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Justice in a Gray World

By Robert Nicholson

Israel uses the pretense of law to dominate and disenfranchise Palestinians in the territories. So argues Ra'anan Alexandrowicz in his documentary *The Law In These Parts* (in Hebrew, *Shilton Hahok*), a recent favorite on the New York film circuit and winner of awards at the Sundance and Jerusalem film festivals. Since the film has garnered nearly universal acclaim, it is appropriate to ask whether the judgment is deserved.

The film aims to examine Israel's military regime in the Palestinian territories since 1967. With riveting newsreel footage and personal interviews of high-ranking IDF officers, Alexandrowicz brings a relatively dry topic to life. The interviewees' strong personalities and firsthand perspectives on major events lend the film an air of authority.

Since the Six-Day War, the movie tells us, Israel has used a species of "law"—in reality, a framework of control masquerading as legal discourse—to govern the territories for Israel's exclusive benefit. Rather than extend Israeli law to the territories, Israel devised a military regime that pilfers Palestinian land and resources while citing "emergency conditions" to deny the Palestinians basic human rights. Israel resurrected obscure Ottoman land laws to justify Jewish settlement in the territories and, worse, manipulated these laws to prefer Jews to native Arabs. Contrary to popular belief, Israel's allowing Palestinians to petition the High Court of Justice for redress of grievances does not bespeak Israeli liberality; rather, it cleverly reinforces Israeli hegemony by giving it the stamp of legality whenever the Court rules in favor of the state, which is often.

Alexandrowicz acknowledges his subjective

gaze, interrogating Israeli officials just as he says they interrogate Palestinian defendants and comparing his selective editing of their testimony to the capricious way in which they, in his view, execute "justice" in the courtroom. But his admission of subjectivity cannot relieve him of responsibility for all the film's faults. The major fault is the film's narrow perspective. The Israeli military is put on trial for its life with almost no reference to the complex situation that gave rise to the occupation. The narrative effectively begins in mid-sentence—in June, 1967, with Israel's preemptive attack on three Arab states. Gaza and the West Bank appear to have been utopias before the arrival of the Israeli juggernaut. No mention is made of the way their previous occupiers, Egypt and Jordan, governed the territories between 1948 and 1967. Little attention is given to the murderous Palestinian *fedayeen* whose insurgency doomed any hopes for normalcy in the region. Similarly, after a few court cases are mentioned and broad conclusions drawn, the narrative cuts off abruptly around 2000, with barely a hint of subsequent events—like the Gaza disengagement. Everything, it seems, can be blamed on Israel's military lawyers.

In fact, however, Israel's military regime was not born *ex nihilo*. Though debate persists about the origins of the Six-Day War, it is undeniable—though Alexandrowicz does not mention it—that Israel's attack was directed at states openly calling for Israel's destruction just two decades after the Holocaust.

After the war, Israel found itself in control of historic hotbeds of anti-Israel sentiment populated by a million hostile Palestinians. The Arab League announced that there

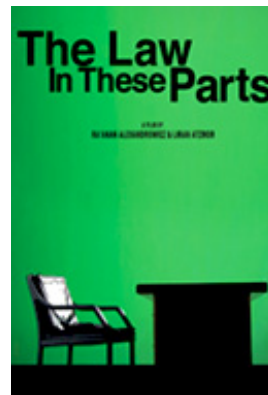
would be "no peace with Israel." Confronted with the prospect of permanent hostility and extended occupation, Israel set out to govern with a kind of transitional justice in a military regime complying with the normative requirements of international law.

Alexandrowicz condemns Israel for refusing to extend its own law to the Palestinian territories—yet Article 43 of the 1907 Hague Regulations requires an occupying power to maintain the existing laws of an occupied territory, abridging them only for reasons of public order and security. The

filmmaker tells in detail how Ariel Sharon invoked the Ottoman legal category of *mawat* ("dead" or "unused") land to allow Jewish settlement and expects his audience to be incredulous—yet the Ottoman Land Code was, and still is, the legal regime governing the West Bank. It may not have been strategic or wise, but there was nothing radical about Sharon's applying the law of *mawat*.

In his most outrageous leap of logic, Alexandrowicz argues that Israel's allowing Palestinians to petition the High Court is an underhanded way of legitimating the occupation. In fact, Israel had no obligation to grant this concession and did so despite the absence of any historical precedent. The film does not mention the important cases in which the High Court has ruled in favor of Palestinian petitioners and against the state.

