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The Eichmann Trial: Was It the Jewish Nuremberg?

HANNA YABLONKA*

Amidst the huge public excitement following Eichmann's capture by Israel in 1960,¹ the French paper *Le Monde* interviewed Ben Gurion, then Israel's Prime Minister, on the significance of the upcoming trial.² Ben Gurion, who, as we now know was more than reluctant to hold such a trial in Israel,³ replied, "This will be the Nuremberg of the Jewish people."⁴ What did he mean? He did not say, and *Le Monde* did not ask.

Looking deeper into this statement, one can unfold in it three different voices shaping a variety of interpretations as to what was meant by Ben Gurion.

The first voice was that of Ben Gurion, the Israeli Prime Minister, speaking to the Israelis. Henry Kissinger is often quoted as having said that Israel has only internal policies and completely lacks foreign politics.⁵ So Gurion's statement was a *par excellence* Zionist nationalistic declaration whose subtext was this: only after the creation of a sovereign Jewish state can the Jews argue and judge in court those who had harmed them.

The second voice was that of Ben Gurion as the leader of all the Jews, speaking to the Diaspora. As much as the four allies who prosecuted the international tribunal at Nuremberg represented the

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1. See HANNA YABLONKA, *THE STATE OF ISRAEL VS. ADOLF EICHMANN* 4 (2004) (first American edition).

2. André Scemama, *Le Process Eichmann Démasquera les Adeptes Actuels de Ceux qui Voulaient Exterminer le Peuple Juif, Déclare M. Ben Gourion*, *LE MONDE*, May 28, 1960 [hereinafter *LE MONDE*].

3. See YABLONKA, *supra* note 1, at 79.

4. *LE MONDE*, *supra* note 2.

5. Avi Shlaim, *Israeli Politics and Middle East Peacemaking*, 24 *J. PALESTINE STUD.* 20, 20 (1995).

international community, so does Israel represent the Jewish people in the historical account left open after the Shoah.⁶ This claim of representing the entire Jewish nation was also made by Israel in the German reparation negotiations—Israel is the inheritor of the murdered Jews of Europe.⁷

The third voice was Israel and Ben Gurion as the self-ordained authorized spokesmen and representatives of the legal interests and memory of the six million victims of the Shoah, most of whom, to be sure, were not Zionists. This trial also became the fulfillment of the basic biblical decree of an eye for an eye: namely justice and yes, revenge.

That is what one can read into Ben Gurion's declaration. But was the Eichmann trial indeed the Jewish Nuremberg?

The bottom line of this paper is that the Nuremberg and the Eichmann trials, though intensely covered by the media, bore almost no resemblance to one another. In support of this assertion, I will refer to the general framework within which those trials were conducted, as well as to three different sets of arguments: the historical, the judicial, and the epistemological.

The Nuremberg trial can be dealt with in the general framework of what Otto Kirschheimer defined as "victors' trials."⁸ The "victorious Allies" set to judge, in front of the whole world, the defeated remaining leaders of Nazi Germany.⁹ But can the Eichmann trial be considered a victor's trial? Barely so! The Jewish people of the post-war era were all but victorious after losing the core of their national body. Moreover, there exists an outstanding difference in the way the end of the war is conveyed in the national memory of the—victorious—French, or the British, with that of the Jewish Survivors, most of whom described the

6. Shoah is a word used in the Bible to describe a huge calamity. It was adopted to describe the events of the Second World War around the end of 1947, and roughly corresponds to the word "Holocaust." See Andrei Oisteanu, *Holocaust – An Attempt of Definition*, ROMANIAN JEWISH CMTY., http://www.romanianjewish.org/en/index_fcer2_02.html (last visited Mar. 24, 2012).

7. Jehuda Reinharz and Evyatar Friesel, *Nahum Goldmann: Jewish Zionist Statesman – An Overview*, in NAHUM GOLDMANN: STATESMAN WITHOUT A STATE 3, 47 (Mark A. Riader ed., 2009).

