Who's Afraid of the Big Bad Anti-Boycott Laws?

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Anthropologists are often quick to decry the law as a fig leaf for the exercise of raw political or economic power. Yet when holding bureaucratic sinecures, anthropologists' daily practices of obedience to authority and official rules are typical of the professional-managerial class. As an attorney among anthropologists, I occasionally encounter colleagues' folk understandings of law in the form of deference: "well of course x is illegal because <awkward pause> but of course you would know better, since I Am Not A Lawyer."

Anthropologists are thus no less susceptible than others to the use of legalese to

obscure, mislead, or browbeat. A case in point are recent messages sent by the American Anthropological Association (AAA) to all members concerning the proposed resolution to boycott Israeli academic institutions. Most notable was a one-page document headlined "Points to Consider for our Association" disseminated just days before voting started this week. Notwithstanding the duty of the AAA's executive board and staff to act as neutral stewards of the Association's democratic processes, these messages are aimed squarely at spreading fear that adopting the boycott would damage the AAA.

Most striking is the claim that if the boycott passes, the AAA would "be significantly restricted in the choice of cities where future Annual and Section Meetings can be located, decreasing the affordability of participation for members." Citing advice from the AAA's lawyer, the leadership claims that 22 U.S. states have passed laws that "specifically ban contracts with entities who wish to contract with the state or its subdivisions, such as publicly operated convention centers, unless the entities certify that they do not advocate or subscribe to a boycott of Israel or its institutions." The cities cited as examples are Atlanta, San Francisco, Detroit, Phoenix, "among many others."

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AAA annual meetings are usually held in privately owned hotels and convention centers, which are unaffected by these laws. The argument seems to be that once publicly owned facilities in some states are off the table, the end result will be fewer choices in meeting locations and thus higher costs. In a field like anthropology where jobs with decent pay are ever scarcer, the prospect of already outrageous membership and conference fees going up further is enough to give anyone pause.

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At issue here are laws responding to the rise of Boycott, Divestment, Sanctions (BDS) tactics in support of Palestinian liberation. These measures – whose passage has been a key domestic policy goal of the American Zionist movement over the past decade – now serve as templates for proposed legislation in the service of other right-wing causes, such as the fossil fuel and firearms industries. Most courts reviewing these laws have struck them down as unconstitutional, but others have upheld them thanks to the current reactionary lurch in the federal judiciary.

The AAA leadership somehow manages to misrepresent these repressive and anti-democratic laws as more sweeping than they actually are.

What the Anti-Boycott Laws Do and Don't Do

Laws targeting BDS activity fall into two broad categories. Some preclude state pension funds from investing in companies that boycott Israel. Others prevent state governments from contracting with entities that boycott Israel. There is a vigorous debate over whether these actions should count as a restriction on freedom of speech. But there has not been any dispute over the scope of these actions: situations where the government is spending money.

When the AAA rents out a publicly owned convention center, this is an altogether different situation. Here, the government is *receiving* money from a private entity seeking a service that is offered to the public at large. Anti-BDS public contracting laws simply do not apply here, for several reasons.

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First, the AAA leadership relies on a strained reading of the text of anti-BDS laws. Since they mentioned Phoenix, let's take a look at Arizona's statute, whose wording is typical. The provision declares that a "public entity may not enter into a contract … with a company to acquire or dispose of services" if that company

boycotts Israel. How could this apply to the scenario of the AAA renting a public convention center? The state is clearly not contracting to "acquire" a service, so the only alternative is that it is contracting to "dispose" of a service. If this sounds not very intuitive to you, you're certainly not alone. But in a lawyer's hands, language is like a prisoner: if you torture it enough, you can make it say anything.

Second, the AAA leadership reads anti-boycott provisions without any regard for their statutory context. Again, let's look at states mentioned in the AAA leadership's own document. California's anti-BDS law explicitly declares its intent "to ensure that *taxpayer funds are not used* to do business with" companies boycotting Israel. Georgia's is in the part of the code "relating to general authority, duties, and procedure *relative to state purchasing*." Arizona's anti-BDS law is located in a section of the legislative code governing the "handling of public funds." Michigan's anti-BDS law is part of a provision governing how the state department of management and budget does procurement contracts. In all these instances, the context is the same: public contracts, in the common sense meaning of situations where the government is hiring an outside vendor.

Third, the AAA leadership disregards how these state governments interpret and implement their own anti-BDS laws. State governments regularly post contract templates online, which have been duly updated to include anti-BDS provisions. But for those same states, public facilities rental contract templates *do not* include anti-BDS requirements. To take the AAA leadership's own examples once again, see Arizona (vendor contract vs. facility rental contract); California (vendor contract vs. facility rental contract); Georgia (vendor contract vs. facility rental contract); Michigan (vendor contract vs. facility rental contract). If the AAA leadership's interpretation of these laws were correct, it looks like the states that passed them did not get the memo, so to speak.

Of course one might wonder if it is nonetheless appropriate for lawyers advising clients to warn them of risks, even remote ones. After all, law is always shifting, governments violate their own laws all the time, and the future can never be predicted with absolute certainty. But the AAA leadership's position exudes no

such humility; quite the opposite, it presents its interpretation of the law as unambiguously correct and describes the loss of access to public facilities in these states as a "likely impact" of passing the resolution. It advocates not for caution, but for cowardice.

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Bullying in the Shadow of the Law

The AAA leadership's interpretation of state anti-BDS laws is not merely wrongheaded. Its public dissemination to the Association's nearly 12,000 members is also harmful in spreading misinformation about the scope of these already very dangerous laws and possibly even setting the stage for further repression down the line.

It is noteworthy that leading advocates of anti-BDS laws have themselves never publicly offered such an alarmingly broad interpretation. Instead, they claim to take as their model anti-discrimination measures such as the federal executive order requiring contractors to refrain from discrimination on the basis of sexual orientation or gender identity. While this comparison is misleading and offensive, it is a sign of how keen Zionist organizations have been to persuade skeptics of the laws' relatively modest scope in order to survive judicial scrutiny.

Does this mean we should now expect architects of anti-BDS legislation to come out and correct the AAA leadership's misinterpretation of these laws? Don't hold your breath. After all, such overzealous misreadings only enhance the laws' chilling effect, which is exactly what many Zionist organizations want. Just as anti-BDS laws serve as an alibi for the AAA leadership's cowardice, proponents of these laws enjoy plausible deniability for any "mistaken" interpretations. And if anti-BDS laws ultimately survive judicial review and become normalized, it is not

inconceivable that today's absurd legal theory might just become tomorrow's modest legislative proposal.

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