The issue of Jewish settlement is admittedly more difficult. Alexandrowicz spends significant time explaining the inequality between Palestinians, who live under military rule, and Jewish settlers, who enjoy the full protections of Israeli law. This ac-



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cusation of procedural and substantive inequality is the film's one major criticism that sticks: arguments for allowing Israeli settlers to "carry the law on their backs" while denying the same right to Palestinians are not very convincing. If the film highlights any issue deserving closer examination, this is it.

Reviewers have quoted Brigadier General Dov Shefi, who says in the film that "order and justice don't always go hand in hand." While this is undoubtedly true, Colonel Oded Pesensson's description of the West Bank legal environment as a "gray world"

seems far more compelling. We are not speaking here of the European Court of Human Rights or the International Court of Justice, dispassionate bystanders applying abstract notions of justice to distant events, but of a military administration forced by the exigencies of war to govern a hostile territory until political leaders can negotiate a solution.

In this context, a tension between order and justice does not seem all that remarkable. Occupation regimes are tasked above all with maintaining order in the absence of

peace, making perfect justice more difficult to achieve. Some Palestinians have suffered injustice in recent decades, and the film is right to remind us of that. Yet justice is an elusive concept in this grayest of worlds; and the Israeli military regime is an outgrowth of the conflict, not the source of its evils. Enumerating its shortcomings is valid, but the exercise must at least apprise the audience of the historical, political, and legal complexity surrounding it. *The Law In These Parts* fails in this obligation.

WEDNESDAY, JANUARY 2

2012: A Year in Books

By D. G. Myers

Books are dying—everyone says so—but you couldn't prove it by the Jews. 2012 was a very good year for Jewish books. Taking full advantage of the growing prestige of interdisciplinary research, Jewish scholars have been particularly active, publishing studies of European Jewish spas, Jewish education, Jewish self-hatred, Jewish music, and a thousand other enticing subjects. Jewish novelists, young and old, have written novels worth keeping around the house and loaning out to friends. All in all, it was a great year to be a Jewish reader.

Of course there were terrible Jewish books, too. To anticipate the inevitable criticisms, Judith Butler's anti-Zionist *Parting Ways*, Nathan Englander and Jonathan Saffran Foer's hipster *Haggadah*, and Deborah Feldman's self-congratulatory memoir of breaking with Orthodox Judaism (predictably entitled *Unorthodox*) have been intentionally left off the following list of the 40 best Jewish books, 20 in nonfiction and 20 in literature, from the past year:

Nonfiction

- Deirdre Bair, *Saul Steinberg: A Biography* (Nan A. Talese). With access to 400 boxes of documents, National Book Award-winning biographer Deirdre Bair has pieced together the fascinating life story of the Romanian-born Jewish cartoonist who became acclaimed as a great modern artist.
- Alan Balfour, *Solomon's Temple: Myth,*

Conflict, and Faith (Wiley-Blackwell). A history of the Temple and the Temple Mount from the Ark of the Covenant to the Second Intifada, Balfour's book is comprehensive, lavishly illustrated, and written to wear its scholarship lightly.

- Maristella Botticini and Zvi Eckstein, *The Chosen Few: How Education Shaped Jewish History, 70–1492* (Princeton University Press). The transformation of the Jews from an agrarian people in the Middle East to skilled urbanites scattered from Spain to India was driven not by anti-Semitic persecution but by the rabbinical imperative to educate one's sons.
- Harry Brod, *Superman Is Jewish? How Comic Book Superheroes Came to Serve Truth, Justice, and the Jewish-American Way* (Free Press). The artists and writers who invented comic-book superheroes were not the only ones who were Jewish; the superheroes were Jewish, too. Brod shows how American comic books derive from Jewish culture.



- Joseph Epstein, *Essays in Biography* (Axios Press). Americans from George Washington to Susan Sontag, Englishmen from Max Beerbohm to John Gross, pop-culture icons from Alfred Kinsey to Michael Jordan—40 brief lives by the greatest living essayist.
- Arnold E. Franklin, *This Noble House: Jewish Descendants of King David in the Medieval Islamic East* (University of Pennsyl-

vania Press). Relying upon material from the Cairo Geniza, Franklin interprets the medieval claims to Davidic ancestry as the Jews' response to living in an Islamic milieu.

