

# Jewish Ideas Weekly

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## “Touch not Mine Anointed Ones”

By Moshe Sokolow

Since the news of the Newtown massacre and its heartbreaking aftermath, an extraordinary talmudic passage has been reverberating in my mind. In answer to the speculative theological question of what occupies God all day, the Talmud, as interpreted by Rashi, declares that “there are twelve hours in a day;” and “during the last set of hours, God sits and teaches Torah to children who died untimely deaths.” (Avodah Zarah 3b)

Why should this be?

The premature death of a child strikes a primal chord; the murder of a cohort of children produces a sense of horror mixed with incredulity. But the wanton massacre of children within the supposedly safe haven of a school—along with the slaying of their teachers and administrators—poses a particularly poignant existential problem, because the Talmud also maintains that the entire world is sustained only by children reciting their lessons. (Shabbat 119b) The blotting out of even the possibility of such life-sustaining activity creates a cosmic lacuna, a metaphysical black hole that threatens to swallow all of existence.

So, God, in His sublime grace, prevents that potential catastrophe by providing a celestial form of continuing education to children who should be back on earth in school.

This teaching reflects not Jewish theology alone but Jewish anthropology, too. Universal education of children, initiated in the first century C.E. by Rabbi Yehoshua ben Gamla, quickly became so unflinching characteristic of Jewish society that even

children who had died simply could not be conceived of as completely relinquishing their studies. Since no human agency could instruct them, their tuition was ascribed to God.

Teachers and their pupils occupy a singular place in talmudic and midrashic thought. “What is the meaning,” the Talmud asks, “of ‘Touch not Mine anointed ones, and do My prophets no harm?’ [1 Chronicles 16:22] My anointed ones,” comes the answer, “are school-children, and My prophets are teachers.” (Shabbat 119b) By analogy to fruits borne by a new tree—which must remain untouched for three years, tithed in the fourth, and consumed only beginning in the fifth (Lev. 19:23-25)—the Midrash Tanhuma suggests that children, too, should be kept sacrosanct throughout their first three years and dedicated to God in the fourth. Only in the fifth year should they begin their formal education; only then are they in the condition that enables them to bear fruit. We may presume, therefore, that until the age of five, children were educated at home by their parents. Subsequently, they were enrolled in school and entrusted to the care and ministrations of teachers.

Teachers occupy a particularly pivotal point in talmudic law and lore. In addition to serving *in loco parentis*—in the legal place of parents—they are *in loco dei*: in God’s stead. They provide instruction in His law and are subject, thereby, to the same regulations that He allows to govern Him. For instance (and a striking one at that!), halakhah requires that teachers of Torah serve gratis, because God, similarly, asked for no remuneration when revealing the Law. Indeed,

Torah teachers’ salaries to this day are disbursed in consideration of the time they spend in preparation and the economic sacrifice it entails (*sekhar battalah*), not for providing instruction *per se*. The title traditionally borne by a Torah teacher, *melamed*, also resonates with divine association. The traditional blessing over Torah recitation and study speaks of God as the “*melamed* of Torah to His people, Israel.”

The students murdered in Newtown were not engaged in Torah study *per se*. But their education was just as life-sustaining for them, and the entire world of their parents and families revolved just as much around their lessons and recitations. The murdered educators were not *melamdim* in the classical sense. But they, too, were entrusted with a most precious commodity: the future of their students, to which they devoted themselves, literally, with all their hearts and all their souls.

The Bible brands the angel of death a coward when he robs the cradle: “Death has ascended through our windows and entered our palaces; to cut off children from the streets and young men from the squares.” (Jeremiah 9:20) Rather than entering through an ordinary door, death has climbed furtively through the window. When its prey is a child, death itself feels shame.

May we quickly see the day when these things will cease: “He will swallow up death for ever; and the Lord God will wipe away tears from off all faces.” (Isaiah 25:8)



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## The Chief Rabbi of Canterbury

By Simon Gordon

Last week, after a two-year search, Ephraim Mirvis was announced as the successor to Jonathan Sacks, who is stepping down after 21 years as the Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth. Rabbi Sacks' tenure will end concurrently with that of the most senior clergyman in the Church of England, Rowan Williams, Archbishop of Canterbury. The coincidence of their retirements is apt, since the two men are in many ways alike. Both are admired in Britain and internationally for their intellect, erudition, and knowledge. Both speak the language of Britain's increasingly secular educated elite. And both have struggled to lead their respective institutions.

Moreover, the Chief Rabbi has in some respects eclipsed the Archbishop as the religious voice of the country.

Rowan Williams' decade-long stewardship of the Church of England has not been a happy one. A liberal by temperament, the Archbishop has attempted to appease liberals and conservatives in the Church but satisfied neither. He angered liberals by blocking the appointment of Jeffrey John, a gay priest, as a bishop in 2003 and again in 2010. But he offended conservatives by failing to sanction the Episcopal Church in the United States for ordaining Gene Robinson, also gay, as Bishop of New Hampshire in 2003; the incident led to a formal declaration of schism by several African churches in 2008. After the Episcopalians consecrated another gay priest as a bishop in 2010, Williams did impose sanctions—causing yet another rift in the Anglican Communion. He attempted to heal the divisions through an “Anglican Covenant,” which satisfied no one.

Williams' efforts to resolve a decade-long dispute over female bishops have likewise angered both sides. His compromise amendment to a bill to introduce women bishops was defeated in 2010. Subsequently, some 60 clergy and 1,000 parishioners, fearing that Anglican women bishops were inevitable, defected to Catholicism. But last month the General Synod rejected the bill—through the votes of the conservative laity, which outweighed those of the liberal clergy. Thus, Williams leaves the Church little different, but much more embittered.

