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Finding “Neo-Israelite” Justice for Adolf Eichmann

Abstract: A recently declassified transcript of a 1962 Israeli government meeting sheds light on a disagreement between the Ben-Gurion administration and several Jewish intellectuals regarding the trial and execution of Adolf Eichmann. Via their objections, four of these dissenting intellectuals, Martin Buber, Hannah Arendt, Gershom Scholem, and Walter Kaufmann, are brought into conversation with the Israeli government as revealed in the transcript. The debates expose underlying and ongoing tensions about whether Israel should be a “nation among nations,” with a universal outlook, or a “light unto the nations,” endowed with particular and exceptional responsibilities as a Jewish state. These differences are related to a conflict between what is characterized as the “neo-Israelite” approach of Zionism and the diasporic “Jewish political tradition.”

Newly declassified documents concerning the trial of Adolf Eichmann reveal substantial differences between the Israeli government under the Mapai party and David Ben-Gurion, then prime minister, and several Jewish intellectuals. At issue was the question of whether Israel should act like all other nations in conducting the trial of Adolf Eichmann or whether it was vested with particular and exceptional responsibilities as a Jewish state. Hannah Arendt, Martin Buber, Gershom Scholem, and Walter Kaufmann all objected to aspects of the Eichmann trial, including Israeli sovereignty over the trial, the charges that would be pressed, and the use of the death penalty as punishment.

When I read Hannah Arendt’s Eichmann in Jerusalem, I did not anticipate that it would have more than peripheral relevance to my anthropological fieldwork on young Israelis—referred to in English as refuseniks and in Hebrew as sarvanim—who violated Israeli law by refusing to serve in the military. Yet, when I arrived in Israel and began...
speaking with refuseniks, the Eichmann trial as well as Arendt’s writing were invoked with surprising frequency in order to express feelings about duty, obedience, authority, and responsibility. I also noticed that intellectuals who supported refuseniks and those who opposed them (for example, Adi Ophir and Elhanan Yakira, respectively) were engaged in academic battles over the work of Hannah Arendt on Eichmann without explicitly mentioning the connection to refusal, though to me it seemed implausible that there was no connection.\footnote{Elhanan Yakira, “Hannah Arendt, the Holocaust and Zionism: The Story of a Failure,” Israel Studies 11:3 (2006), pp. 31–61; Adi Ophir, “Between Eichmann and Kant: Thinking on Evil After Arendt,” History and Memory 8:2 (1996), pp. 89–136.} I was struck by how much the Eichmann trial revealed about the still-conflicting visions of the Israeli state.\footnote{Leora Bilsky has shown in Transformative Justice: Israeli Identity on Trial (Ann Arbor: University of Michigan Press, 2004) how significant this and other major court trials have been in the formation of Israeli identity.}

After World War II, Adolf Eichmann, a Nazi who organized and managed mass deportations of Jews to ghettos and extermination camps, escaped to Argentina, where he lived under the name Ricardo Klement. He was seized in 1960 by Israeli agents and brought to Israel to stand trial on fifteen counts, on which he was convicted and executed. The handling of Eichmann’s trial and execution challenged the young Israeli state and brought to the surface many tensions concerning the nature and function of a Jewish state and its relationship to world Jewry. Whether Israel would consider itself a Jewish state or a state of the Jews was and is not a minor semantic point. The difference determines Israel’s understanding of its mission with regard to its own citizens, including the religious and ethnic minorities, as well as its relations with other nations and the many Jewish communities throughout the world. Perhaps not coincidentally, Israel’s ambivalence regarding the boundaries of the community on whose behalf it acts reflects a traditional tension in Jewish thought between the universal and the particular.

Although the debate between what should be universal about Jewish politics and what should be particular and exceptional often resurfaces, it is especially concrete and urgent in the institutions and policies of Israel and was forcefully exposed in the debates regarding the Eichmann trial. Over the course of history, the State of Israel has been imagined by many as exceptional, as embodying a type of Zionism that transcends mere politics: a state of David rather than a state of Caesar. Creatively imagining the potential of this entity was the preoccupation of such intellectuals as Martin Buber and Emmanuel Levinas as well as the hopeful hobby of millions of ordinary men and women. The ideal was that Israel would be simultaneously, as opposed to alternatively, a “nation among nations,” with
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a universalist approach, and a “light unto the nations,” implying a particular and exceptional responsibility for the Jewish people.³ Mainstream Zionism in its various forms has consistently been ambivalent about these distinctions and has often tried to find a middle path to carry out both missions. This approach, almost unavoidably, has led to contradictions and conflicts of interest, as it did in the Eichmann trial between the intellectuals and the Israeli government. That trial represented a situation in which these conflicting goals, normality and exceptionalism, reached an impasse. The situation required something concrete—a political solution that would foreclose other possibilities—and its ultimate application in some ways reveals the rejection of all forms of Zionism other than the political.

The recent release of the transcript of a secret meeting held by the Israeli government under Ben-Gurion brings these issues into even sharper focus. This document was made public after the publication of some of its details in the summer of 2007 in Avraham Burg’s book Defeating Hitler, which was a call for Israel to be defined as a state of the Jews as opposed to a Jewish state, the matter at the heart of our topic. The purpose of the meeting was to discuss the appeal of several prominent Jewish philosophers against the death penalty for Eichmann. This meeting was attended by Ben-Gurion; by the attorney general and chief prosecutor in the Eichmann trial, Gideon Hausner; as well as by Golda Meir, Levi Eshkol, Dov Yosef, Yosef Burg, and several others.

