

# A Tradition in Crisis: Human Rights and Jewish Politics Reconsidered<sup>1</sup>

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**Abstract:** 2024 marks the fiftieth anniversary of the Declaration on Judaism and Human Rights, issued by a distinguished group of international jurists, rabbis, and scholars at the 1974 McGill International Colloquium on Judaism and Human Rights. This article traces the emergence of a specifically Jewish religious human rights tradition to that moment of political crisis in the globalized Israeli-Palestinian conflict. Out of Montreal came three different meta-narratives about the relationship between Judaism and human rights each of which reflects a deep entanglement with questions of Zionism: a progressive humanism that stresses the unavoidable question of how Jewish rights and Palestinian rightlessness intersect; a revisionist conservatism that equates Jewish human rights with Zionist power; and a liberal antipolitics that seeks to partition Jewish human rights thought and activism from Zionism, freeing Jews from direct implication in the human rights crisis engulfing Israel and Palestine. Each of these meta-narratives is reflected in three different interpretations of the famous biblical verse that is a mainstay of contemporary Jewish human rights discourse: “Justice, justice, you shall pursue, that you may thrive and occupy the land that the Lord your God is giving you” (Deut. 16:20 [JPS]). The article closes by offering a fourth, alternative reading of the verse as a way to imagine a possible future for Jewish human rights.

**Keywords:** Judaism, Human Rights, Zionism, Liberalism, Israeli-Palestinian Conflict

In 2019, the late US Supreme Court Justice Ruth Bader Ginsburg was awarded *Moment Magazine*’s inaugural Human Rights Award. At the prize ceremony in Washington, DC, the editors of the Jewish magazine presented her with a unique gift: a judicial robe collar (jabot) inscribed with the Hebrew words, “Justice, Justice.” The reference was obvious to those present. “Justice, Justice, you shall pursue” is a familiar slogan across the Anglophone Jewish world. We find it emblazoned on protest posters and website banners. At the time, it adorned the walls of the Supreme Court chambers of Ginsburg, who had become a hero to many Americans for her work on civil rights and women’s equality.<sup>2</sup> The words suggested a primal Jewish commitment to ethics and human rights. Indeed, as she emerged as a public icon, the Jewishness of her justice became a central part of her identity. In public appearances, she frequently spoke of this verse as proof of the “age old connection between social justice and Jewish tradition.”<sup>3</sup>

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1. This article originated as the Seymour David Steinman Memorial Lecture, delivered at the McGill University School of Religious Studies on October 26, 2023. I am most grateful to my hosts, Professors Daniel Cere, Patricia Kirkpatrick, and Eric Caplan, the last of whom generously offered a helpful critical response, as well as the other conference participants. I thank Leora Batnitzky, Jill Jacobs, Shaul Magid, and Yosef Malka for their subsequent comments, and the editors and anonymous reviewers for their invaluable feedback. I thank Adam Abergel for research assistance.

2. Jenny Singer, “RBG Wore A Collar With A Torah Verse on the Opening Day of the Supreme Court,” *The Forward*, Oct. 8, 2019, <https://forward.com/schmooze/432897/rbg-is-wearing-a-collar-with-a-torah-verse-on-it-the-week-of-lgbtq-rights/>; “Jane Eisner Interviews Ruth Bader Ginsburg,” *The Forward*, Feb. 5, 2018, <https://forward.com/opinion/393687/jane-eisner-interviews-ruth-bader-ginsburg-transcript/>.

3. See, for instance, Yonat Shimron, “Ruth Bader Ginsburg was passionate about Judaism’s concern for justice,” *Washington Post*, Sept. 19, 2020; Abigail Pogrebin, “A Prayer for RBG’s Long Life—And Our Pursuit of Justice,” *Lilith Magazine*, Jan. 29, 2018, <https://lilith.org/2018/01/a-prayer-for-rbgs-long-life-and-our-pursuit-of-justice/>.

In all her references, however, Justice Ginsburg never quoted the full biblical verse. “Justice, Justice” stems from the Book of Deuteronomy in the Torah (Deut. 16:20 [JPS]). “Justice, justice, you shall pursue, that you may thrive and occupy the land that the Lord your God is giving you.”<sup>4</sup> Justice is directed towards a specific, temporal purpose. The reward for justice is a national homeland. In fact, the verses that encircle this one describe the conquest of that land, the displacement of rival peoples and idolatrous faiths, the appointment of judges, and the triumph of Israel’s sovereignty.<sup>5</sup> Justice is not simply a pre-political moral imperative. It is a divine directive to a specific people seeking sovereign power in an ancient world of warring nations.<sup>6</sup>

What does it mean to quote the first half of that biblical verse, and ignore the rest? Justice Ginsburg’s reading practice is, of course, no different than what Jews and others have done with the biblical text since its very inception. Every generation reads sacred texts to suit its purposes. Yet, just as invoking scripture to link oneself to a long Jewish tradition reflects a deliberate symbolic gesture, so too does truncating a key verse represent an act of rhetorical disconnection.<sup>7</sup> To speak of Judaism and justice in this way is to sever the Jewish tradition from the most explosive human rights issue in the contemporary Jewish world.

This past year, 2023, marked the 75<sup>th</sup> anniversary of the 1948 United Nations Universal Declaration of Human Rights (UDHR). It also marked the anniversary of the creation of the State of Israel, the first Arab-Israeli war, and the Palestinian Nakba. The ongoing Israeli-Palestinian conflict, and particularly the

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Ginsburg first began to invoke the first half of the verse in a series of speeches over the course of 2002 and 2003. “[T]he command from Deuteronomy is displayed in artworks, in Hebrew letters, on three walls and a table in my chambers,” she told an audience at the University of Louisville Law School, to explain her relationship to the tradition of Jewish US Supreme Court justices. Ruth Bader Ginsburg, “From Benjamin to Brandeis to Breyer: Is There a Jewish Seat?” *Brandeis Law Journal* vol. 41, no. 2 (2003): 235. In another speech the same year to the American Constitution Society, she cited the verse to urge an internationalist perspective on American jurisprudence. Ruth Bader Ginsburg, “Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication,” *Yale Law & Policy Review* vol. 22, no. 2 (2004): 329.

4. The closest she came was in a February 2002 speech, in which she said, “On walls of my chambers, I have posted in two places the command from Deuteronomy – ‘Zedek, Zedek,’ ‘Justice, Justice shalt thou pursue.’ Those words are an ever-present reminder of what judges must do ‘that they may thrive.’ There is an age-old connection between social justice and Jewish tradition.” Ruth Bader Ginsburg, “Remarks for Jewish Council for Public Affairs in appreciation for the Albert D. Chernin Award,” speech, Feb. 18, 2002, [https://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp\\_02-18-02](https://www.supremecourt.gov/publicinfo/speeches/viewspeech/sp_02-18-02).

5. “You shall appoint magistrates and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall govern the people with due justice. You shall not judge unfairly: you shall show no partiality; you shall not take bribes, for bribes blind the eyes of the discerning and upset the plea of the just. Justice, justice, you shall pursue, that you may thrive and occupy the land that the Lord your God is giving you. You shall not set up a sacred post—any kind of pole beside the altar of your God that you may make—or erect a stone pillar; for such your God detests. [Deut. 16:18–22] [...] If, after you have entered the land that your God has assigned to you, and taken possession of it and settled in it, you decide, “I will set a king over me, as do all the nations about me,” you shall be free to set a king over yourself, one chosen by your God. Be sure to set as king over yourself one of your own people; you must not set a foreigner over you, one who is not your kin. [Deut. 17:14–15] [...] When you enter the land that your God is giving you, you shall not learn to imitate the abhorrent practices of those nations [...] Those nations that you are about to dispossess do indeed resort to soothsayers and augurs; to you, however, your God has not assigned the like [Deut. 18:9, 14]” (JPS).

6. The medieval Ashkenazi Jewish commentator Rashi says, “The appointment of honest judges is sufficient merit to keep Israel in existence and to settle them in security in their land.” Rashi to Deuteronomy 16:20.

