Criminal Justice:

An Eighth Grade Talmud Unit
BAVLI SANHEDRIN 6

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Background

At Solomon Schechter of Bergen County Middle School, students study Talmud in 7th and 8th Grade using the original Hebrew and Aramaic text. The curriculum, which I developed over the past year and a half, focuses on advancing students' Talmud study skills while using the Talmud as a tool for thinking about ourselves and our society. The unit presented here epitomizes this curriculum. Students study selected sections from the 6th chapter of Tractate Sanhedrin in the Babylonian Talmud. While from a Talmudic perspective the specific topic is capital punishment by means of stoning, students address this chapter as a guide to thinking broadly about criminal justice. I taught this unit to three groups of eighth grade students in the winter of 2016, and I will be teaching it again this coming winter.

Goals

The primary goal of this unit is for students to use the Talmud as a tool for exploring real world problems. Contrary to the expectation that Talmudic discussions of capital punishment are arcane and grim, students learn that the Talmud's dissection of this matter can be fruitfully applied to America's criminal justice system. Stepping far outside of the American cultural context is sometimes the best preparation for engaging with it. Using the Talmud in this way encourages students not only to become more involved American citizens, but to experience Judaism as a guiding and thought-provoking force in their citizenship.

Method

Each segment of the unit is approached on three levels:

Decoding the Talmudic text:

Students learn the Talmud's vocabulary and generate their own translations of the Talmudic text. We analyze the Talmud's word choices and pay special attention to technical terms. Students create modern day usages of Aramaic "Talmud Terms" in order to understand and remember them. They color code their texts and answer oral and written questions to sharpen their understanding.

Understanding the text:

Students engage with the meaning and significance of the text on a Talmudic level. They role play, debate, discuss, write, and question in order to understand the ideas and perspectives that the Talmud articulates.

Connecting to the real world:

Students learn about contemporary iterations of the Talmud's topics in the U.S. criminal justice system. They hear from speakers who work in the justice system; they read and analyze journalistic reports; they learn about organizations working for criminal justice reform; they analyze the relevant amendments to the Constitution and compare them with Talmudic legislation and sentiment.

Topics, Texts, and Connections

Topic: The Appeals Process

This Talmudic chapter dives in after a guilty verdict has already been delivered, at which point there are still opportunities to acquit the defendant. Both the Talmudic and U.S. justice systems address the possibility of judicial error, though different actors and procedures function in each.

Text: Bavli Sanhedrin 42b (Mishnah) and 43a

The Mishnah sets up a system that ensures that appeals may be initiated up to the last possible moment of the defendant's life. The Gemara discusses specifications and potential complications with that process, such as when a witness or legal scholar indicates that they have an argument or evidence in favor of acquittal, but then becomes unable to proceed with the presentation.

Connections: Guest Speaker: Rachel Wainer Apter, Esq.

Ms. Apter, a parent in the school community, is an attorney for the Supreme Court and Appellate Litigation practice of Orrick. She spoke to the 8th grade about the appeals process in U.S. law, and described the appeals case she recently argued before the Supreme Court. Students asked questions and reflected on the similarities and differences between U.S. and mishnaic appeals.

Topic: Funding the dispensation of punishment

Everything costs money, but multiple parties might be responsible for funding the penal system. This topic raises logistical, moral, and political questions.

Text: Bavli Sanhedrin 43a

The Talmud establishes that the public should fund the materials needed for the dispensation of punishment, but is indecisive about whether the convict or the public should fund the required means of attempting to acquit the convict. The Talmud notes a precedent in which the public funded the means of easing the convict's mind at the time of death.

Connections: Selected articles on financing the U.S. prison system

Students divided among themselves several abridged articles and data, reviewing them in *havruta* pairs and then presenting summaries to the class. The packet of sources (attached) includes governmental data on California's costs of incarceration and on New York City's prison population; an article from *The Nation* about fees that prison inmates are required to pay for their own incarceration; a *New York Times* article about the costs of phone calls prisoners make; and an article from *NBC Right Now* on the relative costs of incarceration versus the death penalty.

Topic: Confession

Whereas in the U.S. criminal justice system, confession is usually a source of prosecutorial evidence, the Talmud, based on the Bible before it, treats confession as a spiritual opportunity for the convicted criminal.

Text: Bavli Sanhedrin 43b (Mishnah) and Joshua, Chapter 7

The Mishnah includes a midrashic commentary on the story of Achan from the biblical book of Joshua, offering a spiritual perspective on the process of a criminal being held accountable. The Mishnah simultaneously finds a place for that process in its legal framework: confession is required by the criminal before the execution takes place.