If the Archbishop can be excused for fail-

ing to unify increasingly divergent Anglican opinions, he must bear some responsibility for the fact that the number of Christians in Britain has fallen by a staggering four million in the past decade: for Williams' interventions in public life have been not religious but political. Rather than decrying the secularism of Britain's Guardianista elite, he has adopted its fashionable causes, attacking the Afghanistan and Iraq wars, bankers involved in the financial crisis, and politicians entangled in Parliament's expenses scandal. He has provoked outrage by backing the establishment of *sharia* courts in the U.K. He has also condemned the current Conservative government for their modest aim of closing the national deficit by 2015 by trimming public spending (which they have, so far, utterly failed to accomplish). After he lambasted the education and health reforms of Prime Minister David Cameron as “radical, long-term policies for which no one voted,” Cameron told Williams, in effect, to mind his own ecclesiastical business.

Thus, though the leader of Britain's established church, the Archbishop has become an unwelcome figure to whom to turn for religious counsel.

Into this breach has stepped the Chief Rabbi. Sacks has been embraced by not only the current government but the previous Labour government, which made him Lord Sacks. Labour rivals Tony Blair and Gordon Brown both favor him: Blair provided a complimentary blurb for Sacks' 2009 *Covenant and Conversation* (Koren Publishers Jerusalem), while Brown introduced Sacks at a speech the Chief Rabbi recently delivered at New York University. Both political parties have embraced Sacks' book *The Home We Build Together* (Continuum) as a road map for turning multi-ethnic Britain away from balkanized multiculturalism and toward a new national identity. The book dovetails with both Cameron's idea of the “Big Society” (dismissed by the Archbishop as “aspirational waffle”), and Labour leader Ed Miliband's newfound shibboleth, “One Nation,” and the two men have been tripping over themselves to say so.

Despite these cozy relationships, Sacks has been outspoken on the dangers of secularism to British culture. After the riots that swept Britain in 2011, Sacks placed the blame squarely on moral decay in the mod-

ern West. This stance gained him still more praise, as the country's only religious leader who was both intellectually powerful and courageous enough to speak his mind.

That the Chief Rabbi has assumed something of the national role of the Archbishop is, in a sense, appropriate, since that is the role the chief rabbinate was set up to emulate. The chief rabbinate was not established by secular authorities, as in France, or even by Anglo-Jewry as a whole, but rather evolved from the rabbinate of London's Ashkenazi Great Synagogue. Consequently, the Chief Rabbi represents only one denomination within Anglo-Jewry, namely the United Synagogue. Professing centrist Orthodoxy,

the United Synagogue not only caters to modern Orthodox Jews but is also the default home for non-observant Jews, and is thus by far the largest denomination. Ever keen to integrate Jews into British society, the hierarchy of the United Synagogue's rabbinate was deliberately modeled on that of the Church of England—to the point that one 19th century chief rabbi, Hermann Adler, referred to him-



self as “the Very Reverend.”

But Sacks' success as a public religious figure has served to compensate for his failures to unite Anglo-Jewry and govern the United Synagogue. Sacks' tenure has been no less fractious than the Archbishop's, as he has faced similar difficulties in trying to appease both progressives and traditionalists. As articulated in his 1993 book *One People?* (Littman Library of Jewish Civilization), Sacks entered office in 1991 with the aim of unifying the Jewish community. But that agenda ran aground in 1996 when Sacks not only refused to attend the funeral of Reform rabbi and Holocaust survivor Hugo Gryn, reportedly a friend of his, but denounced him as a destroyer of the faith in a private letter to the ultra-Orthodox *dayan* Chanoch Padwa (who duly leaked it to the press). Likewise, Sacks championed pluralism in his 2004 book *The Dignity of Difference* (Continuum), ascribing theological truths to religions besides Judaism. But after criticism from several ultra-Orthodox rabbis, including the late Rav Elyashiv, Sacks revised the second edition with an attack on relativism and a curtailment of his position on other faiths' claims to truth.

However, even the unification of Anglo-

Jewry is beyond the Chief Rabbi's remit. He is only responsible for the health of the United Synagogue; yet on his watch, the movement has atrophied. Under his leadership, Jews' College (now the London School of Jewish Studies), the United Synagogue's 150-year-old seminary, closed its ordination programs for rabbis and *hazzanim*. As a result, United Synagogue congregations have had to take rabbis either from abroad or from Chabad, many of whom do not share the background or secular education of their congregants, or their predecessors in the pulpit. Doubtless, this has contributed to the difficulty of finding an appropriate replacement for Sacks. Moreover, the closure of Jews College's *semikhah* program represented a lack of ambition: that a major Orthodox movement balks at the challenge of training its own rabbis is hardly a vote of confidence in its future.

The rest of Anglo-Jewry has not been so stagnant. Its most influential creation of the past 30 years is Limmud, whose annual conference is this week, and whose educational model has been exported worldwide. Several major Orthodox rabbis, including Norman Lamm, Shlomo Riskin, and Adin Steinsaltz, have attended the conference. Sacks used to attend—but, pursuant to in-

structions from the London Beit Din, has not done so since he became Chief Rabbi. Thus, the United Synagogue has allowed Limmud to become the preserve of the non-Orthodox.

