent, politically motivated boycott”⁶⁰ The following are the operative clauses of H.R. 496:

(1) affirms that all Americans have the right to participate in boycotts in pursuit of civil and human rights at home and abroad, as protected by the First Amendment to the Constitution;

(2) opposes unconstitutional legislative efforts to limit the use of boycotts to further civil rights at home and abroad; and

(3) urges Congress, States, and civil rights leaders from all communities to endeavor to preserve the freedom of advocacy for all by opposing antiboycott resolutions and legislation.

Both H.R. 246 and H.R. 496 address boycotts and constitutional rights relative to them. H.R. 246, however, explicitly condemns the BDS movement, and especially its “efforts to delegitimize the State of Israel.” H.R. 496, on the other hand, puts more emphasis on the First Amendment rights to boycott and the freedom to advocate “opposing antiboycott resolutions and legislation.” In addition, the resolution “opposes unconstitutional legislative efforts to limit the

use of boycotts to further civil rights at home and abroad.”⁶¹ These two House resolutions reveal clearly the intense juxtaposition between the pro- and anti-boycott advocates in the U.S. Furthermore, there has been no precedent set and constitutional scholars disagree over whether the First Amendment protects expressive speech of the kind that is used in the work of BDS.⁶² Polls conducted in October 2019 revealed that though there was a divide between preferences of Republicans, Democrats, and Independents, most opposed “laws that penalize people who boycott Israel because these laws infringe on the Constitutional right to free speech and peaceful protest.”⁶³

The European Union (EU) has threaded the needle on this issue. In 2016, Federica Mogherini, High Representative of the EU for Foreign Affairs and Security Policy, simultaneously announced BDS actions are legally protected and the EU firmly opposes BDS. She wrote,

“The EU stands firm in protecting freedom of expression and freedom of association in line with the Charter of Fundamental Rights of the European Union, which is applicable on EU Member States’ territory, including with regard to BDS actions carried out on this territory.”⁶⁴

She goes on to say, however, that “The EU rejects the BDS campaign’s attempts to isolate Israel and is opposed to any boycott of Israel.”

Related to this issue, the European Court of Justice recently ruled that Israeli imported food products from the OPT must indicate on the labeling the location of the product’s origin. The word “settlement” must be included on the label, even on products from East Jerusalem and the Golan Heights. This is a binding decision on all twenty-eight member states of the EU.⁶⁵ However, the labeling requirement amounts to “little more than one percent of the fourteen billion dollars in goods and services Israel exports to the E.U.”⁶⁶ Indeed, due to the EU-Israel Association Agreement, Israel has favorable trading privileges and all products originating in Israel proper are given “preferential tariff treatment”. Not surprisingly, the government of Israel strongly opposed this provision, while BDS was generally pleased but did not believe the decision went far enough.

The United Nations also stepped into the fray when it conducted significant and complex research into the companies that do business in the OPT. The UN Human Rights Council requested the UN create a list—some call it a “blacklist”—of companies that work with Israeli settlements, “a ‘significant

source' of human rights violations, resulting from land expropriation, displacement and the destruction of homes and other properties." Special Rapporteur Michael Lynk averred,

"Without these investments, wineries, factories, corporate supply and purchase agreements, banking operations and support services, many of the settlements would not be financially and operationally sustainable. And without the settlements, the five-decade-long Israeli occupation would lose its colonial *raison d'être*."⁶⁷

Israel's reaction was predictable. Israeli Minister of Strategic Affairs Gilad Erdan, who leads efforts designed to defeat BDS, claimed this policy is "[a] nother disgraceful decision by the Human Rights Council, which proves once again the U.N.'s consistent anti-Semitism and Israel-hatred."⁶⁸

Antisemitism

But is the UN antisemitic? Is BDS antisemitic? What precisely makes words, actions, or policies antisemitic? What is the appropriate litmus test for rightly claiming certain words, policies, or actions are or are not antisemitic? These are difficult questions but necessary to answer when we desire to inquire and respond in a way that respects Jewish people.

Two examples will help illustrate the ease and difficulty of determining what is genuinely antisemitic.

Because President Donald J. Trump provides much relevant grist, I quote him at length here. Again, the question is, "What is antisemitic"?

Speaking to a group of reporters on August 21, 2019, President Trump said, "If you vote for a Democrat, you're being very disloyal to Jewish people and you're being disloyal to Israel."

