

WHY RIGHTS? WHY ME?

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ABSTRACT

That Jews are concerned about human rights is distinct from why Jews should be concerned about rights in the first place. This project analyzes the reasons Jews in the twentieth century put forward to convince co-religionists to take rights seriously. Focusing on the content of these arguments facilitates dividing the proffered rationales into three broad categories—the temporal, the innate, and the philosophical. Analysis of each category reveals subdivisions, reflecting the many ways Jews try to persuade each other to care about human rights. This taxonomy, unlike others, highlights the different ways in which Jews conceptualize the burning ethical questions of our day: of *how* and *why* to be Jewish *and* modern. These rationales therefore are understood to function as moral reasons and, as such, can be assessed by their relative claims.

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OF COURSE JEWS HAVE, can, do, and should continue to participate in human rights discourse. Few in contemporary Jewish communities would disagree with this statement as the vast majority endorses the idea of Jews sitting at the proverbial table when human rights instruments are created and negotiated at national and international levels. Many would go so far as to assert that Judaism has much to offer in these conversations. Literature on Judaism's contribution to these projects has boomed, especially since the mid-1970s.

Contemporary scholarship on Judaism and human rights acknowledges a fundamental paradigm difference between Judaism and modernity. On the one hand, Judaism organizes civilization along a duty-centered mechanism (*mitzvot*), whereas modern societies generally order communities along a rights-centered *Weltanschauung* on the other. Despite this orientational incongruity, every modern Jewish author chooses to invoke rights talk to highlight how and what Judaism can contribute to contemporary human rights discourse. The language of duty, however significant it is to the Judaic tradition, is eschewed by these authors. In order to be heard, it seems, Jews can do nothing else but employ the hegemonic language of rights talk. This is not to say that rights talk and duty talk are mutually allergic, but that the language of choice for modern Jewish authors on the topic

of human rights is the language of rights.¹ This very choice deserves attention.

Mystery remains as to *why* Jews should speak *about* human rights in the first place. Why should I, as a Jew, care about human rights? Why should I prioritize concern for human rights when my religious tradition inculcates fervent focus to fulfill *mitzvot*? What reasons do Jewish thinkers deploy to convince me that I should be concerned about human rights? And why are these reasons important to identify and to understand their function? This article offers preliminary responses to these questions.

Notwithstanding claims that its roots emerge from the Jewish middle ages, or earlier from the Talmud, or even from the Torah itself, the ascendancy of rights talk is relatively recent in the history of human civilizations (see Goodman 1998; Goitein 1979; Rackman 1952; Daube 1979; Brichto 1979; and Cohn 1989). Its dominance is most evident in the twentieth century with the establishment of international human rights documents, instrumentalities, and regimes. This study therefore limits itself to rationales Jews provided throughout the twentieth century to convince other Jews to be involved in human rights conversations *at all*.² One might think that because Jews share a textual tradition their rationales would be common or at least related in some significant fashion. There is, however, a surprising range of rationales. Each rationale is significant because each speaks not only *to* Jews but also *of* Jews: the rationales reflect *au courant* self-conceptualizations of what it means to be Jewish *and* modern.³ Certainly, rhetorical diversity is not a modern invention in Judaism, for even arguments put forward by

¹ See, for example, Freund 1990; Konvitz 1972, 13–19; Sidorsky 1979, xxiii; Lamm 1970, 126; and Cohn 1989, 9. Sidorsky's comment best illustrates the tension: "It is evident, as the case in point, that the contemporary phraseology of human rights had not been used in the formulation and the expression of the moral ideas of many earlier and different societies, including biblical, rabbinic, and medieval Judaism. Yet the explication of the terms that were employed for moral expression in similar contexts and the careful transposition of the appropriate frame of reference point to the relevance of the ideals and values of these earlier societies for the analysis of human rights in our own times." On the notion of choosing words within a preexisting language, see Stout 1988, 264–65.

² A future project on this topic would benefit from engaging Israeli scholarship, the positions articulated by Jewish scholars in other parts of the world (like the former Soviet Union), and the more philosophical works of the likes of Hermann Cohen, Franz Rosenzweig, and Martin Buber.

³ For Levinas 1998, speaking is self-exposure. See Gibbs 2000, 49. In regard to his leadership in the fair labor movement in the first half of the century, Rabbi Stephen Wise says that he "went not only as an American citizen, as a minister of religion, but also as the spokesman of the first national Jewish organization [American Jewish Congress] to take its stand in this battle for justice" (1949, 118).

the ancient schools of Hillel and Shammai were considered equally holy inasmuch as they furthered the pursuit of the divine (see BT *Eruvin* 13b).

What is modern is the context in which this diversity of rationalization emerges. Particularly since Baruch Spinoza's 1670 *Theological-Political Treatise*, the interrelationship between rights afforded to individuals and communities, and the duties incumbent upon them by community and state, has become an increasingly deliberated topic among Jews. In his 1783 *Jerusalem*, Moses Mendelssohn conceives the state as the facilitating framework to negotiate rights and duties between citizens and state, a framework that benefits from intellectual and religious difference. Whereas Mendelssohn thinks that religious diversity adds to a state's ability to identify what should be considered human rights, over a century later Moritz Lazarus in his *The Ethics of Judaism* argues that religious diversity is all but irrelevant. Instead, that which is moral becomes law because it is moral, not because it is divinely (or otherwise) ordained.⁴ Lazarus's comment illustrates one way in which Kantian ethical argumentation permeates modern Jewish discourse.⁵ In addition, it sets in motion twentieth-century Jewish argumentation about *why* Jews should care about human rights: is it because human rights are moral in and of themselves that I should care about them, or, regardless of the moral nature of human rights, am I to care about human rights because I am a Jew? Perhaps, though, there are reasons that combine these approaches. Indeed, as will be seen below, modern Jewish human rights discourse contains a myriad of ways Jews understand themselves obliged to discuss and secure human rights. Current scholarship on Jewish reasons for being concerned about human rights, however, does not adequately acknowledge this pluralism or its benefits inasmuch as it emerges *from* and appeals *to* a wide range of modern Jewry and contemporary sensitivities. This paper intends to fill this lacuna.

Before analyzing the rationales themselves, a brief note about the process of rationalization is in order. At its most basic, rationalization is the invocation of a reason for something. Do X *because of* Y. This reason, Y, need not be rational—as this term is commonly understood. Nor does Y need to be compelling for all audiences, especially across traditions and times. A skeptical reader might think a particular Y expresses only an

⁴ Lazarus 1903, §79. This echoes Plato's *Euthyphro* dilemma (see 11a and elsewhere), much debated in medieval (Jewish) philosophy and theology.

⁵ Hermann Cohen takes Lazarus to task for his neo-Kantian apologetics, but supplants it with his own version of a neo-Kantian Judaism. See Cohen's *Religion of Reason: Out of the Sources of Judaism*.

ulterior reason to justify an author's point.⁶ The true reason remains hidden—it being too politically contentious to articulate, or perhaps too theologically controversial, or even unknown to the author altogether. For example, a skeptical reader might think the true but elided reason why Jews should be concerned about human rights at all is that there is some residual guilt for Jews being involved in the death of Jesus of Nazareth. Or perhaps the true reason is unabashed self-interest: at a crass level, caring about human rights is a form of selfishness. Whether this or some other *ur*-rationale truly shapes an author's argument cannot be ascertained with any certainty. However understandable this or another *ur*-rationale may appear, this mode of reading unreasonably elevates a skeptical reader's conjecture over against the written words themselves. A diligent reader, on the other hand, avoids such contention by attending to an author's argument without harboring preconceptions of why an author says "because. . . ." A diligent reader enables these *because of Y* phrases to speak for themselves.

