

# In a Different Voice: Nathan Alterman and Hannah Arendt on the Kastner and Eichmann Trials

*Leora Bilsky\**

*This essay examines the Kastner trial and the Eichmann trial as constitutive moments in the development of Israeli collective identity. This aspect of the trials is explored by comparing the intervention of two intellectuals, Nathan Alterman and Hannah Arendt, in the two trials respectively. Both social critics challenged the terms of the collective identity that was reinforced by the trials. During the Kastner trial, the Israeli poet Alterman set out to challenge the "two paths" conception of heroism and cowardice that shaped the court's — and society's — understanding of the Holocaust. The first part of the essay examines Alterman's critical intervention and the public controversy that followed in its wake. In the second part, I examine Arendt's criticism of the Eichmann trial as an attempt to construct Israeli collective identity around opposition to the demonic Nazi. In this context, I discuss the famous controversy between Arendt and Gershom Scholem over the terms of her criticism. The two episodes come together in the third part of the essay, where I discuss the surprising continuities and affinities between the controversies. The two controversies offer a fascinating tale about the role of the law in the construction of collective identities and the role of the social critic in the development of a liberal society.*

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\* Leora Bilsky, Lecturer, Law Faculty, Tel Aviv University. I would like to thank José Brunner, Pnina Lahav, Vered Lev Kenaan, and Hanna Yablonka for their thoughtful comments. Thanks go also to the Alterman Archive at Tel Aviv University for allowing me access to the private notes of Alterman. I am indebted to Analu Verbin for her research assistance. Research for this paper was made possible by a fellowship in the program Ethics and the Professions, Harvard University, 1998-1999. This article is part of a forthcoming book, tentatively entitled *Political Trials and the Dilemmas of Liberalism*.

## INTRODUCTION

Never before in the history of the people of Israel has such a devastating [literally, murderous] judgment been passed on a Jew, not by a fellow Jew and not by the nations of the world. It might even be that no man of woman born will ever again be judged this way.

These words are taken from the private notes of the acclaimed Israeli poet Nathan Alterman. They were written in response to the verdict in the Kastner trial (Cr.C. 124/53), in which Judge Benjamin Halevi of the Jerusalem District Court condemned the negotiations between the Zionist leader Rudolph Israel Kastner and Nazi functionaries regarding the rescue of the Jews of Hungary, viewing them as a collaboration of the worst kind. The verdict had a profound effect on Alterman, far beyond the natural reaction to an error of law. Indeed this unfiltered reaction sounds like a cry that comes from the heart. Only later could the poet translate this cry into the measured words of poems and polemical essays. When published in his column *Hatur Hashevii (The Seventh Column)* in the widely-read daily newspaper *Davar*,<sup>1</sup> his views were met with heated responses and initiated an intensive debate. It is to this debate that I want to return in this essay, comparing it to the famous controversy kindled by Hannah Arendt's report on the Eichmann trial, originally published in the American magazine *The New Yorker* and later reprinted in a book, *Eichmann in Jerusalem: A Report on the Banality of Evil*.<sup>2</sup>

The Kastner trial and the Eichmann trial were two of the most famous trials in Israel that submitted the events of the Holocaust to public scrutiny. Holocaust trials raise the thorny issue of the relationship between law and history, a subject that has received considerable attention from both historians and legal scholars. However, here I take a different approach and discuss these trials as political trials. In popular perception, political trials are taken to be trials conducted by the political authorities against a political

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1 The daily newspaper *Davar* was the official newspaper of the *Histadrut*, the General Federation of Jewish Laborers. It was founded in 1925 by Berl Katznelson (1887-1944), also one of the founders of the Zionist Labor Movement and who served as the first editor of the newspaper. See Dina Goren, *Communication and Reality — Basic Concepts in Mass-Communication* (1993) (Hebrew).

2 Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963).

adversary in which the end result is pre-determined. In this essay I diverge from this understanding and refuse to reduce the concept "political trial" to the derogative sense that is often associated with the expression "show trials."<sup>3</sup> In my view, political trials, although having elements of political suppression, do not necessarily contradict the dictates of justice and can be made compatible with liberal commitments.<sup>4</sup> Indeed, they may make an important contribution to liberal culture by engendering debate that gives voice to competing stories about the most fundamental values of society. I argue that this is what accounts for their power to question and shape the collective identity of the community. Both the Kastner and Eichmann trials present us with examples of such competing stories. However, in both these trials the contest was not confined to the court of law, but was rather the result of a critical intervention by an intellectual on behalf of truths that had been suppressed, rights that had been violated, and voices that had been ignored. In each case this criticism was met by counter-criticism and initiated a heated controversy that was conducted in newspapers and journals by a group of intellectuals and cultural figures.

This essay examines the dialogue that developed between the court and the social critic and the intense public debate that followed over the terms of Israeli collective identity. I study the special difficulties that the social critic faces when articulating a counter-narrative in the shadow of a political trial. How can the monopolizing tendencies of a legal judgment be resisted? What are the critical resources for developing a counter-story that can compete with the court interpretation of the facts and issues? How can the critic establish his or her authority without relying on institutional support? And finally, what can the intellectual teach the court about the process of judgment?

The essay is divided into three parts. In the first part I present the Kastner trial, consider its criticism by Nathan Alterman, and examine the

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3 For two examples of the pejorative connotations of the term "show trial" based on the Soviet experience, see Lon L. Fuller, *Pashukanis and Vyshinsky: A Study in the Development of Marxian Legal Theory*, 47 Mich. L. Rev. 1157, 1161-62 (1949); A Dictionary of Politics 454-55 (Walter Laqueur ed., 1971) (defining show trials as "sham legal proceedings, repeatedly used in the USSR and other communist countries ... designed to dramatize specific political campaigns and/or eliminate prominent individuals").

4 I follow the route taken by Otto Kirchheimer, *Political Justice* (1961); Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (1997); Judith Shklar, *Legalism* (1964). For elaboration, see Leora Bilsky, *Political Trials: A History of Mis-Recognition* (unpublished manuscript, on file with author).

public controversy between Alterman and important political and cultural figures about the terms of the trial.<sup>5</sup> In the second part, devoted to the Eichmann trial, I study Hannah Arendt's criticism and the public debate that ensued mainly outside of Israel in Jewish-American circles.<sup>6</sup> In particular I examine the famous exchange of letters between Gershom Scholem and Hannah Arendt.<sup>7</sup> In the last part I compare the two controversies in order to evaluate the contribution of political trials and the criticism thereof to the development of a liberal society.

### I. NATHAN ALTERMAN'S CRITICISM OF THE KASTNER TRIAL

Israeli courts first confronted the Holocaust not through accused Nazi perpetrators such as Eichmann, but, rather, through their Jewish victims.<sup>8</sup> In the 1950s the Nazi and Nazi Collaborators (Punishment) Law, 1950, led to a number of trials in which judges were obliged to judge the actions of the Jewish leaders and functionaries during the Holocaust.<sup>9</sup> They listened to testimonies of survivors at a time when the historical context within which the Holocaust period was understood was framed to a large extent by former members of the Jewish resistance. This framework postulated an unbridgeable divide between the praiseworthy path of resistance and the contemptible path of cooperation followed by the Jewish Councils (*Judenräte*).<sup>10</sup>

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- 5 For a detailed discussion of the Alterman controversy, see the interpretive essay by Dan Laor, *Od Al Shtei Ha-Derachim [More on the Two Roads]* in Nathan Alterman, *Al Shtei Ha-Derachim [Between Two Roads]* 114 (Dan Laor ed., 1989) (Hebrew).
  - 6 For a discussion of the Arendt controversy, see Elisabeth Young-Bruehl, *Hannah Arendt, For Love of the World* 347-78 (1982); Jennifer Ring, *The Political Consequences of Thinking* 26-42, 150-56 (1997).
  - 7 Gershom Scholem (1897-1982) is considered the founding father of modern research of the Jewish *Kabbalah*. Born and educated in Germany, he was an old acquaintance of Arendt's. On June 23, 1963, Scholem wrote a highly critical letter to Arendt about her book *Eichmann in Jerusalem*. Scholem's letter and Arendt's reply were reprinted in Hannah Arendt, *The Jew as Pariah: Jewish Identity and Politics in the Modern Age* 240-51 (1978).
  - 8 See Tom Segev, *The Seventh Million: The Israelis and the Holocaust* 260-62 (Haim Watzman trans., 1993) (1991); Yehiam Weitz, *The Law for Punishment of the Nazis and their Collaborators as Image and Reflection of Public Opinion*, 82 *Kathedra* 153 (1996) (Hebrew); Hanna Yablonka, *The Law of Punishment for Nazis and their Collaborators: History, Implementation and Point of View*, 82 *Kathedra* 135 (1996) (Hebrew).
  - 9 Nazi and Nazi Collaborators (Punishment) Law, 5710-1950, 4 L.S.I. 154.
  - 10 These were special bodies comprised of Jews representing the Jewish community vis-à-vis the Nazi government in all Jewish communities under Nazi occupation

The Kastner affair was the first Holocaust trial that succeeded in making itself relevant to the Israeli public at large. The events leading up to the trial in 1953 involved alleged crimes of collaboration committed by Rudolph Israel Kastner during World War II in Hungary. Ironically, the trial began not as a criminal investigation of Kastner's actions but as a libel suit brought by Kastner against a certain Malchiel Gruenwald for circulating defamatory pamphlets about him.<sup>11</sup> Kastner had lived in Budapest during World War II where he had served as chief negotiator with the Nazis on behalf of Hungary's Jewish community. As such, he had enjoyed certain privileges. He had also helped to organize what later became known as the Bergen-Belsen transport — a group of 1685 Jews, including a disproportionate number of Kastner's friends and relatives, who were shuttled to safety. After the War, his involvement in this capacity was questioned: he was accused of being a cynical opportunist who had selfishly sacrificed Hungarian Jewry for his personal safety. After fleeing Europe, Kastner moved to Israel and became active in *Mapai* (the Israel Labor Party). By 1952 he was serving as spokesman for the Ministry of Trade and Industry. It was at this time that Malchiel Gruenwald embarked on a campaign against Kastner. A devoted member of the religious Zionist party, *Ha-Mizrachi*, Gruenwald had a political as well as a personal agenda. He hoped not only to expose Kastner's crimes, but also to denounce *Mapai* for not having done enough to save the Jews of Europe. He demanded Kastner's removal and the appointment of a commission of inquiry to investigate the events that had led to the decimation of Hungary's Jews. Warned by the Attorney General that he must either sue Gruenwald for libel or resign from his government post, Kastner sued. In the course of the trial, however, it was Kastner, and not Gruenwald, who found himself on the defensive.

Shmuel Tamir, the lawyer who represented Gruenwald, was affiliated with the right-wing Revisionist Party, a political adversary of the ruling party *Mapai*. During the Holocaust, one of the central divisions between the two camps had been concerned with the relationship with the British authorities in Palestine. *Mapai* had chosen to cooperate with the British in their war efforts against the Nazis, while the Revisionists had believed that the military struggle for liberation from the British should continue. At first glance, the Kastner trial would seem irrelevant to this controversy since it involved the actions of Jewish leaders in Europe vis-à-vis the Nazi authorities. However,

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in German-occupied Europe. These councils were responsible for carrying out the orders of the Nazi occupiers regarding the Jewish population.

