

Ralph Nader Radio Hour

Episode 501

“The Punishment of Gaza”

Steve Skrovan: Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan along with my co-host David Feldman and the rest of the team. Hello, David.

David Feldman: Good morning.

Steve Skrovan: And we have the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello, everybody.

Steve Skrovan: In the aftermath of Hamas' recent attacks on Israel, we've seen a lot of full-throated support of Israel, even among public figures who are ordinarily critical of Israeli policies.

Most would agree that the Israeli civilians who have been killed and kidnapped right now are victims. But are they victims only of Hamas, or are they also the latest victims of the brutal policies of their own country's far-right leadership? And is it misguided to conflate compassion for Israeli victims with support for the Israeli military? Today on the program, we welcome Israeli journalist Gideon Levy, who spent much of his career reporting on the plight of the Palestinians. With regard to those most recent outbursts of violence, Mr. Levy has said, "As long as Israel continues to believe the problem of Gaza will be solved by the sword, then we will get exactly to the same place. This vicious circle will not be solved by power, will not be solved by tanks, and will not be solved by troops—only by political agreement."

Our original plan was to speak at length with Gideon Levy about the unfolding situation in Israel and Gaza. Unfortunately, a few minutes into our conversation, he had to evacuate to a shelter. You'll be hearing all that as it happened. We wish him well and plan to have him back on soon to continue the discussion. Luckily, joining our discussion today is our resident international law expert and constitutional scholar, Bruce Fein. Regular listeners know Bruce as a former Justice Department lawyer from the Reagan administration and a vocal critic of America's lawless empire. We will speak with him about the American reaction to what's going on with the Israeli government in Hamas.

As always, we'll check in with our relentless corporate crime reporter, Russell Mohkiber. But first, let's speak, even if it's for a few minutes, to Israeli journalist Gideon Levy. David?

David Feldman: Gideon Levy is a *Haaretz* columnist and a member of the newspaper's editorial board. He is the author of the weekly "Twilight Zone" feature, which covers the Israeli occupation in the West Bank and Gaza over the past 25 years. He also writes political editorials for the newspaper. He is the author of the book, *The Punishment of Gaza*. Also joining us is a

friend of the show, Bruce Fein, constitutional scholar. Welcome both of you to the *Ralph Nader Radio Hour*.

Gideon Levy: Thank you so much.

Ralph Nader: Welcome indeed, Gideon. These are, as David said, very difficult times. And before we get to Israel, Palestine, and Gaza, I want to get your view of what has been the position of the United States in the last few days, especially President Biden's short address yesterday, which remarkably ignored the ongoing slaughter, bombing, and devastation of Gaza by the Israeli government, and focused his compassion on the Israeli victims of the Hamas assault, which isn't exactly a statesman like position for the president of the United States, who should be looking for a ceasefire and negotiations and pushing forward for a two-state solution. But he didn't take that opportunity. How was that speech received by you and your colleagues at the *Haaretz* newspaper?

Gideon Levy: I can't speak on their behalf. I can tell you that for Israel it was a great success in terms of here we have such a friendly president, Zionist president they called him. It made the biggest headlines. There's the feeling that the United States is behind Israel right now in an unconditioned way. Those who are even more critical saw this declaration as a green light for Israel to invade Gaza, go for a ground operation, and practically to do whatever it wants until it will get out of control.

If you ask me, I think that there was something moving in his (Biden's) speech, because he seemed very sincere. But I was really missing the other side—the Palestinians, the siege, the occupation, the apartheid—nothing of this exists in his words. It was really a speech of the old Zionist position: that of leader of the Jewish community held also by the United States, not of a statesman who sees the siege and understands the agony and the suffering of the Palestinians for decades, and doesn't see the connection between this barbarian attack on Israel on Saturday and all those preconditions, all of which are criminal and inhumane.

Ralph Nader: Well, he missed an opportunity to try to control the spread of this war into Lebanon and elsewhere. And that was very unfortunate, because he knew at the time that the Israeli government was cutting off water, food, medicine, and electricity from the 2.2 million people in Gaza, which is only about twice the size of the District of Columbia. And that didn't prompt him to say, *look, let all heads come down here. We're sending over mediators; we're trying to curtail the struggle in the war from erupting in the Middle East.* He said nothing like that. His speech was nothing like President Eisenhower's in 1956 when France, England, and Israel attacked Egypt. Eisenhower called had a press conference and basically said, *Stop* in no uncertain terms. And they all stopped. It was nothing like Jimmy Carter's diplomacy that established peace between Egypt and Israel. And now we're seeing a massive slaughter of civilians. I want to ask you, what was the military purpose of the Israeli precision bombers blowing up ambulances, hospitals, clinics, schools, and homes in Gaza? 6 min 44 sec
What is the military purpose of that?

