

Zivotofsky v. Kerry,
Or: On Israel and the Ambiguities of American Jewish Identity
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On Rosh Hashanah and last night I said that I was devoting my three major remarks these holidays to major decisions of the United States Supreme Court of the past year. It was a big year of important decisions. I explained that when I was growing up I wanted to be a lawyer. For more details on my childhood you can ask my parents who are right here. But in the meantime, you'll have to bear with me. We discussed on Rosh Hashanah *Walker v. Texas Division, Sons of Confederate Veterans*. And last night was *Obergefell v. Hodges*. And after Musaf, we can continue the discussion of all three. For today, it is: *Menachem Binyamin Zivotofsky, by his Parents and Guardians, Ari Z. and Naomi Siegman Zivotofsky, Petitioner, v. John Kerry, Secretary of State*.

This was an intensely debated separation-of-powers case that was decided this past June 8th. The thirty-page opinion of the court was written by Justice Kennedy, with a one-page concurrence by Justice Breyer, a thirty-one-page concurring-in-part-and-dissenting-in-part opinion by Justice Thomas, a seven-page dissent by the Chief Justice and a twenty-page dissent by Justice Scalia, of which the final five pages are specifically devoted to a refutation of the concurring part of Justice Thomas's concurring-and-dissenting opinion. The learned opinions were so intensely emotional that the Chief Justice begins his dissent with the words: “Today's decision is a first: Never before has this Court accepted a President's direct defiance of an Act of Congress in the field of foreign affairs.”

The opening words of Justice Kennedy's opinion of the Court—words that might be described as a bit more judicious, for want of a better term—are: “A delicate subject lies in the background of this case. That subject is Jerusalem.”

Here is the relevant background. The Partition Plan for Palestine that was approved by the General Assembly of the United Nations on November 29, 1947, establishing the legitimacy of the

independent State of Israel, called for the British Mandate to be divided between a Jewish state, an Arab state, and the city of Jerusalem which would be under international sovereignty. The well-known part of the story is that, despite some right-wing opposition, the Zionist government of David Ben-Gurion accepted the plan. The Arabs rejected it. The Palestinian leader Mahmoud Abbas, by the way, admitted in 2011 that the Arab rejection of the Partition Plan in 1947 was an error. Well, yes. Back in 1948, the British left Palestine despite the Arab rejection of the plan, and the ensuing war resulted in the 1949 armistice lines, better known as “the Green Line.” Jewish territory exceeded that of the Partition Plan, and the Jewish armies were able to, at great cost, defend the road from Tel Aviv to Jewish West Jerusalem. The Jordanians, though, controlled the Old City and East Jerusalem, and so the city was to be divided until June of 1967 when Israel, as a part of its spectacular victory in the Six Day War, united Jerusalem under Israeli control. Before that time, though, the Jewish state had already staked its claim to Jerusalem as the capital of Israel, just as Jerusalem was the capital of the Jewish sovereign states of ancient times, beginning with King David. That is, my namesake. Though the government in 1948 first sat in Tel Aviv, the permanent institutions of governance were soon after independence moved to West Jerusalem. But when President Truman, on May 14, 1948, recognized the State of Israel—representing the first state to recognize an independent Jewish sovereignty in two millenia—he did *not* recognize Israeli sovereignty over Jerusalem. President's Truman's carefully chosen policy, of recognizing the Jewish state but maintaining neutrality on the status of Jerusalem until a comprehensive peace agreement could be concluded, has been confirmed by every subsequent administration, and by almost every other country in the world.

Growing up and experiencing Jerusalem, especially post-1967, as the Israeli capital that it is, I could not understand why the United States still keeps its embassy in Tel Aviv. I had this little game I used to play when I was young, a way of deciding if a particular atlas or globe was kosher. I would look up the map of Israel, and see if Jerusalem was indicated as Israel's capital—which would make the map kosher—or Tel Aviv, which would make it treif. Reference publications still struggle with the political

pressures on how to handle one of the most contested cities in the history of the world. Most American publishers follow the CIA's *World Factbook*, which does list Jerusalem as the capital, but with the note: “Israel proclaimed Jerusalem as its capital in 1950, but the US, like all other countries, maintains its embassy in Tel Aviv.” One needs a little more intel to understand that CIA notation.