But the challenge has not come from the left alone. With nowhere to learn within the United Synagogue, young adults have turned to Aish and the mildly Haredi Jewish Learning Exchange. Even the Sephardi community, whose membership is 20 times less than the United Synagogue's, has been more dynamic, compensating for the closure of Jews' College by opening its own rabbinical program in 2006, with which the United Synagogue has now partnered. Those innovations that have come out of the United Synagogue—several new schools and a somewhat successful youth movement called Tribe—have had little to do with the Chief Rabbi. He has allowed the United Synagogue to be outflanked on the right, on the left, and, almost paradoxically, in the center too.

Unlike many of his predecessors, Sacks has adopted no specifically Jewish task of his own. While Hermann Adler normalized the Jewish presence in England, Joseph Hertz fought against the prevalence of source criticism, and Immanuel Jako-

bovits founded Jewish medical ethics, Sacks has written books and articles with the broad aim of defending religion in general—and occasionally Christianity in particular. But he leaves no legacy within the Jewish community: neither ideology, nor education, nor outreach.

In replacing Rowan Williams with Justin Welby, the Church of England has chosen a relative outsider, a former oil executive who has been a bishop for only a year. As a former businessman, it is hoped that he will be equipped to address the religious and moral challenges of Britain's economic stagnation. By contrast, in picking Ephraim Mirvis, the United Synagogue has chosen an established figure who has served as both Ireland's Chief Rabbi and a congregational rabbi in England. He is widely regarded as a stop-gap figure, a safe pair of hands. But his communal credentials may be precisely what the movement requires. Mirvis' synagogue has recently opened the United Synagogue's only *kollel*, with six full-time fellows who teach within the community; that is a start. Lord Sacks has spoken about Judaism as a religion that begins with the universal but progresses to the particular: perhaps his successor will be the one to put that into practice.

TUESDAY, DECEMBER 25

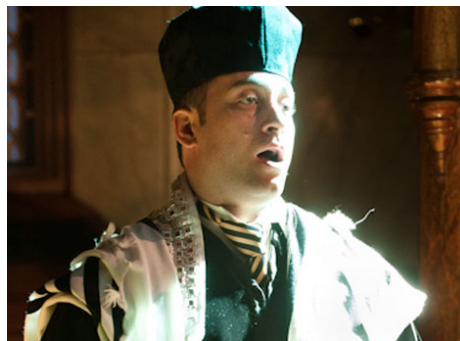
## Not Dead Yet: The Remarkable Renaissance of Cantorial Music

By Allan Nadler

Standing at the foot of the crowded, steep staircase outside the old Eldridge Street shul (now the "Museum at Eldridge Street") on a Sunday afternoon earlier this month, I heard someone call out, "Nu, Professor Nadler?" Looking up, I recognized the familiar grimace of an ancient, ardently secular sage, one of the few such surviving consumers of *Yiddishkeit* in all its iterations, whom I had last seen 20 years before in the grand old Reading Room of the YIVO Institute, then located in the Vanderbilt Mansion on East 86th Street. I responded in strict adherence to the one-upmanship that regulates Yiddish conversation: "Nu, *nu!*" The old man cautiously made his way down one more step, firmly gripping his walker, then

pronounced, "Nu? *Loy almen hazones!*"

*Hazzanut* is no widower. His aphorism was a Yiddish adaptation of the words of comfort issued by the prophet Jeremiah



2500 years ago to the exiles in Babylonia: "*Lo alman Yisrael,*" Israel has not been widowed by God. It was perfect for the occasion: the magnificent cantorial concert we had both just experienced, in which other comforting prophecies of Jeremiah ("If I forget thee, Jerusalem, let my right hand wither . . .") were artfully chanted by Cantor Netanel Hershtik, accompanied by the choir

from his shul, the Hampton Synagogue, along with the superb Amernet String Quartet and the gifted cantorial pianist Alan Mason.

While the aged atheistic, anti-nationalist Bundist inching down the stairs would *never* have walked into a synagogue to *daven*, enjoying some nice *shtikelah hazones*—cantorial pieces—on a Sunday afternoon was another matter, the next best thing to a Yiddish concert on Second Avenue (which is, alas, no longer an option). It did not strike me as odd at all: during my decade as research director at YIVO, I came to know many such wonderfully complex Jews, for whom, despite all their secularist ideological bluster, everything Jewish is precious, even religious "*zionides*" addressed to a God whose existence they deny.

As the great Yiddish poet Jacob Glatstein wrote in the Holocaust's aftermath, "The God of my unbelief is magnificent, and I watch over him." Glatstein subversively used precisely the promise of the 121st Psalm—"Behold, the Guardian of

Israel neither slumbers nor sleeps”—to imagine a very different, post-Holocaust arrangement in which it is Israel that keeps watch over the idea of God, by never forsaking the culture generated by the Jews’ covenant with Him: that is, by never abandoning *Yiddishkeit*.

The concert was sponsored by Pro Musica Hebraica, founded in 2008 by Robyn and Charles Krauthammer to promote the performance of “lost and forgotten” masterpieces of Jewish music. As Charles Krauthammer puts it, “When people hear ‘Jewish music,’ they think of Israeli folk-dancing, of ‘Hava Nagila,’ they think of liturgical music, they think of Kol Nidre; they might think of klezmer, and that’s it.” He might have added that even the liturgical music most Jews know consists of the folksy *faux*-Hasidic tunes of Shlomo Carlebach, ז”ל, or the syrupy tunes of the late Debbie Friedman.