The document spoke not only to the objections of these specific intellectuals but also to the ongoing issues for the State of Israel discussed here: universalism and particularism, inclusion and exclusion, normality and exceptionalism.⁴ This paper first outlines the intervention of Zionism, specifically as it relates to the ideological divergences within Jewish history that led to the conflict over the treatment of Eichmann, and then puts the government meeting into direct conversation with four Jewish intellectuals who took issue with Israel’s approach to the trial: Martin Buber, Hannah Arendt, Gershom Scholem, and Walter Kaufmann.

Three issues are central to the concerns of both the intellectuals and the government. One is the place and context of the trial itself; another is the nature and purpose of punishment, and specifically the death penalty; and the last is the outcome of Eichmann’s execution and its significance for Israel and Jewish communities worldwide. The debates

³ The responsibility to be a light unto the nations might be universal, as in Levinas’ formulation, “Everyone is responsible for everyone else, but I am more so,” or it may stretch as far as speaking for the entire Jewish community.

⁴ Regarding the release of the document, see Yehiam Weitz, “We Have to Carry Out the Sentence,” Haaretz, July 23, 2007.
reveal frequent and varied iterations of the tension between universalism and particularism as well as the incongruity between Zionism’s new, neo-Israelite political approach to the case, and Jewish political tradition. In this debate, Hannah Arendt was staunchly on the side of universalism, while the other Jewish intellectuals for the most part favored a particularistic and exceptional Jewish responsibility. The government, however, alternatively invoked Israel’s particular responsibility to Jews and its need to behave like all other states, in a sense embodying its ambiguous role.

Central to the dispute is the way the Zionist intervention has distinguished itself from its perceived flow of Jewish history, creating a (new) neo-Israelite political approach in deliberate opposition to Jewish political tradition. The main thrust of this distinction is well-known and intentional: a focus on the sovereignty and self-defense of the Jewish people, which is imagined in contrast to the diasporic existence and its political approach, perceived as rooted in a position of dependence, weakness, and subjection.

I refer here to the Zionist approach as neo-Israelite because Zionists intended to bypass what they regarded as the atrophy and perversion of a diasporic existence, which resulted in all the familiar tropes, and to return to a more embodied experience of Jewishness in the land of Israel. This movement sought to transform the physical body and lifestyle of Jews as well as their political forms by returning to those aspects of the Bible that supported these goals. Thus, the Israeli government took a “neo-Israelite” political approach (in which the diasporic developments of rabbinic teachings were not cast off as corrupt) as opposed to a Jewish political approach.

The stream of Zionism that arguably became the most dominant was politically oriented and focused on several aspects of reforming Jews in order to make them fit to reinhabit the land and defend themselves. Ancient Israelites were publicly re-imagined as strong, tough, and physical. The “new Jew,” or the “muscle Jew,” became the ideal in this scenario and was opposed to the Jewish way of life in the Diaspora, which was thought of as weak, soft, and characterized by fear, traits that were only enhanced by the Holocaust. Zionism desired a more physical as opposed to spiritual existence, or a “reembodiment” in the most literal sense. This included exercise, sports, and self-defense. Maccabi sports teams and the kibbutz movement are only two examples of this lifestyle change. The

God of Jewish mysticism, tolerable because of his fragile and imperfect nature, was rejected.⁶

The reform extended not only to physical practices but to political ones as well, and Ben-Gurion was perhaps the epitome of this form of Zionism. Likewise, the government during the Eichmann trial was generally dominated by secular, Ashkenazi Jews who had been involved in founding the state. The goal was to bypass the Diaspora and find role models among the ancient Hebrews.⁷ The secular Zionists reimagined biblical figures like David as secular politicians—political realists and pragmatists—whose religiosity was thought to be ceremonial at best. Biblical figures hence became more universal, in contrast to the esoteric discourse of the Talmud, and more authentic in terms of their ideology. Serious belief and piety were left in exile; after the theological scandal of the Holocaust, God was trusted as little as the Gentiles for providing for the Jews.⁸ Ben-Gurion was well-known for politicizing the Bible, and, at the same time, downgrading the Mishnah, the Talmud, and the rabbinic responsa. “I do not value the Talmud,” he said. “I cannot compare it with the Bible.”⁹ This Bible-centric attitude will be seen to have characterized the government’s approach to the Eichmann case, whereas Jewish intellectuals, such as Scholem, opposed the government through rabbinic sources.

However, not all Jews were committed to Zionism’s “new Israel” vision. There were anti-Zionists in the ultra-Orthodox community, and there were those who were attached to their Jewish lives and traditions outside of Israel. There were also Zionists who disagreed with the mainstream on numerous issues, including method and timing, relations with Palestinians and other Arabs in the region, and the religious emphasis of the state. The Jewish intellectuals considered here fit into one of these categories with varying degrees of opposition to mainstream Zionism, but all of them took opposing positions in the case of Eichmann.