Gideon Levy: I'm not sure Israel knows what is the purpose. Israel is reacting as usual more to satisfy the public opinion. And the Israeli public opinion is demanding now in a very vocal way

some kind of revenge over Gaza. I don't know how, where you're exposed to what really happened on Saturday, but those were really barbarian sins. Not everything was published, but they were barbarian sins, really like ISIS, not less than ISIS. In many ways, people were slaughtered and even worse than this. So the emotions are calling now for revenge. And Israel is following the emotions of the public opinion. As Henry Kissinger stated once, Israel does not have foreign policy; it has only domestic policy. And what we see in Gaza is an outcome of domestic politics.

David Feldman: I'm sorry to interrupt, but we have bad sound here.

Steve Skrovan: Mr. Levy, are you still with us?

Gideon Levy: No, sorry. We have to interrupt it now. There is a siren here and I have to go to the shelter.

Steve Skrovan: Oh, you seriously have to go?

Gideon Levy: Yes.

Steve Skrovan: It sounds like he had to evacuate.

Ralph Nader: Good heavens. I don't know why, there must be these rockets, or they still have some rockets. How could they be shooting rockets when they're being carpet bombed?

Steve Skrovan: So, I doubt we're going to get him back.

Ralph Nader: Now we're really messed up.

Steve Skrovan: Let's do this. David, let's give Bruce another intro and have Ralph and Bruce discuss the constitutional treaty definitions here.

David Feldman: Joining us is a friend of the show, constitutional scholar and specialist in international law, Bruce Fein. Welcome back.

Ralph Nader: Welcome, Bruce. The news recently in the tragedy and the conflict between Israel and Gaza elaborated what the Israeli government has in mind here as it now continues its massive bombing, slaughter, and devastation in Gaza—a little enclave of 2.2 million defenseless people. Minister of Defense Yoav Gallant said that the Israeli government was going to cut off water, food, medicine, fuel, and electricity from the people of Gaza. As the bombing is indiscriminate, reports in the *New York Times* and elsewhere show that hospitals, clinics, schools, homes have all been subjected to indiscriminate devastation. And you say that this meets the definition of genocide. Can you elaborate?

Bruce Fein: Yes, the genocide convention was finally ratified and became effective in 1951, but it was born of the Holocaust, which was prosecuted in part as a war crime at the 1946 Nuremberg Tribunal. And the genocide convention has several definitions of genocide, but one

of them is “deliberately inflicting on a group, conditions of life calculated to bring about its destruction in whole or in part.” And remember, the defense minister added to the elements of boycott that was anticipated that Israel viewed the Palestinians as “animals” and would act accordingly. The reason that's important is because it suggests an intent, a psychological frame of mind, if you will. And it seems to me that combined with the previous privations Israel inflicted on all civilians in the Gaza Strip for decades, adding these on top of those are clearly going to be denying the civilians a fair opportunity to live. To be candid, they will die of starvation, disease, lack of shelter, or otherwise. If you have no food, how are you going to survive? You can't exit—no way to flee—you can't go to Egypt; they've shut down all trespass across borders.

Ralph Nader: Well, it's been called the world's largest open-air prison. The restrictions, the blockade, now the total siege is suffocating the people there. And they didn't ask for this fight. Gaza was created as an enclave for Palestinian refugees in 1948. And they've been there ever since, as Gideon Levy said, without a single day of freedom. There have been assertions by leading Palestinians in the West Bank, such as Mr. [Mustafa] Barghouti who was on *Democracy Now* and was questioned by Amy Goodman, that the extreme elements in the Israeli government leadership are really moving to drive the Gazans into the desert or into the sea and just completely evacuate Gaza. Given all this, what do you see as the position of the United States and Western Europe? They seem to be reacting to the brutal massacre in Israel by the Hamas fighters but ignoring the wider slaughter that the Gazans are now being exposed to and the possibility of involving Hezbollah and a wider conflict in the Middle East. And the Western European nations and the U.S. are simply asserting no-holds barred support and more military equipment for the Israeli government. It sounds like a green light for genocide. How do you view the Western European countries and the U.S. position here? It doesn't have any diplomatic content.

Bruce Fein: No, it doesn't, Ralph. And I say this with great reluctance, but it's true that international relations going back to the Peloponnesian War was, as Thucydides described it, “the strong do what they can, the weak suffer what they must.” The duplicity, the double standards, leave out every single day, for example, the denial of a state for Palestine. Our own Declaration of Independence in 1776 says legitimate governments derive their legitimacy from the consent of the governed, to secure their life, liberty, and pursuit of happiness. And when a government becomes destructive of those rights, they have a right to replace it. In the last election in Gaza, Hamas won, and the United States said, *they're not supposed to win—so no, you can't win the election—self-government doesn't apply to you*. Because unfortunately not limited to just this particular clash now, it was genocide, a clash between Israel and the Palestinians. It's global, and I see it regularly elsewhere. That's what happens, whether it's in Burma, Myanmar, Congo, Nigeria, because the European countries and the United States feel it's not in their interest politically to defend the Palestinians, so who cares. And unfortunately, the Arab countries in that vicinity—Bahrain, Qatar, Saudi Arabia, maybe a little bit less than Qatar and Kuwait—they get the money. They know that they can't antagonize the West too much. They get the oil money and the protection from the West, so they say a few things, but nothing is done.

