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Davina Cooper and Didi Herman

“Doing Activism like a State: Progressive Municipal Government, Israel/ Palestine and BDS”¹

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Abstract

Activism is typically placed in opposition to state practice. Yet, state bodies often participate in campaigns and movements for change, drawing on different powers and capacities, including the ability to withhold goods, land and contracts. This article explores subnational state activism – what it means and the activist framework it offers – through a study of UK local government’s episodic participation in the pro-Palestinian movement for divestment and boycott of Israel. Municipal participation in this movement demonstrates certain tensions and challenges for subnational state activism, in conditions of conflict, where critics denounce local government for over-reaching and acting improperly. This article focuses on two key aspects: the relationship of municipal activism to de-subordination and the troubling of state hierarchy; and the place of responsibility, care and democratic embeddedness within municipal state practice. Together, these strands contribute to wider debates about progressive statehood and paradigms of institutional activism.

Israel has been subject to boycotts for many years. Today, the primary momentum comes from the pro-Palestinian movement for Boycott, Divestment, and Sanctions (BDS) (see Bakan and Abu-Laban, 2009; Barghouti, 2011; McMahon, 2014; Rose and Rose, 2008). In 2005, a coalition of Palestinian organisations called for “international civil society organizations and people of conscience all over the world to impose broad boycotts and implement divestment initiatives” until Israel ended “its occupation and colonization of all Arab lands”; recognised the “rights of the Arab-Palestinian citizens of Israel to full equality”; and made it possible for “Palestinian refugees to return to their homes” (Boycott, Divestment, and Sanctions, 2005). Since then, BDS has become a far-reaching, high profile movement, generating opposition as well as support from NGOs, corporations, artists, consumers, university faculty, students and administrators, and public bodies. This article focuses on the last, and particularly UK local government. Our aim is not to determine whether municipal participation in BDS is right or wrong, but rather to use this participation to contribute to a deeper understanding of municipal state activism.

Activism and statehood are not usually elided together. More commonly, activism is placed *against* state practice. Associated with campaigning and grass-roots social movements, activism is understood as a register of exertion and persuasion, pressuring governments and other bodies to change their policies and actions through discourse and other levers. Activism assumes, if often tacitly, that activist bodies alone cannot *realise* the changes they seek and so must pressure others to act. This makes activism an odd political register for state bodies, who are presumed to hold and exercise sufficient power to negate their need to engage in activism. Yet, the notion that state bodies govern rather than promote changes (which they cannot themselves realise) misses a lot of what state bodies do, particularly when they seek change beyond their own formally territorialised borders, or changes that cannot be realised by their political powers alone. These two aspects come sharply to the fore in relation to local government. With seemingly limited territory and powers, municipal interest in social and political change, albeit episodic, often requires activist registers, as councils draw on (and often dig out) different powers in order to assert, promote, symbolise and stimulate far-reaching political aspirations (e.g., Boddy and Fudge, 1984; Gyford, 1985). We discuss these powers in more detail later on. Yet, in considering state activism, particularly in relation to local government, it is important not to assume such activism takes place independently of other activist bodies. Local state activism is often the result of political pressure from social movement organisations. However, in being taken up by state bodies, commitments, discourses, and goals shift. This is typically read critically. Some see it as a process of watering down and containment, where state activism becomes a second-rate version of the real grass-roots thing. Others criticise state activism for dominating political movements in ways that side-line less powerful grass-roots forces. But what gets omitted from both accounts is what state bodies can bring to activism. In this article, we explore the relationship of state activism to institutional de-subordination, on the one hand, and to responsibility, care and democratic forms of embeddedness, on the other, in order to consider what activism brings to statecraft and, in turn, the contribution state bodies might make to doing and reimagining activist forms.

Exploring the activism of UK local government, in the teen years of the 21st century, may, however, seem untimely given councils' absorption in managing the effects of austerity and the continuing attrition of public services as welfare provision collapses, and local governance becomes increasingly diffuse. Much contemporary work on local government focuses on these changes amidst a pessimism about what is possible, in such circumstances,

for councils to do. At the same time, despite withdrawal of resources from local government and the governance role played by other bodies, academic writing continues to explore opportunities for councils to exercise progressive political agency (Williams et al., 2014) whether in resiliently resisting or mediating austerity or in the growing interest in municipal in-sourcing and green-friendly initiatives (Lowndes and Gardner, 2016; Smeds and Acuto, 2018). These developments are important. They recognise local government as a site of contradictory political projects – progressive initiatives may be small-scale and marginal, yet still exist (see Newman, 2014). They also sustain and advance debates about what progressive local government might mean and entail beyond resisting and opposing reactionary developments (Featherstone et al., 2012). Internationally, the contemporary period has witnessed a resurging interest in municipal radicalism (Russell, 2019). Bertie Russell (2019: 991) describes the municipal “as a *strategic* entry point for developing broader practices and theories of transformative change,” while engaging in developments that extend beyond the local. Discussing the “fearless cities” movement, Laura Roth (2019) writes: “municipalities have a great responsibility... to confront global problems.” This article contributes to these discussions. While municipal activism can advance projects on the political right and left, our focus is local government activism as part of progressive statehood. Municipal activism can take diverse forms, including through policies that symbolically extend service provision in controversial ways. Here, we are interested in the particular place of withdrawal and refusal (see Cooper, 2019) – political registers that become particularly salient within austerity-oriented neoliberal governance. Withdrawal is something public bodies with limited resources can do (when provision may prove far harder). Withholding procurement and investment, on political grounds, also becomes particularly significant when provision and pensions have been privatised or outsourced, leading councils to have far greater involvement with companies and commercial decisions (see also McCrudden, 2007).