11 Cr.C. (Jm.) 124/53, Attorney General v. Gruenwald, 1965(44) P.M. 3.

Tamir sought to use the trial as a political instrument for discrediting *Mapai* by connecting the events in Europe to those in Palestine. He used Kastner's political affiliation with *Mapai* leaders in order to imply an underlying resemblance in their political approaches. Both, he argued, had preferred the path of negotiation and cooperation to that of military resistance. In Europe this choice had proven to be catastrophic since it had facilitated the Nazi annihilation of European Jewry. Tamir saw the trial as a means of demonstrating this "lesson" to the Israeli public, a warning against the pragmatic path of negotiations. This, he argued, was in accord with the Zionist message of the negation of the Diaspora — the condemnation of patterns of behavior considered typical of Diaspora Jews. Whereas Jews in the Diaspora throughout the ages had relied on compliance and cooperation with the authorities for their survival, the Israelis, as the *New Jews*, should abandon that approach and criticize *Mapai* for demonstrating a "Diaspora mentality." In short, for Tamir the trial served to legitimate the Revisionist approach as the only authentic Zionism and the only one capable of guarding against the recurrence of similar catastrophes to the Jewish people in the future.

The trial thus became the focus of a much larger public debate, not only about the behavior of the members of the Jewish Councils during the Holocaust and, in particular, their cooperation with the Nazis, but also about what meaning Israelis should give to the Zionist revolution and to its promise to create a New Jew. Thus, what originally began as a trial of past events soon became a trial about the present and the future and then evolved into a struggle about the collective identity of the Israeli people. The political tension culminated when the trial judge, Benjamin Halevi, found Gruenwald not guilty on most counts and condemned Kastner for collaborating with the Nazis during the Holocaust, proclaiming, in a phrase that became notorious, that Kastner had sold his soul to the devil.

### **A. Nathan Alterman's Public Intervention**

At the time of the Kastner trial (1954-1955), the Israeli poet and writer Nathan Alterman was engaged in an intense critical examination of the behavior of Jewish leaders during the Holocaust. He devoted five notebooks of his personal diary to exploring his views on this subject, which ran against the grain of the generally accepted perception of the Holocaust in the 1950s. In particular, Alterman questioned the validity of the current ideological framework that divided the behavior of Jews into two diametrically opposed paths — what he refers to in his diaries as the *two paths* concept of the Holocaust: the Courageous Path of the Rebels (resistance fighters) and the

Cowardly Path of the Jewish Councils (collaborators). He describes how he came to realize, through private conversations and a careful reading of survivors' testimonies, diaries, and the autobiographies of former ghetto fighters, that the two paths concept worked as an ideological blinder, preventing Israelis from understanding the period and its dilemmas.

The private notebooks were first published only in 1989, accompanied by an explanatory essay by Dan Laor. According to Laor, the notebooks reveal that Alterman became obsessed with the need to discover the truth about Jewish behavior during the Holocaust.<sup>12</sup> However, the notebook that was devoted to the Kastner trial was not included in the 1989 publication.<sup>13</sup> It is there that we find Alterman's unfiltered reaction to Halevi's judgment. He wrote,

The judge concludes that the Nazis had managed to paralyze the mass resistance of the Jews with the plan to save the prominent Jews. The judge constructs a rational and consistent explanation without mentioning at all the fact that there was no resistance in other places as well ... With what measure of ridiculous and shallow pedantry the verdict explains the lack of resistance. The structure of the explanation mounts blame onto blame, in a seemingly logical order, as if the judge sees only the case of Kluj [Kastner's hometown].<sup>14</sup>

This comment is revealing in that it demonstrates the profound sense of historical responsibility that Alterman attached to understanding the period and delivering accurate judgments of it. Being a careful reader of texts, he was quick to sense that the court's judgment contained a dissonance between the chaos of the period, on the one hand, and the logical structures that an excessively formal legal analysis imposed on the period, on the other hand. The formality of the law, Alterman wrote, made the historical events that the judge recounted read like "a psychological novel."

Alterman attributed the judge's main error to his attempt to adapt the complex reality revealed in the courtroom to the ideological preconception of the two paths. He argued that the judge's conclusion that there was a clear choice between two paths resulted from the way he formulated the facts and was not based on the real life experiences of the survivors. However, as soon as this conclusion became a judgment of the court, it had the power to strengthen popular misconceptions about the two paths.

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<sup>12</sup> Laor, *supra* note 5, at 125.

<sup>13</sup> *Id.* at 151 n.28.

<sup>14</sup> *Id.* at 132 (author's translation).

The trial proved to be an important factor in Alterman's decision to publicize his unconventional ideas about the period.<sup>15</sup> He broke his silence in 1954 while the trial was still pending and published a provocative poem that was carefully timed to appear on the Holocaust and Resistance Memorial Day, which fell on April 30 that year.<sup>16</sup> The poem is written in the form of a collective monologue by Jewish ghetto rebels and resistance fighters who decide to step down from their pedestal in order to give testimony about what really happened, warning against the dangerous tendency to fictionalize history and to judge it according to stereotypical conceptions of heroism.<sup>17</sup> The poem engendered intense public criticism, to which Alterman responded with an essay entitled *The Resistance and Its Time* (May 28, 1954).<sup>18</sup>

The public debate reopened shortly after publication of the court's verdict that acquitted Gruenwald and sustained his accusations against Rudolph Kastner as a collaborator. Alterman published his response in the form of four polemical poems devoted to the Kastner trial in his regular column *Hatur Hashevii* in *Davar*. In these poems he harshly criticized the court's judgment both for its anachronistic nature and its stereotypical depiction of Kastner as a symbol of all the evils of the *Judenräte*.<sup>19</sup> In addition, Alterman warned against the tendency to judge according to absolute moral principles

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15 See *id.* at 119, 122 (where Laor claims that Alterman held these ideas as early as 1947, but that it was only during the trial and, in particular, after the publication of Judge Halevi's verdict that Alterman decided to publicize his private thoughts).

16 According to a Knesset decision from 1951, the Holocaust Memorial Day was set on the Hebrew date of the 27th of Nissan, the day on which the rebellion in the Warsaw Ghetto began. The choice of this date is indicative of the Knesset's intention to highlight the role of the Jewish military resistance during the Holocaust. See 9 Knesset Protocols 1655-57 (1951).

17 And on Memorial Day said the fighters and rebels:  
Don't put us on a pedestal to be distinguished from the Diaspora with a strong light.

In this hour of memory we leave the pedestal

To mingle again in darkness with the history of the people of Israel.

*Yom Ha-Zikaron Ve-Ha-Mordim [Day of Memorial and the Rebels]* in 3 Nathan Alterman, *Writings in Four Volumes* 407, 407-08 (1962) (Hebrew) (originally published in *Davar*, Apr. 30, 1954, at 2) (author's translation).

18 Reprinted in Alterman, *supra* note 17, at 409-20.

19 The first poem *Mi-Saviv La-Mishpat [Around the Trial]* (originally published in *Davar*, July 1, 1955, at 2 (Hebrew)) consists of three parts that are devoted to different aspects of the trial: *Al Shtei Ha-Drachim [Two Paths]*; *Tiv Ha-Ashma [The Nature of the Accusation]*; and *Nimat Ha-Diun [The Tone of Discussion]*. The second poem is entitled *Od Al Shtei Ha-Drachim [More about the "Two Paths"]* (originally published in *Davar*, July 22, 1955, at 2 (Hebrew)). The third poem is *Dino Shel Ikaron [Judgment by Principle]* (originally published in *Davar*, July 29,



and advocated, instead, a more contextual perspective that would reveal the real experiences of people during the Holocaust.<sup>20</sup>

Later we will consider and see whether absolute judgment and explanation can really be applied to the *Judenräte* affair and whether its traits are so unambiguous and uniform. For it seems that if we warp this judgment, we shall warp the judgment of a great many who cannot speak. And by wrongly judging them, we shall find ourselves bending the truth and the scales of justice themselves.<sup>21</sup>

An unexpected epilogue was added to this series of poems in 1957 while Kastner's appeal was still pending in the Supreme Court. On March 3, Kastner was shot while returning home from work late at night, and he subsequently died from his injuries. In April, Alterman published the poem *Thirty Days since Kastner's Murder* in which he adopted a more radical stance, urging that the question be removed from the court of law and left to the judgment of historians: "[The murder] orders us to go back to the affair and study it from the start. Maybe the courtroom was not the proper place to recount its history."<sup>22</sup>

The Kastner trial helped the poet to see more clearly the dangers posed by an ideological construction of reality. Israel in the 1950s was, to a large extent, a society trying to live up to its ideological (and literary) ideals about the virtuous life (through, for example, pioneering work, military heroism, self-help, and political activism).<sup>23</sup> Alterman was not only a nationally acclaimed poet, but also a central figure in articulating the Zionist ethos of heroism.<sup>24</sup> Indeed, his earlier poems had contributed greatly to the

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1955, at 2 (Hebrew)), and the fourth poem — *Ha-Lekach La-Dor [About the Moral for the Generation]* (originally published in *Davar*, Aug. 12, 1955, at 2 (Hebrew)). The poems appear edited and revised in Alterman, *supra* note 17, at 421-40. For explanations, see Laor, *supra* note 5, at 122-23.

20 *Judgment by Principle* by Alterman, *supra* note 17, at 427.

21 *More about the Two Paths* by Alterman, *supra* note 17, at 424, 426 (author's translation).

22 Nathan Alterman, *Shloshim Le-Retzah Kastner [Thirty Days since Kastner's Murder]*, *Davar*, Apr. 26, 1957, at 2 (Hebrew) (author's translation). The title refers to the Jewish tradition of thirty days of mourning after a funeral (*shloshim*), during which the immediate relatives of the deceased do not cut their hair, shave, wear new clothes, or participate in festivities.

23 See Gershon Shaked, *Or Va-Tzel, Ahdut Ve-Ribuy [Light and Shadow, Unity and Plurality: Hebrew Literature in a Dialectical Confrontation with a Changing Reality]*, 4 *Alpayim* 113 (1991) (Hebrew).

24 See Laor, *supra* note 5, at 116; Dan Miron, *Mul ha-ach ha-shotek [Facing the Silent Brother: Essays on the Poetry of the War of Independence]* 63-87 (1992) (Hebrew);

ideological perception of the Holocaust and the two paths conception. But during the trial, the poet was faced with the injustice that could be done to actual people who had lived through these times when they were judged according to a strict ideological model. In particular, he understood how his own literary creations could become larger than life and could be used to silence the voices of real people who had tried — often in broken Hebrew and with great emotional difficulty — to give testimony about life under the Nazi regime. Alterman, therefore, began to criticize the plausibility of his own literary creations. As Laor comments:

It is astonishing to see how Alterman — an admirer of the revolt, who in the midst of the Warsaw Ghetto revolt wrote poems like "A Hebrew Girl", a poet who praises the war of the ghetto fighter ... who completely supports the path of military resistance in the poem "So Said the Sword of the Besieged", and who never concealed his own personal admiration for the heroes of the resistance — never hesitated to destroy with his own hands the myth of heroism and resistance.<sup>25</sup>

The trial was an important learning experience for Alterman, not only teaching him about the limits of literature, but also providing him with a model that enabled him to give dramatic shape to his counter-story. Alterman realized that in order for his counter-story to be heard, it was not enough to give voice to the silenced *Judenräte* members who were missing from the public debate. After all, Kastner had also tried to explain and justify his actions in the courtroom, but his message had not been heard by those seeking black and white explanations. As one who had himself contributed to the ideological construction of Israeli collective identity, Alterman realized that in order to hear the repressed voices, it was first essential to dismantle that ideological framework. And for this purpose he chose to imitate the format of a courtroom cross-examination.

