

Political and legal judgment : misuses of the Holocaust in the UK

KLAFf, Lesley <<http://orcid.org/0000-0002-3222-1110>>

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Political and Legal Judgment: Misuses of the Holocaust in the UK

Abstract *Political debates in the UK concerning the Israel-Palestine conflict frequently use the Holocaust as a means to criticise Israel and “the Jews.” They do this by comparing Israel with Nazi Germany or by characterising the Holocaust as a ‘moral lesson’ for, or a ‘moral indictment’ of, “the Jews”. Those who raise concerns that such expressions of hostility to Israel cross the line into anti-Semitism are frequently told that they are acting in bad faith to deflect criticism of Israel. This moves the debate from legitimate questions about contemporary anti-Semitism to questions about acting dishonestly to defend Israel. As a result contemporary anti-Semitism is not acknowledged and resisted. The unwillingness to acknowledge contemporary forms of anti-Semitism is linked to an association of the Holocaust with a genocidal anti-Semitism that has been consigned to the ‘old’ Europe and an associated failure to accept that anti-Semitism exists at the level of discourse and practice (indeed, discourse often informs practice or activity.) The aim of this paper is to understand why and how the Holocaust informs contemporary manifestations of anti-Semitism in the UK.*

Introduction

Two judgments in England earlier this year influenced my choice of topic for this paper. The first was a made by the Liberal Democrat MP for Bradford East, David Ward, after signing the Book of Remembrance in the Houses of Parliament on Holocaust Memorial Day; and the second was made by the Central London Employment Tribunal in, *Mr R Fraser v University and College Union* at the end of March.

In the first case, politician David Ward made use of the Holocaust both to criticise Israel and “the Jews” by equating Israel with Nazi Germany, and by characterising the Holocaust as a ‘moral lesson’ from which “the Jews” had failed to learn. When accused of anti-Semitism, mostly by the Jewish community, David Ward’s response was that his remarks were not anti-Semitic, and that the charge of anti-Semitism was made in bad faith by a powerful lobby in order to stifle legitimate criticism of Israel.

In the second case, the Employment Tribunal dismissed a legal claim of ‘hostile environment harassment’ brought against the lecturers’ University and College Union (UCU) by Jewish member, Ronnie Fraser, alleging, inter alia, that the Union’s repeated discriminatory measures against Israel, its unwillingness to hear complaints of anti-Semitism in response to those measures, and its disavowal of the European Union’s Working Definition of Anti-Semitism on the grounds that it allegedly prevents Israel from being criticised, created a culture of anti-Semitism in the union which harassed him as a Jew. In its wholesale dismissal of the case, the Tribunal made passing reference to Jewish suffering in the Holocaust, but refused to rule on the question of anti-Semitism in the Union. Characterising the Union’s repeated discriminatory measures against Israel as the “the stuff of political debate,” the Tribunal accused the claimant, his thirty-four witnesses, and his Jewish lawyers of conspiring to bring the case in bad faith in order to prevent the Union from criticising Israel.

The use of the Holocaust as a means to criticise Israel, the characterisation of the Holocaust as a moral lesson for Jews rather than a moral wrong done to them, and the denial of anti-Semitism and its associated allegation of bad faith against those who raise it, are now so commonplace in debates involving the Israel-Palestine conflict in the UK that they are considered to be the ‘new’ tropes of the ‘new’ or ‘contemporary’ anti-Semitism. Known respectively as ‘Holocaust Inversion’ and the ‘Livingstone Formulation’, these tropes involve the ways in which the Holocaust is remembered and used. Drawing predominantly on the work of sociologist

Robert Fine and lawyer David Seymour, and using the political judgment of David Ward and the legal judgment of the Employment Tribunal for illustrative purposes, this paper attempts to understand these tropes.

A. Holocaust Inversion

Holocaust Inversion: The Statement of David Ward, MP.

David Ward stated,

Having visited Auschwitz twice – once with my family and once with local schools – I am saddened that the Jews, who suffered unbelievable levels of persecution during the Holocaust, could within a few years of liberation from the death camps be inflicting atrocities on Palestinians in the new state of Israel and continue to do so on a daily basis in the West Bank and Gaza.¹

Here we see a typical example of ‘Holocaust inversion’, which actually involves two distinct but associated tropes, which may or may not appear together; the Israelis as the ‘new’ Nazis and the Palestinians as the ‘new’ Jews on the one hand, which is an ‘inversion of reality’, and the Holocaust as a ‘moral lesson’ for, or ‘moral indictment’ of, “the Jews” on the other, which is an ‘inversion of morality’. The following three sections attempt to shed some light on why they are used and their impact.