7. In moments of “political emergency,” observes Emily Filler, texts such as Deuteronomy 16:20 are invoked in highly selective, decontextualized ways. Their “political utility depends on Jewish readers’ transformation” of a given verse “into a self-evidently ethical exhortation. For the text to be useful in these fraught political moments, it must be [made]

half-century Israeli military occupation of the West Bank has long sparked global debate about Jewish politics and human rights. The October 7 Hamas massacre, kidnapping of Israelis and foreign citizens, and subsequent Israel-Gaza war with its tremendous humanitarian catastrophe have only intensified the ideological battles over religion, politics, and human rights. With supporters of both Israel and Palestine trading accusations of genocide, ongoing legal dramas at the International Court of Justice and the International Criminal Court, and a war of words erupting over antisemitism, anti-Zionism, Islamophobia, and anti-Palestinian racism, it is not an overstatement to speak of a moment of crisis for the Jewish human rights tradition.

It turns out, however, that this crisis is not new. In fact, it is over a half-century old. April 2024 marked 50 years since the McGill International Colloquium on Judaism and Human Rights. On that occasion, 100 Jewish lawyers, scholars, and rabbis gathered in Montreal to issue the first Declaration on Judaism and Human Rights. The McGill conferees came together in the aftermath of the 1967 Six-Day War and the 1973 Yom Kippur War, with ongoing terrorist violence and Israeli military reprisals, accompanied by furious arguments at the United Nations and beyond about Zionism and human rights. Their hope was to mine the deep Jewish past to respond to the vexing present and chart the future for human rights.<sup>8</sup>

Crisis, then, produced response. But as we shall see, in responding to crisis, Jewish leaders did not so much renew a venerable Jewish tradition of human rights theology as invent one. It was precisely the confrontation with decolonization and the problem of Palestine that first led Jews to posit human rights as a specifically Jewish *religious* enterprise with a long genealogy stretching back to biblical antiquity.<sup>9</sup>

The idea that such a Jewish tradition is itself a product of recent vintage should not surprise us. Scholars of human rights have begun to correct for the ahistorical fables about Jewish human rights that depict Jews as natural cosmopolitans devoid of ethnic politics and particularist commitments.<sup>10</sup> They have

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‘easy.’” Emily Filler, “Difficult Jewish Texts and Contemporary Political Crisis,” *Religions* vol. 14, no. 5 (2023): 652, <https://doi.org/10.3390/rel14050652>.

8. The purpose of the conference, according to the American Jewish Committee’s Sidney Liskofsky, its main organizer, was five-fold: “(a) To examine the significance of human rights in Jewish tradition and experience; (b) To analyze the relationship between the development of human rights and major events and movements in Jewish history; (c) To contribute toward an understanding of the Jewish concern for human rights, both historically and contemporaneously; (d) To provide a sound basis for the formulation of Jewish communal policies and programs in the field of human rights; (e) To contribute toward an understanding of the nature, interpretation and justification of human rights, and to participate in the search for solutions of major human rights problems in contemporary society.” AJC Press Release, March 22, 1974, in American Jewish Committee Archives, “AJC Press Releases, March 1974,” <https://ajcarchives.org/Portal/Default/en-US/RecordView/Index/5829>.

9. Judaism was not unique in this regard. On the larger pattern of Western religious human rights discourses emerging from the process of decolonization and the interreligious encounter in the context of the post-World War II Middle East, see James Loeffler, “The Religions of Human Rights,” *Harvard Theological Review* vol. 116, no. 1 (2023): 141–171.

10. James Loeffler, *Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century* (New Haven: Yale University Press, 2018); Nathan Kurz, *Jewish Internationalism and Human Rights after the Holocaust* (Cambridge: Cambridge University Press, 2020). On “human rights” and “religion” as both contingent categories of modernity, see Leora Batnitzky, “From Collectivity to Individuality: The Shared Trajectories of Modern Concepts of ‘Religion’ and ‘Human Rights,’” in *Religion and the Discourse of Human Rights*, ed. Hanoch Dagan, Shahar Lifshitz, and Yedidia Stern (Jerusalem: Israel Democracy Institute, 2014), 547–572. For the critical interrogation of Christian human rights and Islamic human rights, respectively, see Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015) and Sarah Shortall and Daniel Steinmetz-Jenkins, ed., *Christianity and Human Rights Reconsidered* (Cambridge: Cambridge University Press, 2020), and Ebrahim Moosa, “The Dilemma of Islamic Rights Schemes,” *Journal of Law and Religion* vol. 15, no. 1-2 (2000-21): 185–215.

pointed out the absence of many of the core concepts of human rights in the Hebrew Bible and the rabbinic tradition, including the rights-bearing individual, universal equality, and, indeed, the concept of rights.<sup>11</sup> Yet fearful of essentializing Jewish identity and bolstering antisemitic tropes about Jewish tribalism and Zionist conspiracies, they have resisted fully historicizing the idea of *Jewish human rights* per se.

If the concept of a Jewish human rights tradition arose out of a specific moment and set of political needs, that does not invalidate its moral validity. Religious genealogies play important roles in sustaining ethical commitments. However, that forgotten story of its origins – and the fashioning of an origin story for Jewish human rights – has continued to shape the Jewish human rights imagination down to the present in ways that are often unacknowledged, yet which condition moral thought and political action. This history vexes our present, in other words, and constrains our ability to imagine other possible futures.<sup>12</sup>

Out of Montreal came three different meta-narratives about the relationship between Zionism and human rights. Each bore the traces of that verse in Deuteronomy, and each remains with us today: a progressive humanism that stresses the unavoidable question of how Jewish rights and Palestinian rightlessness intersect; a revisionist conservatism that equates Jewish human rights with Zionist power; and a liberal antipolitics that seeks to partition Jewish human rights from Zionism, freeing Jews from direct implication in the human rights crisis engulfing Israel and Palestine. In what follows, I am going to retrace the story of the McGill conference and the Montreal Declaration, then explore the pathways stretching outwards from it directly into our day. I will close this reckoning by offering a fourth, alternative approach for how to imagine the past of Jewish human rights in a way that turns us to its necessary future.

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The idea for a world conference on Judaism and human rights was the brainchild of the man then widely regarded as the living embodiment of human rights, René Cassin (1887-1976). A French Jewish lawyer, Cassin had led an international veterans' peace group after World War I, then served in the wartime French government in exile. In 1948, he helped draft the UN Universal Declaration of Human Rights, for which he was awarded the 1968 Nobel Peace Prize. Cassin also served as president of the Alliance Israélite Universelle, an organization committed to human rights. Originally opposed to Jewish political nationalism, the Alliance under Cassin's leadership embraced Zionism from 1945 onwards.<sup>13</sup>

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11. David Novak, *Covenantal Rights: A Study in Jewish Political Theory* (Princeton: Princeton University Press, 2000), and Jonathan Crane, "Why Rights? Why Me?" *Journal of Religious Ethics* vol. 35, no. 4 (2007): 559–589.

12. For a valuable critique of the challenges of forcing a dialogue between Jewish religious tradition and universal human rights, see Charlotte Fonrobert, "A Universal Declaration of Human Rights by the World's Religions: A Jewish Perspective," in *Human Rights and Responsibilities in the World Religions*, ed. Joseph Runzo, Nancy Martin and Arvind Sharma (Oxford: One World, 2003), 149–156. Shlomo Avineri offers a thoughtful reflection on the paradoxes of how Jewish religious particularism generates moral universalism in Shlomo Avineri, "The Paradox of Religion and the Universality of Human Rights," in *Human Rights with Modernity: The Problem of Universalism*, ed. András Sajó (Leiden/Boston: Martinus Nijhoff Publishers, 2004), 317–326. For an interrogation of the dialectical encounter between Jewish religion and Western legal imagination, see Reut Paz, *A Gateway Between a Distant God and a Cruel World: The Contribution of Jewish German Scholars to International Law* (Leiden: Martinus Nijhoff, 2012).

13. On Cassin's biography, see Jay Winter and Antoine Prost, *René Cassin and Human Rights: From the Great War to the Universal Declaration* (Cambridge: Cambridge University Press, 2013); Marc Agi, *René Cassin: Prix Nobel de la Paix, Père de la Déclaration universelle des droits de l'homme* (Paris: Perrin, 1998); Gérard Israël, *René Cassin, 1887–1976: la guerre hors la loi, avec de Gaulle, les droits de l'homme* (Paris: Desclée de Brouwer, 1990); Samuel Moyn, "René Cassin, Human Rights, and Jewish Internationalism," in *Makers of Jewish Modernity: Thinkers, Artists, Leaders, and the World They Made*, ed. Jacques Picard, Jacques Revel, Michael Steinberg, and Idith Zertal (Princeton: Princeton University Press, 2016), 278–291.

