

Greatest Threat to Free Speech in the West: Criminalizing Activism Against Israeli Occupation

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Global Research, February 17, 2016

[The Intercept](#) 16 February 2016

Region: [Europe, Middle East & North Africa](#)

Theme: [Police State & Civil Rights](#)

In-depth Report: [PALESTINE](#)

The U.K. government [today announced](#) that it is now illegal for “local [city] councils, public bodies, and even some university student unions ... to refuse to buy goods and services from companies involved in the arms trade, fossil fuels, tobacco products, or Israeli settlements in the occupied West Bank.” Thus, any entities that support or participate in the global boycott of Israeli settlements will face “severe penalties” under the criminal law.

This may sound like an extreme infringement of free speech and political activism — and, of course, it is — but it is far from unusual in the West. The opposite is now true. There is a very coordinated and well-financed campaign led by Israel and its supporters literally to *criminalize* political activism against Israeli occupation, based on the particular fear that the worldwide campaign of Boycott, Sanctions, and Divestment, or BDS — modeled after the 1980s campaign that brought down the Israel-allied apartheid regime in South Africa — is succeeding.

The Israeli website +972 [reported last year](#) about a pending bill that “would ban entry to foreigners who promote the [BDS] movement that aims to pressure Israel to comply with international law and respect Palestinian rights.” In 2011, [a law passed](#) in Israel that “effectively ban[ned] any public call for a boycott — economic, cultural, or academic — against Israel or its West Bank settlements, making such action a punishable offense.”

But the current censorship goal is to make such activism a crime not only in Israel, but in Western countries generally. And it is succeeding.

This trend to outlaw activism against the decadeslong Israeli occupation — particularly though not only through boycotts against Israel — has permeated multiple Western nations and countless institutions within them. In October, we [reported on](#) the *criminal convictions* in France of 12 activists “for the ‘crime’ of advocating sanctions and a boycott against Israel as a means of ending the decadeslong military occupation of Palestine,” convictions upheld by France’s highest court. They were literally arrested and prosecuted for “wearing shirts emblazoned with the words ‘Long live Palestine, boycott Israel’” and because “they also handed out fliers that said that ‘buying Israeli products means legitimizing crimes in Gaza.’”

As we noted, Pascal Markowicz, chief lawyer of the [CRIF umbrella organization](#) of French Jewish communities, [published this celebratory decree](#) (emphasis [in original](#)): “BDS is ILLEGAL in France.” Statements advocating a boycott or sanctions, [he added](#), “are completely illegal. If [BDS activists] say their freedom of expression has been violated, now France’s highest legal instance ruled otherwise.” In Canada last year, officials [threatened](#)

[criminal prosecution](#) against anyone supporting boycotts against Israel.

In the U.S., unbeknownst to many, there are similar legislative proscriptions on such activism, and a pending bill would strengthen the outlawing of BDS. As the *Washington Post* [reported last June](#), “A wave of anti-BDS legislation is sweeping the U.S.” Numerous bills in Congress [encourage or require](#) state action to combat BDS.

Eyal Press warned in [a must-read New York Times op-ed](#) last month that under a Customs Bill passed by both houses of Congress and headed to the White House, “American officials will be obligated to treat the settlements as part of Israel in future trade negotiations,” a provision specifically designed “to combat the Boycott, Divestment, and Sanctions movement, a grass-roots campaign.” But as Press notes, under existing law — which is almost never discussed — “Washington already forbids American companies to cooperate with state-led boycotts of Israel.”

The real purpose of this new law, as Press explains it, is to force American companies to treat settlements in the West Bank — which virtually the entire world [views as illegal](#) — as a valid part of Israel, by *outlawing* any behavior that would be deemed cooperative with a boycott of companies occupying the West Bank. U.S. companies would be *forced* to pretend that products produced in the occupied territories are actually produced in “Israel.” The White House [announced](#) that it will sign the bill despite its opposition to the [AIPAC-backed pro-settlement provision](#).

Rahul Saksena of Palestine Legal said that “the BDS provision in the federal customs bill, and the dozens of anti-BDS bills being introduced in Congress and state legislatures across the U.S., are examples of the lengths that Israel’s fiercest advocates and the lawmakers who bend over backward to accommodate them will go to shut down any conversation critical of Israeli policies and supportive of Palestinian freedom.” Dylan Williams, vice president of government affairs for J Street (which opposes BDS), told *The Intercept*: “The references in the Customs Act to ‘Israeli-controlled territories’ are just one instance of a larger effort to sneak Green Line-blurring language into legislation at both the state and national level.”