Boycotting, as the deliberate refusal to transact, however, is not a single unitary practice. It can be undertaken for reactionary or progressive reasons (and, as we discuss, views may differ on which is which). BDS, our focus here, entails a complex mix of goals and strategies, with uneven sign-up by institutional participants as they respond to grass-roots pro-Palestinian activism. Indeed, in *R. (JHRW) v Leicester* (2018, para.41), the court rejected the appellant’s claim that the council boycott resolution was part of “the so-called BDS movement,” in part it would seem because “the Council recognised the right of existence of

the State of Israel”. We return to this case and the complex politics surrounding it below. More generally, in this article, we use BDS as an umbrella term for the different strategic acts of withdrawal undertaken in support of Palestine (rather than as invoking municipal sign-up to a single Middle East agenda). While much, internationally, has been written about BDS and its solidarity politics (e.g., see Allen, 2018; Bakan and Abu-Laba, 2009; Chaitin and Steinberg, 2017), almost no scholarship on local state participation exists. We focus on it here for two reasons: first, to tease out a lesser known aspect of BDS activism; and second to explore the meanings, forms and challenges state activism faces, particularly subnational state activism. One area where municipal “over-reach” has been more extensively discussed, as a mode of statecraft that rescales and extends local government’s remit and scope,² is in subnational foreign policy and international solidarity activities. Here, local and regional governments use twinning, paradiplomacy, and investment strategies, among other mechanisms, to assert and advance political agenda (e.g., see Clarke, 2010; Hocking, 1993; Kincaid, 1989; Kirby et al., 1995; Tatham, 2013). While these initiatives are sometimes supported by superordinate government forms, municipal engagement in foreign affairs has also been resisted and opposed by higher state bodies, and their allies, using legal, policy and campaigning powers. Claims of municipal insubordination get made in different ways. One central argument is that local government’s role and powers exist within a settled state geometry, which should not be disrupted. Yet, political arguments against local state activism are also performative in seeking to bring about the compliant formations they describe. Similar ambitions apply to municipal assertions of foreign policy. Here *doing* state activism becomes a hoped-for way of recasting state bodies and the relations between them. Thus, adopting a state pluralist account, we approach the powers of different state bodies as emergent, contested, and in flux.

Municipal activism and the politics of withdrawal

For over thirty years, British local city councils have used capacities and resources associated with mundane functions, such as borrowing, land ownership, pensions, investments and procurement, to advance political ends (Jaehrling et al., 2018; McCrudden, 2007). In some cases, these “ends” have been self-interested ones – selling off council houses, for instance, to try and safeguard a Conservative electoral advantage (see Cowan 2003). But, in thinking about progressive state activism, our focus is other-directed ends: from promoting economic justice to supporting liberation struggles, anti-fascist action, gender and sexual equality, peace, animal welfare and ecological sustainability (Smeds and Acuto, 2018). Left-run

councils do not necessarily bundle all of these ends together, but they often combine in an expression of left statecraft (see also Gyford et al., 1989). West Dunbartonshire council (2017), in Scotland, for instance, placed BDS within an itemised “empowerment strategy” of commitments that included opposing compulsory redundancies, privatisation and austerity, alongside seeking to promote working-class history and culture.

A similar form of aspirational statecraft can be found in the municipal radicalism of the 1980s - an important forerunner in the articulation of an activist state identity as well as in using transactional withdrawal to do so. Confronting Thatcher’s right-wing government, a cluster of urban councils advanced a left politics that proved striking in its political vitality, policy reach, defiance and ambition as they sought to advance pro-worker economics, lesbian and gay relationship recognition, minority community development, support for women fleeing domestic violence, environmental awareness, and migrant-accessible services (Boddy and Fudge, 1984; Cooper, 1994; Gyford, 1985; Lansley et al., 1989). These developments involved expanding and reconfiguring public provision; but not only that. Councils also undertook strategic acts of withdrawal – particularly of “transactional withdrawal”, retracting or withholding land, venues, contracts, licenses, and investments from specific subjects. Sometimes this was done to impede objected-to activities - for instance withdrawing council lands to obstruct local hunts; more commonly, councils withdrew spaces, services and contracts to signal and symbolise the illegitimacy of particular targeted practices, such as apartheid in South Africa (see also Hutchinson and Jones, 1988). In the process, councils embodied a series of political commitments that they used their powers to support rather than realise.

Municipal transactional withdrawal to further a left agenda did not go unchallenged. In the 1980s and 90s, central government advanced a dense legislative programme to withdraw powers and discretion from local government in a range of sectors. This period also witnessed opponents’ heavy-duty use of litigation to defeat symbolic and strategic acts of withdrawal. Characterising councils as acting *ultra vires* (that is, outside of their powers), opponents brought legal actions against British councils engaged in hunt bans (*R v Somerset*), withdrawal of meeting venues from fascist organisations (*Verral*), newspaper boycotts (*R v Ealing*) and boycott of South Africa (*Wheeler*; see also Allan, 1985). Most legal challenges proved successful. As Neill J. remarked in *R v Lewisham*, over the council’s decision to boycott and divest from Shell because of the company’s economic involvement in South

Africa, “a council cannot use its statutory powers in order to punish a body or person who has done nothing contrary to English law” (951).

The period from 1980s municipal radicalism to post-2008 local government participation in BDS witnessed many changes. Two developments in intra-state regulation are particularly germane for our discussion. One concerns the legal frameworks introduced to regulate public bodies’ use of transactional powers for social and political purposes, particularly in relation to procurement, licensing and investment. The complexity and detail of this changing edifice, with its entwining of domestic, EU, and international law and guidance is beyond the scope of this article (see Arrowsmith, 2006; McCrudden, 2007). What matters for our purposes is the political importance it accrued as central government and others sought to thwart local government’s expression of an independent political agenda. Below we discuss some of the litigation that resulted as councils engaged in transactional withdrawal to support BDS. Yet, this assumption of a municipal entitlement to act was also shaped by a second line of development: local government’s evolving political subjectivity.