In 1969, Cassin launched the International Institute of Human Rights in Strasbourg with prize money from the Nobel award.<sup>14</sup> In 1972, the Cassin Institute partnered with another new institute, the Jacob Blaustein Institute for Human Rights of the American Jewish Committee, to mount a colloquium in Uppsala, Sweden about human rights and international refugee law. Yet that event, intended to focus attention on the plight of Soviet Jews seeking to emigrate, instead provoked a conflict over Palestinian refugees' right of return to Israel.<sup>15</sup> In 1974, Cassin's Institute joined again with the AJC's Blaustein Institute, along with the Canadian Jewish Congress and the International Consulting Council of Jewish Organizations, to mark the 25<sup>th</sup> anniversary of the Universal Declaration with a three-day conference in Montreal. The distinguished roster of individuals who arrived at McGill on April 21, 1974, included some of the most important human rights lawyers and activists in the world, including Columbia University professor Louis Henkin, the leading advocate of international human rights in American law; Israeli Supreme Court justice Haim Cohn, a co-founder of the Amnesty International branch in Israel; and Morris Abram, former US Delegate to the UN Commission on Human Rights; scholars, such as Salo Baron of Columbia University and Jacob Katz of the Hebrew University; several notable rabbis, including Arthur Hertzberg and Gunther Plaut; and politicians, among them Israeli defence minister Shimon Peres.<sup>16</sup>

The purpose of the conference, Cassin announced in his keynote address, was to launch a series of international colloquia to study the religious foundations of modern human rights. We have selected Judaism to be first, because it was the first religion to recognize individual dignity, "the alpha and the omega" of human rights. In addition, there were no doctrinal differences among Jews as there were with other religions. As proof of this Jewish "unity," he pointed to Justice Cohn, suggesting that the participation of a sitting High Court judge from Israel symbolized global Jewish peoplehood.<sup>17</sup> As for the idea of dignity, it was so obvious and fundamental that Cassin felt it unnecessary to say more. He announced that he would skip over the next 3,000 years and proceed to his favourite topic, the French Revolution and "les droits de l'homme."<sup>18</sup>

Cassin's speech was intended to voice confidence in the future of international human rights law. Yet his words betrayed his doubts. We need religion in our work, he explained, because law may not be up to the task. Human rights violations can be resisted "with more authority by religions than by lawyers."<sup>19</sup> This was a stunning admission for one of the most renowned lawyers in the world. It suggested that in a time of crisis, human rights needed less a repair to their foundation than an entirely new one.

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14. Agi, *René Cassin*, 314–316; Israël, *René Cassin*, 259–261.

15. The papers of that conference were published as Karel Vasak and Sidney Liskofsky, ed., *The Right to Leave and to Return: Papers and Recommendations of the International Colloquium Held in Uppsala, Sweden, 19–20 June 1972* (New York: AJC, 1976). On the background of the conference, see Kurz, *Jewish Internationalism*, 173–175.

16. Others included the law professors Maxwell Cohen, John Humphrey, and Irwin Cotler, all of McGill University, Leslie Green of the University of Alberta, Yoram Dinstein of Tel Aviv University, Thomas Buergenthal of the University of Buffalo Law School, and Louis Sohn of Harvard University. The other rabbis present included Marc Tanenbaum, Mark Golub, Jordan Pearlson, and Allan Langner. Several Christian clerics also attended, including Richard Ares, Roland de Corneille, Anthony Mancini, and Stéphane Valiquette.

17. René Cassin, "La Conscience Juive et les Violations des Droits de l'Homme dans le monde contemporain," *Bulletin du Cercle Juif* vol. 168 (1974) : 8–10. For other iterations of Cassin's thought, see R. Cassin, "From the Ten Commandments to the Rights of Man," in *Of Law and Man - Essays in Honor of Haim H. Cohn*, ed. S. Shoham (New York/Tel Aviv, 1971), 13–25.

18. Cassin, "Conscience Juive," 10.

19. Cassin, "Conscience Juive," 12.

What, precisely, was the crisis? Cassin himself alluded obliquely to political obstacles, uncooperative states, and ongoing anti-Jewish “atrocities.”<sup>20</sup> Others spoke more bluntly. Speaker after speaker identified the problem as the terrible politicization of human rights. At the UN, states had weaponized human rights claims to target their enemies and blunt investigations of their own conduct. The drafting and ratification of many key human rights treaties and related enforcement initiatives had stalled because of the Cold War and anticolonial geopolitics. Among the stalled legal projects was an international convention against religious intolerance, inspired by a 1960s outbreak of global antisemitism. Debates had broken out over whether civil or economic rights should be prioritized.<sup>21</sup>

Above all, many new postcolonial African and Arab states now insisted that national self-determination was the first human right from which all others derived. Universal justice began not with individual freedom and equality but with political community enacted through nation and land. There was truth to this idea. After all, Cassin’s *droits de l’homme* were abstract rights that Frenchmen gained as *citoyens*, citizens of France. The UDHR proclaimed the existence of universal human rights, but the mechanism for receiving those rights remained citizenship within sovereign nation-states. What, then, should happen when two peoples claim the same land for their nation-states?<sup>22</sup>

This was the predicament vis-à-vis Israel and Palestine. A violent conflict after World War I between Jews and Arabs in British-Mandatory Palestine led to a UN decision to partition the territory into two states, one Jewish and one Arab. War in 1948 had produced a Jewish state, Israel, but no Arab State of Palestine – as Egypt took Gaza, Jordan the West Bank and East Jerusalem, and Israel the other land allocated for Palestine under the UN partition plan. During the 1967 war, Israel conquered Egyptian and Jordanian-controlled territories, bringing millions of additional Palestinians living there under the rule of military occupation without citizenship. War in 1973 between Israel and its Arab neighbours did not alter the borders or the rightless status of Palestinians in Gaza and the West Bank.

Behind these plain facts lay radically divergent interpretations of their causes and solutions. In an era of decolonization, Zionism’s entanglements with European colonialism seemed obvious and objectionable to many human rights activists. But such claims appeared incorrect and slanderous in the eyes of many Jews and Israelis, given the Jewish connections to their ancient homeland. While many parts of the Jewish world regarded the Israeli-Palestinian conflict as an unfortunate consequence of Arab intransigence and Soviet interference, which endangered a small Jewish state and empowered terrorist threats, Palestinians generally viewed the situation as an unending process of displacement and rightlessness engineered by a powerful, Western-backed militarist Zionist regime. In the late 1960s and early 1970s, Arab, African, and Communist states began using the United Nations as a forum to challenge Israel’s human rights record. The same period saw a steady rise in rhetoric equating Zionism with racism akin to both Nazism and South African apartheid. In the late 1960s, the Soviets led a campaign to expel all Jewish human rights organizations from the United Nations on grounds that they were merely instruments of the worldwide Zionist movement and the Israeli state. Even the issue of antisemitism in the Soviet Union

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20. Cassin, “Conscience Juive,” 11.

21. The proceedings of the conference were partially published as David Sidorsky, Sidney Liskofsky, and Jerome J. Shestack, eds., *Essays on Human Rights: Contemporary Issues and Jewish Perspectives* (Philadelphia: Jewish Publication Society of America, 1979).

22. Eric Weitz, *A World Divided: The Global Struggle for Human Rights in the Age of Nation-States* (Princeton: Princeton University Press, 2019). See also James Loeffler, “The Nationalism of Human Rights,” *The New Rambler Review*, March 25, 2021, <https://newramblerreview.com/book-reviews/history/the-nationalism-of-human-rights>.



and the Muslim and Arab worlds was adjudicated along partisan lines involving Zionist and anti-Zionist alignments.