Holocaust Inversion: Anti-Semitic and Anti-Zionist Polemic.

German political scientist and Director of the Berlin International Center for the Study of Antisemitism (BICSA), Clemens Heni believes that the equation of Israel/ the Jews/Zionism with Nazism amounts to an “inversion of truth” which is used as a form of “extremely aggressive anti-Jewish propaganda.”² Indeed, lawyer, author, and anti-anti-Semitism activist, Anthony Julius, notes that this inversion of the Holocaust has become commonplace in the iconography of the ‘new’ or ‘contemporary’ anti-Semitism. We see headlines like “The Final Solution to the Palestine Question,” references to the “Holocaust in Gaza”, images of IDF soldiers morphing into jackbooted storm troopers, or of Israeli politicians morphing into Hitler, or of the Star of David morphing into the Swastika. The persecuted, the Jews, have become the persecutors of the Palestinians.³

In terms of its impact on Jews in the UK, Heni’s characterisation of the ‘Nazification of Israel’ as “extremely aggressive anti-Jewish propaganda” rings true. The 2009 Report of the European Institute for the Study of Contemporary Anti-Semitism, *Understanding the ‘Nazi’ Card: Intervening against Anti-Semitic Discourse*, which was funded by the UK’s Department of Communities and Local Government and drafted by Paul Iganski and Abe Sweiry, reported that equating Israel with Nazis is the greatest component of incitement and racial aggravation against Jews in the UK today. The Report recommended that the Home Office, the Association of

¹ Ben Quinn, ‘Lib Dem MP David Ward defends remarks about Israel’, *The Guardian*, 25th January 2013; <http://www.guardian.co.uk/politics/2013/Jan/25/lib-dem-david-ward-Israel> [accessed 23/02/13].

² Clemens Heni, *Antisemitism: A Specific Phenomenon*, Berlin: Edition Critic, 2013, p. 175.

³ Anthony Julius, *Trials of the Diaspora: A History of Anti-Semitism in England*, Oxford University Press 2010, pp. 506-516. See also, Manfred Gerstenfeld, ‘Holocaust Inversion: The Portraying of Israel and Jews as Nazis’, *Jerusalem Center for Public Affairs*, no. 55, 1 April 2007.

Chief Police Officers, and the Crown Prosecution Service prepare guidance for the police on whether the use of Holocaust imagery to refer to contemporary Israeli policy amounts to incitement of racial hatred against Jews⁴.

So the question is, how to understand the use of the Holocaust, an event which was *the* defining moment in the development of anti-Semitism, an event so unspeakably horrible that it has been described as a “rupture in civilisation,”⁵ a regime that “had no other clear principle except murderous hatred of the Jews,”⁶ to precipitate further animosity towards Jews? Or maybe it is not the intention of those who Nazify Israel to cause anti-Jewish resentment; maybe they *really believe* that the Israelis are doing to the Palestinians what the Nazis did to the Jews of Europe? For instance, when pressed, David Ward insisted on the validity of his comparison. He said,

Because, don't forget, long before the death camps were set up, the treatment of the Jews in many of these European countries, and of course following 1933, in particular in Nazi Germany, was racist, and directed at the Jewish people. [It was] very low level or what is regarded as low level cases and nastiness and harassment to begin with, and then escalated. And when you look at it – wherever it may be – the West Bank, and a declared intent by the Israeli forces to harass, often just annoy Palestinians – in terms of a check point that will be open on certain days, and then it will be open but at a later time, and the next day, it will open slightly earlier, so you get there and it's been shut again.....really just to harass, in many cases to move the Palestinians from land, to just give up and move on.....⁷

Whether or not IDF soldiers deliberately change the opening and closing times of check points in the West Bank in order to harass Palestinians, I do not know, but even if they do, no matter how wrong it is, there is absolutely no equivalence between *that* and the ghettos, the labour camps, the starvation, the disease, the denial of paid work, and the Jew-baiting, that occurred in Germany and Eastern Europe between 1933 and the Holocaust. To claim otherwise invokes the blood libel.⁸ Not only is there no real equivalence between the two, there is no moral equivalence either.

