

REVIEW ESSAY

NEVER AGAIN . . . WHAT? LAW, HISTORY, AND THE  
USES OF THE HOLOCAUST

*Michael A. Livingston*

ALVIN H. ROSENFELD, *THE END OF THE HOLOCAUST* (Indiana University Press, 2011)

PETER NOVICK, *THE HOLOCAUST IN AMERICAN LIFE* (Houghton Mifflin, 1999)

IDITH ZERTAL, *ISRAEL'S HOLOCAUST AND THE POLITICS OF NATIONHOOD* (Cambridge University Press, 2005)

TOM SEGEV, *THE SEVENTH MILLION: THE ISRAELIS AND THE HOLOCAUST* (Farrar Strauss Giroux, 1993)

ROBERT S.C. GORDON, *THE HOLOCAUST IN ITALIAN CULTURE, 1944-2010* (Stanford University Press, 2012)

DAVID FRASER, *LAW AFTER AUSCHWITZ: TOWARD A JURISPRUDENCE OF THE HOLOCAUST* (Carolina Academic Press, 2005)

PETER BEINART, *THE CRISIS OF ZIONISM* (New York Times Books, 2012)

The Holocaust—the murder of six million European Jews in countries under German control between 1941 and 1945—is widely regarded as one of the major events of the twentieth century. Yet its precise historical significance is a matter of ongoing debate. Is the Holocaust unique, or is it merely the most famous of a series of genocides that characterize modern history? Was it specifically a Jewish tragedy, or does it “belong,” in a moral and historical sense, to Europe, the Western World, or humanity in general? Does the Holocaust provide justification for the modern State of Israel, and how has that state been shaped, or distorted, by the Holocaust experience? Is the use of the word Holocaust (with or without a capital “H”) even appropriate, or should it be replaced with another term (and perhaps a different number of victims) that carries less or different historical baggage?

The debate about the meaning of the Holocaust has become especially intense during the past two decades. While there has been unprecedented attention to the Holocaust in popular culture and academic studies, the passage of time and the gradual disappearance of surviving eyewitnesses have raised concerns that the

“end of the Holocaust” in public memory may be upon us. A chorus of voices has attacked the so-called “Holocaust industry” for allegedly using Jewish suffering as an excuse for imperialist policies and monetary gain.<sup>1</sup> Even in Israel, scholars and journalists have questioned the culture of memory surrounding the European tragedy, suggesting that the country was indifferent to the events when they actually happened, and subsequently exploited them for political purposes.<sup>2</sup> Although actual denial of the Holocaust remains a fringe phenomenon, the question of the Holocaust’s uniqueness and its place in American, Israeli, and European culture is very much alive.

While much of the debate about the Holocaust takes place in the realm of popular culture, law and legal institutions are central to the discussion. Two famous and widely publicized trials, the Nuremberg Trials in postwar Europe and the Eichmann Trial in Israel, were instrumental in drawing popular attention to the Holocaust and in “framing” the event—albeit in radically different ways—for future generations. Critiques of the so-called Holocaust industry typically begin with the efforts to secure monetary payments from Swiss banks and others for Holocaust-related damages.<sup>3</sup> Books and movies about the Holocaust frequently emphasize legal processes, while scholars use the records compiled in such proceedings in their own, more rigorous studies.<sup>4</sup> To put the matter in more pithy academic jargon, law and legal institutions me-

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1. See generally NORMAN FINKELSTEIN, *THE HOLOCAUST INDUSTRY: REFLECTIONS ON THE EXPLOITATION OF JEWISH SUFFERING* (2d ed. 2003) (offering the most prominent [and extreme] version of this critique. Softer versions of this critique may be found in other sources, including several of those cited below).

2. See *infra* notes 22-28, 30-32 and 34.

3. FINKELSTEIN, *supra* note 1, at 81-139. The criticism of reparation efforts is not necessarily limited to the political left. See, e.g., Gabriel Schoenfeld, *Holocaust Reparations: A Growing Scandal*, COMMENTARY MAG., Sept. 2000, available at <http://www.commentarymagazine.com/article/holocaust-reparations-a-growing-scandal>.

4. The most famous movie is probably *JUDGMENT AT NUREMBERG*, a 1961 film starring Spencer Tracy and Burt Lancaster and directed by Stanley Kramer. A loosely fictionalized version of the Eichmann Trial was *THE MAN IN THE GLASS BOOTH*, a 1975 film starring Maximilian Schell and directed by Arthur Hiller, which was based on a 1967 Robert Shaw novel and a previous Broadway play. The Eichmann Trial in particular is a linchpin of Segev’s and Zertal’s books and of numerous other treatments of Holocaust memory. See generally, e.g., TOM SEGEV, *THE SEVENTH MILLION: THE ISRAELIS AND THE HOLOCAUST* (Haim Watzman trans., Farrar Strauss Giroux 1993, 1991); IDITH ZERTAL, *ISRAEL’S HOLOCAUST AND THE POLITICS OF NATIONHOOD* (Shaya Galai trans., Cambridge University Press 2005, 2002).

diate the transformation of history to memory, and the Holocaust is a prime example of this phenomenon.

The subject of Holocaust memory is a vast one, too wide perhaps for even a single book to deal with adequately, let alone a brief article. This essay has a narrower purpose: to consider the efforts of several recent authors to deal with this subject, and what can be learned by examining their work in a respectful but critical fashion. I have defined the term “recent” liberally, including three books published in the past year or so and four others that go back one or two decades.<sup>5</sup> I have been similarly liberal in my definition of “Holocaust memory,” including two books (Rosenfeld and Novick) that deal with the Holocaust in American culture;<sup>6</sup> two others (Zertal and Segev) that are primarily concerned with Israel;<sup>7</sup> and one (Gordon) that focuses on Italy.<sup>8</sup> The essay is rounded out with one additional book (Fraser) about Law and the Holocaust and a further work (Beinart) that discusses American Jews and Israel with the Holocaust as a central theme.<sup>9</sup> The goal of this admittedly eclectic discussion is to consider the issue of Holocaust memory and the uses of the Holocaust from a variety of perspectives, in a variety of different countries, and thereby achieve insights (or at the very least frame questions) that might not be available in a narrower study. Indeed, a principal motive for this project is the sense that a compartmentalized discourse—including the compartmentalization of both subject matters and geographic areas—has impoverished our discussion of the Holocaust and a desire to correct this deficiency.