All these developments pointed to the fundamental way in which the Israeli-Palestinian conflict had become the defining context for all Jewish issues in the realm of international human rights. Cassin himself, despite his image as a staunch French Republican and universalist, had increasingly waded into this controversy after 1967. At the UN, he publicly defended Israel's position on the conflict and downplayed Palestinian human rights claims, including national self-determination, comparing Palestinian terrorist attacks to the Holocaust.<sup>23</sup> Less than a year after winning the Nobel Peace Prize, he denounced the UN Commission on Human Rights that he had effectively created.<sup>24</sup>

A clear reminder of the dynamics of this controversy arrived in the weeks before the conference. In early April, three members of the Popular Front for the Liberation of Palestine, a splinter group from the Fatah-led Palestinian Liberation Organization, crossed the border from Lebanon into Israel. Entering the town of Kiryat Shmona, they killed eighteen Israeli civilians, eight of them children, before blowing themselves up as Israeli forces closed in on them. Israel immediately responded with a cross-border raid, attacking six villages, killing one woman and one little girl, arresting thirteen Palestinians, and destroying thirty-one houses. At the UN Security Council, Israeli Ambassador Yosef Tekoah called the terror attack a gross violation of Jews' human rights and, quoting Rene Cassin, a "tragic reminder that Israel's struggle remains the struggle for the right of Jewish men, women and children to life and for the right of the people of Israel to exist in freedom and equality with all nations."<sup>25</sup> Arab diplomats insisted that the root cause was, in the words of Syrian Ambassador Haissam Kelani, the Israeli violation of "the fundamental principles of international law and human rights – rights proclaimed in the Charter and in the Universal Declaration of Human Rights."<sup>26</sup> The Saudi representative, Jamil Baroody, boasted that he had helped create the UDHR in Paris in 1948. Now, Zionism had perverted its meaning. Baroody insisted that Zionism was not Judaism, and anti-Zionism was not antisemitism. Judaism is "a noble religion," he told the Security Council, adding, "We have nothing against the Jews." But he then proceeded to chastise Judaism for its inherent "racialism." He mocked the Jewish dietary laws and suggested Jewish rabbis and scientists should kosher-ize Judaism by abandoning Zionism.<sup>27</sup> The Soviet ambassador, Jacob Malik, admonished Israelis for their "barbarity, cruelty, Hitlerism and fascism in the Zionist version." They should replace the Ten

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23. "Arab warfare by terror is a loathsome, criminal policy," he declared in a 1974 UN General Assembly meeting, adding, "It is inspired by unmitigated Nazi-like hatred toward the remnants of a people victimized by the Nazis in history's most horrifying genocide." UNGA Official Records, Twenty-ninth session, A/PV.2267 (Oct. 14, 1974), 667.

24. "Human Rights Commission Is No Tribunal, Says Cassin," *The Australian Jewish Times*, March 20, 1969, 10. The complex interrelationship between Cassin's Zionism and his human rights universalism has been generally underplayed by his top biographers, who generally note the tension without ascribing a deeper meaning to it. "It would be absurd to fault Cassin for failing to respond to the unfolding human rights tragedy in Palestine and Israel at the end of his life," write Cassin's biographers Jay Winter and Antoine Prost, even as they note the glaring inconsistency in his treatment of Palestinian claims to the right to self-determination in what was the prime era of decolonization. Winter and Prost, *René Cassin*, 338. See also Israël, *René Cassin*, 8–11; Marc Agi, *Fantassin des droits de l'homme* (Paris: Plon, 1979), 271–279; and Kurz, *Jewish Internationalism*, 175–176. For very important engagements with these questions, see Moria Paz, "A Most Inglorious Right: René Cassin, Freedom of Movement, Jews, and Palestinians," and Nathaniel Berman, "There's No Place Like Home: Domicile, René Cassin, and the Aporias of Modern International Law," in *The Law of Strangers: Jewish Lawyers and International Law in the Twentieth Century*, ed. James Loeffler and Moria Paz (Cambridge: Cambridge University Press, 2019), 177–218.

25. UNSC Official Records, Twenty-ninth year, S/PV.1766 (April 15, 1974), 15.

26. UNSC Official Records, Twenty-ninth year, S/PV.1766 (April 15, 1974), 8.

27. UNSC Official Records, Twenty-ninth year, S/PV.1767 (April 16, 1974), 12–14.

Commandments with a new tablet bearing only one line, “Get out of the occupied Arab territories.”<sup>28</sup> These remarks reflected the crystallization of the image of Zionism as a species of religious racism, a charge that would soon become official. The Israeli ambassador walked out in protest after the Security Council passed a resolution condemning the Israeli reprisal raid but not the Palestinian attack.

In the estimation of those gathered in Montreal, the now-familiar sequence of events at the United Nations was proof positive that the human rights movement had lost its way. We have entered a period of crisis and despair, noted Professor Louis Henkin. Human rights have been turned into a “weapon with which to beat the State of Israel and to attack the Jewish NGOs themselves.”<sup>29</sup> The world’s governments ignored or violated human rights at will, lamented Rita Hauser, and “the dream of protection for Jews, so long the victims of abuse, by universal schemes seems ill-fated.”<sup>30</sup> Over the past few centuries, claimed Israeli historian Jacob Talmon, it was the Jewish “fate to serve as a testimony, as a living witness, a touchstone, a whipping block and symbol all in one” in the battle for human rights.<sup>31</sup> Jews had become the barometer of the crisis in the world of human rights, and Israel had become the Jew of the nations.

A Jewish-centered crisis required a Jewish answer for the world. Montreal was intended to provide one. For Cassin, the path forward was clear. Human rights needed to reject politics and return to their origins in religion, beginning with Judaism. There was only one problem. The assembled experts disagreed with him. In the words of Henkin, whose devotion to human rights law was matched only by his Orthodox piety:

Human rights as we know them today do not exist as concepts [...] in the Bible or even in Rabbinic Judaism [...] Judaism knows not rights but duties, and at bottom all duties are to God [...] The [M]odern human rights [principles of ...] popular sovereignty and individual freedom and autonomy have no counterpart in ancient Judaism.<sup>32</sup>

Henkin’s assessment was shared by Oxford rabbinicist David Daube, Israeli Geniza expert Shlomo Goitein, and American biblical scholar Herbert Brichto, who reported that no term for “human rights” existed in biblical Hebrew.<sup>33</sup> Even Justice Cohn, who was keen to find parallels between modern human rights ideas and premodern Judaism and would later devote himself to defending that link, conceded the gap.<sup>34</sup> One scholar, Rabbi Simon Greenberg of the Jewish Theological Seminary of America, went so far as to suggest that for all of its rich doctrines of justice, Judaism as a religion simply fell short in terms of the modern values of liberty and equality.<sup>35</sup>

None of the assembled experts in Montreal denied the value of the Jewish commitment to human rights principles. Many had spent decades, like Cassin, labouring to devise international human rights treaties. Yet they did so without a clear theological basis for their work. Their activism was born out of

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28. UNSC Official Records, Twenty-ninth year, S/PV.1767 (April 16, 1974), 6.

29. Louis Henkin, “Reappraisal and Readjustment,” in *McGill Colloquium on Judaism and Human Rights: Montreal, Canada, 21–23 April 1974* (Montreal: Jacob Blaustein Institute for the Advancement of Human Rights; Canadian Jewish Congress; Consultative Council of Jewish Organizations; International Institute for Human Rights; McGill University, 1974), 1, 21.

30. Rita Hauser, “International Human Rights: The Dream and the Deceptions,” in *McGill Colloquium*, 19.

31. Sidorsky, “Introduction,” in *Essays on Human Rights*, xxxi.

32. Louis Henkin, “Judaism and Human Rights,” *Judaism* vol. 25, no. 4 (1976): 435–446.

33. David Daube, “Human Rights: The Rabbis and Philo,” in *McGill Colloquium*, 1; and S. D. Goitein, “Human Rights in the Middle Ages,” in *McGill Colloquium*, 15.

34. Haim Cohn, “Equalities and Inequalities in Jewish Law,” in *McGill Colloquium*, 1.

35. Sidorsky, “Introduction,” 30. For a full presentation of Greenberg’s views, see Simon Greenberg, *The Ethical in the Jewish and American Heritage* (New York: JTSA, 1977).



minority experience and Jewish politics rather than a fidelity to rabbinic law or scriptural dogma.<sup>36</sup> All these men gamely identified parallels and resonances within premodern Judaism that accorded with modern human rights principles. With both Judaism and human rights under attack, such an apologetic move made sense. The crisis demanded as much. It also required an official declaration about Judaism and human rights.<sup>37</sup>

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The Montreal Declaration begins by presenting a Jewish religious genealogy for human rights:

Human rights are an integral part of the faith and tradition of Judaism. The beliefs that man was created in the divine image, that the human family is one, and that every person is obliged to deal justly with every other person are basic sources of the Jewish commitment to human rights.

