

Flexing Ethical Muscles: Challenges of Jewish Sovereignty in Israel



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Challenges of Jewish Sovereignty in Israel

“Taking power and the costs of power... have become central concerns of the Jewish people... Ethical muscles not flexed for centuries are now used; sometimes they are stiff and sore...” - Rabbi I. Greenberg

This lesson explores the great responsibility that comes with being a Free People in Our Land. The lesson uses two legal judgments made by Israel's Supreme Court to expose the students to the complex nature of this responsibility.

Goals:

- The students will appreciate the wonder of the modern State of Israel's sovereignty after two thousand years under foreign rule.
- The students will grasp the great complexity that Israeli decision-makers encounter when setting policy.
- The students will experience the challenges of being in the shoes of the decision-maker, as opposed to someone assessing a situation from afar.
- The students will learn about two deep, ethical challenges that Israel has faced.

Outline:

Stage 1

Introduction

- A. The students will learn the timeline of Jewish sovereignty
- B. The students will learn about the Supreme Court of modern Israel

Stage 2

Ethical dilemmas

The students will learn about two ethical issues presented to the Supreme Court, and be asked to take a vote on how the court should rule

- A. Scenario 1: The security fence
- B. Scenario 2: The use of torture

Stage 3

Discussion

Each group will share with the others what their verdicts were and why. A short discussion will unfold

Stage 4

Conclusion

The students will learn what was actually decided in the real cases

Background:

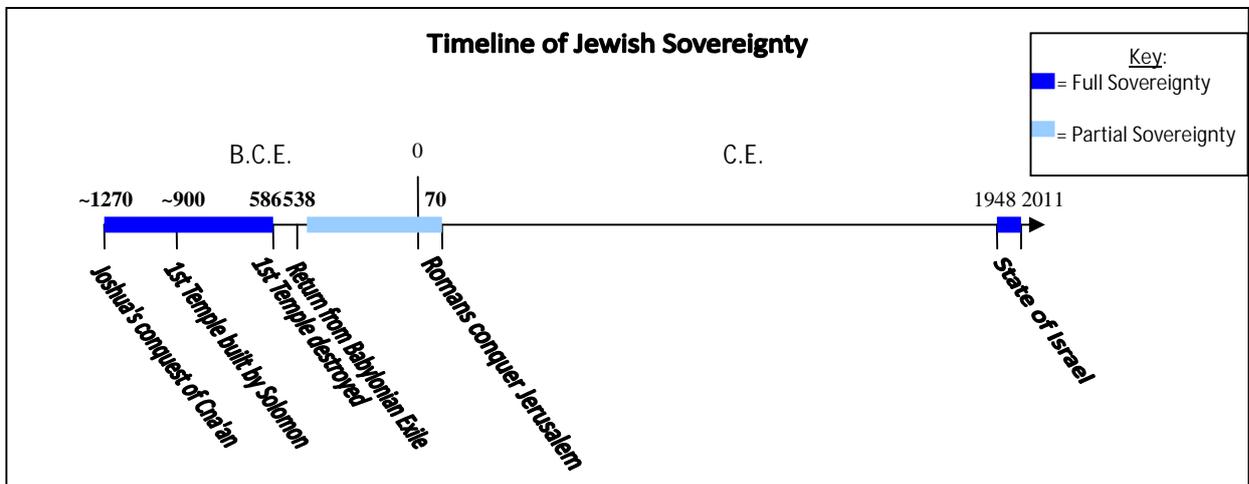
Rabbi Greenberg wrote the following on the transition the Jewish People have undergone as they assumed power:

The State of Israel was designed to place power in the hands of Jews to shape their own destiny and to affect or even control the lives of others. Creating the state meant that Jews took on major responsibility for saving their own lives... Taking power and the costs of power in human lives and resources have become central concerns of the Jewish people. Inescapably, Jewish hands become dirtied with blood and guilt as they operate in the real world. The classic Jewish self-image – the innocent, sinned-against sufferer whose moral superiority sustained self-respect – is being tested and eroded. Ethical muscles not flexed for centuries are now used; sometimes they are stiff and sore...

In this paragraph, Greenberg explores the price of power. Yes, earning the right to defend ourselves is a tremendous victory for the Jewish people. However, being autonomous, wielding weapons, and having to make tough decisions that affect millions of people is still new territory for the Jewish people. In this sense, perhaps it was morally easy to be a victim, because everyone sides with the underdog, and it's easy for the weak person to come off as morally superior. The challenge is to have power, to live as an independent body in the world, making decisions and calling the shots without losing one's moral compass. Autonomy is where things start to get messy.

