



Michael Sfard in court, December 2017. Credit: \ Moti Milrod

For an Israeli Lawyer Fighting for Palestinian Rights, Winning Is a Double-edged Sword

Michael Sfard talks to Haaretz about his new book, 'The Wall and the Gate,' his optimistic outlook on ending the occupation and the disturbing trends he sees in Israeli society

By David B. Green | Jan 28, 2018

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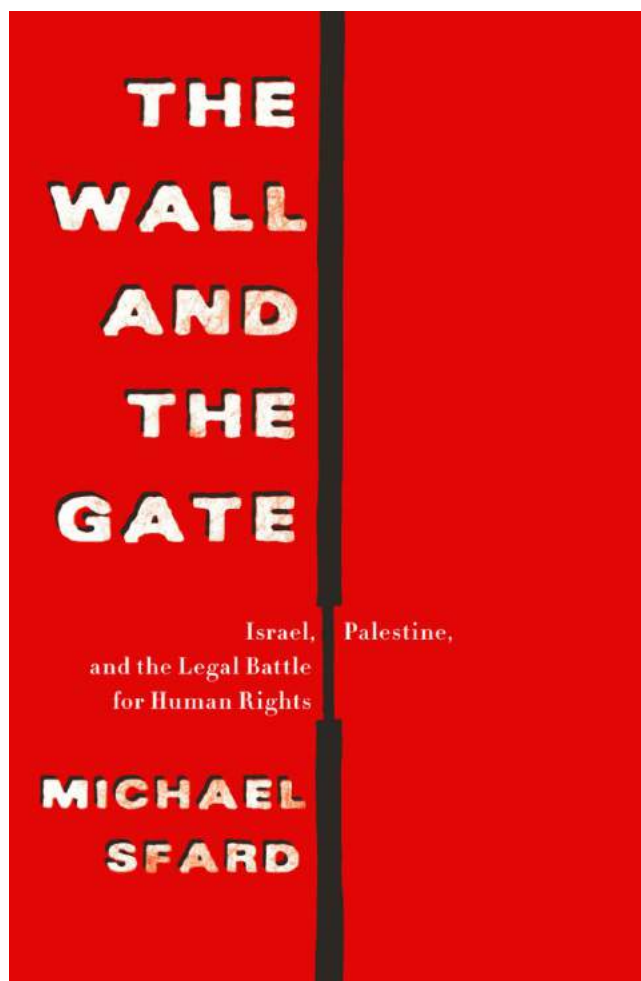
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Michael Sfard likes to say that “The Wall and the Gate” was born on the Jerusalem-Tel Aviv Highway. The human rights attorney’s new book, which is subtitled “Israel, Palestine, and the Legal Battle for Human Rights” (Metropolitan/Holt Books; 526 pages; \$35), deals with the history of Israeli litigation on behalf of the [Palestinians](#) over a half-century of occupation. For about half of that time, Sfard has been one of the key players in this drama, representing Palestinian individuals and communities in challenging the [expropriation and theft of their lands](#), attempted deportations, Israeli torture and administrative detention of “terror” suspects.

I accomplished today?"



The cover of Michael Sfard's book, "The Wall and the Gate." Credit: Courtesy

For a long time Sfard had been aware of a dissonance between his goal of attaining relief for individual Palestinian clients and his desire to force a change in Israeli policies. A telling example is his most dramatic legal victory, when in 2007 the High Court rejected the state's claim that the route of one segment of the security barrier erected during the second intifada had been based solely on security considerations. Instead, it accepted Sfard's argument that the authorities had allowed the desire to include more West Bank land for settlements within the Israeli side of the wall to prevail, even to the detriment of security-military needs.

The 2007 case involved the encroachment of the barrier on the Palestinian village of Bil'in to allow for the planned construction of a new neighborhood in the adjacent Jewish settlement of Modi'in Ilit. Although the court did not accept the claim of Sfard and his colleagues that the very construction of the barrier was, as he writes in the book, "an act of dispossession and a breach of international law," – it refused to rule on the overall legality of the fence – it did order the state to reroute the fence so as to reduce the area expropriated from the Palestinian village by half. Combined with other similar cases pursued by Sfard and other lawyers, the High Court reduced the total amount of West Bank land taken from Palestinians for the barrier by a similar proportion.