- Lela Gilbert, *Saturday People, Sunday People: Israel through the Eyes of a Christian Sojourner* (Encounter). A Christian who sojourned in Israel for six years explains how she came to understand the true character of the rage against the Jewish state, which is now being directed against the Christian communities of the Middle East.
- Daniel Gordis, *The Promise of Israel: Why Its Seemingly Greatest Weakness Is Actually Its Greatest Strength* (Wiley). The deep sense of belonging that characterizes Israelis—the love of the land that puts them at odds with the utopian universalism preferred by the chattering classes—is the Jewish state's light unto the nations.
- Ruth HaCohen, *The Music Libel against the Jews* (Yale University Press). To Christian ears, trained by the classical tradition, Jewish music sounded like noise. When they entered the tradition, then, Jewish composers like Schönberg created music that was intentionally dissonant and noisy. A provocative, idiosyncratic book.
- Ronald Hendel, *The Book of "Genesis": A Biography* (Princeton University Press). A volume in the Lives of Great Religious Books series, Hendel's biography traces

the cultural influence of *Bereshit* from its genesis to its enlistment, by both sides, in modern political conflicts.

- Jon D. Levenson, *Inheriting Abraham: The Legacy of the Patriarch in Judaism, Christianity, and Islam* (Princeton University Press). In his tenth book, the great biblical scholar takes issue with the popular view that the three “Abrahamic” religions share a common source, which might bring them together. For Levenson, the differences are more telling.
- Olga Litvak, *Haskalah: The Romantic Movement in Judaism* (Rutgers University Press). The Jewish “Enlightenment,” as it has long been known, is better understood against the background of European romanticism. A Jewish historian at Clark University, Litvak applies her reinterpretation of Haskalah to current debates over Jewish secularism.
- Harry Ostrer, *Legacy: A Genetic History of the Jewish People* (Oxford University Press). The story of the Jews—their origins and migrations—is encoded in their DNA, and Ostrer (a geneticist at the Albert Einstein School of Medicine) shows how the story can be told without ideological ax-grinding.
- Joshua Parens, *Maimonides and Spinoza: Their Conflicting Views of Human Nature* (University of Chicago Press). A revisionist study arguing that the value of reading Maimonides is to gain distance from the modern world and its thinking, which were deeply shaped by Spinoza. Dense but rewarding.
- Paul Reitter, *On the Origins of Jewish Self-Hatred* (Princeton University Press). A new genealogy of the old term, which argues that “Jewish self-hatred,” rather than being a polemical weapon and instrument of censure, arose in inter-war Germany with an affirmative, even redemptive meaning.
- Anita Shapira, *Israel: A History*, trans. Anthony Berris (Brandeis University Press). A comprehensive history, from Zionism’s origins to the present, which shifts the focus from the Arab-Israeli conflict to internal politics, immigration and nation building, culture, and the economy.

- Gil Troy, *Moynihan’s Moment: America’s Fight Against Zionism as Racism* (Oxford University Press). The 1975 United Nations resolution declaring that Zionism is racism galvanized American support for Israel; and the symbol of that support was Daniel Patrick Moynihan, the U.S. ambassador who memorably denounced the resolution before the UN General Assembly.
- Robert S. Wistrich, *From Ambivalence to Betrayal: The Left, the Jews, and Israel* (University of Nebraska Press). The great scholar of anti-Semitism follows up his magisterial *Lethal Obsession*, one of the best Jewish books of 2010, with an account of how the political Left’s attitudes toward the Jews have undergone the transformation described in the title.
- Mirjam Zadoff, *Next Year in Marienbad: The Lost Worlds of Jewish Spa Culture*, trans. William Templer (University of Pennsylvania Press). Every summer before Hitler, middle-class European Jews descended *en masse* upon the spas of western Bohemia, creating “Jewish places” where they were the dominant group. Zadoff recreates these lost places skillfully and in detail.
- Yair Zakovitch, *Jacob: Unexpected Patriarch*, trans. Valerie Zakovitch (Yale University Press). A “literary archaeology” that reconstructs the patriarch’s life from multiple sources, primarily by putting the biblical story “under a microscope.”

