THE TRIAL OF ADOLF EICHMANN: RETROSPECT AND PROSPECT

Conference at the University of Toronto, September 8-10, 2012. Co-sponsored by the Centre for Jewish Studies of the University of Toronto and the GHI Washington. Conveners: Doris Bergen (University of Toronto), Michael Marrus (University of Toronto), Richard F. Wetzell (GHI). Made possible by additional grants from the Sarah and Chaim Neuberger Holocaust Education Facility of the UJA of Greater Toronto; the Holocaust Martyrs’ and Heroes’ Remembrance Authority of Yad Vashem; the Ray and Rose Wolfe Chair in Holocaust Studies; the Andrea and Charles Bronfman Chair in Israel Studies; the Centre for European, Russian and Eurasian Studies; the Faculty of Law; the Toronto Consulate General of the Federal Republic of Germany; and the Toronto Consulate General of Israel.

Participants: Bryce Adamson (Toronto), Deborah Barton (Toronto), Ronald Beiner (Toronto), Liat Benhabib (Yad Vashem), Laura Berger (Toronto), Michael Berkowitz (University College London), Leora Bilsky (Tel Aviv University), Ruth Bettina Birn (The Hague, formerly Dept. of Justice Canada), Boaz Cohen (Western Galilee College Akko), Lawrence Douglas (Amherst College), Mira Goldfarb (Sarah and Chaim Neuberger Holocaust Education Foundation), Valerie Hébert (Lakehead University at Orillia), Alex Hinton (Rutgers University), Sara Horowitz (York University), Neha Jain (Georgetown University Law Center), Tomaz Jardin (Ryerson University), Jennifer L. Jenkins (Toronto), Laura Jockusch (Hebrew University/ Ben-Gurion University of Negev), Michael Kasprzak (Toronto), Thomas Pegelow Kaplan (Davidson College), Jeffrey Kopstein (Toronto), Deborah Lipstadt (Emory University), Nimrod Lin (Toronto), Audrey Macklin (Toronto), Lindsay Macumber (Toronto), Michael Marrus (Toronto), Mayo Morgan (Toronto), Devin Pendas (Boston College), Johannes Platz (Archive of Social Democracy, Bonn), Derek Penslar (Toronto/University of Oxford), William Schabas (Middlesex University, London), Roni Stauber (Tel Aviv University), Irmgard Steinisch (York University), Fabien Théofilakis (University of Paris Ouest Nanterre), Dominique Trimbur (French Research Institute, Jerusalem), James Waller (Keane State College), Esther Webman (Tel Aviv University), Annette Weinke (Friedrich Schiller University, Jena), Rebecca Wittmann (Toronto), Hanna Yablonka (Ben-Gurion University of Negev), Ran Zwigenberg (City University of New York).

Although more than fifty years have passed since the trial of Adolf Eichmann in Jerusalem, the trial and its legacies continue to resonate...
worldwide. This multi-disciplinary conference examined the trial retrospectively, exploring its impact on law and international relations in the early sixties; as well as prospectively, exploring how it has, or has not, been a precedent in international law, in historical understanding of Eichmann and the Holocaust, and in the social sciences.

The conference was opened by a screening of David Perlov’s *Memories of the Eichmann Trial*. This film, produced by Israel’s IBA Chanel in 1979, features interviews with survivors, their children, and young Israelis who offer their perspectives on the impact of the trial on their personal lives and on Israeli society. The film was introduced by Mira Goldfarb and Michael Marrus (in lieu of Liat Benhabib, who could not attend), who spoke about the history of the film as well as its recent restoration and re-release in 2011 by the Yad Vashem Visual Center.

The first panel, chaired by Jeffrey Kopstein, focused on “The Eichmann Trial: As it Happened.” Laura Jockusch examined the relationship between the Eichmann trial and the Nuremberg trials. The Eichmann trial, she argued, realized the longstanding demand of Jewish organizations that the crimes against the Jews be tried as a separate category and rearranged the hierarchy of testimony established at Nuremberg by focusing on the testimonies of survivors who were presented as reliable witnesses. Liat Benhabib’s paper, presented by Mike Kasprzak, discussed the filming and distribution of the trial, first recorded on two-inch tapes, then broadcast in the United States on City Network, and now fully available on a YouTube channel. Benhabib explained that during the trial the prime concern in Israel was that it would receive too much coverage, and only very limited footage from the trial was shown at Israeli cinemas in newsreels. Deborah Lipstadt asked the question: what was and what was not accomplished by the trial? She argued that the trial did not break some sort of “silence” on the issue of the Holocaust in Israel, where the story of the Holocaust had already been told by survivors for decades. The trial’s focus on survivor witnesses did, however, redefine the survivors’ role in Israeli society and led to their experiences being “heard” in a new and different way. Commentator Tomaz Jardin reflected on the legacy of the trial beyond its verdict and questioned the role of the law and the courtroom in establishing historical memory.

