The Eichmann Trial, The Jewish Question, and the American-Jewish Intelligentsia

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From a Jewish point of view, two elements are inseparable from any discussion of the Jewish problem: anti-Semitism and assimilation. For a Jew the problem essentially is this: how can the Jewish people survive in the face of hostility which threatens to destroy us, and, on the other hand, in the face of a friendliness which threatens to dissolve our group ties and submerge us as a whole by absorbing us individually?

—Ben Halpern

I herewith commission you to carry out all preparations with regard to...a total solution of the Jewish question...

—Hermann Goering

We have no Jewish Question in America. The only question we recognize is the question of how to prevent the emergence of ‘Jewish question’ here.”

—Abraham Cahan

1992 marks the thirtieth anniversary of the Eichmann trial. The Supreme Court of Israel heard oral argument between March 22d and March 29th and rendered an opinion sustaining the conviction on May 29th. Eichmann’s petition for pardon to the President of Israel was denied; he was executed by hanging on June 1st, 1962 and his remains were scattered over the Mediterranean.

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3 HALPERN, supra note 1, at 14 (quoting ABRAHAM CAHAN, Die Arbeiter Zeitung (Dec. 5, 1890), reprinted in 2 E. TCHERICOWER, GESHIKHTE FUN DER YIDISHER ARBETER-BAVEGUNG IN DIE FAREYNIKTE SHTATN 499-502 (1945)).
I. THE JEWISH QUESTION

The abduction, trial, and execution of Adolf Karl Eichmann by the state of Israel, fifteen years after the shutdown of the crematoria at Auschwitz, challenged the American Jewish intelligentsia to confront the Jewish question. What does it mean to be a Jew in America and who is an American Jew? Is the Jewish history of anti-Semitism and the Holocaust also a part of American-Jewish history? Is there a lesson in the destruction of European Jewry—the triumph of anti-Semitism, the failure of assimilation—relevant to American Jews? Is there a national component to being Jewish? Are Jews a people? If so, is there a sovereign state, outside of America, which might claim affinity with American Jews, a state which speaks for the Jewish people?

The architects of the final solution treated all Jews alike. They classified all Jews—old and young, male and female, rich and poor, liberal and conservative, orthodox, reform, atheist, agnostic, or baptized—as subhuman and perceived them as threats to Gentile personhood. But all Jews were not alike. Jews throughout the world, before, during, and after the Holocaust, defined themselves in different ways, both in relation to Gentiles and in relation to their fellow Jews.

The Eichmann trial directly involved the two central events of Jewish history in this century: the Holocaust and the establishment of the state of Israel. It invited, almost coerced, American Jews to take a stand and, in the process of taking a stand, to develop whatever self-awareness they could muster about the meaning of being a Jew as well as a citizen of the United States. Self-awareness as a Jew had to crystallize in relation to both the non-Jewish-American world in which they lived and in the models presented by other Jews about the meaning of being Jewish.

How did the legal aspects of the trial affect this perception of self? The trial systematically documented the origins, development, and application of the German death machine. It aimed to make every Jew, however assimilated, confront or suppress the idea that “there, but for the Grace of God, go I.” It invited thoughts about a common Jewish history and common Jewish destiny regardless of one’s individual preferences. It challenged American Jews to rethink their relationship to their own government, provoking the questions: Where was my government when the millions were murdered?

4 This does not mean that there had been no debates about the meaning of Jewishness among American Jews. Indeed, there had been lively debates which were both informed and informative, but they were conducted by a small and self-selected group of people who chose to identify themselves as Jewish and to reflect on the meaning of being Jewish in America. They were conducted under the auspices of the several Jewish organizations in the United States and published primarily in Judaism and Commentary. The debates intensified following the Eichmann trial. See generally YOSEF GORN, THE QUEST FOR COLLECTIVE IDENTITY (1990).

5 The prosecution insisted on extensively documenting the failure of the Allies to come to the rescue of the Jews. It noted Canadian and American willingness to shelter British
Is there the faintest possibility that "It" could happen here? If there is a difference, what is it?

Julius Stone, the noted Australian-Jewish professor of jurisprudence, observed the conflict that this strategy created within his psyche. When asked to observe the trial on behalf of the International Commission of Jurists, he felt great resistance. Upon reflection, he discerned two powerful forces pulling him in opposite directions. One was the duty to learn, the other, the resistance to listen. This resistance, he observed, was rooted not only in the natural reaction to the "details of . . . inhumanity," but also in the resentment one feels before a demonstration that "unless we are careful we ourselves may sometimes come to similar degraded conduct." Stone further observed that "[t]hese subconscious resistances are strong enough, even if we discount the cruder sense of guilt over ungenerous immigration policies which might have saved many who later perished, as well as the animus of various shades of antisemitism." This subconscious conflict, Stone suggested, was responsible for the effort by the international legal community to argue against the legitimacy of the trial, saying: "I suspect that many of the . . . technical objections to the trial are merely rationalizations of our natural resistance to apprehending the details of these years of inhumanity."

The trial raised a number of legal issues, each potentially the basis of a learned law review article: Could the abduction of Eichmann against his will and the will of his host country, Argentina, undermine Israeli jurisdiction? Did the territoriality principle—that criminal jurisdiction extends to either a national or an act occurring inside the territory of the state claiming jurisdiction—apply to the case, or could an exception be carved for the occasion? Could Eichmann be held responsible for actions which were not considered criminal when done and which were recognized as crimes in international law only ex post facto? Could a state which did not exist at the time of the Holocaust try him? Was the Israeli judiciary capable of guaranteeing a fair and impartial trial? And most poignantly, from the perspective of international law, could Israel create a category of "crimes against the Jewish People" or would international law recognize only crimes against humanity?

First a few words about Adolph Eichmann and the trial.

children during the Blitz, and their reluctance to rescue Jewish children. Evidence of American responsiveness to advertisements published in Pets Magazine, calling upon Americans to adopt pedigreed English dogs, was similarly offered, to emphasize that Western conscience felt more for endangered dogs than for Jews in death camps. GIDEON HAUSNER, THE HOLOCAUST IN THE MIRROR OF THE TRIAL 301 (1988).