In the international arena, justice is subordinated to power, and that's what's we have here. When President Biden yesterday said *we're all in favor of a rule-based international order*, while he's supporting the very definition of genocide, shows how incredibly hypocritical and callous these

politicians are. I don't want to single out Biden, because politicians in general are that way. And I'm not going to exclude some of those who are Palestinians either. It's a universal sociopathology in the political figures, and it's tragic, because who loses? The peaceful civilians who want nothing more than a better life, an opportunity to develop their faculties and have families.

Ralph Nader: You mentioned *Declaration of Independence*, which was also a detailed declaration of resistance to the tyranny of George III and the call for a revolution. American politicians constantly say, *Israel has a right to defend itself, as any nation does*. They've never said the Palestinians have a right to defend themselves. And who is the oppressor? Who is the occupier? Who is stealing the land? Who is invading the area of West Bank at will, smashing houses, killing people, and engaging in a blockade? It's Israel. So if Israel has a right to defend itself, all the more Palestine has a right to defend itself against illegal occupation of the remnant of the original Palestine, which in the West Bank amounts to about 22 % of the original Palestine. Give us an idea, Bruce, of the array of constitutional, statutory, and international violations by the U.S. in its decades-long support of the Israelis.

Bruce Fein: The first is the crime of the war of aggression, which is one that we participated in establishing—the Charter for the International Military Tribunal in Nuremberg. It means that you can go to war only in self-defense, and once you complete self-defense, you don't have license to walk all over the world and destroy everyone. Israel has been fighting war in the West Bank and Gaza. But they don't have sovereignty over it in self-defense because self-defense means they've actually attacked you, not attacked in response to a provocation. And the United States has gone out of its way to convey agreement not to dispute Palestine's sovereignty. Although if the Israelis had sovereignty over the West Bank, they'd have civilian law rather than military law being applied to the Arabs. But it's military law that applies. The one that comes to mind most frequently is the requirement of proportionality that when engaged in conflict, it's a prohibition to use military force that's dramatically in excess in its risk of civilian casualties, suffering and destruction of property, vastly in excess to the importance of the stated military objective. When you had asked Gideon Levy what's the military objective right now in Gaza, he said he didn't think there was a military objective other than a political objective appropriate to the anger of the Israelis who saw their loved ones lost, killed. 18 min 6 sec I'm not going to deny that there's not violence on the other side as well. This is not a case of saints battling each other. The magnitude of the violence is supposed to be limited to the magnitude of the violence proportionate to the importance of the military objective. I don't know whether there's any military objective that looks to an end game. The military people always say *you can't kill your way out of a war*. Israel hasn't learned that lesson. That's all they have in store here.

Ralph Nader: We're talking about proportionality; over the last 25/30 years, the casualties of innocent Palestinians compared to casualties of innocent Israelis is about 400 to one. That's deaths, injuries, and side-effect diseases. For example, only 10 % of the people of Gaza have access to clean water. There's a 40% level of anemia among Gazan children. So, there's a huge disproportionality here. But go back to Washington D.C.'s violation of the *Constitution* and statutes and the US's policy toward Israel.

Bruce Fein: There's a concept in the law called co-belligerency. It puts you at the same risk as the belligerency. Co-belligerency means you are supplying systematically military support in one

way or another to a belligerent. So, when we're systematically providing Israel with perhaps even more than they're asking for, in military equipment, intelligence, etc., to fight wars, and Congress has not declared war at all. This is a unilateral effort by Biden. People postulate that if you let Congress vote on it, they would do the same thing. Well, then they need to vote on it and say, *we want to be declared a co-belligerent; we'll accept the risk of being a co-belligerent. We can be attacked.* Because when you're a co-belligerent, you're technically at war, so you're subject to attack like any other belligerent by the opposition, by the enemy. All these things continue forward without any congressional involvement whatsoever. Unfortunately, the Congress long ago unilaterally surrendered its war power because they don't want to vote on it. They just want to have all the responsibility in the present-day derelict. *We could be primaried if we have to vote on this issue. It's controversial, so let us abdicate our responsibilities.* It's a messed-up system in the United States; we pay no attention to international law. How could we say at one time under Condoleezza Rice, that we needed, elections in Gaza? They had elections, and Hamas won, and we didn't accept the outcome of the election because we didn't like it. Really? That's promoting self-governance? It's such a joke. Moreover, you can see why the Israelis could be emboldened, because their boycott, their excessive use of force to damage civilians is just a takeoff of what the United States has set as an example. And perhaps we all can remember the most infamous statement that then Secretary of State Madeleine Albright made on *60 Minutes* to Leslie Stahl, when she was confronted with the fact the embargo and the boycott the United States was inflicting on Iraq had killed 500,000 children—more than had died at Hiroshima and Nagasaki. And Albright's response was "It was worth it." And what was our military objective? I don't know; nobody says they know. We're still there now. We have no clue what we're doing. So we are a very bad example to other countries to limit where you have to act according to proportionality.