8. OTTO KIRSCHHEIMER, POLITICAL JUSTICE: THE USE OF LEGAL PROCEDURE FOR POLITICAL ENDS 332 (1961).

9. *Id.* at 335.

end of the war as actually the saddest days of their lives.¹⁰ This sadness was strongly echoed in Yitzhak Zuckerman's words:

The long anticipated day arrived on January 17th, 1945. Suddenly there was a complete silence. . . . We were sitting in our room, eating lunch, when our landlord appeared and said: 'the Soviet tanks are in town.' There was a short silence. I called on Zivia [Lubetkin, his wife to be].

. . . .

As if it happened today, I remember the moment when Zivia, me and our dog went out to the center of the city. We saw Soviet tanks and on them soldiers with their faces black and around them and towards them joyful crowds: Women, children and men throwing flowers and kisses. Suddenly, for the first time, I collapsed inside.

That day, January 17th was the saddest day of my life. . . . The joyous crowds, the kissing soldiers, the flying flowers, the feeling of freedom and liberation, and we – me, Zivia and the dog, standing among the masses lonely, orphaned, the last remnants, knowing all too well that there is no more a Jewish nation[.]¹¹

Beyond that framework lay the historical, judicial, and epistemological differences:

From the historical perspective, the Eichmann trial was completely different from Nuremberg in its narrative of the events of Second World War as well as in its chronological time frame. The Nuremberg team, led by the Americans, spoke mostly to public opinion back home explaining "why we joined the war" (or as it is more commonly referred to: "what we fought for").¹² The issue at hand was the Second World War and Germany's conspiracy to launch an aggressive war against the European countries, and later on the entire world.¹³ The period discussed was mostly between the years 1939 and 1945.¹⁴ The Jewish story in this context was dealt with as yet another manifestation of the atrocities performed by the Germans in the countries they occupied.¹⁵ This conveyance of the state of affairs led to the notion that one of

10. See Hanna Yablonka, *Holocaust Survivors in Israel: Time for an Initial Taking of Stock*, in *HOLOCAUST SURVIVORS: RESETTLEMENT, MEMORIES, IDENTITIES* 184, 187–88 (Dalia Ofer et al. eds., 2012).

11. ITZHAK ZUCKERMAN, *THE POLISH EXODUS* 15 (Shlomo Derech, ed., 1988) (translation by author). Zuckerman was one of the legendary leaders of the Warsaw Ghetto uprising.

12. DONALD BLOXHAM, *GENOCIDE ON TRIAL* 227 (2001).

13. See *id.* at 17; MICHAEL MARRUS, *THE NUREMBERG WAR CRIMES TRIAL 1945–1946: A DOCUMENTARY HISTORY* 1–2 (1997) (providing further discussion).

14. BLOXHAM, *supra* note 12, at 64; MARRUS, *supra* note 13, at 187–88.

15. BLOXHAM, *supra* note 12, at 12, 63; MARRUS, *supra* note 13 at 94, 154.

Germany's greatest crimes at the time was the murder of seventy-nine captured American soldiers in Malmedy, Belgium.¹⁶

Last but not least, documents presented at the Nuremberg trial were, to a large extent, the sole source of evidence. I shall return to this issue later in this paper, in my epistemological analysis.

On the other hand, contrary to Nuremberg, the Eichmann trial was telling the story of the Shoah while almost completely ignoring the context of the Second World War. The story was told much along the lines of stories conveyed by the survivors to their fellow listeners after the end of the war. For them, the relevant opening dates were those when the cities where they lived were taken by the Germans and "liberation day" did not mean May 8th, the commonly accepted date of the end of the Second World War in Europe, but rather various dates which marked the slow process of Germany's withdrawal from occupied territories and its movement from Eastern Europe towards the West. These dates ranged from February 1944 to May 1945, a very different timeframe than the one commonly accepted for World War II at Nuremberg.¹⁷

The Eichmann trial conveyed the accepted Israeli paradigm of the Shoah starting in January 1933, which marked Hitler's rise to power, and ending, ultimately, but not exclusively, in May 1945, which marked the end of World War II in Europe.¹⁸ The Jewish plight was told as essentially different from all other civil atrocities performed by the Germans.¹⁹ The Shoah was perceived as a significant deviation from evil as it was understood until then in human history.²⁰ Consequently, at the center of the trial stood the uniqueness and unprecedented nature of the Shoah, and no less the existence of the sovereign Jewish state—Israel—which enabled the Jews for the first time to judge those who had harmed them.²¹

These historical differences were strongly supported by the very different legal postures of the two trials. The courts in the two cases not

16. See BLOXHAM, *supra* note 12 at 134.

17. *The Holocaust: An Introductory History*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/jsource/Holocaust/history.html> (last visited Jul. 15, 2012).