The text goes on to celebrate the many but unnamed “contributions Judaism and the Jewish experience have made to human rights.”<sup>38</sup> The capsule origin-story focuses on individual dignity, unified humanity, and interpersonal ethics as Judaic meta-principles. After this opening, the authors endorse the Universal Declaration, affirm “the interdependence of human rights” (civil and political with economic, social and cultural), commend the goal of a global “war against poverty,” with development aid to “Africa, Asia and Latin America,” laud “progress in human rights law,” in terms of treaty ratification, and affirm the goal of eliminating racism in the “Decade of Action to Combat Racism and Racial Discrimination.” Having professed their faith in policy terms, they then offer a diagnosis of the problems hampering the realization of universal human rights: double standards. “Human rights laws [...] must be applied impartially, with a single standard for all [...] They should never be exploited for the extraneous political purposes.” There must be action against antisemitism and the “vicious libels about Jews and Judaism [...] in] certain Arab States and the Soviet Union.” They single out the USSR and Syria for discriminating against Jews and restricting their right to leave. “Jewish minorities” must also be allowed the right “to preserve” their “unique cultural heritage.” The text closes with a pledge to remain “advocates and activists for human rights,” concluding: “To labour for the human rights of all peoples has been an integral part of commitment to Judaism throughout our long past. We shall remain faithful to it in the future.”<sup>39</sup>

Beyond the invocation of a Jewish human rights tradition with which the Declaration opens and closes, what is most striking about the text is its two glaring omissions. First, the text completely ignores Jewish law, the core structure of rabbinic Judaism. The legal language that suffuses the theology and lived reality of Jewish religion is left out of a document on Judaism. Nor does the text mention God as the basis for morality. Both the law and the lawgiver are absent from the picture of Jewish human rights.<sup>40</sup>

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36. On this point, see, generally, Loeffler, *Rooted Cosmopolitans*, and, more specifically, Loeffler, “Religions.”

37. Similarly, Professor Milton Konvitz, who attended the conference, had in 1972 published his own volume, inspired by a year spent living in Jerusalem: Milton Konvitz, ed., *Judaism and Human Rights* (New York: W.W. Norton & Company, 1972). Another attendee, Louis Henkin, published his seminal text in 1976: “Judaism and Human Rights.” On the latter’s text, see Samuel Moyn, “Louis Henkin, Human Rights, and American Jewish Constitutional Patriotism,” in Loeffler and Paz, *Law of Strangers*, 93–117.

38. “Montreal Declaration on Judaism and Human Rights, 1974,” in *Israel Yearbook on Human Rights*, ed. Yoram Dinstein, vol. 4 (Tel Aviv: Tel Aviv University, 1974), 436.

39. “Montreal Declaration,” 437–439.

40. One is reminded of Robert Cover’s argument that narrative supplies the normative force behind law: “In a situation in which there is no centralized power and little in the way of coercive violence, it is critical that the mythic center of

The other striking omission is Zionism. The text speaks in detail about antisemitism in Communist Europe and the Middle East.<sup>41</sup> Yet it does not name the central feature of this rhetoric: antisemitism couched as anti-Zionism. Similarly, Israel and Palestine go entirely unmentioned. Faced with a global crisis centred on Zionism, the drafters chose to avoid the topic altogether in the document.<sup>42</sup> The omission suggests that the way to solve the crisis of Jewish human rights is simply to avoid discussing Israel or Jewish politics in any way, shape, or form.

The result is a curious text. Religion is referenced, but human rights appear to lack a divine foundation. Political antisemitism is cited, but without any acknowledgement of the political form, it assumes. Zionism is implicitly defended, without being explicitly mentioned. Perhaps because of these features, the Montreal Declaration quickly vanished from the public stage. An important book gathered some of the papers presented, but the text itself was rarely, if ever, cited in the decades after its promulgation. When the World Jewish Congress tried to organize a follow-up conference two years later devoted to “the Jewish contribution to the development of human rights,” some participants balked. “It does not matter what the record shows about the universalistic, human elements in Judaism as a religion, or what individual Jews or Jewish organizations have done, historically, on behalf of human rights,” warned Cornell University political scientist Milton Konvitz. “The Arab quarrel is not with Jewish history or with the Jewish religion, but with the philosophy of Jewish secular nationalism, which is largely a Twentieth Century phenomenon.” A tradition born of contemporary crisis could not resolve that crisis by returning to an imagined religious past.<sup>43</sup>

Yet, while Montreal did not reset the global discourse on Judaism and human rights, it did establish the idea of a Jewish religious human rights tradition. From then on, virtually every Jewish discourse on human rights would cite biblical chapters and verses to lend Jewish activism an ancient, apolitical pedigree. Beginning in the 1980s, Israeli groups, such as Betzelem and Rabbis for Human Rights, sourced their names and their roots in liturgical imagery. Other rabbis followed suit by hunting in the annals of Jewish law for a more comprehensive and specific human rights ethic. A whole genre of scholarship now seeks to understand how Judaism and human rights coexist or combine.<sup>44</sup>

This religionization of human rights has provided contemporary Jews with a compelling symbolic language of spiritual justice. It has also helped to pluralize a universalist movement that retained the heavy

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the Law reinforce the bonds of solidarity. Common, mutual, reciprocal obligation is necessary. The myth of divine commandment creates that web.” Robert Cover, “Obligation: A Jewish Jurisprudence of the Social Order,” *Journal of Law and Religion* vol. 5, no.1 (1987): 68.

41. “Montreal Declaration,” 438.

42. In the face of attacks on Zionism, Brandeis University historian Ben Halpern argued, it made sense to tell the world that Zionism was no more and no less than a case of “self-determination as a human right.” The recognition of that right would come not through moral suasion but in the realm of “power relationships” and geopolitics. But Halpern’s voice failed to sway his colleagues. Ben Halpern, “Jewish Nationalism: Self-Determination as a Human Right,” in *Essays on Human Rights*, 309–335.

43. Letter from Milton Konvitz to Susan Gittleson, May 14, 1976, series 2.1, box 7, folder 10, Milton Konvitz Papers, Kheel Center, Cornell University, Ithaca, NY.

44. For samples of this literature, see Michael Broyde and John Witte Jr., ed., *Human Rights in Judaism: Cultural, Religious, and Political Perspectives* (New York: Jason Aronson Publishers, 1998); Michael J. Broyde and Shlomo C. Pill, “Human Rights in Judaism,” CSLR Research Paper 7.2022-AFF (March 8, 2022): 1–44. Available at SSRN: <https://ssrn.com/abstract=4084883> or <http://dx.doi.org/10.2139/ssrn.4084883>; Asher Maoz, “Can Judaism Serve as a Source of Human Rights,” *Tel Aviv University Law Faculty Papers* vol. 7 (2005): 677. H. H. Cohn, *Human Rights in Jewish Law* (New York: KTAV, 1984); Dagan, Lifshitz, and Stern, *Religion*. For a sophisticated interrogation of the philosophical and rhetorical uses of rights-rhetoric for Jewish ethical discourse, see Crane, “Why Rights?”

imprint of Christianity even as it proclaimed its secularism. Yet the Jewish human rights tradition continues to be haunted by the political crisis that sparked its emergence and was shaped by those origins even as the crisis persists. By way of explanation, let us return to that verse from Deuteronomy.

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In January 1988, at the beginning of the First Intifada, the Israeli Jewish writer Yizhar Smilansky penned a famous essay, “The Secret of Jewish Existence.” As Palestinian civilians in the West Bank and Gaza rose up in violent protest against military occupation, the Israeli military responded with harsh repressive measures leading to allegations of systematic human rights violations. For the first time, Jews in Israel and around the world began to grapple with the reality of military rule over another people. It was no longer possible to speak of Jewish human rights without mentioning the Israeli-Palestinian conflict. In Smilansky’s telling, the situation exposed the fundamental dilemma that had been hiding in plain sight in Jewish history since 1948:

The argument today is not about the Occupied Territories, even though it is about Territories; and it is not about security, even though it is about security; and not about peace, even though it is about peace. What is the argument about? The fundamental argument of today is about the Jew. Whether there are things in the world that the Jew is forbidden to do [...] because he is a Jew.