The next panel, chaired by Ronald Beiner, examined Eichmann as a person and Hannah Arendt’s famous analysis. Michael Berkowitz’s
paper discussed the afterlife and reception of Hannah Arendt’s claim that Eichmann was a “convinced Zionist.” Challenging Slavoj Zizek in particular, Berkowitz argued that Eichmann cannot be described as a Zionist and did not work with Zionists on the basis of shared interests. Fabien Théofilakis, drawing on the notes Eichmann took during his trial, contended that Eichmann played a central role in shaping his own defense. Far from image of the banal bureaucrat portrayed by Arendt, his notes reveal Eichmann as an engaged and thoughtful person who carefully constructed and manipulated his image and defense during the trial. James Waller’s paper examined the tremendous influence that Arendt’s portrayal of Eichmann has had on the social sciences. Powerfully reinforced by the experiments of Stanley Milgram and Philip Zimbardo, Arendt’s “theory” thoroughly transformed the way that we think about perpetrator behavior. In her comment, Rebecca Wittmann questioned whether historical evidence proving Eichmann’s antisemitic commitment necessarily invalidates Arendt’s theory of the “banality of evil.”

The third panel, chaired by Audrey Macklin, examined the legal aspects of the Eichmann trial and its impact on international law. Devin Pendas argued that the trial did not set an important legal precedent and had little impact on the development of international law. Therefore, the reason why the trial has had such “staying power” is not related to its legal but its political significance: By casting Nazi criminality not in terms of international aggression (as the Nuremberg IMT trial had done) but as a crime against the Jewish people, the Eichmann trial “disconnected Nazi criminality from the issue of world order,” an approach that had considerable political appeal during the Cold War. By contrast, William Schabas contended that the trial did contribute greatly to international law because it was the first trial to apply the genocide convention, to distinguish between genocide and crimes against humanity, and to prosecute genocide retroactively. In addition, the trial demonstrated that Eichmann’s kidnapping was not an impediment to the jurisdiction of the court. Leora Bilsky challenged the view that survivor testimony played no significant role in the Eichmann verdict (as opposed to the trial) by arguing that Judge Landau sought an “integrated history” that included not only historical documents but also the personal experiences of victims. In the panel’s final paper, Neha Jain examined the juridical problem of how to hold individuals responsible for collective crimes. She argued that the Eichmann trial contributed to the development of one of the most sophisticated legal doctrines of perpetrator responsibility,
that of Organisationsherrschaft, but also noted the underlying legal challenge remains unresolved and relevant for us today. In his comment, Michael Marrus examined the didactic role of the Eichmann trial, concluding that trials are not the best places to tell balanced or durable historical stories.

The second day of the conference was dedicated to exploring the impact of the trial around the world. The fourth panel, chaired by Sara Horowitz, examined the trial’s impact in Israel. Boaz Cohen demonstrated that the Holocaust already permeated all aspects of Israeli life and society before the Eichmann trial. Although the trial represented a new phase in Holocaust awareness, that integration was founded on a communal permeation and commemoration that existed before the trial. Hanna Yablonka advanced the thesis that, although the memory of the Shoah was already present in Israeli society, the central place that the Eichmann trial accorded to survivor testimony led to a processing of this information into a new kind of “knowing” and thus caused a merging of the Holocaust experience and the identity of the State of Israel. Dominique Trimbur examined German-Israeli relations, arguing that the Eichmann trial did not register any change in the “quiet but tense” relations between the two countries. The delegation sent by the FRG to report on the trial improved de facto relations but de jure relations remained the same, as the permanent presence of the delegation in Israel was blocked. In the panel’s final paper, Roni Stauber argued that in order to win West Germany’s support for Israel Ben-Gurion was willing to draw a sharp distinction between Nazi Germany and contemporary West Germany, promoting a notion of the “other Germany” that provoked controversy in Israel but won him the gratitude and support of the West German government during the period of the Eichmann trial. Commentator Derek Penslar questioned the morality of Ben-Gurion’s intentions in the relations between Israel and Germany, since these would not have been possible without a “psychological shift” in the identification of “the villain” in Israeli discourse from the Germans to Arabs.