With regard to Jewish rationalizations of rights rhetoric, these *because of Y* phrases not only speak for themselves; they also speak about their authors. In his cool review of the 1972 volume *Judaism and Human Rights* edited by Milton Konvitz, Aaron Kirschenbaum highlights the self-reflective nature of Jewish thinking about human rights:

What has Konvitz done here? A man steeped in the democratic ideals of the American political and legal heritage and as a student grappling with constitutional problems and modern ethical questions, he has studied the Bible to see what its deeper meaning is *to him*, to learn what its underlying principles are *today*, to relate its timeless teachings to the context of Man's dilemmas in the twentieth century [Kirschenbaum 1972, 358–59; emphasis in original].

The complaint Kirschenbaum registers against Konvitz is that the latter "overlook[s] the gap between the world of *historic* Judaism and the world of the *citizen* of the twentieth century" (363; my emphasis). For Kirschenbaum, "authentic interpretation requires that the essence of the

⁶ "To give an explanation after the fact when dealing with a rational commandment such as the prohibition of murder, when there is a perfectly obvious reason or primary meaning for it, is to give a rationalization. A rationalization is the substitution of a secondary meaning or effect when a primary meaning or cause is available. . . . In the case of the nonrational commandments, conversely, such as the prohibition of eating of pork, we admit that the primary meaning, reason, or cause is unknown to us. Hence any secondary meaning we infer subsequent to our acceptance and observance of the prohibition is clearly only secondary and does not in any way masquerade as the primary meaning" (Novak 1992, 27).

original text be preserved *despite* the shifts in emphasis and *despite* the change of scenery.”⁷ Konvitz is charged for being a modern human being: a historically located person endowed with the right and responsibility to judge phenomena and texts, to decipher which, if any, speak to the issues of the day. Kirschenbaum would rather that Konvitz avoid plumbing traditional texts for relevant material to modern human rights issues, and instead bolster his human rights positions with other arguments. If one wants to talk about modernity, like rights talk, leave the textual tradition alone.

Kirschenbaum’s preference for an ahistorical reading of the Jewish textual tradition does not comport with the inevitability of contextually minded interpretations by modern Jews. Vast swaths of modern Jewry recognize that it is the individual, historically located Jew who harbors the locus of ultimate decision about (a) how to make a decision, and (b) for which reasons. This is why *The Jewish Ethicist*, an online Orthodox advice column, does not seek “to act as a substitute for the ethical judgment of the reader by recommending an authoritative guide to action. On the contrary, the columns strive primarily to explain the underlying ethical and educational principles at work, so as to strengthen and cultivate these values in the reader.”⁸ The preeminent Reform Jewish theologian, Eugene Borowitz, articulates a similar sentiment when he says that it is the autonomous individual who ultimately “must determine what to make of God’s demands and Israel’s practice, tradition and aspiration” (1991, 293). Emmanuel Levinas argues that as historically located individuals, each Jew cannot but help reading the Judaic tradition in light of contemporary civilizational concerns (1990a, xiii; see also 1994, 92, 102; 1990b, 219–20). Moreover, this practice has messianic import because without such modern and individualized interpretations, “something would remain unrevealed in Revelation if a single soul in its singularity were to be missing from the exegesis” (Levinas 1994, 171). Reading the textual tradition in light of contemporary issues is an exegetical practice already embedded within the Judaic textual tradition—and is a necessary practice for the tradition to continue revealing its relevance to modernity and moderns.⁹

⁷ Kirschenbaum 1972, 364; my emphasis. What “the essence of the original text” is or who is qualified to articulate it (if “it” exists), or what the nature of the gap between historic Judaism and the twentieth-century world is, Kirschenbaum does not say.

⁸ Meir 2005, ix. See also Wurzbürger 1994 and 2000 for another Orthodox perspective about relying upon individuals to make decisions.

⁹ On selectivity and the necessary application of the tradition to modernity, see Joseph 1925, vii. Hermann Cohen, too, speaks of the need to read the textual tradition through the lens of (albeit modern) preconceived concepts (1995, 4).

1. Why Rights? The Rationales

Twentieth-century Jewish arguments about human rights differentiate into three broad categories. *Temporal arguments* appeal to historical events, current realities, or future possibilities. *Innate arguments* point to aspects internal to the Judaic tradition that, for the author(s), compel concern for human rights. Finally, *philosophical arguments* articulate reasons that, irrespective of Judaism or Jews, inspire concern for human rights. As one might expect, these meta-argumentative classifications are not mutually exclusive, as some rationales defy easy categorization and some authors deploy multiple argumentative strategies. Nonetheless, these rubrics facilitate a clearer understanding of how Jews go about convincing audiences (both Jewish and gentile) that Jews can, do, and should be concerned about human rights (and, obviously, have substantive contributions to make to the conversation). Unfortunately, this article can only consider a fraction of extant material on the subject; hence the sources are merely illustrative and not exhaustive. The heuristic value of this perhaps seemingly ethnographic taxonomy will be discussed in the latter half of this article.

1.1 *Temporal arguments*

Scholars invoking temporal argumentation to rationalize why Jews should be concerned about human rights tend to take one or more of three general perspectives. The retrospective stance hearkens to historical events or themes. Usually these rationales pick and choose highlights from the vast history of the Jewish people or general civilization. Emanuel Rackman's mid-century piece best illustrates this viewpoint:

As never before in human history, the safeguarding of human rights has become a matter of international concern. The Charter of the United Nations acknowledged that their violation was a cause of World War II and that their protection had become vital to peace. Furthermore, in the debates within the Israeli Knesset the principal argument advanced in favor of a written constitution was that it would protect human rights. Jews, therefore, might well consider some Talmudic insights with regard to the nature and implementation of those human rights that have become particularly controversial in our day [1952, 158].

Another illustration is found in Konvitz: "The [1999] enforcement of the right to dignity by the Israeli Supreme Court may well serve as a brief rationale for a new edition of *Judaism and Human Rights*" (2001, 1). Both Konvitz and Rackman—among others—consider recent past events sufficiently motivating to justify contemporary concern for human rights.

One significant kind of retrospective argument focuses on the theme of victimhood (see Henkin 1976). When the *Israel Yearbook on Human*

Rights emerged in 1971, the first volume opened with this argument by the editor Yoram Dinstein:

If human rights are contemporary with man, so are violations of human rights. In fact, historically speaking, the development of fundamental freedoms reflects the reaction of a shocked mankind to its own excesses. All too often, these excesses were directed at Jews. One may perhaps say that, in the international supermarket of persecution, Jews have been the traditional consumers—Jews have paid the highest pricetag—and such fair trade regulations as evolved are in many respects based on their sad experience. Thus the entire modern concept of crimes against humanity—genocide, in particular—is a direct outcome of the Holocaust [1971, 11].

By depicting Jews as the archetypal victim (indeed, consumer) of human rights abuses, Dinstein paints Jews—collectively it seems—as the universal gauge of the protection of human rights. He goes on: “The *Israel Yearbook on Human Rights* is dedicated to the proposition that Jews have a stake in the promotion of human rights, and that the treatment of Jews in most instances is an acid test of the respect for these rights” (1971, 11). Dinstein anticipates that Jews have and will continue to play the role of victim, and moreover, that by measuring excesses heaped upon Jews the world can assess “respect” afforded human rights generally. Unfortunately, Dinstein does not flesh out how measuring “respect for these rights” is actually done—whether, for example, an infringement against one individual is similarly damning as the infringement against a group. Looking forward, what if Jews never again suffer abuses—is this evidence for Dinstein that human rights are upheld across the board? He does not say.

For Dinstein, the enduring if even episodic victimhood of Jews justifies both the *Israel Yearbook* itself as well as the claim of a debt.