It probably would have been tempting for Ben-Gurion to dismiss the objections outright. The trial and execution was popular within Israel, and

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⁷ To contextualize this particular stance, it is worth noting the long-standing tradition of social movements that look to the sources of biblical/Godly teachings to rectify the conditions of their communities. There were, of course, the original prophets, and this practice was revived by the New England Puritans, who saw themselves as descendants of the ancient Israelites.


Ben-Gurion's Mapai party was looking for decisive action in the Eichmann trial as redemption after one of its members in the government, Rudolf Kastner, was tried and convicted of collaborating with the Nazis. But Ben-Gurion could not simply dismiss their objections for several reasons, one being that Zionism was more ambivalent concerning the Diaspora than I suggested above. In fact, many Zionists looked to famous Diaspora thinkers throughout the centuries as bearers of a kind of cultural heritage that they did not reject, but, on the contrary, from which they drew credence. Likewise, many leaders, including Ben-Gurion, had deeply personal veneration and respect for dissenting Jewish thinkers such as Martin Buber, as frustrating as he could be to Ben-Gurion's plans. Also, as noted, Israel maintained an ambiguous relationship with its citizens and world Jewry, and in some cases never dismissed the possibility that the state spoke for the entire Jewish people.

Ben-Gurion's personal correspondence clearly shows that he devoted a great deal of effort to trying to pull Jewish leaders into the fold and to maintain his hold on those who already supported him. The particular needs of the government and Israel were often at odds with those of world Jewry. Thus, when the dispute erupted over the trial and execution of Eichmann, members of the government sometimes found themselves having to walk the line, so to speak, in order to maintain the appearance of a communal Jewish response.

After Eichmann was kidnapped in Argentina and brought to Israel to stand trial, some Jewish intellectuals argued that he should be tried in an international court because his crimes were crimes against humanity, not only against the Jewish people. Among these was Hannah Arendt, who came from the tradition of German philosophy and who, by her own subsequent admission, did not in these early days sufficiently appreciate the category of the political. As a Jew, she fled Germany and then Europe to escape the Nazis, eventually settling in the United States. In her early life in Europe she considered herself a Zionist, but she eventually broke with mainstream Zionism over many issues.

Arendt came to Israel to cover the Eichmann trial for the *New Yorker*. Her report and the book to which it led became the subject of great controversy, much of it based on misreading, some of it not. Arendt consistently sided with a call for universality and a critique of its absence. She desired that Jews be considered a people among peoples, a nation among nations, and Israel, a state among states. In the Eichmann trial, she found much fault on all these counts, beginning with the fact that the trial was held in Israel and including the basis of the charges. She took issue with the trial's not being held in the International Court. She thought that if it were held in the International Court—despite the hostility
of people in Israel—it would have more meaning and legitimacy by involving the world in the judgment. In Israel, one of the charges against Eichmann was “crimes against the Jewish people,” which Arendt felt lacked foundation and universal meaning. She would have preferred that he be charged only with crimes against mankind committed on the body of the Jewish people, again to highlight the universal nature of the Nazi Holocaust as an attack not on the Jews alone, but on human diversity, and thus a crime against the world. This clearly conflicted with the lessons that Ben-Gurion had learned from the Holocaust.

For Arendt this was no small matter; it reflected and perpetuated Israel’s grave misunderstanding of the events that took place in Europe during this period. As she elaborates in many of her writings, especially The Origins of Totalitarianism and the articles in Responsibility and Judgment, Arendt perceived a complete moral breakdown and failure in Europe, which resulted in unprecedented genocide and an attack on humanity. She felt that by charging Eichmann with crimes against the Jewish people, the trial missed this significant point and turned the Holocaust into the ultimate pogrom.

Throughout the trial, prosecutor Gideon Hausner compared Eichmann to past persecutors of the Jews, especially the biblical Haman, and Arendt objected to all these rhetorical flourishes as bad history. Again, she felt this characterization missed the universal significance of the events in Europe. Ben-Gurion’s statement that the trial would shame the nations, further illustrated, for Arendt, a profound misunderstanding underlying the Israeli approach to the Holocaust and Nazi war crimes. Her concern was that if the government tried Eichmann for crimes against the Jews, how would they also speak for the non-Jewish victims and demonstrate that the crimes were offensive to all of humanity?

Arendt objected to the attitude taken toward Eichmann, which was one of the major points of controversy in her book. Specifically, she objected to Hausner’s attempt to portray Eichmann as a monster (for our purposes, as particular and exceptional). Arendt found no grounds for these claims; rather, Eichmann was “average, mediocre, dull and unintelligent. He was

no diabolical monster, rather very pathetic." The crime was profound, but the criminal was disappointing in scale. Treating Eichmann as a monster again bypassed the main issue, the complete moral failure of Europe. Arendt found this failure expressed throughout Eichmann’s testimony. His bizarre and banal phrasing of the details of his crimes, as if they were mere bureaucratic procedure, spoke volumes. Eichmann did not appear to understand the nature of his crimes. He had only bureaucratic language, only clichés of obedience and duty. She described a kind of automaton, which took the logical rules of morality to extremes without thought or judgment in each individual case, and things, of course, went horribly wrong.