The issue in *Zivotofsky v. Kerry* is the fact that the United States Congress has taken a position on Jerusalem that aligns with the position of the Israeli government, even as it contradicts that of the executive branch of this country and that of almost every other country in the world. In regard to the embassy, Congress passed the Jerusalem Embassy Act in 1995, requiring the State Department to move the embassy from Tel Aviv to Jerusalem by the end of 1999. But the act has a proviso to “allow the President to delay the implementation of the law indefinitely if the move presents national security concerns,” a proviso that has been invoked successively by Presidents Clinton, Bush and Obama. At stake in *Zivotofsky v. Kerry* is *another* act of Congress, a specific section of the Foreign Relations Authorization Act for Fiscal Year 2003. Section 214 of that act is entitled “United States Policy with Respect to Jerusalem as the Capital of Israel.” The section has four clauses. The first urges the President to immediately relocate the embassy to Jerusalem pursuant to the Jerusalem Embassy Act of 1995. The second clause limits funding of the consulate in Jerusalem unless it is under the supervision of the American ambassador to Israel, that is, of the embassy in Tel Aviv. The third clause limits funding of government publications to those that list Jerusalem as the capital of Israel. I imagine that is in part behind the language in the CIA *World Factbook* entry. And finally, there is the fourth and final clause, a clause that was struck down by the Supreme Court on June 8th as unconstitutional.

What was this unconstitutional language? I quote from the Act: “Record of Place of Birth as Israel for Passport Purposes—For the purposes of the registration of birth, certification of nationality, or issuance of a passport of a United States citizen born in the city of Jerusalem, the Secretary [of State] shall, upon the request of the citizen or the citizen's legal guardian, record the place of birth as Israel.”

In case you were wondering about Justice Thomas, by the way, he agreed with the majority that

the law was unconstitutional regarding the passport requirement, but held that it was acceptable regarding the other consular registrations. But let's focus now on the bigger issues.

First of all, what are we talking about here? If you think about your passport, it has a spot where it indicates place of birth. My passport, and that of both my sons, says: "New York, USA." If you are born outside the United States, the standard entry, according to the State Department's Foreign Affairs Manual, is to record the place of birth as "the country [having] present sovereignty over the actual area of birth." That can be a little tricky, as sovereignty can change. My wife Alla was born in Odessa. The sovereignty at the time was the USSR. Her current passport says: "Ukraine." Well, for now...

Now, what if Alla were an ardent Russian nationalist and in love with Vladimir Putin. By the way, I assume that this is not the case. But if it were, hypothetically, she might be bothered by the notation of "Ukraine" in her passport. She cannot have USSR stated in the passport anymore. That ship has sailed. And she certainly cannot have Russia. But the State Department does allow that "if a citizen objects to the country listed as a sovereign by the State Department, he or she may list the city or town of birth rather than the country." So Alla could have her passport read "Odessa" rather than "Ukraine," if it was really that important to her. But it is important to some people. It might be important to some people born in Northern Ireland, for example, that their place of birth not be listed as "United Kingdom." It is wonderful that our State Department is so accommodating of people's feelings about a passport notation! But the State Department does *not* allow a citizen to list a sovereign that conflicts with the foreign policy of the executive branch. According to State Department policy, then, "because the United States does not recognize any country as having sovereignty over Jerusalem, the Foreign Affairs Manual instructs employees to record the place of birth for citizens born there as 'Jerusalem.'"

Section 214(d) of the Foreign Relations Authorization Act for Fiscal Year 2003 was intended to overturn that policy and allow a US citizen born in Jerusalem to list the place of birth on the passport as "Israel" if so requested by the citizen.