We feel it is incumbent upon us, in the predominantly Jewish State of Israel, to press for the discharge of a *debt of honor on the part of the international community to Jewish martyrdom throughout the ages*. Evidently, we are not disinterested. Just as for a fettered prisoner liberty is not an abstract notion, for us anti-Semitism is not a mere “ism.” For us, rather, it means pogroms, concentration camps and gas chambers. As consumers, we know what it is all about [1971, 11; my emphasis].

Jews know what victimhood is all about. For Dinstein and others, Jewish victimhood is sufficient to (a) inspire me to be concerned about human rights, and (b) justify claiming a debt from the world at large.¹⁰ Had Jews not suffered at the hands of others, Dinstein perhaps might not

¹⁰ See Henkin 1976, 442: “It was, beyond doubt, the Holocaust of the Jews in Europe that provided the principal impetus to the drive to make international human rights law a reality; in large measure it was an act of moral reparation to the Jews.”

have made such an argument. However, this counterfactual hypothesis only highlights the truth that he made his case in this way *only*. Note the jump-shift in his argument: because the Jewish *people* suffered, the international community owes the *State* of Israel a debt of honor. This is a complex assumption. At one level he conflates a hitherto stateless people with a young nation state that, at that time in 1971 and even today, claims only a portion and not even a majority, of the Jewish people as citizens. At another level he assumes the international community (whatever that means) could extend adequate compensation for the untold and immeasurable suffering the Jewish people endured through the centuries. This raises the question of statute of limitations: which abuses are so old that preclude contemporary fulfillment of a debt of honor? And are Jews the only people who have endured abuses? Dinstein nods toward other victims in a cursory manner when he says: "At the same time, we have a special concern with the plight of all forgotten minorities, and our goal is to publish studies on those human rights that are usually upheld with a still, small voice, if at all" (1971, 11). That he does not assert that the international community owes other "forgotten minorities" a "debt of honor" reflects his exclusivism: only Jews are so owed, and therefore at least Jews should be a part of the international discourse on human rights and the fruits thereof.

A second temporal perspective considers contemporary aspects of modern political life as warrant for Jewish concern about human rights. In the early twentieth century, Jews were encouraged to be politically engaged, especially in the struggle for civil and religious liberties. As early as 1903 the prominent British rabbi Morris Joseph asserts that when Jews use "their votes for the purpose of securing such rights, Jews are in reality only playing the part of good citizens, for they are helping to vindicate the cause of justice, which cannot be set at naught without detriment to the national well-being. That they happen to be fighting for their own personal interests also, is an accident" (1925, 494). Joseph wants Jews to strip themselves of their religious and cultural particularities so as to "be guided by political considerations only, by principles which we sincerely believe to make for the welfare of the State. *All thought of self must be discarded*" (1925, 492; my emphasis). Across the Atlantic in America, Judah L. Magnes, despite his call for Jews to retain "their distinctive national culture" lest they court "degeneracy of many kinds," nevertheless agrees with Joseph that Jews "must accommodate" to their national surroundings and language.¹¹ Although Magnes does not advocate complete disembodiment as does Joseph, he does see the need for compartmentalizing one's traditional cultural distinctiveness in modern

¹¹ Judah L. Magnes, "A Republic of Nationalities" (1909). Found in Mendes-Flohr and Reinharz 1995, 493–96.

democracies so as to further state projects like expanding civil and religious liberties. These positions echo Spinoza's argument that whatever external religiosity one desires to practice, it must nevertheless accord with the peace and prosperity of the state (2001, see chapter 19). In short, Jews are not to act *as Jews* per se but only like every other person in the polity—equally deserving of civil and religious liberties.

In contrast to the calls for national assimilation and accommodation, Zionism was then increasing activism and advocating *Autoemancipation*, as described by Leon Pinsker a generation earlier.¹² However, the right for self-emancipation was not an individual right but a communal right: the right of national self-determination. That the Jewish nationalist movement reclaimed traditional concepts such as Exile (*galut*) and Redemption (*ge'ulah*) disgruntled many Western Jews seeking assimilationist existence. Zionism pulled Jews toward greater ethnic, if not religious, particularity whereas the universalism in the American and British milieu enticed many to abandon their specific heritage (see Green 1979; Halpern 1979). Nonetheless, both national universalism and Zionist particularism are considered by these authors sufficient to justify the construction of human rights instruments protecting minorities, even for those seeking national self-determination.¹³

Prospective rationales constitute the third temporal perspective. These arguments justify Jewish contributions to human rights discourse by invoking claims from the future that ought to compel action in the present. There are two levels of prospective rationalizations: the practical and the ideal. Michael Broyde offers a recent example of a practical or concrete prospective argument in a paper wherein he describes a three-fold calculus to support legislation protecting the rights of homosexuals from labor and housing discrimination.¹⁴ At the outset "this rule is in our own best interest, whereas a rule which allows economic discrimination based on society's perception of a person's private morality or religiosity is not." This is particularly so when "the same elements [wanting to discriminate against homosexuals] have in the past sanctioned or encouraged anti-semitism and discrimination against Jews." Second, supporting human rights policies "is a nearly risk-free fulfillment of the Jewish people's mandate to be a moral 'light unto the nations of the world' and demonstrate our moral and religious disagreement with such conduct."

¹² Leon Pinsker wrote *Autoemancipation* in 1882, which precipitated the arrival of Jews to Palestine in the first of many waves of emigration there.

¹³ This is evidenced in the writings by Stephen Wise in the early twentieth century and by those concerned about Soviet Jewry in the latter part of the century. See Wise 1949, 177; see also Dinstein 1979; Sidorsky 1979; and articles in the *Israel Yearbook for Human Rights* throughout the 1970s and 1980s.

¹⁴ Broyde (n.d.). All quotes are from the web edition. The paper is from 1997 or later.

And finally, “if we do not seek to protect the civil and political rights of those with whom we theologically disagree, we may find these groups will not seek to assist us when our rights are settled.”

Broyde’s calculus deserves closer scrutiny. Asserting that protective legislation is in Jewish self-interest appears deontological in nature until he unveils the true warrant for this comment: palpable evidence exists that those yearning to squelch the rights of one minority also have been known to discriminate against Jews in the past. Broyde’s “self-interest” is thus a euphemism for the claim to victimhood *as Jews*. This, coupled with Isaiah’s (42:6, 49:6) charge to be a light unto the nations (*l’or goyim*), suggests that for Broyde, being Jewish is not merely a nationalistic experience but a religious one. Broyde continues to assert religious distinctiveness in the second stage when he separates religious from political positions vis-à-vis homosexuality. His argument thus boils down to this line of reasoning: *politically* supporting homosexuals’ human rights does not abrogate Jews from articulating *religious* repugnance for homosexuality. Only by publicly standing in solidarity with homosexuals can Jews hope for their assistance when the sights of discrimination turn again toward Jews.

Broyde’s “we will scratch your back if you will scratch ours” calculus applies in the interreligious arena as well:

After all, Jewish worship and tradition, with its own unique practices and belief *might one day* be subject to attempted governmental regulation by those who view it as profoundly foreign and perhaps even unethical, and it is then that we hope *our common allies* in the battles for religious freedom whose own religious practices we *really* do not agree with, will join us in protecting our rights, as we have joined in protecting theirs.

This is nothing shy of a Janus-faced approach to interreligious relationships. Jews should publicly endorse *and* privately—that is, religiously—condemn. Broyde is not alone in forwarding this protectionist calculus to *push* the modern Jew to be concerned about human rights so as to secure concrete help for Jews in the future should Jews suffer (see Henkin 1976, 435). Moreover, unlike Joseph’s and Magnes’s call for political engagement with minimal religious identification, Broyde wants the modern Jew to be politically identified *as a Jew* per se.

