

Legislating the Historical Resonance of Boycott in Germany: Memory and *Staatsräson* in the Bundestag's 2019 Resolution against BDS

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1 Introduction

On July 9, 2005, a coalition of more than 170 Palestinian civil society groups called “upon international civil society organisations and people of conscience all over the world to impose broad boycotts and implement divestment initiatives against Israel similar to those applied to South Africa in the apartheid era” (BDS 2005). The date marked the first anniversary of the Advisory Opinion of the International Court of Justice on the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” (ICJ Reports 2004). Israel had ignored the Court’s opinion that the construction of the wall was to be halted immediately, that the parts that had already been built were to be dismantled, and that Israel was to make reparations for all damage caused by the construction. The boycott coalition called for “non-violent punitive measures” “until Israel meets its obligation to recognise the Palestinian people’s inalienable right to self-determination and fully complies with the precepts of international law by:

1. Ending its occupation and colonisation of all Arab lands and dismantling the Wall
2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194” (BDS 2005).¹

The call has been heeded by activists and organisations all over the world (Thrall 2018). Because the Israeli government considered the global movement for BDS a major security threat, the Ministry for Strategic Affairs implemented

1 On the global campaign for BDS, see generally Barghouti 2011, Thrall 2018, and the edited volumes, Wiles 2013 and Estefan, Kuoni, and Raicovich 2017.

a global strategy to try to suppress it (Perugini and Gordon 2015). Apart from banning and discrediting human rights organisations and BDS activists, the Israeli government and affiliated organisations such as NGO Monitor lobbied governments around the world to censor the BDS movement. As a result of this lobby, thirty-eight states in the United States now have anti-BDS legislation in place that prohibits state contracts with, or state investments in companies and entities that engage in BDS, even though several courts have blocked such laws as conflicting with the constitutional right to freedom of political expression (Palestine Legal 2023). Attempts to criminalise BDS on the U.S. federal level have so far been unsuccessful. In 2016, the British Secretary of State for Communities and Local Government prohibited local governments from using decisions on pension investments to pursue BDS, although a British court ruled that this prohibition was outside his competence. In France, Germany, and Spain, local government authorities have refused meeting spaces to Palestine solidarity activists calling for BDS, although the courts have generally ruled that such refusals conflict with the fundamental right to freedom of assembly. And BDS activists in various countries have been the target of criminal prosecutions for allegedly violating anti-discrimination laws, even though these prosecutions have generally led to acquittals (Bot 2019).

In 2009, the European Court of Human Rights still upheld France's criminal conviction of an elected mayor who had asked the local government's catering services to boycott Israeli orange juice in order to protest the "atrocities" of then prime-minister Ariel Sharon (*Willem c. France*, par. 7). The mayor had been convicted for discriminating against Israeli producers of orange juice on the ground of their nationality (*Willem c. France*, par. 16). However, in 2020, the Court unequivocally recognised that calling for a boycott is an "act to provoke or stimulate debate on a topic of general interest" that is protected by the fundamental right to freedom of expression, and that the campaign of a French BDS group handing out flyers in a supermarket had nothing to do with racism, antisemitism, hatred, violence, or intolerance (*Baldassi c. France*, par. 70).

In *Willem c. France*, the dissenting Judge Jungwiert had already objected that "[i]t is easy to imagine that in a similar case, a mayor (who is almost always a member of a political party) calls, for instance, for a boycott of products from the United States to protest against the war in Iraq, of Russian products because of the conflict in Chechnya, or of Chinese merchandise for occupying Tibet" (*Willem c. France*, Dissenting Opinion of Judge Jungwiert). Although the majority of the judges were not persuaded by Judge Jungwiert's hypothetical comparisons in this particular case, his dissenting opinion points to the centrality of comparison, both to boycotting as a political practice and to discussions

and judgments about the legality and legitimacy of boycotts in general and of BDS in particular.² Indeed, to call a political action a boycott is always already to compare it, at least implicitly, to the successful 1880 campaign of the Irish National Land League against eponymous English land agent Charles Boycott. And as I mentioned above, the BDS movement explicitly compares itself to the global boycott of the South African apartheid regime. However, the German Bundestag (the parliament) has decided on a different comparison.