It may be noted that several of the books discussed are critical of mainstream trends in Holocaust memory and (more specifically) of the official uses of the Holocaust by the State of Israel and the American Jewish community. The reader may accordingly assume that I am left-to-liberal in my political sympathies and tired or at least bored by the continuing attention to the Holocaust in Israeli and American circles. In fact, the opposite is closer to the truth: I

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5. See generally PETER BEINART, *THE CRISIS OF ZIONISM* (2012); DAVID FRASER, *LAW AFTER AUSCHWITZ: TOWARD A JURISPRUDENCE OF THE HOLOCAUST* (2005); ROBERT S.C. GORDON, *THE HOLOCAUST IN ITALIAN CULTURE 1944-2010* (2012); PETER NOVICK, *THE HOLOCAUST IN AMERICAN LIFE* (1999); SEGEV, *supra* note 4; ZERTAL, *supra* note 4.

6. See generally NOVICK, *supra* note 5; ALVIN H. ROSENFELD, *THE END OF THE HOLOCAUST* (2011).

7. See generally SEGEV, *supra* note 4; ZERTAL, *supra* note 4.

8. See generally GORDON, *supra* note 5.

9. See generally FRASER, *supra* note 5; BEINART, *supra* note 5.

am conservative in my sympathies and have devoted most of my recent career to Holocaust Studies of one form or another. I simply think it is more interesting to consider original and well-argued positions, even when I disagree with them, than predictable repetitions of more or less the same views. Readers who want a dose of balance are welcome to consult any of the large volume of books that take a more conventional view of the subject, and many of which I will cite at appropriate points in the essay.

*The United States and the Holocaust: Is There a "Holocaust Industry" and So What If There Is?*

It may be useful to begin our discussion close to home. Although the Holocaust did not take place in North America—and although it appears to have been a peripheral concern for Americans (including most American Jews) when it actually happened—in recent decades it has become a major political, cultural, and educational concern, so much so that the “Americanization of the Holocaust” has become a noted and sometimes lamented phenomenon. The most obvious example is the construction of the United States Holocaust Memorial Museum (the “USHMM”), which occupies a prime position near the Mall in Washington, DC and has become a major tourist destination. There are also numerous events, memorials, educational programs, and local or regional museums devoted to the Holocaust, and the field of Holocaust Studies (or “Holocaust and Genocide Studies”) has carved itself an important if not necessarily central niche in the American academy.<sup>10</sup> Perhaps more importantly, the Holocaust is regularly employed in public policy debate, especially when issues involving Jews and/or human rights are concerned. Both supporters and opponents of aid to Israel have made use of it; as have advocates of causes ranging from aid to Darfur, to gay rights, and the anti-abortion movement.

One of the more perplexing aspects of Holocaust memory, at least in the United States, is that it appears to get stronger the further one gets away from the event. While the Holocaust at-

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10. See generally *Jewish Studies: Global Directory of Holocaust Museums*, ISRAEL SCI. & TECH. HOMEPAGE, <http://www.science.co.il/holocaust-museums.asp> (last visited Oct. 10, 2012); *Holocaust Museums, Monuments, and Memorials Around the World*, N.J. DEPT. OF EDUC., <http://www.state.nj.us/education/holocaust/resources/world.pdf> (last visited Oct. 10, 2012).

tracted relatively little attention in the 1940s and 1950s—even the term “Holocaust” was not in general use at the time—it became prominent in the 1960s and 1970s and reached a pinnacle of cultural influence in the 1980s and 1990s, when movies (*Schindler’s List*, *Sophie’s Choice*), museums (notably the USHMM), and academic research really took off and the subject began to occupy a more prominent place in political discourse.<sup>11</sup> This “delayed reaction,” both in the Jewish and larger American communities, struck many as surprising and has not escaped scholarly attention.

The most prominent theory, which has been advanced in various forms by a number of authors, might be called the internal dynamics approach.<sup>12</sup> According to this approach, the increasing attention paid to the Holocaust results from changes in the domestic politics of the United States (and especially the American Jewish community) as much as, if not more, than the event itself. During World War II and in its immediate aftermath, so the argument runs, it was in the interest of American Jews to think of themselves as Americans first and Jews second (if at all). Accordingly, in this period, the extermination of the European Jews was seen as only one part of the larger war effort, and its specifically Jewish aspects, if they were considered at all, were regarded as secondary. Both the major legal process in this period, the Nuremberg Trials, and the best-known popular representation, the *Diary of Anne Frank*, were consistent with this approach.

Beginning in the 1960s, the argument runs, the internal dynamics of Americans and especially American Jews began to change. Instead of unity, diversity and difference became the watchwords. Instead of optimism about the future, the Jewish community became nervous and edgy about intermarriage and demographic decline. The State of Israel, which had earlier been seen as a largely left-liberal cause, increasingly found its support among moderates and even conservatives on the political spectrum. These factors encouraged intellectuals, politicians, and other opinion-makers to emphasize the unique, specifically Jewish character of the Holocaust, and to place the Holocaust and fear of

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11. SCHINDLER’S LIST (Universal Pictures 1993); SOPHIE’S CHOICE (Incorporated Television Co. 1982); U.S. HOLOCAUST MEMORIAL MUSEUM, <http://www.ushmm.org/> (last visited Oct. 10, 2012). See generally Arthur Hertzberg, *The First Encounter: Survivors and Americans in the Late 1940’s*, U.S. HOLOCAUST MEMORIAL MUSEUM, [www.ushmm.org/research/center/publications/occasional/1996-02/paper.pdf](http://www.ushmm.org/research/center/publications/occasional/1996-02/paper.pdf) (last visited Oct. 10, 2012).