At the ideal level of prospective rationalization we find appeals to the messianic. In his 1982 article in the *Journal of Ecumenical Studies*, Daniel Polish explores “the importance of the ideals of human rights in Judaism” (1982, 50). He concludes by speaking about “the embodiment of human rights. . .in the longed-for future.”

The importance of the various freedoms which constitute the “political rights” discussed here and of the bounty and health which are the “economic

rights” is underscored by the fact that they constitute *the Jewish idea of that Messianic time which is the goal of human history*—along with the peace which is the complement, or more properly the consequence, of their perfect realization. *People long for the time when these ideals will be the normative condition of human life.* In cosmic terms, humanity is entitled to them. They are our human rights in the most profound sense. How appropriate, then, that *until the arrival of that time of redemption we still-unredeemed humans should labor together to make them our conditions* [1982, 50; my emphasis].

The idea of the ideal future—the messianic era in which human rights will already be normative—is for Polish sufficiently motivating to justify Jewish participation in the human rights discourse. Does it matter that his piece is geared toward a more-than-Jewish audience? Would he make the same argument were he speaking specifically to Jews, and would he put this reason at the end? Perhaps. Significant, however, is that it is the *pull* of the future’s ideality that should inspire Jewish participation in the political life of civilization. Whereas the messianic should *pull* a modern Jew to be concerned about human rights, practical political ramifications surrounding human rights legislation should *push* one to be concerned as well.

1.2 *Innate arguments*

The second class of rationalizations is innate arguments that point to the Judaic tradition itself as grounds for justifying Jewish concern about human rights. Two broad and somewhat overlapping approaches are evident: the principled and the legal.

An international colloquium hosted at McGill University in April 1974 produced a “Declaration on Judaism and Human Rights” (McGill 1974). This document begins as follows:

In the light of the contribution Judaism and the Jewish experience have made to human rights, we affirm: 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 struggles of Jews for freedom from oppression and discrimination in the modern era have helped advance the cause of human rights for all. Jews and Jewish organizations have significantly aided efforts to secure national and international protection of human rights and freedoms. We accordingly reaffirm our long-standing dedication to the advancement and protection of fundamental rights and freedoms for all persons [McGill 1974, 436].

Temporal arguments like claims to previous and present struggles of Jews and the implicit support for individual and national

self-determination are certainly evident here. Of interest now is the assertion that “human rights are *an integral part* of the faith and tradition of Judaism.” The document supports this claim by appealing to certain principles abundant in Jewish philosophical literature, liturgy, theology, and lore, specifically (1) *betzelem elohim* (Genesis 1:27)—in the image of God, expanded upon in the *midrash* that claims all humans are descendants from Adam so that none can say their ancestors are superior to others’ ancestors (BT *Sanhedrin* 38b); and (2) the biblical injunction of *la’asot mishpat* (Deuteronomy 10:18)—doing justice toward fellow humans, especially the vulnerable. These principles, particularly *betzelem elohim*, are popular among Jewish scholars seeking justification for Jewish support for human rights. Other popular principles include *kavod habri’ot* (respect for human dignity), the Noahide Laws, and versions of the Golden Rule.¹⁵

Arguments of principle assert that Judaism supports human rights and does so from within its very core. Some go as far as to say that Judaism is coequal to human rights. Here is but one illustration:

The recognition of the importance of human life is at the same time both integral to the Jewish faith system and the first and necessary precondition for a belief in human rights. Other elements of that idea-set are similarly central to the worldview of Jewish thought. The notion of human rights flows as a natural extension of the Genesis account of the creation of humanity [Polish 1982, 41; see Konvitz 1972, 17].

While some authors point to the beginning of the *Tanakh* for the roots of contemporary human rights sensibilities, others refer to the prophets as the quintessential Judaic grounding (Kaplan 1980; Irwin 1972) and some to rabbinic literature (Rackman 1952). Irrespective of which source authors use to locate principles conducive to human rights discourse, theirs is the project of painting Judaism as a universalist tradition *in toto* (see Sidorsky 1979). Certainly, Judaism is not the *exclusive* source for universal human rights, says Konvitz, for such a claim “would be violative of the spirit of universalism which is one of the most significant aspects of Judaism” (1972, 17). Painting Judaism in universalist colors does not preclude other traditions also contributing to human rights discourse. Nevertheless, depicting Judaism in this way enables glossing over aspects of the textual tradition at odds with universalism. This rhetorical reductionist style of justifying religious concern about human rights finds expression among modern rabbinic and synagogue organizations’

¹⁵ Saperstein (1998, 49) offers these principles: “Dignity, equality, perfectability, responsibility for justice and peace, the rule of law, a just distribution of God’s wealth entrusted us, and the demand we use the world’s resources moderately and sustainably—these are the values that Judaism brings to bear on the issues confronting us today.”

resolutions and documents.¹⁶ They try to convince modern Jews to be concerned about rights because of a principle or two found in the Jewish textual tradition and irrespective of countervailing texts.

Legal arguments, in contrast, generally attend to these prickly texts even though, in the end, they also encourage concern about human rights. One might think that this approach is purely *halakhic* casuistry, that is, interpreting specific Jewish laws. Instead, these arguments speak more in terms of Jewish legal philosophy (Novak 1994, 133). Common to legal argumentation is the explicit and extensive acknowledgment that Judaism speaks more in terms of *mitzvot*—duties and obligations—than of rights. Haim Cohn says, “[W]e can only deduce ‘human rights’ in religious and divine law by means of negation. The obligation, the commandment, is what creates a right alongside it, and recognizes that right” (1989, 9–10). The mix of rights and duties, David Novak asserts, is “only intelligible in a social context where there is the rule of law” (1998, 6). This mode of argumentation echoes Moses Mendelssohn’s assertion that Judaism is not a revealed religion per se but revealed legislation encompassing “laws, commandments, ordinances, rules of life, instruction in the will of God as to how [Jews] should conduct themselves in order to attain temporal and eternal felicity” (Mendelssohn 1983, 90).

The legal approach, by highlighting the preponderance of theocentric duty-language within the Jewish textual tradition, articulates a more reserved vision of Jewish universalism than found in principled arguments. Legal arguments do not shy away from endorsing human rights legislation altogether; rather, it is the political instantiation of rights that the modern Jew must render intelligible from within a Judaic *Weltanschauung* of covenantal theocracy (see Novak 1994, 133; 1998, 5; 2000, 29–30). The motivation for Jews to be concerned about human rights emerges from a presupposition of the necessity for the rule of law as well as a theological concept of the ideal polity. Inasmuch as the ideal polity does not yet obtain in human civilization, Jews must wrestle with the next best way of ordering society.¹⁷

Unlike temporal arguments invoking the messianic era as an ideal goal, the ideal for legal arguments is a *way*—a method of ordering society now in the least bad manner—and democracy is that way. Legal arguments often speak of and encourage institutionalizing duties in

¹⁶ On relations between torture and human rights, see, for example, resources provided by Rabbis for Human Rights at <http://www.rhr-na.org/torture/tortureresources.html>. In regard to lethal force and rhetoric dependent upon Jewish principles, see Crane’s “With a Mighty Hand” (2008).

¹⁷ Konvitz concludes the recent second edition of *Judaism and Human Rights* with Elon’s masterful essay, “The Values of a Jewish Democratic State: The Task of Reaching a Synthesis” (2001).

modern democracies. Because the Jewish covenant acknowledges a community's duty to protect itself as a corporate body, legal rationalizations also soberly consider Jewish texts that endorse constraining currently legally protected liberties (see Cohn 1989, especially chapter 12). Authors using legal arguments thus seek coordination if not harmonization of (human rights) instrumentalities in modern democracies with covenantal theocracy as it is articulated in the Jewish textual tradition.