Well, that is what the act says, and that is what the Court struck down. The Court's argument,

which I'll get into soon, was that recognition of sovereignty is an exclusive power of the President which was wrongfully infringed upon by Congress. But I wonder what the members of Congress really expected to happen when they passed this act in 2002. Nobody expected President Bush to move the embassy to Jerusalem pursuant to the Jerusalem Embassy Act of 1995. And what about the passport issue? When President Bush signed the act into law, he issued a statement that section 214 would, “if construed as mandatory rather than advisory, impermissibly interfere with the President's constitutional authority to formulate the position of the United States, speak for the Nation in international affairs, and determine the terms on which recognition is given to foreign states. US policy on Jerusalem has not changed.” [End quote.] Now that is an interesting statement! George W. Bush signed the law, but he stated that he understood section 214 to be advisory rather than mandatory. Nothing in the statute reads as non-mandatory, and neither did, nor could, the Court, consider an act of Congress as merely advisory. Now, of course, President Bush was not going to veto the Foreign Relations Authorization Act, an act covering hundreds of pages that granted all the funding for US foreign affairs, because of a tiny paragraph about Jerusalem that most understood was there “for show.” I am not saying that there are not some in Congress who feel strongly about the embassy moving to Jerusalem and these other questions. But I believe—and I may be wrong—that for most members of Congress, the inclusion of section 214 into the bill was an easy way to establish credentials as being strong supporters of Israel, a position important to both the evangelical right and the Jewish community. I am suggesting that Congress did not really expect anything to happen, and especially because President Bush laid it out in black and white that he had no intention whatsoever of fulfilling section 214. And neither did President Obama.

It is easy to talk about laws as theories on paper. But when real people get involved, things get more complicated, and that is when the courts need to adjudicate. In 2002, just when President Bush signed the Foreign Relations Authorization Act for Fiscal Year 2003 into law, Menachem Binyamin Zivotofsky was born in Jerusalem. His parents, Ari and Naomi Zivotofsky, were American citizens living in Jerusalem. Any American citizen who has a child abroad has the right to register their child with the

local US consulate as an American citizen, and that child is, by law, a full American. The Zivotofskys exercised that right and registered their baby boy Menachem Binyamin at the American embassy in Tel Aviv. They filled out “Jerusalem, Israel” as the place of birth. The embassy clerk explained that the passport could only say “Jerusalem.” The Zivotofskys were unhappy about that and somehow found out about the new law and filed suit on behalf of baby boy Menachem Binyamin in the US District Court for the District of Columbia, seeking to compel the State Department to comply with section 214(d) of the Foreign Relations Authorization Act for Fiscal Year 2003. And only this past June, when the baby boy reached the age of bar mitzvah, was the case finally resolved, in favor of the State Department position.

This is what happened. First of all, the Zivotofsky's lawyers explained to their clients that their request for “Jerusalem, Israel” could not work. It could be either “Jerusalem” as the State Department wanted, or “Israel” as the law in question allowed as the alternative upon request. Okay. So the District Court dismissed the case on two grounds: that it presented a non-justiciable political question and that Zivotofsky lacked standing. That is, that the status of the sovereignty of Jerusalem was a political not a legal question and so could not properly be adjudicated by the courts, and that young Zivotovsky did not have the right to sue on the matter. The Zivotofskys appealed and the appellate court ruled that while Zivotovsky did have the right to sue, that the district court was correct that this was a political matter that the courts would not be able to resolve. The Zivotovskys then successfully appealed to the Supreme Court, which ruled against the finding that this was a political matter that the courts could not decide, and remanded the case back to the Court of Appeals for the DC Circuit. Ordered to hear the case, the appeals court found that section 214(d) was indeed unconstitutional. The Zivotofksys appealed that decision to the Supreme Court, which, despite some vigorous dissent, affirmed the ruling of the Court of Appeals.

Let's take another step back here and talk about why this issue is so charged. Justice Scalia cut right to the chase in his dissent, writing: “The political branches of our Government agree on the real-world fact that Israel controls the city of Jerusalem.” So there are actually two issues that are raising the

collective blood pressure: one is Jerusalem, and the other is the power-struggle between Congress and the President. Both are old stories. Neither anywhere near resolution. But the Supreme Court, by its own choice, put itself in the middle of both. But what really brings the issue home to us, as American Jews, is the challenge to our identity. Again, Justice Scalia's analysis is penetrating: "Section 214(d)" he writes, "performs a more prosaic function than extending recognition. Just as foreign countries care about what our Government has to say about their borders, so too American citizens often care about what our Government has to say about their identities."