12. See *infra* text accompanying notes 13-15.

its repetition at the center of American Jewish (and to a lesser extent American) identity. This essential argument is reflected in both Peter Novick's and Alvin Rosenfeld's work, although they reach rather different conclusions, Novick calling for a de-emphasis of the Holocaust and Rosenfeld for a re-dedication to its memory.<sup>13</sup>

A skeptic might note that there are several problems with this thesis. For one thing, a delayed reaction to tragedy is rather less unusual than the argument suggests. Many of the best-known monuments to the American Civil War were built not in the war's immediate aftermath, but thirty, forty, or even fifty to sixty years later, when people (much like today's Holocaust survivors) feared the war was being forgotten or interpreted in ways not to their liking.<sup>14</sup> The Civil War Industry, complete with professional reenactments, mass tourism, and literally thousands of books likewise dwarfs any existing Holocaust equivalent.<sup>15</sup> The thesis also suffers from overbreadth and is effectively nonfalsifiable: both Israel's victories (1967) and its defeats or near-defeats (1973) are cited as evidence for the theory.<sup>16</sup>

Still, history and memory are two different things, and there can be no question that—whatever scholars may say—the Holocaust is and will continue to be used to support, well, pretty much whatever the speaker would have believed in, anyway. I received a rude if useful introduction to this fact when I attended a conference of the America-Israel Public Affairs Committee (the "AIPAC") with my son last year.<sup>17</sup> The principal theme of the conference was a more-or-less open demand that the United States take, or allow Israel to take, military action against the Iranian nuclear pro-

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13. NOVICK, *supra* note 5, at 127-281; ROSENFELD, *supra* note 6, at 51-94, 271-80. A harsher version of Novick's argument is presented in Finkelstein's book, *see* FINKELSTEIN, *supra* note 1. Rosenfeld's book includes significant material on European intellectual responses and is not limited to the American situation. *See* ROSENFELD, *supra* note 6.

14. *See generally* *Top 10 U.S. Civil War Sites*, NAT'L GEOGRAPHIC, <http://travel.nationalgeographic.com/travel/top-10/civil-war-sites/#page=1> (last visited Oct. 10, 2012) (Fort Sumter established 1888; Manassas Nat'l Battlefield Park established 1940; Richmond, Virginia established 1936).

15. *See generally* DREW GILPIN FAUST, *THIS REPUBLIC OF SUFFERING: DEATH AND THE AMERICAN CIVIL WAR* (2008) (providing a good introduction to the phenomenon of Civil War memory).

16. *See generally* AHRON BREGMAN, *ISRAEL'S WARS: A HISTORY SINCE 1947* (3d ed. 2010).

17. America Israel Public Affairs Committee, Policy Conference, Mar. 3-6th, 2012, *see* <http://www.aipac.org/get-involved/policy-conference/pc-2012-schedule>.

gram. Never one for subtlety, Israeli Prime Minister Binyamin Netanyahu made the Holocaust parallel explicit, reading a letter from an American military commander explaining the reasons for not bombing Auschwitz, which (or so Netanyahu argued) were similar to the arguments used by opponents of an attack on Iran. I was offended and agitated by this argument, which struck me as unconvincing on several levels, so much so that I began reading a number of books, articles, and blogs critical of Israeli policy and American support for it. These works (I quickly found) made equally emotional, Holocaust-based arguments on behalf of peace, social justice, and empathy if not outright support for the Palestinian position.<sup>18</sup>

It is easy to say that either or both of these arguments are illegitimate, but are they any more so than (say) the suggestion that the Civil War requires us to be uncompromising about minority rights, World War I requires us to be pacifists, or the success of the 1980 American hockey team proves the superiority of individualist to collectivist values? What is at issue here is less the Holocaust than the inevitable uses and misuses of history—the difference between history and memory, so to speak—and the tendency to reduce cognitive dissonance by arguing that our most traumatic memories are honored and respected by doing essentially what we wanted to do in the first place. No doubt that tendency is especially strong for vast, sweeping events like the Holocaust, but it is hardly limited to them.

Rather than debating whether there is “too much” or “too little” attention to the Holocaust, I think that scholars would do better to examine the process by which history is transformed to memory and how the Holocaust experience differs from that for other historical events. One obvious point is the identity of the victims. While all peoples define themselves by their historical narratives—and especially their national traumas—one need not be an anti-Semite to see that Jews are something of an outlier here. There is a joke that all Jewish Holidays are basically the same,

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18. One of the more sophisticated statements of this position is that of Amira Hass, an Israeli journalist who speaks Arabic and lives in the occupied territories, and who in a well-publicized interview traced her activism to her mother's memory of a Death March in which German women averted their eyes from the obvious misery of the Jewish prisoners. At that moment, Hass suggests, she resolved never to avert her own eyes from parallel examples of suffering. See Robert Fisk, *Amira Hass: Life Under Israeli Occupation—By an Israeli*, THE INDEPENDENT (Aug. 26, 2001), <http://www.commondreams.org/views01/0826-04.htm>.

consisting of the formula “They tried to kill us; they failed; let’s eat.” While only two-thirds of this formula is true for the Holocaust, there can be no question that Jews define themselves by tragedy even more so than most other peoples. Further, as David Roskies argues, it often takes them a long time to assimilate these tragedies in their collective memory.<sup>19</sup> This rather than any special political perfidy may account for the delayed, sometimes contradictory reaction to this most recent archetype.

A second point that I would like to see further explored is the role of law and lawyers in the history/memory process. I noted above that the major legal process in the 1940s era (the so-called Nuremberg Trials) tended to treat the Holocaust as one part of a broader program of aggressive war and “crimes against peace.” Whereas the 1961 Eichmann Trial (held in Israel but highly publicized elsewhere) emphasized the specifically Jewish and anti-Semitic nature of the tragedy, and the 1980s and 1990s-era civil litigations (Swiss banks, insurance companies, etc.) were if anything more Jewish (and also more American) in content.<sup>20</sup> Part of this is effect rather than cause: the Eichmann Trial required Israel to kidnap and arrest the perpetrator and the Swiss bank litigations required aggressive action on the part of lawyers and politicians, neither of which would have been as likely in the immediate postwar era. Still, lawyers and legal processes clearly shape as well as being shaped by popular perceptions: a more detailed study of this phenomenon, and a comparison to other historical events, would be potentially quite interesting.

The comparison to the Civil War broadly defined (Civil War, slavery, Reconstruction) strikes me as relevant here again.<sup>21</sup> Because most of the major Confederate figures were never prosecuted, there is no precise parallel to the Nuremberg or Eichmann trials, although several legal or quasi-legal processes (the trial of John Wilkes Booth, the impeachment of Andrew Johnson, and trials involving lynchings or similar activities in the South) directly or indirectly raised the issue of the war and its consequences. The longer-term legacy of the Civil War was played out in a variety of legal contexts, ranging from the *Dred Scott* decision preceding the

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19. See DAVID G. ROSKIES, *AGAINST THE APOCALYPSE: RESPONSES TO CATASTROPHE IN MODERN JEWISH CULTURE* (1984) (suggesting that, for all its enormity, the Holocaust will eventually be assimilated into Jewish experience in the same manner as prior tragedies).