Then speaking at the Israeli American Council in Hollywood, Florida, three months later "Trump hit all of his favorite anti-Semitic tropes before a room full of Jewish people. He started off by once again invoking the age-old cliché about "dual loyalty," saying there are Jews who "don't love Israel enough." After that warm-up he dove right into the stereotype about Jews and money, telling the group, "A lot of you are in the real estate business, because I know you very well. You're brutal killers, not nice people at all," he said. "But you have to vote for me—you have no choice. You're not gonna vote for Pocahontas, I can tell you that. You're not gonna vote for the wealth tax. Yeah, let's take

100% of your wealth away!” ... He continued: “Some of you don’t like me. Some of you I don’t like me at all, actually. And you’re going to be my biggest supporters because you’re going to be out of business in about 15 minutes if they get it. So I don’t have to spend a lot of time on that.”⁶⁹

Many took umbrage from his tropes, calling his comments “deeply offensive” and “unconscionable”.

Unfortunately, there are many in the U.S. who would not be appalled. The ADL recently reported that antisemitic incidents in the U.S. increased twelve percent in 2019, climbing from 1,879 incidents in 2018 to 2,107 in 2019. This included a particularly disturbing fifty-six percent increase in assaults against Jews in the U.S.⁷⁰ According to the ADL, a 2014 global poll “revealed that more than one billion people worldwide hold anti-semitic views.” A 2018 EU survey revealed that “80 percent of European Jews feel that anti-semitism in their country has increased over the past five years, and 40 percent live in a daily fear of being physically attacked.”⁷¹

The second example is found in the book, *The Case Against Academic Boycotts of Israel*, edited by Cary Nelson and Gabriel Noah Brahm. Kenneth Marcus’s article “Is BDS Anti-Semitic?” decidedly answers in the affirmative: BDS is antisemitic. He writes,

In the last analysis, the BDS campaign is anti-Semitic, as its predecessors were, because some of its proponents act out of conscious hostility to the Jewish people; others act from unconscious or tacit disdain for Jews; and still others operate out of a climate of opinion that contains elements that are hostile to Jews and serve as the conduits through whom anti-Jewish tropes and memes are communicated; while all of them work to sustain a movement that attacks the commitment to Israel that is central to the identity of the Jewish people as a whole. This does not imply that all or even most of BDS’ proponents are anti-Semites. That is a different question. Based on the best available empirical research, it appears that some of Israel’s critics are not motivated by prejudice. Rather, they oppose Israel’s actions for legitimately non-discriminatory reasons. Their reasons may be good or bad, convincing or unconvincing, logical or illogical. But they are not anti-Semitic. Nevertheless, it ought to give them pause to realize that, for whatever reasons,

they are participating in a boycott that has deeply unsavory roots and ramifications.⁷²

On its face, it appears that Marcus makes a strong case, but it turns out not to be in fact. Although he begins with his conclusion that BDS is antisemitic, the rest of his “proof” consists of “unsubstantiated possibilities”, in the words of David Palumbo-Liu in a review of *The Case Against Academic Boycotts of Israel*.⁷³ Marcus tries to distinguish between the BDS campaign and the people who support it, but the distinction is useless because he describes the people by their motives, and, according to him, their motives are antisemitic. He then admits that some critics are not prejudiced “based on the best available empirical research.” Strangely, he does not reveal his research. All the while he ignores what really troubles BDS and people who are critical of Israel and BDS—the fact that Israel forces Palestinians (mostly in the OPT and less so in Israel proper) to live in an “empirically visible” oppression confirmed by BDS and much of the international community.⁷⁴

President Trump is virtually oblivious to his blatant antisemitism, while Marcus, a serious, meticulous scholar is clearly knowledgeable about the complexity of determining who is and is not antisemitic or what is or is not an antisemitic word, policy, or act. He sincerely wants to conclude that BDS is antisemitic, and he fails without the evidence.

Finally, to reveal antisemitism in the BDS movement, the Ministry of Strategic Affairs and Public Diplomacy issued a September 2019 report of 94 pages that discusses and illustrates instances of antisemitism connected to BDS. Natan Sharansky, Chairman of the Institute of the Study of Global Antisemitism and Policy (ISGAP), offered his “3D test” “to distinguish between legitimate criticism of Israel and antisemitism. The three Ds are demonization, delegitimization, and double standards.”⁷⁵ Sharansky briefly explains each:

For thousands of years, Jews were demonized, they were charged with blood libels, with poisoning wells, and, later, with controlling the global banking system.

There were periods in history when the Jewish faith was delegitimized and the Jewish claim to nationhood was denied.