18. *Id.*

19. The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem, Israel 64 (State of Israel, Ministry of Justice, Jerusalem 1992) [hereinafter *Eichmann Trial Record*].

20. *Id.* at 64–65.

21. See *id.* at 115–16.

only interpreted the letter of the law very differently, they also diverged in their view of the person behind the crime.²²

A short while before the end of the war, the Allies discussed the issue of post-war trials, which resulted in the modification of three criminal categories: (1) crimes against peace; (2) war crimes; and, (3) a new judicial category which no one really understood, let alone knew how to use: crimes against humanity.²³ Indeed, most of the Nuremberg defendants were convicted for war crimes.²⁴ Only two Nazi criminals were convicted, at Nuremberg, exclusively for committing “Crimes against Humanity.” Baldur von Schirach and Julius Streicher.²⁵ Schirach, the commander of the Hitler Jugend (Hitler’s youth group), was among the few who were not sentenced to death, but rather to twenty years in prison.²⁶ Julius Streicher, however, the founder and editor of the famous (or rather, infamous) *Der STURMER* newspaper,²⁷ was sentenced to death.²⁸

In the context of this comparison it must be said that many historians were under the impression that both Streicher and Von Schirach were strange picks to be convicted for crimes against humanity given the essence and scope of their crimes. This is especially true for Streicher, who was executed.²⁹ Streicher is considered by many sources to be insane³⁰ and was not a member of the military, nor did he take part in the planning of the Holocaust, the invasion of Poland, or the Soviet invasion.³¹ Yet his role in inciting the extermination of Jews was significant enough, in the prosecutors’ judgment, to include him in the indictment.³² In their verdict the judges wrote the following:

For his 25 years of speaking, writing, and preaching hatred of the Jews, Streicher was widely known as “Jew baiter number one.” In his speeches and articles, week after week, month after month, he

22. YABLONKA, *supra* note 1, at 243.

23. MARRUS, *supra* note 13, at 185.

24. ANN TUSA & JOHN TUSA, *THE NUREMBERG TRIAL* 504 (1983).

25. MARRUS, *supra* note 13, at 237–38. At Nuremberg, “crimes against humanity” meant, to a large extent, anti-Jewish persecution and massacres. See LÉON POLIAKOV, *LE PROCÈS DE NUREMBERG* 209 (1971).

26. MARRUS, *supra* note 13, at 239.

27. TUSA, *supra* note 24, at 503.

28. MARRUS, *supra* note 13 at 237.

29. *Id.*; see also TUSA, *supra* note 24, at 504.

30. Streicher was the only one whose sanity was being examined and although he was found sane enough to stand trial, he was diagnosed with a neurotic obsession. TUSA, *supra* note 24, at 137; see also MARRUS, *supra* note 13 at 193.

31. TUSA, *supra* note 24, at 503.

32. *Id.* at 504. (showing Streicher as a defendant).

infected the German mind with the virus of anti-semitism, and incited the German people to active persecution.³³

This decision is still controversial because of its implications with regard to the freedom of speech and the press.³⁴

Streicher's last words before being hanged were: "This is my celebration of Purim 1946, I am now going to God. The Bolsheviks will hang you all one day! Adele, my dear wife[.]"³⁵ This statement may be a reference to the defeat of Haman and the hanging of his ten sons, enemies and persecutors of the Jews in the Book of Esther, commemorated by the Jewish holiday Purim. It is believed that Streicher was making the observation that like the story of Haman, ten contemporary enemies and persecutors of the Jews, himself included, were scheduled to be hanged (the eleventh Nazi found guilty, Hermann Göring, had committed suicide the night before).³⁶

Eichmann faced his trial based on Israel's Nazi and Nazi Collaborator's Punishment Law of 1950.³⁷ Its first article dealt with "crimes against the Jews", as its primary issue, a completely new category of crimes.³⁸ "Crimes against humanity," the Nuremberg judicial novelty, came second.³⁹ This law was, and still is, unlike any other law in Israel's criminal system in that it is retroactive and deals with events that happened before the establishment of the state.⁴⁰

The law is also extraterritorial in that it deals with events that happened outside the country, even on a different continent.⁴¹ It allowed hearsay evidence, the re-adjudication of the same crime, and had no statute of limitations period.⁴² The law also forced the death penalty

33. *Judgement: Streicher*, AVALON PROJECT (2008), <http://avalon.law.yale.edu/imt/judstrei.asp> [hereinafter *Streicher Judgment*]. As to the controversy, see MARRUS, *supra* note 13, at 252–53.