20. See generally DEBORAH E. LIPSTADT, *THE EICHMANN TRIAL* (2011).

21. See *supra* note 2 and accompanying text.



war to the Jim Crow statutes that followed it down through *Brown v. Board of Education* and other icons of the Second Reconstruction in the 1950s, 1960s, and subsequent years.<sup>22</sup> The comparison is obviously an imperfect one given the very different nature of the original events and the much greater time passed since 1865 than 1945. Still it seems difficult or impossible to comprehend the phenomenon of Holocaust memory without some basis for comparison, and it appears preferable for scholars to address these questions than to pretend there is something unique or perfidious about the use of the Holocaust in political and cultural discourse.

*Israel's Holocaust and the Self-Defense Question: The Holocaust as Ideology*

If the Holocaust remains to some degree marginal to American society, the same cannot be said for the State of Israel. The very existence of the State is, to some degree, a result of the Holocaust and the tragedy of European Jewry—or what is perhaps more accurate to say, a particular understanding of the origins and meaning of that tragedy—are central to its self-understanding. Young Israelis learn about the Holocaust, soldiers visit the principal memorial to it, and a significant number of people still receive payments relating to it. It is invoked regularly in debates on all manner of policy issues. When I ask Israeli students if they personally know any Holocaust survivors, virtually everyone raises their hand.

That the Holocaust is central to Israel's identity doesn't mean that the event's significance, or the country's response to it, is beyond debate. A good summary of the debates—and simultaneously the opening salvo in a new round of contention—is Tom Segev's, *The Seventh Million*, originally published in 1991.<sup>23</sup> Segev, a journalist-cum-academic with a penchant for slaughtering sacred cows, makes two distinct but related points.

The first is that Israelis, while later invoking the Holocaust for all manner of national purposes, did not seem particularly concerned about it when it was actually happening.<sup>24</sup> Although this is not a new point, Segev makes it in excruciating detail, noting that the Hebrew press and (pre-State) Jewish leadership frequently

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22. See generally C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (3d ed. 1974). See also *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

23. SEGEV, *supra* note 4.

24. *Id.* at 73.

seemed more concerned with local events than the tragedy taking place in Europe and, when they were concerned, typically evaluated the Holocaust in terms of its effect on Israel (immigration, propaganda, etc.) rather than on its own terms.<sup>25</sup> A good example, although hardly the only one, is the remark attributed to Ben Gurion that he would rather see a smaller number of Jews come to Israel than a larger number go elsewhere, even though he knew (or could not help knowing) that the remainder would likely be killed.<sup>26</sup> There is a quality of twenty-twenty hindsight to these criticisms—it is not at all clear what the tiny community in Palestine could have done to stop the Holocaust when the United States, Britain, and the European Jews themselves were unable or unwilling to do it—but in a society saturated with Holocaust memory the argument was highly controversial in nature.<sup>27</sup>

Segev's second point related to the convenient and sometimes cynical uses Israelis have made of the Holocaust since 1948, in particular its use—as symbolized by both the 1961 Eichmann trial and the Six Day War of 1967—to contrast Israeli “strength” with the “weakness” of Diaspora Jews and thereby justify virtually any national or military goal that the leadership considered important at the time in question. This same point is made, in rather more abstract and literary terms, by Idith Zertal in her book *Ha'umah Ve'ha'mavet* (The Nation and Death), originally published in 2002 and translated into English under the title *Israel's Holocaust and the Politics of Nationhood* (2005).<sup>28</sup> Employing the elegant if at times overstated language of cultural studies, Zertal traces how the Holocaust together with a seemingly endless chain of domestic tragedies have been used to create a culture of death and sacrifice that both rationalizes aggressive policies and justifies or even demands further sacrifices.<sup>29</sup> Part of this inevitably involves the puncturing of national mythology: the effort to rewrite the Warsaw Ghetto uprising (in fact led largely by non-Zionists) as a proto-Zionist enterprise; the exaggeration in retrospect of the military threat faced by Israel in 1967; and the use of Jewish displacement from Europe as an excuse to displace Palestinian Arabs in the

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25. *Id.* at 77-79.

26. *Id.* at 78-79.

27. *Id.* at 15-34.

28. ZERTAL, *supra* note 4.

29. *Id.* at 9.

Middle East.<sup>30</sup> But Zertal raises important questions about the uses of the Holocaust and its role in the Israeli national psyche; in particular, about the militarization and (one cannot avoid saying it) genderization of the Holocaust, which contrasts the supposedly weak/effeminate response of Diaspora Jews with the strong, virile, male approach of the Israelis themselves. In this sense, Zertal's and Segev's books constitute an Israeli parallel to the work of Novick, Rosenfeld, and others in the United States: an exegesis on the transformation of history into memory, the latter serving the needs of the national or subnational culture and only dimly related to the actual events it purports to memorialize.<sup>31</sup>

As with Novick and Rosenfeld, aspects of Segev's and Zertal's criticisms are perhaps overstated. There was not much Israelis (or proto-Israelis) could have done to prevent the Holocaust, and surely their record here is no worse than anyone else's, although one could perhaps have expected more. As for the transformation of historical facts into national myths, the process seems neither good nor bad, but merely inevitable: Israelis create myths about their past, and perhaps convince themselves of the truth of these myths, no more and no less than any other people, although one could argue they feel more guilty and self-conscious about this process than most others. Americans criticizing Israelis for stealing somebody else's country—or rationalizing the use of force in doing so—has a particularly unconvincing ring.

What is revealing, once again, is less the transformation of history into memory than the means by which this transformation is accomplished. Here, there is a substantial and ongoing divergence between the Israeli and American models that began in the early postwar years and has persisted, notwithstanding numerous twists and turns, to the present day. While the American response to the Holocaust tends to be universal and perpetrator-oriented, emphasizing the evil done by the Germans and how we can prevent similar evil here, the Israeli response is particularist and victim-oriented, emphasizing what happened to the Jews—in Germany and elsewhere—and what the Jews themselves could have

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30. One of the more entertaining parts raises the question of how Joseph Trumpeldor, who supposedly said, "It is good to die for our country" in 1920, could have been understood by his comrades, when he spoke little Hebrew and they spoke no Russian. See ZERTAL, *supra* note 4, at 14-15.