1.3 *Philosophical arguments*

The third class of rationalizations speaks to and from the reasonableness of the Western mind for the simple fact that most literature in the last century on the intersection of Judaism and human rights has emerged in a Western milieu. Often these arguments explicitly identify humanity's capacity to reason as shared with God (see Novak 1998, 12–13; Kaplan 1980, 55; Levinas 1993; Rosenzweig 2005; and Cohen 1995). All philosophical arguments appeal to reason to persuade and cajole concern about human rights. Common to this class of argumentation is the idea of the other. More precisely, the vulnerability of the other—the other's otherness—compels concern and action. Perhaps, in the end, this class of argumentation should be called “other arguments.”

Practical philosophical arguments about the other boil down to what David Saperstein calls “enlightened self-interest.” He approaches this conclusion through a logical progression. He first explains that the Judaic tradition recognizes that

real power involves compromises. That was always the role of the prophet in his symbiotic relationship with the king. Any time we have power without an encounter with those prophetic norms to call us to task, we will compromise our moral structure, and we will give in to the temptation to abuse power [Saperstein 1998, 51].

Robust checks and balances of powers, therefore, are necessary for a society to survive and thrive. Saperstein then implicates the Jewish principle of *'arevim zeh ba zeh*—that all Jews are responsible (literally, pledges) for each other (BT *Shevuot* 39a), when he says, “all nations, all peoples, are responsible for the other; international cooperation is indispensable for international justice” (Saperstein 1998, 51). Thus far, it might be tempting to consider this particular argument within the “innate principled” category of rationalizations. However, Saperstein augments this argument by appealing to the rational mind of modern Jews.

Saperstein then asserts through the observation of René Cassin, a drafter of the Universal Declaration of Human Rights, that

Jewish *conscience* in today's world cannot turn away from any act of injustice, from any violent expression of the spirit of intolerance, nor from any practical case implying that an individual is subject to any arbitrary or

oppressive society. . . . The Jewish *conscience* calls on each man to continue the struggle for the freedom of all, to not accept any compromise in the name of a national or ideological principle [1998, 52; my emphasis].

Putting aside that Saperstein via Cassin speaks of “*the Jewish conscience*” as if it were monolithic, his is nonetheless an appeal to modern reason. He asserts that contemporary Jewish reason cannot ignore others’ suffering and thus must work to secure the freedom (qua rights) of all. It is reasonable, Saperstein finally says, for modern Jews to be concerned about human rights and their instrumentalities for the simple fact that “none of us are truly safe and secure so long as others are the victims of deprivation, persecution, or oppression. It is never enough to care only for our own needs and those of whom we love; our eyes must always look to the preservation of justice across the globe” (1998, 53).

Saperstein begins by appealing to rationales particular to the Judaic tradition only to conclude his argument with appeals to universal practical reason. Whatever safety and security the self (be it an individual, community, or state—Jewish or otherwise) currently enjoys, it cannot be “true”—or complete—as long as others suffer. For this reason, safety and security are always approximate and relative, constantly in flux. He does not abjure concern for human rights motivated from self-interest but this motivation is not sufficient to ensure that those human rights are protected. Saperstein therefore concludes that it is in every group’s interest to be other-minded *as well*—which he calls “enlightened self interest.”¹⁸ Being other-minded is what modern Jews can and ought to be, especially with regard to human rights and their instrumentalities.

Abstract philosophical rationales, in contrast, argue that the mere existence of others—regardless of whether one attends to them legally or physically—is what compels concern about human rights. Levinas asserts that human rights instruments do not so much as *endow* each human with uniqueness than they *reflect* the already absolute alterity of every being (Levinas 1993, 117).¹⁹ He cites this Talmudic passage to illustrate the paradox of “the human in being”:

¹⁸ For a Christian logical and practical philosophical argument to be concerned about human rights, see Carey and Carey 1987. Using anti-Semitism in the UN as their case study, they argue that verbal animosity can snowball out of control if not checked early on; all minorities would be unnecessarily vulnerable to abuse. Furthermore, Christians should protest such abuse on religious grounds, and all people should protest as well because an organization’s justness is evident to the degree to which minorities are protected by and within that organization.

¹⁹ It is interesting to note that the few places where Levinas directly discusses rights (1993, 1999) are not found in his “Jewish” thought but in his “Greek” (on this distinction, see Gibbs 1992). However, the terminological and textual resources he uses to discuss human rights emerge from the Jewish tradition. Might this be reason to think that Levinas considers human rights an issue *discussable* in society writ large, though *thinkable* from within a particular (here, Jewish) tradition?

Grandeur of the Holy-Blessed-Be-He: Behold man, who strikes coins with the same die and gets coins all alike; but behold the King of kings, the Holy-Blessed-Be-He, who strikes all men with the die of Adam and not one is the same as another. That is why each is obliged to say: The world was created for me!²⁰

Despite its theological overtones, Levinas sees in this text a philosophical assertion that humans are of similar worth and yet are dissimilar in being. Already the multiplicity of unique humans precludes the possibility of human interchangeability. Thus, for Levinas, “the rights of man or respect for those rights *does not proceed* from the sternness or the grace of God” (1993, 118; emphasis in original). Instead, rights are understood a priori—prior to any state or human rights institution. Essential for Levinas is the knowledge of this a priori.

The conditions for the respect of these rights are only apparent once man has already assumed his first right, in becoming aware of the natural and social determinism that hampers the person, and once, consequently, he catches sight of the practical procedures, issuing from that *knowledge*, capable of freeing the person from these pressures and of subordinating them to the exercise of his rights [1993, 119; emphasis in original].

The “first right” is coming to the knowledge that one is hampered by nature (one is unique in *this* particular way and not in *that* particular way) and by society (one is surrounded by “absolutely dissimilar” unique beings); that is, the first right is coming to appreciate the absolute alterity of one’s own being in this particular society. Respect for rights then emerges from this intellectual a priori.

Knowing that I am, and thus every human is, already radically unique leads, for Levinas, directly to fraternity, to responsibility for others (see 1990b, 176–77). “The rights of man manifest themselves *concretely* to consciousness as the rights of the other, for which I am answerable” (1993, 125; emphasis in original). Through others appealing to me to be responsible for their well-being I become “irrecusable and non-transferable, I am instituted as non-interchangeable: I am chosen as unique and incomparable” (1993, 125). Hence Levinas is able to say:

My freedom and my rights, *before* manifesting themselves in opposition to the freedom and rights of the other person, will manifest themselves precisely in the form of responsibility, in human fraternity. An inexhaustible

²⁰ BT *Sanhedrin* 37a. Translation in Levinas 1993, 118. This excerpt comes from Mishnah *Sanhedrin* 4.5. The literal translation of *chotam* can be understood as die, stamp, or seal; in this situation it can be considered a mold. This *mishnah* addresses how a court should extract truthful testimony from witnesses to capital crimes. See discussion in YT *Sanhedrin* 23a–b; MT *Sanhedrin* 12.3.

responsibility: for with the other our accounts are never settled [1993, 125; my emphasis; see also Rosenzweig 2005, 231].

The *a priori* is that each human is radically and incomparably unique; knowing this is my first *right*. My *rights*, however, are beyond mere intellection. My rights emerge from responding to the needs of the radically and incomparably unique others surrounding me and demanding of me by their very presence to care for their well-being. Thus Levinas succinctly says, “The Rights of Man are originally the rights of the *other* man” (1999, 149; see also 127). As noted, inter-human responsibility can never be fulfilled or completed: it is an infinite task of ever responding to the other, a task which renders being human meaningful.²¹

Whereas practical philosophical arguments urge institutionalizing human rights regimes so as to preempt abuse, more abstract philosophical arguments see human rights regimes as reflecting structures of human existence. For the one, I should be concerned about human rights because I am only as safe to the degree others feel safe. For the other, I should be concerned because I cannot be otherwise: my very uniqueness demands my responsibility *for* and responsiveness *to* others’ human rights.