34. MARRUS, *supra* note 13, at 252–53.

35. DENNIS BARK & DAVID GRESS, A HISTORY OF WEST GERMANY PART ONE 68 (2nd ed., 1993).

36. *Id.* (describing the effect of Göring's suicide the night before).

37. *Eichmann Trial Record*, *supra* note 19, at 3.

38. See Hanna Yablonka, *The Law for Punishment of the Nazis and Their Collaborators: Legislation, Implementation and Attitudes*, 82 CATHEDRA QUARTERLY 135, 135–52 (1996) [hereinafter *Punishment*].

39. Nazi and Nazi Collaborators (Punishment) Law, 5710-1950, arts. 1(a)(2), 1(b).

40. *Id.* art. 16.

41. *Id.*

42. *Id.* art. 15.

once a defendant was convicted, though this provision was later abolished in Israel in 1954.⁴³

During the Eichmann trial, the prosecution brought 111 witnesses who described in the first person their ordeals in the various European countries, ghettos, and camps.⁴⁴ At the Nuremberg trial, only a few witnesses were summoned to describe the Jewish fate,⁴⁵ and, generally speaking, the Jewish issue was deliberately marginalized, though not completely ignored.⁴⁶ In the words of Bloxham: “[t]he unwritten rule that the Nuremberg case could in no way be seen to be influenced by Jewry appears to have been a pre-eminent check, a view buttressed explicitly by the long-standing mistrust of the ‘objectivity’ of ‘Jewish’ evidence and the traditional Christian stereotype of the vengeful Jew . . .”⁴⁷ Bloxham added quite bluntly: “Jews could not be allowed to be seen to describe the fate of their kin; this was the task of the ‘objective’ Nazi documentation on the one hand, and the voice of universal opinion—personified in US Supreme Court Justice Jackson—on the other.”⁴⁸

Even the testimony about Auschwitz, a place so iconic and identified with the notion of “the final solution,” was given at Nuremberg by a French political prisoner by the name of Mary Valliant Couturier.⁴⁹ She described the process of selection in Auschwitz as well as the stages of murder:

They [the Jews] were taken to a red brick building, which bore the letters “Baden,” that is to say “Baths.” There, to begin with, they were made to undress and given a towel before they went into the so-called shower room . . . Once the people were undressed they took them into a room which was somewhat like a shower room, and gas capsules were thrown through an opening in the ceiling.⁵⁰

This description in the passive figure of speech completely left the victims voiceless!! The voice of the victims was not heard. The victims were not given the opportunity to tell their ordeal from their own perspective.

43. See *Punishment*, *supra* note 38, at 135–53 for more about the Nazi and Nazi Collaborators’ Punishment Law of 1950.

44. See generally *Eichmann Trial Record*, *supra* note 19 (listing the 111 witnesses). See also *Punishment*, *supra* note 38, at 148.

45. This is true in particular for the American prosecution team.

46. See BLOXHAM, *supra* note 12 at 66–68.

47. *Id.* at 66.

48. *Id.* at 68.

49. MARRUS *supra* note 13, at 155–57.

50. *Id.* at 155–56.

Nor will one find the victims' voice in the content and words of the opening first paragraph of the indictment in the two trials.