Literature

- Jami Attenberg, *The Middlesteins* (Grand Central). As the matriarch of the clan passes the 300-pound mark without looking back, a Jewish family in suburban Chicago comes flying hysterically apart.
- Ramona Ausubel, *No One Is Here Except All of Us* (Riverhead). When the rumors of war reach them in 1939, the Jews of a Romanian village decide to protect themselves by reinventing the world from scratch. An intriguing debut.
- Eduardo Halfon, *The Polish Boxer*, trans. Anne McLean and others (Bellevue Literary Press). An English translation of a novel by the Guatemalan Jewish writer, which wrestles with the question of identity in a world full of migrants and exiles.

- Hillel Halkin, *Melisande! What Are Dreams?* (Granta). At the age of 72, the ever-wonderful Jewish writer offers his wonderful first novel, a love letter to conjugal love and a meditation on dreams and resurrection.
- Joshua Henkin, *The World Without You* (Pantheon). An American Jewish family gathers for the unveiling of the headstone of its youngest son, killed while covering the war in Iraq. The family’s disagreements over his memorial and the war are just the beginnings of their differences.
- Howard Jacobson, *Zoo Time* (Bloomsbury). The 12th comic novel by the “English Philip Roth”—the “Jewish Jane Austen,” he interrupts—in which a Jewish novelist confronts the death of books and his yen for his 66-year-old mother-in-law.
- Sayed Kashua, *Second Person Singular*, trans. Mitch Ginsburg (Grove). The third Hebrew novel by the Israeli Arab who created the popular sitcom *Arab Labor* rewrites Tolstoy’s “Kreutzer Sonata” as the tale of an Arab lawyer’s jealousy toward a Jewish paraplegic—who may be cuckolding him.
- Hans Keilson, *Life Goes On*, trans. Damion Searls (Farrar, Straus & Giroux). The late Dutch Jewish novelist’s 1933 debut, never before translated into English. Banned by the Nazis, it tells how one family experienced the upheavals of Weimar Germany and the rise of National Socialism.
- David Koker, *At the Edge of the Abyss: A Concentration Camp Diary, 1943–1944*, trans. Michael Horn and John Irons (Northwestern University Press). The *Dagboek* written on scraps of paper in the Vught concentration camp by a 21-year-old philosophy student, first published in the Netherlands in 1977 and never before translated into English.
- Mario Levi, *Istanbul Was a Fairy Tale*, trans. Ender Gürol (Dalkey Archive). A major work of Turkish Jewish literature, Levi’s 600-page saga of a Ladino-speaking Sephardic family from the last days of the Ottoman Empire to the end of the 20th century submerges the reader in an exotic Jewish world. Daunting, but worth the struggle.
- Amos Oz and Fania Oz-Salzberger, *Jews*

and Words (Yale University Press). A personal essay by the famous Israeli novelist and his daughter, a historian. The Jews, they argue, are neither a political nor an ethnic grouping but a tradition of meaning-laden words.

- Elliot Perlman, *The Street Sweeper* (Riverhead). The “multilayered” and “epic” third novel by the Australian Jewish novelist, 600 pages in length, which weaves the civil rights movement together with the Holocaust in a story spanning decades and continents.
- Joseph Roth, *A Life in Letters*, trans. Michael Hoffman (W. W. Norton). The great Austrian Jewish novelist (author of *Job* and *The Radetzky March*) may have been at his best in his letters. Collected here in one book, they tell the story of the man and of his times, the years between the wars.
- Ellen Ullman, *By Blood* (Farrar, Straus & Giroux). In 1974, a disgraced professor eavesdrops on the therapy sessions of a young lesbian who discovers she is Jewish. With his unsought help, she learns her connections to the Holocaust and Israel.
- Francesca Segal, *The Innocents* (Hyperion Voice). *The Age of Innocence*, Edith Wharton’s classic novel about the clash between social convention and romantic desire, is rewritten and transplanted to North

West London (the Jewish district), where young 21st-century Jews find themselves in the same predicament. A brilliant debut novel.