1.4 Assessment of categories

Even though it is possible to see the rationales Jews have used in the past century to discuss the interconnection between Jews, Judaism, and human rights as dividing into three broad categories—temporal, innate, and philosophical—some concern should be given to the adequacy of these categories. Do these categories clarify what these rationalizations are and how they function within modern Jewish discourse? Answering this concern requires attending to the following question first. Might there be, in fact, other ways of categorizing such rationales? Three approaches come to mind: historical, sociological, and ideological.

A historical approach would map rationalizations so as to trace the trajectory of modern Jewish thinking. This approach might, for example, note the relative silence of *mitzvot*-centered rhetoric in the early part of the century in comparison to its prevalence in the latter half. A converse pattern can be seen through the century in the decreasing shyness of Jews across the streams of modern Jewry to employ rights-centered rhetoric itself.

A more sophisticated historical map would be more sociological, taking into consideration perceived and real socioeconomic and political positions of Jewish communities. Obviously it is impossible to speak of a

²¹ See Cohen (1995) who also argues that humanity’s task of correlating human ethics with the idea of God is an infinite task.

monolithic Jewish community in the past century; the experiences of some cannot be assumed for all. On the other hand, it is possible to see tonal shifts in Jewish arguments about human rights during the past century and link them—albeit tentatively—to socioeconomic and political experiences. For example, compare Magnes and especially Joseph, both writing at the beginning of the century, who encourage Jews to look and act like “the Joneses”—to vote *as citizens* and not *as Jews*—with Broyde at the century’s end, who urges Jews to vote from within a distinctly Jewish mentality. Perhaps Broyde’s confidence that Jewish participation in democratic processes will not be hampered by one’s religious identification in public reflects the relative success and security Jews felt in the latter part of the century as compared with its beginning. Saperstein, too, seems to speak from relative security when he stresses that Jews (and everyone else, for that matter) are not “truly safe and secure” as long as *others* suffer. Others, not Jews. Dinstein, on the other hand, writing only a quarter of a century earlier, bemoans Jewish victimhood both domestically and internationally. He seems to give voice to the angst of a group that has access to the means to address its woes but does not yet have sufficient clout to secure itself from abuse.

A third method to categorize rationales is along ideological lines. David Biale offers this synopsis of twentieth-century Jewish self-identification configurations among American Jews:

With the movement of the Jews out of the working class and out of the cities in the years since World War II, the *socialist and communist ideologies* of the first half of the century became less central to Jewish self-understanding, although radicalism remained an important component in the identity of many Jews. Three other ideologies, whose origins lie in the prewar period, became crucial for the way Jews saw themselves—and continue to see themselves—in relation to America: a *religious ideology* that hails Judaism as one of the three great American religions, a *political ideology* that defines Judaism as intrinsically equivalent to this or that American political philosophy, and a *cultural ideology* that sees Jews as one ethnic group in a pluralistic society [Biale 1986, 194–95; my emphasis; see Diner 2004, 201].

However attractive this framework may appear, its explanatory power regarding the mixture of religion and politics *across* ideologies is weak. For example, this framework would have difficulty locating with precision either Novak’s or Saperstein’s different arguments to be *politically* engaged *Jewish* citizens in a diverse society.

Each of these three approaches—historical, sociological, and ideological—offers interesting ways of understanding the emergence of certain forms of rationalizations. Each provides possible reasons *why*

certain Jews give voice to certain arguments. The latter two approaches, especially, help explain why this Y is used here and now, or why that Y is used there and then. On the other hand, they all share a similar and critical weakness. None adequately accounts for the fact that Jews employ many ways to persuade others to be concerned about human rights. None fully explains how it is that Jews of similar socioeconomic statuses and of same historical periods deploy strikingly different modes of rhetoric—often simultaneously—to convince co-religionists to care about human rights. Again, various modes of argumentation are not an exclusively modern phenomenon within Judaism; what is new is the topic to which they are applied.

Unlike these three approaches that address the *contexts* surrounding the rationalizations Jews use, the proposal put forward here categorizes rationales by *content*. Paying closer attention to *what* people say has important benefits. First, this method highlights *how* people persuade by dividing arguments according to *what* is said. In so doing, it is possible to identify authors' conceptualizations of rhetoric, of what will move their intended audiences, and reflexively, of what they think of themselves within the contexts they wish to shape. From this comes a second benefit: this approach permits exploring *why* Jews use certain rationales. Though people can rarely intentionally step outside their historic, sociological, or ideological *Weltanschauungen*, they can intentionally use other words and rationales to convey their message. The rationales they use are consciously chosen; they could have argued why otherwise (see Stout 1988, 264–65). In fact, many do. Many authors employ multiple rationales to convey the import of their message. A few, on the other hand, like Dinstein and Cohn, seem so convinced that no other rationale compels except the one they employ, like victimhood and legalism, respectively.

Moreover, a content-driven analysis speaks to and from a distinctly modern notion of humanity and citizenship. It recognizes that authors and audiences alike have a kind of human agency that is not confined to socioeconomic circumstances or ideological boundaries. Individuals are understood to be autonomous inasmuch as each self is obliged to become an authority to itself. How each inhabits this modern world is a matter of personal choice and public deliberation. The words and rationales used in these processes thus become critical inasmuch as they reflect one's self-understandings and shape others' self-understandings (see Walzer 2001, 7; Mittleman 2000, 109; and Habermas 1990).

2. Why Me?

Even if categorizing rights arguments by their content is considered the best way to differentiate them, is it possible to then discern which

among them is stronger and which weaker? Or must the conclusion of this analysis be limited to the claim that the multiplicity of ways Jews go about persuading each other is an evolutionarily important practice for communal survival, or that no one method of rationalizing why Jews should be concerned about human rights is better or worse than the next? Leaving it at this is tempting for it gives honor to the fact that each modern Jew is complex and can be reached and persuaded in a myriad of ways. It is reasonable, one might argue, that clarifying this taxonomy is sufficient because, according to the Talmudic principle that “these and these are the words of the living God,” multiplicity of argumentation is countenanced and canonized in the Judaic textual tradition (BT *Eruvin* 13b).

This conclusion, I argue, is premature if only because it silences the audience. These authors write and speak not just *for* themselves but *to* those of us who read and listen. They choose to articulate their positions about human rights so as to put forward their opinion as well as to garner support for their position. That is, their words are given so as to persuade an audience. This is distinctly different from the premodern situation, when Jewish leaders’ articulated positions became law, which, for better or worse, was expected to be followed.²² Modern speakers—even those within orthodox communities—can only appeal to their audiences so as to persuade them and convince them to concur with their positions.²³ The audience, then, becomes an active—albeit quiet—participant in modern Jewish discourse, especially with regard to human rights issues. Hence the question “Why me?” because I, too, am in the audience waiting to be convinced.

Just as Jews addressing human rights choose to speak *at all*, so too do they choose to speak *in a particular manner*. These manners or rationales are what Jürgen Habermas calls reasons, reasons that must be cited so as to persuade and reach a common decision (1990, 71). However, these reasons are not brought from nowhere, as Jeffrey Stout observes (1988, 264–65). Rather, reasons emerge from a *Lebenswelt*, a lifeworld, “that not only forms the *context* for the process of reaching understanding but also furnishes *resources* for it” (Habermas 1990, 135; emphasis in original). Speakers and their reasons emerge *from* a particular shared lifeworld as much as they speak *to* a shared lifeworld. In this particular case, the lifeworld comprising speaker, audience, and the reasons put forth in discourse is a Jewish lifeworld. Hence the question “Why me?” boils

²² *Aggadah*—or non-*halakhic* discourse—is a different matter altogether. See Borowitz 2006.