Legal restraints on councils’ political use of transactional withdrawal hailed local government as a subordinate administrative apparatus without the necessary authority to advance an independent political agenda. At the same time, through case-law and statute, councils were increasingly constructed as persons. In the 1980s and 90s, many council policies and practices, involving decisions about land and contracts, were legally assessed against the (ostensibly non-political) business and management criteria deemed to apply to, and be applied by, “private” contractors and owners (see Cooper, 1998: 160-62; Nardell, 1995; *R v Somerset*). This analogising of local authorities to persons (or a certain sort of legal person) acquired a new lease of life with the growing emancipation of local government in the 21st century, which culminated in a “general power of competence”. This held that “A local authority has power to do anything that individuals generally may do” (Localism Act 2011 s.1(1)).³ A number of scholars have addressed the scope and implications of this provision, including in relation to a Conservative localist agenda (Bentley and Pugalis, 2013; Eagle et al., 2017; see also Lowndes and Gardner, 2016). Others have identified the unexpected powers and opportunities it made available, and that could be taken up, for more progressive forms of localism (Featherstone, 2012; Williams et al., 2014). Ostensibly intended to encourage municipal entrepreneurship, a general power of competence also extended possibilities for other kinds of municipal activity since councils no longer had to demonstrate the statutory basis for their actions. But how does this help us think about

municipal activism: the advancement of political agendas that councils proved unable to realise? Should municipal activism resemble the activism individuals undertake; or does municipal activism present us with a different activist form, one with wider salience, as a result of its institutional home? In the rest of this article we explore these questions in relation to local government involvement in BDS.

Boycotting Israel

In recent years, the global movement against Israeli occupation has gathered steam, with subnational government emerging as one significant focus for political activity and pressure. In Spain, a leading site of the new municipalism (Russell, 2019), a number of local councils introduced boycotts. According to Electronic Intifada (EI), by 2016 about fifty Spanish cities and towns had participated in a national campaign to declare themselves “free of Israeli apartheid” (Silver, 2016).⁴ These actions did not go unchallenged (see Liphshiz, 2016).⁵ Lobbying, litigation warnings and law-suits, including by the Spanish-based, pro-Israel organisation, ACOM, caused cities to withdraw boycott motions; and some found themselves compelled to by the courts.⁶ Yet, despite pushback, the level of Spanish municipal activity contrasts with other jurisdictions, including the USA. While a few American cities tried, with limited success, to introduce motions supporting an Israel boycott,⁷ governmental activity largely went in the reverse direction. Declaring friendship and support for Israel,⁸ American states participated in a wave of anti-boycott laws (e.g., Watkins, 2018).⁹ Building on earlier federal action to counter Arab states’ boycott of Israel (Steiner, 1978),¹⁰ new state laws *required* public bodies to withhold contracts, grants and investment from subjects engaged in anti-Israel boycotts. By spring 2019, more than twenty-five US states had introduced legislative provisions or executive orders,¹¹ with litigation, in turn, challenging the new laws’ constitutionality (see also, Stanley-Becker, 2018; NPR, 2018).

The UK case, on which we focus, sits somewhere between Spain and the United States. Local authorities in Northern Ireland, Wales, Scotland and England proposed and passed boycott motions, if far less extensively than in Spain, while central government, in turn, tried to restrict municipal boycotts, but without *requiring* public bodies to boycott the boycotters as in the USA. UK municipal initiatives, of course, did not constitute a unified bloc. They were embedded in the distinct histories and demographics of their localities, for instance the Irish Republican movement’s long-standing affinity with Palestinian struggles against Israel (Hill and White, 2008). They were also cast by the distinct form, functions and

responsibilities of different tiers of local government. However, while councillors and councils proposed different actions, this article focuses on their common ground. This included refusing to contract with companies based in Israel or that aided illegal settlements; not purchasing goods made in Israel or the occupied territories; withdrawing investments, particularly of pension funds; and publicly expressing support for Palestine and criticism of Israel. A motion passed by the Scottish council, Stirling, in 2010, is typical. It,

... condemn[ed] the Government of Israel for its continuing illegal occupation of East Jerusalem, the West Bank and the blockade of Gaza. ...Stirling Council recognised that Apartheid was not acceptable in South Africa and it is not acceptable in Palestine. Council therefore resolved to re-assess its current procurement arrangements and ensure future agreements and contracts boycott all Israeli goods. Council also agreed to write to all Scottish Local Authorities, Westminster and Holyrood Governments calling on them to implement an immediate boycott of all Israeli goods (Stirling Council, 2010).

Local government support for Palestine did not go uncontested. In 2016, the British government updated two legal provisions. The first, a public procurement note, stated procurement should “never be used as a tool to boycott tenders from suppliers based in other countries, *except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government*”.¹² The second, published guidance from the Secretary of State for Local Government, determined that “ethical and social objections” could be taken into account in decisions about investment. However, it prohibited authorities from using “pension policies to pursue boycotts, divestment and sanctions [“BDS”] against foreign nations and UK defence industries” other than when introduced by the British government (PSC, 2017, para 1).

Government attempts to curtail municipal involvement in BDS produced its own opposition. Newcastle City Council (2016) passed a motion opposing what they saw as curbs on their right to engage in “ethical” procurement and investment policies “directly contrary to the government’s own stated commitment to the principle of localism... [in] the Localism Act of 2011”. Litigation also followed. In *R. (JHRW) v Leicester* (2016), the anti-BDS organisation Jewish Human Rights Watch (JHRW) brought a claim for judicial review against three British councils. Leicester (2014) had voted “to boycott any produce originating from illegal Israeli settlements in the West Bank”; Swansea council had asked their council