“Jew” was not “an empty word,” he continued. To be a Jew imposed a moral burden, which ancient texts echoed through with demands on the current reality of Jewish rule over the Palestinian people. “Here, on this land,” he wrote, “the test of the Jews is the morality of self-restraint [...] Not to inherit what is not one’s own, not to ignore the tears of the oppressed [...] not to expel one’s neighbors.” “Justice, Justice, you shall pursue,” he noted, means that in the “struggle for existence—there are things that the Jew is forbidden to do.” This ethic of collective “self-restraint” even whilst struggling “to survive, to not be destroyed,” forms “the secret of Jewish existence.”<sup>45</sup>

Smilansky’s words inspired Israeli rabbi Arik Aschermann, one of the first leaders of *Shomrei Mishpat* (Guardians of Justice), later known as Rabbis for Human Rights, an organization founded during the First Intifada in order to “give voice to the Jewish tradition of human rights.”<sup>46</sup> “For years I searched for the ultimate Jewish text displaying the connection between justice and universal human rights,” Aschermann wrote, acknowledging thereby that the Jewish tradition had to be invented. For Aschermann and other progressive Jewish activists of the 1980s and after, Jewish human rights began with an acknowledgment that Jewish people hold sovereign power over stateless Palestinians. Where once the McGill Declaration had pushed Zionism out of the frame of Jewish human rights, it now needed to be explicitly confronted.<sup>47</sup> There could be no Jewish human rights anywhere without a stance on the Israeli-

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45. Yizhar Smilansky, “The Secret of Jewish Existence” [Heb.], *Davar*, Jan. 29, 1988.

46. Quoted in Atalia Omer, *When Peace Is Not Enough: How the Israeli Peace Camp Thinks About Religion, Nationalism, and Justice* (Chicago: University of Chicago Press, 2013), 145. For Aschermann’s discussion of Smilansky, see Arik Aschermann, “Does Judaism Teach Universal Human Rights?” in *Abraham’s Children: Liberty and Tolerance in an Age of Religious Conflict*, ed. Kelly James Clark (New Haven: Yale University Press, 2012), 93.

47. Arik Aschermann, “Jewish Tradition and Human Rights,” in *Peacemakers in Israel-Palestine: Dialogues for a Just Peace*, ed. Robert Hostetter (New York: Taylor & Francis Group, 2022), 113.

Palestinian conflict.<sup>48</sup> This stance earned Aschermann and other progressive Jewish religious human rights activists heaping scorn from other Jews who denounced them as political traitors who placed universalism before Jewish nationhood. Yet Jewish religious progressives frame their commitments as expressions of particularism. In 2017, Aschermann launched a new organization, *Torat Tzedek* (The Torah of Justice), to pursue “universal human rights as a Jewish religious obligation, and to present the foundation for this obligation in Jewish sources.”<sup>49</sup> Though frequently attacked by rivals as an anti-Zionist, Aschermann continues to stress his commitment to “our highest Jewish and Zionist values.”<sup>50</sup> The Jewish pursuit of human rights, in other words, remains grounded in the dilemma of Israel and Palestine.<sup>51</sup>

That Zionism proved inescapable did not mean that it conditioned only one vision of Jewish human rights. In 2019, the Israeli conservative politician Yoaz Hendel introduced a bill to the Israeli parliament to allow Israeli victims of terror access to government intelligence information, in order to sue Palestinians convicted under Israeli law of terrorist crimes for monetary damages. In his speech, he presented this demand as an elementary form of individual *and* collective justice: “We will not stop fighting for the national resilience of the State of Israel. Justice, Justice you shall pursue!”<sup>52</sup>

Hendel’s citation of the verse from Deuteronomy was an obvious rhetorical flourish by a crafty politician. Yet the verse echoed his larger philosophy of what he termed “Zionist human rights.” Back in 2013, Hendel launched *Blue and White Human Rights* to rescue human rights from both an Israeli nationalist Right that “neglected the principles of freedom and human rights,” and a Left that had “abandoned the national foundation.” His organization’s goal was to articulate an authentically Zionist

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48. Rina Levanon, “The Double Face of Inheriting the Land – Thoughts on Parashat “Shoftim,”” August 16, 2023, <https://docs.google.com/document/d/1w8LJo7RGaQLOweS5SGfT33opFqHsS3-QIxOID7Do3jQ/edit>. On Rabbis for Human Rights, see Cristiana Calabrese, “In God’s Name: Jewish Religious and Traditional Peace and Human Rights Movements in Israel and in the Occupied Territories,” *Quest. Issues in Contemporary Jewish History* vol. 5 (2013): 101–123, [10.48248/issn.2037-741X/748](https://doi.org/10.48248/issn.2037-741X/748). See also Bettina Prato, “Prophetic Justice in a Home Haunted by Strangers: Transgressive Solidarity and Trauma in the Work of an Israeli Rabbis’ Group,” in *Political Theologies: Public Religions in a Post-Secular World*, ed. Hent De Vries and Lawrence Sullivan (New York: Fordham University Press, 2006), 557–585; and Noam Zohar, *Life, Liberty and Equality in the Jewish Tradition* [Heb.] (Jerusalem: Rabbis for Human Rights, 2006).

49. “About Us: Our Director,” *Torat Tzedek* website, 2023, <https://www.torat-tzedek.org/about>.

50. Arik Aschermann, “Pursue Justice Whether You Are Praised, or Vilified,” blog post, *The Times of Israel*, Sept. 6, 2019, <https://blogs.timesofisrael.com/pursue-justice-whether-you-are-praised-or-vilified/>. Atalia Omer argues that Rabbis for Human Rights and other similar organizations do not “question the basic premises of Jewish nationalism or the centrality of the Zionist experiment vis-à-vis Judaism.” Omer, *When Peace*, 144. From the political Right, conservative Jewish activist Jonathan Neumann offers a critique of Jewish progressive social justice activism as deracinated “Marxism.” Jonathan Neumann, *To Heal the World? How the Jewish Left Corrupts Judaism and Endangers Israel* (London: All Points Books, 2018). See also Shaul Magid, “Social Justice and the Future of Judaism,” *Tablet*, June 13, 2018, <https://www.tabletmag.com/sections/arts-letters/articles/social-justice-and-the-future-of-judaism>.

51. A similar ethos defines the most important North American Jewish human rights organization, *T’ruah*: The Rabbinic Call for Human Rights, founded in 2002 as Rabbis for Human Rights-North America, which in 2013 framed its commitment as “working equally in North America and in Israel and the occupied Palestinian territories.” Its sophisticated model of nationhood and human rights is encapsulated in its logo: “The purple of our logo combines the blue and white of the Israeli flag; the red, white, and blue of the American flag; and the red and white of the Canadian flag. We are Americans and Canadians with deep connections to Israel, and a commitment to making all three of the countries we love the most just, peaceful, and righteous places possible.” “About T’ruah,” *T’ruah* website, <https://truah.org/about/>.

52. See video posted on Hendel’s Facebook page (Nov. 20, 2019): <https://www.facebook.com/YoazHendelpage/videos/527282231337698/?d=n&sfns=mo>.

human rights ethic against the rest of the movement whose moral pieties conceal “their true interest of delegitimizing Israel and [... making] a mockery of human rights”:

Blue and White Human Rights was created as a Zionist ideal, to enable individuals to support Palestinian rights and dignity and strengthen Israel as a just and worthy society. Blue & White believes that the security requirements of the State and its citizens are a priority, and that they can be safeguarded while observing the human rights of all who come under Israeli rule.<sup>53</sup>

Like his left-wing counterparts, Hendel professed a commitment to the very “same slogans you hear from human rights organizations,” and the Jewish ideal of “everyone created in the image of God.”<sup>54</sup> Yet the deeper valence of his human rights vision reveals a striking resonance with the full verse from Deuteronomy:

Nationalism preserves freedom, and thus without it all the inhabitants [of the land] between the Jordan River and the Mediterranean Sea would be condemned to be as it were subjects of an Arab dictatorship. Without Zionism as a national movement, the Land of Israel would today become a backward place in which people live deprived of freedom of speech, freedom of expression and freedom of religion, like the countries around it.<sup>55</sup>

In order to secure justice for all the inhabitants of the Land of Israel, Blue and White Human Rights argues, Israel must annex the entire “Judea and Samaria,” the biblical names for the West Bank, as part of the Jewish homeland.<sup>56</sup> In this reading, Jewish human rights begin with possession of the land, and the “initiation of Israeli sovereignty” requires ethical responsibility towards conquered people.<sup>57</sup> “We are a Zionist organization,” they write, “that sees in human rights a moral obligation to everyone who sees themselves sovereign in the land.” They insist that Israeli Jews can offer Palestinians a truncated set of human rights without full equality. They seek to de-politicize human rights, in other words, by ending Palestinian claims to national self-determination.<sup>58</sup>

Both the progressive and conservative versions of the tradition tie Jewish human rights to Zionism. Both posit a crisis in response to which Jews must retrieve an ideal of ethical nationhood from the storehouse of Jewish tradition. Both insist that Jewish human rights principles, while applicable to politics,

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53. Yoaz Hendel, “Introduction” [Heb.], *Liberal Nationalism: Anthology* (Jerusalem: Institute for Zionist Strategies, 2019), 4; “Blue & White Human Rights,” The Institute for Zionist Strategies website, <https://www.izs.org.il/blue-and-white-rights/>. See, also, Yoaz Hendel, *Conversations on Israeli Hope* [Heb.] (Tel Aviv: Yedioth Ahronoth, 2018), 126–127.