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Ziva Shamir, *On Time and Place: Poetics and Politics in Alterman's Writing* 27 (1999) (Hebrew).

25 Laor, *supra* note 5, at 127-28 (author's translation). Laor adds that "when Alterman argues that the image of 'the young man and woman' is not necessarily the symbol of the period, it is impossible not to notice Alterman's cautious reference to his own repertoire of characters that appear in the poem 'Magash Ha-Keseph' for example": *id.* at 133 (author's translation).

## B. The Poet Cross-Examines the Myth

Alterman's poems about the Kastner trial are very different from all the other poems he published in *Hatur Hashevii*.<sup>26</sup> In these poems Alterman does not respect conventional forms of poetry; instead, he constantly mixes genres, using prose, poetry, expository writing, and long citations from history books and from personal accounts of resistance fighters. It seems that the trial had a profound influence on the poet, impelling him to seek a form that could adequately reflect the pain and doubt that he was experiencing.

On the most obvious level, these poems attempt to approximate a trial.<sup>27</sup> Alterman constructs an imaginary trial in which the two adversaries are the two paths: the rebels and the *Judenräte*. Alterman appoints himself the attorney for the silenced members of the *Judenräte* (and, by implication, also for Kastner) and tries to prove their case by cross-examining the witnesses for the prosecution, that is, members of the Jewish resistance. Interestingly, he does not summon *Judenräte* members themselves to give witness. Maybe he senses that the public is not yet ready to hear them. Instead, he tries to prove their innocence using testimonies of their political adversaries, the resistance fighters. For this purpose, Alterman gives long quotations from the diaries of resistance fighters at the beginning of his poems and contrasts them with their more recent statements. This move is a familiar one in courtroom interrogations. Because the law attributes more credibility to earlier statements than to later ones, the demonstration of inconsistencies

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<sup>26</sup> See *id.* at 123.

<sup>27</sup> Alterman may have been influenced by one particular cross-examination that took place in the courtroom. During the trial, the defense lawyer Tamir cross-examined Yoel Palgi, an Israeli paratrooper who had been sent to Hungary during the War to rescue Jews and spy for the British. In particular, Tamir confronted Palgi with his own testimony presented in his autobiographical book *Ruach Gedola Ba'u* (*A Great Wind Has Come*). This book embodied the heroic ideal of the New Jew, and Palgi was considered a cultural hero himself. Tamir, however, attributed every inconsistency between the book and Palgi's courtroom testimony to his efforts to protect the ruling party, *Mapai*. Tamir concluded that Palgi was not a real hero and that his whole book was merely a cover-up for the failure of his mission (allegedly due to Kastner's betrayal). For an account of this interrogation, see Shalom Rosenfeld, *Tik Plili 124: Mishpat Gruenwald-Kastner* [Criminal Case 124: The Gruenwald-Kastner Trial] (1955) (Hebrew).

In his private notes, Alterman wrote that in his view, Palgi had spoken the truth in the courtroom. Alterman thought that Palgi had had the courage to publicly shatter the myth that the heroism of the rebellion could have saved the Jews from the Holocaust. From his poems, we can see how Alterman adopted the same format of cross-examination, redirecting it to the resistance fighters.

between an earlier statement and a later one is one of the prevailing legal techniques for discrediting an adversary. For example, in order to undermine the condemnation of the *Judenräte*'s methods of rescue, Alterman quotes from the diary and notes of Mordechai Tenenbaum, the leader of the Jewish underground in the Bialystok Ghetto, describing a meeting with the head of the *Judenrat*, Ephraim Barash. Tenenbaum recorded in his diary that he told his comrades:

I say to those assembled that if the *Aktion* takes place on this scale, there will be no response on our part. We'll sacrifice the 6300 Jews in order to save the remaining 35,000. The situation at the front is such that a radical turnabout could come any day. If they want to broaden the *Aktion*, or if during the *Aktion* they should force us by their behavior to take to the streets, or if the street should rise spontaneously to defend itself, we will have no choice but to take the initiative ourselves.<sup>28</sup>

Alterman claims that this and similar quotations from the Jewish fighters show that the logic of sacrificing the few for the many was prevalent at the time among the resistance leaders themselves. Judge Halevi condemned this type of cold calculation as a sign of the moral corruption of Kastner and the *Judenräte* in contrast to the heroism of the resistance fighters. Alterman's quotations, however, show that there was no clear dividing line between the two paths. The pragmatic but tragic logic stemmed from notions of collective responsibility that were shared by the *Judenräte* and resistance fighters alike.

In another poem, Alterman argues that the two paths concept is a myth imposed after the fact upon the historical events.<sup>29</sup> To support this view he summons the testimony of Yitzhak Zuckerman, one of the leaders of the Warsaw Ghetto uprising. Zuckerman is quoted as saying that the January revolt would never have begun if there had been enough time to consult with the leaders of the resistance, who would have probably decided to postpone it.<sup>30</sup> Again, both the *Judenräte* and the resistance fighters share the logic of gaining some more time. Alterman concludes that the judge's very attempt to present a moral dilemma with two mutually exclusive options is detrimental to the historical truth.

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28 Cited in the poem *Around the Trial* by Alterman, *supra* note 17, at 421 (originally published in *Davar*, July 1, 1955, at 2) (author's translation).

29 *More about the Two Paths* in Alterman, *supra* note 17, at 424.

30 *Id.*

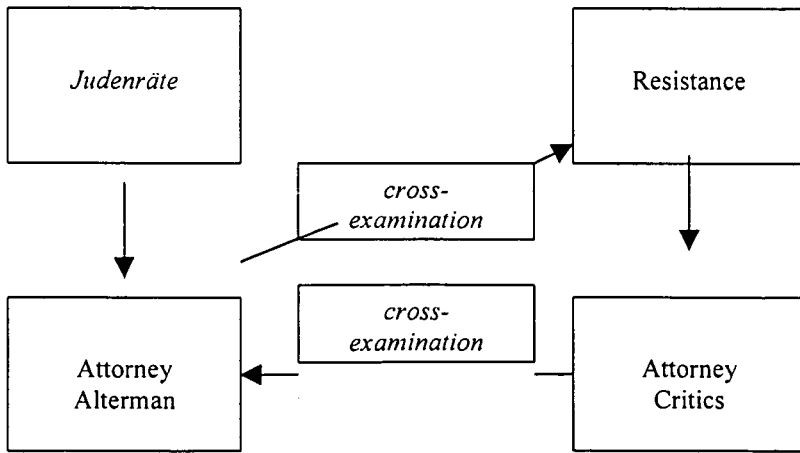
### C. Cross-Examining the Poet

Alterman's public intervention caused turmoil at the time. Publicists and cultural heroes accused him of intentionally blurring the line between heroism and cowardice in order to acquit Kastner and the *Judenräte's* path (and, likewise, *Mapai's* cooperation with the British during the War). Interestingly, the critics also adopted a trial-like format in their own essays, very similar to the one produced by Alterman. This time, however, they summoned Alterman himself to the witness stand for cross-examination. Following Alterman's own method, they began their essays with quotations from Alterman's poems, contrasting his early poems with his current publications to reveal contradictions. At times they seemed to forget that these were literary creations and preferred them to the living voice of the poet. These contradictions cast doubt on the purity of the poet's motivation, suggesting that it was political (Alterman's desire to defend *Mapai*) instead of an unyielding search for the truth.<sup>31</sup>

The confrontation between Alterman and his critics imitated the format and logic of a courtroom examination and can be schematized in the following way:

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31 For a general discussion of Alterman's affiliation with *Mapai* and Ben-Gurion and for the political slant of his poems in *Hatur Hashevii in Davar*, see Michael Keren, *Ben-Gurion and the Intellectuals: Power, Knowledge, and Charisma* 142-46 (1983). Laor thinks, however, that Alterman's views on the Kastner trial were not politically motivated, but, rather, expressed his genuine criticism of the prevailing ideological conception of the Holocaust. To support this view Laor, *supra* note 5, at 115-16, 119, quotes a conversation between Alterman and Abba Kovner that took place around 1947. I further discuss this meeting in *infra* Part 3. Laor argues that even more than his published poems, Alterman's notebooks written during the public controversy over the "two paths" and the Kastner trial convey his obsession with discovering the whole truth; *id.* at 125. Laor also points out that Alterman was sometimes very critical of Ben-Gurion's views; for example, he points to the public disagreement between the two regarding the appropriate relationship between Israel and Germany (*id.* at 115). It should be noted, however, that in later compilations of his complete works, Alterman chose not to include the poems that deal directly with the Kastner affair. See Alterman, *supra* note 17, at 405-40. Alterman omitted the poems *The Nature of the Accusation*, *The Tone of Discussion*, and *Thirty Days since Kastner's Murder*. Laor, *supra* note 5, at 126, attributes these omissions to Alterman's intention to focus on matters of principle rather than on the actual controversy.



The two adversaries were the two paths: military resistance (Rebels) versus negotiations and cooperation (*Judenräte*). Alterman appointed himself the attorney for the *Judenräte*, and his critics played the role of attorney for the resistance fighters. Trying to disprove each other's position, both parties engaged in "cross-examination." While Alterman "cross-examined" the resistance fighters, his critics "cross-examined" him.

As mentioned before, the political significance of the Kastner trial lay in the association between *Mapai* and the way of "Kastnerism" as an ideology, i.e., the preference of negotiation over military resistance.<sup>32</sup> The trial produced an unholy coalition of critics from both the right-wing *Herut* party and the left-wing parties (especially *Ahdut Ha-Avodah*). An interesting split occurred, though, during the public debate. While criticism of *Mapai* was largely voiced by the right-wing attorney Tamir through the radical weekly *Ha-Olam Ha-Ze*,<sup>33</sup> criticism of Alterman was advanced mainly by

32 See Pnina Lahav, Judgment in Jerusalem 284 n.52 (1997); Shabtai Teveth, Ben-Gurion and the Holocaust 16-19 (1996) (Hebrew).

33 *Ha-Olam Ha-Ze*, a weekly magazine edited by Uri Avneri, was known for its aggressive criticism of the political establishment both in content and in style. It sought to expose all types of corruption on the part of politicians and public figures, and it gained the reputation of a dynamic journal devoted to shattering national myths. The opinions expressed in the magazine made it the target of criticism and harassment on the part of the political establishment. It generated many heated controversies during the 1950s and 1960s, including with its reports of the Kastner affair in support of Tamir's line and in giving him a public forum to express his views outside the courtroom. See I Yoav Yitzhak, First Class 215-16 (1998) ("Persons") (Hebrew).

people associated with left-wing parties and with former resistance fighters. Thus, the publicist Meir Ben Gur contrasted Alterman's earlier poem *A Prayer of Retribution*, which describes the "courage of the fighters and defenders of the city," with his more recent poem *Around the Trial*, written in reaction to the Kastner trial. Ben Gur wondered what effect these two poems, with contradicting messages but written by the same poet, might have on the education of the country's children.<sup>34</sup> David Kenaani, a writer and an expert on Alterman's literary work who became a harsh critic of Alterman's views about the Holocaust, provided another example of this courtroom technique. Kenaani published a reply to Alterman in which he pointed out the contradiction between Alterman's current questioning of the myths surrounding Jewish heroism and his earlier poems, which had provided the young Israeli nation with its moral code of heroism and honor:

Nathan Alterman dedicated *Hatur Hashevii* (30.4) to the Day of Remembrance and the Resistance. And when you come across the words of a poet whom you respect and admire, and you sense that they are alien and strange — then you reread them to determine whether perhaps the fault lies not with the author but with yourself ... . There is one book of Hebrew poetry that deserves the title "prophetic." In the early days of the War, before the extermination had begun, a Hebrew poet had a powerful vision of a war in which the few in numbers would face the many ... I am referring to *Simchat Aniim* [*The Joy of the Poor*] by Nathan Alterman, the greatest poet of our generation. Fear and wonder strike the reader at the prescient words of this seer who transcends the bounds of time. Years before the Warsaw Ghetto uprising he said:

The enemy bears scorn and death  
Arise, for the foe is marching  
Arise, hold fast your weapons  
Prepare, for the time is near ...