“It turns out,” says Krauthammer, “there’s a great, rich tradition of classical Jewish music people just don’t know about.” Pro Musica has done a wonderful job of remedying this gap with magnificent concerts, mostly at Washington’s Kennedy Center for the Arts, featuring precisely those forms of Jewish music that do not come readily to mind when one thinks of “Jewish music.” The recent Eldridge Street concert added many long-neglected classics of Jewish liturgical music’s early 20th century “Golden Age” to the endangered works that Pro Musica has resurrected.

Krauthammer introduced the concert by saying that Hershtik’s and his repertoire choices were guided by the theme of the Jews’ historic yearning to return to Zion. This was somewhat misleading; only four of the concert’s 12 compositions were what might anachronistically be termed “Zionist.” The longest and most complex single piece—“*Umip’nei Hata’einu*,” made wildly famous by Cantor Moshe Koussevitsky’s recording and recited to perfection by Hershtik—bemoans the exile but piously submits to it as God’s will, hardly a Zionist sentiment: “On account of our sins, we were exiled . . . and we are not able to return up [literally, to make *aliyah*] to be seen and to bow down before Thee in Thy Holy Temple.”

The concert took place as Hanukkah approached, but Krauthammer assured the audience that they would not be hearing

“Dreidel, Dreidel.” Indeed, since during the winter holiday season Jews commonly bemoan the absence of any Jewish equivalent to the magnificent liturgical music of the Christmas Midnight Mass, it was especially good to be reminded of *hazzanut*, our own equally magnificent treasury of classical composition for the synagogue, which for too long has been spurned and scorned by Jews of all denominations. It was comforting and inspiring to be moved not by Handel’s “Messiah,” Bach’s “Weihnachts Oratorio,” or Schubert’s “Ave Maria,” gorgeous as they are, but by selections from our own classical liturgy, which have been lost or forgotten not as the consequence of pogroms or the Holocaust but on account of the low-brow musical predilections of most American shul-goers.

After a half-century of steady decline, however, there is increasing evidence of a cantorial renaissance, emerging from two groups in the Jewish world that held *hazzanut* in contempt when it was king. One group is the Hasidim, who regarded the great European cantors as conduits of subversive Western—*goyish*—musical influence and banned attending services at the grand choral synagogues, which were considered *treyf* because of their adoption of church aesthetics: chorales, cantors dressed up in clerical gowns and hats and, worst of all, *decorum*. The other major source of opposition was the Zionists, for whom *hazzanut* was yet another cultural by-product of the despised *galut*, with its incessant minor-key kvetching and moaning about the painful state of the Jews, instead of happy music conducive to the folkdancing of the new *Yishuv*.

Yet it is precisely from those two sectors that there now emerges a new generation of cantors, reviving *hazzanut* in much the same way that Wynton Marsalis and his coterie of young jazz turks brought bebop back from the dead a few decades earlier. The most celebrated of the new Hasidic cantors is Isaac Meir Helfgot, a Gerer Hasid who incongruously leads prayers at Manhattan’s stodgy Park East Synagogue—in full Hasidic-Shabbes, rather than cantorial, regalia. There are more than a dozen other incredibly gifted young Hasidic *hazzanim*, but only Helfgot has performed with musical giants like Isaac Perelman and the Boston Conservatory’s Hankus Netsky.

The Zionist revival of *hazzanut* stems

mostly from the work of Naftali Hershtik, father of the Netanel Herstick who sang at Eldridge Street. Naftali Hershtik’s school, the Tel Aviv Cantorial Institute, now places the world’s finest cantors in American and Canadian synagogues, eclipsing the three denominational cantorial schools in the United States. Manhattan’s highest-brow Conservative congregation, the Park Avenue Synagogue, recently hired Azi Schwartz, a gifted disciple of Naftali Hershtik, while at Canada’s oldest and Montreal’s largest traditional synagogue, Shaar Hashomayim, services are led by Gideon Zelermyer, blessed with the richest voice in today’s cantorial world.

Zelermyer’s newest CD, *The Shabbat Experience* (Congregation Shaar Hashomayim)—with accompaniment by the Shaar choir, directed by the talented Stephen Glass—is unlike any other cantorial recording with which I am familiar. It is strictly, smartly thematic, featuring multiple classic and modern versions of the prayers that bracket the Torah-reading ceremonies—namely, the most dramatic moments of the Sabbath morning service, when the Ark is open and the congregation paying the greatest attention: “*Ein Kamoha*,” recited before the Torah’s removal from the Ark, and “*Uv’nuho Yomar*,” chanted just before its return.

The concept and realization of the recording are nothing short of brilliant. It is worth more than its price to hear Zelermyer’s spectacular rendering of just two of the 12 variations on “*Uv’nuho Yomar*,” by, respectively, modern *hazzanut*’s pioneering, and most prolific, composer, Louis Lewandowski, and the legendary “King of Cantors,” Yosseleh Rosenblatt. The former Zelermyer rendering, I would argue, is as aesthetically pleasing as anything to be heard at the finest Midnight Mass. The latter, far more complex but equally as beautiful, clocks in at just under eight minutes; it is, thus, better listened to in an armchair than while standing during synagogue services.

Hearing 19 versions of the prayers uttered as the Torah is removed, then returned to the Ark confirms my wizened Yiddishist friend in his declaration. Not only is *hazzanut* no widower; it is a cultural treasury, long abandoned but, thankfully, again thriving, in many instances practiced more artfully and intelligently than even during *hazzanut*’s Golden Age.

