

Boycott, Law and the Public Sphere: Rethinking the Legal Regulation of Boycotts Following the Anti-Boycott Law

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This article proposes a new language for conceptualizing the legal wrongdoing involved in boycotting, through a discussion of two Israeli legal acts—the Prevention of Harm to the State of Israel by means of Boycott Law, 5711-2011 (the “Anti-Boycott Law”), and the High Court of Justice’s ruling on the constitutionality of the law (*Avneri v. the Knesset*). While the court conceptualized the boycott as a form of individual speech (or protest), and accordingly addressed the legal prohibition on boycotts as a violation of the right to freedom of expression, this article argues that a boycott is a phenomenon that takes place in the public sphere and that boycotts must be analyzed in terms of the legitimate/illegitimate use of collective power. The article stipulates a series of analogies between the legal prohibition on boycotts and criminal offenses prohibiting expression in the public sphere (such as incitement to racism and pornography) as well as tort doctrines dealing with the collective use of power (most notably, a strike), while drawing from these analogies the relevant ramifications regarding the legal regulation of boycotts. One conclusion is that boycotts must be distinguished according to the legitimacy of the use of power inherent to them. Another conclusion is that political boycotts, which involve illegitimate use of power, not only harm the direct subjects of the boycott but also affect quintessential public interests, such as political discourse and the democratic process. A third conclusion is that the abovementioned interests compete with the freedom of expression, and therefore must be considered when formulating the legal regime regarding boycotts. Moreover, the insight that not only individual rights but also public interests might be affected by boycotting raises the question whether legal regulation of boycotts should be handled by private law, public law, or both.