Some Perspective

The timeline below is a rough diagram depicting periods in Jewish history in which the Jewish People had sovereignty. The dark blue indicates full freedom, independence and self-government, while the light blue indicates only partial sovereignty. It is apparent, upon examining the graph, that the majority of Jewish history, and nearly the entirety of the past 2,000 years have been periods in which Jews could not make decisions for themselves, and were vulnerable to the whims of those who wielded power over them. As a result, the past two thousand years have been wrought with tragedy for the Jewish People.



Since 1948, Jews have returned to a state of self-governance they had almost forgotten was possible. There is a Jewish military, a Jewish legislative system, and Jewish parliament. Granted, muscles that have not been used for millennia are a bit squeaky and might cause a few stumbles. Yet, for the first time in two thousand years, Jews are using all the muscles in their body to operate, even if it is difficult at times.

By putting the students in the shoes of the Supreme Court Justices, we hope to expose them to the complexity and the weight of responsibility that has gone hand-in-hand with Jewish power and sovereignty.

Stage 1

Introduction:

- A. Introduce to the students to the timeline of Jewish Sovereignty. Point out the wonder that after so many years of being under the rule of others, the Jewish People finally took their own destiny in their hands in establishing the State of Israel. The fact that Jews have their own governing bodies today is not something to be taken for granted.

It is with this perspective that you introduce the Israeli Supreme Court to the students.

The Activity:

- B. Give the class the background/introduction on how Israel's Supreme Court works (see information below).

Stage 2

Ethical Dilemma Activity*

Instructions:

Break the class up into smaller groups so as to facilitate maximal group participation and discussion. Make sure there are an uneven number of students per group so that the voting will work.

Once in the smaller groups, tell the students that they are a group of judges now convened in order to make decisions on two vital issues in Israel. The facilitators should not share the real results with the group- that will be revealed at the end, when the class has discussed their own verdicts together.

The group should discuss each issue and take a vote on each one of them. Make it clear that they can make any decision they want – it doesn't have to be a yes/no answer. Like the US Supreme Court, the decision is theirs, and a compromise or "middle ground" would be acceptable.

Each group should select one person who will present to the other groups their decision and how they came to it.

Try to get through both cases, but if you only get through one, that's fine. There's a lot of information, so use your discretion about when to skip paragraphs, or when to stop and discuss.

Conclude with a statement about the fascinating and crucial issues that the Jewish People now deals with in Israel.

Then the groups join back together for the presentations.

Each group representative explains what their group decision was. If there is time, take a poll on what people think really happened. (ie. "If you think the Supreme Court said yes, raise your hand...")

The staff then explains what really happened.

*Adapted from a program on www.hadracha.org, with thanks to World Bnei Akiva

The Supreme Court

The Supreme Court is at the head of the court system in the State. It is the highest judicial body in Israel. The Supreme Court sits in Jerusalem. Its area of jurisdiction is the entire State of Israel. A ruling of the Supreme Court is binding upon every court, other than the Supreme Court itself.

Judges: The number of Supreme Court justices is determined by a resolution of the Knesset. Usually, twelve justices serve in the Supreme Court. At the present time there are fourteen Supreme Court justices. At the head of the Supreme Court and at the head of the judicial system as a whole stands the President of the Supreme Court, and at his side, the Deputy President.

Justices are selected by the Committee to Select Judges and are formally appointed by the President of the State. The President of the Supreme Court is the Justice who has served on the Court for the longest period of time. Cases are usually heard by a panel of three Justices; however, the President of the Supreme Court has the authority to appoint a larger panel when deemed necessary. The panel is always composed of an uneven number of Justices.

CASE 1:

Another Brick in the Wall: Israel's "security barrier"

Background:

In 2002, Israel began constructing an extensive network of fences and walls to prevent suicide bombers from reaching its civilians. The entire 420-mile barrier has not yet been completed. While the large majority of the structure will be barbed wire and trenches, about 20 miles (approximately 5 percent) will consist of 20-foot high concrete walls.

The path of the barrier generally travels along Israel's pre-1967 border, but at certain points, it dips into Palestinians' land the West Bank. For this reason, it is claimed that Israel is using the barrier to annex land that they say will be theirs when a future state is established.

According to government studies, in areas where the fence has been completed, the rate of terrorist and criminal incursions into Israel has gone from 600 per year to 0. In addition, Israel's government has repeatedly claimed that the fence will remain up only as long as suicide bombers continue to attack Israel from their hideouts behind the structure.