## ’Twas the Day After Christmas . . .

By Ethan Schwartz

As the dust settles from Christmas, many American Jews go about readjusting to a society that, for the other 11 months of the year, they find eminently comfortable. Christmastime brings questions of diasporic Jewish identity to the fore with a power unmatched by other American institutions, eliciting emotions of bitterness, guilt, or triumphalism, depending on whom you ask. No matter how Jews behaved on Christmas, many undoubtedly participated in the most venerable of Jewish Christmastime rituals: a fierce debate about what it means to be a Jew in America. How can we be Jews if we celebrate Christmas? How can we be Americans if we do not?

Investigating the answers to these questions is the task of Joshua Eli Plaut’s new book, *A Kosher Christmas: ’Tis the Season to Be Jewish* (Rutgers University Press). Despite the catchy title, it is a serious academic work. Plaut uses Christmas as a fruitful case study in the construction of American-Jewish identity, a quintessential example whose relevance resonates far beyond the holiday season. The book’s recognition of this fact is an important achievement.

Plaut begins with the differing responses to Christmas by the two great waves of Jewish immigrants. Assimilated German Jews largely embraced the holiday. Their Eastern European counterparts, who associated it with pogroms, rejected it. Indeed, Plaut observes, as early as the 16th century, observant Jews in Europe were so determined not to ascribe any significance to Christmas that on Christmas Eve they abstained from studying Torah and played cards instead. All too aware of the day’s ominous import, they found themselves unable to continue in their pious routine.

Christmas was so prominent that even as Eastern European Jews tried to ignore it, they were, in an ironic way, celebrating it themselves. If this was true in the isolated communities of the Old World, all the more so is it true in the porous Jewish culture of America. Even for observant Jews, any degree of interface with American society brings the need to respond to the non-Jewish holiday that saturates it every December. The result is what Plaut calls a “parallel seasonal universe of Jewish praxis.” Some Jews recast Christmas and Hanukkah to suit their

individual social and spiritual needs. Others establish new traditions: Chinese food, Christmastime social justice initiatives, and real-life versions of the Seinfeldian secular holiday of Festivus. Still others, especially in interfaith households, try to celebrate both Jewish and non-Jewish wintertime traditions with integrity.

For a season that is ostensibly religious, the pervasive secularity of the landscape that Plaut describes is striking. Yet this is precisely his thesis: Jews have been the vanguard of an effort to “transform Christmastime into a holiday season belonging to all Americans,” without religious exclusivity. The most important Jewish mechanisms of secularization are comedy and parody, for laughter undermines religious awe. Take, for example, Hanukkah Harry from *Saturday Night Live*, who heroically steps in for a bedridden Santa by delivering presents from a cart pulled by donkeys named Moishe, Hershel, and Shlomo. Remarkably, Hanukkah Harry has emerged as a real Santa-alternative for many American Jews. Plaut sees such things not as attempts at assimilation but as an intentional subversion of Christmas traditions. “Through these parodies,” he writes, “Jews could envision not having to be captivated by the allure of ubiquitous Christmas symbols.” And it isn’t just Jews: for Americans in general, Jewish parody helps ensure that Christmas “not be taken too seriously” and that the celebrations of other traditions “be accorded equal respect and opportunity.”

There is something disconcerting about this thesis, summoning up classic anti-Semitic images of conspiracy and sabotage. Without a trace of irony, Plaut recounts incidents in which fundamentalist Christian groups complained that “certain Americans, particularly Jews, were trying to take the ‘Christ’ out of Christmas.” He adds that “anti-Semitic comments often ensued.” Those Christian fundamentalists might well feel vindicated by Plaut’s argument; yet Plaut is unfazed by this connection, and rightly so. It is not inherently anti-Christian, he recognizes, to oppose Christianity’s domination of a secular democracy. If Jews have helped to make American society more open, they should be proud of it.

Still, without buying into anti-Semitism,

we should be troubled by Plaut’s portrayal of Jews as subversive of religious meaning. We must ask whether today’s secularized Christmas has negative consequences for—or is a negative symptom of—the way American Jews relate to their own tradition. The image of the Jew as irreverent comedian, able to laugh at conventions, has venerable roots in Jewish sources. In those sources, however, it exists alongside a profound respect for the past and its claim on the present. Only in the abiding presence of this respect is the irreverence uniquely Jewish.

Plaut’s Jews jettison this dialectic entirely. “Jews have demoted both Christmas and Hanukkah,” he writes, “mixing both in a popular culture concoction that asks little of each holiday and begs only that those who participate have fun and laugh at their own seriousness.” Plaut claims that different traditions are all “accorded equal respect.” But, in reality, they are all equally mocked.

What results is a Judaism stripped of life-shaping power and spiritual vitality. Only a few of the Jewish responses to Christmas that Plaut describes, such as Christmastime charity, bespeak or support a substantive Jewish identity. The rest suggest an eroded commitment to any-

thing deeper than a thin cultural Jewishness, the fodder of self-deriding stand-up. The anti-Semitic narrative thus misses the point: if Jews took the “Christ” out of Christmas, they could do so only by taking the miracle out of Hanukkah.

Plaut’s interesting argument ultimately suffers from its failure to recognize that in subverting Christmas, American Jews have promoted their own assimilation. His notion of active subversion seems less significant when the watered-down Judaism it produces resembles passive assimilation anyway. He describes American Jews who, by his account, “survive and thrive.” Yet where Plaut sees thriving, others might justifiably see decline.