Prosecutor Henry Jackson opened at Nuremberg:

May it please Your Honors:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to reason.⁵¹

These were the opening words of Gideon Hausner at the Eichmann trial:

When I stand before you here, Judges of Israel, to lead the prosecution of Adolf Eichmann, I am not standing alone. With me are six million accusers. But they cannot rise to their feet and point an accusing finger towards him who sits in the dock and cry: "I accuse." For their ashes are piled up on the hills of Auschwitz and the fields of Treblinka, and are strewn in the forests of Poland. Their graves are scattered throughout the length and breadth of Europe. Their blood cries out, but their voice is not heard. Therefore I will *be their spokesman and in their name I will unfold the awesome indictment.*⁵²

The differences are clear and shining. Although the two men were naturally aware of the fact that they were on the road to the history books, Jackson refrained from any personal reference. This is very much in contrast to Hausner presenting himself as the representative of the six million murdered Jews, with biblical references.

Jackson spoke for all parties involved in the trial. Hausner, by comparing himself to the mission imposed on Moses and Aaron by God in the Jewish Exodus from Egypt,⁵³ had a very specific national Jewish entity in his vision. Hausner sanctified the number six million ignoring the need to substantiate it.⁵⁴ Jackson spoke very carefully of the "Five million seven hundred thousand Jews" who "are missing from the

51. *Nuremberg Trial Proceedings Volume 2*, AVALON PROJECT 98-99 (2008), available at <http://avalon.law.yale.edu/imt/11-21-45.asp> [hereinafter *Nuremberg Trial Vol. 2*].

52. *Eichmann Trial Record*, *supra* note 19, at 62.

53. *Exodus* 2:2 (King James) (The exodus of the Jews from Egypt is the formative event in the creation of the Jewish peoplehood, its birth cradle).

54. YABLONKA, *supra* note 1, at 82–83 (referring to the debate over the number).

countries in which they formerly lived and over 4,500,000 who cannot be accounted for by the normal death rate, nor by immigration, nor are they included among displaced persons”.⁵⁵ These examples do not even touch upon the tone of the two prosecutors. Hausner’s self-depiction as that of an ancient prophet contrasted strongly with Jackson’s topic-focused, law enforcement prosecution.

Later on in the trial, Jackson portrayed the crimes against the Jews. Again they had no voice and no perspective. Their plight was actually the secret weapon of Germany’s war machinery. The focus of Jackson’s portrayal was in line with the centrality in the indictment of Germany’s conspiracy to launch an aggressive war. In his own words:

The persecution of the Jews was a continuous and deliberate policy. It was a policy directed against other nations as well as against the Jews themselves. *Anti-Semitism was promoted to divide and embitter the Democratic peoples and to soften their resistance to the Nazi aggression.* As Robert Ley declared in *Der Angriff* on 14 May 1944: “[t]he second German weapon is Anti-Semitism because if it is constantly pursued by Germany, it will become a universal problem which all nations will be forced to consider.”⁵⁶

Jackson’s summation was also symptomatic:

Determination to destroy the Jews was a binding force which at all times cemented the elements of this conspiracy. On many internal policies there were differences among the defendants. But there is not one of them who have not echoed the rallying cry of Nazism: ‘Deutschland erwache, Juda verrecke!’ (Germany awake, Jewry perish!).⁵⁷

This was all too different from the interpretation given to Anti-Semitism at the Eichmann trial. Here it was portrayed not as a well thought strategic war device, but rather as an ongoing historical phenomenon—hatred deeply rooted in the European culture and

55. *Nuremberg Trial Vol. 2, supra* note 51, at 119 (further reporting that an estimated sixty percent of 9,600,000 Jews had perished).

56. *Id.* at 118 (emphasis added). See also in the words of Sir Hartley Shawcross the British prosecutor citing the German state of mind:

Anti-Semitism propaganda in all countries is an almost indispensable medium in the extension of our political campaign. You’ll see how little time we shall need in order to upset the ideas . . . of the whole world simply and solely by attacking Judaism. It is beyond question the most important weapon in our . . . arsenal.

Nuremberg Trial Proceedings Volume 19, AVALON PROJECT 437–38 (2008), <http://avalon.law.yale.edu/imt/07-26-46.asp>.