7 Id.

8 Id.
II. THE EICHMANN TRIAL

Adolph Eichmann was head of Department IV B 4 in the RSHS (the Reich security services) and in charge of Jewish Affairs and Evacuation. He proved his excellent managerial skills first by performing the modest task of expelling Vienna's Jews from Austria,\(^9\) then by engineering the systematic murder of the majority of European Jewry.\(^10\) In 1944, weeks before the Red Army marched on Budapest, he reactivated the Auschwitz crematoria to add 400,000 Hungarian Jews to his 5.5 million victims.\(^11\) After the war, Eichmann escaped to Argentina and assumed a false identity. On May 11, 1960, as Israel was celebrating its Bat Mitzva, Israeli security agents abducted Eichmann and brought him to face charges in Jerusalem.\(^12\)

His trial was not an ordinary trial. Israeli law was amended in order to provide that a Supreme Court justice chair the trial level three-judge panel.\(^13\) In order to accommodate the international media and a sizeable contingent of interested spectators, Israel decided not to hold the trial in the usual small and modest court building, but rather in Bet Haam, the “People's House”—a public hall for concerts and plays. To ensure Eichmann's safety, he was seated in a specially constructed bulletproof glass booth. A heavy police guard surrounded the court; visitors needed permits and were thoroughly searched before entering the building. Cameras were allowed into the improvised courtroom, a rarity in the common law world and unprecedented in Israeli judicial procedure. A battery of simultaneous translators contributed to the cosmopolitan atmosphere. The black and white decor of the podium, enhanced by the black robes of judges and lawyers, created the sensation of a film noir. The sterile odor of legalism, of procedural rules dryly and meticulously applied to a defendant presumed innocent, competed for attention alongside the agonizing picture of the Jews descending into hell. Witnesses collapsed on the stand, unable to command memory. The


\(^10\) Id. at 17-31.

\(^11\) Id. at 25.


\(^13\) By law, Judge Binyamin Halevy, Chief Judge of the District Court, was to preside over the panel sitting in judgment. In the early 1950s, however, Halevy had delivered the opinion in the notorious Kastner trial, which addressed the question of alleged collaboration of Hungary's Jewish leadership with Eichmann. See Attorney General v. Grunvald, 12(3) P.D. 2017 (1955) (Isr.). In his opinion in the Kastner case, Halevy declared that “Kastner had sold his soul to Satan.” Id. Kastner was assassinated shortly before the Supreme Court of Israel overruled Halevy's opinion, finding that Kastner's activities did not amount to collaboration. Substantial pressure was put on Halevy to recuse himself in the Eichmann trial, but he refused. The Knesset therefore amended the Nazi and Nazi Collaborators law to provide that a Supreme Court judge preside over the District Court. Halevy did serve as one of the three judges in the Eichmann panel. Incidentally, Israel does not have a jury system.
audience, made up of survivors, turned itself into a chorus by defying court orders and spontaneously challenging the defense’s version of the case.

After his conviction, Eichmann was hung in the summer of 1962. He was the first, and so far the only, person executed by the State of Israel.

Susan Sontag observed in 1964 that, above everything else, the trial was “the most interesting and moving work of art in the past ten years.”14 A literary critic, she perceived “[t]he function of the trial [as] . . . that of the tragic drama: above and beyond judgment and punishment, catharsis.”15 Did the catharsis work? How did this “most interesting and moving work” touch her as an American Jew? Sontag took care to maintain a neutral stance. Only her characterization of the trial as “the most interesting and moving work of art,” and her observation that its legal form somehow favored Eichmann—by casting him in the role of a defendant, as if there were something to defend—suggested faint hints of possible personal involvement. As a literary critic, however, she felt that the legal aspects of the trial hindered human understanding: “the problem with the Eichmann trial was . . . the contradiction between its juridical form and its dramatic function.”16 Sontag poignantly observed “a fundamental paradox in the Eichmann trial: it was primarily a great act of commitment through memory and the renewal of grief, yet it clothed itself in the forms of legality and scientific objectivity.”17

Why did the Israelis insist on clothing the commitment through memory in forms of legality and scientific objectivity?

III. THE BEN-GURION (ZIONIST) CONCEPTION OF THE JEWISH SELF

David Ben-Gurion, founder of the state of Israel and Prime Minister at the time of the trial, offered an explanation of the Eichmann trial that challenged the American-Jewish conception of self. In an interview with the New York Times on December 18, 1960, Ben-Gurion insisted on framing the problem in its specific rather than abstract form.18 The Holocaust, he said, was not about the murder of one group of people by another; it was about the murder of all Jews. It was not simply a war crime committed during the second world war; it was the culmination of a long history of anti-Semitism. One could not separate the Holocaust and the historical relationship between Gentiles and Jews. The trial was designed to expose the perennial

15 Id.
16 Id. at 119.
17 Id.
question of anti-Semitism—and its direct relationship to the Final Solution. For Ben-Gurion, suggestions that the Final Solution should be understood on the abstract level of crimes against humanity, rather than against Jews as Jews, and that an international tribunal should try the perpetrators, evidenced, quite simply, a conspiracy of silence—a denial of the Jewish perspective.¹

Ben-Gurion thus emphasized the legitimacy and centrality of the Jewish voice and insisted on situating the Holocaust in Jewish history and Jewish history in world history. His emphasis and insistence were reflected in his commitment to bringing the arch-anti-Semite to the Jewish state to face Jewish justice, which he felt would create a sense of empowerment and healing. Moreover, his emphasis and insistence were ideologically rooted in the Zionist disappointment with liberalism.

Liberalism, in the words voiced by Count de Clermont-Tonnerre in the French National Assembly during the historic debate about the status of the Jews, promised the Jews “everything as individuals” but “nothing as a nation.”² Liberalism invited Jews to assimilate, to observe a public/private distinction by becoming “like everyone” in the public domain while remaining “Jews” at home (if they so desired). To Zionists, however, persistent anti-Semitism and the failure of assimilation exposed the fallacy of liberalism. Ben-Gurion, the voice of Zionism throughout the trial, opposed the public/private distinction, demanding recognition of the right of the Jews to be Jews publicly, as well as privately. He believed the insistence on the category of “crimes against humanity” rather than “crimes against the Jewish People” revealed the insidious public/private distinction in the international arena. Israel and the Jews were called upon to treat their Jewishness as irrelevant in the public life of nations. Bound up within the rejection of the category “crimes against the Jewish People,” Ben-Gurion read the old liberal message: “to the Jews as a nation, nothing.” He interpreted the rejection as yet another liberal plot to disguise the evil of anti-Semitism with the garb of universality and formal egalitarianism. At the same time, he saw the call for an international tribunal—spiced as it was with skepticism about the viability of Jewish justice—as an effort to maintain the fragmentation of a Jewish self dependent on a machinery of justice created by others and applicable to Jews only upon their concession of the irrelevance of their Jewishness.