Ironically, this brand of moral failure was more or less what some of Arendt’s critics accused her of. Daniel Bell commented that while technically many of Arendt’s strictures were correct, if it were possible to live by a universalistic standard, “abstract justice, as *Talmudic* wisdom knew, is sometimes too strong a yardstick [by which] to judge the world.” He accused her staunch universalism of doing violence in its application. This argument was similar to Horkheimer and Adorno’s critique of the Enlightenment, which they faulted for the moral collapse of Europe. Bell insisted that one had to take into account one’s identity as a Jew as well as a philosopher, implying perhaps that these were at odds in their instruction.

Gershom Scholem’s criticisms of Arendt were similar; he claimed that she lacked identification with her Jewish identity and, more so, “love of the Jewish people.” He qualified this attack by confessing that he regarded Arendt “wholly as a daughter of our people, and in no other way.” Regarding this comment, she responded in an oft-quoted passage, “The truth is I have never pretended to be anything else 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.” As to the accusation that she lacked love of the Jewish people, she assertively conceded the fact but, of course, not the point:

16 Ibid., p. 43.
18 Ibid.
20 Ibid., p. 466.
You are quite right—I am not moved by any “love” of this sort, and for two reasons: I have never in my life “loved” any people or collective—neither the German people, nor the French, nor the American, nor the working class or anything of that sort. I indeed love “only” my friends and the only kind of love I know of and believe in is the love of persons. Secondly, this “love of the Jews” would appear to me, since I myself am Jewish, as something rather suspect. I cannot love myself or anything which I know is part and parcel of my own person. I do not “love” the Jews, nor do I “believe” in them; I merely belong to them as a matter of course, beyond dispute or argument.  

Here we see Arendt’s understanding of public and private, with love reserved for the private sphere, which she considered particular and thus unfit and even too dangerous in its irrationality to play a public role, while Jewishness was a public or universal fact. She went on to question the role of “heart” in politics, further differentiating public and private realms on the basis of universal and particular. This spat reveals the philosophical differences between Arendt and Scholem, which we will continue to see, with Arendt’s dismissing any motivation other than the public and universal as out of place in ethics.

Martin Buber also attempted to intervene in the Eichmann trial. Maurice Friedman, a biographer of Buber, narrates an anecdote from 1960 when he was in Jerusalem. A doctor told him, “We have two Bs in Israel—Buber and Ben-Gurion. We wish the former would stick to philosophy and the latter to politics.” Thankfully, for those of us who appreciate such encounters, the wish was unfulfilled. Buber wanted Eichmann to stand trial before an international tribunal, because in this case Israel was the accuser, the victim, and thus should not also be the judge. Ben-Gurion adamantly opposed this, insisting that the trial be held in Israel. He said that Israel was the “sole heir” to the six million murdered in the Holocaust and that it was the “duty of the Israeli government, as the government of the Jewish state whose foundations were

21 Ibid., p. 467.


25 Ibid., p. 358.
laid by millions of European Jews and whose establishment was their dearest hope, to judge their murderers.” Here Ben-Gurion was making an impassioned plea for a particular responsibility of Israel—the state’s right to address the Jewish legacy—but at the same time he was making a universal claim to speak for all Jews.

This was a highly rhetorical bid for sovereignty in the Eichmann case, and it did not go undisputed. For example, Herbert Ehrmann, the president of the American Jewish Committee (AJC), was angered and objected to Israel’s speaking for world Jewry. He argued with Ben-Gurion’s known belief that “Judaism could not flourish elsewhere but in Israel.” Former AJC president, Judge Yosef Proskauer, agreed that an international tribunal was needed. So did the president of the World Zionist Organization, Nahum Goldmann. Ben-Gurion responded by calling Goldmann a “wandering Jew.” In 1935 Goldmann moved from Germany to the United States via Honduras. He was a great supporter of Israel alongside a healthy Diaspora. Ben-Gurion’s labeling intended to affix to him and his position all the tropes of unhealthy diasporic Judaism that were central to Ben-Gurion’s ideas about Zionism and redemption in Israel.

Israel never conceded its right to judge Eichmann, and in the government meeting called to discuss the appeals for clemency, there is more evidence that the State’s leaders intended the judgment to speak for Jewry worldwide. Dov Yosef articulated this idea by expressing concern that asking for a pardon for Eichmann would put the president in an awkward position by making a decision over the heads of thousands of Jews, especially those who went through the Holocaust. Yosef said that they, and not the government, should be the deciders. To this statement Ben-Gurion objected: “No, we decide.” Yosef favored the death penalty because it would make Israel like all the nations in its response, but he also felt the need to make it clear that the authority behind this punishment came not from the world, or even from the State of Israel, but from Jews, and especially the victims of the Holocaust. Yigal Alon was similarly moved to clarify the deciding power behind the execution of Eichmann:


28 Feldstein, Ben-Gurion, Zionism and American Jewry, p. 122.


30 Government protocols for meeting held May 29, 1962, Israel State Archive, p. 5.
I am sorry that Eichmann continues to abuse us now by forcing us to enact the death penalty. But there is no escape, he committed genocide, the penalty has to be clear and decisive. There is no doubt that carrying out the verdict will also cause negative reactions in certain circles, but not carrying out the verdict will cause negative reactions with even more people, and those dearer to us.31

Zerach Warhaftig argued that people would feel that Israel’s blood was abandoned if Eichmann was not executed.32 These arguments posited Israel’s particular and exclusive responsibility as the vested representative of the Jewish victims and survivors.