On May 15, 2019, the Bundestag adopted a resolution titled, “Countering the BDS Movement with Determination—Fighting Anti-Semitism” [*Der BDS-Bewegung entschlossen entgegenzutreten—Antisemitismus bekämpfen*], which stated:

The Bundestag wants to decide [*wolle beschließen*]:

I. The German Bundestag determines [*stellt fest*]:

(...) The model of argumentation and the methods of the BDS movement are antisemitic. Moreover, the calls for campaigning for a boycott of Israeli artists, as well as the stickers on Israeli trade products that are supposed to deter people from buying them, recall [*erinnern an*] the most terrible phase of German history. “Don’t Buy” [*sic*] stickers of the BDS movement on Israeli products inevitably awaken [*wecken unweigerlich*] associations with the Nazi slogan, “Don’t buy from Jews!” and similar graffiti’s on storefronts and shop windows. (Bundestag 2019)³

Although the Bundestag determines in this resolution that the BDS movement’s calls and stickers inevitably awaken associations with the 1933 Nazi boycott of Jewish businesses—note the tension between the wilful speech acts of resolving, deciding, and determining and the alleged inevitability of the awakening of associations—BDS in fact bears few resemblances to the Nazi boycott. Whereas the Nazi boycott was a campaign led by a powerful government against an oppressed minority, the BDS movement is a grassroots protest movement of an oppressed minority against a powerful government. This makes the BDS movement much more similar to what are arguably the five

2 On the role of comparison in boycott politics, see the special issue on “The Politics of Boycott” of the *Radical History Review*, especially the introduction (Rothman and Zimmerman 2019) and Takriti 2019 on “lineages of boycott in Palestine.” See also Bot 2019.

3 All translations of German texts are mine unless otherwise noted. For an informative overview and analysis of the attempts to censor BDS in Germany, including the Bundestag resolution, see Hever 2019. For an in-depth analysis of the discourse on fighting anti-Semitism in Germany over the past two decades, see Younes 2020. For analyses of the Bundestag resolution, see Wetterau and Benz 2020, 59–64 (in German) and Asseburg 2019.

most famous boycotts in modern world history: the Boston Tea Party, the Irish National Land League's campaign against Charles Boycott, Gandhi's boycotts in India, the Civil Rights Movement's boycotts in the United States, and the global boycott against the South African apartheid government.

Of course, these famous boycotts were all grassroots campaigns against colonial regimes upheld by the British Empire and its postcolonial successors, and some German intellectuals have suggested that boycotts awaken very different associations in Germany than in other contexts. For instance, Stefanie Schüler-Springorum, the director of the Center for Research on Antisemitism at Berlin's Technical University, has maintained that "[i]n Germany, a boycott is a difficult form of protest" (cited in Eddy and Marshall 2018). "Historically," Schüler-Springorum submitted, "it has a completely different resonance, as basically the Nazis' first step against an ethnic minority. Therefore it is simply not acceptable" (cited in Eddy and Marshall 2018).

However, despite her insistence on the need for a historical and contextual understanding of the resonance and associations of boycott in Germany, Schüler-Springorum, like the Bundestag resolution, ignores what is indisputably one of the most important boycotts in German history. From 1933 to 1941, Jewish groups, labour unions, and other civil society organisations in the United States, the United Kingdom, France, the Netherlands, and many other countries organised a global boycott to protest the Nazi government's anti-Semitism. Although there had been anti-Semitic boycotts of Jewish stores before, the April 1, 1933 Nazi boycott of Jewish businesses and Jewish lawyers and physicians to which the Bundestag resolution and Schüler-Springorum seem to be alluding was, in fact, a counter-boycott against this global boycott (Gottlieb 1982, 15–24; Bartrop and Grimm 2022, 8–9). The fact that Schüler-Springorum and the Bundestag resolution do not even mention this eight-year-long, global anti-Nazi boycott is surprising because, as I will argue in the next section, BDS is much more similar to this transnational solidarity boycott than to the national anti-Jewish boycotts imposed by the Nazi government.⁴

In this chapter, I develop a critique of the Bundestag's attempt to legislate the "inevitable" awakening of associations between calls for BDS and Nazi calls

4 In the German context, BDS is also more similar to the transnational post-World War I boycott of German scientists and scholarly organisations because of their role in spreading war propaganda, a boycott that led to the demise of German as one of the main languages of science (Reinbothe 2019). BDS is also more similar to the transnational anti-apartheid movement that had a prominent presence in both West and East Germany (Brede 2016, 359). And in his monograph on boycott in the context of organised labor in Germany, Gerhard Binkert mentions "numerous cases of boycott in the late 19th century," including blacklisting and consumer boycotts (Binkert 1981, 23).

for anti-Jewish boycotts. In the next section, I recall some of the basic events of the global boycott against the Nazis and of the controversial 1933 *Haavara* or transfer agreement with which the Nazis sought to undermine this boycott. In the subsequent section, I interpret the Bundestag's attempt to legislate "inevitable" associations between calls for BDS and Nazi calls for anti-Jewish boycotts, as well as the resolution's welcoming of the fact that various municipalities have refused financial support and meeting spaces to groups supporting BDS, as enactments of the controversial concept of *Staatsräson* that the resolution invokes twice. I conclude the chapter by arguing for a critical comparative engagement with the political history of boycott, to resist the Bundestag's legislation of exceptional associations between the global campaign for BDS and a national boycott with which it has little in common, and to explore associations and resonances between BDS and similar transnational solidarity boycotts. Thus, the chapter both interrogates and challenges the German state's attempt to change, by means of legislation, the memory of a political practice that already carries its own, primarily emancipatory memories, as well as the German state's attempt to rehabilitate a political concept tainted by a deeply anti-constitutional and anti-democratic genealogy.