leader and chief executive “to note that Council does not wish to do business with any company in breach of international law or UN obligations” – a resolution that specifically named Veolia and “Israeli settlements in East Jerusalem” (see *JHRW*, 2016, para 19; see also Swansea, 2010). The third, Gwynedd council (2014), also in Wales, had called for a trade embargo and to stop investing in Israel. *JHRW* claimed that, in passing these motions, the councils had failed to fulfil their duties to advance good relations, eliminate discrimination, have regard to their Public Sector Equality Duty, and fulfil their obligations under procurement law (*JHRW*, 2016, para 3). The court found for the councils, including on appeal (*R. (JHRW) v Leicester*, 2018). Central to the courts’ decision was the legal splitting of local government into two parts – an action that protected the council’s deliberative autonomy but at the expense of its efficacy. The High Court reasoned that while the declarative part of the council had acted in a political manner by discussing and passing boycott motions, the “business” part of the council, subject to statutory obligations in relation to procurement, had not. “The evidence is clear: the Council resolutions did not override, or even affect, the lawful exercise of its public functions ... and no contracts or potential contracts were affected by the resolutions” (2016, para. 46). The Court of Appeal reiterated this point: the mayor and cabinet were subject to a legal obligation not to take account of non-commercial considerations (such as BDS) when making contracts (2018, para. 10). The council executive therefore could not be bound by the councillors’ resolution. But as long as the executive did not act on non-commercial considerations, it was lawful for the council to debate and pass resolutions committing to withdrawal.

In a second case, *R. (Palestine Solidarity Campaign) v Secretary of State*, which lost on appeal, the Palestine Solidarity Campaign (PSC) challenged the government’s statutory guidance on pension investment. According to the court, “The government is concerned that local government pension funds should not be involved in such political issues [ie, BDS] because of the mixed messages it might give abroad; because it might undermine community cohesion at home by legitimising anti-Semitic or racist attitudes and attacks (although it accepts that anti-Israel and pro-Palestinian campaigning is not in itself anti-Semitic); and because it could impact adversely on the financial success of UK defence industries” (2017, para. 4). The High Court found in favour of PSC. It held that sections of the pension guidance fell “outside the proper scope of the Secretary of State’s statutory powers because they were issued not for pensions purposes but... for foreign affairs and defence purposes” (2017, para. 23). The court also noted that the Localism Act 2011 ushered in a less

“prescriptive” environment for local government (2017, para. 9). In such conditions, the restrictions imposed by the Secretary of State on “certain types of non-financial factors” were without legal authority (2017, para. 32). However, the Appeal Court held that the judge had erred in law. Foreign and defence policy *could* be considered as wider aspects of the “public interest”, which the Secretary of State could properly take account of in issuing pension guidance, without this constituting an unauthorised purpose (*R. (PSC) v Secretary of State*, 2018, para.21).¹³

Pluralising government authority

The *PSC* case demonstrates how municipal activism involving transactional withdrawal can rub against the policies of superordinate state bodies. While court decisions appear to settle any disagreement, discrepant judgments, as in the *PSC* case, show judicial resolution is not always straight-forward. Nor is municipal activism fully domesticated and contained by legal rulings. Local councils may seek to ensure expressions of pro-Palestinian support fall within their legal powers, deferring to the advice of their legal department in the process,¹⁴ but the decision to support an international campaign against a foreign nation-state brings the co-constitutive relationship between subnational de-subordination and state activism to the fore.

This relationship has several dimensions. On the one hand, challenging (or ignoring) vertical state authority is a feature of local state activism in its refusal - albeit usually limited to particular isolated instances of action - to defer to central government agenda. At the same time, such challenges also comprise part of a political action-network that holds subnational state activism up as local government asserts a political authority and agency not derived from the nation-state. As one councillor remarked, on flying a Palestinian flag at a staged die-in, “We have a strong tradition in Newcastle for standing up against [sic] international humanitarian issues for example when Nelson Mandela was given the Freedom of the City in 1986. *At that time he was still considered a terrorist by the Government*” (Proctor, 2014; italics added). Conventional liberal state perspectives situate local government as a subordinate part of a larger, orderly governmental structure or system. This positioning comes sharply to the fore in relation to international policy and who “our friends are”. Local government is not expected to ally with bodies that central government has identified as national enemies (or enemies of “our” friends); nor should it conduct its own foreign relations and policies.¹⁵ Undertaking both these transgressive moves is, of course, not exceptional to BDS or even to municipal support for Palestine. Local government in Britain has a long

history of engaging in practices of international solidarity, friendship, collaboration and learning (see Ewan and Hebbert, 2007; more generally, Aldecoa and Keating, 1999; Hobbs, 1994; Hocking, 1986; Jackson, 2018). Yet, when these municipal agendas clash with those of central government, glimpses of a different state imaginary emerge.

What councils are depends (at least in part) on what they do; their scope, roles and force are not fully formed in advance but emerge and develop as municipal responsibilities are claimed (and, in turn, contested).¹⁶ Local government activism thus both expresses and depends upon a more pluralist account of the state (as well as of activism), of competing, interlocking, differently scaled, and differently imagined kinds of bodies, a political imaginary municipal activism also helps constitute (see Albert, 2014; Aretxaga, 2003; Caporaso, 1996). Yet, supporting state pluralism is not an unequivocal left position. Historically, many on the left argued for political power's concentration within a single orderly state body (or system) so states could act effectively against entrenched interests such as large corporations. This position has both a prescriptive and interpretive dimension – how states should be and how they should be imagined. Underlying both accounts is a set of claims about power. Arguing states are and should be orderly, with only a weak form of pluralism in the distribution of authority, assumes that power is something that can be held, controlled and allocated (Cooper, 2019). If power is more varied and diffuse, this approach breaks down and the diverse powers exercised by diverse bodies become important to attend to. Progressive innovations and experiments often involve municipal powers (e.g., Boddy and Fudge, 1984; Russell, 2019). Certainly, there is nothing intrinsically left-wing about local government. Nevertheless, its scale, exposure (and susceptibility) to party and social movement pressure, and its orientation to welfare and the quotidian - alongside a desire to break free of the limits of the parochial – help local government become a site through which new forms of care, responsibility, and democracy can be expressed.