Another example, under Donald Trump who dropped the mother of all bombs in Afghanistan just to show how strong we could be. What was the military objective? Nothing other than to flex his muscles and show he was a tough guy, which is clearly another war crime. So, it puts us in a very awkward position to hold Israel to a standard that we don't apply to ourselves.

Ralph Nader: Let's go back to the stream of war equipment supplied to Israel by the United States—the most modern military equipment, fighter jets, artillery, and all kinds of other military arms. Under federal law, the U.S. is banned from selling or donating military equipment to countries who use this equipment offensively instead of defensively. Describe that situation over the years.

Bruce Fein: We've simply ignored the limitation, and remember unfortunately, the laws are enforced by the executive branch that is supposed to take care that the laws be faithfully enforced rather than sabotaged. But that same issue arose with the Israeli incursion in Lebanon in the early 80s when Alexander Hague and Israel using weapons/cluster bombs we had given them offensively in Southern Lebanon. So we just turned around and declared that it was all defensive, and that none of it was offensive, because it was all in response to the attack by the Palestinians. But as we well know, Ralph, in law, if you have provoked an attack on yourself, you can't then kill in self-defense after you're the one who provoked the attack. That's common in our law of homicide. And if you create conditions of life that are intolerable, you don't find that you have an immigration problem in Gaza with people wanting to live there because the conditions are so

harsh and stark. What do they think is going to happen? There's no hope. There's nothing and then you end up with this kind of violent response.

Ralph Nader: Let me read a couple short sentences from Gideon Levy's recent article in *Haaretz*, the Israeli newspaper, "In Gaza, most of whose residents are refugees created by Israel ... Gaza, which has never known a single day of freedom since 1948. Prime Minister Benjamin Netanyahu bears very great responsibility for what happened, and he must pay the price, but it didn't start with him, and it won't end after he goes. We now have to cry bitterly for the Israeli victims, but we should also cry for Gaza. The Hamas fighters who, with low-tech equipment, breached the barrier and moved into Israel and attacked the villages—many of those fighters had lost members of their own family in prior Israeli attacks, especially the giant ones in 2014 and 2008. In 2014, over 400 children in Gaza were killed. And these fighters are now all dead, according to the Israeli government, 1500 of them. So it was more like a suicide attack. They knew they were going to die, and they were going to take Israelis with them. And it was a cry by Hamas to the world that you are not going to ignore the Palestinian question as you are moving to establish relations between Saudi Arabia and Israel, and basically circumventing the 56 years of occupation militarily and otherwise by Israel in the West Bank, and Gaza. And so what we've seen here is the result of an abandonment by Congress completely to oversee this situation. Over the years, all they've done is pass resolutions with over 90 percent of the members of Congress reacting to AIPAC and others while the Israelis are slaughtering Palestinian civilians and saying, *Go for it*. And Biden's statement yesterday was a very dangerous green light to the Israeli government, *You can do whatever you want, and we're going to supply you with whatever you want in terms of weapons*. Your response.

Bruce Fein: That's accurate, and it shows that even foreign policy is driven by domestic considerations. Biden is worried about 2024. He wants to get as many votes as he can. And he's worried that if Trump is the nominee. He'll move the embassy to Jerusalem. And he's got to be worried about migration of votes or the continuing votes from some Jews for Trump. It's a political calculation. He's totally divorced from reality on the ground in the Middle East and Gaza and in Israel. And that's how Congress reacts as well. It's all driven by, I want to be in power and stay in power. There's no moral element to it whatsoever, zero.

Ralph Nader: Yeah, and of course, Joe Biden in his speech hardly referred to Congress. Why should he? Congress has turned itself, as you have said, into an inkblot. Instead of pushing for a ceasefire, Joe Biden is pushing warships toward that tormented area. And as usual, US taxpayers will pay the bill. And who is Joe Biden representing and what is he standing for in terms of the UN Charter, International Law, and the US National Interest? That question isn't even being discussed in the United States.

Bruce Fein: No, it's not. All he's doing it for is political domestic considerations. And I try to say this and inject a little bit of lightness in what's a very bleak discussion here. That's why Netanyahu was reported to have said when he was asked whether he'd want Israel to become the 51st state of the United States, he replied *No, I'd lose 100 votes in the Senate*. He'd only have two. And that's how categorically the United States—president and Congress—support Israel, without asking any questions. We automatically give them, without any oversight, \$3 to \$4 billion in military economic aid annually, even though Israel is far richer than the countries that we give very sparingly to. This is how they feel that they can obtain votes. Justice has very little

or no weight in the balance, and that sad situation in our politics has been around a very long time. The sentiment seems to be will this help me get power or not. That's the only intellectual universe in which these people operate. And the result is crimes, injustice, war, and conflict; we see the huge mess. And unfortunately, Ralph, it isn't limited to right now and what the TV cameras are focusing on. 28 min 45 sec

Ralph Nader: To what extent do you think Biden is overreacting to the Republican Party, which is goading him and basically daring him to be more aggressive on behalf of Israel than they are as a party in Congress?