2 The Global Anti-Nazi Boycott of the 1930s and the *Haavara* Agreement

Less than two months after Hitler came to power on January 30, 1933, a small American Jewish defence group named the Jewish War Veterans called for "a strict boycott against German merchandise to serve as protest against Nazi anti-Semitism" (*New York Times* 1933). On April 1, the German Nazi party organised the infamous nation-wide boycott against German Jews in order to counter the "anti-German atrocity propaganda and threats of boycott" by Anglo-American Jews (Gottlieb 1973, 199). On the same day in Paris, the International League Against Anti-Semitism in Paris declared a boycott of German goods "until the downfall of Adolf Hitler or the resumption of full rights for German Jews" (Black 1984, 80). The League proceeded to open boycott offices in Lyon, Nice, and Marseilles. On April 2 in Toronto, the boycott was adopted during a "mass protest meeting co-sponsored by Jewish and Christian clergy" (Black 1984, 80). On April 6, the Polish Undersecretary of State told the German ambassador that the Polish government would not interfere with the anti-Nazi boycott, which had been enforced by violent mobs (Black 1984, 80). On April 9, London and Manchester police, fearing "Polish-style boycott violence," demanded that store owners remove window posters reading "Boycott German Goods" (Black

1984, 80). However, this prohibition led to a debate in parliament during which Churchill called for an end to the suppression of the boycott (Black 1984, 80). On April 13, Samuel Untermyer, citing the inspiration of the boycott by Jewish shopkeepers in London, called for a boycott during a meeting of the American Friends of the Hebrew University (Hawkins 2022, 147). This call was the beginning of what Untermyer's biographer describes as "the most ambitious boycott attempted in the United States since the boycotts of British merchandise in the period immediately before the American Revolution" (Hawkins 2022, 148). Untermyer became the head of the American League for the Defense of Jewish Rights, an "ad-hoc group" soon renamed the Non-Sectarian Anti-Nazi League to Champion Human Rights (Gottlieb 1973, 199–200).

The boycott movement continued to spread in May, 1933, with boycotts in Cairo, Gibraltar, and Buenos Aires; examples included a disruption of a screening of a German film in Paris; a boycott of German ocean liners in London; and boycott groups in Amsterdam who printed thousands of "boycott stamps" with a "swastika transmuted into a four-headed snake behind prison bars" for use on letters and packages, which soon became an "international boycott tool" (Black 1984, 125). Towards the end of May, the British Trades Union Congress declared the anti-Nazi boycott mandatory for its members, as did the Dutch Federation of Trade Unions and the Dutch Labour Party. On July 20, an international boycott conference was held in the Carlton Hotel in Amsterdam, the World Jewish Economic Conference—a nod to the World Economic Conference held in London—with delegates from sixteen countries, including the U.S., Britain and France, South Africa and Egypt, the Netherlands, Belgium, Poland, and Latvia present, and the support of "allied Jewish organisations" in ten other countries (Hawkins 2022, 152). The conference resolved, among other things, "[t]hat boycotting of German goods, products and shipping throughout the civilised world is the only effective weapon for world Jewry and humanity by way of defence and protection of Jewish rights, property and dignity in Germany" (Birchall 1933; Gottlieb 1982, 386). Anticipating a further transnational coordination and consolidation of the boycott, various boycott movements adopted the slogan, "Germany will crack this winter" (Black 1984, 185).

The boycott lasted until October, 1941, and significantly impacted German exports (Gottlieb 1973, 198). The Nazis repeatedly recognised that it hurt their economic interests. Indeed, the strong resonance of this transnational boycott in Germany is evident from the fact that Hitler still complained about the boycott and its demonisation of Germany in an address to the Reichstag on April 28, 1939:

It is likewise an unbearable burden for world economic relations that it should be possible in some countries for some ideological reason

or other to let loose a wild boycott agitation [*eine wilde Boykotthetze*] against other countries and their goods and so practically to eliminate them from the market. It is my belief, Mr. Roosevelt, that it would be a great service if you, with your great influence, would remove these barriers genuinely to free world trade, beginning with the United States. For I am convinced that if the leaders of nations are not even capable of regulating production in their own countries, or of removing boycott agitation [*Boykotthetzen*] pursued for ideological reasons which can damage trade relations between countries to so great an extent, there is much less prospect of achieving any really fruitful step toward improvement of economic relations by means of international agreements. Only thus will the equal right to buy and sell on the world market be secured, indeed for everyone. (Gottlieb 1982, 346 (trans. modified) and Hitler 1939, 58)