Responsibility, care, and democratic embeddedness

Municipal activism asserts and helps procure the moral value of different state bodies, in different webs of relations, with different powers and resources, taking up and advancing a shared responsibility for global life (with all the tensions this involves).¹⁷ This may mean *providing* resources and support in conditions where superordinate state bodies prohibit or withdraw such provision, as with the sanctuary city movement (Darling, 2009; McDonald, 2012); it can also involve, as we have discussed here, strategic acts of refusal or retraction.

Yet, the take-up of commercial, land-owning, investment and grant-making powers to exercise a politically-motivated “right” to refuse has proven controversial – being denounced by opponents as irresponsible and punitive, withdrawing resources from “legitimate” subjects, and “wasting” time, money and attention on issues beyond local government’s proper purview.¹⁸ What we want to explore here, however, is a counter-perspective anchored in the value and inevitability of subnational bodies over-reaching their position within a vertical political structure. Rather than being irresponsible, careless, and undemocratic, municipal activism provides a way of advancing social justice that draws on and asserts norms of responsibility, care and horizontal forms of political embeddedness. Having set out this case, we go on to explore some of the tensions and challenges the specific example of BDS raises.

Responsibility is an important dimension of state activism, underscoring the capacity and willingness of local authorities to respond to international conflict, and to make the act of responding a self-imposed reflexive and collective obligation (see generally Gatens and Lloyd, 1999; Massey, 2004; Young, 2004, 2006). When councils engage in boycotts, the hierarchical lines of responsibility asserted by superordinate state bodies, anchored in formal jurisdictional authority, are displaced by a different kind of responsibility – one that is horizontal rather than vertical, driven by ethics and politics rather than just law, taken-up rather than imposed, and connected rather than individuated. Responsibility here is not a zero-sum act or commitment where assumption by one body necessarily means withdrawal by others. When states at a distance assume some responsibility for events in Israel/ Palestine by refusing to financially support companies trading and investing in Israel (see also Allen, 2018), they assert a more collaborative form of public responsibility, opposing the individualisation and privatisation of neoliberal forms (Trnka and Trundle, 2014). From this perspective, it is the refusal to act or pay attention which is irresponsible – abandoning others, simply because they are geopolitically distant or subject to other jurisdictional authorities, to conditions of suffering. This is a responsibility that exceeds questions of culpability; but locating and determining wrong-doing is not ignored. As with blame or guilt-based forms of responsibility, municipal boycotts trace backward lines of causation and wrong-doing to determine responsibility in the present. This responsibility does not require identifying the *specific* subjects who caused the wrong. Other subjects (in other times and places) can also be caught up in relations of collective responsibility - either because they benefited or because they are tied to the wrong-doers, including as subsequent citizens of its places (see also

Young, 2006). As such, boycotts recognise the *collaborative and networked character of culpability* (as well as of solidarity): the long chains of support that sustain oppressive polities; and the different involvement of different bodies, including bodies that appear, at first glance, too remote to be implicated.

Municipal boycotts in solidarity with Palestine recognise relations of culpability-based responsibility that tie local government investment and contract decisions to egregious regimes, where recognition of these ties demands ameliorative action. But municipal boycotts also suggest something else, anchored in a responsibility that is assumed, including through being taken up, to *change* present-day conditions. While much of this responsibility is deemed to lie, in this instance, with Israel, some lies also with international actors, whose decisions to invest and procure (or to withdraw resources) can affect political practice at a distance. In other words, where others *can* make a positive difference (and not simply because they *have* made a negative difference), they have an obligation to act. For instance, a Tower Hamlets (2014) motion urged the British PM “to show international leadership” in relation to the violence in Gaza. Responsibility is tied, here, not simply to culpability but to capacity as well. Commenting on the motion passed by Swansea, one Palestine activist remarked, “The decision ... shows that we are not powerless in the face of multi-nationals that back Israel... [I]t shows us that everyone ...can play a small part in the struggle for a Free Palestine.”¹⁹ Rather than just facing backwards to remedy past injustices, responsibility also faces forward to building a different and better future.

Taking responsibility, in conditions where this is politically volunteered, becomes a way of performing activist statehood. By saying no, councils act as moral commentators, identifying injuries and expressing concern. From this perspective, councils have a duty - because they have the capacity - to stage and amplify expression of what is “right”. As one councillor remarked, “the day we turn our backs on the suffering and become numb and oblivious to what was happening in Palestine and the Gaza Strip with the flagrant abuses to human rights, was the day that we lose the moral high ground” (Derry City and Strabane, 2017a). In this way, councillors constitute themselves, and by extension their corporate municipal persona, as moral beings – declaring and opposing injustice. We suggested earlier that activism, including by states, is anchored in the limited capacity of actors to bring into being the political aspirations they seek. At the same time, activism often asserts political agency. As one Welsh councillor stated, “We believe that if Gwynedd leads the way there is hope that other councils in Wales and beyond will follow” (Gwynedd, 2014). To the extent

institutional assertions cannot actually realise the claims they make, they constitute a form of role-play – acting “as if” an authority has more political power and influence than it does; claiming a responsibility based on a capacity to change things, which others doubt. However, while municipal activism may not realise the responsibilities it claims, its actions help give shape to progressive forms of statecraft. Here, two governance principles are particularly important: care-work and democratic embedding.