This brings us to the question of David Ward's possible state of mind when he made the comparison. Did he really believe it was valid? Or was he knowingly making a false comparison, and if so, what could possibly have been his reason? Historian, Deborah Lipstadt, author of the 1993 book, *Denying the Holocaust: The Growing Assault on Truth and Memory* (among others) and successful defendant in the libel suit brought by Holocaust denier, David Irving, against her and Penguin Books in 1996, uses the neologism “soft-core denial” to explain Holocaust inversion, as well as other forms of Holocaust distortion.⁹ Noting that the false comparison between

⁴ Paul Iganski and Abe Sweiry, *Understanding the 'Nazi Card': Intervening Against Anti-Semitic Discourse*, Report of the European Institute for the Study of Contemporary Anti-Semitism, July, 2009; <http://www.eisca.eu/wp-content/uploads/2009/07/nazicard.pdf> [accessed 01/03/2013].

⁵ Dan Diner, *Zivilisationsbruch: Denken nach Auschwitz*, Frankfurt: Fischer Verlag, 1988, p. 2.

⁶ Leo Strauss, 'Preface to Spinoza's Critique of Religion,' *Jewish Philosophy and the Crisis of Modernity*, New York, 1997, p. 139.

⁷ Ben Quinn, 'Lib Dem MP David Ward defends remarks about Israel, op. cit., fn. 1

⁸ For a good discussion of the blood libel and its resurrection in discourses around the Israel-Palestine conflict, see Raphael Israeli, *Blood Libel and its Derivatives: The Scourge of Anti-Semitism*, Transaction Publishers: New Brunswick and London, 2012.

⁹ Jonny Paul, 'Holocaust Scholar Warns of New 'Soft Core' Denial', *The Jerusalem Post*, 6th February, 2007; see also, Clemens Heni, 'Secondary anti-Semitism: from hard-core to soft-core denial of the Shoah', *Jewish Political Studies Review*, vol. 20, no. 3-4, Autumn 2008.

Israel and the Nazis “elevates by a factor of a zillion any wrongdoings Israel might have done, and lessens by a factor of a zillion what the Germans did”, she considers Holocaust inversion to be “a very convenient way of engaging in antisemitism” because it involves “accusing Jews of atrocities.”¹⁰ In fact, this is exactly what Ward did. Conflating Jews and Israelis, he accused “the Jews” of “inflicting atrocities on the Palestinians.”

Holocaust inversion may well be a convenient way to engage in anti-Semitism but this does not necessarily help us to understand its *specific purpose*. Nevertheless, drawing on Anthony Julius’s observation that it has become commonplace in the iconography of contemporary anti-Semitism, Holocaust inversion appears to serve a very important political function. For David Ward and his fellow travellers, it is a powerful weapon in the fight to discredit Israel and to deny her legitimacy in order to justify a ‘one-secular-state-solution’ to the Israel-Palestine conflict. Julius points out that the Zionist/Nazi trope not only says to the world that the “Zionists are to the Palestinians what Nazis were to the Jews”, but also compounds two additional tropes: that “the ‘Zionists’ and Nazis share the same Fascist ideology” and that “the ‘Zionists’ are said to have been complicit with the Nazis in the Holocaust.”¹¹ One can therefore understand why, as a practical matter, the playing of the ‘Nazi card’ is so common place in post 1948 anti-Zionist polemic. It also seems to me that the ‘Israel-equals-Nazi’ trope resonates with the ‘blood libel’, that is, with the mediaeval anti-Semitic libel that Jews lust for the blood of gentiles (formerly Christians and now Muslims), and that this makes its use even more of a concern for Jews generally. This is especially so when the proponent of Holocaust inversion conflates Israelis with Jews, as David Ward did.

The probability that David Ward was deploying Holocaust inversion for political reasons is buttressed by the fact that the sentiments he expressed have also been expressed by eminent academics in the ‘new anti-Zionist’ movement. It was the noted anti-Zionist Edward Said who first suggested that Israelis and Jews should be more compassionate and sensitive in their treatment of the Palestinians because of their own history of persecution and suffering, of death camps and the Holocaust.¹² Here we see the idea that the Holocaust was a moral lesson for the Jews, rather than a moral wrong done to them. We also see a blurring of Jews and Israelis. Similarly, anti-Zionists Hazem Saghiyah and Saleh Bashir published an article in 1998, *Universalizing the Holocaust*, in which they wrote,