Not all Jewish organisations supported the boycott. On the contrary, in August 1933, the Jewish Agency for Palestine and the German Zionist Federation concluded the controversial *Haavara* or transfer agreement with the German Ministry of Economic Affairs, which undermined the boycott (Bartrop and Grimm 2022, 101; Brenner 1984). Historian Lawrence Baron considers the *Haavara* agreement to be “the most important German response to the anti-Nazi boycott and the economic impact of anti-Semitic discrimination.” He explains the details of the agreement as follows:

The Germans promised to waive restrictions on taking currency out of the country for Jews emigrating to Palestine who were allowed to keep £1,000 of their assets to qualify for settlement in Palestine outside of British immigration quotas for poorer Jews going there. In return these and potential future German Jewish immigrants to Palestine placed the remainder of their capital in blocked accounts to subsidise the purchase of German goods for export to Zionist enterprises in Palestine. The savings accrued by the Zionists from this method of price reduction on needed German products were converted into cash allotments for the German Jewish immigrants who received approximately 50% of the money they had left behind in Germany. (Baron 1987, 186)

According to Baron, the agreement was an economic win both for the Nazis and for the Jewish economy in Palestine. But in signing the agreement, the World Zionist Organisation broke the anti-Nazi boycott.

I have recalled these basic events of the global anti-Nazi boycott of the 1930s and the *Haavara* agreement because of the Bundestag resolution's claim

that BDS “inevitably awakens associations” with the Nazi boycott of Jews, and because of Stefanie Schüler-Springorum’s claim that “historically, boycott has a completely different resonance” in Germany than it does elsewhere. This brief overview demonstrates that the alleged awakening of associations between calls for BDS and the Nazi calls for boycotting Jewish businesses is not based on historical similarity. Instead of resembling the anti-Jewish boycotts instigated by the Nazi government, BDS is much more similar to the anti-Nazi boycott of the 1930s. Like the anti-Nazi boycott (and unlike the anti-Jewish boycotts of the Nazi government), BDS is a grassroots movement founded by a coalition of civil society organisations. Moreover, like the anti-Nazi boycott (and unlike the anti-Jewish boycotts), BDS is a global solidarity movement fighting for the (human) rights of an oppressed group.

When interpreting BDS historically, in a German context, it is also important to recall that the origins of the strong trade relations between Germany and Israel which calls for BDS in Germany target—Germany is Israel’s most important trading partner in the European Union—lie in the *Haavara* agreement. Indeed, due to the *Haavara* agreement, Germany had overtaken the United Kingdom, which was the Mandatory Power, as the first exporting country to Palestine in 1937 (Bartrop and Grimm 2022, 102). Although the Nazis did not support the creation of a Jewish state in Palestine, out of an anti-Semitic fear of strengthening the supposed global Jewish conspiracy (Bartrop and Grimm 2022, 102), their objective in concluding the *Haavara* agreement, apart from breaking the global anti-Nazi boycott, was to get German Jews to leave Germany (Brenner 1984).

3 *Staatsräson*, Memory, and Miracles: Taking Exception to Historical Comparison

How, then, does the Bundestag resolution intervene in the remembrance of boycott history in Germany? In this section, I interpret the Bundestag’s attempt to legislate an alternative historical resonance of boycott in Germany as an enactment of the concept of *Staatsräson*, which the resolution mentions twice: “A decided, unconditional no to hatred against Jewesses and Jews of whatever nationality is part of the German *Staatsräson*”; and “The security of Israel is part of the *Staatsräson* of our country” (Bundestag 2019).

Staatsräson is a controversial concept. According to conservative Catholic constitutional theorist and Nazi lawyer Carl Schmitt, the doctrine of *Staatsräson*, which originated in the Italian Renaissance, used to be invoked to justify the breach of a rule when special circumstances or a state of emergency required

making an exception (Schmitt 2017, 56). This doctrine is also at the heart of Schmitt's antiliberal theory of sovereignty that I will briefly discuss towards the end of this section. In a 1980 article, legal scholar Helmut Rumpf argued that since the mid-19th century, the intellectual tradition of liberalism considered the idea of *Staatsräson* to be fundamentally at odds with the democratic rule of law and, in the twentieth century, came to associate it with fascist, Nazi, and authoritarian forms of anachronistic backsliding into Europe's absolutist past (Rumpf 1980, 273–74). However, according to Rumpf, liberal democratic constitutions also inevitably contain a specific idea of *Staatsräson* because *Staatsräson* is “as an existential principle, a primordial principle of the state” (Rumpf 1980, 285). This is why it is necessary to rethink and rehabilitate the idea of *Staatsräson*, Rumpf argues, orienting it towards preserving “the spirit of the constitution” (Rumpf 1980, 292). However, although *Staatsräson* has always been invoked to justify prioritising the preservation of one's own state (Michaels 2023b), the concept has curiously been rehabilitated primarily in the context of claims by German government officials and political leaders about Germany's “special” or “exceptional” relation with Israel. Memory plays a central role in this rehabilitated use of *Staatsräson*.