Municipal boycotts invoke care and care’s affective values in several ways (see generally Robinson, 1999; Tronto, 1993). One, witnessed here, concerned the repeat expressions of friendship. Anti-boycott laws, most notably in the USA, justified themselves through discourses of friendship, allegiance and solidarity with Israel.²⁰ UK municipal BDS initiatives drew on affective ties with Palestine, where friendship and solidarity were expressed through transactional withdrawal as well as through acts of symbolic affinity, political sociability and material support. In 2014, several British councils flew the Palestinian flag to express affinity with the people of Gaza faced with escalating Israeli violence (eg, Tower Hamlets, 2014). Councils also visited the Occupied Territories as an expression of “friendship” (Tower Hamlets, 2014). In Derry City and Strabane District Council (2016), in Northern Ireland, council minutes record, “A Member of the Sinn Féin grouping stated that his Party had a long and strong proud history of support and solidarity with the Palestinian Struggle and people”. In this context, a planned Sinn Féin delegation visit to Palestine was “part of that friendship, solidarity and direct assistance to the Palestinian struggle.” Support was also shown through practical initiatives, such as twinning with Palestinian municipalities (e.g., see the Olive Declaration, 2014; generally Clarke, 2010), and local partnership activities to raise funds. In Sheffield, for instance, the council partnered with Medical Aid for Palestinians to support a sponsored run in 2018.²¹

Second, local state activism can assert new forms of democratic embedding, often by asserting local government-social movement ties. In his discussion of contemporary left municipalism, Russell (2019: 1003-4) explores the blurring of clear inside-outside distinctions as “collective self-governance” develops. We do not want to claim that councils’ episodic engagement with BDS achieved a radical kind of practical, democratic embeddedness. Nevertheless, municipal participation in solidarity politics offers glimpses of more heterarchic relations: overlying, clashing with, and reimagining in more egalitarian fashion how and where councils fit within wider political formations. Councils made this point participating in anti-apartheid boycotts, where expressing opposition to South African

state policy, and to the networks of social, economic and cultural forces which sustained that regime, was also integral to their commitment to minority ethnic communities at home. According to Lewisham council in the case of *R v Lewisham*, “good race relations in Lewisham would be damaged if the local authority was seen to be trading...with an international group which many people regarded as a supporter of or colluder with apartheid” (948).

The lines of accountability depicted by local authorities when legally challenged are, of course, constituted in part by the exigencies of the legal terrain in which they are acting. At the same time, they open up ways of thinking about how local states can be part of different social networks. Municipal embeddedness within non-state networks inverts the typical focus of debate about democratising local government, oriented to increasing local (civil society) participation in governmental decision-making. Instead, here, a different form of embedding is posed. Campaigning organisations may be concerned with their capacity to influence municipal action. However, in the case of pro-Palestinian activism, this got tied to folding councils into their own webs of grass-roots action (see also Noxolo et al., 2012). Within this movement network, councils were important sites of boycott action given the scale, resources and symbolism they could leverage, but they were not agenda-setting players. For the most part, council resolutions resulted from NGO activity, being introduced by councillors active in pro-Palestinian organisations or as a result of BDS deputations and presentations at local council meetings (e.g., see Derry City & Strabane District Council, 2017b).²² Municipal participation was also not always praised by grass-roots activists; and councils – struggling to combine political commitments with legal restraints - were sometimes criticised for not going far enough. As one Sheffield activist is minuted as stating, the “risk averse approach” adopted by “the council’s in-house [legal] team ... was limiting Sheffield’s stated aspirations to ‘get ahead’ and be a ‘fairest city’ in the land” (Sheffield, 2016).

Taking responsibility, showing care, and embedding local government in social movement or civil society networks constitute three important planks for supporting and giving content to progressive local state activism (see also Cooper 2017). Yet, while valuable, these planks are not straight-forward. Not only is each internally contested, as when caring about the needs of some takes place at the expense of others (see Fierke 2014) but, as guiding principles for state activism, they can also diverge and clash. For instance, pursuing social justice may sometimes undermine relations of care where distance is maintained from distasteful others, including “pariah” states (eg, Tower Hamlets, 2011). Conversely, relations

of attachment and affect – of friend/ enemy distinctions – may short-circuit attention to justice (see discussion in Barnett and Land, 2007). Political care-work may disregard or normalise certain injustices to get “buy in” (see also Gawerc, 2016); and care itself may be experienced as patronising, disempowering, and controlling (Narayan, 1995), particularly when bodies deploy unequal power and resources (Sin, 2010) to undermine more democratic and horizontal political networks (Noxolo et al., 2012; but see also Robinson, 2018).

Tensions surfaced sharply in municipal anti-Israel boycotts, where the promotion of responsibility, solidarity and care for one constituency, Palestinians, was characterised by opponents, such as JHRW, as precipitating the exclusion of another, namely UK Jews.²³ According to their website, “Jewish Human Rights Watch was established in February 2015 to fight the Boycott, Divestment and Sanctions Movement (BDS) through recording and combating their anti-Jewish boycott movement’s action which has fuelled the rise of anti-Semitism.”²⁴ In *R (JHRW) v Leicester*, they argued that “the Councils ... failed properly or sufficiently to consider the effect of the resolutions on the Jewish community” (2016, para.3). Singling out Israel “for different treatment... failed to have due regard to the need to eliminate discrimination and harassment of Jewish people, and the need to foster good relations between those who are Jewish and those who are not” (2016, para.3). According to a Leicestershire county councillor quoted in the case: “It was impossible to avoid the conclusion that Israel was being targeted because it is a Jewish State and that as a consequence we as Jews living and working in and around Leicester were being targeted as well ... It was as if, despite all the time they had lived and worked in Leicester, ... the City Council did not consider Jewish people to be part of that community” (2016, para.5).

Critics of anti-BDS politics suggest accusations like these cannot be taken at face value since they are made strategically to bolster political support for Israel (e.g., Samiian and Rofel, 2018). However, BDS advocates may, in turn, too quickly dismiss feelings of precarity among some British Jewish communities, given the tangled relationship both historically and contemporaneously between Israel, Jews and antisemitism (or Judeophobia) (see also Herman, 2016; Hirsch, 2018) – a relationship fuelled by other episodes of antisemitism, and histories of anti-Jewish boycotts (Robinson, 2013; Friedlander, 1997; Prusin, 2005). Certainly, the fear that some Jewish communities might be losing municipal care and accountability does not necessarily mean BDS activists, including municipal ones, *intend* antisemitism. Focusing on intention discounts the role that context, history, and cultures of interpretation (in terms of what is heard) play (see also Butler, 1997). Sara Ahmed

(2009) suggests one of racism's harms is that of not quite knowing – of never being sure - whether utterances or practices are deliberately racist or whether they simply coincide with racialized tropes (see also Herman, 2011). Antisemitism, and its extensive rebuttals, including by Jewish members of BDS and Jewish supporters of the boycott,²⁵ raise complex issues that we cannot do justice to here (but see Fine, 2009; Klug, 2013, Kushner, 2013). What we want to briefly address, instead, are the implications of these tensions, more broadly, for how we think about municipal activism.