Yes, this is a challenge to our identity. I grew up as an American Jew, understanding that the United States was Israel's strongest supporter, and that I was at home in both countries. I grew up in a synagogue like this with the Stars and Stripes on the left and the Israeli flag on the right. My parents sent me to Solomon Schechter day schools, where half the day was in English and half in Hebrew. Every school assembly began with the Star Spangled Banner and Hatikvah. We marched in the annual Salute to Israel Day parade. We visited Israel multiple times. I spent my junior year of college at the Hebrew University of Jerusalem and spent a subsequent rabbinical school year in Jerusalem again. I have very close family who live in Israel, and others in this country who grew up in Israel and for whom Hebrew is their mother tongue. So that is why it *did* bother me when I would find a map that did not recognize Jerusalem as the capital of Israel. And it *did* bother me that the embassy was in Tel Aviv. I understood, eventually, that to move the embassy to Jerusalem, and for the US to otherwise recognize Jerusalem as the capital, would be understood by the Arabs as a move away from neutrality, and would decrease the ability of the United States to broker and help maintain a future peace agreement, which was ultimately in Israel's best interest. And indeed, there were Palestinian protests when this law was passed. But that was a difficult extended explanation that could not quite assuage the pain I felt knowing that the country of my birth and nationality was not fully able to recognize the heart of the country of my soul.

Jerusalem is the heart of Israel. It is the final and culminating word of Hatikvah. And, my friends, it is the last word we will say in our prayers this evening before we break the fast. *Leshanah haba'a*

beYerushalayim. Next year in Jerusalem. To this day, every time I ascend to Jerusalem—and it is an ascent up the mountains—I sing to myself the passage from Isaiah 27: “Those lost in the land of Assyria and those cast away in the land of Egypt shall come back and worship Adonai on the holy mountain in Jerusalem.” But we’ll come back to that soon. There is not a Jew alive who can come to Jerusalem and not be moved by the glistening gold of its stones, by the stories they tell, of the millenia of history they have witnessed.

I only really understood the problem of Jerusalem when I experienced it first hand. On the Christmas Eve of my junior year of college, the year I was at the Hebrew University of Jerusalem, I went with a handful of friends to nearby Bethlehem. I mean, yes we were all Jewish, but how could we give up the chance to experience Christmas in Bethlehem when Bethlehem was less than a half hour away? I remember it was raining cats and dogs that night, and Manger Square, usually full of pilgrims on a Christmas Night, was drenched. You could only get into the Church of the Nativity for the midnight service with a special ticket. But every restaurant and bar around the square was filled with people escaping the rain and watching a simulcast of the service, what would have been on a big screen in the square had the weather cooperated. We eventually retired to our hotel room off the square, which we piled into and somehow managed to each find a space of bed to sleep on. And that may already be a little too much detail about a college experience for a sermon. But the point that I am getting to is that in the morning we found a large taxi that was willing to take us all back to Jerusalem, which was far preferable to walking down the hill and waiting for the public bus. The taxi asked where to. We were “posing” as it were, as American Christian tourists. So while it probably would have been fine, we chose not to ask the driver to take us all the way back to the university campus. So we asked that he just drop us all off at the Jerusalem Central Bus Station. We knew that there we could grab a quick breakfast and then an easy municipal bus back to Mount Scopus, where the university is. We figured that would also be a simpler fare to negotiate. So he said no problem, and off we went. Then, young ones that we were, we were quite engaged in our own conversation until the driver stopped the car and asked us for the fare as