- Sasson Somekh, *Life after Baghdad: Memoirs of an Arab-Jew in Israel, 1950–2000* (Sussex Academic). Originally titled *Yamim Hazuyim* (“Call It Dreaming”) when first published in Israel, the second volume of memoirs by the scholar of modern Arab literature recounts his life in Oxford, Princeton, Cairo, and Tel Aviv.
- Ilan Stavans and Steve Sheinkin, *El Iluminado: A Graphic Novel* (Basic Books). A literary critic and a cartoonist team up on a detective story that also reveals something of the history of “crypto-Jews” in the American Southwest.
- Gerald Stern, *Stealing History* (Trinity University Press). The distinguished Jewish poet, winner of the National Book Award and a finalist for the Pulitzer Prize, offers a memoir in the form of 84 essays (average length: not quite four pages), which shift like an easy-going conversation between past and present, public and private.
- Steve Stern, *The Book of Mischief: New and Selected Stories* (Graywolf). A series of stories, 17 in all, balancing precariously on the razor’s edge that separates fantasy from reality, by the author of *The Frozen*

Rabbi, best American novel of 2010.

- Elie Wiesel, *Hostage*, trans. Catherine Temerson (Alfred A. Knopf). In his 15th novel, originally published in France in 2010, Wiesel tells the story of a Jewish writer who is kidnapped from his home in Brooklyn and held hostage while his captors demand the release of three Palestinian Arab inmates from an Israeli prison.

The best Jewish book in each category this past year? *Inheriting Abraham* is the most impressive work of Jewish scholarship published during 2012. For more than three decades, Jon Levenson has been quietly developing a biblical theology that would revolutionize Jewish understanding and worship, if only more Jews were to learn of it. *Inheriting Abraham* is his most accessible book yet—a model of how exacting scholarship can be written for the well-educated layman.

For once a literary prize serves as a faithful guide: Joshua Henkin won the Edward Lewis Wallant Award for the year’s best Jewish novel. *The World Without You* deserves the accolade. The grandson of a famous Orthodox rabbi and the son of an influential Columbia University law professor, Henkin understands the dynamics and tensions of a Jewish family from the inside. *The World Without You* belongs to a tradition that includes I. J. Singer’s *The Brothers Ashkenazi* and Der Nister’s *Family Mashber*. At 336 pages, Henkin’s multi-generational family chronicle is too short a visit with sharp-edged and unforgettable characters.

THURSDAY, JANUARY 3

The ISI and the Jews

By Alex Joffe

There are perhaps 5,000 Jews in India; there are no longer any in Pakistan. So, during the 2008 Mumbai attacks by Pakistani terrorists, how did it happen that the Chabad house was singled out and six Jews killed? And now that the victims’ relatives have sued the perpetrators in federal court, why has the State Department’s Legal Adviser informed the court that two former heads of Pakistan’s Inter-Services Intelligence agency, ISI, are immune from suit despite evidence that they helped plan the attack?

On November 26, 2008, 10 terrorists from the Pakistan-based Lashkar-e-Taiba (LeT) launched a series of attacks in Mumbai that lasted 65 hours and killed 195 people. Most of the targets—a train station, a hospital, two luxury hotels—were selected for their high profile and their crowds. But another target was the Chabad center, Nariman House. There, two terrorists took Rabbi Gavriel Holtzberg and his pregnant wife Rivka hostage, along with four others. During the subsequent siege by Indian forces, the couple were tortured, then murdered. Their two-year-old son, Moshe, was rescued by his Indian nanny, Sandra Samuel.

Indian police quoted the sole surviving terrorist, Ajmal Amir Kasab, as saying that

Nariman House was the most important target, because LeT wanted to “send a message to Jews across the world by attacking the ultra-Orthodox synagogue.” Indian intelligence overheard the attackers being instructed by their handlers in Pakistan that Jewish lives were “worth 50 times those of non-Jews.” Why?

LeT, founded in 1990, receives support from ISI and from individual Saudis and Gulf Arabs. Like Hizballah, LeT maintains networks of schools, mosques, and media, providing social services directly and through front groups. Though its chief aim is “liberating” Kashmir from India (it has perpetrated a long string of bloody assaults to that end), its ideology and ambitions are increasingly global. The

group's "Jewish problem" is standard Islamism with a South Asian flavor: opposition to the "Hindu-Zionist-Crusader alliance," a desire to "plant the flag of Islam in Washington, Tel Aviv, and New Delhi," and attacks on Jews to "avenge the atrocities on Palestinians."