On the other hand, the fence has rocked the economic stability of Palestinians who can no longer access their farms. The fence has reduced access to hospitals and schools, and violated the rights of Palestinians. Many believe that the planned route of the fence totally ignores the rights of Palestinians and, as such tens of cases challenging the route have been brought before the Israeli Supreme Court. Indeed the International Court of Justice in the Hague declared the Separation Wall to be illegal.

You are the judges of the Supreme Court. You must reach a decision about this case – is the construction of the "security barrier" legal?

Information to consider:

WHY THE WALL IS NECESSARY

Why Israel Needs a Fence by Benjamin Netanyahu, Published by The New York Times, July 13, 2004

First, Israel is not building the fence on territory that under international law can be properly called "Palestinian land." The fence is being built in disputed territories that Israel won in a defensive war in 1967 from a Jordanian occupation that was never recognized by the international community. Israel and the Palestinians both claim ownership of the land. According to Security Council Resolution 242, this dispute is to be resolved by a negotiated peace that provides Israel with security and recognized borders.

Second, the fence is not a permanent political border but a temporary security barrier. A fence can always be removed. Recently, Israel removed 12 miles of the fence to ease Palestinian daily life. And last month, Israel's Supreme Court ordered the government to reroute 20 more miles of the fence for that same purpose. In fact, the indefensible line on which many have argued the fence should run -- that which existed between Israel and Arab lands before the 1967 war -- is the only line that would have nothing to do with security and everything to do with politics. A line that is genuinely based on security would include as many Jews as possible and as few Palestinians as possible within the fence.

That is precisely what Israel's security fence does. By running into less than 12 percent of the West Bank, the fence would include about 80 percent of Jews and only 1 percent of Palestinians who live within the disputed territories. The fence thus will block attempts by terrorists based in Palestinian cities to reach major Israeli population centers.

Third, despite what some have argued, fences have proved highly effective against terrorism. Of the hundreds of suicide bombings that have taken place in Israel, only one was originated from the Gaza area, where Hamas and Islamic Jihad are headquartered. Why? Because Gaza is surrounded by a security fence. Even though it is not complete, the West Bank security fence has already drastically reduced the number of suicide attacks.

The obstacle to peace is not the fence but Palestinian leaders who unlike past leaders like Anwar Sadat of Egypt and King Hussein of Jordan, have yet to abandon terrorism and the illegitimate goal of destroying Israel. Should Israel reach a compromise with a future Palestinian leadership committed to peace that requires adjustments to the fence, those changes will be made. And if that peace proves genuine and lasting, there will be no reason for a fence at all.

In the last four years, Palestinian terrorists have attacked Israel's buses, cafes, discos and pizza shops, murdering thousands of our citizens. Despite this unprecedented savagery, the court's 60-page opinion mentions terrorism only twice, and only in citations of Israel's own position on the fence. Because the court's decision makes a mockery of Israel's right to defend itself, the government of Israel will ignore it. Israel will never sacrifice Jewish life on the debased altar of "international justice."

Benjamin Netanyahu is Israel's Finance Minister and a former Prime Minister.

Information to consider: WHY THE WALL IS A BAD IDEA

According to B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories), the construction of the separation barrier violates international human rights standards:

The construction of the barrier has brought new restrictions on movement for Palestinians living near the barrier's route, in addition to the widespread restrictions that have been in place since the outbreak of the current Intifada. Thousands of Palestinians have difficulty going to their fields and marketing their produce in other areas of the West Bank. Farming is a primary source of income in the Palestinian communities situated along the barrier's route, an area that constitutes one of the most fertile areas in the West Bank. The harm to the farming sector is liable to have drastic economic effects on the residents - whose economic situation is already very difficult - and drive many families into poverty.

The erection of the barrier will also significantly reduce access of the rural population to the hospitals in nearby cities. The educational system will also be harmed because many teachers come from outside the communities in which they teach. Social and family ties will also be hampered by this new reality.

In deciding to build a barrier to prevent attacks within Israel, the authorities selected the most extreme solution to the problem and the one that creates the greatest harm to the Palestinian residents. Israel chose this solution over alternatives that would have caused a lesser degree of harm to the Palestinians.

According to the State Comptroller's report from 2002, most of the Palestinians who perpetrated attacks in Israel entered the country through the checkpoints situated along the Green Line, and not through the open areas between the checkpoints. Despite the report's findings, Israel decided to erect the barrier before it solved the problems that were found in the operation of the checkpoints. Furthermore, the IDF did not take any meaningful action in the seam area that would prevent Palestinians from entering Israel, and gave this lower priority than other objectives, such as carrying out extensive operations deep in the West Bank.