Far be it for me to suggest that Alterman is disavowing *Simchat Aniim*. Far be it for me to imply that he intends to remove those who realized his vision from their pedestal.<sup>35</sup>

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<sup>34</sup> Meir Ben Gur, *The Poet Nathan A. and the "Two Paths,"* Lamerhav, July 8, 1955, at 3 (Hebrew). Meir Ben Gur and Moshe Carmel, who vehemently criticized Alterman in their newspaper *Lamerhav*, were also senior spokesmen for *Ahdut Ha-Avodah*. See Laor, *supra* note 5, at 123.

<sup>35</sup> David Kenaani, *Ke-Or Yahel* [*Like a Shining Light*], *Al Ha-Mishmar*, May 14, 1954, at 5 (Hebrew) (author's translation).

It is significant that Kenaani can attribute a logical contradiction to Alterman only by banishing the element of time. He does this in two ways. First he presents the early writings of Alterman as prophetic, i.e., as transcending the limits of its own time. He then refuses to acknowledge the possibility that the poet might have changed his earlier views as a result of listening to survivors and learning about the period. The logical contradiction is produced by these two exclusions of historical time. Ironically, Kenaani repeats in his critique the very mistake that Alterman warns against in the judgment of the court by choosing to erase historical time from his account.

Kenaani's criticism exemplifies the essence of the controversy aroused by the Kastner trial: how should the period of the Holocaust be presented to the Israeli public? The debate was between a concrete approach that insisted on historical accounts as a means of understanding the complex reality in Europe and an abstract approach that relied on the timelessness of myth to connect the traumatic events in Europe to the new Jewish life being created in Israel. Alterman was deeply critical of the common error of judging by hindsight ("backshadowing"), thereby ignoring the actual historical context.<sup>36</sup> However, he was not content merely to discuss the period of the Holocaust with the meticulous precision of an historian. He wanted to influence the collective memory of the young country, and for this he needed to formulate his views in a dramatic way that would capture the imagination. Alterman thus sought a way to reintroduce real historical time into the story of the Holocaust without risking boredom and irrelevancy. His solution was to personalize Time and summon Time itself to give testimony alongside the resistance fighters. Time remembers the *Judenräte* and rebels alike, refuses to provide the moral that its audience desires, and chooses instead to abandon the community that does not respect their memory.<sup>37</sup> In his concluding poem, *Thirty Days since Kastner's Murder*, the poet presents Time as refusing to accept its unfair exclusion from the judgment of the court and causes the judgment to disintegrate:

And at that moment reappear the hellish days of this period to find their place among the paragraphs of the verdict and this verdict tears itself apart and its parts are carried away like a storm dispersed in the darkness and lost.<sup>38</sup>

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36 For a theoretical exploration of the error of backshadowing, particularly in Holocaust studies, see Michael Andre Bernstein, *Foregone Conclusions* (1994).

37 *About the Moral for the Generation* by Alterman, *supra* note 17, at 434.

38 Alterman, *supra* note 22 (author's translation).



There is a tension that runs throughout Alterman's writings. On the one hand, the poet was very critical of the attempt to morally judge Kastner with the inadequate tools of law that gave the affair the simplistic form of a psychological novel. On the other hand, he chose to formulate his own poetic critique as a courtroom interrogation. Alterman doubted the possibility and wisdom of producing a clear-cut judgment, but these doubts were expressed in a pseudo-legal way. One explanation for this might be the court's immense influence on the public debate, a force that could only be countered by the adoption of legal language by the poet himself. Alterman came to realize (albeit reluctantly) that the court had the power to shape the way the Holocaust period would be perceived by the general public, how its collective memory would be constituted. In order to compete with the influence of the court, he needed to produce a dramatic confrontation, and he did so by creating his own imaginary counter-trial.

## II. HANNAH ARENDT AND THE EICHMANN TRIAL

Unlike the almost forgotten Kastner trial<sup>39</sup> of the 1950s, the Eichmann trial was intended from its very outset to be a celebrated educational affair.<sup>40</sup> The trial was cast as one in which the entire Jewish nation (via its Israeli representatives) undertook to try one of its worst oppressors, Adolph Eichmann and, by implication, Nazism itself.<sup>41</sup> The very structure of a trial symbolically inverted the past by transforming the persecuted victims into the prosecutors in order to bring closure to that painful past. For this purpose, the line between victims and perpetrators had to be clearly demarcated.

The political philosopher Hannah Arendt reported on the proceedings of the trial for *The New Yorker* in 1961. As a German Jew, Arendt was

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39 The Kastner trial has, however, received revived interest and has been the subject of much research in recent years; see Yehiam Weitz, *Ha-Ish She-Nirtsah Paamayim* [The Man Who Was Murdered Twice] (1995) (Hebrew); Lahav, *supra* note 32; Asher Maoz, *Historical Adjudication: Courts of Law, Commissions of Inquiry and "Historical Truth,"* 18 *Law & Hist. Rev.* 559 (2000); Leora Bilsky, *Judging History in the Kastner Trial,* 19 *Law & Hist. Rev.* (forthcoming Spring 2001). This new wave of writing suggests that there are different stages to the public debate triggered by a political trial, the meaning of which is reworked by subsequent generations.

40 See Segev, *supra* note 8, at 327 (presenting different quotations from Ben-Gurion's statements about the educational purpose of the Eichmann trial).

41 See the opening speech by Gideon Hausner (given on April 17-18, 1961) in Israel Ministry of Information, *Attorney General versus Eichmann 7-162* (1961) (Hebrew).

confronted with the dilemma of how to reconcile her solidarity with a particular national group with her universalistic commitment to justice.<sup>42</sup> How could she express her criticism about the trial without her views being appropriated by anti-Semites? How could she criticize without becoming the "disloyal daughter" of the Jewish people?

The intense emotions aroused by Arendt's report and the overwhelming denunciation it received from Jewish and Israeli circles demonstrate how difficult it is to occupy the role of social critic in such times.<sup>43</sup> From a national point of view, the trial was seen as an attempt to bring the Holocaust to the consciousness of the world and to correct its unjust omission from the Nuremberg Trials.<sup>44</sup> It was also an important vehicle through which the young Israeli nation sought to overcome internal divisions and bitter political debates regarding the behavior of the Jewish leadership during the Holocaust

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42 Before the War, Arendt had been engaged in Zionist activities for which she was arrested by the Gestapo. After fleeing from Germany to France, she worked for Youth *Aliyah* (dealing with youth immigration to Israel); see Young-Bruehl, *supra* note 6, at 105-15. Later, however, Arendt began to criticize certain Zionist policies. Indicative of her position is a letter she wrote to the anti-Zionist American Council for Judaism, from June 11, 1963, in which she refused the Council's offer to serve as a public forum for expressing her views about the Eichmann controversy in a lecture:

You know that I was a Zionist and that my reason for breaking with the Zionist organization was very different from the anti-Zionist stand of the Council: I am not against Israel on principle, I am against certain important Israeli policies. I know, or believe I know, that should catastrophe overtake this Jewish state, for whatever reasons (even reasons of their own foolishness) this would be the perhaps final catastrophe for the whole Jewish people, no matter what opinions every one of us might hold at the moment.

*Id.* at 361.

43 Note, however, that the main controversy surrounding Arendt's report arose in Jewish-American circles in the United States and not in Israel. This can be explained by the fact that Arendt wrote in English and published her report in an American magazine. (Only excerpts were translated and published in the Israeli newspaper *Haaretz*.) Unlike the earlier Kastner debate, which was conducted in Israeli daily newspapers and implicated the behavior of political parties within Israel, the Arendt controversy remained a debate among intellectuals. One reason might be that whereas the Kastner trial was politicized by defense lawyer Shmuel Tamir from the outset and was perceived as implicating the behavior of the Zionist leadership during the War, the Eichmann trial was not seen by Israelis or American Jews as accusatory with regard to their behavior during the War. It was only the Arendt report that turned the trial into an occasion for self-criticism, and hence, it was the report that was the subject of controversy and not the trial itself.

44 See Segev, *supra* note 8, at 329 (citing a letter from Ben-Gurion to Goldman).

(as exemplified by the Kastner affair), by turning away from blaming the victims to blaming the Nazi perpetrators. Survivors often experienced shame and self-blame for having survived the Nazi period, feelings compounded by the assumption on the part of a large portion of the Israeli public that only collaborators could have survived. Indeed, beginning with the trials in the 1950s against *kapos* (Jewish functionaries in the camps) and culminating with the Kastner trial, the survivors saw themselves as standing in the defense box along with the accused. It was only when Eichmann was put in the defense box and the survivors were assigned the role of witnesses for the prosecution could they begin to overcome these feelings. For Ben-Gurion's party, *Mapai*, the trial had the additional political significance of dissociating the party from the path of the Jewish Councils (an association created by the Kastner trial)<sup>45</sup> and presenting its heroic side (kidnapping Eichmann in Argentina and bringing him to justice). At this moment of crucial importance for the articulation of Israeli national identity, Arendt intervened and expressed her criticism of the terms of Israeli collective identity that the trial was reinforcing.

The bulk of Arendt's report is devoted to examining the deeds of Adolph Eichmann and the nature of his guilt, to fleshing out the meaning of the famous subtitle of her book "the banality of evil."<sup>46</sup> For the purposes of this article, however, I will limit myself to those parts of the report in which Arendt addressed the terms of Israeli collective identity as reflected in the trial.

### **A. The Philosopher Contests the Terms of Israeli Collective Identity**

One focus of Arendt's criticism was the decision to prosecute Eichmann under the legal category of "crimes against the Jewish People."<sup>47</sup> This choice, she explained, went hand in hand with the belief that "only a Jewish court could render justice to Jews, and that it was the business of Jews to sit in

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45 *See id.* at 328.

46 I have discussed this issue at length in a previous essay: Leora Bilsky, *When Actor and Spectator Meet in the Courtroom: Reflections on Hannah Arendt's Concept of Judgment*, 8 *Hist. & Memory* 137 (1996).