Ben-Gurion objected to the statement that the victims of the Holocaust, rather than the government, were the deciders, but his position may reflect an ambivalent point in the relationship between Zionism and the Holocaust, an ambiguity noted by many scholars of Zionism. On the one hand, the Holocaust was the ultimate justification for the State of Israel, demonstrating that the world is irreparably anti-Semitic, and thus the State’s necessity incontrovertible. At the same time, from the perspective of diasporic cultural decay, such events cause the Jewish people’s deepest shame, indicated in the metaphor that Jews supposedly went like sheep to the slaughter, making very little effort to defend themselves. Perhaps Ben-Gurion recognized that the authority to judge Eichmann derived from the victims of the Holocaust, but he rejected the possibility that they could act as the sovereign authority on the matter.

This point was not agreed upon by the whole government. Dov Yosef voiced an opposing view. At the same time, many of those at the meeting were concerned that in order to be accepted as sovereign, Israel had to perform its statehood roles as other nations performed theirs. Hausner described this question from a legal point of view, finding it difficult to see Eichmann as deserving of pardon. He reported that he had studied the verdicts of Nuremberg and was fully confident that if Eichmann had stood trial with his “friends,” he would have been executed. (The politics of friendship can be dangerous.) What is more, he said that legal experts had told him that if Israel did not execute Eichmann, it would appear to the world halfhearted in its conviction.33 Dov Yosef reinforced this point and added the concern that Israel was being singled out for special restrictions because of its Jewish character. He emphasized the need to reject this assigned particularity and behave like all the other nations:

31 Ibid. p. 17.
32 Ibid. p. 16.
33 Ibid. p. 4.
I don’t know what we are needed for here. Defendants receive the same treatment throughout the world. In Nuremberg there were seventy-seven verdicts, if I am not mistaken, and they executed all of them. No one said a word, not big states or small ones, but suddenly when the Jewish people try to do the same thing—it’s improper. In my opinion that is untenable. We have laws and we must carry out the verdict. In these states if one man kills another man, they hang him. Nothing would help.\textsuperscript{34}

Golda Meir stated this sentiment even more forcefully and highlighted the stakes of not performing similarly to the rest of the world at this critical juncture:

Non-execution of the verdict will not show the superiority of the Jewish people, but rather put an emphasis on the inferiority of the Jewish people. There is not one people in the world which in such a situation would show some superior sensitivity. It is only demanded from the Jewish people, demanded by Jews and non-Jews. There was a trial according to the law of the State of Israel—this is done by all the peoples. This was done by the Polish with [Rudolf] Hoess, this was done by the Czechs with Wisliceny, the Dutch with Reuter, the Norwegians with Quisling: no one said to them that they need to show superior sensitivity, only of us they demand this, because the world has not yet adjusted to the people of Israel among all the other peoples.\textsuperscript{35}

Although Ben-Gurion, who ran the meeting, did not fully articulate his position on this occasion, we know he had a similar reaction to criticism of the execution. In a letter found in the Israeli state archives, Ben-Gurion responded to a letter from an American named Dininger, writing to support Buber’s appeal:

I am rather surprised by those who say that the Jews believe in an eye for an eye. Don’t they execute murderers in Britain, America and France? The peoples of these countries are not Jews; why are they not stigmatized as believers in the principle of an eye for an eye and a tooth for a tooth. Many, to my regret, are not yet accustomed to looking on the Jews as a people enjoying equal rights and equality of status with every other free people. The Jewish people has no need of self-defense. The murder of six million Jews is not a lesser crime than the murder of a single American or Englishman,

\textsuperscript{34} Ibid. p. 6.

\textsuperscript{35} Ibid. p. 8.
but no one blames the Americans or the British for executing murderers, or reminds them of the “sin” of an eye for an eye.36

We see that Ben-Gurion apparently agreed with other members of the committee that Israel as a Jewish state was being called upon by Jews and non-Jews to behave differently from most nations of the world and, moreover, that this was an unfair demand.37

How can we compare this universal perspective of the Israeli government, the desire to be a nation among nations, to the universality desired by Hannah Arendt? Though there were numerous iterations of the tension between the universal and the particular in the debates, they are not necessarily commensurable. Both the government and Arendt appealed to ideas of disinterested justice and the need to deny the exceptionality of the circumstances. What differentiates the government’s universality is that for many participants in the meeting, this universality was required after a precondition was met, namely, that Israel was responsible to and for global Jewry. Arendt opposed this condition from the beginning, objecting to the trial being held in Israel for crimes that occurred before it even existed.

The exceptionality or commonality of Israel was a persistent theme throughout the controversies of this trial. The country insisted it had to behave like all the other nations in order to prove its sovereign power, while at the same time asking the Argentine government to make an exception concerning Israel’s violation of its sovereignty in kidnapping Eichmann due to a “supreme moral force.”38 Out of regard for the Jewish community, Israel also recognized a unique demand to fulfill responsibilities that were above and beyond those that applied to other states.

The nature and purpose of punishment was another issue in dispute between the intellectuals and the Israeli government. Among those who petitioned the government not to carry out the death penalty were the Central Conference of American Rabbis, the representative body of Reform Judaism in America, and several professors from the Hebrew University.