The first use of the concept of *Staatsräson* by a German government official in the context of German-Israeli relations was a 2005 article by Rudolf Dreßler, a former German ambassador to Israel (Hever 2019, 87; Michaels 2023a, 34).⁵ Pointing to the importance of good relations with Israel for Germany's global reputation and to the fact that many of Israel's driving forces consider Germany “politically and economically, scientifically and technologically the second most important partner after the United States,” Dreßler argued: “the secure existence of Israel is in the German national interest, and is thus part of our *Staatsräson*” (Dreßler 2005). The latter phrase contains a curious expansion of the meaning of *Staatsräson*. The concept has usually been invoked to justify the suspension of the rule of law, not when suspending the law just happened to be in the national interest, but when what Dreßler calls the “secure existence” of the state was at stake. That is, *Staatsräson* has usually been invoked to justify not simply what is politically expedient but what is politically necessary. However, Dreßler connects the secure existence of the Israeli state to the *Staatsräson* of the German state without arguing that the preservation of the German state depends on the preservation of the Israeli state. He simply argues that the secure existence of Israel is good for Germany's global

5 Michaels finds one precedent in a 2001 article in *Die Welt* by a journalist: Michaels 2023a, 34.

reputation and that Israel is an important political, economic, scientific, and technological partner of Germany.

However, this is not the only expansion of the meaning of *Staatsräson* in Dreßler's article. From 2003 onwards, Dreßler reports, he had been invited to the annual Holocaust commemoration in the remembrance centre Yad Vashem, which he claimed was part of the Israeli *Staatsräson*:

Holocaust Remembrance Day in Israel finds no equivalent in the German culture. The memory of the horror, of the oppression, of the terror, of the events characterized by destruction and mass annihilation can have no equivalent. Holocaust Remembrance Day in Yad Vashem is part of the Israeli *Staatsräson*. (Dreßler 2005)

By using the concept of *Staatsräson* in this passage, Dreßler suggests that the preservation of the Israeli state hinges on the official cultivation of the memory of the Holocaust as incomparable (without equivalent). Whereas the concept of *Staatsräson* has usually been invoked by states deciding that exceptional circumstances necessitate exceptional measures, Dreßler connects the exceptionality associated with the concept of *Staatsräson* to the *content* or *substance* of those measures. To preserve the Israeli state against existential threats—Israel declared the state of exception on the day of its foundation, and this state of exception has been extended ever since (Sivan and Laborie 2016, 139)—it needs to officially commemorate the Holocaust as an exceptional historical event.

According to Dreßler, Israel's decision to invite the German ambassador to Holocaust Remembrance Day should not be interpreted as a sign of the 'normalisation' of German-Israeli relations, because: "The German-Israeli relations cannot be 'normal'—conforming to the norm. Put differently: according to the regulations or ordinary, common or average" (Dreßler 2005). Dreßler associated normalisation with "*Schlussstrich-Debatte*" about the Second World War: discussions that want to put a full stop behind the past and move on with a clean slate (Dreßler 2005).

While the concept of normalisation had played an important role in German foreign affairs since the 1970s, the concept has also been associated with the position of conservative historians in the 1986 *Historikerstreit* or historians' dispute. Comparatist Michael Rothberg summarises this dispute as follows: "At a moment when Christian Democratic Chancellor Helmut Kohl was seeking to 'normalise' West Germany's position in global politics, [philosopher Jürgen] Habermas saw such prominent intellectuals as Ernst Nolte and Andreas Hillgruber attempting to rehabilitate a 'positive' national identity by

evading the gravity of the Holocaust through politically tendentious comparisons” (Rothberg 2022, 1317). Produced towards the end of the Cold War, these ‘normalising’ historical comparisons sought to relativise German responsibility for the Holocaust, for instance by portraying Germany as a victim of Soviet aggression. In reaction against these attempts at normalising by relativising, i.e. diminishing German responsibility, Habermas successfully promoted a discourse of absolute responsibility and of the Holocaust as a singular historical event that was incomparable in its exceptionality. But as various scholars have demonstrated and as various scholars and artists have painfully experienced (such as race critical scholar Anna-Esther Younes, historian and political theorist Achille Mbembe, and various curators and artists of the 2022 edition of art festival documenta), the discourse of the exceptionality of the Holocaust has more recently foreclosed any attempts to relate Holocaust memory to any other instances of racial violence, especially instances of colonial violence (Rothberg 2009; Younes 2020; Dirk Moses 2020).