we had arrived. We looked around and found ourselves staring right across at the Damascus Gate of Jerusalem. Now, if you are familiar with Jerusalem, you know that the Damascus Gate is the center of East, or Arab Jerusalem. “Central Bus Station?” I asked the driver a bit nervously. “Yes. Welcome!” he replied in his thick Palestinian Arabic accent. Of course we paid him and got out of the cab. Then I looked around me. I saw that we had pulled up into a rather large dirt lot filled with green buses. Not the red buses we were used to. These buses only had Arabic lettering on them, and, I am sure, could take you anywhere in East Jerusalem or the West Bank. It suddenly dawned upon me that, from the perspective of a Palestinian, *this was* the Jerusalem Central Bus Station, not the place I was thinking of on the opposite side of the city. I understood then that there were, and are, in fact *two* Jerusalems, even though I only knew one of them. To this day, if you stay in a hotel in the Jewish half of the city and ask for a city map, you will find that the map includes West Jerusalem and the Old City, but does not include the Arab neighborhoods to the east of the Old City. And if you ask for a city map in an Arab hotel in East Jerusalem, as I actually did with Tina and Manny Haber a few years ago, you will find that the map includes East Jerusalem and the Old City, but not the Jewish neighborhoods to the west of the Old City. And that day, Christmas morning in 1992 as I stood in the *East* Jerusalem central bus station with my college friends, I then looked to my left and saw, atop a rather large corner building, flying proudly upon its mast extended on the roof, the Stars and Stripes. It was the *other* American consulate in Jerusalem. I was proud and reassured to see the Stars and Stripes flying a block from where I stood, and yet confused that that flag was there because the United States was also extending friendship to this *other* side of the city, a side that was so foreign and strange to me. I also realized that there were no buses at *that* central bus station that would take us to where we were going. That was no problem. We walked through the Damascus Gate and the Old City. We had a wonderful breakfast of zaatar pita in the back of a stall in the Arab market. I still remember how good that tasted. Much better than any of the Israeli fast food we would have grabbed at *our* central bus station. And then we eventually got back to where we were going.

But where *the city* was going was in two opposite directions. It continues to pull itself apart, and

the United States has continued to attempt to help resolve the unresolved conflicts. And yet, as our president said in an address to the UN four years ago: “Ultimately, it is the Israelis and the Palestinians, not us, who must reach agreement on the issues that divide them, including Jerusalem.”

I chose to talk about *Zivotofsky v. Kerry* today, and at some length (but in the spirit of the day, I apologize) because this was a year that has taxed our complex identities as American Jews. Before I even mention Iran, we need to acknowledge the enormously complicated issue of Jonathan Pollard, the American who was convicted of spying for Israel and will be released on parole this November after serving a thirty-year prison sentence. Pollard has been a polarizing issue for the American Jewish community these thirty years. On the one hand, there have been those who have worked tirelessly and in concert with the government of Israel in pressing for his release, arguing that he has served an unprecedented time in prison, more than any other person convicted of spying on behalf of an ally in American history. They have dismissed the statements of those who argued for the strictest punishment and treatment, like Caspar Weinberger, who was secretary of defense at the time of Pollard's arrest and conviction, as motivated by an anti-Israel animus. And yet, if you look at the CIA Damage Assessment Report, which you can read online as it is declassified—although granted, with a great many empty spaces on each page—you will read the assertions, confirmed by Pollard's own cooperation, that Jonathan Pollard did pass on over 1500 classified items to Israel, and that the breach endangered and compromised the American security apparatus in multiple areas. Was he really a spy who inflicted significant harm on the United States, or was he singled out for harsh punishment because he was a Jew spying for Israel? For the first time since his imprisonment, the government is not objecting to his release, and his parole will go through in November. Some suspect that this was an olive branch that the Obama administration was able to offer Netanyahu. Others believe that thirty years was time enough, and that Pollard cannot possibly continue to pose a threat to the security of the United States. But all that being said on both sides, I will forever be pained by the Pollard case. We look back into history at the Dreyfus Affair in 1890s France, the most famous Jew convicted of espionage in modern history. The Dreyfus Affair was

a symbol of the growing antisemitism in Europe at the time and was an impetus to Theodor Herzl to get the Zionist movement off the ground. But the difference there was that Dreyfus was innocent, and his innocence was ultimately accepted and his honor restored. Not so with Pollard, who was guilty and admitted to his crimes. As a Jew I can understand the motivation to help Israel. But as an American I am outraged by the betrayal of the trust that our country granted Pollard. As an American Jew, the story breaks my heart.