The Ben-Gurion, Zionist conception of Jewish self was a reaction to a

¹ Ben-Gurion, supra note 18, at 7.
² PATRICK GIRARD, LES JUIFS DE FRANCE DE 1789 A 1869, at 51 (1976), quoted in Eugen Weber, Reflections on the Jews in France, in THE JEWS IN MODERN FRANCE 16 (Frances Malino & Bernard Wasserstein eds., 1981) (“We must refuse everything to the Jews as a nation, we must grant them everything as individuals.”).
³ There are many strands in Zionism, and certainly Ben-Gurion did not speak for all of them. But I think that during the Eichmann drama he spoke for most, if not for all, Zionists.
liberal, Gentile self. At the same time, it involved a reaction to another Jewish self, the image of the Jew in exile as perceived by Zionist ideologues. Ben-Gurion believed that Jewish life in exile produced a subservient and deferential Jew, one incapable of asserting her own rights and eager to avoid conflict with the Gentile majority, even at the cost of self-effacement, a Jew deficient in Chutzpah. He hoped the return to Zion would produce a “reconstructed Jew”: free to develop an authentic self, able to defend her rights, at ease about being Jewish, “normal.” He saw the “normal Jew” as one who felt about being Jewish as the English felt about being English or the French about being French.

When confronted by the American-Jewish reservations about trying Eichmann before an Israeli court for crimes against the Jewish people, Ben-Gurion heard that “other” Jewish self. An opposition to Jewish empowerment and Jewish justice, levied by Jews, revealed that “exile mentality.” Ben-Gurion reacted:

I see it argued, by Jews among others, that Israel is legally entitled to try Eichmann but ethically should not do so because Eichmann’s crime, in its enormity, was against humanity and the conscience of humanity rather than against Jews as such. Only a Jew with an inferiority complex could say that . . . .

If he were speaking today, he could describe these Jews as having false consciousness, perhaps a less offensive sounding characterization. In any event, Ben-Gurion’s analysis fueled the burning controversy. Thus, American Jews were forced to take a position, which required some conception of an “American-Jewish” self.

IV. THE AMERICAN-JEWISH REACTION: THE LEGAL PROFESSORATE

Silence is sometimes instructive. Certainly, it is significant that not a single major American law review has carried an article discussing the legal issues involved in the Eichmann trial, and that other journals published for the bar displayed only a modest interest in the matter. The American-Jewish legal professorate, particularly within elite law schools, did take a stand, but merely in conjunction with private bar events or in the popular media. The conceptions of the Jewish self revealed by law professors, however, suggest that, for reasons of either personal disposition or environmental pressure, they were eager to ignore the Jewish difference. Their conceptions of the Jewish self were probably molded by these influences. I will explore the positions of three prominent American-Jewish professors who participated in this debate. They were members of elite law schools, who were by and

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22 Ben-Gurion, supra note 18, at 7. Responding to the charge that Eichmann should be tried before an international tribunal, Ben-Gurion responded: “Israel does not need the moral protection of an international court. Only anti-Semites or Jews with an inferiority complex could suggest that it does. America does not need that kind of protection, nor does England or any other country.” Id.

Not surprisingly, they shared similar points of view. First, none of the three referred to his Jewishness. This suggests that each considered his Jewish self—to the extent he acknowledged one—as irrelevant to his position on the legal issues. Second, the three considered the idea of prosecuting Eichmann for crimes against the Jewish people ill-conceived. This opinion, I should add, they shared with most Jewish legal scholars outside of Israel. Third, they felt that the Holocaust was a catastrophe of colossal proportions for which those responsible should be brought to justice. They differed only on questions of process: Who had the jurisdiction to try Eichmann? What should the charges be? Fourth, they agreed that international law on these questions was sparse and indeterminate.

The similarities suggest that the three were children of American liberalism, embracing the public/private distinction, and thus orthodox in treating their Jewishness as immaterial to the debate. As children of liberalism, they saw the Holocaust as the murder of human beings generally, not of Jews specifically. From the liberal perspective, the category of "crimes against the Jewish people" echoed the racist Nuremberg Laws by legally recognizing Jews as different. This meant falling back into the illiberal Nazi trap, using language employed by anti-Semites. It was a position they could not stomach. Instead, they insisted on international law not differentiating races. Being "normal," to Ben-Gurion, required recognition of differences: e.g., that death was based upon Jewish biological descent. To Americans, by contrast, "normal" connoted the opposite, a denial of difference.

The indeterminate state of international law regarding the legality of the

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26 See, e.g., Stone, supra note 6, at 8 ("What may be objected to in the 1950 [Israeli] law is the inclusion as a separate offense of the 'crime against the Jewish people.' ").
27 There exists a competing conception of the American self, which emphasizes pluralism. This conception was developed in the beginning of this century by the American-Jewish philosopher Horace Kallen, among other things in order to legitimize American-Jewish support of Zionism as harmonious with loyalty to the United States. This conception led Leon Wieseltier to theorize recently about a contrast between Jewish life in Europe and in the United States. Whereas the "dispensation of Jewish life in Europe . . . was rights" (meaning individual liberalism), "the dispensation of Jewish life in the United States is interest. In the system of American pluralism, not only is an erasure of identity not required for membership in the society, but its opposite came to be almost a requirement." Leon Wieseltier, The Competition for the Jewish Future, CONGRESS MONTHLY, May-June 1992, at 4, 4 (alterations in original). It seems that Wieseltier's conception of
trial, however, allowed some room for perceptions of Jewishness in the shaping of arguments for or against the Israeli position. In this context, attitudes toward the state of Israel, Jewish history, and Jewish personhood surfaced in the debate surrounding the trial and revealed the world views of the three scholars.

Professor Milton Katz distinguished himself among the three by defending the legality of the trial. This required courage at the time, as most of the American intelligentsia went the other way. In a speech before the New Jersey Institute for Practicing Lawyers, published in the Harvard Law Record, Katz raised the legal issue of the validity of the category of "crimes against the Jewish people" only to dismiss it as legally irrelevant: "[T]he specific relationship of Eichmann to the Jewish people is not an indispensable part of this case in the legal sense, although it is, of course, a vital part of it in the actual and historical sense." Thus, the distinction of the legal from the actual and historical, allowed Katz to concede the significance of Jewishness and yet sidestep the thorny issue.