Nevertheless, Plaut’s book is an important Jewish response to Christmas in its own right. His academic approach aims to overcome the paralyzing self-consciousness that often plagues Jews during this season. He addresses Christmas ethnographically, avoiding the moralizing that pervades most Jewish discourse on the subject. Non-ac-



demic readers, who expect Plaut to take a stand on what this all means for American Jewry, are unlikely to be satisfied. Yet this apparent shortcoming is actually the study's most interesting merit: in an area dominated

by pandering and polemic, Plaut succeeds in challenging his readers to form their own questions and opinions. His provocative, if problematic, complication of the classic schema of Jewish assimilation leaves much

to be done. But precisely for this reason, it should be treated as a novel response to Christmas and an important new voice in the broader conversation about Jewish identity in America.

THURSDAY, DECEMBER 27

## Jews, Law, and Human Rights (I)

By Michael Pinto-Duschinsky

Are legally enforceable codes of human rights good for the Jews? Even to ask this question seems parochial and unseemly. Human rights deserve the utmost respect—and by Jews of all people. They are morally necessary; they are in keeping with the best religious, moral and cultural traditions of Judaism; they are a universal imperative.

Yet, the “Good for the Jews” question cannot be ignored for two important reasons. First, the creation of international human rights conventions was seen in the 1940s as a response to the Holocaust and potentially the most effective way to prevent any repetition of the genocide perpetrated by Adolf Hitler's Germany. It was hoped that a set of international human rights institutions would protect Jews and other minorities.

Second, Jewish opinion is now fiercely divided as to whether these institutions—particularly the United Nations Human Rights Council (Geneva), the International Criminal Court (The Hague), and the European Court of Human Rights (Strasbourg)—have achieved this outcome. Jewish voices are often heard to complain that the new international human rights system has come to be systematically biased against Jewish and Israeli interests. “Lawfare” has become a modern form of anti-Semitic agitation, albeit often conducted (it is claimed) by dissident Jews.

Jewish scholars and activists have been at the forefront of what denigrators call the human rights industry since its post-war inception. Many of the leading legal philosophers of the past century have been Jewish. The greatly respected but controversial American jurist Ronald Dworkin is one of the most influential advocates of, as his book title puts it, *Taking Rights Seriously* (Harvard University Press). Michael Sandel's course titled “Justice” attracts enough students at Harvard to fill Sanders Theater and has proved a YouTube sensation—the

lectures have been viewed over seven million times. At Oxford University, Herbert Hart (the descendant of a rabbi) wrote the ground-breaking volume *The Concept of Law* (Oxford University Press). He was followed by Joseph Raz, who arrived in Oxford from the Hebrew University of Jerusalem. By far the most influential of Britain's international lawyers, Sir Hersch Lauterpacht, came to Cambridge University from Galicia via Vienna, where he studied under another intellectual giant, Hans Kelsen, a Jewish convert to Catholicism. Other Jewish names to be conjured with include Raphael Lemkin, credited with the invention of the term “genocide,” and the French jurist René Cas-



sin. It would be repetitious to include the title of “Professor” gained by all of the above.

Their influence was not confined to academe. Kelsen, a member of Sigmund Freud's circle, sat on Austria's constitutional court, formed after the country's defeat and dismemberment in the First World War. Lauterpacht advised the British Government on the legal basis of the Nuremberg war crimes trials. He later sat on the United Nations' Law Commission and as a judge on the International Court of Justice at The Hague. Cassin served as president of the European Court of Human Rights and won the Nobel Peace Prize. Some of the largest benefactors of human rights organizations, such as George Soros and Sigrid Rausing, are Jewish. So are many of the world's leading human rights activists and experts—Aryeh Neier of the Open Society Institute, Richard L. Bernstein (the founder of Human Rights Watch), Peter Benenson (founder of Amnesty International), Lord Lester of Herne

Hill (co-founder of Interights), the British judges Lord Hoffmann and Sir Stephen Sedley, and the former head of Israel's Supreme Court, Aharon Barak, to name only a few.

Regardless of any calculus of communal benefit, there are very strong reasons for Jews to promote humane practices in peace and in war. It should be a matter of pride that rabbis such as William G. Braude, Saul Leeman, and Nathan Rosen were active in the civil rights movement in the American South in the 1960s. On a personal note, I wish to pay tribute to my late father, Rabbi Jenö Duschinsky; his Beth Din colleague in Cape Town, Rabbi David Rosen, and his friend Dennis Diamond (of the Board of Deputies of South African Jews) for their stands, albeit cautious, against apartheid.

In this article and in a second piece on *Jewish Ideas Daily* tomorrow (dealing with recent and current European conflicts, in particular about the Holocaust and the legality of circumcision and kosher slaughter), I will set out a few of the problems, for Jewish interests, of human rights advocacy. But, in so doing, it is vital to avoid any misunderstanding about the importance of human rights themselves and the need for tolerance within Jewish communities about the way in which differences of opinion about human rights may be discussed.

In today's world, we need to avoid the unduly personal attacks made against Jews such as Judge Richard Goldstone when they express unpopular and arguably unjustified criticisms of the behavior of Israeli forces in Gaza. For example, the Jerusalem-based organization NGO Monitor regularly reports on dubious anti-Israeli accusations made by hostile NGOs which are funded largely by European governments. It is a great pity that NGO Monitor and the Im Tirzu campaign of Israeli students devote so much of their energies to attacking another Jewish body, the New Israel Fund.