47 Eichmann was also charged with "crimes against humanity," but this crime was presented by the prosecution as a sub-category of "crimes against the Jewish People." The appellate court opinion reversed this order of importance. Justice Agranat wrote that "the category of 'crimes against the Jewish People' is nothing but ... 'the gravest crime against humanity.' It is true that there are certain differences between them ... but these are not differences material to our case." Cr.A. 336/61, *Eichmann v. Attorney General*, 16(3) P.D. 2033, 2048 (author's translation). For further discussion, see Lahav, *supra* note 32, at 152-55.

judgment on their enemies."<sup>48</sup> Arendt was alarmed by the ethnic categorization implicit in the choice of the legal category, notwithstanding the prosecutor's boast that he would likewise prosecute Eichmann for crimes against non-Jews because "we make no ethnic distinctions."<sup>49</sup> In fact, Arendt claimed, Israeli law did make ethnic distinctions, particularly in its personal status laws. For example, by conferring jurisdiction on personal matters over Jewish citizens to the rabbinical courts, Israeli law sanctioned a situation in which no Jew could marry a non-Jew in the State of Israel. What was even more alarming to Arendt was the fact that there seemed to be a consensus amongst secular and religious Jews in Israel about the desirability of such a law.<sup>50</sup> Arendt informed her readers that this was one of the reasons that Israel did not have a written constitution where it would have to spell out this abridgment of individual freedom in the name of ethnic solidarity. Arendt did not fail to note the irony of this situation in a trial intended to condemn the murderous trail of Nazism that had begun with the exclusionary Nuremberg laws of 1935.

But Arendt's main concern was not the existence of historical ironies. By connecting the choice of a legal category (crimes against the Jewish People) to Israel's policy of religious distinctions, Arendt pointed to a dangerous implication of the trial that went beyond the mere choice of a law under which Eichmann should be prosecuted. Arendt realized early on that the trial had the power to shape not only the way in which Israelis understood the nature of Eichmann's crimes, but also the way in which they understood themselves. It was for this reason that Arendt attributed such importance to the choice of a legal category. To put it differently, Arendt understood that the legal result was not the only factor to consider in such a trial. The way in which this result was reached was of equal importance. Eichmann could have been indicted under any one of several legal categories, but each would have had different implications for the way in which Israelis perceived their own future behavior.<sup>51</sup> Taking the particularistic road of

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48 Arendt, *supra* note 2, at 7. Note that Arendt does not see a problem in giving jurisdiction to Jewish judges over a Nazi criminal; rather, she criticizes the choice of the legal category "crimes against the Jewish People."

49 *Id.* at 6-7.

50 *Id.* at 7.

51 Arendt makes a similar observation in her discussion of the Dreyfus affair. She explains that for the future of the French Republic, the important fact was not whether one supported Dreyfus, but on what grounds this support was based: did it stem from a particularist group interest, or was it based on a broader understanding that infringing the rights of one is to infringe the rights of all. Hannah Arendt, *The Origins of Totalitarianism* 106 (2d ed. 1951).

"crimes against the Jewish People" projected the problem of anti-Semitism onto the rest of the world by pointing to its eternal victim, the Jew. On the other hand, taking the universalistic road of "crimes against humanity" would have left room for the possibility that such crimes could even be committed by Jews. In this regard Arendt warns against the us-them (Jews-Gentiles) logic inherent in the category of crimes against the Jewish People and in the historical account of the prosecution, which undermined the ability to embrace plurality (within Israel and among nations) and to practice normal politics.<sup>52</sup> She writes, "A change in this mentality is actually one of the indispensable prerequisites for Israeli statehood ... depending now on a *plurality* which no longer permits the age-old, and unfortunately, religiously anchored *dichotomy of Jews and Gentiles*."<sup>53</sup> In particular, Arendt was wary of the symbolic connection that the trial created between enemies of old (Nazis) and present enemies (the Palestinians) through its focus on the relations between the Palestinian leader (Haj Amin El-Husseini, the former Mufti of Jerusalem) and Eichmann.<sup>54</sup> The national conflict between Israelis and Palestinians was, thus, interpreted according to a binary scheme in which Israelis were seen as falling squarely in the category of victims. This conceptual framework left no room for recognizing the victimization of Palestinians by Israelis.

Arendt's second focus of criticism was the ideological Zionist lesson intended to be drawn from the trial, which contrasted "Israeli heroism" with "Jewish submissiveness." This negative view of the behavior of Diaspora Jews was conveyed in particular through the prosecution's repeated question to the witnesses: "Why did you not rebel?"<sup>55</sup> Arendt exposed the fallaciousness of this ideological construction by shifting attention to the painful issue that was not discussed during the trial, namely, Jewish cooperation with the Nazis:

But the question the prosecutor regularly addressed to each witness except the resistance fighters, which sounded so very natural to those who knew nothing of the factual background of the trial, the question

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52 Hausner depicted Eichmann as the incarnation of the persecutors of old, Pharaoh and Haman, presenting the history of the Jews as a long history of persecution and victimization by the Gentiles.

53 Arendt, *supra* note 2, at 11 (emphasis added).

54 *See id.* at 13. *See also* Hannah Arendt, Karl Jaspers Correspondence 1926-1969, at 416 (Lotte Kohler & Hans Saner eds. & Robert Kimber & Rita Kimber trans., 1992) (letter from Arendt to Jaspers dated December 23, 1960).

55 Arendt, *supra* note 2, at 10.

"why did you not rebel?," actually served as a smoke screen for the question that was not asked.<sup>56</sup>

This suppressed question is reported by Arendt, a few lines earlier, namely, "Why did you cooperate in the destruction of your own people and, eventually, in your own ruin?"<sup>57</sup>

According to Arendt, it was this unspoken question and the repressed issue behind it that enabled the prosecution to establish the clear polarity between Nazi monsters and Jewish martyrs. The prosecution made every effort to distinguish the Eichmann trial from the previous Kastner trial in which the gray area of Jewish cooperation with the Nazis had been heatedly debated.<sup>58</sup> However, the trials were so clearly interwoven that Gideon Hausner had to approach his witnesses in advance and ask them, for the sake of national unity, not to drag the bitter controversy over the Kastner affair into the Eichmann trial.<sup>59</sup> Arendt was critical of this staged silence, and hence, what was missing from the official transcript quickly found its way into her report.<sup>60</sup> Indeed she devoted twenty-two pages of her book, its most controversial pages, to discussing the cooperation of the *Judenräte*, in general, and the cooperation of Kastner, in particular, with the Nazis, even though the issue was never raised during the trial.<sup>61</sup> In dealing with this painful subject, Arendt focused on the figure of Rudolph Kastner, the Zionist leader who had chosen to negotiate with the Nazis in order to save the lives of Hungarian Jews, and whose behavior

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56 *Id.* at 124.

57 *Id.*

58 This was a difficult task because many of the main actors in the Eichmann trial had participated in the Kastner trial. These included the Assistant to the Attorney General Gabriel Bach, Judge Benjamin Halevi, Justice Simon Agranat, and a long line of witnesses, including Joel Brand, Hansi Brand, and Pinhas Freudiger.

59 See Gideon Hausner, *Justice in Jerusalem* 341 (1966).

60 "That the prosecution in Jerusalem, so careful not to embarrass the Adenauer administration, should have avoided, with even greater and more obvious justification, bringing this chapter of the story [i.e., the Jewish cooperation] into the open was almost a matter of course." *Id.* at 119. "The testimony of Mrs. Charlotte Salzberger on Theresienstadt ... permitted us to cast at least a glance into this neglected corner of what the prosecution kept calling the 'general picture' ... ." *Id.* at 120. "[T]hey were only too glad not to 'elaborate' on this side of their story." *Id.* at 121. "[T]he gravest omission from the 'general picture' was that of a witness to testify to the cooperation between the Nazi rulers and the Jewish authorities." *Id.* at 124.

61 For a further discussion of this issue, see Leora Bilsky, *The Competition of Storytellers: Gideon Hausner and Hannah Arendt*, in Arendt in Jerusalem (Steven Aschheim ed., forthcoming).

revealed the artificial nature of the ideological binarism of New Jew versus Old Jew (military resistance versus peaceful negotiation).<sup>62</sup>

Arendt used the Kastner affair to undermine the "heroic Zionism" side of the Israeli heroism/Jewish submissiveness dichotomy. But what about the ideological figure of the submissive victim? Here we can identify two strategies used by Arendt. The first involved a deliberate shift of attention away from the well-known victims who took the stand, such as Abba Kovner (the poet and resistance fighter) and Yehiel Dinur alias K-Zetnik (a survivor and writer, who collapsed on the stand). Instead, Arendt chose to focus on Zindel Grynszpan who testified about what it meant to become a refugee.<sup>63</sup> One reason that Arendt may have been interested in his testimony was that he did not talk with the pathos of a saint or a hero, thus enabling her to discuss the Holocaust outside the strictures of Zionist ideology. Another reason may have been that she herself was a refugee from Germany and may have identified with the human experiences he recounted more than with the lofty ideals and stories of immense suffering recounted by other witnesses.<sup>64</sup> Her second strategy for dismantling the aforementioned dichotomy was more subtle and involved admitting her own identity as a survivor.<sup>65</sup> This "confession" was

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62 See Arendt, *supra* note 2, at 118, 132.

63 See *id.* at 227-30.

64 Zindel Grynszpan was the father of the famous Herschel Grynszpan, who on November 7, 1938, shot to death the Third Secretary of the German Embassy in Paris in reaction to German policy with regard to its Jewish citizens (this might have been the reason for selecting the father to give testimony in the trial), an event that was used by the Nazis as the pretext for *Kristallnacht* (Crystal Night). On the night of November 9, 1938, in retaliation for the assassination carried out by Herschel Grynszpan two days earlier, organized terror attacks were made on Jewish synagogues and stores in Germany and Austria. The assault had been long in the works, but the assassination provided the opportunity to begin the attack. Through the night, 101 synagogues were destroyed by fire, 76 were demolished, and 7500 Jewish-owned stores were systematically destroyed by gangs of Nazis.

Arendt, however, does not focus on Herschel Grynszpan, but on the seemingly non-heroic story of his father, Zindel Grynszpan, whom she described in the following terms:

He was an old man, wearing the traditional Jewish skullcap, small, very frail, with sparse white hair and beard, holding himself quite erect ... Now he had come to tell his story, carefully answering questions put to him by the prosecutor; he spoke clearly and firmly, without embroidery, using a minimum of words.

Arendt, *supra* note 2, at 227-28. Arendt attributed his ability to tell this story to his "purity of soul, an unmirrored, unreflected innocence of heart and mind that only the righteous possess." *Id.* at 229.

65 See Arendt, *supra* note 2, at 8 ("[The courtroom] was filled with 'survivors,' with

made in a strategic way: Arendt identified herself as one of the survivors, but one who refused to obey the code of behavior expected of her. Rather, she offered her criticism of the prosecution with a strong and direct voice. In other words, Arendt frustrated readers' expectations of the passivity of survivors by offering her own textual resistance.<sup>66</sup> With these two strategic moves, Arendt tried to undermine the Zionist opposition between the military heroism of the Israelis (the New Jews) and the submissive passivity of the Diaspora Jews in order to open the way for the development of a society more tolerant of difference and plurality.

## B. The Controversy over Arendt's Report

As in the case of Alterman before her, Arendt's articles produced heated public debate, but this time most of the debate was conducted among intellectuals in American magazines and journals (a fact that led to the additional accusation against her for "airing dirty linen" in public about internal Jewish matters).<sup>67</sup> The critics focused on two issues: the inclusion of the chapter on the *Judenräte* and Arendt's thesis on the banality of evil. They argued that by raising these issues, Arendt obscured the distinction between victims and perpetrators.<sup>68</sup> In some reviews, Arendt was even accused of having undertaken to provide a "legal defense" for Eichmann.<sup>69</sup> Here, I shall

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middle-aged and elderly people, immigrants from Europe, *like myself ...*" (emphasis added)). This exposure of the personal could not have been easy for Arendt, who warned against such "transgression" in her other works. See, e.g., Hannah Arendt, *The Human Condition* 68-78 (1958).