And then there was the tension of identity we all felt when we watched the frustrations come out into the open at several moments this past year between the President of the United States and the Prime Minister of Israel. Even in these long remarks I cannot recount them all, and that is in itself remarkable. Let's remember for a moment that controversy over the Prime Minister's address to Congress this past March on the Iran deal. There as well, I felt my identity split in two. On the one hand, I was so proud that the leader of our tiny Jewish state should be greeted with such applause and treated with such honor in Congress, the legislative assembly of the greatest nation on earth. But at the same time, I was embarrassed, also as a Jew, that the Prime Minister was speaking in Congress against diplomatic protocol, without the invitation or coordination of the State Department, which is to say, not at the pleasure of the President. We know that Obama and Netanyahu will be meeting soon, and I know that they will work to mend a frayed relationship. President Obama said directly in his high holiday conference call to American rabbis just before Rosh Hashanah that "The American and Israeli relationship is a relationship of family. We may disagree on specifics now and then, but no disagreement will ever endanger our relationship. Our values are too intertwined." And yet, that moment back in March was painful. I think that Justice Thomas was thinking about that in his opinion in *Zivotofsky v. Kerry*. In arguing for the President's exclusive power to recognize foreign sovereigns, Justice Thomas looks at the historical record of the first administration, that of President Washington. Justice Kennedy, in the Court Opinion, also cited Washington's decision to recognize the ambassador from revolutionary France, without consultation of Congress, as precedent for the Presidential power. Remember, George Washington was president

during the French Revolution. Justice Scalia, on the other hand, accused the majority of supporting “a presidency more reminiscent of George III than George Washington.” But Justice Thomas went a step further than Justice Kennedy's invocation of Washington's record, citing how Washington made a point, when corresponding with foreign leaders, that his was the supreme executive authority, not Congress. “When foreign ministers addressed their communications to Congress,” Justice Thomas recounts, “Washington informed them of their error.” How could Justice Thomas not have been thinking of the Israeli Prime Minister's direct communication with Congress this past March, as these opinions were being researched and within the context of the legislative and executive tug-of-war that the case brought up.

When you read through seventy-plus pages of legal opinions on what is on the surface a very specific debate on whether the recognition of foreign sovereignty is a power exclusive to the President or a power initiated by the President but shared with Congress, it does wake you up when you find these political jabs hidden between the lines. Supreme Court justices are not supposed to get political. They are the only ones who sit through the annual State-of-the-Union speeches with solid poker faces rather than engage in the game of the up-and-down applause displays of the opposing parties. So that seemingly obscure historical note about George Washington reads to me like Justice Thomas expressing criticism of the Speaker of the House for inviting Netanyahu to speak to Congress.

I found another political jab cleverly hidden in a citation within the Chief Justice's dissent. In his treatment of the balance of powers between Congress and the President on the question here of recognition, he explains that certain contradictions will need to be lived with. While the President can choose to recognize a certain country, Congress can contradict that recognition by refusing to fund a US embassy, by imposing a trade embargo, and ultimately, by declaring war. Justice Kennedy argued that same point in the Opinion of the Court in explaining how the balance of power works out. The Chief Justice elaborated on the point to argue that the balance of power here implies that the President's power is not exclusive. In making that argument, he mentions, as an aside, that, and I quote, “statements by

nonlegislative actors might [also] be seen to contradict the President's recognition positions, such as the declaration in a political party platform that 'Jerusalem is and will remain the capital of Israel.'" Now, recall that there was a minor crisis at the 2012 Democratic National Convention where the platform was found not to include the statement about Jerusalem as the capital of Israel. In order to avoid angering voters who hold support of Israel dear, the party machinery moved to quickly add the clause, and this was at the strong direction of the head of the party, the sitting president who was seeking re-election. The Chief Justice reminds us of this only through his citation of the New York Times article title: "Pushed by Obama, Democrats Alter Platform Over Jerusalem." A very clever way to criticize President Obama within a judicial opinion for contradicting himself between directing the DNC one way and the State Department another way.

By the way, let me add that I have great respect for the Chief Justice. I did meet him once. He gave a keynote address at a Rabbinical Assembly convention in Washington, which I attended along with Alla and my father. I remember that while he was careful to remain apolitical, he was very respectful and charming, and he stayed for the entire kosher banquet, spending that whole hour at supper with the leaders of the Conservative rabbinate, and sitting through Birkat Hamazon! I did shake his hand. All I had a chance to say was: "Mr. Chief Justice." So I said a little more just now.