31. ZERTAL, *supra* note 4, at 9-208. Zertal's work and that of other "new historians" has been criticized by some more conservative Israelis, see, e.g., ELHANAN YAKIRA, *POST-ZIONISM, POST-HOLOCAUST: THREE ESSAYS ON DENIAL, FORGETTING, AND THE DELEGITIMATION OF ISRAEL* (2010).

done and should do differently in the future to prevent it happening again.

As always, law played a substantial role in this divergence. Even before the Eichmann Trial, the legacy of the Holocaust played itself out in Israel largely through legal processes: the Kastner Affair in the 1950s, in which a government official was accused of complicity with the Germans because of his role in rescue negotiations during the war (the official was largely successful in redeeming his reputation but was subsequently shot dead by a politically motivated assailant); the parliamentary debate over whether to accept German reparations (the payments were eventually accepted but a near-riot ensued leading to Ben Gurion refusing to address Menachem Begin, a future Prime Minister, by name); and so forth.<sup>32</sup> The kidnapping and trial of Eichmann were carried out precisely to establish a new Israeli/Jewish approach to the Holocaust. Whereas the Nuremberg Trials had emphasized the Germans' "crimes against humanity" and paid relatively little attention to victim testimony, the Eichmann Trial emphasized crimes against the Jewish people and called so many witnesses that even the judges became frustrated. Indeed, when the Jewish but secular-oriented Hannah Arendt wrote a series of articles (later a book) critical of the trial and Ben Gurion's manipulation of it, she was roundly criticized by Gershom Scholem—like her a German-born intellectual but a prominent Israeli scholar of Jewish mysticism—precisely for lacking a sufficiently Jewish consciousness (*ahavat yisrael*, love of the people Israel), a clash that forms the emotional centerpiece of Zertal's book.<sup>33</sup>

Law is, of course, not the only factor at work here. The entire culture of Israel, especially the Israeli military, is based on the rejection of exile and the sense that Jewish life outside the country is both dangerous and incomplete. Ben Gurion himself is reported to have remarked, when asked about American Jews, "All the real Jews are here."<sup>34</sup> Books, movies, and other forms of popular cul-

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32. See generally Asher Maoz, *Historical Adjudication: Courts of Law, Commissions of Inquiry, and "Historical Truth,"* 18 *LAW & HIST. REV.* 559 (1964); Menachem Z. Rosensaft & Joana D. Rosensaft, *The Early History of German-Jewish Reparations*, 25 *FORDHAM INT'L L.J.* 1 (2001).

33. See ZERTAL *supra* note 4.

34. The Israeli writer A.B. Yehoshua put it with characteristic bluntness when he stated that Americans were only "partial" Jews while he as an Israeli was "complete" and "total" in his Jewish identity. Revital Blumenfeld, *A.B. Yehoshua: Americans, unlike Israelis, are only partial Jews*, *HA'ARETZ* (Mar. 18,

ture play an important role, as does military service which is a central rite of passage for most Israelis. Still, it is significant that much of the issue has expressed itself through legal fora: indeed many intellectual (and some less intellectual) exchanges, like the Arendt-Scholem exchange, have their origin in trials or other legal disputes.<sup>35</sup>

The issue of perpetrators' and victims' perspectives, which may be traced directly to the Eichmann Trial, is especially significant here. I saw this issue first hand when I was a research fellow at the USHMM about ten years ago. Many of the other fellows were German and most of the Americans and other Europeans spoke German or other European languages, but only rarely used Yiddish (the language of Jewish Eastern Europe) or Hebrew. The great bulk of their work was accordingly done in German or other perpetrator documents; only a relatively small number of papers were based on the (admittedly much less extensive) victim sources. Even with the best of intentions, these scholars inevitably came to see the Holocaust as a subdivision of German and other European history rather than a uniquely Jewish phenomenon. For example, I noticed that virtually none of the papers talked much about anti-Semitism, as if the victims could just have easily been Protestants, Catholics, or atheists; as if their disproportionately Jewish character was a mere accident or bad luck. The Eichmann Trial and the Israeli culture of memory may be understood, in part, as efforts to correct this imbalance and to prevent the Holocaust from being so universalized that it loses its essentially Jewish component. Not entirely coincidentally, once anti-Semitism is dissociated from the undeniable fact of the Holocaust it becomes acceptable once again.

*The Culture of Memory in Europe: A Holocaust Without Jews?*

The issue of German scholars brings us to the broader question of Holocaust memory in Europe; where the events in question actually took place. The issue here is both more and less poignant than in the places studied above: more poignant, because it is part of the history of the countries in question, but at the same time less so, because the Jewish tragedy in Europe—in rather sharp

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2012), <http://www.haaretz.com/print-edition/news/a-b-yehoshua-americans-unlike-israelis-are-only-partial-jews-1.419240>.

35. See generally David Kaposi, *To Judge or Not to Judge: The Clash of Perspectives in the Scholem-Arendt Exchange*, 14 HOLOCAUST STUD.: A J. CULTURE & HIST. 93 (2008).

contrast to Israel and the United States—tends to be seen as part of a broader European tragedy and has struggled to be recognized as a separate and distinct event. Indeed, the question of the specificity or particularity of Jewish suffering has become a somewhat defining issue in European memory, at the level of popular culture, and to some degree, scholarship as well.

An interesting case study is presented by Italy, which had a relatively small number of Holocaust victims but was significant because it was Hitler's principal ally. Italy also enacted its own set of racial laws, similar to the German Nuremberg Laws, as early as 1938.<sup>36</sup> A comprehensive study of Italian Holocaust memory was recently completed by Robert Gordon, who has previously written about Primo Levi and other subjects.<sup>37</sup> In a work that is more a collection of essays than a single monograph, Gordon develops several themes, including the relationship between specifically Jewish and more generally Italian approaches; between high and popular culture; and between Italian Holocaust memory and that in other countries.<sup>38</sup>

The first of these themes is especially prominent. Gordon noted that the initial tendency was to view Jews as having suffered a somewhat more intense version of what was experienced by all Italians, especially in the years 1943-45. The use of the term *deportati* (deportees), which included resistance fighters and Italian soldiers as well as Jews, even though the former categories were not generally subject to extermination, was characteristic of this period.<sup>39</sup> Only later, owing to international events (the Eichmann Trial, Six Day War, etc.) and domestic Italian developments (most notably Levi's books and essays), did the Holocaust come to be recognized as a specifically Jewish phenomenon.<sup>40</sup> Yet even this later development did not eliminate the tensions: for example, the Day

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36. The Italian Race Laws were enacted in 1938 and included provisions banning Jews from Italian schools and universities, prohibiting mixed marriages, and severely restricting commercial activities. Although Jews were not deported or killed in this period, the measures sufficed to cause permanent damage to the Jewish community and provided both a moral and organizational basis for the more aggressive anti-Jewish measures, now including deportation and murder, taken by the German-dominated Republic of Salò/Salò during the years 1943-45. Approximately 7,000 Jews of a prewar population of about 40,000 were killed in the Holocaust.