The dissociation between the acknowledgment of the Holocaust and what Israel is doing should be the starting point for the development of a discourse which says that the Holocaust does not free the Jewish state or the Jews of accountability. On the contrary, the Nazi crime compounds their moral responsibility and exposes them to greater answerability. They are the ones who have escaped the ugliest crime in history, and now they are perpetrating reprehensible deeds against another people.¹³

Again, we see the Holocaust viewed as a moral lesson for Israel and “the Jews,” which imposes upon them a greater moral responsibility and accountability in their treatment of others. There is even an implication here that Israel and the Jews use the Holocaust to *evade* responsibility for what Israel does. We also see the

¹⁰ Amy Klein, ‘Denying the deniers: Q & A with Deborah Lipstadt’, *JTA News*, 19th April, 2009; <http://www.jta.org/news/article/2009/04/19/1000426> [accessed 13/03/2013].

¹¹ For an excellent discussion and analysis of the Israel/Jew/Zionist-equals-Nazi trope and its distinct defamations, see Anthony Julius, *Trials of the Diaspora*, op. cit., fn. 3, pp. 506 - 516.

¹² Edward Said, *The Pen and the Sword: Conversations with Edward Said by David Barsamian*, Chicago: Haymarket Books 2010, p. 42 (first published in 1987), cited in Heni, *Antisemitism: A Specific Phenomenon*, op. cit., fn. 2, p. 195. It was also Edward Said who first portrayed Arabs and Muslims as the “new Jews”, see, Edward Said, *Orientalism*, New York Vintage Books, 1978

¹³ See Heni, *Antisemitism: A Specific Phenomenon*, op. cit., fn. 2, pp. 201-202.

equation between the crimes that Nazi Germany perpetrated on the Jews and “the Jews’,” rather than the Israelis,’ treatment of the Palestinians. I still wonder how such claims are possible.

Holocaust Inversion: Ethics as the ‘Other’ of Law

What other possible explanations are there for the practice of Holocaust inversion? How can people like David Ward in all seriousness judge Israel to be doing to the Palestinians what the Nazis did to the Jews? We saw from his insistence on the validity of his comparison that his judgment is very poor. His statement is wholly inaccurate. Moreover, it trivialises the Holocaust, whitewashes the crimes committed by the Third Reich, inflates the ‘crimes’ of the Israelis, and blames Jews for not having learnt a moral lesson from the Holocaust.

The question of misusing the Holocaust in this way has been addressed, and I believe, answered by David Seymour. He has developed a theoretical explanation for Holocaust inversion in his critique of Zygmunt Bauman’s and Jean-Francois Lyotard’s theories on the causes of anti-Semitism and the Holocaust. Seymour shows that these theories permit Judgments about the Holocaust and Jews to be based solely on ethics. The problem is that there are no checks on the faculty of ethical judgment.¹⁴

Seymour argues that by regarding the Holocaust as the latest stage in modernity and emancipation respectively, Bauman and Lyotard not only dissolve the specificity of the Holocaust, but they also present it as devoid of all consciousness, all human agency and all discursive practices of the law. Instead, both account for anti-Semitism and the Holocaust in terms of an ontological ethics, which presents ethics as the ‘Other’ of law. In so doing, they have overlooked the fact that the ethical sphere is not devoid of judgment. Seymour states that,

[Ethics] is, in fact, a judgement that can only be described as absolutist and without measure. It is a judgment that is akin to blind fury that, knowing no limits, knows only ‘obstinacy’ and ‘desperation’ and now includes within its repressed memories, genocide and death camps.¹⁵

Thus it is Bauman’s and Lyotard’s removal of law and legalism from judgments relating to the Holocaust in the name of ontological ethics which, Seymour argues, partly explains the use, or rather abuse, of the Holocaust by inverting it and using it as a standard against which the acts of the Jewish state and Jews can be measured.