I won't bore you with any more details of the decision. I have already been speaking for so long. Suffice it to say that much was made over a disagreement on how to read precedents. Did the President confer with Congress in the past on such issues because such conferral was constitutionally required, or because it was just politically prudent? While the Chief Justice could not get passed the point that never before had the Court ruled so clearly in favor of the President against the expressed will of Congress in such an issue of foreign policy, I think the reason why that is so, according to my reading, is that this may have been the first time that such a conflict so clearly came to the fore on recognition. Sometimes, a case is a first, and you have to apply precedents laterally, but you don't have a clear precedent for what you are looking at. That does not mean that you can't decide the law just because it never came up before.

But that gets into whole other areas of jurisprudential theory that we cannot touch now.

The point I want to make about the case is that it boiled down to the tension of the balance of powers between what the Court calls the two “political branches” of the government, the legislative and the executive. That constant tension is not dissimilar to how we find ourselves pulled in two directions when Israel and the United States do not see eye to eye.

I wish that that that never happened, that there would never be moments of such disagreement. But disagreement is natural, and as both President Obama and Prime Minister Netanyahu have said, it is a disagreement within family.

So how long did you think I could talk about Israel while continuing to dance around Iran? No, I am not going to talk about the Deal. Except to say that it was heartbreaking to watch how the American Jewish community, finding itself in an impossible position between the Israeli prime minister and the American president, found itself taking sides and condemning the other in terms that will take some time to live down. We need to recognize that everyone within the Jewish community who took a position on this issue did so out of deep concern for the security of Israel. We are allowed to disagree on what we think is best. And I would never envy those like President Obama and the Prime Minister Netanyahu who are burdened with the responsibility of making such extraordinary decisions each day.

The debate over the Iran deal, the focus on the Jewish identity even of individual members of Congress, by *both* sides of the debate, shook the foundations of our carefully calibrated American Jewish identity. It was traumatic. Nothing like the trauma of war, God forbid. But traumatic nevertheless in an existential way.

I have no easy solution to the tension of being an American Jew. Maybe the blessing of our lives is to live with that tension, much as the Supreme Court needs to live with the tension of the balance of power between “the political branches.” We are blessed to live between two poles of competing identities. Would that more of our ancestors would have had such tensions to chose between.

Let us rededicate ourselves this Yom Kippur to feeling that tension, to feel that deep connection

to Israel and our Jewishness even as we are at home here in America. I will offer one easy way to do that. Come with us to Israel this summer. If you have not been to Israel, you *must* come. If you have been before, I know you yearn to come again. No words can explain the growth that we feel in our Jewish *neshama*, our Jewish soul, or essence if you will, as when we are in Israel. As when we are in Jerusalem. You should have all received the trip itinerary in the mail. There are more copies on the table in the lobby. You can find it on our website. It will be in *Temple Talk*. And you can contact me. Let's talk about going to Israel together. Join me and Alla and Laurence and Ariel as we reconnect with the land of our people and heritage. We need to do that. And our US passports are accepted even in Jerusalem, sovereignty questions notwithstanding. And we can come back, and when we land at Newark Liberty Airport, we will thank God for the blessings of this great nation, even as we will already miss Israel and yearn to return.

If you have been on a synagogue tour with me to Israel, and for sure if you come with us in July, you may recall what I said, how I sing to myself the words from Isaiah 27 every time I ascend the mountain road to Jerusalem. When I do so alone I sing to myself. But when I am the rabbi of a group, I sing it into the microphone on the bus, hoping that some will sing with me.

Maybe you will sing with me now. You'll find the words on page 165. You may know it. It is often played at weddings during horah dancing. It is a prayer about lost ones returning to Jerusalem. It is also a prayer that Jerusalem's tensions be resolved. We know about those tensions. By going up to Jerusalem, and by singing about her, we bring that day, when those tensions will be resolved, one step closer. Page 165, six lines from the bottom. You can catch on and sing with me.

Uva'u ha'ovdim be'erezt Ashur vehanidahim be'erezt Mitzrayim.

Uva'u ha'ovdim be'erezt Ashur vehanidahim be'erezt Mitzrayim.

Vehishtahavu laShem, beHar Hakodesh, Vehishtahavu laShem, beHar Hakodesh,

Vehishtahavu laShem, beHar Hakodesh, Vehishtahavu laShem, beHar Hakodesh,

BeYerushalayim. Yerushalayim. Yerushalayim. Yerushalayim. [You know the words now!]

Yerushalayim. Yerushalayim. Yerushalayim. Yerushalayim.