37. See GORDON, *supra* note 5.

38. *Id.*

39. *Id.*

40. *Id.*

of Remembrance in Italy and other European countries is celebrated on the date that Auschwitz was liberated by Soviet forces (January 27), a date with secular but no particular Jewish significance; also plans for Holocaust museums in Rome and other cities have been repeatedly delayed, at least in part, because of debates about the “Italian” or “Jewish” content of the museums and related commemorations. Similar tensions are visible in other cultural products: although there has been a vast output of Holocaust-related materials the event appears most accessible to Italians when it is presented in universal terms as in a number of popular movies (*Life is Beautiful*, *Facing Windows*, *Unfair Competition*, etc.) and literary works, including arguably even the classics by Giorgio Bassani, who emphasizes the concept of Jews as outsiders rather than their specific religion or culture, and Levi himself, whose narrative power derives partially from the echoes of Dante in his description of Auschwitz and subsequent events.<sup>41</sup>

Gordon is primarily a literary scholar and does not deal extensively with postwar legal battles arising from the Race Laws and Holocaust eras. Yet similar themes may be observed in this field as well. As other scholars have demonstrated, Italian Jews have been almost universally frustrated in efforts to win reparations or restitution for jobs and property lost during the Fascist era, let alone for the loss of life and dignity sustained in this period.<sup>42</sup> While there are a number of reasons for this result—bureaucratic inertia, judicial indifference, the inadequacy of legal categories to deal with an event of such magnitude—the refusal to recognize the specificity of Jewish claims, the idea that “everyone suffered” and it is therefore unnecessary or inappropriate to accord special status to Jewish claims—must rank high among the reasons for the failure. This is, of course, hardly a unique Italian phenomenon: witness the difficulty African-Americans have encountered in attempting to win reparations for slavery, or the earlier sense that both sides suffered in the Civil War and the corresponding refusal to recognize the rights of the freedmen as a primary goal of that

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41. *Id.* at 41-85, 139-56, 188-206. On the Italian Race Laws and Holocaust, and the difficulty of securing reparations or other closure after the war, *see generally* MICHAEL A. LIVINGSTON, *THE FASCISTS AND THE JEWS OF ITALY: MUSSOLINI'S RACE LAWS, 1938-1943* (forthcoming 2013).

42. GUIDO FUBINI, *LA CONDIZIONE GIURIDICA DELL'EBRAISMO ITALIANO*, 87-106 (2nd ed. 1998) (providing a summary of key decisions). Limited payments were made from German funds and under more general Italian programs for losses suffered in wartime. *Id.*

conflict.<sup>43</sup> As in the American case, the more-or-less Christian imagery of the Italian wartime Resistance, the sense of national death and regeneration, operated to deny the claims of a minority group and indeed to make such claims appear almost an unwelcome intrusion on a tableau of reconciliation and rebuilding.

The Italian case suggests a number of factors that, in varying degrees, are present in all European countries. Essentially the problem comes to this: what is the meaning of Holocaust memory in countries that either have few remaining Jews or where the remaining Jewish communities were changed beyond recognition by the Holocaust itself? How can these countries confront the Holocaust when the legal and institutional structures that helped produce the tragedy were to a significant degree retained after the war and, where they were replaced, reflected a national and frequently Christian narrative from which the Jews themselves were largely excluded? In such places the temptation to universalize the Holocaust, to treat it as simply an extreme case of the violent excesses that characterized the Fascist and wartime eras—and to strip it of all or nearly all its Jewish content—may well become irresistible. This is in a sense the precise inverse of the Israeli approach: universal rather than particular; perpetrator- rather than victim-oriented; and with a predominant lesson of internationalism/pacifism rather than the nationalist/militarist emphasis of the Israeli paradigm. This lesson (as in the Israeli case) just happens to coordinate perfectly with the postwar direction that the society had chosen anyway.

The universalist/pacifist emphasis of European Holocaust memory may help to explain a phenomenon that seems bizarre or even offensive to many Jews: European support for the Palestinian cause and the tendency to rationalize that support by means of Holocaust analogies. From a Jewish perspective such support seems baffling or perverse, at best a misplaced allocation of sympathy, at worst a willful effort to purge Holocaust guilt by suggesting that Jews are no better than their oppressors. From a European perspective, however, it has a certain logic. There are a lot of

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43. See generally REDRESS FOR HISTORICAL INJUSTICES IN THE UNITED STATES: ON REPARATIONS FOR SLAVERY, JIM CROW, AND THEIR LEGACIES (Michael T. Martin & Marilyn Yaquinto eds., 2007) (on reparations for slavery). See also FAUST, *supra* note 15, at 266-71 (describing the turn in Civil War memory from the celebration of the antislavery cause toward an emphasis on reconciliation between Northern and Southern whites).



Muslims in today's Europe and not many Jews.<sup>44</sup> The most obvious contemporary parallel to 1930s anti-Semitism is the present-day treatment (mistreatment) of this minority.<sup>45</sup> From here it is a relatively small step to analogizing the Palestinians in the West Bank or Gaza to the Jews in 1930s Europe; a step made rather easier by the fact that many Israeli leftists, who are typically the only Israelis with a European audience, are saying more or less the same thing. That some of the anti-Israel arguments are eerily similar to anti-Semitic nostrums of the 1930s—Fascist propaganda frequently suggested that Jews wanted sympathy in Europe but mistreated Arabs in Palestine—is likely to be lost on most people who are not professional historians or otherwise inclined to a more nuanced view.

*The Legal Question Revisited: Fraser's Law After Auschwitz*

Although law often operates in a background manner, it remains a self-contained discourse that raises issues and problems of its own. Because of differences in language and legal culture, studies of "Law and the Holocaust" tend to consider one country or one part of one country at a time. That said, there are several common themes and at least one synthesizing work that (I suspect) will loom large in future discussions.