Double standards were applied to Jews, either through the imposition of special laws—from the Middle Ages in Europe, to the Russian Empire

and Nazi Germany—or through de facto government policy discriminating against Jews as in the Soviet Union.⁷⁶

The report discusses and illustrates instances of demonization, delegitimation, and double standards in word and art. Most of what is displayed is disrespectful and repugnant, revealing clear antisemitism. But the question is: are these accurate, precise, and helpful examples of antisemitism? Demonization is a very broad term and attempting to define it so that it does not implicate others mistakenly is a complex task. Delegitimation is more precise but it too has its flaws. For instance, words and actions that amount to loud and harsh criticism of Israeli policies could be considered a form of delegitimation and therefore antisemitic. Finally, double standards are often heuristically useful, but they have problematic limitations. For instance, some complain, “why is *Israel alone* roundly criticized for its role in the Middle East and no one complains about the behavior of Syria, Saudi Arabia, Iraq, i.e., more egregious states? The fact is lots of ordinary people, analysts, human rights workers, diplomats, UN officials, and militaries complain, critique, move, and even invade countries like Syria, Saudi Arabia, and Iraq to attempt to change conditions there.

Over the past several decades the meaning of antisemitism has mutated into anti-Zionism. At least since Emperor Constantine declared Christianity the state religion antisemitism had meant hostility toward Jews. At the end of the last century, anti-Zionism became the “new antisemitism”. Increasingly, many began to criticize the Jewish state too. Now, anti-Zionism is considered by many to be antisemitic, though there is a lively debate over this.⁷⁷ Doubling the labels of highly contested and freighted concepts will continue to confuse, and make it likely that many will intentionally and unintentionally abuse them. Brian Klug warns, “when anti-Semitism is everywhere, it is nowhere. And when every anti-Zionist is an anti-Semite, we no longer know how to recognize the real thing—the concept of anti-Semitism loses its significance.”⁷⁸

It seems that this phenomenon, reinforced by the increasing BDS activity, may make preserving Israel’s current level of legitimacy more difficult. And Israel already has a public relations problem that the Ministry of Strategic Affairs has been addressing for a couple of decades but much more intensely since BDS was established. Not surprisingly, Israel is most popular with people in the U.S. A recent Pew Research Center poll indicated that sixty-four percent of Americans were very or somewhat favorable toward Israel, while only forty-

six percent were favorable or somewhat favorable to the Palestinians.⁷⁹ Western Europe is a different story. Negative views of Israel in 2016 hovered between sixty and seventy percent.⁸⁰ An October 2019 poll of forty-five countries largely confirmed Israel's popularity with the U.S., but it also indicated that six West European countries gave Israel low marks (ten percent - thirty-three percent favorability). Two Eastern European countries—the Czech Republic and Slovakia—were more favorable (forty-five percent and forty percent respectively). Even worse, one 2018 BBC poll indicated that Israel was ranked fourth most disliked country in the world, just behind Iran, Pakistan, and North Korea.⁸¹

Conclusion

Dissent has many victories in its quiver.⁸² It brought the Soviet Union down in the late 1980s. The LGBTQ community exists today in the freedom it has because it insisted “We Belong” in the 1990s. The courage of the Southern “Fifth Circuit Four”—Judge Minor Wisdom, Judge Elbert Tuttle, Judge Richard Rives, and Judge John Robert Brown—to rule in favor of equality for African Americans and the rule of law in the 1950s and 1960s in repudiation of the Ku Klux Klan's white supremacy and despite the risks of the public's ire.⁸³ These examples are but a few of the many individuals, organizations, and even countries that have dissented to make the world a better place. We need dissenters, flies in the ointment, dissidents, and protesters because of “one important thing about life. Some of our most fiercely held beliefs will turn out to be completely wrong.”⁸⁴

The BDS movement may be an unlikely movement for good, but it does not need to be “good” to make its dissent useful in seeking out justice for millions of Palestinians in the Holy Land. It must, however, insist and persist, by way of its various methods and tactics, to do what it must to convince the Israeli government and enough of its people that the cost of refusing to acknowledge and realize the human rights at issue in this seventy-plus year struggle is too high. Many wars have been finally stopped by this realization, and this nonviolent “war” between BDS and Israel's government is clearly at a juncture.

But “to do what it must” is not an invitation to stonewall or engage in more violence; it is an opportunity instead to consider another tactic that would require the leadership on both sides to enlarge its thinking about “the other”. A

brilliant insight of Christian and Croatian theologian Miroslav Volf, one forged in the crucible of the Yugoslav Wars of the 1990s, may be useful to move toward an agreement. Volf asserts that those opposing leaders amid conflicting justices should enlarge their thinking or, put another way, accept a “double vision” of the “other”. He writes,

...we enlarge our thinking by letting the voices and perspectives of others, especially those with whom we may be in conflict, resonate within ourselves, by allowing them to help us see them, as well as ourselves from *their* perspective, and if needed, readjust our perspectives as we take into account their perspectives. Nothing can guarantee in advance that the perspectives will ultimately merge and agreement be reached. We may find that we must reject the perspective of the other. Yet we should seek to see things from their perspective in the hope that competing justices may become converging justices and eventually issue in agreement.⁸⁵

This suggestion may appear facile, even naïve, but the alternative is worse. It is likely that in a few months after I write this, Prime Minister Netanyahu and the Knesset will annex much of the West Bank. Coupled with the harmful move of the U.S. embassy to Jerusalem and President Trump’s invitation to annex the Syrian Golan Heights, the conflict will become more intractable, making it even more difficult, if not impossible, to come to a just agreement.