Connections: Discussion and Application

The specific, stated reason for the rabbis' interest in confession is that it ensures that the punishment will be restricted to this world; a criminal who confesses retains their place in the World to Come. In our school community, theological perspectives do not necessarily align entirely with those of the rabbis, so it is particularly important that our discussion does not end there. Students brainstorm and share social and emotional reasons for the confession of one's wrongdoings.

Topic: Wrongful Conviction

The Talmud sees wrongful conviction as a gravely important phenomenon to address. Despite safeguards, wrongful conviction, followed by unjust punishment, is an ever-present possibility, and cannot always be prevented by means of even a permissive appeals process.

Text: Bavli Sanhedrin 43b (Mishnah) and 44b

In the context of its requirement for the convict to confess, the Mishnah offers the possibility for a person who knows they have been wrongfully convicted to utter a counter-confession: a statement of remorse for all their sins except for the one for which they are being punished, having never committed it. The Mishnah presents an objection to that suggestion, since even the truly guilty might adopt this language. The Gemara discusses this conundrum and provides a thought-provoking anecdote about a person who used just such a counter-confession.

Connections: The Innocence Project

The Innocence Project is an organization that "exonerates the wrongly convicted through DNA testing and reforms the criminal justice system to prevent future injustice."[1] Students view two videos about this organization,[2] the first to

[1] Innocenceproject.org/about.

[2] https://www.youtube.com/watch?v=Cgg35eNBllA; https://www.youtube.com/watch?v=Cgg35eNBllA.

introduce them to it, and the second to help them empathize with the wrongfully convicted. Students consider how the rabbis of the Talmud might fit DNA evidence into their justice system, and they reflect in writing on how contemporary cases affect their perspective on this issue.

Topic: Dignity of the Convict

The rights and appropriate treatment of convicts have been debated for centuries. Both the Talmud and the U.S. Constitution and penal system offer intriguing yet paradoxical approaches to these questions.

Text: Bavli Sanhedrin 45a (Mishnah and Gemara)

The Mishnah establishes the procedures for carrying out the punishment of death by stoning, including the active role played by the witnesses who are responsible for the conviction. The Gemara explains that the stoning procedure is intended to avoid both mutilating the body and inflicting unnecessary suffering. The famous biblical verse, "Love your neighbor as yourself" (ואהבת לרעך כמוך), is interpreted to mean that the convict must be assured a good death. "Your neighbor" is thus defined as the criminal sentenced to death. Paradoxically, the Talmud does not therefore prohibit the death penalty, but it does directly address the convict's human dignity.

Connections: The 8th and 13th Amendments

Students compare and contrast the Talmud with the 8th Amendment of the U.S. Constitution, prohibiting "cruel and unusual punishments," and the 13th Amendment, prohibiting slavery, "except as a punishment for a crime." Paradoxically, slavery is not therefore considered "cruel." Students learn about prison labor and prison conditions in the United States and explore the extent to which our Jewish moral compasses, inspired by the Torah's central commandment of "Love your neighbor as yourself," should lead us to support or object to our country's penal system.

Special Guest Speaker: Chief Justice of the Supreme Court of the State of New Jersey, Stuart Rabner

The entire Middle School was honored with a visit from Stuart Rabner, the chief justice of the Supreme Court of the State of N.J. His interactive presentation introduced students to the nature of the U.S. judiciary, to concrete challenges like standards for evidence, and to the commitment he and his colleagues have to justice and the social good. Prompted by student questions, he discussed the importance of separating one's personal religious commitments from work in a secular system, all the while role modelling how a practicing Jew can become involved in high levels of the American judicial system. Chief Justice Rabner

also met with a small group of 8th graders who had expressed in writing their eagerness for a more focused conversation with the chief justice. He took their questions on a wide range of topics, sharing personal anecdotes from his Jewish and professional life as well as information about his work towards criminal justice reform.

Reflections, Student Impact, and Plans for the Future

The long-term impact of learning on middle school students is impossible to measure in advance. In the short-term, assessments can measure the quality of the learning and higher order thinking, but the impact on the life of the student will emerge gradually over time. My hope for the Talmud unit presented here is that it plants seeds that will blossom in different ways for different students over time. Some students last year felt motivated to pursue the study of law, but they have nearly a decade before they can make that decision. Some students felt motivated to become activists or to learn more about the justice system. Some students actively identified aspects of Talmud study that were of newfound interest and relevance to them. Here I note the learning successes I observed, the direct feedback I heard from students, and the improvements I plan for this coming winter.

Assessments and Observations

Over the course of the unit, students were increasingly able to fill in outlines of the *sugyot* they learned; to translate the Talmud's ideas into their own words and idioms; and to relate the material to real world situations using both concrete knowledge and imagination. These skills were assessed through written worksheets.