Nevertheless, the rhetoric and institutions of human rights are sometimes unfair and harmful. While we need to be respectful of Jews who express sincere reservations about aspects of Jewish morality, religion, and action, there is a tendency on the part of some

leading Jewish thinkers and activists to be unduly self-critical. For sheer brilliance, there probably is no living legal philosopher greater than Dworkin. But I was taken aback to hear his reply to a theoretical question posed by the eminent political theorist Professor Alan Ryan at a conference at St. Antony's College, Oxford in January, 2009. Acting as devil's advocate, Ryan asked Dworkin why he felt every life was of equal moral value. Dworkin answered by saying that there were indeed those who did not have this belief: for example, Jews believed in a superior status as the "chosen people." In subsequent correspondence, Dworkin justified himself by writing (presumably with reference to the *Tanya* of the first Lubavitcher Rebbe), "Some Jewish texts, particularly in the mystical tradition, do interpret the claim to imply superiority, though others reject that implication. I cited only the former interpretation as illiberal."

Irrespective of the dubious validity of Dworkin's reference to "the chosen people" as an expression of racial superiority, why did he choose this example? Why not refer instead to Nazi beliefs or to those of slave owners? The notion that some Jewish human rights activists are prone to direct too much of their fire against their own co-re-

ligionists may sometimes have substance. A belief in the overarching ideal of human rights appears in some cases to be a form of secular religion.

When it comes to international human rights institutions, the bias is undeniable. One does not need to be a defender of every controversial action by Israel in its dealings with Palestinians to realize that the United Nations Human Rights Council has an unreasonable focus on real or alleged Israeli misdeeds. Between 2008 and 2010, no less than 48 percent of this body's resolutions were directed against Israel. The notion that Israel is responsible for a half of all the human rights violations in the entire globe is absurd. Secretaries General of the UN Kofi Annan and Ban Ki-moon have both criticized the UN Human Rights Council for singling out Israel. "The Council should give the same attention to grave violations committed by other states as well," said Annan. Yet the procedures for electing countries to membership on the UN Human Rights Council assure that voting blocks of countries hostile to Israel will predominate. The Council is no august, neutral body but is inherently political. The rules whereby judges are elected by the 121 constituent state parties to the International Criminal Court risk

producing the same bias in that body.

The politicization of human rights verdicts is not confined to Arab member countries of international human rights bodies. In 2002, when I was carrying out an academic study of political financing for an international organization based in Scandinavia, I spoke to the country's foreign affairs official responsible for human rights matters about her country's vote in the UN Human Rights Council on the Israeli "massacre" in Jenin. She was an official with whom I had previous contact in connection with my study. "You needn't worry," she assured me. "We know that there was no massacre in Jenin." In view of the fact her country knew the accusation was untrue, I asked her to explain her country's vote on the UN Human Rights Council. Her country wished to vote with the countries of the "South," she said, and with Europe against the United Kingdom. Moreover, her ministry had issued a more detailed statement—which, however, had not been translated into English.

This example of prejudice brings me to the vexed issue of the record and attitude of human rights bodies in Europe to the Holocaust and to Jewish religious matters. This will be explored in tomorrow's article.

FRIDAY, DECEMBER 28

## Jews, Law, and Human Rights in Europe: the Unfulfilled Promise (II)

By Michael Pinto-Duschinsky

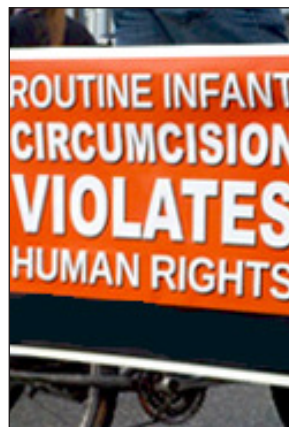
Seventy years ago, on December 17, 1942, British Foreign Minister Sir Anthony Eden reported to the House of Commons that the Jews of Germany and German-occupied Eastern Europe were being systematically starved and murdered. He read a declaration by the Allies (named by Franklin Delano Roosevelt the "United Nations") condemning this "bestial policy." The declaration included a "solemn resolution to ensure that those responsible for these crimes shall not escape retribution." The Allies, declared Eden, would try to give asylum to as many refugees as possible.

After the Second World War, the General Assembly of the newly created United Nations, a body larger than the anti-Hitler coalition, accepted a Universal Declaration of

Human Rights on December 10, 1948. Five months later, a group of European countries created a Council of Europe, agreed to a European Convention on Human Rights, and gradually accepted the jurisdiction of a European Court of Human Rights based in Strasbourg, a city which had switched several times between French and German sovereignty. Today, the Council of Europe consists of 47 countries all of which accept the permanent jurisdiction of the Strasbourg Court as the final arbiter of cases brought under the very wide terms of the European Convention on Human Rights (a document broadly similar to the Bill of Rights in the U.S. Constitution).

The Universal Declaration of Human Rights and the European Convention both emerged as responses to the Holocaust. Jewish jurists such as Sir Hersch Lauterpacht, Raphael Lemkin, and René Cassin played

prominent roles in their creation. In front of the entrance to the Strasbourg headquarters of the Council of Europe, a memorial to those who died in Auschwitz makes clear



the intention that the European Convention on Human Rights and the European Court of Human Rights to guarantee that the Holocaust could never recur.

It is worth asking whether these various human rights declarations have protected Jewish safety and Jewish interests as intended. The record has been mixed at best. In much of Europe, Jews still feel distinctly uncomfortable. Moreover, there is

a risk that the European Court of Human Rights may in the next few years restrict such fundamental Jewish religious practices as circumcision.

In the two-and-a-half years of war after December, 1942, it is doubtful whether the threat of Allied retribution provided any real

protection to the Jews of German-occupied Europe. The declaration of December, 1942 was not an adequate substitute for more determined rescue efforts. There were major limits on the ability of the Allies to help Jews under German rule, but more could have been done.