66 The possibility of textual resistance, as opposed to the military resistance that was extolled by Israeli society at the time, is a crucial move towards building a society that tolerates criticism. I return to this subject later in my discussion on the meaning that Arendt gives to "patriotism."

67 See Young-Bruehl, *supra* note 7, at 347-55.

68 See, e.g., Norman Podhoretz, *Hannah Arendt on Eichmann: A Study in the Perversity of Brilliance*, 6 *Commentary* 201, 201 (1963): "In the place of the monstrous Nazi, she gives us the Jew as accomplice in evil; and in the place of the confrontation of guilt and innocence, she gives us the 'collaboration' of criminal and victim." See also Lionel Abel, *The Aesthetics of Evil: Hannah Arendt on Eichmann and the Jews*, 30 *Partisan Rev.* 211 (1963); Marie Syrkin, *Hannah Arendt: The Clothes of the Empress*, 10 *Dissent* 341 (1963); Marie Syrkin, *Miss Arendt Surveys the Holocaust*, 30 *Jewish Frontier* 7 (1963). For a reflective essay on the two controversial issues raised by Arendt's book, see Richard Bernstein, *The Banality of Evil Reconsidered*, in *Hannah Arendt and the Meaning of Politics* 297 (Craig Calhoun & John McGowan eds., 1997).

69 See, e.g., Podhoretz, *supra* note 68.



limit myself to considering an aspect of the controversy that has not been studied so far: the difficulties of articulating a critical view that competes with the judgment of the court. What authority does the critic have to offer as an alternative to the court's decision? What is the role of the critic's identity in articulating and authorizing her positions? Studying these questions will reveal important analogies between the Arendt controversy of the 1960s and the Alterman controversy of the 1950s.

### C. The Question of Judgment

From among the many criticisms of Arendt's report, I would like to concentrate on the famous exchange of letters between Arendt and Gershom Scholem.<sup>70</sup> The heart of the correspondence concerned the proper attitude of the social critic vis-à-vis her people. Scholem set the terms of the debate by highlighting the contrast between the detached judge and the connected (loving) member of the community, and he criticized Arendt for adopting the former position. Two excerpts from Scholem's letter to Arendt from June 23, 1963, demonstrate this point:

In the Jewish tradition there is a concept, hard to define and yet concrete enough, which we know as *Ahabath Israel*: "Love of the Jewish people" ... In you, dear Hannah, as in so many intellectuals who came from the German Left, I find little trace of this ... . There were among them [the Jewish leaders] also many people in no way different from ourselves, who were compelled to make terrible decisions in circumstances that we cannot even begin to reproduce or reconstruct. I do not know whether they were right or wrong. Nor do I presume to *judge*. I was not there.<sup>71</sup>

In her reply, Arendt seems to accept Scholem's dichotomy and confines herself to choosing sides. She refuses to embrace love for the people as the proper stance of the social critic and insists on the need (and possibility) to judge for the sake of the community's own good. In other words, given a choice between love and judgment, Arendt renounces the former and upholds the latter. Regarding the necessity of judgment in relation to the issue of Jewish cooperation, she writes:

This [the behavior of the Jews] constitutes our part of the so called

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70 The correspondence was published in European newspapers and in the American journal *Encounter*; reprinted in Arendt, *supra* note 7, at 241.

71 Arendt, *supra* note 7, at 241-43 (added emphasis).

"unmastered past," and although you may be right that it is too early for a "balanced judgment" (though I doubt this), I do believe that we shall only come to terms with this past if we begin to judge and to be frank about it.<sup>72</sup>

Before going further into the substance of the argument, I would like to compare its structure to the Alterman controversy of the 1950s. It appears that Arendt and Alterman held opposing views regarding the need to judge the *Judenräte*. While Alterman called for a deferral of judgment, Arendt insisted on judging them at any cost. Interestingly, in each case, the writer criticized the position taken by the court. Alterman was critical of the court's judgmental treatment of Kastner, while Arendt defied the prosecution's attempts to circumvent the issue of the *Judenräte* in Eichmann's trial. Arendt was condemned by Scholem for her willingness to judge the *Judenräte*, while Alterman was harshly criticized precisely for his reluctance to judge them.<sup>73</sup>

Thus, Scholem's accusation of Arendt for being too ideologically biased in engaging in an overall condemnation of the behavior of the *Judenräte* was the opposite of the position taken by David Kenaani, writing in 1954, who had criticized the lack of ideological clarity in Alterman's views:

Doubly strange is the blurring of the boundary between the rebels and "the elders of the Jews"... . The rebels in their lives and deaths constructed this wall — a wall of honor, of wisdom, of historical account ... for the "time that has no analogy" corrupted the Jewish leaders and turned them into tools of destruction of their Jewish brethren ... . Under these extreme circumstances such different paths cannot be reconciled. We should choose only one path to which we bestow our praise. We should inherit our values from only one of the two paths. Only one path can become the symbol of the time and its fights.<sup>74</sup>

Alterman answered Kenaani by restating his reservations about the sweeping condemnation of the *Judenräte*. He rejected Kenaani's ideological judgment according to the two paths conception and called for an approach that

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72 *Id.* at 248.

73 The structural similarity of the controversies is remarkable given the very different historical contexts in which the two controversies took place (the 1950s and 1960s in Israeli society and the changing views in Israel with regard to the Holocaust). For a discussion of the trials in the context of their periods, see Segev, *supra* note 8, at 255-310, 323-84 (the Kastner trial and the Eichmann trial, respectively).

74 Kenaani, *supra* note 35 (author's translation).

would allow for hesitations and uncertainties. We see then that Alterman's idiosyncratic views of the 1950s became the conventional wisdom that Scholem advocated in the 1960s.<sup>75</sup> The inverse, however, is true of Arendt, whose subversive views about Eichmann's trial appear to reflect Israeli popular sentiment of the 1950s.

What can explain Arendt's seeming regression, and did she really endorse the ideological judgment that characterized the 1950s in Israel? As we have seen, one reason for Arendt's return to the Kastner affair and to the issue of Jewish cooperation was her desire to expose what she viewed as the dangerous attempt of the prosecution in the Eichmann trial to avoid this subject. However, she raised this issue not in order to endorse the ideological condemnation of the survivors ("Why did you not rebel?"), but, rather, to oppose the new ideological order that was advanced in the Eichmann trial and, in particular, to disrupt the clear-cut binarism of devilish murderer and passive victims. She criticized the *Judenräte* not because they did not subscribe to the Zionist code of military heroism, but because they did not adopt a position of civil disobedience.<sup>76</sup> She was also careful to make distinctions between the leaders and the Jewish people as a whole, as well as between the different stages of the destruction of European Jewry. Consequently, she limited her criticism to the actions of the Jewish Councils in the early stages of ghettoization when civil disobedience may have still been possible.

#### D. Judgment and Identity

There is an important affinity between the debates regarding the way in which Alterman and Arendt invoked their identities to support their unusual judgments.

Expressing his views of the *Judenräte*, Alterman resorted to the personal voice:

I have said it already to several of the ghetto rebels and I repeat it here: I do not know in whose faith I would have lived and died if I had been there — in the faith of the rebellion or in the faith of those

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75 See, in particular, Scholem's assertion in Arendt, *supra* note 7, at 243, that "I do not know whether they were right or wrong, nor do I presume to judge, I was not there."

76 This was the key issue in Arendt's criticism of the Jewish leaders' cooperation. Arendt, *supra* note 2, at 112-34.

who resisted it. And David Kenaani, does he know with certainty with whom he would have sided? Is he certain of this?<sup>77</sup>

The invocation of one's identity during such a debate is peculiar. We are used to thinking of objective judgment and personal voice as opposites. Indeed, judges try to conceal the role of their identities in reaching their judgments. The conflation of the two categories by Alterman calls for explanation.

Alterman's published reply to Kenaani was a milder version of the views that he actually held on the subject. Laor demonstrates this with a reference to a private conversation between Alterman and Abba Kovner that took place around 1947 and was later reported by Kovner. Because of its importance to our investigation, I quote it in full:

Yitzhak Sade took me to Alterman. The first time I came from the coffee shop for a drink in his old apartment he wanted to ask me something. Alterman opened a notebook, looked in it and asked, asked and listened, wrote very little and listened carefully, all about the Ghetto. Later we returned to the street. I think it was at the end of Ben-Ami Street [literally meaning "Son of My People" Street] that he said: Had I been in the Ghetto — I would have been with the *Judenräte* members. I stopped walking. Seeing that I had stopped, he stopped as well. A gap opened between us. A woman pushing a stroller with a baby entered the gap. She recognized Alterman and smiled at him, he did not smile back. And I said: But Nathan, I read *Simchat Aniim* [the earlier book of poems by Alterman] — how can you —?

This was here — he answered sharply — this was after all here!<sup>78</sup>

Kovner describes Alterman as trying to imagine himself in the shoes of the Jewish victims before reaching his judgment. After listening carefully to Kovner's descriptions of the Ghetto, Alterman concludes that had he been there, he would have joined the *Judenräte*. The shocking effect that this statement had on Kovner was due to the discordance between Alterman's public image of heroism and defiance and his identification with the *Judenräte*. When Alterman was confronted with the concrete situation

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77 *The Resistance and Its Time* by Alterman, *supra* note 17, at 409, 415-16 (originally published in *Davar*, May 28, 1954, at 2 (Hebrew)) (author's translation).

78 Abba Kovner, *Hivadut [Acquaintance]*, in *On a Narrow Bridge: Oral Essays* 111 (Shalom Lurya ed., 1981) (Hebrew), *cited in* Laor, *supra* note 5, at 116 (author's translation). Laor writes that this memory was also confirmed in a letter that Kovner sent to him from May 21, 1987; *id.* at 151 n.18.

in the Ghetto, he rejected his own ideals of military heroism and identified with the *Judenräte* members — perceived as the despised Other by Israeli society. It was this act of personal exposure, more than the content of his judgment, that had the power to fracture the ideological lens through which the Holocaust was judged at the time. We saw Arendt employ a similar confessional voice when she mentioned the fact of her being a Holocaust survivor as a way of questioning the ideological depiction of Holocaust survivors in Israel.

### **E. Gender and Identity**

In the reported conversation between Alterman and Kovner, the two men represent in their words the two paths: resistance (New Jew) and compliance (Old Jew). The woman appears in this paragraph as an interruption. She seems unable to integrate into the symbolic order of the two exclusive paths, and therefore, her entrance induces a shift from the symbolic to the real. She enters the rift that opens between the disputing men with a baby stroller and a smile. As a literary artifice, her appearance underlines the dramatic confrontation between the men; it also signals, however, an implicit opposition between men's contemplative preoccupation with the past and women's worldly activities of raising the next generation. From this perspective, it seems that gender does not affect the choice between the two paths; both occur in a purely male world. This portrayal of the confrontation disguises the extent to which ideological categories of the New Jew and its opposite, the Diaspora Jew, are also shaped by gender.