During Katz's consideration of the state of international law regarding Israel's various bases of jurisdiction, a preliminary question arose regarding the treatment of the state of Israel. That is, if one were to apply a principled approach to this legal problem, and if furthermore, one were to reason by example (as common law adjudication teaches us to do), then should one liken Israel to England and France or should one liken it to an underdeveloped country? David Ben-Gurion had analogized Israel to the United States and England when he announced that, like the United States or England, Israel did not need the protection of an international tribunal. The ramifications of his comparison placing Israel in the First World were clear: Israel was a part of the advanced western world, possessed a highly developed legal system, and was as capable of delivering due process as any other country similarly classified. Israel desired international recognition as a normal state, as one equally entitled to apply the reach of the territoriality principle in specific cases. Professor Katz accepted Israel's claim to a high position in the hierarchy of states. His arguments for the validity of Israel's claims involved examples of similar behavior by France or the United States, implicitly recognizing Israel as a member of the First World. This stance

the American Jewish self is limited to those consciously Jewish, and certainly was not descriptive of the Jewish law professors of the 1960s.

28 See Katz, supra note 23, at 14 (observing "a body of precedent which goes back at least to the eighteenth century, to the effect that certain crimes, abuses of behavior in time of war . . . may be punished by any state anywhere at any time").

29 Id. at 9.

30 He did, however, express disagreement with the category of "crimes against the Jewish people" at the end of his speech as "unwise," because it could be used by other nations to protect minorities outside of their territories. Still, no mention of the Jewish issue was made in the context of that argument. Id. at 9, 16.
may have formed the ground for his initial sympathy with the Israeli claim and reinforced his professional judgment about its validity.

Professor Herbert Wechsler was of a different mind. Wechsler, employing his famous "neutral principles" approach, made the following analogy:

No one would doubt the point if Spain should undertake to legislate respecting crimes against Catholics or Ghana should presume to deal with crimes against "the Negro people," if such crimes were not committed in their borders. Neither the State of Israel nor the Jews can be acknowledged to present a special case.\(^\text{1}\)

Thus, Wechsler argued that the Holocaust was not a "crime against the Jewish people," but rather a war crime against humanity. Moreover, he considered Jewishness as unlike "Americaness" or "Englishness," for no one would raise the issue if the United States protected Americans abroad, or if England protected its subjects. Instead, Jewishness more closely resembled skin color or cross-national faiths, something very personal, which should be treated as utterly irrelevant by international law.

Still, Wechsler's points of reference—Catholics in Franco's Spain and blacks in Nkrumah's Ghana—may reveal deeper yearnings: to be like white Anglo-Saxon Protestants. If the latter was Wechsler's reference group, and this affected his own conception of self, then the Israeli insistence on representing the Jews and on regarding the Holocaust as a tragedy that befell all Jews, probably proved most irritating to him.

My reading of Wechsler's remarks suggests that he was so irritated with Israel's claim for representation of world Jewry, that he momentarily abandoned his commitment to neutral principles (the remarks were made in a public debate). When Wechsler addressed the question of applying universal jurisdiction in cases analogous to piracy, for example—the question of whether Israel could legitimately prosecute Eichmann for crimes against humanity rather than against the Jewish people—he held Israel to a standard which he probably would not have applied to his native United States. He asserted that Israel could apply the principle of universal jurisdiction only if it would submit itself to such jurisdiction, for its own "war crimes," such as the creation of the Arab refugee problem and the massacres in Kibya and Kfar Kassem.\(^\text{2}\) Wechsler did not volunteer an opinion as to whether

\(^{31}\) Wechsler, supra note 24.

\(^{32}\) Between 600,000 and 760,000 Palestinian Arabs became refugees during the 1948 war. BENNY MORRIS, THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM, 1947-1949, at 298 (1987). Skirmishes along the Jordanian/Israeli border in 1952 led to the Israeli policy of "retaliation." In 1953, the Jordanian village of Kibya was destroyed and 69 residents were killed in a retaliatory attack led by a young officer, Ariel Sharon. It is not clear that the government of Israel had authorized this action. According to Shabtai Tevet, the soldiers believed that the houses they demolished were empty. Following the incident, specific instructions were issued to prevent repetition. SHABTAI TEVET, MOSHE DAYAN: THE SOLDIER, THE MAN, THE LEGEND 394-95 (1972). The Kfar Kassem (the village of Kassem) incident took place on the eve of the Sinai Campaign (Israel's invasion
the requirement of "clean hands" should apply universally, or whether the Nuremberg tribunal met that standard.

The difference between Wechsler's and Katz's analyses on this issue is revealing. Both subscribed to the jurisprudence of neutral principles and a "detached, dispassionate" approach to legal matters. Katz, however, scrupulously adhered to neutrality, treating all states alike, refusing to pierce the veil of sovereignty to consider internal affairs. Wechsler, on the other hand, agreed to bend the rules when it came to Israel and endeavored to expose it for what he believed it to be: a law breaking, vulgar third world state unworthy of noble neutrality.

Katz's strictly abstract approach, then, worked in favor of the Israeli case, whereas Wechsler's more contextual one potentially challenged the legitimacy of the trial. Wechsler's contextualism, however, was reserved for the activities of the state of Israel, and did not extend to the Nazi death machine in Europe. There, he remained loyal to an abstract understanding of reality. His description of the Holocaust suggests that crimes were committed against "nationals of Jewish faith" who should not be regarded as Jews qua Jews, but rather as individuals who happened also to be of a Jewish faith. He saw the Holocaust as "a war crime and a crime against humanity as well as a crime against the law of the states where the offense was perpetrated, in which the victims were Jewish people." His position reveals his internalization of the nineteenth century liberal slogan: "to the Jews as individuals everything; to the Jews as a nation nothing." He denied the significance of the Jewish question in America, as well as in Europe. Thus, as the international significance of anti-Semitism was ignored, Jews assimilated into their respective nationalities and retained the Jewish faith as a private matter.

into Sinai, in concert with France and England) on October 29, 1956 in the context of a military curfew imposed on Arab villages. Israel's border police shot and killed 47 residents of Kfar Kassem for allegedly violating curfew orders. It was clear that the villagers did not know and could not have known about the curfew. The perpetrators were convicted by a military court, and their defense of obedience to orders was rejected. By 1959 all convicts were released from jail (either through parole or presidential pardon). One paragraph from the opinion of the military court, delivered by Judge Binyamin Halevy, see supra note 13, has become a landmark of Israeli legal justice:

An illegal order—has a black flag flying above it, like a warning "Thou shalt not." What is important here is not formal illegality, covert or half covert, not an illegality recognizable by legal minds, but rather: an open and explicit illegality evident on the face of the order . . . an illegality which punctures the eye and upsets the heart . . .