57. *Nuremberg Trial Vol. 2, supra* note 51, at 127.

discourse, reaching its final murderous stage under the Nazi regime.⁵⁸ In other words, it was not dealt with in the context of the Second World War, but rather in the context of the Jewish-non-Jewish relations over the generations. In Hausner's words, "[t]he way of anti-Semitism led to Auschwitz."⁵⁹

These crucial differences between the trials had a profound epistemological impact on the world. The Western public and cultural discourse following the Nuremberg trials centered on World War II history and the victory.⁶⁰ They were all striving to return as soon as possible to normality and the process of healing.⁶¹

The Jewish story during World War II was thus viewed mainly through the context of the aggressive war launched by Germany and through German documents, where German eyes portrayed the Jews as a passive, amorphous, and anonymous crowd, enhancing for many the old perception of the "Diaspora Jew."⁶² The Jews were the string puppets in historical events—the subject of decisions made by others. Even the Warsaw Ghetto Uprising, which is considered to be the first urban resistance in the whole of occupied Europe, was determined from General Stroop's report of the event.⁶³ He, of course, saw the rebels as bandits, regardless of age and gender.⁶⁴ The Jewish people during the Shoah were thus perceived to be going to their deaths like sheep to the slaughterhouse and their leaders as collaborators within the German killing apparatus, implying that some of the blame for the mass murder lied with its victims' conduct.⁶⁵

A profound change in these perceptions came about following the Eichmann trial. Conceptually, that trial shifted the center of the discourse from the phase of the "victims' guilt" into the ongoing debate over the "murderer's guilt." The long discussions over the yes or no banality of evil, the choice to do good or evil, and the essence and origins of evil are all, to this day, the core issues both in research and in

58. *Eichmann Trial Record*, *supra* note 19, at 64.

59. *Id.*

60. See BLOXHAM *supra* note 12, at 227.

61. *See id.*

62. See, e.g., *Nuremberg Trial Proceedings Volume 3*, AVALON PROJECT 553 (2008), <http://avalon.law.yale.edu/imt/12-14-45.asp> (describing wartime reports by Jürgen Stroop, who was the German commander in charge of the oppression of the Warsaw uprising).

63. *Id.*

64. *Id.* at 554; MARRUS, *supra* note 13, at 194.

65. See RAUL HILBERG, *THE DESTRUCTION OF THE EUROPEAN JEWS 1037–40* (1961) [hereinafter *DESTRUCTION*].

moral, social and popular public discourse.⁶⁶ All these elements are probably part of the reason why Raul Hilberg's ground-breaking book, *The Destruction of the European Jews*, was published some fifteen years after the Nuremberg trial.⁶⁷ Likewise, Isaiah Trunk's pioneer book *Judenrat: The Jewish Councils in Eastern Europe Under Nazi Occupation* was published some seventeen years after the Eichmann trial.⁶⁸ Hilberg's book told the history of the Shoah exclusively through German documents to which Hilberg was exposed in Nuremberg as a member of the American prosecution team.⁶⁹

The crucial difference between these two great works can be traced through their analyses of the Jewish leadership in the ghettos (the Judenrat) during the Shoah. Hilberg, through the German documents, saw the Jewish leadership mostly as a tool in the hands of the Nazis whose task was to facilitate the execution of the "final solution," which, according to Hilberg, they did.⁷⁰ Trunk, on the other hand, to a large extent following the Eichmann trial and the voice it gave to the victims, described the Jewish leadership through the eyes and emotions of their communities.⁷¹ The picture he drew was a multi-dimensional picture of a leadership confronting an unprecedented challenge, trying to understand the actual meaning of the events and many times acting to the best of their ability and understanding in the service of their communities.⁷² In his book, Trunk added a whole new dimension to the research of the Shoah, without which its story would never have been told in its full scope and complexity.

The "minister" of history has many times proven to be a rather ruthless and ironic judge. Sixty-five years after the Nuremberg trials and fifty years after the Eichmann trial one can easily conclude that the

66. See, e.g., HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (1963) (minimizing Eichmann's role to that of a recipient of orders). Cf. Ron Rosenbaum, *The Evil of Banality: Troubling New Revelations About Arendt and Heidegger*, SLATE (Oct. 30, 2009), http://www.slate.com/articles/life/the_spectator/2009/10/the_evil_of_banality_single.html.

67. See generally DESTRUCTION *supra* note 65 (providing a comprehensive study of the Holocaust); see also RAUL HILBERG, *THE POLITICS OF MEMORY: THE JOURNEY OF A HOLOCAUST HISTORIAN* (1996) [hereinafter *POLITICS OF MEMORY*] (describing the profound impact of the Nuremberg trial on Hilberg's writing).