²³ This observation was put forward by Spinoza, and even earlier by Maimonides if one looks to his *Guide of the Perplexed*. For a modern consideration of this within Judaism, see Mittleman 2000. See also Meir 2005, ix-x.

down to the question of which rationales speak to (and also of) me *as a Jew*.

It is now possible to consider a standard by which to assess the relative strengths and weaknesses of the rationales Jews have used to convince fellow Jews to be concerned about human rights. This standard asks how these rationales make claims upon me as a Jew. This standard both acknowledges the presence and agency of the audience, and also honors the particularity of this audience.²⁴

2.1 *Because and because*

That the Jewish tradition countenances multiple methods of instilling in me the import of being concerned about human rights gives testament to the tradition's complexity and to its followers' ingenuity. On the other hand, which rationalizations come to dominate contemporary discourse among Jews about rights may indicate disturbing (to some) or uplifting (to some) sociopolitical, philosophical, and theological trends within modern Jewish communities. Some might argue that Jews should employ only one manner of argumentation. This makes moderate sense inasmuch as Jews share a common textual tradition. And yet, this textual tradition canonizes various disputes and problems that are addressed in complex and varied ways. Many problems even go unresolved, leaving it to the reader to determine which given answer best answers the question at hand. Thus, it does not seem unusual that modern Jewish argumentation continues this tradition of using multiple means to persuade me to be concerned about human rights.

Two perspectives, one external and one internal, can be brought to bear on this fact so as to assess its impact on the Jewish community (broadly understood). It might be construed by some outside the Jewish community that stances publicly aired by Jews do not actually represent other Jews or the Judaic tradition writ large. When a specific rabbi, scholar, or Jewish communal leader encourages fellow Jews to take up a human rights concern because of this or that reason, gentiles may be tempted to discount that effort, especially when a different argument is put forward by another Jew. On the other hand, were Jewish communities to speak in a uniform voice employing a single rationalization model, outsiders may still hold that very position suspect for the fact of its univocality. This single voice may gloss over divergent opinions

²⁴ And yet, Levinas, as seen above, writes about human rights in his "Greek" work but uses "Jewish" sources. It should also be noted that some of the authors reviewed here published or spoke in contexts which included more than a Jewish audience. This notwithstanding, it is possible to comment about Jews trying to persuade other Jews in multi-religious societies.

harbored within the Jewish community, opinions that, especially in light of the topic of human rights, deserve public consideration. Perhaps the variety of Jewish rationalizations renders accessible to gentiles Jewish contributions to rights discourse.²⁵

Looking inward, what is the effect on the Jewish community given the fact that Jews rationalize differently regarding human rights? Jewish speakers on human rights conscientiously choose their rhetorical styles, depending on how they perceive themselves, me (as the audience), and the situation at hand. It is possible that they may choose a rationalization rhetoric that does not persuade me. This risk is greatest for that author who is so convinced that there is only *one* appropriate, compelling, or true rationale for this topic. Claims to victimhood, for example, may lose their political suasion as Jews become increasingly secure. Similarly, legal arguments, irrespective of their *halakhic* acumen, may not compel secularist or non-*halakhic* Jews to be concerned about rights. Conversely, an author using many rationales may not convince me either, for the simple reason that I do not find in her argument an overarching and overwhelming justification for my concern. Even if I did find one of her rationales (Y_1) compelling, I might suspect that other people who are apparently in agreement with my ultimate position on a rights issue are in agreement with me for one of her other reasons (Y_2 or Y_3). In this situation, they and I do not participate in the rights discourse for the same *reason*; we participate only for the same *purpose*. Feelings of Jewish collective action thus become vulnerable to suspicion from every participant.²⁶ And yet, acknowledging that Jews act for different reasons may be necessary to increase cooperative action across Jewish communities, and to spur collaboration between Jewish and non-Jewish communities. Common *cause* need not mean common *because*.

2.2 *Because of beliefs or because of morals*

What happens in the situation when an author's multi-reasoned argument appears to include contradictory or conflicting reasons? For example, she might say that Jewish concern for human rights should be based upon the assertion that human rights already inhere in the Judaic tradition *and* upon claims to victimhood. While these are not mutually exclusive reasons, their combination appears inconsistent if not at least redundant. Is it possible to be persuaded by both reasons simultaneously?

²⁵ Whether rights discourse is in fact good for Jews or anyone else, for that matter, is worthy of exploration. See "The Ironic Tragedy of Human Rights" by Charles Blattberg, a paper given at the University of Toronto, Department of Philosophy, December 2005.

²⁶ The story of the Tower of Babel suggests danger should humanity be unified in language and purpose. See discussion in Stone 2003, 108.

This depends on whether these reasons function as beliefs or as morals, according to Bernard Williams.²⁷ If rationales were beliefs, the situation would be dire for at least one of them because, for Williams, beliefs must either *be* true or *aim* at the truth.

If I discover that two of my beliefs conflict, at least one of them, by that very fact, will tend to be weakened. . . . To believe that *p* is to believe that *p* is true, so that the discovery that two of my beliefs cannot both be true is itself a step on the way to my not holding at least one of them [1973, 169].

Williams understands that the beliefs one holds ought to be coherent when held concurrently. When one belief is discovered to be impossible or untrue, especially in light of other held beliefs, it is an individual's responsibility to "disembarrass" herself of this belief and abandon it (1973, 169, 179–80). In the case at hand, an asymmetry inexorably arises. Whereas the speaker does not see her reasons qua beliefs as conflicting, I—as her audience—do. Even if I do not know which of her reasons qua beliefs is untrue and must be abandoned, I would remain skeptical toward her entire argument because of the apparent incoherency of the beliefs she espouses. Moreover, even if I did not find an internal inconsistency across her rationales qua beliefs, I could dismiss them altogether because they are only her beliefs; as such, their claim upon me is naught. It also puts me in a position to evaluate the veracity of her beliefs, a position that is philosophically untenable (see discussion of Rorty in Stout 1988, chapter 11). Although at the end of the day I may agree with her ultimate stance and do as she advises (voting a certain way, participating in human rights discourse, and so on), I may do so for a reason or belief she did not articulate. That is, I can avoid her rationales qua beliefs altogether. Given these critiques, considering *rationales as beliefs* renders an argument susceptible to multiple ways of being undermined or dismissed.

Suppose, however, that the rationales put forward in these arguments function as morals, stating "I ought to X *because of* Y." Instead of deciphering the veracity of a speaker's argument, I am now tasked to determine whether her moral justifications are sufficiently compelling for me. When her argument includes multiple rationales qua morals, each of which says I *ought* to do the same thing, X, *why* I actually perform X is ultimately left to my discretion. As seen in the case of rationales qua beliefs, I could be doing X for Y₁ or Y₂ or Y₃ as she argues, or perhaps I found

²⁷ See Williams's (1973) discussion of these categories in "Ethical Consistency" in his *Problems of the Self*. He also addresses conflicts of desire, a category which does not adequately apply to the issue at hand here.

an alternative reason (Z) to justify my performance. It could be that Z is purely emotional, intellectual, or pragmatic. Even though I perform X because of one reason or another, I nonetheless act “in a frame of mind that acknowledges the presence of both the [other] *ought's*” (Williams 1973, 172). Since I know I *could have* performed X for any of those other—albeit *moral*—reasons, I cannot deny the claim those other moral reasons had on me. Thus Williams says that assuming a posture of moral indifference is impossible:

It is not an option in the moral case that possible conflict should be avoided by way of skepticism, ignorance, or the pursuit of *ataraxia*—in general, by indifference [as might be the case when rationales function as beliefs]. The notion of a moral claim is of something that I may not ignore: hence it is not up to me to give myself a life free from conflict by withdrawing my interest from such claims. . . . A man who retreats from moral conflict to moral indifference, however, cannot at the same time admit that those conflicts were what, at the time, he took them to be, viz. conflicts of moral claims, since to admit that there exist moral claims in situations of that sort is incompatible with moral indifference towards those situations [1973, 178].