Palestinians celebrate the rerouting of the separation barrier between Bi'in and the settlement of Modi'in Ilit, September 26, 2011. Credit: \ Moti Milrod

Sfard quickly recognized the double-edged nature of such victories. Yes, the damage wrought by the fence on individual Palestinian communities was lessened, but it came at the expense of the court giving its legal imprimatur to the barrier as a whole. And because he and his barrister colleagues were participating in the process, by necessity on Israeli terms – even though they resisted the temptation to propose alternate, less-invasive routes for fence segments they were challenging – he says he often found himself wondering whether he had become an involuntary collaborator in the creation of the barrier.

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“I remember taking friends from abroad to see the separation fence,” he says in an interview with Haaretz. “We drove along the route, and I found myself saying, ‘I’m one of the architects of this fence.’ I explained that it had become a joint venture. Not from the beginning. But like with many other struggles, the system, whether it be the government or the army or whatever authority is involved, digests the human rights actor and makes him part of the process.”

Hence the soul-searching on the highway to Tel Aviv and the decision to examine the questions being raised by way of a book.

With the help of a grant from George Soros’ Open Society Foundation, Sfard took a two-year leave of absence from his small Tel Aviv law office (he returned a half-dozen times during that period to appear in court in pending cases) and moved with his family to New York. Over this period, he wrote the book in Hebrew (Keter-Modan is scheduled to publish it this spring) and then worked with the translator, Maya Johnston, and the editor, Riva Hocherman, on the English edition, which was published last week.

the communist regime. Sfard was raised in the Ma'alot Dafna neighborhood, in a household filled with constant banter about politics and culture. His maternal grandfather was the late Polish-born sociologist Zygmunt Bauman.

Despite the unqualified Ashkenazi credentials, Sfard says that the family traces its origins back to the expulsion of Jews from Spain in 1492. He believes, however, that the family name comes not from the Hebrew name for Spain, *Sfarad*, but rather is a kabbalistic anagram of the word *pardes* (orchard).

Sfard did his regular military service as a medic, but in 1998, he refused to do reserve duty in occupied Hebron in the West Bank and found himself sentenced to three weeks in an army prison.



Michael Sfard meets with farmers from the Palestinian village of Beit Furik, 2012. Credit: Michal Fattal

He had been active in political affairs at least as early as high school, but decided to study law after concluding that one couldn't be a politician and remain honest, as he told Aviva Lori in this paper in 2005. An opportunity to do a legal internship with human rights-law giant Avigdor Feldman presented itself in 1999, he jumped at it. The internship turned into a regular job and Sfard continuing working with Feldman until he left to open his own practice in 2004.

It is at his office in south Tel Aviv that I met him a few days before his departure for a two-week book tour in the United States. The office is bright and airy, but a decrepit elevator carried me up four flights from a grungy entrance where one might expect to find a used syringe or two – if the space was lit. The location reflects Sfard's decision to forgo a lucrative career representing corporate clients: As he writes in the book, paraphrasing Rabbi Abraham Joshua Heschel, "some are guilty of the occupation, but all are responsible for it and responsibility creates a moral duty that is incumbent on members of the collective and the primary moral duty is to fight to end the injustice."

Sfard's life seems to be organized around this belief, but he is far from self-righteous or preachy. He has a good sense of humor and a

today is a social worker assisting children and families at risk. They have two sons, aged 12 and 6.

You have written that you are certain the occupation will come to an end some day. Can you imagine a point in the future when you can no longer say that? When you have to acknowledge that the battle is lost?

“The short answer is no. The long answer is, absolutely no.

“Look, people mistake my insistence that there is a reasonable path for change with optimism. But optimism is a belief, and this is not a matter of belief. It’s a matter of analyzing reality, politics and so on. In the near future, I don’t think things will change. But my understanding of history, of politics, of how people behave, is that regimes that are fundamentally subjugating people, stripping them of rights, especially groups of people, are regimes that by definition are not sustainable. And a regime of this kind has to keep on nurturing and investing in the domination practices in order to keep things from exploding.”



Michael Sfard in his office, January 2018. Credit: \ Moti Milrod

Sfard says this conviction is one of the things that separates him from “some of my colleagues on the Israeli far-radical left: I think that Israeli society still has the genuine liberal pluralist values that it is based on. Which are under attack. We have this blessed history, where this country was established by mixing values – contradictory values – but some of them were genuinely this. And this makes the instability even worse.