Social justice activism, including by local government, typically emphasises certainty, advocacy, and clear political agenda. Yet, this can sit in tension with relations of care – both in terms of caring for different communities, and in acting carefully. Pat Noxolo and colleagues draw on Spivak to argue that taking responsibility means being attentive to uncertainty, to challenging “simplistic... determinations of wrong-doer and wronged” in favour of “care-full approaches that offer no guarantees” (Noxolo et al., 2012, 426-27). What might this mean here? Arguably, it does not require councils to withdraw from assuming responsibility for injustice, including through practices of transactional withdrawal, even if others' access to (symbolic) resources of validation contracts as a result. It does not mean, as some have argued, that municipal visits to Palestinian cities or the raising of the Palestinian flag require parallel visits to Israel or its flag being waved from city hall (even as any national flag waving may overstate the terms of progressive solidarity).²⁶ But it may mean working against the Manichean tendencies of much activism with its friend/ enemy, good/ bad dualisms.

Attention and care constitute resources which councils could deliberately utilise to *complicate* the alignments that social justice claims produce, including in the accounts that have come to dominate progressive geopolitical histories (Herman, 2019). Writing in favour of anti-BDS state speech in the USA, Haberer (2018) argues for the importance of thoughtful, reasoned, discursively open and dialogic state utterances in this area. In the British municipal context, deliberate “balancing” statements (in the course of advancing a pro-BDS position) proved common. Councils, like other activists, routinely denied the negative implications of their activism for other constituencies. Speaking to Derry City and Strabane District Council (2017b), one campaigner, for instance, “clarified that the BDS Campaign is not against the Israeli people; the campaign is not anti-Semitic, the campaign is aimed at the Israeli Government and is in opposition to the policy that they are implementing against the Palestine people. ... She added that this campaign is about the need for human rights for all”.

The Court of Appeal decision in *JHRW* made much of such inclusive-sounding utterances, using their presence in the amended council resolution, and in the debate surrounding it, to reject the appellants' argument that Leicester had breached its public sector equality duty towards its Jewish community (see para 42).²⁷ Like many, we are sceptical about the care demonstrated by such claims. But if utterances are often a light-weight form of care, this goes both ways. If the court in *JHRW* allowed the boycott resolution only because it did not impact on executive council action, social justice-as-care also becomes reduced to statements of support or attention, legally insulated from "business as normal" council practices.

While there are no easy answers in how to resolve the tensions of justice and care that municipal activism generates, more important than abstract principles of resolution is recognising the situated and competing pulls on local government; how its activism is always subject to divergent responsibilities, accountabilities, and claims for care. Earlier, we discussed how councils get politically and legally constituted as both like and unlike human actors. What municipal boycotts, and other acts of expressive refusal, raise is the possibility of developing paradigms for political activism based specifically on the complex responsibilities of public (governmental) bodies. So, rather than imagining municipal activism through a framework based on individual grass-roots activism – a framework where it will inevitably come up short, we might explore the specific activist casts that municipal bodies invoke. These foreground the challenges and responsibilities that activist councils face in simultaneously sustaining multiple (often clashing) relations of care and community embeddedness. They also foreground the presence and politics of internal division and splintering. While the courts' concern in *JHRW* was with the division between debating chamber and executive, other kinds of division or plurality within state activism are also opened up, including in its political methods, rationalities, affects, and goals.

Conclusion

In the teen years of the 21st century, a striking symmetry developed between Europe's municipal boycotts of Israel, and American state boycotts of anti-Israel boycotters, with their competing claims to friendship and solidarity, stigmatisation of opponents, and law-suits, as courts on both continents parsed the legality of boycotts in various forms. Located within this wider context, this article has focused on the participation of UK local government in BDS. Here, pro-Palestinian boycotts constituted a refusal on the part of municipal government to be fully governed by the concerns of the local or by the international agendas of the nation-state.

While participation, in the UK, only involved a small number of local authorities engaging in occasional actions of support, and while implementation remained meagre despite the resolutions passed, this episode provides a fruitful site for exploring the experience, potential and challenges of progressive state activism.

In examining how local government might act progressively beyond the terms central government establishes, the assumption and cultivation of responsibility is a key aspect. We have argued that this responsibility should not be understood exclusively, or even primarily, as backward-focused – with its attunement to culpability, but as forward-oriented also – attentive to what *assuming* responsibility (in conditions where legal obligations and political right are contested) might do. Progressive local state activism ties the exercise of responsibility to assertions of justice, care (caring about, and being care-full, as well as caring for), and to local government’s embedding within political networks outside (as well as within) the institutional hierarchy of the nation-state. But in making this argument, it is important not to romanticise municipal boycotts – claims about justice are contested; cultivating care in one direction may have repercussions for other care relations; and municipal participation (bedding down) within one social movement network may (seem to) jeopardise its participation in others.

Nevertheless, at the heart of this discussion is the contribution local state activism might make to reimagining not only states, but activism as well. We have used the term “activism” to signal the deployment of powers to advance or stimulate changes that cannot be realised by the activist subject alone. Against conventional readings which focus on states as governing (or failing to do so), municipal participation in BDS foregrounds state bodies engaging politically in promoting goals that they are unable to secure. But councils are not just second-rate activists. Our argument, in this article, is that local government provides a productive site for thinking more deeply about forms of political activism that reject (or at least complicate) the friend/ enemy distinctions which regularly shape progressive political agendas. As an agentic site subject to overlapping responsibilities, connections and political projects, local government withdrawal can never fully mean withdrawal. Politically, legally, and morally, municipal authorities find themselves obliged to sustain relations of care and attention towards those whom the political projects they advocate seem to oppose. While this can be interpreted negatively, it also has value. Municipal involvement in campaigns often disappoints, with councils deemed weak activist figures at best. However, if we focus on councils’ aspirations and self-depictions when they assume an activist mantle, including the

attention they are compelled to pay as public governance formations to disgruntled subjects, municipal activism offers an important and challenging perspective on activism, one that may prove helpful when thinking about other activist subjects also.