In recent years several writers have addressed the Zionist contraposition of New Jew and Old Jew, exposing its compatibility with a gender binarism of male and female behavior.<sup>79</sup> This literature demonstrates how the figure of the Diaspora Jew is linked with characteristics that are traditionally associated with women, such as passivity and pragmatism, as opposed to the New Jew, whose characteristics of activism and military heroism are considered male. This perspective can help illuminate a covert gender dimension in the two controversies. First, it can explain some of the shock effect created by Alterman's identification with the *Judenräte* members. From this perspective it becomes clear that Alterman's move represents a crossing of both national

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<sup>79</sup> See generally David Biale, *Eros and the Jews* (1992); Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man* (1997); Paul Breines, *Tough Jews: Political Fantasies and the Moral Dilemma of American Jewry* (1990).

and gender identities.<sup>80</sup> By identifying with the *Judenräte*, Alterman crosses not only a national line (from Israeli to Diaspora Jew), but also an implicit gender line (identifying with the "feminine" figure of the Diaspora Jew).

This perspective can also shed new light on the controversy between Arendt and her critics. Indeed, Jennifer Ring suggests in a recent study that the volume and heat of the reactions to Arendt's report should be explained by its gender subtext:

Had a man written *Eichmann in Jerusalem*, there would have been two volatile sides to the issue, just as there had been to the major Jewish issues of the previous two decades: negotiation with the Nazis or not? Armed resistance or survival tactics? Those battles were fierce and hard fought, but there was a "critical mass" of opinion on both sides.<sup>81</sup>

To substantiate this claim, Ring compares the reactions to Arendt with the more balanced and respectful criticism directed at the historian Raul Hilberg, who held similar positions about the *Judenräte* and upon whose work Arendt relied heavily in her report.<sup>82</sup> But the more moderate reactions to Hilberg can be explained equally well, if not better, by structural differences between his book and Arendt's, including, among others, such factors as the time and place of publication, the intended audience, and the nature of the work.<sup>83</sup> Moreover,

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80 I use the term "crossing" deliberately to invoke the more familiar expression "cross-dressing."

81 Ring, *supra* note 6, at 111. *See also id.* at 153:

The surprising singularity of the agreement of the New York and Israeli Jews over Arendt's report is not so paradoxical once gender is factored in ... . Both ... were responding to the gentile racism that associated Judaism with femininity, accepting the challenge to be "real" men, and in that sense, desiring to assimilate to the non-Jewish standards of masculine deportment. Hannah Arendt touched *that* nerve.

82 *See generally* Raul Hilberg, *The Destruction of the European Jews* (1985). Ring, *supra* note 6, at 39-40, compares the two.

83 These structural factors include, *inter alia*: (1) the nature of the work (Hilberg — historical work, Arendt — political theory); (2) the intended target audience (Hilberg — professional audience, Arendt — general audience, Jews and non-Jews); and (3) the context of publication (Hilberg — writing without responding to a particular public event, Arendt — reporting on a publicized trial with the intention of producing a counter-narrative). Ring, *supra* note 6, at 39-40, recognizes some of these factors, but does not see them as undermining her thesis:

In spite of the fact that he lacked the flamboyant public persona of Arendt, was not a scholar with an international reputation (the result of Arendt's *Origins of Totalitarianism*), did not publish his report in the widely-read *New Yorker*, and hence was less significant as a target of critical attention, his

our comparison of the Arendt controversy with the Alterman controversy of the 1950s has shown that both writers received very similar treatment, irrespective of gender.<sup>84</sup> This counter-example does not mean, though, that gender played no role in these controversies. I suggest that gender categories can still be illuminating if we refine our use of them and replace an essentialist understanding of gender with a constructivist one, i.e., if we consider the way gender categories are constructed and contested by these two writers.

Both Alterman and Arendt undertake to expose the ideological nature of Israeli collective identity by an act of "cross-gendering." Alterman refuses to uphold the militant "male" identity expected of him and adopts the "female" identity of the Diaspora Jew. Likewise, Arendt refuses to act according to the traditional feminine image of the Diaspora Jew (passive and compliant). Instead, she adopts a "male" identity of defiance, condemning the "womanly" behavior of the Jewish leaders. Both writers use an act of cross-gendering to undermine the use of Zionist identity categories (New Jew versus Diaspora Jew) that the Israeli public regarded as self-evident and to reveal their constructed nature. They produce a shock effect by skillfully playing out the discrepancy between their real and assumed identities. I suggest that this move can account for the intensity of the reactions in both cases.

## F. The Politics of Love

This point can be elaborated by taking a closer look at the way in which Arendt disrupts the ideological binarism advanced in the Eichmann trial. Let us return to Scholem's accusations that Arendt's very willingness to judge the *Judenräte* demonstrated her lack of love for her people. In her reply, Arendt acknowledges, "You are quite right — I am not moved by any 'love' of this sort ... I have never in my life 'loved' any people or collective ... I indeed love 'only' my friends and the only kind of love I know of and believe in is the love of persons."<sup>85</sup>

Scholem attributes Arendt's "heartless" treatment of the Jews to her association with intellectuals from the German Left: "In you, dear Hannah, as in so many intellectuals who came from the German Left, I find little trace

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scholarship was taken seriously, and he was never accused of betraying the Jewish community, or of exhibiting "Jewish self-hatred."

I believe that these are precisely the reasons why Hilberg was not attacked personally, unlike Arendt.

84 However, as I mentioned, the accusations directed at Arendt also stemmed from her having aired "dirty linen" in public.

85 Arendt, *supra* note 7, at 246.

of this [*Ahabat Israel*]."<sup>86</sup> Nevertheless, Scholem hastens to add, "I regard you wholly as a daughter of our people, and in no other way."<sup>87</sup> Notwithstanding his confidence in Arendt's belonging, the implication of Scholem's words is that the only way for Arendt to show her loyalty as "a daughter of our people" to the public at large is to uphold love over judgment. Thus, love becomes a means of judging Arendt's misbehavior.

Arendt is quick to notice the disciplinary aspects of the politics of love. She disputes Scholem's insinuation that her report amounts to a repudiation of her Jewish identity and reaffirms her belonging to the community:

I have never pretended to be anything else [other than Jewish] or to be in any way other than I am, and I have never even felt tempted in that direction. It would have been like saying that I was a man and not a woman — that is to say, kind of insane.<sup>88</sup>

Interestingly, this is the only time in the debate that Arendt invokes her identity as a woman.<sup>89</sup> This statement should be read as a rhetorical move on the part of Arendt. It indicates that what really disturbs Scholem (and other Zionist critics) is the "masculine" position that Arendt adopts, betraying the traditional role reserved for women on such occasions.<sup>90</sup> As we saw, the "negation of the Diaspora" narrative relies on an implicit gender categorization of the New Jew (masculine) and the Diaspora Jew (feminine). Arendt's criticism threatens this unarticulated premise because it comes from one who is expected to be doubly silent (a woman and a survivor).

Arendt, however, goes beyond rhetoric to dispute the terms of the debate that Scholem imposes on her. She argues that we should distinguish between repudiating one's group identity and guarding one's independence ("... the trouble is that I am independent ... I do not belong to any organization

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<sup>86</sup> *Id.* at 241.

<sup>87</sup> *Id.* at 242.

<sup>88</sup> *Id.* at 246.

<sup>89</sup> Bonnie Honig argues that Arendt relies on an essentialist understanding of gender (one cannot escape one's gender) and applies the same essentialist understanding to the Jewish category in order to resist Scholem's attack. Honig is critical of this move and suggests that the opposite approach would have been preferable (i.e., analogizing womanhood to Jewishness and noticing the element of performativeness and construction in both); Bonnie Honig, *Toward an Agonistic Feminism: Hannah Arendt and the Politics of Identity*, in *Feminists Theorize the Political* 215, 230 (Judith Butler & Joan W. Scott eds., 1992).

<sup>90</sup> An acute awareness of the unsettling effects of a woman's "masculine" intervention in public debate is present in Arendt's essay on Rosa Luxembourg; Hannah Arendt, *Men in Dark Times* 37 (1968).



and always speak only for myself"<sup>91</sup>). And as for the alleged lack of love in her treatment of the Jews, Arendt unveils the politics behind this statement saying, "You know as well as I how often those who merely report certain unpleasant facts are accused of lack of soul, lack of heart, or lack of what you call *Herzenstakt*. We both know, in other words, how often these emotions are used in order to conceal factual truth."<sup>92</sup> In other words, in the name of solidarity, abuses and injuries are covered up, and women (referred to as sisters or daughters) are urged not to report them lest they be seen as repudiating their group identity or betraying their community.

Having exposed the underlying "politics of love" in Scholem's response, Arendt then examines whether judgment really stands in opposition to loyalty and solidarity with one's group. Patriotism, she urges, should not be confused with love. Indeed, Arendt argues that patriotism is not only compatible with but even necessitates judgment and criticism: "That there can be no patriotism without permanent opposition and criticism is no doubt common ground between us,"<sup>93</sup> she wrote, thus implying that Scholem shares her version of patriotism. In her view, the viability of a people depends upon constant criticism even more than upon love. Thus, when judging the behavior of the Jewish leaders during the Holocaust, she is inspired by this kind of critical patriotism. Adopting an internal group perspective, she writes, "*To a Jew* this role of the Jewish leaders in the destruction of their own people is undoubtedly the darkest chapter of the whole dark story."<sup>94</sup> Similarly, in her reply to Scholem she justifies her criticism of the *Judenräte* by admitting that "wrong done by my own people naturally grieves me more than wrong done by other people." In other words, taking one's group affiliation seriously (as Scholem demands) can lead one to be more critical of (and saddened by) the wrongs conducted by one's own people than judging them from a detached standpoint.<sup>95</sup>

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91 Arendt, *supra* note 7, at 250.

92 *Id.* at 247.

93 *Id.*

94 Arendt, *supra* note 2, at 117 (emphasis added).

95 Here I disagree with Bonnie Honig, who sees the controversy between Arendt and Scholem in terms of the private/public divide. Honig argues that Scholem believed that certain *public* responsibilities stemmed from one's Jewish identity, while Arendt rejected this attitude, considering her Jewishness to be a *private* matter. I think that both Arendt and Scholem agreed that one's Jewish identity could sometimes become a political (public) matter (indeed, Arendt, *supra* note 7, at 246, explicitly says so in her letter), but they disagreed about the nature of the obligations that stemmed from recognizing one's Jewishness ("love" versus "judgment"). See Honig, *supra* note 86, at 215-30.

### III. SOCIAL CRITICISM IN THE SHADOW OF POLITICAL TRIALS: THE KASTNER AND EICHMANN CONTROVERSIES RECONSIDERED

Social criticism in the shadow of a political trial may enjoy some advantages in capturing public attention (such as high visibility and dramatic confrontation), but it also suffers from significant disadvantages. Two such impediments have been the focus of our discussion. First, how it is possible to develop a counter-judgment to that of a court of law, given the exclusivity and the finality of a court's judgment? And second, how can one disrupt the identity categories advanced by the court while avoiding the accusation of being a traitor to the community? Considering these questions revealed common features in the strategies of criticism developed by Alterman in the 1950s and Arendt in the 1960s.

With respect to challenging the judgment of a court of law, both writers criticized the court for transgressing the proper limits of a legal judgment by entering the domains of literature and historiography. Alterman exposed the mythical narrative implicit in Judge Halevi's judgment and accused him of producing a psychological novel instead of a proper legal judgment. Likewise, Arendt pointed out the prosecutor's incursions into the field of history, painting the big picture about the Jewish Holocaust instead of concentrating on Eichmann's actions.