“One of the metaphors I use is of a split personality. From the days that the Zionist movement was created, it included contradictory values. And there’s some kind of a status quo that was reached between those competing values throughout the years. During the

“Is there a risk that we will lose the war? Of course there is a risk. But there is no point where I, as part of this society, will say: I give up. Where I say, okay, I am willing to live in a society that doesn’t even aspire to be a democracy, where’s there’s no freedom of expression, where there are no basic rights and it’s based on fascist and racist ideology. No, I will always keep on fighting – as long as I’m allowed to, as long as I’m able to.

How do you define your identity, Zionist, Jewish, religious? And when you imagine your boys reaching draft age, do you still make a distinction between service in the army in general and service in the territories?

“It’s getting harder and harder to make that distinction. And I feel that I would not like my kids to go the army, in the current state of affairs. I would like them to contribute to Israeli society, and I think that they should, but I think that our biggest national project today is colonization and subjugation of the Palestinians, and being in the army is being part of it.

“There are so many definitions to Zionism. But if Zionism is the belief or the desire that the Jewish people will have a place where they can exercise their right of self-determination as a nation, and that place is here, then I’m a Zionist. If being a Zionist means thinking that this should come at the expense of other people who live here, and they should become second-class citizens, then I’m not a Zionist.”

Let’s talk about the Supreme Court. It is under fire from both politicians and the public, with the often-made claim that it’s trying to take the place of the legislature, and that it has to be reined in. How badly do you think the court is threatened today?

“Probably the most successful lie or myth, in 50 years of Israeli history, is the idea of the court as leftist, as pro-Palestinian, as a human rights activist. There’s nothing further from the truth than that. If there is one predictive parameter – probably the biggest – for any of the Supreme Court’s rulings, it’s what does the security establishment think about the case at hand.

“The people who are trashing the Supreme Court do not understand that to a very large degree, they owe the settlement enterprise’s existence to the Supreme Court. They owe the 50 years of occupation that is still ongoing, and its stability, to the court. Likewise, the people who trash the United Nations do not understand that we owe that institution our existence in international law as a nation, as a state.

“And after having said all that, the court is in big jeopardy these days. And I think it’s not just at risk because it’s being targeted by legislators and by right-wing circles. But also because it is being changed from within. And the fact that in recent years, some cases were decided in ways that no court in the last 50 years would have ruled. For example, the kosher stamp that the court has given to the anti-boycott law. For example, the dismissal of the cases against the Nakba law and of the acceptance committees in small communities law. And even recently, the Supreme Court ruling that overturned a 40-year-old principle that you cannot allocate private Palestinian land for settlement purposes. Probably the only existing measurable

What do you say about the government's plan to deport some 37,000 African asylum seekers from Israel?

"I have to say that this is something I cannot understand. I can understand why leaders and people target Palestinians. I don't accept it – I think people are brainwashed. I think that the Palestinian civilians are not our enemies. But I understand that there is a clash between us.



African migrants demonstrate against Israel's policy of forcibly deporting African refugees and asylum seekers to Uganda and Rwanda, outside the Rwandan embassy in Herzliya, January 22, 2018. Credit: JACK GUEZ/AFP

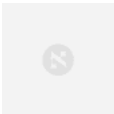
"But the only explanation that I can find for the deportation [of the Africans] is that they have brown skin. And I'm terrified by that insight. Everything about the asylum seekers' story and about Jewish history should lead to the conclusion that we are the first among all nations that should have embraced them, like Begin did with the Vietnamese [refugees beginning in 1977], and it would be in line with Jewish morality, lessons from Jewish history, and it would be the best thing Israel could do for public relations in the world.

"They are not in conflict with us. They are not changing our society. They enrich our society. And the only explanation is that they have dark skin. Because we have dozens, thousands, of foreigners without dark skin who work here, and no one is thinking about deporting them. On the contrary, we want them, because they work in jobs that Israelis do not want to work in.

"So, why [the Africans]? With the things that they went through? It makes me cringe with shame.


"And so, the only explanation is that we have leaders that are unabashed to use the lowest and most horrendous tricks in the book, and that is incitement against the person who is different.

We know that! This is us! We were there! We had the long nose, we had the peyot [sidelocks], we dressed differently, and that made us the monsters, the bloodsuckers, those who are chasing our women, are soiling our purity. And this is what the sons and daughters of the survivors of this are now doing, the same thing to people who came from war-torn countries. For me, it's worse in what it says about our society, worse than what we do to the Palestinians.



David B. Green

Haaretz Columnist




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