Bruce Fein: You're exactly right, Ralph. This is just a political calculation, not just the Republican Party, but possibly Mr. Trump being his rival in 2024, and he worries that Trump will jump on him with this is why I did Israel. 29 min 28 sec and I recognize their sovereignty over the West Bank and Golan Heights and move the embassy that no other president did. So, he's worried about that; he's not worried about factually describing the horrors ongoing, including the violations of international law. And it's disgusting to hear him repeat that we're all in favor of a rule-based international order, as he violates the rule-based international order that he currently praises. Apparently, he has no embarrassment about saying that at the same time he supports genocidal conditions of life to destroy a group, as he publicly champions a rule-based international order. The other irony here, and I say this without trying to at all suggest that compassion isn't needed for all the suffering on both the Israeli and the Palestinian side. The genocide was born of the Holocaust. If anybody should be sensitive to the genocide convention, more than anyone else, it would be Israel. But unfortunately, that doesn't really come into play here.

Ralph Nader: Over the years, the vituperative talk by Israeli high officials toward the Palestinians is really genocidal talk. They refer to them as vermin, snakes, and animals that have to be destroyed, evicted. All this is a matter of record; I'm talking about ministers in the Israeli government and heads of state. It's interesting that the founder of Israel, David Ben-Gurion, didn't use words like that against the Palestinians. He was pretty frank. Coming out of the Holocaust, he was going to establish a homeland in Palestine, no matter what, no matter what the inconveniences to the inhabitants there. And he once very candidly to Nahum Goldman, who was the head of the World Zionist Organization, "It was their land and we took it." This is a widely reported quote. But now there isn't any kind of conciliation given the overwhelming superpower of Israel over the defenseless Palestinians. This raises an interesting question here of anarchy versus international law. Why aren't the international law experts in the United States more aggressively speaking out over the years? They're almost silent. Their discipline seems to be under attack. There's almost nothing left of international law, not just in the Middle East, but all over the world countries do whatever they want to do. Why are the international law specialists not connecting with each other in making statements about the wreckage here by governments who think they can do whatever they want?

32 min 25 sec **Bruce Fein:** In part, it's because there's no platform. If you made a statement like we're talking today, there's no way the *New York Times*, *Wall Street Journal*, *Washington Post* would ever print it. They censor anything that tries to call your own country to account for wrongdoing, especially an international wrongdoing of a high sort. So basically, you have no audience. And it's unfortunate that international law says it's honored in the breach rather than

the occurrence. They write down all these norms, but because we don't have one world sovereignty, there's no one who enforces them. So, the rules end up being advisory only. You use it to condemn your enemy, and then you do the same thing yourself. That's the world we live in, because we do not have any culture; we don't have any 33min 9 sec unwritten restraints on power to do whatever and get away with it. So, people will do whatever they feel to gain power—no matter what the moral scruples dictate otherwise—to fight and get authority over other people. The unfortunate thing is that the horrors in the Middle East right now aren't unique. Look in the Congo; look in Myanmar. I went recently over into Katulia in Burma., They bomb refugee camps there too, and it's not just there—you got genocide against the Rohingya. Anyway, that's what makes [not in audio] around 28 min. international law so fragile. You can deliver wonderful ... International law at its best like Jesus' Sermon on the Mount. But how did the Sermon on the Mount work out in practice? It was delivered in the most bloodstained place in the world. It doesn't mean we don't speak out ourselves, but I'm just trying to describe reality out there in terms of what we can expect.

Ralph Nader: Let's talk about the last bastion of international law, which is the international court in The Hague. You've worked before that court on a number of cases. Enlighten us about the international court, and whether the U.S. is a member. Give us some idea as to whether this court has any practical jurisdiction over the situation in the Middle East.

Bruce Fein: The International Court of Justice (ICJ) was created [in 1945] under the United Nations Charter. It sits in The Hague. There are fifteen members who are elected for nine-year terms; the judges are regionally disbursed by governments. They're supposed to be independent, but as you can imagine it's politicized but not as much as the UN Security Council or General Assembly. The ICJ has jurisdiction over [law]suits between nations that arise under international law or treaties, like the Genocide Convention. The difficulty is there are no armed forces to enforce any judgements rendered. If you're on the losing side, so what...it's just a scrap of paper as [Assistant Secretary of War] John McCloy said about the U.S. Constitution when he supported locking up all the Japanese Americans in World War II. So, it's there. It has some influence. But I remember the case against the mining of harbors in Nicaragua that was held to be a violation of international law and the ICJ and the United States. were like so what... we're not going to recognize your authority, and never complied with it. So, we have an organ that is capable of adjudicating claim of one nation against another nation in violation of international law. But hard part is if this is the judgement, how do you enforce it?

Ralph Nader: But the U.S. isn't even a member of the International Criminal Court. Isn't that correct?

Bruce Fein: We need to distinguish here between the International Court of Justice, which handles civilian cases between nations and the International Criminal Court; you're correct, we're not even a member of that... but that handles criminal prosecutions against individuals, natural people, not countries. For example, they're investigating Putin for alleged war crimes in Ukraine. And we aren't even a member of that, but we are encouraging that other people be prosecuted before the International Criminal Court, and we've actually told other countries that

you have to give us protection that if we have our troops in your country that you'll never refer our soldiers to the International Criminal Court; it's called Article 98.