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² For a discussion of institutional practices of statecraft and scalecraft, see Pemberton and Searle (2016); Papanastasiou (2017).

³ This provision only extended to England; Scottish and Welsh local authorities had a general “well-being” power; see also Local Government (Northern Ireland) Act 2014.

⁴ See also, <https://bdsmovement.net/news/dozens-spanish-cities-declaring-themselves-free-israeli-apartheid> (Accessed 5 February 2019).

⁵ See also The Lawfare Project, <https://www.thelawfareproject.org/> (Accessed 12 May 2019).

⁶ See <https://eurojewcong.org/news/communities-news/spain/madrid-rejects-motion-to-boycott-israel/>; <https://electronicintifada.net/content/israel-lobby-lawsuits-aim-slow-boycott-spain/18341>; <https://www.thelawfareproject.org/commercialdiscrimination/2018/4/11/spanish-city-council-commercial-discrimination-against-israeli-entities> (Accessed 12 May 2019).

⁷ See, for example, New Orleans (2018); Barrows-Friedman (2018); Silver (2017); Stanton (2014).

⁸ “Israel is a firm and faithful friend of the United States” (Wisconsin) (Executive Order #261: Available at:

https://content.govdelivery.com/attachments/WIGOV/2017/10/27/file_attachments/903537/Executive%2BOrder%2B%2523261.pdf (Accessed 12 May 2019); or, “the state and Israel

have a long history of friendship based on economic, cultural, intellectual and political cooperation and exchange” (New Jersey) Available at:

http://www.njleg.state.nj.us/2016/Bills/A1000/925_11.PDF

(Accessed 5 February 2019).

⁹ These laws have been primarily state-based. Federal attempts to legislatively support anti-boycott actions are proceeding at time of writing.

¹⁰ This includes establishment of a Federal Office of Anti-Boycott Compliance to “discourage, and in some circumstances, prohibit U.S. companies from furthering or supporting the boycott of Israel” based in the Bureau of Industry and Security, available at:

<https://www.bis.doc.gov/index.php/enforcement/oac>

(Accessed 5 February 2019).

¹¹ <https://palestinelegal.org/righttoboycott> (Accessed 10 May 2019).

¹² 17 February 2016, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500811/PPN_on_wider_international_obligations.pdf

¹³ Leave to appeal to the Supreme Court was granted in January 2019.

(Accessed 5 February 2019).

¹⁴ Many municipal boycott motions explicitly limited their practical reach to the terrain of lawful action, see *JHRW* (2016, para 42); also Liverpool City Council, 2012.

¹⁵ See comments made in response to Bradford flying the Palestinian flag, available at: <http://www.yorkshire-voice.com/palesti/>; see also endnote 18.

(Accessed 5 February 2019).

¹⁶ Eg, see Bristol (2017: 16) on “rebalanc[ing] sovereignty from national governments towards local government.

¹⁷ Indeed, in relation to BDS, some international lawyers and advocates suggest the withdrawal of support for Israel is not a choice. Councils are legally obliged, under international law, to act; see Schechla (n.d.).

¹⁸ Similar objections were expressed in 2014, when several councils raised the Palestine flag to protest Israeli violence in Gaza. In responding, the Government minister at the time, Brandon Lewis, described the flag flying as a “clear political statement on an area of public policy which the municipal body has no responsibility”. Available at:

<http://www.bbc.co.uk/news/av/uk-england-london-28593153/tower-hamlets-mayor-raises-palestinian-flag>.

(Accessed 5 February 2019).

¹⁹ Swansea action for Palestine, 12 July 2010. Available at:

<http://www.inminds.com/article.php?id=10454>

(Accessed 5 February 2019).

²⁰ For instance see Maryland, available at:

<http://governor.maryland.gov/2017/10/23/governor-larry-hogan-signs-executive-order-strengthening-marylands-opposition-to-bds-movement-against-israel/>

(Accessed 5 February 2019). An Alabama Act states, “Whereas Alabama and Israel share a commitment to deeply held common value... shaped greatly through the influence of biblical faith...as the only democratic ally of the United States in the Middle East.” SJR 6, Alabama Legislature, adopted 9 February 2016, available at:

<http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016rs/PrintFiles/SJR6-enr.pdf> (Accessed 5 February 2019). The law also claims “the Jewish people are indigenous to the land of Israel”, highlighting the Christian Zionist ethos endemic to much of this

American pro-Israel movement, see further Herman (2019).

²¹ Available at: <https://www.map.org.uk/challenge-events/sheffield-10k->

²² For BDS resources aimed at local government, see <https://bdsmovement.net/local-governments> (Accessed 4 February 2019).

²³ Similar tensions occurred in another UK BDS case where a Jewish union member unsuccessfully argued that discussion and passage of pro-BDS motions by the university union, UCU, constituted racial harassment under the Equality Act 2010; *Fraser v University & College Union* (2013). This argument was rejected by the court, on the grounds there was no particular relationship between criticising Israel, on the one hand, and antisemitism in Britain, on the other (the court also rejected Fraser’s claim that his Jewishness and zionism could not be separated).

²⁴ <https://www.jhrw.com/about> (accessed 12 May 2019).

²⁵ See for instance *R (JHRW and Neumann) v. Leicester City Council and others* (2016) para 6, re mayor’s claim that many Leicester Jews support the boycott.

²⁶ See <http://www.bbc.co.uk/news/uk-england-leeds-28499908>

(Accessed 5 February 2019).

²⁷ For a far more detailed analysis of how English courts understand Jews and Jewishness, see Herman (2011).