In *Law After Auschwitz*, David Fraser considers the postwar response to the Holocaust in Germany, France, and several English-speaking countries (the U.S., Britain, Canada and Australia). While there are important differences between these countries, the essential move is always the same: an effort to isolate or cordon off the Holocaust era by claiming that it was somehow "illegal" or "criminal" in nature and that a restored legal authority, which both punishes the crimes and prevents their repetition, is suffi-

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44. *Compare Muslim World Populations Statistics, 30-DAYS PRAYER NETWORK*, [http://www.30-days.net/muslims/statistics/muslim\\_countries/](http://www.30-days.net/muslims/statistics/muslim_countries/) (last visited Oct. 10. 2012) (number of Muslims in each European country), *with World Jewish Population, 2010*, BERMAN INST.—NORTH AM. JEWISH DATA BANK U. OF CONN., [http://www.jewishdatabank.org/Reports/World\\_Jewish\\_Population\\_2010.pdf](http://www.jewishdatabank.org/Reports/World_Jewish_Population_2010.pdf) (last visited Oct. 10. 2012).

45. See MATTI BUNZL, *ANTI-SEMITISM AND ISLAMOPHOBIA: HATREDS OLD AND NEW IN EUROPE* (2007) (providing an interesting comparison of European anti-Semitism and islamophobia and emphasizing the differences as well as the similarities between these phenomena).

cient to heal the breach.<sup>46</sup> The problem, according to Fraser, is that none of this is actually true.<sup>47</sup> For one thing, the deportations, murders, and other anti-Semitic outrages did not occur outside the law, but pursuant to them: indeed there is a substantial body of evidence that lawyers outside Germany regarded these procedures as legal, if perhaps immoral, until the demands of wartime propaganda pushed them in a different direction.<sup>48</sup> For another, many legal tools employed by the Nazis, including rigid definitions of racial or ethnic status, measures to control or reduce suspect populations and so forth, continued to be used by other countries during and after the war period, sometimes at the very same time they were indicting or prosecuting German war criminals.<sup>49</sup> The problem here is not so much one of political hypocrisy—that point is almost too easy to make—but as one of legal philosophy: law itself having been part and parcel of the Auschwitz phenomenon, there is a very serious question whether law can be used to correct it, or whether we may not need a new, as yet undeveloped language to do so.<sup>50</sup>

Fraser's book is the latest volley in an old debate, one that goes back at least to the famous Hart and Fuller exchange of the 1950s, which considered the Nazi regime (and by implication the Holocaust) against the background of the nature law/positivist dichotomy.<sup>51</sup> My own view is that he overstates his case a bit. While the Nuremberg Laws and similar programs in other countries were pretty clearly legal, if not moral, in nature, I think there is at least a plausible argument that the Germans stepped outside the law at some point on the way to the gas chambers, and that law and legal institutions can play an important if at times ambiguous role in blocking this path in the future. But by and large Fraser is right: all or most of the anti-Jewish measures taken pursuant to law were indeed dependent on law for their legitimacy and effectiveness, and the decision to place them outside the legal ambit is essentially a postwar invention. Even the gas chambers are ambiguous here. While there was no legislation saying the Jews should be sent to the chambers, there was a long trail of administrative orders made pursuant or (to use an American term) "under the

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46. See generally FRASER, *supra* note 5.

47. *Id.* at 422-24.

48. *Id.* at 146.

49. *Id.* at 138.

50. *Id.* at 78-79.

51. FRASER, *supra* note 5, at 419.

color” of law, orders which would have appeared quite legal to those asked to enforce them and may even have appeared legal, although once again surely immoral, to their intended victims.<sup>52</sup> One can debate, retroactively, whether these orders were really “law” in a philosophical sense and whether their recipients should have ignored them, but that is largely reasoning after the fact rather than a description of how they were understood at the time.

Fraser’s book is a work of law rather than history and its connection to the remaining works discussed herein is admittedly a distant one, but the issues are not unrelated. The various approaches to Holocaust memory—Europe, Israel, America—all depend on the existence of a legitimate postwar order which is itself untainted by the Holocaust and therefore qualified to dispense judgment on it. If the postwar order is itself contaminated, this legitimacy is necessarily called into question. This problem applies even to Israel, which represents the victims of the Holocaust but is also a Western-oriented state with legal rules and processes that are hardly immune to the diseases that produced the tragedy in the first place.

The universalism of Fraser’s approach likewise provides an interesting contrast with the particularism of the national memory cultures. In Fraser’s view, each country considered— notwithstanding differences in their legal institutions—to some degree shares the stain of Auschwitz; a stain which the various efforts at legal rationalization can cover but never remove.<sup>53</sup> Is it too much to argue that memory cultures, which are frequently rooted in carefully managed legal proceedings, are likewise delusional in nature, creating and nurturing a rhetoric of innocence and self-righteousness that ultimately blinds us to the real lessons of the Holocaust? Or is this process of nationalizing and instrumentalizing the Holocaust merely inevitable, part of the unavoidable gap between history and memory that can be reduced but never completely bridged? What is the proper role of law, which contributed so much to this gap, in attempting to reduce it?

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52. See *DAS SONDERRECHT FÜR DIE JUDEN IM NS-STAAT: EINE SAMMLUNG DER GESETZLICHEN MASSNAHMEN UND RICHTLINIEN, INHALT UND BEDEUTUNG* (Joseph Walk ed., Müller Juristischer Verlag 1981) (providing a more comprehensive collection of these orders and special Jewish legislation in Nazi Germany).

53. FRASER, *supra* note 5, at 20.

*Toward a Convergence? Beinart's Crisis of Zionism*

The issue of Holocaust memory—always hotly contested—has lately become even more so. The catalyst is a book by Peter Beinart, *The Crisis of Zionism*, which (notwithstanding its title) is really more about American Jews than Israel itself.<sup>54</sup> According to Beinart, the older generation of American Jews feels guilty about its failure to prevent the Holocaust—something it almost certainly could not have done anyway—and has compensated this with unquestioning support for Israeli policy.<sup>55</sup> The most immediate result is that it has encouraged Israeli actions, notably the occupation of the West Bank and Gaza, which are in Beinart's view, destructive in the long-term.<sup>56</sup> But it has also damaged or destroyed the credibility of the American Jewish Establishment, taking positions that are alienating to younger American Jews and which, not entirely coincidentally, distract attention from the activities (religious education, social action, etc.) that would provide a firmer basis for American Jewish continuity.<sup>57</sup> Only by reversing these policies, and connecting a renewed domestic liberalism to a more progressive Middle East policy, can American Jews reclaim the moral high ground and ensure a more promising future.<sup>58</sup>

There are several rather glaring holes in Beinart's argument, which his many critics have not been shy in pointing out. For one thing, the sectors of American Jewry (notably Orthodox Jews) that support Israel most vehemently have actually been growing faster than those that do not. Beinart also exaggerates the degree to which political liberalism—largely a twentieth or at best nineteenth century invention—is vital to Jewish identity. A section contrasting the liberalism of Barack Obama, who is arguably portrayed as a pseudo-Jewish president, with the conservatism of Israeli Prime Minister Binyamin Netanyahu seems particularly forced.