Under the existing laws, American companies have been *fined* for actions deemed supportive of boycotts aimed at Israel. For decades, U.S. companies and their foreign subsidiaries, for instance, have been [required by law](#) to refuse to comply with the Arab League boycott of Israel. Penalties for violators include up to 10 years of imprisonment.

In 2010, G M Daewoo Auto & Technology Company, a Korean firm owned by General Motors, [was fined](#) \$88,500 by the [Office of Antiboycott Compliance](#) for 59 anti-boycott violations, including the “crime” of declaring on a customs form: “We hereby state that the carrying vessel ... is allowed to enter the Libya ports [sic].” At the time, Libyan law did not allow Israeli goods or ships that had previously stopped in Israel to enter Libyan ports, and the company’s seemingly banal declaration that it was complying with Libyan law was deemed by the U.S. government to constitute support for a boycott of Israel, and it was thus fined.

The suppression of anti-occupation activism is particularly acute on American college campuses. Among other things, that is deeply ironic. In the U.S. over the past year, there has been a widespread media debate over censorship on college campuses. Notably, the pundits who have most vocally condemned this censorship and held themselves out as free speech crusaders — such as [New York’s Jonathan Chait](#) — have completely ignored what is far and away the most widespread form of campus censorship: namely, punishment of those

who engage in activism against Israeli actions.

This campus censorship on behalf of Israel was comprehensively documented in [a report](#) last year by Palestine Legal titled “The Palestine Exception to Free Speech.” The nationwide censorship effort has seen [pro-Palestinian professors fired](#), anti-occupation student activists suspended and threatened with expulsion, pro-Palestinian groups defunded, and even [discipline for students](#) for the “crime” of flying a Palestinian flag. The report documents how pro-Israel campus groups and alumni “have intensified their efforts to stifle criticism of Israeli government policies.” The report explains: “Rather than engage such criticism on its merits, these groups leverage their significant resources and lobbying power to pressure universities, government actors, and other institutions to censor or punish advocacy in support of Palestinian rights.”

Notably, the students and administrators justifying the campus censorship of anti-Israel views invoke the very same “PC” rhetoric of “safe spaces” and “hate speech” denounced by ostensibly free-speech pundits. The University of Illinois student who led the campaign to fire Steven Salaita for his pro-Gaza tweets, himself a former AIPAC intern, [told the New York Times](#): “Hate speech is never acceptable for those applying for a tenured position; incitement to violence is never acceptable. ... There must be a relationship between free speech and civility.” Another “pro-Israel” student demanding Salaita’s firing said, “It’s about feeling safe on campus.”

This was a classic and extreme case of oppressive censorship on campus — the University of Illinois [ended up paying](#) Salaita close to \$1 million to settle the resulting lawsuit — yet very few of the pundits who turned “college censorship” into a nationwide cause uttered a peep about this case or the countless other instances of suppression of anti-Israel criticism.

It is now routine for students advocating BDS or otherwise working against Israeli occupation to be disciplined or endure other forms of sanctions. As the Palestine Legal report documents:

These heavy-handed tactics often have their desired effect, driving institutions to enact a variety of punitive measures against human rights activists, such as administrative sanctions, censorship, intrusive investigations, viewpoint-based restriction of advocacy, and even criminal prosecutions. Such efforts intimidate activists for Palestinian human rights, chill criticism of Israeli government practices, and impede a fair-minded dialogue on the pressing question of Palestinian rights.

This report, the first of its kind, documents the suppression of Palestine advocacy in the United States. In 2014, Palestine Legal — a nonprofit legal and advocacy organization supporting Palestine activism — responded to 152 incidents of censorship, punishment, or other burdening of advocacy for Palestinian rights and received 68 additional requests for legal assistance in anticipation of such actions. In the first six months of 2015 alone, Palestine Legal responded to 140 incidents and 33 requests for assistance in anticipation of potential suppression. These numbers understate the phenomenon, as many advocates who are unaware of their rights or afraid of attracting further scrutiny stay silent and do not report incidents of suppression. The overwhelming majority of these incidents — 89 percent in 2014 and 80 percent in the first half of 2015 — targeted students and scholars, a reaction to the increasingly central role universities play in the movement for Palestinian rights.