Angela Merkel subsequently⁶ used the concept of *Staatsräson* in her 2008 speech to the Israeli Knesset on the occasion of Israel’s sixtieth anniversary:

Every federal government and every chancellor before me was committed to Germany’s special historical responsibility for the security of Israel. This historical responsibility of Germany is part of my country’s *Staatsräson*. (Merkel 2008)

Merkel was the first German chancellor invited to speak to the Knesset. Like Dreßler’s article, Merkel’s speech revolved around the exceptionality of German-Israeli relations because of the memory of the Holocaust: “Germany and Israel are and remain—indeed forever—connected in a special way through the memory of the Shoah” (Merkel 2008). Merkel recalls that for a long time, Israeli passports made an exception for travel to Germany. The fact that this is no longer the case, Merkel argued, does not make the relations between Germany and Israel any less exceptional. In Merkel’s speech, the language of the exception takes a particular theological form, particularly in its reference to the concept of the miracle.⁷ Merkel said:

6 Ralf Michaels notes that Merkel had already used the concept in the context of German-Israeli relations in a speech to the General Assembly of the United Nations in 2007, but that this speech received little attention (Michaels 2023a, 33).

7 Shir Hever points to the theological stance towards the Israeli state of the Evangelical Church, Germany’s biggest church, as an important influence on German-Israeli relations (Hever 2019, 3). See also historian A. Dirk Moses’ critique of “Germany’s Catechism” in Dirk Moses 2021.

I could not stand before you today and speak to you as the chancellor of the Federal Republic of Germany raised in the former GDR, if after the Second World War in the then Federal Republic, there had not been politicians like Konrad Adenauer, Willy Brandt, and Helmut Kohl. They believed in the power of freedom, the power of democracy, and the power of human dignity. In this way, they have been capable of making the seemingly impossible possible: the fulfillment [*Vollendung*] of the unity of Germany in peace and freedom, and with that the atonement [*Versöhnung*] of the European continent.

From the experience that the impossible can become possible, we can draw the determination and the confidence that any effort will pay off that brings the Near East a big step closer to a peaceful cooperation. Or to say it with the well-known words of David Ben-Gurion: “He who does not believe in miracles [*Wunder*] is not a realist.” When today, on the 60th anniversary of the foundation of the state Israel, we consider the German-Israeli relations, we know that his sentence has proven to be both realistic and correct. Yes, these are special, unique relations—with everlasting responsibility for the past, with common values, with mutual trust, with great solidarity with each other, and with united confidence. (Merkel 2008)

According to Merkel, the special relations between Germany and Israel originate from the exceptional violence of the Holocaust and have been redeemed by leaders who believe in miracles by acknowledging Germany’s exceptional responsibility and by acting on it. Just as Dreßler argued that Germany’s “special responsibility” was being accomplished by Germany’s military cooperation with Israel—the crew of a German warship visited Yad Vashem during a joint military exercise (Dreßler 2005)—Merkel’s speech, which made repeated reference to Iran’s nuclear capabilities, served to legitimate the supply of submarines with nuclear capabilities to the Israeli navy (Hever 2019, 87).

In 2017, then Social Democratic (SPD) leader Martin Schulz used the concept of *Staatsräson* in a televised debate with Merkel (Hever 2019, 87). Schulz said: “There are for instance young Palestinian men who come to us, who have been raised with a deeply rooted anti-Semitism, who must be told in clear language: “There is only room for you in this country if you accept that Germany is a country that protects Israel, that that is our *Staatsräson*” (cited in Fruchtmann 2017).⁸ Schulz’s invocation of the concept of *Staatsräson* exemplifies the

⁸ On October 8, 2023, the day after Hamas killed, took hostage, and kidnapped hundreds of people in Southern Israel, German Chancellor Scholz also equated the security of Israel with Germany’s *Staatsräson* altogether: “Israel’s security is German *Staatsräson*” (Scholz 2023).

discourse that race-critical theorist Anna-Esther Younes analyzes as a racializing discourse of “anti-anti-Semitism” that revolves around the figure of “the anti-Semitic Palestinian” (or Arab or Muslim) and around the category of “Israel-related anti-Semitism” in German citizenship policy discourses in the wake of the 1999 citizenship law and the September 11, 2001 attacks on the New York World Trade Center and the Pentagon (Younes 2020, 256). Indeed, on November 14, 2023, the CDU/CSU introduced a “Draft for a Law to End the Residency and Prevent the Naturalization of Anti-Semitic Foreigners” (Bundestag 2023). The draft law aims at “better protection against a further consolidation and extension of an anti-Semitism that has ‘immigrated’ from abroad” and would make “the procuring of German citizenship dependent on a commitment [*Bekanntnis*] to Israel’s right to exist and a declaration [*Erklärung*] that the applicant for naturalisation does not pursue, nor has pursued activities against the existence of the state of Israel” (Bundestag 2023).