54. “Yoaz Hendel: The Battle of Human Rights in Israel – Part 1,” Shalom YouTube channel, Aug. 19, 2014, <https://www.youtube.com/watch?reload=9&app=desktop&v=TY5Af6fvT9k>. A different line of analysis questions whether the adoption of human rights rhetoric is a tactical maneuver or an ideological appropriation. See Ron Dudai, “Entryism, mimicry and victimhood work: the adoption of human rights discourse by right-wing groups in Israel,” *The International Journal of Human Rights* vol. 22, no. 5 (2017): 1–13; and Nicola Perugini and Neve Gordon, *The Human Right to Dominate* (New York: Oxford University Press, 2015).

55. “Yoaz Hendel: The Battle of Human Rights in Israel – Part 1.”

56. Netanel Simha Nakhshon, *Law Enforcement in Judea and Samaria: Building, Water and Traffic* [Heb.] (Jerusalem: Institute for Zionist Strategies, 2018), 2–4; See also Hendel, *Conversations*, 78–82, 96–98.

57. Nakhshon, *Law Enforcement*, 2–4.

58. Shay Shahaf, “Human Rights without Politics” [Heb.], *Makor Rishon NRG*, Dec. 11, 2013, <https://www.makorrishon.co.il/nrg/online/1/ART2/530/332.html>. See, similarly, the political critique of conservative Israeli politician Dore Gold, “Tikkun Olam, Israel and a Just World Order,” *Jewish Political Studies Review* 25:3/4 (2013): 7.

are themselves apolitical entities. Both place the Israeli occupation at the center of their activism, even as they diverge radically in their diagnoses and prescriptions for justice. Both also represent Israeli phenomena, though they have their corresponding affiliates elsewhere in the Jewish world.<sup>59</sup> A third, very different approach characterizes the liberal Jewish human rights tradition that flourishes today in the diaspora. Let us now return to where we began, with Justice Ruth Bader Ginsburg, and her 2019 acceptance speech of the *Moment Magazine* Human Rights Award, subsequently renamed the Ruth Ginsburg Human Rights Award. In her speech, Justice Ginsburg took the occasion to explain the relationship between Judaism and justice that powered her attachment to the slogan, “Justice, Justice, You Shall Pursue.”<sup>60</sup> Quoting from a speech that she had delivered on and off for the previous twenty years, she described an ancient and eternal Jewish commitment to universal justice woven into the fabric of Jewish belief. “The demand for justice, for peace, for enlightenment, runs through the entirety of the Jewish history and Jewish tradition.”<sup>61</sup>

After that stirring yet generic remark, however, Ginsburg jumped to the twentieth century, to name her two role models in the chain of Jewish women who embodied that tradition. First, she cited Emma Lazarus, the nineteenth-century American Jewish poet whose words adorn the Statue of Liberty, noting, “Emma Lazarus was a Zionist before that word came into vogue. Her love for humankind and especially for her people was evident in all her writings.” Next, she turned to her second inspiration: Henrietta Szold, the American-born founder of Hadassah, the international Zionist women’s organization, of which Ginsburg was a proud, lifelong member. Szold, she reminded her audience, “was a Zionist, even before Theodor Herzl came on the scene.”<sup>62</sup> Why did Ginsburg bring up each woman’s Zionism? The implication was that the political commitment represented the women’s philanthropy and their pride in their people. Perhaps it was also a way to signal her belonging to the Jewish story without invoking the Jewish religion, about which Ginsburg was famously ambivalent and critical on the grounds of gender egalitarianism. Yet what is most striking is that she makes no mention of the Israeli-Palestinian conflict or the precise

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59. I leave aside two other very important phenomena in the roster of Jewish human rights thought, each of which deserves its own study: Jewish anti-Zionism and Religious Zionism. On the former, see Brooke Hotez, *Reinventing Identity: Jewish Dissenting Rhetoric in Support of Palestinian Rights* (Ph.D. Thesis, Department of English, University of Arizona, 2021), 113. For the latter, see Yehuda Brandes, *Judaism and Human Rights: The Dialectic between “Image of God” and “Holy Nation”* [Heb.] (Jerusalem: Israel Democracy Institute, 2013); and Alan Brill, “Yehuda Brandes- Judaism and Human Rights,” blog post, Dec. 11, 2013, <https://kavvanah.blog/2013/12/11/yehuda-brandes-judaism-and-human-rights/>.

60. The same year, Ginsburg won the Berggruen Prize for Philosophy & Culture for her work using “law to advance ethical and philosophical principles of equality and human rights as basic tenets of the USA.” Berggruen Institute, press release, Oct. 23, 2019, <https://berggruen.org/news/annual-berggruen-prize-for-philosophy-culture-awarded-to-u-s-supreme-court-justice-ruth-bader-ginsburg-for-her-work-in-pioneering-gender-equality-and-strengthening-the-rule-of-law>.

61. “Editor-in-Chief Nadine Epstein presents Justice Ruth Bader Ginsburg with one-of-a-kind collar,” *Moment Magazine* YouTube channel, Oct. 8, 2019, <https://www.youtube.com/watch?v=BCt6ZmhhHjQ&list=PL7oVkadwPksjI9JJXaPw9ddhfBQYM-mm0&index=17>. Statement of Ruth Bader Ginsburg to the American Jewish Committee, quoted in “Justice Ginsburg honors heritage of Jewish women,” *The Jewish Star*, July 11, 2018, <https://www.thejewishstar.com/stories/justice-insburg-honors-heritage-of-jewish-women,15775>; Ruth Bader Ginsburg, “Remarks at the Genesis Foundation Lifetime Achievement Award Ceremony Tel Aviv,” July 4, 2018, [https://www.supremecourt.gov/publicinfo/speeches/j.%20ginsburg%20remarks%20genesis%20lifetime%20achievement%20award%20tel%20aviv%20israel%20july%204%202018%20\(3\).pdf](https://www.supremecourt.gov/publicinfo/speeches/j.%20ginsburg%20remarks%20genesis%20lifetime%20achievement%20award%20tel%20aviv%20israel%20july%204%202018%20(3).pdf).

62. Ginsburg wrote a foreword to the definitive biography of Szold, but makes no mention there of the fact, documented within, that Szold advocated Jewish-Arab bi-nationalism and joined the Brit Shalom movement for a single, unified state in Palestine. See Dvora Hachohen, *To Repair a Broken World: The Life of Henrietta Szold, Founder of Hadassah* (Cambridge: Harvard University Press, 2021), ix–x.



relationship between Zionism and human rights. By alluding to Zionism without explaining it, Ginsburg neatly expressed the liberal strain of the Jewish human rights imagination.<sup>63</sup> “Justice, Justice” meant justice for one’s people and for all people – “for humankind and for her people” – in an imaginary braid, without specifying how the human rights crisis in the context of the contemporary Israeli-Palestinian conflict implicates the universalist commitment articulated. This move was consistent with the logic of liberalism. Ginsburg removed the political from the law and imagined a Jewish human rights ethic as an apolitical tradition culminating in both American liberalism and Jewish Zionism, without thinking that these might be in tension with one another.<sup>64</sup> From Cassin’s determination to defend Zionism without mentioning it, Ginsburg’s human rights vision depoliticized Zionism to put it in a non-ideological, harmonious relationship with religion as an example of Jewish ethics. Little wonder, then, that in her final trip to Israel in 2018, she visited the Old City of Jerusalem with former Soviet refusenik and right-wing Israeli politician Natan Sharansky, and praised the Israeli judicial system for its fundamental focus on “human dignity for all.”<sup>65</sup> In presenting her the Genesis Prize during that visit, Justice Aharon Barak hailed her as “an outstanding Jewish jurist, whose pursuit of human rights and justice for all stems from her Jewish values.”<sup>66</sup>

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63. Jenny Singer, “Ruth Bader Ginsburg’s Feminist Role Models Are Two Jewish Women,” *The Forward*, Sept. 19, 2019, <https://forward.com/schmooze/431773/ruth-bader-ginsburgs-feminist-role-models-are-two-jewish-women/>. As Singer noted, the speech was nearly identical to the same one delivered a year before by Ginsburg upon receipt of the Israeli Genesis Lifetime Achievement Award. “Justice Ginsburg honors heritage of Jewish women,” *The Jewish Star*, July 11, 2018, <https://www.thejewishstar.com/stories/justice-insburg-honors-heritage-of-jewish-women,15775>;