Ralph Nader: The vast majority of nations belong to the International Criminal Court. Which countries other than the U.S. do not?

Bruce Fein: You're talking about a total universe approaching 200. Israel does not. Pakistan, India, China, Russia does not; you've got a dozen serious nations that have not ratified. They're the ones who are most likely to commit the violations themselves and the last people who want to sign up.

Ralph Nader: We've been talking with Bruce Fine, constitutional international law expert and practitioner. Let's go to Steve for any comments or questions, Steve.

Steve Skrovan: I want to defer to Francesco DeSantis, who's brought up an interesting point.

Francesco DeSantis: I have a question related to the role of Christian Zionism, especially as it relates to the domestic politics of this issue with President Biden and former President Trump. For instance, a 2018 Lifeway poll, according to the *Washington Post*, found that 80 % of evangelical Christians in the U.S. believe that the creation of Israel in 1948 was a fulfillment of a biblical prophecy that would bring about Christ's return. And with the obvious demographic whopping difference between Jews and Christians in this country, I want to know what role you believe that plays in the domestic politics.

Bruce Fein: I think that you're spot on. The vast majority of the evangelical Christian community in the United States supports Israel, and they believe that its existence is a fulfillment of the second coming of the Messiah. Israel itself does not believe that because they don't believe that Jesus was the Son of God. But you put aside quibbles like that when you're coming together to try to amass power. And so the Christian voter is a very, very strong force for the United States giving carte blanche to Israel to do whatever it wants. And they were very supportive when Mr. Trump moved our embassy from Tel Aviv to Jerusalem.

Ralph Nader: David?

David Feldman: Pardon the expression... Henry Kissinger. I apologize for bringing him up. But if Richard Nixon were president, and this were, say, 1973, what would shuttle diplomacy look like? What would Nixon and Kissinger be doing now with Netanyahu and the Palestinians? What would diplomacy look like if we had a president, who instead of saying *it is the duty of Israel to attack Hamas*, we had a president who counseled temperance like Ralph was saying earlier. And what would that look like if Antony Blinken, our Secretary of State, was in Israel to negotiate as opposed to promising more weapons?

Bruce Fein: The first thing you have to do, if we're gonna be involved, is to at least give an external exhibition of being neutral. Right now, the Palestinians would never say we're neutral. They just turn the TV on and say, *Why we're turning diplomacy on? We're negotiating against ourselves*. So the United States, if it's going to be any kind of negotiating partner, would have to

say, *We've got to cut off our aid to Israel. We need to make sure that humanitarian aid gets into Gaza and people aren't starving to death.* And then with that, they say they're convinced that there's got to be some kind of peaceful resolution consistent with the wishes, the consent of the governed, and then convene something like a Camp David Summit; it could be someplace else. We do have the resources that can have pressure that enabled Carter, for example, to negotiate the Camp David Agreement between Egypt and Israel. But unless we ourselves are able to demonstrably show we're neutral, there's there is no first step to even begin the diplomacy.

Ralph Nader: Hannah?

Hannah Feldman: Thank you. Bruce, America is a settler colonial state. Our foundations are similar to that of Israel, in that we were founded by settlers and structured our country to push out the native inhabitants by whatever means necessary. I'm curious, with your knowledge of America's founding principles, what role that plays in how we approach the apartheid state and the atrocities in Israel?

Bruce Fein: Yeah, it's a wonderful question. It took like 600 years to disavow what was called the Doctrine of Discovery, announced in 1493 by the Pope trying to define how the Western world would divide up all the other species. But if you want to push back far enough, every border in the world was created simply by who has the greatest military power. There could have been people before the Native American Indians that Columbus discovered were here as well. Our species has been around a long time—I don't know how many thousands or millions of years the Earth has existed. It's unfortunate, but you got to accept the idea that every single boundary in the world is in a moral sense, artificial. It didn't come from God; it didn't come from the sky; it didn't come because people displayed greater morality than anyone else, but just because they had the ability to be there and fight off people who wanted to take the land away from them. So nobody really has the moral high ground the sense that you were discussing and saying, *Oh our borders are sacrosanct but nobody else's are because they were given to us because we were so virtuous.* They're there because they had guns - to be candid about it. The only reason why we don't recognize that is because we don't know all the histories far enough back to understand who was exterminated for the French become French and the Germans and the Yugoslavs and the Serbians or whatever and Americans and that's why we need to recognize that we've got to hang together or we all hang separately; boundaries however can be prudentially useful because at least there's some working formula to prevent constant warfare. And every boundary is up and new and you can fight over it. But it's a prudential judgment. It's not the sanctimony that *hey you're subhuman you're an animal* if you don't agree with XYZ. And it's that kind of humility that we need to have that enables us to engage in conversation and be a trustworthy partner in the discourse here but had a I can guarantee you there's no country in the world that's got clean hands when it comes to the borders, not one.