Even if we accept Israel's claim that the only way to prevent attacks is to erect a barrier, Israel is required to select the route that results in the fewest possible human rights violations. The planned route almost totally ignores this principle and is based on extraneous considerations which have little, if anything, to do with the security of Israeli civilians. One of the government's primary considerations was inclusion of as many settlements as possible west of the barrier in order to increase the likelihood of their annexation into Israel. The authorities also determined the route of the barrier in a manner that would avoid the political problems resulting from recognition of the Green Line as the border of Israel.

CASE 2: When is Torture okay?

Background:

It has been known since the beginning of the State of Israel, that some of the most effective ways to get information about a terror attack is by interrogation. Through intense interrogation, many attacks have been prevented, and lives have been saved. However, it is also known that one of the most effective ways of retrieving information is by using a certain amount of "physical pressure", for example, shaking a suspect, holding him in a particular painful position for a lengthy period of time and sleep deprivation. Human rights activists are concerned that "moderate physical pressure" may amount to torture.

You are the judges of the Supreme Court. You must reach a decision about this case – should it be made legal to use physical force when it comes to security matters?

Information to consider:

GENEVA Convention against Torture (CAT)

This convention bans torture under all circumstances and establishes the UN Committee against Torture. In particular, it defines torture, requires states to take effective legal and other measures to prevent torture, declares that no state of emergency, other external threats, nor orders from a superior officer or authority may be invoked to justify torture. It forbids countries to return a refugee to his country if there is reason to believe he/she will be tortured, and requires host countries to consider the human rights record of the person's native country in making this decision.

The CAT requires states to make torture illegal and provide appropriate punishment for those who commit torture. It requires states to assert jurisdiction when torture is committed within their jurisdiction, either investigate and prosecute themselves, or upon proper request extradite suspects to face trial before another competent court. It also requires states to cooperate with any civil proceedings against accused torturers

Case Study

The petitioner in one case, HCJ 7563/97 (Abd al Rahman Ismail Ganimat) was arrested on November 13, 1997 and interrogated by the GSS. He appealed to this Court on December 24, 1997 via the Public Committee against Torture in Israel. He claimed to have been tortured by his investigators, through use of the "Shabach" position," excessively tight handcuffs, and sleep deprivation.

His interrogation revealed that he was involved in numerous terrorist activities, which resulted in the deaths of many Israeli citizens. He was instrumental in the kidnapping and murder of Sharon Edry, an IDF soldier. Additionally, he was involved in the bombing of Cafe "Appropo" in Tel Aviv, in which three women were murdered and thirty people were injured. He was charged with all these crimes and convicted at trial. He was sentenced to five consecutive life sentences plus an additional twenty years in prison.

What the Court Really Decided

CASE 1:

The Israeli Supreme Court ruled in June 2004 that a (2 mile long) contentious section of the barrier built by Israel in the West Bank violates the rights of thousands of Palestinian residents by separating them from their farmland in "a veritable chokehold, which will severely stifle daily life."

A 34-page ruling issued by a three-judge panel of the court found that a partially completed portion of the route "...which separates the local inhabitants from their agricultural lands -- injures the local inhabitants in a severe and acute way, while violating their rights under humanitarian international law."

Building the barrier along a route that would separate thousands of farmers from their olive groves and other lands "severely violates their right of property and their freedom of movement," said the justices, who concluded, "The difficult reality of life from which they have suffered will only become more severe."

The Israeli military, which chose the barrier's route and is overseeing its construction, said in a statement that it would shift the path of an 18-mile section to meet the court's demands.

CASE 2:

The Court held that the GSS was not authorized to employ investigation methods that involve the use of physical pressure against a suspect if it means violating human rights, because it is currently against Israeli law, which is made by the Knesset and not the court.

BUT if an investigator is facing charges because of physical pressure, the defense may claim that it was out of necessity that these deeds were done. This is because of Israel's unique security problems that it has faced since its founding.

The basic thought was that were this to be allowed, it would raise issues of "law and society, of ethics and policy, and of the Rule of Law and security", knowing that Israel is in a Unique situation.

One of the Judges, Justice Kedmi, wrote that the Knesset has one year to review that law and make the decision. During that year, "the GSS could employ exceptional methods in those rare cases of "ticking time bombs", on the condition that explicit authorization is given by the Attorney General."