In the propaganda war between Israel and the Arab world, particularly during the 1960s, assertions that Israel had created the Palestinian refugee problem or references to the Kfar Kassem or Kibya massacres out of context, were considered by Israelis as well as by the American-Jewish establishment as hostile to the Israeli side and therefore to the Jewish State.

33 Wechsler, supra note 24.
34 Id.
Wechsler apparently attained a high degree of assimilation, a conception of self identifying thoroughly with the “American” image, which permitted him to treat Jewishness as superficial, a mere accident of history with no particular importance. That was perhaps what Yosal Rogat aspired to do, but did not fully attain. The Stanford law professor offered a complex and very thoughtful analysis of the cultural meaning of the trial. He understood Israel’s attempt in the Eichmann trial “to galvanize all Jews into a tensed self-consciousness of their heroic destiny” and tensely resisted the invitation. Like Wechsler, he thought that Israel should refrain from trying Eichmann. He did not, however, share Wechsler’s indifference to the question of Jewish identity. Rather, he devoted an entire section of his essay to the issue of “Jewishness”—a term he placed within quotation marks—in which he tried to demolish that “anguished intensity and mystic exclusivity which have historically been part of Jewish specialness.”

Jewish history, from the time of slavery in Egypt onward, he explained, was but a series of agonizing and painful events. Individual Jews were socialized to internalize a “demoralizing” outlook, and were thereby trapped in the notion that “they cannot themselves choose because they were chosen.” This notion of the Jewish self was rooted in a world view which stressed “traditional authority and commandments against individual conscience; group bonds against personal commitments; social duties rather than individual rights; and ... submission to the world against modern attempts to master it.” Rogat, however, considered this world view “archaic,” “primitive,” and “tribal.” He believed that it had been totally refuted by social science and replaced by modernity:

Today ... we have begun to think that the self, also, is an artifact. We are told that we cannot fall back onto any human essence, but can only create ourselves by our own decisions and commitments. ... By the very act of holding the trial ... Israel undertakes an aggressive defense of the last and most crucial bastion besieged by modernity—the self. It denies that personal identity can be created by individual action and freedom; and asserts that it can only be discovered by understanding one’s own tradition.

Why was the state of Israel locked in a battle with the modern conception of self? According to Rogat, Jews everywhere, including Israelis, were liberating themselves from their “special and essentially mystical conception of

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35 Rogat, supra note 25, at 6-22.
36 Id. at 18.
37 Id.
38 Id. at 19.
39 Id. at 20-21.
40 Id. at 18-20.
41 Id. at 21.
... nature and mission," a development which the leadership of Israel could not accept.

Rogat offered a new conception of self to the modern emancipated Jew. This Jew did not seek shelter in the "American" (or any other national) self. Rather, a Jew should seek cosmopolitanism, in which one "can determine for [oneself] the nature and the meaning of... Jewishness and of [one's] relation to Jewry." He conceded the difficulty of this task: "[t]o acknowledge this necessity is to take on a dispiriting burden of freedom, for we can call on the assistance of only our own resources, and they are meager." He did not explain why this dispiriting experience was an improvement over the collectivist bonds of special destiny, nor did he have to, because he believed it to be the inevitable way of the future. He did make it clear, however, that he preferred the new, emancipated, detached, "rootless, cosmopolitan, and atomized" Jew to the "older" one. It is tempting to speculate that Rogat envisioned "the Jew as spectator," similar to the role that he attributed to Oliver Wendell Holmes, the other subject of his scholarly interests during the same time.

Rogat's and Ben-Gurion's understandings of the Zionist interpretation of Jewishness were like ships passing in the night. Rogat viewed Israel as a mere continuation of the tribal attributes of collectivity, one more link in the old Jewish chain. Ben-Gurion understood Zionism as revolution, defiance of the "old Jewish existence," a belief that the Jews can take destiny into their own hands and transform it. Ben-Gurion's Zionist model diagnosed rootlessness and alienation as symptoms of the disease of Jewish existence in exile, an existence of soul without body. Zionism hailed rootedness, preferably in Zion, as a precondition to solving the Jewish problem, as essential to the normalization of the Jewish people. Rogat perceived rootedness as pre-modern and doomed to failure.

Yet, almost malgre lui, Rogat shared with Ben-Gurion the belief that Jews are different. Ben-Gurion wished to overcome the difference, however, by making the Jewish people a normal nation, like all others. Rogat, on the other hand, wished to purge the difference by turning the Jew into a cosmo-

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42 Id. at 18. Rogat added:
The Jewish identity of American Jews, for example, always precarious, is rapidly disappearing under an onslaught of bland good-will, tolerance, and anti-anti-Semitism. Many of the New Israelis are rejecting the anguished intensity and mystic exclusivity which have historically been part of Jewish specialness. They enjoy a simple, and disconcertingly sunny and ordinary, aggressive Israeli nationalism.

Id.

43 Id.

44 Id. at 21.

45 Id. at 22.


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political citizen. Viewing cosmopolitan rootlessness and alienated selfhood as the trends of the future, Rogat hoped that Jews would become pioneers in the cosmopolitanization of nations until perhaps the national boundaries separating them would wither away. In this sense, Rogat and Ben-Gurion shared yet another understanding of Jewishness: both believed that the “house of Israel” should be a light unto the nations—Ben-Gurion explicitly, in his utopian vision of the communitarian society; Rogat implicitly, in his individualist vision of the cosmopolitan society.

Of course, all of this is reading between the lines. Rogat did not consciously advocate a “Jewish difference.” Explicitly, he acknowledged only that the Eichmann trial provoked “extreme discomfort and embarrassment.” He wrote that both Jews and non-Jews shared these feelings. The Jewish sense of discomfort and embarrassment, however, was not like that experienced by non-Jews. The embarrassment that he thought “modern” Jews were experiencing was indicative of his own internal struggling. Rogat had not managed to liberate himself from the gripping power of the family, and he therefore could not bear the spectacle of the family showing its old, primitive kishkes in public. He shared this feeling of shame with the woman who, more than any other, kept the bonfire of the Eichmann trial burning at least in New York City—Hannah Arendt.

V. HANNAH ARENDT IN JERUSALEM

Hannah Arendt’s impressions of the Eichmann Trial were first published in *The New Yorker* and then as a book, *Eichmann in Jerusalem: A Report on the Banality of Evil.* Her writings served as an epilogue to the drama of the Eichmann trial and shaped the catharsis it propelled. While the three law

48 The antinomy between normalization (a nation like all nations) and the concept of the chosen people destined to bring light unto the nations is indeed a paradox in Zionist ideology.