The fifth panel, chaired by Jennifer L. Jenkins, examined the impact of the trial in the two Germanies. Annette Weinke argued that the impact of the trial in West Germany was minimal and consisted mainly of reports that were critical of the trial. The reception of Hannah Arendt’s report did not establish a new way of thinking about perpetrator behavior but strengthened trends that were already dominant
in West German historiography and public discourse. Ruth Bettina Birn contended that the Israeli prosecution failed to construct its case against Eichmann on the basis of accurate and comprehensive historical documentation, instead presenting many witnesses whose testimony was unrelated to Eichmann’s crimes. Thus both the legal and the educational aspects of the trial were deeply flawed. Johannes Platz examined public opinion polls conducted by the Frankfurt Institute for Social Research that measured the West German population’s reactions to the trial: their findings emphasized the continuing prominence of the “authoritarian personality” in Germany and did not indicate any decrease in antisemitic commitment. Thomas Pegelow Kaplan argued that Arendt’s interpretation of Eichmann appealed to West German and U.S. student protestors because it subjected the Nazi perpetrator to a profound universalization, which allowed Eichmann to emerge as the archetypal perpetrator of twentieth-century mass crimes. The student activists’ remaking of representations of Eichmann in the aftermath of the trial had a profound impact on collective memories in West Germany and the United States. In her comment, Irmgard Steinisch reflected on the fact that none of the papers addressed the political context or the continuing presence of former Nazis in politics, in both West and East Germany.

The final panel, chaired by Mayo Morgan, examined the Eichmann trial’s worldwide impacts. Esther Webman examined the impact of the Eichmann trial on Arab Holocaust discourse. As the Holocaust became increasingly central to Israeli identity, Arab writers became increasingly alienated from it. This was expressed in Holocaust denial, accusations of collaboration between Zionism and Nazism, and charges of complicity of its victims, whose suffering was equated with that of the Palestinians. Valerie Hébert considered the effects of the post-atrocity paradigm generated by the trial, which centralizes survivor testimony, in Rwanda. She argued that, although these trials may be the only way to legally confront atrocity, the intense trauma experienced by survivors in testifying demonstrates that their involvement in the trials does not necessarily lead to reconciliation for the victims. Exploring the impact of the Eichmann trial on the Duch trial at the Khmer Rouge tribunal in Cambodia, Alex Hinton focused on what he called “redaction” in trials, the reduction involved in explaining perpetrator behavior, and on how this shapes and limits both victim and perpetrator testimony. He argued that the impacts of the Eichmann trial do not necessarily translate to cross-cultural
justice, particularly when applied in Cambodia. In his paper, Lawrence Douglas advance the thesis that the Eichmann trial anticipated and paved the way for the shift from the “aggressive war paradigm” to the “atrocity paradigm” that now characterizes international law. The Eichmann trial thus exemplified a shift away from crimes against peace to the crime of genocide, and from documentary evidence towards survivor testimony. In her comment, Doris Bergen reflected on the legacies and effects of the Eichmann trial in other contexts, noting that these have not always been positive, either for the victims or for the pursuit of justice in general.

The conference concluded with a roundtable, chaired by Richard Wetzell, in which six graduate students commented on the six conference panels. Commenting on the first panel (on the trial itself), Laura Berger drew connections from the Eichmann trial to related contemporary issues in Canadian law. In her comment on the second panel (on Eichmann), Lindsay Macumber argued that the influence of Arendt’s concept of the “banality of evil” was demonstrated in many of the papers of the conference, even when it was explicitly negated. Commenting on the third panel (on the trial’s legal aspects), Bryce Adamson raised the question whether the precedent created by the Eichmann trial was “consistent with modern values in a human rights era.” In her response to the fourth panel (on the trial’s impact in the German states), Deborah Barton highlighted the ways in which the papers dealt with the representation, appropriation, and reception of the trial in the light of political objectives. Commenting on the fifth panel (on the trial’s impact in Israel), Nimrod Lin argued that the trial initiated a shift in Holocaust discourse that might be described in terms of Foucault’s notion of a “discursive explosion.” In his response to the final panel (on the trial’s worldwide impact), Ran Zwigenberg suggested that the trial exemplified a larger shift in the privileging of experience over reason, that is, over documentary evidence, in law and history.

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