As we [reported in September](#), the University of California — the largest academic system in the country — has been debating proposals to literally *outlaw* BDS activism by formally equating it with “anti-semitism”: as though opposition to Israeli government oppression (opposition shared by many Jews) is somehow the equivalent of, or is inherently driven by, animosity toward Jews. If anything, what is actually “anti-Semitic” is to conflate the Israeli government with Jews generally (an ugly anti-semitic trope with a long history). Yet that is the Orwellian tactic being used to justify the criminalization of anti-occupation activism, as it converts that activism into “anti-semitism” or “hate speech” and then bans it on that basis.

This attempt to formalize suppression of anti-occupation advocacy on college campuses is long-standing and widespread. The New York state legislature [actually passed](#) “a bill that would suspend funding to educational institutions which fund groups that boycott Israel.” Such legislation is becoming commonplace, as the group United With Israel [boasted just last month](#):

Florida became the fifth state in the U.S. to introduce a resolution to confront the anti-Israel [BDS \(Boycott, Divestment, Sanctions\) movement](#) when it passed a law on December 21, similar to the first anti-BDS legislation introduced in Tennessee last April.

By doing so, Florida has joined Tennessee, [New York](#), [Indiana](#), and Pennsylvania. Another [35 states are reportedly considering similar legislation](#).

The commendably consistent pro-campus-speech group FIRE, while expressing some criticisms of the BDS movement, has [repeatedly documented and denounced](#) attempts to outlaw BDS advocacy on campus:

FIRE’s position on the Israel-focused BDS movement is driven by our concern for academic freedom — for students and professors, and for its continuing importance as a meaningful concept in and of itself. Students and professors must be perfectly free to support boycott, divestment, and/or sanctions against Israel or any other country they wish, and they must not face punishment for this support. As you might expect, FIRE has opposed attempts to [punish](#) organizations for supporting BDS, and we have certainly [defended professors’ rights to be highly critical of Israel](#) — or, frankly, any other country, person, or idea.

Yet this censorship effort to ban BDS and other forms of Israel criticism continues to grow, in multiple countries around the world. It’s not hard to understand why. The Israeli government and its most powerful supporters have invested vast sums of money and considerable political capital into the campaign to institutionalize this censorship.

Last year, GOP billionaire Sheldon Adelson and Democratic billionaire Haim Saban [donated tens of millions of dollars](#) to a new fund to combat BDS on college campuses. Also last year, Israeli Prime Minister Benjamin [Netanyahu](#) “decided to implement a 2014 resolution to establish a special task force to fight the anti-Israeli sanctions”; that [task force](#) has funding of “some 100 million Israeli shekels (roughly \$25.5 million).” [BuzzFeed’s Rosie Gray reported in 2014](#) that anti-BDS legislation has become a major goal of AIPAC. As part of the controversy at the University of California, Richard Blum, the mega-rich investment banker and husband of Sen. Dianne Feinstein, [threatened the university](#) that his wife would take adverse action against the university if it did not adopt the harsh anti-BDS measures he was

demanding.

None of this is to say, obviously, that suppression of anti-occupation activism is the only strain of free speech threats in the West. The [prosecution of Western Muslims](#) for core free speech expression under “terrorism” laws, [the distortion of “hate speech” legislation](#) as a means of punishing unpopular ideas, [threats and violence](#) against those who publish cartoons deemed “blasphemous,” and [pressure on social media companies](#) to ban ideas disliked by governments are all serious menaces to this core liberty.

But in terms of systematic, state-sponsored, formalized punishments for speech and activism, nothing compares to the growing multi-nation effort to criminalize activism against Israeli occupation. Rafeef Ziadah, a Palestinian a member of the [Palestinian BDS National Committee](#), told *The Intercept*:

“Israel is increasingly unable to defend its regime of apartheid and settler colonialism over the Palestinian people and its regular massacres of Palestinians in Gaza so is resorting to asking supportive governments in the U.S. and Europe to undermine free speech as a way of shielding it from criticism and measures aimed at holding it to account.”

It is, needless to say, perfectly legitimate to argue against BDS and to engage in activism to defeat it. But only advocates of tyranny could support the literal outlawing of the same type of activism that ended apartheid in South Africa merely on the grounds that this time it is aimed at Israeli occupation (some of Israel’s own leaders have [compared its occupation to apartheid](#)). And whatever else is true, commentators and activists who prance around as defenders of campus free speech and free expression generally — yet who completely ignore this most pernicious trend of free speech erosion — are likely many things, but an authentic believer in free speech is not among them.

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