36 David Ben-Gurion to W.T. Dininger, Israel State Archive, June 12, 1962.

37 Ben-Gurion did not object to the characterization of an eye for an eye as a “sin,” akin to being bloodthirsty. The principle of an eye for an eye is found in the Code of Hammurabi, in the book of Exodus, and is later used as the principle behind proportionate justice (Exodus 21:23–37). Scholtem and Buber would argue that this approach is not the definitive form of Jewish justice, that there is no form of punishment in the Talmud that would allow its literal application (that is, no actual eyes lost). Nevertheless, this penalty is a sin only in the Christian context, based on the teachings of Jesus in the Sermon on the Mount, in which he tells his followers: “You have heard that it was said, An eye for an eye and a tooth for a tooth. But I say to you, do not resist an evildoer. If anyone strikes you on the right cheek, turn to him the other also” (Matthew 5:38–39).

38 Keren, “Ben-Gurion’s Theory of Sovereignty,” p. 43.
of Jerusalem—including Nathan Rotenstrich, Shmuel Samberski, and Ernst Simon.\(^\text{39}\) Several intellectuals, including Martin Buber, Gershom Scholem, Hugo Bergmann, Akiva Ernst Simon, and Leah Goldberg sent a long letter to President Ben Zvi requesting clemency.

Buber, in addition to submitting this letter, called Ben-Gurion and asked to see him personally. “No,” the septuagenarian replied to the octogenarian, “you are older than I. I will come and see you.” For two hours in Buber’s house on Hovevei Tzion (Lovers of Zion) Street in Jerusalem, the philosopher pleaded with the prime minister to commute the death sentence. He argued that society is a community of individuals; when it kills one man, it kills part of itself, and “Who gave society the right to kill itself? Society does not have such plenipotentiary rights.”\(^\text{40}\) He also said that no punishment could fit the crime committed: he was against retribution because no retribution was possible. Here, not unexpectedly, Buber employed a very broad understanding of the concept of society that allowed Eichmann to be included in the same “society” as himself and Ben-Gurion. He later gave many interviews, to Time Magazine and The New York Times among others, stating his objection to the execution of Eichmann. He said, “Thou shalt not kill applies with equal force to state and individuals. As far as it depends on us, we should not kill, neither as individuals nor as society.”\(^\text{41}\) Whereas the Israeli government supported Eichmann’s sentence with references to the Hebrew Bible (I Samuel), Buber turned to Jewish tradition to defend his objection to the death penalty. He quoted rabbi Menahem Mendel of Kotzk as saying, “What the Torah teaches us is this: none but God can command us to destroy a man, and if the very smallest angel comes after the command has been given and cautions us: ‘Lay not a hand upon…’ we must obey him.”\(^\text{42}\)

Gershom Scholem was also a signatory to the letter to Ben Zvi. He objected to the death sentence not because he thought Eichmann deserved clemency; in fact, the opposite was true. He believed, rather, that the laws of human society were at a loss to punish Eichmann adequately, that there could be no proportion. In addition, he believed that if justice were to be done, then it had to be done with tens and hundreds of thousands whose hands had been soiled with blood, a fact that Hannah Arendt likewise noted. He was proposing not that all of these people be

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\(^{39}\) Friedman, Buber’s Life and Work, p. 359.


\(^{41}\) Friedman, Buber’s Life and Work, p. 358.

\(^{42}\) Ibid.
brought to justice, but rather, that Eichmann’s punishment be deferred, lest it signify some kind of completion.\footnote{43}

At the risk of conflating philosophy and politics and against the recommendation that the “two Bs” be kept each in his own realm, I suggest we learn from Scholem’s scholarship on Judaism, and specifically on Jewish conceptions of justice. Scholem wrote about justice using the biblical story of Jonah. Jonah was asked by God to go to Nineveh and prophesy its destruction. He refused and, like a child, was obliged to take some “time out” to contemplate his behavior in the belly of a big fish. Jonah finally agreed to God’s demand, went to Nineveh, and prophesied its destruction in forty days. After forty days, Nineveh was not destroyed, and Jonah the prophet was confused and argued with God. Scholem said that this quarrel with God reveals a misunderstanding on the part of Jonah, who did not distinguish between law and justice.\footnote{44} God sent Jonah to prophesy, and Jonah interpreted this prophecy in historical (ordinary) time, as if what happened in the past could be connected to a prophecy of the future. He did not understand why the future should be any different from the past. But Jonah’s understanding of prophecy and of justice is misinformed: justice is deferment.\footnote{45} Scholem noted that the book of Jonah ends with a question, which becomes an unending cycle. It is a prototypical Jewish question, Scholem argued, in that it knows no answer, but its answer must in essence be another question, for in Judaism the concept of an answer does not exist, which in turn is the basis of talmudic dialectics.\footnote{46} Jonah took the side of the law, and from this perspective he was correct. God always takes the side of justice, denying law in history. Kleinberg argues that for centuries Jews had distinguished between ordinary time and messianic time. But this distinction was eliminated with secular Zionism, in which humans took control of the messianic kingdom. “The messianic kingdom was to be ushered in by human efforts; the present age was not the time for faith and hope, but for action.”\footnote{47}

Scholem wanted the State of Israel to act within a particular Jewish tradition. Essentially, he argued that within justice in its deepest sense, judgment is allowed, but in the Jewish tradition its execution remains something entirely different. The unequivocal connection of the judge’s

decision to the executive power is suspended by the deferment of this
power. What God did in Nineveh—“he had passed a sentence in order
to carry it out, and he did not [yet] do it”—is a classic expression of
the idea of Jewish (as opposed to Christian) justice. Scholem did not
leave us to ponder these abstract notions of justice but used the death
penalty to concretize them. He explained that the reverence for deferral
could account for the triumph of justice in talmudic law and in rabbini-
cal Judaism. In the following quotation we see that if in the neo-Israelite
approach of Zionism, the Talmud becomes less important, there is less
tradition preventing executions.