If rationales function as morals, as I think they do in these Jewish human rights discourses, then I as an audience member cannot recuse myself of their moral claims upon me; I must take them seriously.

Habermas takes this point further. He says that moral norms become norms and endure as norms *only if* they are deliberated in public, and *only if* reasons are put forward that are sufficiently compelling in the eyes of the concerned audience.

Enduring acceptance of a norm also depends on whether, in a given context of tradition, reasons for obedience can be mobilized, reasons that suffice to make the corresponding validity claim at least appear justified in the eyes of those concerned. Applied to modern societies, this means that there is no mass loyalty without legitimacy [Habermas 1990, 62].

The moral norms speakers put before me are, in essence, their candidates for what ought to be the norms guiding Jewish communities at least on the topic of human rights. Which candidates emerge victorious depends on audience approval, which itself depends on audience comprehension. Thus, it is vital for speakers wishing to influence others to speak in ways and using reasons that are accessible and compelling to their audience. Stout concurs, adding that such speech, however novel it may be, must speak from and to a particular community (1988, 264; see Habermas 1990, 67–68, 134–37). Therefore, it is reasonable here to consider the above rationales as morals and assess them according to their ability

to reach modern Jewry. Modern, because this is a question about which rationales compel today, not yesterday.²⁸

2.3 *Because I am a Jew*

This concluding section thus evaluates the aforementioned rationales according to the taxonomy put forward. After each category is internally evaluated, an attempt is made to determine which, across the categories, is most morally compelling.

Within the temporal category, invoking general historical events to motivate my concern about human rights has less of a moral claim upon me as a Jew than would adducing claims to Jewish victimhood, the former being more historically contingent and less specific to me as a Jew than the latter. Urging me to vote regardless of my religious identity has less of a moral claim upon me as a Jew than do arguments encouraging my political participation because, in part, of my association with the national project of Zionism. Though the prospective practical argument of mutual back-scratching in the political arena (and simultaneously religiously condemning people that Judaism might find repugnant) pushes a moral claim upon me, it is the Jewish idea of the messianic future that pulls a moral claim upon me from within Judaism itself, and thus carries more moral weight for me as a Jew than does the practical. Looking across the temporal spectrum, as historical events fade and Jews become increasingly politically and socially secure, it is plausible that claims to victimhood will carry less moral urgency than claims to national self-determination. If, however, history alters its course and Jews again suffer, arguments from victimhood may be more morally salient than other rationales. Similarly, as the nature of Zionism adjusts to the complex realities of Israel and to the global shifts in nation-state sovereignty, appeals to Zionism may not sustain their moral urgency. Of the temporal arguments surveyed here, only appeals to the messianic, as Jewishly envisioned, maintain moral urgency despite and because of historical processes.

Innate arguments, comprising principled and legal forms, make claims upon me from within Judaism itself. Assessing which form carries greater moral weight requires determining which weight provides the most honest articulation of the Jewish tradition. Though arguments from principle persuade because of their simplicity and spatiotemporal universality, they fail to reflect adequately the totality of the Judaic tradition. Legal arguments often swell in attempting to survey the broadest swath of Jewish texts on a specific subject like human rights. However, details

²⁸ For a discussion of reasons in contemporary ethical discourse, see Walton 2003, though he does not distinguish religious reasons as a special category.

in themselves do not necessarily lend themselves to moral weightiness, for often the forest is hidden by the trees. On the other hand, the greater theocentric tone found in legal arguments reflects and reifies the substance of Jewish conceptualizations of a just and fair civilization—one grounded upon divine imprimatur. Thus, between principled and legal innate arguments, the latter appear to carry greater moral weight for me as a Jew.

Philosophical rationalizations assume moral claims upon me not as a Jew per se but as a human being. However difficult it is to clearly demarcate the difference between practical and abstract philosophical arguments, it is possible to see commonalities among them. For example, both Saperstein's "enlightened self-interest" and Levinas's a priori arguments begin with Judaic texts and values. This hook to the Judaic tradition notwithstanding, they both ultimately lean upon appeals to human rationality, universally understood. That is, their moral claims upon me as a Jew do not rest upon Judaism per se or upon my sense of Jewishness but upon my self-conception as a modern rational being capable of recognizing the plight of others. The significant difference is that Saperstein presupposes that I am and can engage in the political manifestation of rights instrumentalities; if Levinas assumes this, it is not explicit. Thus, it is plausible to assert that a philosophical argument's moral claim upon me as a Jew increases the more it is pragmatic.

Finally, comparing moral claims across the taxonomy, which assumes the strongest claim upon me as a Jew? It might be tempting to dismiss outright rationales not explicitly emerging from the Judaic tradition but rather from historical and modern sensibilities. Doing so, however, would ignore the fact that Jews are indeed historically located beings—speakers and audience alike, and are no less and no more rational than other moderns.²⁹ But such claims upon me as a Jew seem less salient than the claims of arguments speaking from within the Judaic tradition itself. Three rationalization forms explicitly emerge from Judaism: the messianic, the principled, and the legal. If, as seen above, principled arguments' moral claims upon me are purportedly less salient than legal arguments' claims, then which between legal and messianic arguments carries more moral weight for me? It should be noted that both messianic and legal forms emerge from a theocentric *Weltanschauung*. Whereas one (the messianic) is a telos, the other (law) is a method or way toward that goal. To the degree that neither adequately can exist without the other, it is reasonable to conclude that the argument with the strongest moral claim upon me as a Jew is the one incorporating *both* messianic and legal forms of rationalizations.

²⁹ Just look to Maimonides, Hermann Cohen, Franz Rosenzweig, and Martin Buber, among others, who integrate historical concerns and contemporary notions of rationality into their Jewish ethical works.

This taxonomy of rationales serves many purposes. First and foremost, it helps distinguish arguments according to content rather than by context. Second, by appreciating rationales as moral reasons, it facilitates evaluating the relative moral strengths of the rationales themselves within and across categories. Finally, it lends itself to further discourse analysis along Habermasian lines to assess the development of the ethics of Jewish rights discourse itself. On the other hand, a critical limitation of this and similar projects is its explanatory power of rationales used in other religious traditions or in so-called secular society writ large. This limit, however, is not a weakness per se but an honest recognition of its scope: this project explores Jewish rationales used among Jews (see Stout 1988). Complementary projects in other religious traditions on how persuasion works therein can only add to our general understanding of the intersection of religious sensibilities and public policy, of religious rhetoric in the public square.

Of course Jews have, can, do, and should continue to participate in human rights discourse broadly speaking. How appropriate is it to say “of course?” According to Kirschenbaum in his 1976 “Human Rights Revisited” article,

The preoccupation of the Jewish people with human rights is self-evident and understandable: “self-evident”—in the writings of scholars, in the speeches of communal leaders, and in the activities of national and international organizations and institutions devoted to the problems of civil liberties and civil rights, their protection and their furtherance; “understandable”—in the light of its dramatic history of persecution and tragic experience of deprivation of its elementary human rights [Kirschenbaum 1976, 228].

Not only is Jewish concern for human rights self-evident and understandable, it is normative—a point deserving a moment’s reflection. This paper does not consider Jewish scholarship condemning human rights regimes, discouraging Jews from engaging in human rights discourse, or trying to dismiss every link between Judaic history and moderns’ needs for the protections human rights instruments offer. Why? Because such arguments are hard if not impossible to find, or perhaps they do not exist at all. This *lack* of Jewish arguments *against* human rights therefore suggests that of course Jews can and should endorse human rights. Doing so is what Jews *ought* to do. *Why* Jews should—well, that depends whom you ask.³⁰

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