The summative assessment for the unit required the students to write and perform an original play involving rabbinic judges working through the sentencing of a certain Ploni Almoni for the crime of idol worship. Each pair of students was assigned a scene based on a section of the Talmudic material, including narration that explained the scene in light of the Talmud. The class then had to coordinate their scenes and perform their play together. Students demonstrated engagement with the material, creative and independent thinking, and deep processing of some of the real world lessons. For example, one group's script had a rabbinic judge describe the importance of figuring out who was going to pay for items necessary for Ploni's punishment in terms of an analogy to the data on California's incarceration costs. Most strikingly, students who were not even planning to proceed to Jewish high schools engaged enthusiastically in the performance of their Talmudic play.

Throughout the unit I observed considerable student progress in text skills, engagement with the material, and integration of real world connections with Talmudic text. Students began to intuit areas of real world connections even before I introduced them. Numerous students who had not yet found Talmud inspiring or interesting

found themselves paying attention and becoming involved due to the real world connections and multifaceted analysis this unit provided.

Direct student feedback

I solicited direct student feedback after each of the two guest speakers during this unit. Students overwhelmingly felt that the speakers expanded their knowledge and gave them new perspectives. Concretizing their Talmudic learning and its real world connections by means of conversation with Jews working in the U.S. justice system was not only enjoyable, but led to clarification questions and answers, allowed for deeper understanding of the relevance and application of our themes, and provided role models on both Jewish and professional levels. Most students responded that they would like to continue learning from guest speakers.

I also solicited student feedback at the end of the unit, asking students if and why they thought the unit was valuable. I was delighted to the see the variety of answers as to what the students took away from the unit. One 8th grader said that he came to understand that the rabbis of the Talmud, in their own way and in their own time, were trying to do the same kinds of things that we are today: they were working towards fairness, accountability, and the best way to carry out justice. He noted that he realized how much less and different technology the rabbis had access to, and that we have far more tools at our disposal, such as DNA testing, but he learned that they were doing their best, just like we do, with what they had. Another 8th grader said that she learned that it was much easier to initiate an appeal in the Talmudic system than in the American system, and she believes that the American system should be reformed so that appeals are easier. Both of these students' comments demonstrate that learning about the Talmud in conjunction with connections to the real world deepened their understanding of and engagement with both.

Plans for the future

As with any unit or lesson that I teach, each year presents an opportunity to refine my materials and update the information I share. With my current 8th graders, for example, when we address the rights of convicts, I plan to talk with the students about this year's massive prison strike in the U.S., the largest in this country's history.[3] The more current this sort of information is, the more students can relate to it and pursue it. When I taught this last year, some of the most accessible information I found was nearly a decade old, and for 13 year olds that feels like a century ago. I have been continuously amassing more and better materials for future use.

[3] http://www.cnn.com/2016/10/30/us/us-prisoner-strike/.

Similarly, our extraordinary visit from the chief justice of the New Jersey Supreme Court, Stuart Rabner, who is a personal acquaintance of mine from the synagogue community I grew up in, will not be repeated this winter, due to the chief justice's schedule. This year, I plan to invite Professor Todd Clear of Rutgers University, a renowned criminologist whose most recent project is the founding and developing of NJ-STEP: New Jersey Scholarship and Transformative Education in Prisons Consortium,[4] which provides college education to inmates in N.J. state prisons. Professor Clear is a personal friend of mine from my current synagogue community, and he is an engaging speaker with a fascinating personal story that students can connect with on various levels. I relish the opportunity to provide my students with role models, inspirations, and perspectives far beyond what the classroom or the Talmud by itself could provide.

One area of improvement I plan on is the summative assessment. I hope to maintain the rabbinic trial of Ploni Almoni as a useful review and integration of learned material (and a fun exercise for the students). But upon reflection I concluded that it did not sufficiently capture the depth of what students gained from their studies. I plan to develop alongside it a project that harnesses all of the energy that accumulates over the course of the unit. My tentative plan is for students to research and develop an advocacy plan relating to one of the criminal justice topics raised in the Talmud.

When I developed and taught this unit last year, it was my first year at Solomon Schechter of Bergen County. I did not teach those 8th graders the previous year. This year, the 8th graders will have taken my Talmud course the previous year as well. My 7th grade curriculum includes a unit focused on chapter 8 of Bavli Bava Kamma and deals with accountability for personal injury. I plan to develop clear and strong connections between that unit and the present one. This will further demonstrate to the students the extent to which their close study of a handful of Talmudic *sugyot* can reach beyond those pages in multiple directions.

[4] http://njstep.newark.rutgers.edu/.

Sample Materials Overview

Attached are four separate documents including the following materials from my unit:

1. The Talmudic text from which students study, with the segments we focus on demarcated with brackets.

2. The data, articles, and webpages that students worked on regarding real world connections with the Talmud.

3. Worksheets that students completed as formative assessments.

4. Instructions and details for the summative assessment.