After Hitler's defeat, a limited number of Nazi war criminals were brought to trial. But the pursuit of Holocaust perpetrators was relatively short-lived. Within months of the German surrender, the United States, Britain and France turned their attentions to the Soviet danger.

Prominent supporters of the Nazi regime whose prosecution was briefly sought were soon courted by Western governments, especially if they possessed knowledge or had economic resources useful for the burgeoning Cold War.

For the leading Jewish jurists, the project of creating a new world order of human rights conventions, organizations and courts, laudable as it was, acted as a diversion from the immediate task of searching out and prosecuting the perpetrators of the Holocaust. The Council of Europe was created at the very time that war crimes investigations and trials were being abandoned; it was the time when most of the mass murderers sentenced to imprisonment in the Nuremberg trials were being prematurely released.

Although the European Convention on Human Rights aimed to create a new Europe based on legally enforceable human rights, it is remarkable that Germany was able to escape liabilities for the Holocaust. Through an intricate series of maneuvers over several decades, Germany and German companies that used slave laborers during the Second World War have refused to acknowledge legal responsibilities. In the 1990s, I accompanied two former slave laborers at Auschwitz to a meeting with the German ambassador in London. When one of them had described the conditions he had been forced to endure, the ambassador turned to me to explain that "strictly speaking" there had been nothing illegal in his treatment.

For more than a year I have been in correspondence with the head of the Volkswagen Foundation in a fruitless attempt to obtain a reply as to whether Volkswagen accepts the fact that its atrocious actions during the Second World War were illegal.

Among the stratagems employed by the German authorities to escape legal obliga-

tions to Jewish and non-Jewish victims was an agreement in the so-called London Debt Settlement of 1952 that consideration of such payments would await the final settlement of the Second World War in a peace treaty. At the time Germany was divided into two rival states. The (West) German negotiator of the London Debt Settlement, Hermann Abs of Deutsche Bank, had been a member of the board of I. G. Farben when it commissioned the Buna factory at Auschwitz.

After the fall of the Berlin Wall in 1989, the 1990 treaty recognizing German unification was drawn upon a manner that, technically, did not constitute a peace treaty. Apparently the Second World War has never and will never come to a legal close.

Such legalistic fiddles may have little practical import apart from denying Holocaust survivors the entitlement to adequate compensation. But it is more than a paradox that the European Convention on Human Rights was created to prevent another Holocaust, but few Nazi perpetrators were brought to justice; and the German state and German corporations that employed and murdered slave laborers have doggedly rejected legal responsibilities. The failure to establish a legal reckoning for the Holocaust morally undermines the European system of human rights.

Although more senior British supporters of this system, such as the Jewish lawyer Philippe Sands QC, stress the Holocaust-prevention roots of the European Court of Human Rights, it is remarkable how flip-pantly some younger human rights lawyers in London, such as Jewish legal blogger Adam Wagner, dismiss all mention of the Holocaust in connection with debates on human rights.

One of the latest debates within Anglo-Jewry is about whether there is a danger that the European Court of Human Rights may restrict Jewish *brit milah* (infant male circumcision). In September, 2012, a leading British lawyer, Jonathan Fisher QC, wrote in the London *Jewish Chronicle* warning of the Strasbourg Court's potential hostility to circumcision. He cited the opinion expressed in passing (*obiter dicta*) in a 2010 case involving Jehovah's Witnesses in Russia. The judgment referred to circumcision as a "contentious" practice and as potentially harming believers' well-being. Fisher's alarm about this wording increased because a German judge in Cologne had recently declared that infant circumcision contravened the rights of the child. This created considerable

uncertainty about the legality of *brit milah* throughout Germany and led the German Government to pass a law asserting the right to *brit milah*, albeit under restricted conditions. A new organization of British Jews, Milah UK, was created to mount a defense against anti-circumcision campaigners in the United Kingdom.

Another Jewish campaign body had previously been created in Britain to protect ritual slaughter (*shehitah*) against hostile lobbies in Continental Europe. In 2011, the lower house of the Dutch parliament voted by 116 to 30 to ban both Jewish and Muslim ritual slaughter. Eventually, the upper house rejected this vote and agreed to the continuation of ritual slaughter, but with new restrictions. In 2012, *shehitah* was declared unconstitutional by a court in Poland.

Lawyers such as Fisher feel there is a genuine risk that core Jewish religious practices may come under attack through the European Court of Human Rights. If Germany passes a law guaranteeing the right to circumcision, that law may be challenged in the Strasbourg Court. A verdict against circumcision in that court would apply in all 47 member states of the Council of Europe (including the U.K., France, Russia and Ukraine). Though the European Convention protects freedom of religion, it also includes other rights which may be cited as a basis for protecting male infants against what may be seen as mutilation to which they have been too young to consent.

Jewish supporters of the Strasbourg Court, such as Wagner and the London-based Jewish human rights organization named after René Cassin, make light of the remarks of the judge in the 2010 Jehovah's Witnesses case about the contentious character of circumcision. Wagner accuses both Fisher and me of being influenced by British politics and by the wish to spread alarm about the Strasbourg Court rather than by Jewish religious concerns or a realistic assessment of the dangers of a legal ban or restriction on circumcision.

It is too early to gauge the severity of the risk to *brit milah* or to *shehitah* in Europe. What is clear, however, is the increasing use of "lawfare" within European forums against Jewish and Israeli interests. Moreover, the assumption, held by some of the great Jewish jurists, that human rights institutions and courts tend to provide better protection than parliaments to minorities such as the Jews may be over-simple.