A court of law that in seventy years had executed one sentence of
death was named homicidal. The Torah knows the death penalty;
talmudic law does not question it but enacts the idea of deferral by
imposing an extraordinary burden of proof in all criminal cases.
Through such a burden judgment is rendered practically impossible.
The underlying idea, however, always remains the same: judgment
is possible, its execution is not possible. The human court’s ver-
dict does not entail its execution; justice fills the abyss between
them.

At the government’s meeting to discuss the appeals for clemency, Ben-
Gurion raised Buber’s objection as well as that of Walter Kaufmann, who
had written to him. Ben-Gurion, introducing Kaufmann as “a Jew, appar-
tently of German descent,” noted that he had read one of Kaufmann’s
books and marveled that a Jew in America dared write such a lethal cri-
tique of Christianity. In his letter, Kaufmann rejoiced at Eichmann’s
capture and declared the trial fair. But he said it would bring honor to
Israel if it denounced his acts and those of the Nazis and, agreeing that no
punishment was too great for him, let him go. “We are not bloodthirsty,”
he argued. Kaufmann wrote to Ben-Gurion that Eichmann’s trial rep-
resented a “unique opportunity for impressing the world with a morality
higher than it now accepts…. Our prophets gave the world a higher ethic
than it had before. Now the new Israel could go a step beyond even
that ethic and transcend retributive justice altogether.”

48 Scholem, “Jonah and the Concept of Justice,” p. 357.
49 There is also a difference between theology and politics, as the rabbis had limited
judicial power to carry out death sentences.
50 Scholem, “Jonah and the Concept of Justice,” p. 358.
51 This theme of Jews in exile being vulnerable and afraid, or surprisingly unafraid
in this case, recurred throughout the meeting.
52 Government protocols for meeting held May 29, 1962, p. 2.
53 Walter Kaufmann to David Ben-Gurion, May 3, 1962.
evidence about Kaufmann’s position from other writings, especially his famous *Critique of Religion and Philosophy*, which was published shortly before the Eichmann trial and was presumably—based on his description—the work Ben-Gurion read. This book is a critique of Christianity and its reliance on dogma, and it is particularly critical of the retributive function of punishment, which Kaufmann identifies with the folly of Christianity initiated by Augustine.

The government members at the meeting mostly misread the appeals not to use the death penalty. They (with Hannah Arendt) felt that such requests were on the wrong side of the scale between mercy and punishment; in fact, Buber, Scholem, and Kaufmann wanted the scale put aside in favor of deferred justice. Most rejected the appeals for clemency outright. Hausner had long been known to favor Eichmann’s execution, and he was the only member of the Histadrut (Israel’s labor federation) convention in the 1930s who had supported the death penalty, which was abolished with the creation of the state (except for specific circumstances, including high treason in wartime, war crimes against humanity, or crimes against the Jewish people). Only two participants in the government meeting questioned the execution of Eichmann, but when we look at their objections from the perspective of the nature of the punishment, they could not stand more in contrast to each other. One of those reluctant officials was Yosef Burg, who said, “There are moments that a man stands opposite from his conscience, from history, and needs to say his piece, and I want to say: on this issue I have thought a lot, it is true that there is no guarantee that I think correctly.” He quoted a trusted adviser who said,

The State of Israel said what it needed to say in the trial, it can allow itself to let the murderer die daily anew. I cannot bring up the concept of pardon in this context, and also not a reduction of the sentence. But if the possibility of pending is changed and states that the sentence will hang in his face day after day… If it is possible to leave him in this situation, that any day they can execute the sentence, I want this, if only because it is cruel.

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54 Friedman, *Buber’s Life and Work*, p. 358.

55 Yosef Burg was the father of Avraham Burg, mentioned above as the author of *Defeating Hitler* (2007). Indeed, Burg the son brought about this historical involution when calling for Israel to reject the idea of being a Jewish state in favor of being a state of the Jews and in the process forced the declassification of the transcripts on which the present paper is based.

56 Government protocols for meeting held May 29, 1962, p. 15.
Levi Eshkol and Burg had similar doubts about the fate of Eichmann but for very different reasons. Burg opposed Eichmann’s execution because he believed the punishment would be greater if Eichmann were not killed immediately but left to suffer in anticipation. Eshkol’s reasoning was the closest to Scholem’s, although this similarity was clearly unintended. Eshkol was against the idea of pardon, but something about the death penalty did not seem appropriate to him:

Maybe the question is not one of conscience, in this case, the creature that they call a man is, to me, not connected with conscience. [But] from the moment I heard of his capture I found myself saying: maybe it is possible that after the trial he will go into the world with the mark of Cain on his forehead and they will relate to him like Cain.... I don't see him as such a man that brings about pangs of conscience, but if it is the case that we must use the word pardon regarding the death penalty, in this case I do not grasp this word.57

Eshkol struggled to express what he saw as the problem—that the available options were fundamentally insufficient. The choices were pardon or execution (lightening of the sentence would not have addressed the philosophical issue); he did not want execution, but pardon seemed wholly inappropriate for a man as irredeemable as Eichmann. Instead, Eshkol imagined a more just punishment, the mark of Cain: a justice that was neither punishment nor pardon but rather, as for Nineveh, a deferment. Eshkol was the only member of the government who seriously considered a particularly Jewish, nonpolitical solution to the Eichmann conundrum, if only very briefly.