It was bad history and cheap rhetoric; worse, it was clearly at cross purposes with putting Eichmann on trial, suggesting that perhaps he was only an innocent executor of some mysteriously foreordained destiny, or, for that matter, even of anti-Semitism, which perhaps was necessary to blaze the trail of "the bloodstained road traveled by this people" to fulfill its destiny.<sup>96</sup>

In both cases, the authors undertook not only to criticize the transgressions of the court, but also to offer their own judgments. Curiously, in so doing they chose to imitate the forms and discourse of a court of law, bestowing a quasi-legal appearance to their counter-narratives. Alterman chose to deliver his criticism in the form of a cross-examination, appointing himself attorney for the *Judenräte*. Arendt criticized the choice of the legal category of crimes against the Jewish People and argued that it be replaced with crimes against humanity. She also developed what was perceived as an alternative line of defense for Eichmann's attorney, by raising the issue of Jewish cooperation

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96 Arendt, *supra* note 2, at 19.

with the Nazis. Both writers remained critical of the judgment of the court. Alterman gave his disagreement a literary form and described in a poem how Time would tear apart the court's judgment.<sup>97</sup> Arendt, for her part, endorsed the court's decision, but could not resist the temptation of supplementing it with a verdict in her own words.<sup>98</sup> This choice of quasi-legal language lent authority to their criticism, enabling them to capitalize on the dramatic element of a courtroom confrontation. It also allowed them to question the court's digression into the realms of literature and historiography, areas in which both enjoyed considerable reputations.<sup>99</sup>

In one important respect, however, the controversy diverged from the procedures of a court of law. While an attorney in a courtroom remains a professional whose own identity is not a subject under investigation, both Alterman and Arendt were put on the witness stand by their critics, and their own identities became the subject of public scrutiny. Interestingly, in both cases, the technique for discrediting the writers was similar: the current controversial views of the writer were contrasted with his or her previous works, exposing changes and contradictions. Alterman's earlier praise for the heroism of fighters in poems such as *Simchat Aniim* was

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97 *About the Moral for the Generation* in Alterman, *supra* note 17, at 434.

98 Arendt's judgment reads:

You admitted that the crime committed against the Jewish people during the war was the greatest crime in recorded history, and you admitted your role in it. But you said you had never acted from base motives, that you had never had any inclination to kill anybody, that you had never hated Jews, and still that you could not have acted otherwise and that you did not feel guilty. We find this difficult, though not altogether impossible to believe; there is some, though not very much, evidence against you in this matter of motivation and conscience that could be proved beyond reasonable doubt ... . You told your story in terms of a hard-luck story, and, knowing the circumstances, we are, up to a point, willing to grant you that under more favorable circumstances it is highly unlikely that you would ever have come before us or before any other criminal court ... [however] politics is not like nursery; in politics obedience and support are the same. And just as you supported and carried out a policy of not wanting to share the earth with the Jewish people and the people of a number of other nations ... we find that no one, that is, no member of the human race, can be expected to want to share the earth with you. This is the reason, and the only reason, you must hang.

Arendt, *supra* note 2, at 277-79.

99 Arendt's reputation was based on her previous study of Nazism in her book *The Origins of Totalitarianism*, first published in 1951. Alterman enjoyed wide public recognition as a national poet who articulated the Israeli ethos of heroism; his "Holocaust poems" were also widely read and acknowledged. See Laor, *supra* note 5, at 149 n.2.

contrasted with his current defense of the *Judenräte*. Likewise, Arendt's views in *The Origins of Totalitarianism*, where she describes the difficulties of resisting a totalitarian state, were compared to her harsh condemnation of the cooperation of Jewish leaders with the Nazis.<sup>100</sup> In both cases, these inconsistencies were attributed to the writer's current political agenda and not to fundamental changes in his or her knowledge and understanding of the Holocaust.<sup>101</sup>

These personal attacks were intended to undermine the writers' credibility. In response, the two writers sought a way to turn a vicious attack into a tool of criticism. They each used the strategy of employing identity as a critical device for undermining the rigidity of ideological categories such as New Jew and Old Jew, Resistance Fighter and Holocaust Survivor. To this end, they both rejected the identity expected of them and adopted an opposing (forbidden) identity: Alterman, previously a spokesman for the New Jew, identified with the despised figure of the *Judenräte* member; Arendt, a woman and a Holocaust survivor, spoke with the defiant voice of a resistance fighter. Arendt and Alterman thus hoped to expose the constructive character of these categories and to display the disciplinary practices that upheld them. The intensive debates that greeted their interventions suggest that the purpose of social criticism may be best served not by calm reflection but, rather, by the ability to anger, shock, and challenge conventional wisdom.

It would be worthwhile to pause and ponder what this kind of "identity politics" can teach us about the practice of social criticism. It is common to think that an objective judgment requires an erasure of the personal identity of the critic. Our controversies reveal that such detachment is often impossible because it is the very affiliation of the critic with the community

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100 See, e.g., Abel, *supra* note 68, at 227-28. ("Every point Miss Arendt maintained in her book on totalitarianism she would today have to retract and deny in order to seriously criticize the decisions made by the leaders of the Jewish councils between 1941 and 1944.")

101 During the Arendt controversy, Mary McCarthy questioned the technique of uncovering contradictions: "Supposing Abel is right and there is a contradiction between the earlier book and the present one, what would it prove? That she was right then and wrong now or vice versa?" Mary McCarthy, *The Hue and Cry*, 31 *Partisan Rev.* 1, 82-94 (1964). McCarthy misses the quasi-legal nature of the debate that allows each contradiction to be resolved in favor of an earlier statement. In a recent book, Richard Bernstein suggests that there is no real contradiction between the thesis of "radical evil" in the *Origins of Totalitarianism* and the thesis of the "banality of evil" in the Eichmann report; Richard J. Bernstein, *Hannah Arendt and the Jewish Question* 137-53 (1996).

and the reputation that he or she enjoys therein that justifies the critics' demands that he or she refrain from judging. Alterman and Arendt manage to turn their identities into tools of criticism. They also challenge the communitarian view, arguing that an independent judgment is compatible with caring for the good of the community at large. Moreover, their attitude is based on the idea that a democracy that is worthy of its name can survive only by virtue of the critical intervention of people who are as suspicious as they are combative. In the words of Habermas, this type of involvement with public affairs nurtures a "political culture of opposition [that] complements the institutions of the state."<sup>102</sup>

If we search for a lesson to be learned from the first two major political trials that took place in Israel, it has to do with the need to recognize the value of a "competition of stories." It is from this perspective that we notice a troubling aspect of the politics surrounding the Kastner and the Eichmann trials. The Kastner affair began as a criminal libel trial directed against the subversive voice of Gruenwald for defaming a public figure.<sup>103</sup> Likewise, the Attorney General in the Eichmann trial sought to ensure that internal controversies over the role of the Jewish Councils would be suppressed in the trial so that the "official story" of the State of Israel about the Holocaust would go unchallenged. The fear of the counter-story continued even after the conclusion of the trials. This is most evident in the Kastner affair. As mentioned, Judge Halevi's condemnation of Kastner for "selling his soul to the devil" was followed by an appeal to the Supreme Court, where the decision was reversed on most counts. While the appeal was pending, Kastner was assassinated. The rehabilitative judgment of the appellate court did not put a stop to the controversy. But instead of allowing the two judgments to compete for recognition by the public, the Israeli authorities decided not to publish the trial court judgment (139 pages long) in the official publication of court decisions. The opinion was published only ten years later, accompanied by a note to the reader that the judgment had been reversed by the Supreme Court.<sup>104</sup> In the Eichmann trial, the Kastner affair and the issue of Jewish cooperation were not discussed. Arendt's insistence on discussing these issues was largely

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102 Jurgen Habermas, *Heinrich Heine and the Role of the Intellectual in Germany*, in *The New Conservatism* 73 (Shierry Weber Nichol森 ed. & trans., 1989) (1985).

103 The political wisdom of this move was questioned from the beginning. While the Attorney General (Haim Cohen) insisted that a public official (Kastner) should file a libel suit or resign, the Minister of Justice (Pinchas Rosen) questioned the wisdom of such an uncompromising position given its unpredictable repercussions. See Segev *supra* note 8, at 264; Lahav, *supra* note 32, at 123-24.

104 See Cr.C. (Jm.) 124/53, Attorney General v. Gruenwald, 1965(44) P.M. 3, 7.

due to her fear of the effect their suppression would have on the political culture in Israel.<sup>105</sup> The fate of Arendt's report was similar to that of Halevi's judgment. Her book was not translated into Hebrew and was not published in Israel.<sup>106</sup> In contrast, the book that Jacob Robinson wrote refuting Arendt's arguments was published in both English and Hebrew.<sup>107</sup> It seems that in both cases, the Israeli authorities, when threatened by a counter-story, thought that the proper response was to uphold the official story instead of encouraging a culture of contestation.

In both the Kastner and the Eichmann affairs, the question of judgment was raised by an outsider to the legal game, an intellectual who watched the political trial from a distance and was critical of what he or she saw. Upon further reflection, this phenomenon should not surprise us, given the fact that the very term "intellectual" was first coined in France following Emile Zola's intervention on behalf of Alfred Dreyfus.<sup>108</sup> Indeed, political trials

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105 See Bilsky, *supra* note 61.

106 The book has been translated into Hebrew by Arie Uriel and released this year. Segev, *supra* note 8, at 465, argues that Arendt attributed the non-publication of her book in Hebrew to the efforts of Ben-Gurion. Arendt, *supra* note 2, at 222, also points out the fact that Eichmann's autobiography, which he wrote while in prison in Israel, was confiscated by the Israeli authorities and deposited with the Israeli National Archives. Segev, *supra* note 8, at 360, writes that this action was taken after Hausner explained to Ben-Gurion that Eichmann's book was intended to compete with the Court's verdict and, if published, could raise doubts as to the correctness of the court's judgment. The decision to seal the memoirs from public view was revoked only recently by the Attorney General in response to a petition from Eichmann's children to receive the memoirs. The manuscript was released in March 2000 in response to a request from the lawyers of Professor Deborah Lipstadt during the libel suit brought by Holocaust denier David Irving against her. See Tom Segev, *Adolph Eichmann's Idols*, Haaretz, Mar. 3, 2000, at B4 (Hebrew).

107 Jacob Robinson, *And the Crooked Shall Be Made Straight: The Eichmann Trial, the Jewish Catastrophe and Hannah Arendt's Narrative* (1965) (the Hebrew translation of this book appeared in 1966 under the title *He-Akov le-Mishor*).

108 In January of 1898, Emile Zola published an open letter to the President of the Republic that contained grave accusations against the military and the legal system; the following day, a manifesto appeared in the same newspaper, likewise protesting against infringements of rights in the trial of Captain Dreyfus, who had been convicted of espionage. It bore over a hundred signatures, including those of prominent writers and scholars. Soon thereafter, it was publicly referred to as the "manifesto of the intellectuals." Anatole France spoke at the time of the "intellectual" as an educated person acting "without a political mandate" when in the interest of public matters, he makes use of the means of his profession outside the sphere of his profession — that is, in the political public sphere.

Habermas, *supra* note 99, at 72-73.

have often served to awaken intellectuals from their "theoretical slumber" and force them to enter the political realm of debate. Such intervention is usually understood in terms of protecting justice from politics. But I believe that this formulation is too simplistic for dealing with the rich phenomenon of political trials and its complex relationship with our notions of justice. Here I have tried to show that the real contribution of the intellectual in such trials lies in turning them into "political" occasions, in the original sense of the word — occasions for the public to subject the most fundamental values of the State to critical reflection and to consider alternative narratives that are being suppressed or ignored. It is from this perspective that we can begin to see the contribution of political trials to the viability of a liberal political culture.