Hannah Feldman: I would never imply such a thing.

Bruce Fein: I'm just saying that you're right. The United States may feel, *hey how can we go ahead and we're the ones also who took over land too so why should we complain that Israel is doing what we did?* But they could say that about Putin going into Ukraine as well. But they say there isn't any consistently principled approach to this. *It's just whatever I can get away with I*

will. The strong do what they can; might makes right; the weak suffer what they must. And let's move on. It's a wonderful formula when you happen to have all the nuclear weapons or most of them in the world and are super powerful. It's not so wonderful when you're weak.

Ralph Nader: Steve, do you have a question?

Steve Skrovan: Bruce, I have a constitutional question for you. About 11 or 12 years ago, I spent about five weeks in Israel working. And I made a lot of friends and had a lot of great political discussions. But I came away from that with my amateur political science assessment that the state of Israel is fatally flawed in that when you base a country on an identity, whether that's a heritage or ethnicity or a religion, as opposed to what our founders did in the 1700s when it was based on an idea, which was revolutionary at the time, it seems like once you base a country on an identity, it's inevitable that you're going to have apartheid. Is that a fair assessment?

Bruce Fein: I think it's a fair assessment. It may be a little bit incomplete. Israel really doesn't have a constitution. They have basic laws. But obviously, Ben-Gurion thought, there needed to be a country where a Jew could come as a refuge if there was another attempted Holocaust. But he didn't attempt to exclude others. Certainly not on the face of it. That's why 20 % of the Israeli population as we speak are Arab. They're not Jews. But in so far as we look at their legal, their infrastructure, their unwritten rules, if you're not a Jew there, you're a second-class citizen. You're not necessarily conscripted into the army. They don't do the policing the same. So it's a little bit like blacks in the United States during Jim Crow. Okay, they were technically Americans, but they really didn't enjoy citizenship like if you were white, and believe is a result of the fact that they're built on this idea that, hey, Yahweh, God gave this land to Jews, to Abraham, Moses, so it's ours because of our religious identity, not for any other reason, and that being the conviction, I think of a very large majority of Jews, certainly Orthodox Jews, how can it be otherwise then you're going to treat people who are not part of the chosen people as lesser people and you end up with something whether you call it apartheid, South African style, Jim Crow style, Israeli style that's built in system. And the only way you could try to move forward would be to do something like we did in our Constitution and say, *no we're secular country there can be no religious test oaths for anything; we're all the same under the law, and we welcome anybody who complies with the law, and we don't ask about their religion whatsoever*. And I don't think certainly now that that could come about in Israel given the strength of the Orthodox Jews who don't believe that whatsoever.

Ralph Nader: Given the current events and the destruction of Gaza, Biden should really demand an immediate ceasefire and negotiate to establish a truce. He's got to try to be an honest broker, but instead he's a ditto head bullhorn for more military activity by Israel. This is the lowest point in presidential positioning on the Middle East conflict since the end of World War II and there's nobody in government to call him to account. The Senate and House don't have hearings; they didn't have thorough hearings on Afghanistan on Iraq on Libya at all. They just rubber-stamped tens of billions of dollars every year for the conflicts in Iraq and Afghanistan whereas years ago Senator Fulbright had very thorough hearings on Vietnam, which had consequences to getting out of that conflagration, it's currently a dead zone in terms of dealing with international conflict from a preventive point of view or from an anticipatory point of view, or even now from a

restorative point of view. And the danger is that this war that's now going on, is going to spread to Lebanon, and it could then spread to Syria, and other countries get involved. And who knows where it will go from there? We don't have a president who puts a diplomatic break on his ally, even though his ally has been dependent for decades on U.S. military support, diplomatic cover, and getting other countries to stand in line behind the U.S. on the Israeli position vis-a-vis the Palestinians. Do you see anything coming in the next few days, Bruce Fein, that has any light at the end of the tunnel?

Bruce Fein: I don't because I don't see anything in the U.S. domestic political equation that would be a headwind against what Biden has already pronounced as full-fledged, unconditional support for Israel. I don't see anything for anybody to go criticize that position other than it wasn't even as broad as it ought to be. We have no statesmen around anymore. All these people care about and think about is the next election cycle and what plays XYZ. They don't think about suffering, morality, rule of law, or anything except how can we stay in power for the next cycle? And unfortunately, we become a country with zero statesmen, I mean complete zero. So how can we be optimistic? I don't say that with pleasure, but I don't want to be Pollyannish and say, *Okay, something's going to happen*, when I don't see anything changing whatsoever.

Ralph Nader: Let's look at the internal politics of Israel. More than a million Israelis demonstrated against Netanyahu's intent to weaken the judiciary and undermine any kind of democratic control over the Knesset or over the prime minister by the Supreme Court of Israel. Although now everybody's in solidarity because of the assault on the villages in southern Israel, there's going to start the process of recrimination about how this pompous prime minister's intelligence failure led to this situation. And there may be a Knesset vote, perhaps of no confidence. Isn't that the system they operate under? Couldn't they possibly bring Netanyahu down and form a new government?