Nariman House was surveyed many times before the attack—by, among others, David Headly, who sometimes posed as a Jew. He was born Daood Gilani, the son of a Pakistani diplomat and an American mother, and became an informer for the U.S. Drug Enforcement Agency. In 2000 he traveled to Pakistan, where he came under LeT's influence. He went back to Pakistan repeatedly for training—which he later testified, included direct contact with and direction by ISI officers. By 2005, he said, the ISI had put Nariman House on its target list. In 2006 he changed his name to Headly to make his international travel less conspicuous. He was arrested in Chicago in 2009 and pled guilty to participation in the Mumbai attacks. His past as a DEA informant leads some to believe that the U.S. government had advance warning of the attacks.

The State Department's decision not to let the Holtzberg family sue former ISI officials is partly based on the Foreign Sovereign Immunities Act of 1976, which immunizes foreign governments and officials from suits in U.S. courts (though it excludes cases of "extrajudicial killing" or "material support" for such an act). But it goes beyond that.

The U.S. relationship with Pakistan is shaped by political, ethnic, and now atomic variations on the 19th century's "Great Game," the competition between great powers—then, Britain and Russia—over the vast regions of Central Asia, including Afghanistan and Pakistan, on the threshold of India. After Britain's withdrawal from the Indian subcontinent in 1947 and its bloody partition into predominantly Hindu India and Muslim Pakistan, the latter found itself in desperate need of allies. India, nominally non-aligned, had de-

fense ties with the Soviet Union; Pakistan responded by allying with America. This alliance persisted through ill-advised wars against India in 1965 and 1971, military coups, and the discovery of a Chinese-supported Pakistani nuclear weapons program. U.S. assistance was periodically cut off, but the need to fight the Soviets in Afghanistan—and 9/11—revitalized the relationship. Since 2002, Pakistan has received \$15.8 billion in U.S. aid.

According to the late Pakistani Prime



Minister Benazir Bhutto, the ISI operates as a state within a state, seeing itself as the ultimate guarantor of Pakistan. This self-assigned role requires that it hedge every imaginable bet; what might appear as cynical duplicity is, to ISI thinking, merely strategic flexibility. Though Pakistan is a putative American ally, the ISI has worked with al-Qaeda and the Haqqani network. It let Osama Bin Laden live in the shadow of Pakistan's military academy and continues to supply and direct the Taliban. Along with the Pakistani Taliban, the ISI may even have been involved in Bhutto's murder in 2007. Beyond this, Pakistan is a leading nuclear proliferator, and in a de facto alliance with Iran.

Still, why such deliberate slaughter of an insignificant number of Jews in a tiny building far from Mumbai's glitzy hotels? Part of the answer is Muslim anti-Semitism. But thanks also to the uniqueness of its geography and demography and its nearly abort-

ed birth, Pakistan is uniquely paranoid. It is a land without Jews, but Jews loom large in its Islamists' imaginations. Israel is one of the "Three Satans," along with America and India. Official media regularly accuse all three of fomenting Pakistan's problems; even the Taliban are said to be under their thumb. No absurdity is too great to be deployed or believed. Thus, Pakistani media state that the CIA, Mossad, and Indian intelligence murder polio immunization teams (even when the Taliban claims responsibility) and that the flogging of a 17-year-old girl was a "Jewish conspiracy" to destroy local peace and "distort the image of those Islamists who sport beards and wear turbans."

The lessons of the Chabad lawsuit are plain and grim. The Executive Branch perception of national security interests will always trump individual pursuit of justice. The Foreign Sovereign Immunities Act will protect the occasional Israeli official falsely accused of "war crimes;" more frequently, it lets others, including Saudis after 9/11 and now Pakistanis, off the hook. Designed to keep U.S. courts from making foreign policy prospectively, it also limits the historical account retrospectively.

The broader legacy of U.S.-Pakistani relations is so fraught with lies and fear that the potential for volcanic embarrassment, sheer nuclear terror, and ordinary inertia become insurmountable obstacles to official accountability, let alone policy change. The Gordian Knot is so complex that America's self-interest seems unintelligible. But placating a petulant nuclear-armed state has been absolutely paramount in U.S. policy for decades. This fact is not lost on others.

It is also clear that individual justice has no place in the calculus. American Jews, portrayed as wielding legendary power, have none when compared with the forces that shape American foreign and nuclear policy. This, too, should be kept in mind.