68. See generally ISAIAH TRUNK, *JUDENRAT: THE JEWISH COUNCILS IN EASTERN EUROPE UNDER NAZI OCCUPATION* (1972) (examining the activities of the Jewish councils in Nazi-occupied Europe).

69. See DESTRUCTION, *supra* note 65, at x.

70. See *id.* at 1037–40.

71. See TRUNK, *supra* note 68, at ix, xii–xiv.

72. See *id.* at 570–71.

Shoah has to a large extent overshadowed the Second World War in the public mind. Over four hundred Holocaust museums, the number of visitors at the Holocaust Memorial Museum in Washington, D.C., and yes, even the Iranian-instigated Holocaust caricature contest, indicate the enormous long-range effect of the Eichmann trial in unveiling this “epoch-changing event” of the Shoah, to use Emil Fackenheim’s term.⁷³

To conclude, both trials indeed stemmed from the German defeat in World War II. Also, both verdicts relied exclusively on written documents, *but* that is where the resemblance ends.

The trials referred to different historical events, put in different contexts, and thus bore different conceptual outcomes.

Time’s perspective indicates that while the Nuremberg trials left quite a short-term impact on public discourse, the Eichmann trial left the Shoah as an ongoing source of debate, interest, actualizations, and publications.

One of the basic theories in the study of the history of the Shoah is that of information, knowledge and consciousness.⁷⁴ The premise of the theory is that there exist an epistemological and a temporal gap between the assimilation of information into actual knowledge and the formation of a holistic perception.⁷⁵

This epistemological gap is evident in the slow pace with which reports on the mass murder of Jews in Europe were interjected into the overall picture, making it clear that the solution the Germans devised for the “Jewish problem” was actually a final and total one. Naturally enough, the problem grows more acute the greater the distance between the event and the reservoir of known human experiences. The Holocaust was most certainly an aberrant and extraordinary event, the knowledge and awareness of which required the destruction of previously accepted thought patterns. The problem of information and knowledge can also be observed in the postwar years. It was during the postwar years that information about the Holocaust was processed, but turning that information into general knowledge and perception was rather slow and probably could not have happened any other way.

Looking back, it was at the Nuremberg trial where much of the information and documentation about the Holocaust was found and

73. YEHUDA BAUER, *THE HOLOCAUST: SOME HISTORICAL ASPECTS* 76 (1982).

74. See generally Dan Diner & Joel Golb, *On Guilt Discourse and Other Narratives: Epistemological Observations Regarding the Holocaust*, 9 *HIST. & MEMORY* 301, 301–20 (1997) (explaining gaps between gathering knowledge about the Shoah and incorporating that knowledge into cultural perception).

75. *Id.*

made known to the public. It was at the Eichmann trial that this information turned into actual knowledge and led the Shoah to where it now stands, at the center of a world-wide cultural discourse!

Haim Guri, one of Israel's leading poets, followed the Eichmann proceedings for an Israeli newspaper called *LaMerhav*.⁷⁶ In his poetic sensibility he was able to trace the process of information being transformed into knowledge while in the making. His description is breathtaking:

For we knew about these things, didn't we?!

We knew, yes, also before the Eichmann trial we knew. Scholars and historians and anthologists labored incessantly in Israel and abroad and furnished us with the literature and documentation, which many [people] approached with covered eyes . . .

But when this material . . . became part of the charge sheet, when these documents erupted out of the silence of the archives, it seemed as if they were now speaking for the first time, and that this knowledge was very different from that which was known before.

They underwent the same [kind of] change that occurs when things are removed from theory and put into practice, and this released a tremendous energy of "now I can understand and grasp."

The Holocaust has happened now, and not at any other time between those years and the beginning of this trial.

Those archives began to live their terrible lives and for a moment we believed that a sense of chaos was enveloping us. But the place of the chaos was usurped by the cruel order of the facts and details, from within the fog of generalization we saw the destruction rise up and be reconstituted in all its details.⁷⁷

This bore and still bears a profound historical significance.

76. YABLONKA, *supra* note 1, at 221–22 (citing Haim Guri, *The Jerusalem Trial*, *LAMERHAV*, Oct. 9, 1961).

77. *Id.* at 222.