49 Rogat, *supra* note 25, at 19. Although the paragraph discussing this “extreme discomfort and embarrassment” mentions non-Jews, it proceeds to explain the feeling in Jewish terms, thereby suggesting that Rogat had the Jews in mind and only added the non-Jews for purposes of universalizing the argument:

The extreme discomfort and embarrassment the trial has provoked in Jews and non-Jews alike measures both the partial success of this attempt to assert an older view of the relation of the individual to the group and the strength of the forces it seeks to overcome. Attitudes toward the conflict between a traditional Jewish community and the detached, emancipated Jew may determine, therefore, especially among Jews, the view taken of the trial. Its wisdom may seem doubtful if it is considered possible and desirable for the individual Jew to arrive at his own conclusions about Jewishness. On the other hand, it can seem a uniquely apt device to bring out the futility and perversity of any such attempt; to demonstrate to the individual that his membership in the group is given to him, and not created by him.

*Id.*

professors discussed above wrote prior to the trial, Arendt's work followed it. She rekindled the controversy and ignited what was termed a "collective psychoanalysis" among the New York Jewish Intelligentsia.  

By the time Eichmann was transferred to Israel, Arendt had lost her interest in Jewish affairs, had restored her relationship with Martin Heidegger, and was rapidly making a name for herself in the United States as a major political theorist. The idea of a trial, however, uncorked her old feelings. She wrote: "To attend this trial is somehow, I feel, an obligation I owe my past," and "I missed the Nuremberg Trials, I never saw these people in the flesh, and this is probably my only chance." From the beginning, then, she acknowledged a degree of involvement that none of the law professors claimed or could claim.

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51 Elisabeth Young-Bruehl, Hannah Arendt: For Love of the World 349 (1982) (quoting a letter to Arendt from her friend Hans Morgenthau describing the frenzy that Arendt's ideas had caused).

52 Id. at 291. In 1953, Arendt declined an invitation to write about the Kibya massacre saying: "I do not want to have anything to do with Jewish politics any longer." Id. The Kibya massacre was one of the incidents Herbert Wechsler pointed to as proof of Israeli lawlessness. Wechsler, supra note 24.

53 The noted philosopher Martin Heidegger joined the National Socialist Party in 1933 and remained a dues-paying member until the end of World War II. For attempts to explain his Nazi past, see Martin Heidegger and National Socialism (Gunther Neske & Emil Kettering eds. & Lisa Harries trans., 1990).

54 Young-Bruehl, supra note 51, at 329 (quoting Arendt's letters to Vassar College and to the Rockefeller Foundation, respectively, explaining her reasons for changing prior engagements).

55 Like Rogat, Arendt experienced embarrassment and discomfort, but hers came not from the exposure of naked Jewish tribalism but rather from internal Jewish prejudices. According to Elisabeth Young-Bruehl, "[t]he prosecutor, Gideon Hausner, continually annoyed and embarrassed Arendt. She described him ... with more than a little German Jewish disdain: 'Galician Jew ... speaks without periods or commas ... like a diligent schoolboy ... ghetto mentality.'" Id. at 331. In Eichmann in Jerusalem, she complained that the translations from Hebrew to German during the trial were "sheer comedy, frequently incomprehensible." Arendt, supra note 50, at 3.

In Arendt's Republic of Weimar, where she grew up and studied philosophy with Martin Heidegger and Karl Jaspers, the ethnic divide between German and Eastern Jews was visible and the sense of German superiority firm. Her naturalization in the United States did not dissolve these distinctions which, for her, were reflexive. Young-Bruehl, supra note 51, at 3-41. In Jerusalem, she was flabbergasted not only by banality of the Nazis, but also by the prominence of the Ostyuden (Eastern Jews). The State that claimed monopoly over Jewish representation, that claimed to represent her, was dominated by (Jewish) Galicians and Liitvaks and Poles and Russians, whom she was raised to see as inferior to herself. Worse still, they, rather than German Jews, were chosen to translate the Hebrew into German. Arendt, supra note 50, at 3.

Arendt revealed a phenomenon that an American Jew growing up after World War II would only dimly be aware of: there are different types of Jews, and these types were shaped by, among other things, the particular ethnic environment within which they
Arendt did not argue against the result of this judicial process. She con-
cluded, in fact, that Eichmann “must hang,” but she disagreed with the
court’s reasoning. She found that the Jerusalem court failed to “com[e] to
grips with three fundamental issues . . . : the problem of impaired justice in
the court of the victors; a valid definition of the ‘crime against humanity’;
and a clear recognition of the new criminal who commits this crime.”
Arendt found that “justice was more seriously impaired in Jerusalem than
it was at Nuremberg, because the court did not admit witnesses for the
defense,” and further argued that an international tribunal should have been
established which included neutral countries. She faulted the Israeli court
for not insisting that the crime against humanity was “more than a crime
against the Jewish or the Polish or the Gypsy people, that the international
order, and mankind in its entirety, might have been grievously hurt and
endangered.” Finally, she criticized the court for not recognizing in the
Nazi a new criminal, one who is “neither perverted nor sadistic,” but rather
“commits his crimes under circumstances that make it well-nigh impossible
for him to know or to feel that he is doing wrong.” On this last issue, she
insisted that “civilized jurisprudence prided itself . . . [most] on . . . taking
into account . . . the subjective factor” of mens rea. But the Nazis formed
a new category of criminals, men and women who did not possess mens rea.
This new category, she insisted, had to be recognized as a matter of law.
Each of Arendt’s objections reflected a desire to purge the Jewish factor
from the events of the Holocaust. Her insistence on including neutral par-
ties in the panel of judges ignored the Zionist viewpoint that there were no,
and could be no, neutral parties in this matter. In the European theater of
operations during World War II, neutrality had meant passive complicity
with the Nazi agenda, and for Jews “neutrality in hindsight” was simply not
good enough to qualify as justice. The call for accentuating the idea that

grew up. Arendt’s conception of Jewish self, as well as Ben-Gurion’s conception, is
important for an understanding of the American-Jewish perception: it is a conception of
Jewish self that is informed by forces and cultures outside of the American pale.