Bader Ginsburg, “Remarks at the Genesis Foundation.” The original version of this speech appears to be one delivered in 2022. See Bader Ginsburg, “Remarks for Jewish Council for Public Affairs.” See also “Jane Eisner Interviews Ruth Bader Ginsburg.” In a 2004 version of the speech delivered at the historic Touro Synagogue in Newport, Rhode Island, she spoke explicitly about Louis Brandeis’s vision of Zionism to the effect that imperiled Jews “would have a home in the land of Israel, a place to build a new society, a fair and open one, he hoped, free from the prejudices and economic disparities that marked much of Europe, a state where the prophetic teachings of justice, charity, and lovingkindness could be made real. Jews well established in the United States, he counseled, would have new land.” Bader Ginsburg, “Remarks for Touro Synagogue (Newport, Rhode Island). Celebration of the 350th Anniversary of Jews in America,” Aug. 22, 2004, [https://www.supremecourt.gov/publicinfo/speeches/viewsspeech/sp\\_08-22-04](https://www.supremecourt.gov/publicinfo/speeches/viewsspeech/sp_08-22-04).

64. “The security I feel is shown by the command from Deuteronomy displayed in artworks, in Hebrew letters, on three walls and a table in my chambers. ‘Zedek, Zedek, tirdof’ ‘Justice, Justice shalt thou pursue,’ these art works proclaim; they are ever present reminders of what judges must do ‘that they may thrive.’” Bader Ginsburg, “Remarks for Touro Synagogue.” On Ginsburg’s involvement with Jewish political life, including the American Jewish Congress, see Deborah Kalb, “Jewish Organizations welcome Ginsburg as high court nominee,” *Jewish News of Northern California (Emanu-El, Jewish Community Bulletin)*, June 18, 1993; Deborah Kalb, “Ginsburg invokes Jewish past in Senate committee hearings,” *Jewish News of Northern California (Emanu-El, Jewish Community Bulletin)*, July 23, 1993; Ruth Bader Ginsburg, “Justice Ruth Bader Ginsburg on Passover,” blog post, American Jewish World Service, March 18, 2015, <https://ajws.org/blog/justice-ruth-bader-ginsburg-on-passover/>. On the theme of the complex entanglements of American Jewish liberalism, Israel and Palestine, and law, see Pnina Lahav, “*Zivotofsky v. Kerry*: The Supreme Court of the United States, the Politics of American Jewry and the Biblical Balaam,” *Israel Studies* vol. 21, no. 3 (2016): 1–19.

65. Sana Britavsky and Jill Weber Smith, “What we learned on Justice Ruth Bader Ginsburg’s last visit to Israel,” *The Jerusalem Post*, Oct. 30, 2020, <https://www.jpost.com/opinion/what-we-learned-on-justice-ruth-bader-ginsburgs-last-visit-to-israel-647489>. On Sharansky’s Zionism and human rights, see Arie Dubnov, “Human Rights in the Age of Nation-States: A Critical Engagement with Eric D. Weitz’s *A World Divided*,” *Journal of Genocide Research* vol. 23, no. 1 (2021): 139–145.

66. “Ruth Bader Ginsburg Compares Exclusion of Women in Israel to Discrimination Against African-Americans in U.S.,” *Haaretz*, July 7, 2018. For anti-Zionist critiques of this liberalism, see Hamid Dabashi, “Ruth Bader Ginsburg was no saint,” *Middle East Eye*, Oct. 9, 2020, <https://www.middleeasteye.net/opinion/ruth-bader-ginsburg-was-no-saint>; and Jonathan Ofir, “Accepting Israeli prize in 2018, RBG never mentioned Palestinians,” *Mondoweiss*, Sept. 27, 2020, <https://mondoweiss.net/2020/09/accepting-israeli-prize-in-2018-rbg-never-mentioned-palestinians/>.



Where does this leave us? As these three examples suggest, the Jewish human rights tradition – and the verse in question – remain open to diverse readings. Yet as we have seen, the very notion of a religious tradition emerges from a moment of crisis. Jewish human rights today retain the inexorable link between Zionism and human rights that has bedevilled Israel and the Jewish world since at least 1967, if not before. Even in the liberal case, where an American Jewish jurist sidesteps the Israeli-Palestinian conflict in narrating her Jewish story of justice and human rights, Zion's presence reveals itself. Within Israel, meanwhile, both the anti-occupation Left and the pro-occupation Right highlight the inescapable ties between politics and ethics in the translation of a tradition of liturgical texts into a concrete practice of Jewish self-determination. Whether or not they acknowledge this problem, then, Jewish human rights activists remain captive to it.<sup>67</sup>

How, then, might we escape this captivity? Origins are not destiny. A just resolution of the conflict would transform the meaning of the Jewish human rights tradition. Recognizing the politics operating in the religious imagination is a necessary first step in that direction. Yet historicization and demystification are unsatisfying from the standpoint of normative moral thought. Perhaps, then, we can permit ourselves one glimpse of a possible future by returning to a different portion of the Jewish past, and in doing so re-imagine the Jewish human rights tradition with the aid of those Jewish thinkers who stand in between the biblical text and the modern day: the rabbis of the Talmud.

In *Tractate Sanhedrin* 32B, the rabbis discuss the fact that the biblical verse in Deuteronomy repeats the word “justice.” One of the core principles of rabbinic interpretation is that words are not wasted in the Torah. A double occurrence must mean something. Why, then, they ask, does the text read “justice, justice”? They answer:

It has been taught: *Justice, justice, you shall pursue*. The first mention of justice refers to a decision based on strict law. The second refers to a compromise. How so? It is like when two boats sailing on a river meet. If both attempt to pass simultaneously, both will sink, whereas, if one makes way for the other, both can pass without mishap. And similarly, where there are two camels that encounter each other while ascending the mountain of Beit Horon, where there is a narrow steep path, if both attempt to ascend at the same time, both will fall. If they ascend one after the other, both ascend.

There are, in effect, two kinds of justice here. One might understand this as religion, Judaism or otherwise, versus human rights. Or two nations locked in conflict. Some compromise is necessary. But, how, then, to reach that compromise? The rabbis continue, returning to the boat analogy:

How does one decide which boat should go first? If there is one boat that is laden and one boat that is not laden, the needs of the one that is not laden should be overridden due to the needs of the one that is laden.

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67. James Loeffler, *Prisoners of Zion: American Jews, Human Rights, and the Israeli-Palestinian Conflict*, University of Michigan Belin Lectures in American Jewish Affairs 29 (Ann Arbor: Michigan Publishing, 2020), <https://hdl.handle.net/2027/spo.13469761.0029.001>.

The weaker party should take precedence, the rabbis suggest, or risk true peril. Yet in an emergency, what if they cannot agree on whose burden and risk is greater? Then, the rabbis conclude, pragmatism should make the determination:

If there is one boat that is close to its destination and one boat that is not close to its destination, the needs of the one that is close should be overridden due to the needs of the one that is not close.<sup>68</sup>

In this reading, both parties need to reach the shore of security, which we might interpret as territorial sovereignty and self-determination. It is possible, perhaps, to read this as the starting point for a new ethic of Jewish human rights, one in which Zionism, having achieved its goal of Jewish statehood, needs then to yield to the Palestinian claim to national self-determination, in order that both parties may survive and uphold the principle of justice. Or it might be read as a call for the more powerful to restrain themselves for the sake of both parties' future existence. In either case, the origins of the crisis matter less than the immediate danger. The competing claims need to be pragmatically managed so that both can reach their destination without drowning each other in the process. A lane of coexistence must be found. Two just demands for justice conflict, without the one invalidating the other. That is a lesson which we profoundly need in the world today and which Jewish tradition asks us to consider and uphold for the sake of the world.

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68. I deliberately leave out here the final scenario raised by the rabbis, when there is a total impasse: "If both of them were close to their destinations, or both of them were far from their destinations, impose a compromise between them to decide which goes first, and the owners of the boats pay a fee to one other – i.e., the owners of the first boat compensate the owner of the boat that waits, for any loss incurred" (*Sanhedrin* 32b). In that scenario, it remains unclear *who* coerces the parties to compromise, which of course also echoes the dilemma of the Israeli-Palestinian conflict.

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