Buber and Scholem were also concerned about the message the execution might send and the effects it might have on Jewry worldwide. Buber felt that the killing of Eichmann would create a new Antichrist myth for generations, which might cause an anti-Semitic resurgence: “The death sentence does not diminish crime—on the contrary, all this exasperates the souls of men... killing awakens killing.”58 His fears were not unfounded. After Eichmann was kidnapped, Argentina’s Jewish community suffered the worst anti-Semitic campaigns since the pogrom of 1919. These acts peaked with the execution of Eichmann, again raising the question of whether Israel could play both the role of state and represent world Jewry at the same time.59 Buber also feared that the death penalty would allow

57 Ibid., p. 18.
58 Friedman, Buber's Life and Work, p. 358.
a second-rate individual to symbolize the tragedy of European Jewry and that his death would allow other guilty parties to feel easy and vicarious expiation. He feared that German youth would be relieved of the burden of German guilt just when he believed they were beginning to feel a resurgence of humanism. He suggested, somewhat impractically, that Eichmann be sent to work on a kibbutz, so that he “be made to feel that the Jewish people were not exterminated by the Nazis and that they live here in Israel.”60 He did not, to my knowledge, make any suggestions as to which kibbutz might be a good placement for Eichmann, and the suggestion may have had more farcical than practical potential.

Scholem agreed with Buber’s concerns. He felt that the execution would carry a false sense of historical significance via the illusion that it was possible to conclude the entire episode of the Holocaust with the hanging of one (in)human creature. He was concerned that it would give people the sense that something was being done to atone for the unforgivable. He thought that if Israel really wanted to prove to the world that justice was “being done,” then Eichmann should remain in prison with the Israelis or with the Germans.61

Interestingly, Eichmann wanted to hang himself in public in order to lift the guilt from German youth, but his opinion on the matter should not be overstated. Hannah Arendt always found such guilt absurd. The young people had done nothing wrong themselves, and feeling guilty about the Holocaust was just cheap sentimentality, especially when so many adults who were still in power really were guilty yet felt no responsibility themselves.62 In response to these concerns, although the government did not grant clemency, it did take precautions to prevent the building of a shrine in Eichmann’s memory at the site of his death: his ashes were spread in international waters.

The meeting’s attendees also took seriously Buber’s claim that the execution would provide easy exoneration for guilty parties. On this issue, pragmatism and the desire to display sovereignty won the day, and it was decided that these reasons did not justify pardon. Also, many echoed the sentiment that if no punishment was big enough for Eichmann, that was hardly a reason to lessen the sentence against him. Golda Meir claimed that this was purely philosophical and she was not ready to go along with the philosophers, thus explicitly foreclosing other options.63 Bar Yehuda contended,

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60 Friedman, *Buber’s Life and Work*, p. 359.
62 Friedman, *Buber’s Life and Work*, p. 361.
63 Government protocols for meeting held May 29, 1962, p. 8.
Eshkol, I would not agree, if in some way no type of punishment is enough, there cannot be a punishment other than death. It is possible to say: we have put him in a state of dishonor, we said all that we can say about him, and so what more do we have to do... that it is not only him, that it is the whole generation. I am not moved to philosophical thought like that; there is something in that, also in that, but it is not important if it is life imprisonment.64

Such was the general consensus of the meeting, so the government did not recommend clemency to the president. Eichmann was killed the following day, with President Ben Zvi quoting I Samuel 15:33: “As thy sword made women childless, so shall thy mother be childless among women.”65

Eichmann the man is nearly irrelevant to this paper, as he was, frankly, to nearly everyone debating his case, philosophers and government alike. He was never the central issue; Israel was. As such, the debate stirred by his trial did not die with him. Whether Israel will be a state of the Jews, a universalist nation among nations, or a Jewish state, the idea of its being a light unto the nations endowed with special abilities and responsibilities is still a central question for the nation. The issues riding on this negotiation are many, including Israel’s treatment of non-Jewish populations within and outside its borders as well as the possibilities of trading land for peace. Does the State of Israel have the right to give up parts of Jerusalem containing sites significant to world Jewry in the interests of its own peace? Likewise, the distinction speaks to the recent dispute between A.B. Yehoshua and American Jewry over the former’s comments that only Jews in Israel can lead genuinely Jewish lives and that Judaism outside Israel has no future. These were the core matters debated in the Eichmann trial, but they were not resolved. The outcome was a philosophical mixed bag, with the government attempting to walk the line between universal and particularist commitments while focusing on the concrete political. The impasse of the Eichmann trial ensured that not all Zionist forms would survive its test, and the political emerged as the ultimate victor.

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64 Ibid., p. 7.
65 Weitz, “We Have to Carry Out the Sentence.”