The Bundestag’s anti-BDS resolution not only posits that the security of Israel is part of Germany’s *Staatsräson*, but the resolution itself is already an application of this idea. In welcoming “[t]he fact that countless municipalities have already decided to refuse the BDS movement [...] financial support and the allocation of communal spaces,” the Bundestag welcomes the suspension of the fundamental right to freedom of assembly of BDS activists. German courts have so far confirmed that the refusals of municipal meeting spaces to BDS activists violate the German Constitution and the European Convention on Human Rights, and in 2023, a Frankfurt court confirmed in a case finding a ban on an assembly on “Peace and Justice in the Near East” unconstitutional that “the observance of fundamental rights is not conditional on a *Staatsräson*” (VG Frankfurt 5. Kammer 2023). Furthermore, the German Federal Constitutional Court already recognised in 1958 that calling for a boycott was protected political speech in a landmark judgment about a 1950 cultural boycott against Veit Harlan, the director of the infamous anti-Semitic Nazi propaganda film *Jud Süß* (Lüth; Bot 2019). In determining, without any evidence, that “the mode of argumentation and methods of the BDS movement are anti-Semitic,” the Bundestag criminalises BDS activists, suspending their fundamental right to freedom of speech.

Furthermore, in “determining” or “deciding” that “Don’t Buy’ [sic] stickers of the BDS movement on Israeli products inevitably awaken associations with the Nazi slogan, ‘Don’t buy from Jews!’ and similar graffiti on storefronts and shop windows,” the Bundestag seeks to regulate what “inevitably” awakens which memories in people’s minds. Thus, the Bundestag resolution also suspends the fundamental right to freedom of thought.

Although much less discussed than freedom of expression, freedom of thought is at the core of the political tradition of liberalism.⁹ For instance, John Stuart Mill's *On Liberty* was primarily an attempt to confront the threat of a "tyranny of the majority" in democracies, not only to "freedom of discussion" but to "freedom of thought" (Mill 2007, 8 and 19). Thomas Hobbes had already argued that the sovereign may control the public expression of opinion in order to keep the peace, but not what people think in private. Interestingly, in light of Angela Merkel's conceptualisation of the "redemption" of German-Israeli relations as a miracle, the most pertinent passage defending freedom of thought in Hobbes' *Leviathan* is specifically concerned with the belief in miracles: exceptional events that disrupt the normal course of history:

A private man has always the liberty (because thought is free) to believe or not believe, in his heart, those acts that have been given out for miracles, according as he shall see what benefit can accrue, by men's belief, to those that pretend or countenance them, and thereby conjecture whether they be miracles or lies. But when it comes to confession of that faith, the private reason must submit to the public; that is to say, to God's lieutenant [i.e. the sovereign or the state]. (Hobbes 1994, 300)

Carl Schmitt identified this passage, in his 1938 book on *The Leviathan in the State Theory of Thomas Hobbes*, as "[t]he seed of death that destroyed the mighty leviathan from within and brought about the end of the mortal god" (Schmitt 2008, 57). Indeed, Schmitt lamented: "Only a few years after the appearance of the *Leviathan*, the first liberal Jew [Spinoza] noticed the barely visible crack in the theoretical justification of the sovereign state" (Schmitt 2008, 57, trans. modified). Allowing private citizens "the right of private freedom of thought and belief," Schmitt argued, erodes the state's vitality from within (Ibid.). In his 1922 *Political Theology*, Schmitt had already argued that "[t]he state of exception has a meaning for jurisprudence that is analogous to the meaning that the miracle has for theology" (Schmitt 2004, 43). For Schmitt, letting private citizens decide whether or not they believe in miracles completely undermines the sovereign's position as "the one who decides on the state of exception" (Schmitt 2004, 13). According to Schmitt's antiliberal political theory, the state should dictate the belief in exceptional events. Drefßler's suggestion that the preservation of the Israeli state depends on official commemorations of

9 In contemporary jurisprudence, freedom of thought still appears, for instance, in cases about proselytism, such as *Kokkinakis v. Greece* before the European Court of Human Rights.

the Holocaust as an exceptional event, the requirement that Palestinians or other migrants profess Israel's "right to exist," and the Bundestag's attempt to legislate inevitable associations between calls for BDS and Nazi calls for anti-Jewish boycotts are entirely in line with this political theory. Indeed, the Bundestag not only prescribes the form of official commemoration, but also seeks to dictate the memory of its subjects.

4 Resisting the Exception

Calls for BDS and the Bundestag's anti-BDS resolution instantiate a conflict between two competing solidarities: a solidarity with Palestinians that activates memories of anticolonial resistance and global solidarity with the oppressed and a solidarity with the Israeli nation-state that grounds itself in memories of the Holocaust (Collins 2011, 147; Rothman and Zimmerman 2019, 9). However, while the call for BDS is a call for solidarity with the Palestinian *people* that is grounded in law, the Bundestag resolution's solidarity with Israel is a solidarity among *nation-states* that takes exception to the rule of law. While campaigns for BDS are attempts by civil society organisations at legal mobilisation "from below," aimed at ending Israel's occupation and colonisation of all Arab lands, the dismantling of the wall, equal rights of Palestinian citizens of Israel, and the right of return of Palestinian refugees, the German government's solidarity with the Israeli state is grounded in extra-legal invocations of the exceptional concept of *Staatsräson* "from the top." While the BDS movement compares itself to a historical boycott movement with which it has a lot in common, the Bundestag resolution insists on an exceptional comparison between calls for BDS and a boycott with which it has almost nothing in common.