56 ARENDT, supra note 50, at 279.
57 Id. at 274.
58 Id. at 274-76.
59 Id. at 276.
60 Id.
61 Id. at 277.
62 Id. at 277-79.
63 In fact, Arendt should have known this from personal experience, both from her
efforts with the Zionist organizations on behalf of stateless Jewish refugees in Paris during
the 1930s, and from the lifesaving entry visas into the United States for herself, her hus-
band, and her mother which were obtained by Jewish organizations in America on the
basis of her Zionist connections. YOUNG-BRUEHL, supra note 51, at 102-06.
64 Arendt’s insistence that “justice was . . . seriously impaired” because witnesses for
the defense would not come to testify before an Israeli court is another example of her
failure to recognize the centrality of the Jewish factor in the Holocaust. Requiring these
these crimes assaulted the international order and mankind in its entirety similarly ignored the context of the Holocaust, where neither mankind nor the international order came to the rescue until it was too late for the majority of European Jews. From the Jewish perspective, at least as seen by Ben-Gurion, no international justice was possible until the Jewish story was fully told, by Jews, to Jewish judges. But these objections were not new; they appeared in different versions in both Wechsler's and Rogat's objections to the trial.

It was Arendt's final objection, the lack of mens rea and the idea of the new criminal that, combined with the previous two, stung her Jewish audience. Arendt wished to understand the Holocaust not in terms of "the Jewish Question"—i.e., in terms of anti-Semitism—but rather in terms of the rise of totalitarianism. She wished to show how, when the state destroys society, a new type of person is created, a person "terribly and terrifyingly normal." This interpretation touched a raw nerve among some Jews. The architects of the final solution had portrayed the Jews as non-human, not-normal, in order to legitimize genocide. To the Jews, justice in the Eichmann trial meant reclaiming normalcy. If they were normal it only seemed logical that those who deprived them of their normalcy were themselves abnormal, hence monstrous. The Zionist conception of justice required a

witnesses would have made a trial impossible because the witnesses would not come before an Israeli court for fear of risking their own prosecution.

In fact, Arendt grossly overstated the case. While the prosecution and the district court did emphasize the charge of crimes against the Jewish people, the Israeli Supreme Court devoted the bulk of its opinion to the argument that crimes against humanity were perpetrated. See Eichmann v. Attorney General (1963) (Isr.), English Translation Part I (on file with the Boston University Law Review).

Indicting Eichmann before a Jewish Court in Israel will fill some inhuman void that has been hidden somewhere in Jewish existence and the stories of its lives and deaths since it went into exile to this day. With the capturing and future trial of the one who spilled the people's blood, Israel appears before the Jewish people, for the first time, as the one who decides upon the validity of laws thereby replacing the void which was reflected from the cracks of Jewish history until now. The State of Israel will not let this trial out of its hands and will not deliver it to others. It will sit to judgment and its soul sobriety, and its nerves iron-clad and its renewed sovereignty would have no better justification than the scales of justice which it holds in its hand this time.

NATHAN ALTERMAN, The Scales of Justice, reprinted in 2 The Seventh Column 497, 499-500 (1981) (author's translation). Alterman was one of Israel's major poets and was close to Ben-Gurion. The article appeared in Davar, the then-ruling party's daily newspaper, in response to international criticism of Israeli jurisdiction.

Arendt, supra note 50, at 276.
reversal of the Nazi conception of the Jew. If the Nazis defined the Jews as non-human and, therefore, unworthy of life, the Zionists regarded the Nazis as abnormal for not treating the Jews as human. From this perspective, Arendt's position was perceived as an insult to the Jewish struggle to be accepted as human, normal, a part of humanity.

In hindsight, it seems that the Israeli insistence on traditional justice (albeit processed by Jews) had to do precisely with the yearning to restore the status quo ante, before the Jew was expelled from civic society and turned into free prey. To accomplish this, it was important to apply the criminal law as it traditionally had existed in civilized society. Any other process, any recognition of a new criminal and a new or “objective” crime, would mean that the Jews were not entitled to the same safeguards as everyone else.

The denial of mens rea, the idea of the banality of evil in the context of the European inferno, itself seemed “word and thought defying.” Those who saw themselves as participants in the ordeal of remembering understood her to mean that the memories were banal, that the pain had a banal quality to it. To these readers, the term “banality of evil,” read together with Arendt’s statement that “[o]n trial are his deeds, not the suffering of the Jews,” and her open contempt for the evidence presented at the trial—what she called “‘the right of the witnesses to be irrelevant’”—meant only one thing: Arendt, who called upon them to de-demonize and to normalize the Nazi, failed to humanize her own kin.

Was this another version of the French-liberal “to the Jews as a nation nothing, to the Jews as individuals everything?” Or, was there some latent hostility for Jewish attributes? Arendt provided much ammunition for this latter charge. She pried open, with the crudest of instruments, the most

after a senseless journey, to die in Poland on the threshold of the gas chambers? In my convoy there were two dying ninety-year-old women, taken out of the Fossoli infirmary: one of them died en route, nursed in vain by her daughters. Would it not have been simpler, more “economical,” to let them die, or perhaps kill them in their beds, instead of adding their agony to the collective agony of the transport? One is truly led to think that, in the Third Reich, the best choice, the choice imposed from above, was the one that entailed the greatest affliction, the greatest waste, the greatest physical and moral suffering. The “enemy” must not only die, he must die in torment.


69 YOUNG-BRUEHL, supra note 51, at 367. Once in Jerusalem, her biographer tells us, Arendt was startled by the realization that Eichmann was “not even sinister.” Id. at 329. A mental process of cura posterior, of healing, of changing her attitude toward the past had begun. She no longer saw the Nazis as representatives of “radical evil.” Rather, in Eichmann she saw the prototype of the “new criminal,” full of superficiality and emptiness, full of the “banality of evil.” See id. at 367-69.

70 ARENDT, supra note 50, at 5.

71 Id. at 225 (quoting inscription found at the Yad Vashem museum in Jerusalem, Israel).

72 See supra note 20 and accompanying text.
sensitive issue of Jewish behavior during the Holocaust. She who made questions of relevance so crucial to her argument insisted almost obsessively on accusing the Jews, all Jews, and particularly the Jewish leadership: "[T]here was no distinction between the highly assimilated Jewish communities of Central and Western Europe and the Yiddish-speaking masses of the East. . . . [Everywhere] Jewish officials could be trusted to [cooperate in the destruction of their own communities]."\textsuperscript{73} This, she said, was "undoubtedly the darkest chapter in the whole dark story."\textsuperscript{74} The prosecution, as Arendt correctly pointed out, tried to treat this issue as irrelevant. On trial was the Nazi, not the Jew.\textsuperscript{75}

Arendt, who called upon the world to recognize the "new criminal" was not prepared to recognize a "new victim." From the Jews she expected conventional, rational behavior. It seemed that, after aptly applying the virtuoso methodology to the Nazi phenomenon, none remained with which to analyze Jewish behavior, in all of its "word and thought defying" complexity. For this lack of compassion and mercy, lack of what Gershom Scholem called "Herzenstakt,"\textsuperscript{76} Arendt was labeled a self-hating Jew.