Bruce Fein: Ralph, just today, the opposition joined forces with Netanyahu. Now they have a government of national unity. So that put the kibosh on. And you talked about the Knesset. When a declaration of war was made, it was made solely by the executive. The Knesset had no voice whatsoever. But as we speak right now, Israel has now unified.

Ralph Nader: Like Britain during World War II, they now have a government of national unity. But unlike World War II, Gaza will be in ruins in a few days, and then the recriminations will start. There's a huge boiling anger in Israel about the intelligence failures. They put that defeat on Prime Minister Netanyahu. So it could unravel quickly after the initial solidarity, which is not surprising.

Bruce Fein: I'm just saying right now politically from what we can see, the opposition to Netanyahu has basically surrendered and said, we're a part of your government, and that just happened today. It could come unraveled because politics we know is very fragile. And people even after Yom Kippur war against Golda Meir had to step down because of a similar intelligence failure; that could happen here. But right now I'm not optimistic that it will.

Ralph Nader: There's still an opportunity here for the people to register their opposition and then the remaining challenge is to get that congressional sentiment turned around by people who

are fed up with endless wars and criminal aggression, to reach the White House which is a runaway imperial presidency under both Democrat and Republican presidents.

They still kept appropriating 300 million bucks every single day. Didn't stop when they went one step further, the Congress and did something. They affirmatively rejected a proposal in Congress to establish an inspector general for the forthcoming tens of billions of dollars to Ukraine.

Bruce Fein: We never know in advance whether your protest is going to succeed; we're not clairvoyant, but the high watermark of being a citizen is standing up and protesting even if it doesn't result in anything. Go back and think... the very first person who said slavery is bad probably got wiped out. We don't know who they were; somebody had to start the conversation even though it took a long time before it was finally honored. It's the same thing with the first person who said *Hey women aren't chattel*, somebody had to start the conversation. And that's why, even in the short run...hey it looks like we're climbing a steep hill; we're at the bottom of Mt. Everest; somebody has got to do it. At least we in the U.S. with our heritage are the ones as citizens to say it. Maybe it doesn't result in anything. If we all do it will result in something. It's not hopeless. We are speaking to posterity even if the current generation turns a deaf ear, and that makes it worth it.

Ralph Nader: And it doesn't even require all of us, just a small minority of active citizens in congressional districts supported by public opinion can turn Congress around if they know what they're talking about, and they persist. That's what eventually happened with the Vietnam War when public opinion turned against it and Congress said to the presidency, *we're not giving you anymore money*, and they cut off appropriations. They still kept appropriating 300 million bucks every single day. Didn't stop when they went one step further, the Congress and did something. They affirmatively rejected a proposal in Congress to establish an inspector general for the forthcoming tens of billions of dollars to Ukraine. Bruce, in the context of our discussion, which of your books would you like our listeners to read?

Bruce Fein: The two best would be: *American Empire: Before the Fall* and *Constitutional Peril: The Life and Death Struggle for Our Constitution and Democracy*. They're the ones that lay out exactly how far we've fallen.

Ralph Nader: We've been talking with Bruce Fein, constitutional and international law expert. Thank you very much for coming on once again, Bruce. And I'm sure the subject matter we discussed will be continued.

Bruce Fein: Unfortunately, you're exactly right. Probably come back in two months likely talking about the same things.

Steve Skrovan: We've been speaking with Gideon Levy and Bruce Fein. We will link to their work at *Ralph Nader Radio Hour.com*. Now it's time to hear from our corporate crime reporter, Russell Mohkiber.

Russell Mohkiber: From the National Press Building in Washington, D.C., this is your *Corporate Crime Reporter* "Morning Minute" for Friday, October 13, 2023. I'm Russell

Mohkiber. More than halfway through his term, President Biden has yet to nominate an administrator to lead the Pipeline and Hazardous Material Safety Administration (PHMSA) within the Department of Transportation. That's according to a report from the *American Prospect*. In the aftermath of the Norfolk Southern train derailment, PHMSA played an indispensable role in keeping America safe from toxic chemicals. The agency, though small, is responsible for regulating pipelines and overseeing transportation of many dangerous materials throughout the country, including flammable fuels, radioactive substances and chemicals. Yet, the post at the agency has been vacant for years now. For the *Corporate Crime Reporter*, I'm Russell Mohkiber.

Steve Skrovan: Thank you, Russell. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan, along with David Feldman, Hannah Francesco, Ralph, the whole team's here. But that's our show. I want to thank our guests again, Gideon Levy and Bruce Fein. For those of you listening on the radio, we're going to cut out now for you podcast listeners. Stay tuned for some bonus material we call "The Wrap Up", featuring Francesco DeSantis and *In Case You Haven't Heard*. A transcript of this program will appear on the *Ralph Nader Radio Hour* Substack site soon after the episode is posted.

David Feldman: Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. It's good we had Bruce Fein on our show. He's coming out with a new report called *Congressional Surrender*, a tutorial for members of Congress and their staffs.