Various authors have argued that what the BDS movement is boycotting is ultimately the exception itself (Sivan and Laborie 2016, 137–40; Feldman 2019, 196–98). In its demand that Israel comply with international law, the BDS movement resists what Sivan and Laborie call "the Israeli model of the permanent state of exception justified by national security" (Sivan and Laborie 2016, 140). It is not surprising, then, that attempts to censor the BDS movement also take the form of exceptional measures. As a "mere act of parliament," the Bundestag's anti-BDS resolution is not actually legally binding (Gärditz 2020). However, it may be exactly its non-legally binding status that gives this resolution its political power to censor BDS activism, like the notorious 2016 "non-legally binding working definition of anti-Semitism" promoted by the International Holocaust Remembrance Alliance (IHRA 2016), which is cited

in the Bundestag's anti-BDS resolution as well.¹⁰ While presented as a non-legally binding "working" definition, the IHRA redefinition of anti-Semitism has been embraced by numerous public and semi-public bodies in various countries and has played an important role as "soft law" in facilitating the stigmatisation of critiques of Israel as anti-Semitic (Gould 2022; Neumann 2023). Both the IHRA "working definition" and the Bundestag's anti-BDS resolution are not "really" law, but it may be precisely this quasi-legal status that allows for their effective mobilisation against the constitutional rights of BDS activists. A state actor that has made ample use of the IHRA "working definition" of anti-Semitism and of the Bundestag's anti-BDS resolution in order to censor BDS activists is Felix Klein, the "Representative of the Federal Government for Jewish life in Germany and the Fight against Anti-Semitism." Klein's position was only created in 2018, and legal scholars have criticised the creation of this position as constitutionally problematic because it authorises a non-elected civil servant to intervene in public discourse on behalf of the German government (Gärditz 2020). Klein's position of "anti-Semitism representative" is yet another instance of an exceptional intervention in the freedom of speech, assembly, and thought.

It is important, then, to resist the Bundestag's attempt to foreclose associations and resonances between BDS and similar historical boycotts, as well as the Bundestag's legislation of exceptional associations between BDS and a boycott with which it has little in common, by interpreting BDS within the political history of boycott through concrete historical analysis and critical comparison. As historian Abdel Razzaq Takriti argued, such an interpretation involves a "examining the location of boycott within broader strategies of liberation unfolding at different historical junctures" (Takriti 2019, 59). Takriti cautions against an "[a]nalysis of boycott qua boycott [that] tells us little about the relationship between boycott and the actual struggles it is meant to serve," which risks "[p]rivileging the tactical form over the substantive principles underlying it, not to mention the material realities it is meant to alter" (Takriti 2019, 59). Especially in anticolonial contexts, Takriti argues, abstract analysis of boycott, for instance in social movement theory or in the "contentious politics

10 "According to the working definition of the International Holocaust Remembrance Alliance, anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities. Beyond that, the state of Israel, conceived as a Jewish collectivity, can also be the target of such attacks." (Bundestag 2019)

framework,” risks depoliticisation and erasure of already marginalised voices (Takriti 2019, 59).

Takriti focuses on the genealogy of boycott in Palestinian politics, tracing lineages of Palestinian boycott back to boycotts in Ottoman Palestine against the Austro-Hungarian annexation of Bosnia in 1908 and against Zionist colonisation in the 1910s (Takriti 2019, 60). Takriti suggests that abstract analyses of “boycott qua boycott” are especially problematic in the context of Palestine, because boycott was in fact “at the core of the Zionist project in Palestine,” with its doctrines of “conquest of labor” and “Hebrew labour” that excluded Arab workers and “[shunned] Jews who did not participate in enforcing this exclusion” (Takriti 2019, 61). According to economist Shir Hever, the practice of boycotting Palestinian labour, “[a]lthough today officially illegal in Israel, still persists in thousands of Israeli businesses, which advertise their commitment not to employ Arab workers” (Hever 2013, 109). Takriti not only analyses Palestinian boycotts in the context of the Zionist boycott of Palestinian labour, but also in the context of the removal and subsequent denial of political rights for Palestinians.

This genealogy is important to recall because, as I mentioned at the beginning, BDS is a Palestinian-led movement that started with a call by more than 140 Palestinian civil society organisations. The Bundestag’s attempt to legislate a German national resonance for calls for BDS disavows the fundamental transnational or global nature of the BDS movement. Against this attempt to legislate an exceptional national boycott memory, critical comparison can open up space for foreclosed transnational resonances between BDS and boycotts against anti-democratic regimes elsewhere.

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