The self-hating Jew is another, quite familiar, portrait in the gallery of Jewish selves which emerged during the Eichmann trial and its aftermath: the Jew who insisted that the Holocaust was mostly, if not completely, the fault of the Jews. This characterization hit the American-Jewish community like an electric shock. What Jews suddenly discovered was that non-self-hating voices did not have the same access to the marketplace of ideas as did self-hating voices, like that of Arendt.

This discovery prompted Irving Howe to observe that the intellectual press in the United States was partial to ideas free of Jewishness. In an article entitled "The New Yorker" & Hannah Arendt, published in Commentary,\textsuperscript{77} Howe observed that The New Yorker magazine was not an open forum welcoming different Jewish points of view. Only Arendt's interpretation was accepted for publication and thus allowed to influence "[h]undreds of thousands of good middle-class Americans."\textsuperscript{78} The other "Jewish" point

\textsuperscript{73} A\textsc{rendt}, supra note 50, at 118.
\textsuperscript{74} Id. at 117.
\textsuperscript{75} There was a reason for the prosecution's strategy. In the 1950s, Israeli society was torn apart by a spectacular libel trial involving Rudolf Kastner, the leader of the Jewish community in Hungary. After the district court held that "Kastner had sold his soul to Satan" (i.e., Eichmann), thereby accepting at least partially Arendt's view of the role of the Jewish leadership (although Arendt would disagree that Eichmann was satanically evil), Kastner was assassinated. The Supreme Court of Israel exonerated Kastner, posthumously. One purpose of the Eichmann trial was to heal the societal rift, end the self-blame, and focus on what the Nazis had done rather than on how the Jews might have collaborated.
\textsuperscript{76} Y\textsc{oung-B\textsc{ru}}e\textsc{hl}, supra note 51, at 337.
\textsuperscript{77} Irving Howe, "The New Yorker" & Hannah Arendt, COMMENTARY, Oct. 1963, at 318.
\textsuperscript{78} Id. at 319.
of view was confined to Commentary or similar fora; The New Yorker did not find an intellectual or public interest in a defense of Jewish behavior during the Holocaust, or in a defense of the relevance of the Jewish question to the Final Solution. Thus, the choice of The New Yorker, and vicariously of the American intelligentsia, confirmed the existence of the Jewish question in America.

CONCLUSION

In his book The American Jew: A Zionist Analysis, first published in 1956, Ben Halpern observed that American Jewishness had two distinct characteristics: First, “American Jews never faced directly the whole historic complex of problems, centering around Emancipation as a traumatic event, from which modern Jewish ideologies arose.” Second, “American Jewish ideological development may still not really have begun.”

The Eichmann trial has modified both features. As a distinct American-Jewish ideology has begun to emerge, American Jews have come to recognize the history of European Jewry as a part of their own history. American Jews, some willingly and some less so, have begun to absorb the history of the Holocaust as a part of their own, Jewish, history. From this perspective, the Eichmann trial was a great success. Also, the state of Israel acquired further legitimacy as a kind of “insurance policy,” the guarantee that in the event of a “next time,” Jews would have some shelter. The 1967 (Six Day) war, coming as it did on the heels of the Eichmann trial and the controversy surrounding Arendt’s book, reinforced these themes. The anxiety preceding the war was exacerbated because of Holocaust imagery, made so vivid during the trial. The swift victory seemed to wipe out (once and for all?) the shame created by the “passive” death of the six million Jews. Finally, Israel was no longer viewed as a third world country. Even distinguished American law professors started to visit it regularly. American-Jewish ideology was developing around two main pillars: remembrance of the Holocaust and commitment to the state of Israel.

In terms of the construction of the Jewish self, however, the Eichmann trial had some unforeseen consequences. Jews came to define themselves in reaction to catastrophe. The acceptance of the Holocaust as the pivotal event in Jewish history seemed to dwarf everything else that was historically Jewish. It confirmed Yosel Rogat’s view that Jewishness is about pain and suffering and little else. The Holocaust, which has been popularized and

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79 HALPERN, supra note 1, at 26-27.

80 So strong was the influence that even Nazi vocabulary infiltrated Jewish parlance. For example, right wing Israelis and their supporters in the United States frequently accuse the Palestinians of wanting the occupied territories to be “yudenrein” (free of Jews). Left wing Israelis and their supporters in the United States frequently accuse Israel’s government as being motivated by “lebensraum” (a need for greater living space). This phenomenon has been extensively documented in Israel. See, e.g., Danny Rubenstein, Israelis and the Holocaust, POLITIKA, June-July 1986, at 18 (Hebrew).
commercialized, sometimes vulgarized, since the Eichmann trial, has come
to emphasize being Jewish in terms of being the target of persecution. Questions
about the meaning of being Jewish, particularly the question about the
meaning of Jewishness after the Enlightenment (the ideals of egalitarianism
and universalism), and its relationship to the notion of Am Sgula (the partic-
ularity of the Jewish phenomenon) faded into the margins.

All four scholars examined in this essay—Katz, Wechsler, Rogat, and
Arendt—seem to have defined their Jewish selves in reaction to, and in nega-
tion of, some concept of Jewishness “out there.” They denied that there was
a Jewish difference worthy of exploration, at least not in the context of the
meaning of justice. In so doing, they attempted to follow the cardinal prin-
ciple of liberalism and of Jewish emancipation—to abandon particularism in
favor of universalism. In the aftermath of the Eichmann trial, we have wit-
tnessed a reversal, at least in some Jewish circles, of this phenomenon. The
“Jewish difference” often seems defined by the particularism of persecution.

In their conception of an American-Jewish self, both phenomena are com-
pletely Jewish. Jewish history has known both the one who denies all rele-
vance of Jewishness, who wishes to merge with “the other” (whoever that
other might be), and the one who erects a wall between himself or herself
and the Gentile world. But there are other notions of Jewishness. Notions
which develop in relation to some positive conception of Gentile selfhood
while simultaneously acknowledging the significance of Jewish culture for
the Jewish person. I do not mean to say that there is one “correct” defini-
tion of being Jewish. In fact I do not think there is one. Jewish history and
culture is a gallery which contains a wide range of conceptions of selfhood. I
only mean to say that the conceptions of self, anchored in the belief that
there is no Jewish question in America, or that the Jewish question is only
about survival, are impoverished versions, requiring too much negative
energy and permitting too little critical assessment.