However, Beinart's thesis remains relevant for the way that it connects Holocaust memory with the future of American (and by extension Israeli) Jews. Essentially, Beinart is arguing that American Jews have bought into the Israeli version of Holocaust memory—the Holocaust shows what happens when Jews are weak

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54. See generally BEINART, *supra* note 5.

55. *Id.*

56. *Id.* at 8-10.

57. See *id.*

58. *Id.*

and we must therefore be strong—rather than developing their own, more nuanced response.<sup>59</sup> He makes an American version of the argument advanced by Segev and Zertal in Israel: it is time to get beyond the “never again” mentality and begin to think about positive ways to ensure Jewish continuity rather than focusing endlessly on the past.<sup>60</sup> As is typically the case with American Jews, Beinart is liberal rather than radical: the European move of equating the Palestinians with Holocaust victims—of effectively reversing the polarities of Holocaust memory—is one he never really makes. Still, his argument is original and forceful, placing the Holocaust squarely at the center of American Jews and their self-understanding.

The effect of Beinart’s work—together with that of Segev, Zertal, and other authors—is to blur the geographic differences described above, so that instead of an “Israeli” and an “American” form of Holocaust memory, we are witnessing the emergence of two distinct if related narratives that increasingly cross geographic and political lines.<sup>61</sup> This convergence of approaches may be expected to accelerate with the passage of time.

But Beinart’s work also—and somewhat paradoxically—suggests the continuing importance of legal and political structures in dictating the nature of Holocaust memory in various contexts. The role of American Jewish institutions, notably the American Israel Public Affairs Committee (the “AIPAC”), is an obvious example of this phenomenon.<sup>62</sup> The influence of the Israeli Establishment—including the military but also educational institutions and the liberal media—is no less impressive. Here as always, globalization goes only so far, and the cultures of memory are likely to converge slowly and inexorably in the decades to come.

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59. BEINART, *supra* note 5, at 31.

60. *Id.*

61. The European approach, which to some degree de-Judaizes the Holocaust altogether, remains largely distinct although it probably has more influence in Israel than the United States.

62. See JOHN J. MEARSHEIMER & STEPHEN M. WALT, *THE ISRAEL LOBBY AND U.S. FOREIGN POLICY* (2007) (rendering one of the harshest criticisms of the AIPAC and other pro-Israel groups—rather stronger than what Beinart or this author would likely be associated with—is). The author’s description of a typical AIPAC donor, who is portrayed as wealthy, guilt-ridden, and not terribly well informed is, only slight overstated. *But see* ALAN M. DERSHOWITZ, *THE CASE AGAINST ISRAEL’S ENEMIES* (2008) (responding to the criticisms of this nature).

*History, Memory, and the Future of the Holocaust*

By its nature, a review essay is inconclusive: the books reviewed will each have their own different perspectives and the author can go only so far to bring them together. Attempting to impose a single dominant theme risks distorting the works and imposing the author's own viewpoint. Nevertheless, a few basic themes may be identified.

First—and notwithstanding the numerous differences of time, place, and culture—it seems that there are two broad approaches to Holocaust memory: one emphasizing a perpetrator perspective and primarily internationalist and pacifist in nature, the other emphasizing the victims' perspective and tending to be more nationalist and even militarist in nature. The European approach represents the extreme version of the first perspective and the Israeli approach, or at least that represented by the traditional Israeli establishment, the second. The American approach is somewhere between these two extremes, but with the addition of so many specifically American elements—the importance of democratic institutions, the comparison to domestic racial persecution, the use of movies and television to frame the conversation—it to some degree constitutes a third, distinct model.

Second, in each of these cases, law and legal institutions have played an important and even a decisive role in mediating the transition from historical fact to cultural memory. The influence of a few highly publicized trials (Nuremberg, Eichmann, etc.) is the most obvious example. This process has continued in subsequent years, with legal and political institutions continuing to foster their preferred approaches to Holocaust memory and a series of subsidiary trials/litigations (Swiss Banks, the various Demjanjuk proceedings, ongoing litigations regarding the rights of European survivors) used to reinforce or modify the existing paradigms. The constitutive as well as reactive role of law is an important theme in all countries.

Finally—and especially in recent years—there appears to be a substantial blurring or seepage across geographic lines with the prevailing approaches in each country increasingly challenged by alternate paradigms that at least partially resemble those in other jurisdictions. For example, the prevailing Israeli paradigm has been challenged by writers like Segev and Zertal whose views are in many respects similar to those of European liberals. A similar process has taken place in the United States, as represented by the work of Beinart in the American Jewish community and

Novick and Rosenfeld in the broader society. Within Europe, there has been a less developed, but not insignificant, challenge to the dominant paradigm on the part of neoconservative authors, some although not all of them Jewish, who have questioned the left-liberal emphasis of European Holocaust memory and (more specifically) the attempts to “de-Judaize” the Holocaust and deemphasize its link to anti-Semitism.

A frequent assumption of Holocaust authors is that there will be an inevitable decline of interest in the subject—the so-called “End of the Holocaust”—as surviving witnesses die and the world moves on to other concerns. I am less convinced. For better or worse, the European Holocaust has become the paradigm for everything that has gone wrong in the modern world, or at very least the modern western world; so much so that the addition of the word “European” (or “Jewish”) appears unnatural and even a little bit disconcerting. Rather than being ignored, it seems likely the Holocaust will continue to be pushed in whatever direction is most appealing for those with the power and influence to control our understanding of it. Politics, culture, and especially law will continue to play important roles in this process. The results may be better or worse, depending on the wisdom and discernment of the actors in question, and they will undoubtedly be painful for many: but the transformation of history to memory is merely inevitable. It is hoped that this essay will provide a useful road map.