We can only hope that someday, hopefully someday soon, dissent may make the Holy Land a safer, more just patch of land.

NOTES

- ¹ Nathan Thrall, “BDS: How a Controversial Non-Violent Movement Has Transformed the Israeli-Palestinian Debate,” *The Guardian* (August 14, 2018) <https://www.theguardian.com/news/2018/aug/14/bds-boycott-divestment-sanctions-movement-transformed-israeli-palestinian-debate>.
- ² David Horowitz, “The Relegitimizing: A Terror Victim’s Son Partners with Government to Combat BDS,” *The Times of Israel* (December 5, 2018) <https://www.timesofisrael.com/the-relegitimizing-a-terror-victims-son-partners-with-government-to-combat-bds/>.
- ³ David Horowitz, “BDS Is a Dirty Business. Those Who Battle It on Israel’s Behalf Must Stay Clean,” *The Times of Israel* (June 17, 2018) <https://www.timesofisrael.com/bds-is-a-dirty-business-those-who-battle-it-on-israels-behalf-must-stay-clean/>.
- ⁴ I intentionally spell “antisemitism” without the hyphen, following the lead of the International Holocaust Remembrance Alliance (IHRA). The IHRA states, “The unhyphenated spelling is favored by many scholars and institutions in order to dispel the

idea that there is an entity ‘Semitism’ which ‘anti-Semitism’ opposes. Antisemitism should be read as a unified term so that the meaning of the generic term for modern Jew-hatred is clear. At a time of increased violence and rhetoric aimed towards Jews, it is urgent that there is clarity and no room for confusion or obfuscation when dealing with antisemitism.” International Holocaust Remembrance Alliance, “Memo on Spelling of Antisemitism” (April 2015) https://www.holocaustremembrance.com/sites/default/files/memo-on-spelling-of-antisemitism_final-1.pdf.

⁵ Alan Dowty, *Israel/Palestine*, 2nd ed., (Boston: Polity Press, 2008), 33.

⁶ *Ibid.*, pp. 33-34.

⁷ The precise number of Jews living in Ottoman Syria during this period is unknown. Estimates range from two percent to eight percent of the total population.

⁸ World Zionist Organization, “Questions and Answers: What is Zionism?,” *World Zionist Organization* (n.d.) <https://www.wzo.org.il/index.php?dir=site&page=articles&op=item&cs=3300&language=eng>.

⁹ There is a wide range of definitions of Zionism, as there are books and articles about Zionism. An excellent collection of original sources of perspectives on Zionism dating back to the late eighteenth century is Arthur Hertzberg’s classic, *The Zionist Idea: A Historical Analysis and Reader*. Another important work on Zionism is Gideon Shimoni’s, *The Zionist Ideology*. The three types of Zionism I offer here are general, contemporary approximations, merely heuristic, not exhaustive or complete.

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¹⁷ *Ibid.*, 93.

¹⁸ *Ibid.*, 97.

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²⁰ *Ibid.*, 95.

²¹ *Ibid.*, 95-96.

²² The International Court of Justice’s advisory opinion concluded, “...the Court considers that Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall.... The Court accordingly finds that the construction of the wall, and its associated régime, are contrary to international law.” *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (International Court of Justice July 9, 2004).

- ²³ The U.S. had already refused to participate in the two earlier WARCs (1978 and 1983) primarily because they objected to UN General Assembly Resolution 3379, the 1975 resolution that “determine[d] that Zionism is a form of racism and racial discrimination.” See “Elimination of All Forms of Racial Discrimination,” Pub. L. No. A/RES/3379 (1975), <https://unispal.un.org/UNISPAL.NSF/0/761C1063530766A7052566A2005B74D1>. The UN General Assembly repealed this resolution in 1991.
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- ²⁷ Omar Barghouti, *BDS: The Global Struggle for Palestinian Rights* (Haymarket Books, 2011), <https://www.amazon.com/Boycott-Divestment-Sanctions-Struggle-Palestinian/dp/1608461149>, 4-5.
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- ³⁵ The following three points are the abridgement referenced above and are posted immediately under Article 11 (a). (i) By murder of members of a racial group or groups; (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups. International Convention on the Suppression and Punishment of the Crime of Apartheid.
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