

# The Scoop on Ben & Jerry's

by Steven R. Sheffey

Americans are dying of COVID and gun violence. Our democracy is at risk from insurrectionist Republicans attempting to suppress votes across the country. Iran is closer to nuclear weapons than when Trump took office and the two-state solution Israel needs is moving out of reach, but sure, let's focus on whether gourmet ice cream is available in West Bank settlements or whether settlers will have to drive ten minutes into Israel to get their beloved ice cream.

I disagree with Ben & Jerry's decision, not because it is antisemitic or a boycott of Israel, but for many of the reasons articulated by [Michael Koplou](#). It takes two to make peace, and neither the Palestinians nor Israel can make peace without the active engagement of the other. One-sided pressure on either side will cause the side under pressure to dig in and the other side to sit back and watch.

Ben & Jerry's is not boycotting Israel. [Ben & Jerry's](#) (and its parent company, [Unilever](#)) announced that it will stop selling ice cream in the West Bank at the end of 2022 but will continue to sell in Israel—which means it is not boycotting Israel. As [Ben and Jerry](#) themselves noted, “the company drew a contrast between the democratic territory of Israel and the territories Israel occupies.”

[Jonathan Freedland](#) explains that “far from being anti-Israel, Ben & Jerry's have reasserted the distinction between Israel proper and the occupied territories. They have signaled to progressive-minded customers that you can be opposed to settlements without being opposed to Israel itself.” That's huge, especially on college campuses, where the existence of Israel itself is an issue.

Those who argue that Ben & Jerry's is anti-Israel because it is boycotting settlements are saying “that if you object to Ma'ale Adumim then you object to Tel Aviv, that if you loathe a 54-year military occupation then you must loathe Israel.” Is that the message we want to send?

Some claim that Ben & Jerry's independent board [wanted to boycott Israel](#) even though the board's original statement did not call for a boycott of Israel. Rather, Unilever added the sentence affirming that Ben & Jerry's would continue to sell in Israel.

We are not the thought police. What matters is not whether those within the Ben & Jerry's organization agree with the statement issued by Ben & Jerry's. What matters is the statement issued by Ben & Jerry's and, as of now, it's clear as clear can be it will continue to sell in Israel. If and when that changes, we'll do what intelligent people do: we'll reevaluate our opinion.

Ben & Jerry's decision is neither antisemitic nor supporting Boycott, Divestment and Sanctions (“BDS”). As [Ben and Jerry](#) themselves said, “it's possible to support Israel and oppose some of its policies, just as we've opposed policies of the U.S. government...As Jewish supporters of the State of Israel, we fundamentally reject the notion that it is anti-Semitic to question the policies of the State of Israel.”

Instead of giving BDS an unearned victory by parroting its claims that its pressure on Ben & Jerry's was successful, we should tell it like it is: this was a rejection of BDS, which advocates for boycotts of Israel, and is instead a targeted, limited boycott of the West Bank that will have little economic impact. We should use this opportunity to explain why we disagree with the tactic rather than using potentially [unconstitutional laws](#) to alienate those who otherwise might agree with us. Further, we should explain that settlement expansion, while not the root of the conflict, is an impediment to a solution.

If we act as if the West Bank—which Israel has not annexed—is Israel, then we are giving a boost to the [BDS](#) movement and others who argue that the undeniable disparity in legal rights between Jews and Palestinians in the West Bank means Israel is not a democracy. If West Bank Palestinians cannot vote in Knesset elections, and they can't, it doesn't mean Israel is not a democracy if the West Bank is not part of Israel. If the West Bank is part of Israel, then Israel is not a democracy.

Defending Israel [against allegations of apartheid](#) depends on maintaining clarity between the West Bank and Israel. Some argue that Israel has [de facto annexed the West Bank](#). Reacting to the Ben & Jerry's boycott as if it is a boycott of Israel lends credence to this argument. Those who argue that Ben & Jerry's is boycotting Israel when it is actually boycotting the West Bank are not only wrong, but playing into the hands of the BDS movement.

Let's not fall for the "double standards" fallacy. [Rabbi Jill Jacobs](#) has explained when criticism of Israel crosses the line into antisemitism. What some call "double standards" often do not cross that line: "Human rights activists and organizations almost always choose a focus for their efforts. (One may reasonably work to end the genocide of the Rohingya community in Burma, for instance, without simultaneously addressing Bashar al-Assad's slaughter of his people in Syria.) Israel attracts additional scrutiny because it is a top recipient of U.S. foreign aid and the only Western nation currently carrying out a military occupation of another people. Its territory is sacred to three major world religions. The existence of a strong U.S.-based lobby dedicated to promoting the policies of the Israeli government unsurprisingly generates a counterresponse. And Palestinians have built a national movement over the past five decades, unlike more recently displaced people. These trends shape a legitimate political dynamic."

Peter Beinart wrote [the best article I've yet read](#) about the double standards fallacy. You don't have to agree with everything Beinart has ever written, or even everything in this article, to see how weak the double standards argument is in this case.

Ben & Jerry's decision is not antisemitic. As [Michael Koplow](#) explains, Ben & Jerry's decision "is the very definition of tying a decision not to Jewish status or even Israeli status, but to specific Israeli activity in a specific location, and to limiting the consequences of that decision to that specific location...If it is antisemitic to continue selling ice cream to Jews and to Israelis in Israel but not in territory that Israel itself defines as disputed, then the term really has no meaningful ability to distinguish between categories of behavior that are about hating Jews as Jews and categories of behavior that impact Jews for other reasons."

What happens next? If you like Ben & Jerry's ice cream and you like Israel, keep eating it. If you support a one-state solution and if you support settlements, then maybe stop eating it if that makes you feel better. But before you accuse BDS supporters of hypocrisy for availing themselves of technology developed in Israel, take a good look in the mirror if you boycott Ben & Jerry's and continue to use [any of the products made by Unilever](#). You might also ask yourself whether boycotting Ben & Jerry's is the best way to send a message that you don't think boycotts are the best way to send a message.

Many states have anti-BDS laws, and some of them include refusing to do business in territory controlled by Israel, which means the West Bank. The Ben & Jerry's decision will have little economic impact on Israel, but why pass up an opportunity to pit self-proclaimed pro-Israel advocates against free speech advocates on an issue of no practical impact on Israel? That's just what we need, right? Thus far, no state anti-BDS law that has been challenged [has survived court scrutiny](#). [We'll soon see if that streak continues](#). For more on the applicability of state anti-BDS laws to Ben & Jerry's, read this conversation with [Lara Friedman](#).

We have yet to see any evidence that divesting pension funds from holdings in Unilever will hurt Unilever economically at all, nor have we seen evidence that termination of contracts with Unilever will materially affect Unilever. But it's a great opportunity for proponents of anti-BDS legislation to prance and preen and act like they are making a difference.

The problem is that if they make a difference, it will not be to Israel's advantage. Pressing for enforcement of state-level anti-BDS laws, such as the [Illinois law](#), against Ben & Jerry's will (i) reinforce the false notion that Ben & Jerry's is engaging in BDS (why would we want to tell people that a well-known progressive company is engaging in BDS when it isn't?), (ii) conflate Israel with the West Bank, and (iii) pit a loud subset of the pro-Israel community against the free speech community, forcing allies of Israel to choose between free speech and action against an American company whose decision to pull out of the West Bank will have little or no economic impact on Israel. Any action taken now against Ben & Jerry's would be premature since they will continue to sell in the West Bank until the end of 2022.

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