Further, Seymour argues that the judgment that the Jews should have learnt their lesson from the Holocaust may be explained, at least in part, by Lyotard’s transference of the figure of the Jews as the ‘personification of the ethical’ onto the ‘sign’ of Auschwitz, which represents the ‘event’ of the Holocaust. This makes Auschwitz the embodiment of the ethical in the post-Holocaust world, and as such Auschwitz now replaces the Jews as “the unidentifiable thorn in the ‘west’s’ flesh.”¹⁶ That is, the ‘sign’ of Auschwitz is met with unconscious frustration because it is a reminder to Europe both of the limits of emancipation and of a debt that Europe owes to Auschwitz but which it can never repay. However, as it is not just Auschwitz that acts as that reminder but also the Jews for whom Auschwitz was brought into being,

The potential remains that, once again, Europe will vent that frustration on the personification of its failure. And so, it is my contention that it is this *ressentiment* against the *ethical* reading of the Holocaust that partly accounts for the idea that it is the Jews who have betrayed the ethical

¹⁴ David M. Seymour, ‘From Auschwitz to Jerusalem to Gaza: ethics for the want of law,’ *Journal of Global Ethics*, Vol. 6. No. 2, August 2010, 205 – 215.

¹⁵ Ibid. p. 210.

¹⁶ Ibid. p. 210.

imperative (and, by implication, their own ontological essence) that the Holocaust is said to carry within its 'sign.'¹⁷

Thus, to conclude, it is Seymour's argument that by presenting the Jews and the Holocaust solely in terms of the ethical, Bauman and Lyotard have allowed for both *past* and *present* judgments about both Jews and the Holocaust to be made solely in terms of the ethical. However, as ethical judgments are made without legal judgment – as ethics is the 'Other' of law – they may be both unreflective and absolute. Moreover, ethical judgments bring with them their own unacknowledged and unrestrained violence, and,

It is a violence that, like the harm with which it is confronted, is in excess of the measure and dignity of law and finds expression in the presentation of the Holocaust as a lesson taught to, but not learnt, by Jews.¹⁸

Holocaust Inversion: Israel as the 'Other' of the 'New' Europe.

Although not specifically articulated as an explanation for the temptation to accuse Israel of Nazism in its treatment of the Palestinians, Robert Fine's work on nationalism, post-nationalism, and anti-Semitism does, in my view, offer another possible explanation for the practice of Holocaust inversion.

Fine discusses the classification of modernity into national and post-national periods, with post-national Europe self-regarded as the civilised continent that has transcended its racist past.¹⁹ Fine points out that this nationalist/post-nationalist dichotomy is problematic because it tends "to endorse a moral division of the world between us and them: 'we' the civilised and postnationalist European; 'they' who believe in the purity of the nation and act with corresponding barbarity."²⁰

Fine argues that in this worldview Israel can serve to symbolise the 'Other' of the idealised post-national Europe. This is because of the temptation to treat post-nationalism not as a critical theory but as an absolute doctrine. Israel can serve this doctrine well, not as a "real country embroiled in real conflicts", but as a symbolic vessel into which post-national Europe can project all that is bad in its own past. In this way, Israel becomes "the incarnation of all the negative properties postnational Europe has allegedly thrown off – racism, colonialism, ethnic cleansing, violence, even genocide."²¹

By projecting onto Israel all that is bad in 'old' Europe's past, it becomes possible, and indeed, acceptable for David Ward and those who subscribe to a similar world view to characterise Israelis or Zionists as Nazis.

B. Denial of Anti-Semitism and the Accusation of Bad Faith

Denial of Anti-Semitism and the Accusation of 'Bad Faith': The Statement of David Ward, MP.

¹⁷ Ibid. p. 210.

¹⁸ Ibid. p. 214.

¹⁹ Robert Fine, 'Fighting with Phantoms: a contribution to the debate on anti-Semitism in Europe', *Patterns of Prejudice*, Vol. 43, No. 5, 2009, pp. 459-479.

²⁰ Robert Fine, 'Nationalism, Postnationalism, Antisemitism: Thoughts on the Politics of Jurgen Habermas', *Osterreichische Zeitschrift fur Politikwissenschaft (OZP)* 39. Jg. (2010) H. 4, 409-420, p. 417.

²¹ Ibid. p. 417.

In response to continued criticism of his statement on the grounds that it was anti-Semitic, David Ward denied anti-Semitism and said,

There is a huge operation out there, a machine almost, which is designed to protect the state of Israel from criticism. And that comes into play very, very quickly and focuses intensely on anyone who's seen to criticise the State of Israel. And so I end up looking at what happened to me, whether I should use this word, whether I should use that word – and that is winning for them.²²

This is an example of 'The Livingstone Formulation,' the term coined by David Hirsh to refer to the practice of responding to claims of contemporary anti-Semitism by alleging that those making the claim are doing so dishonestly to prevent Israel from being criticised; that their anti-Semitism is not anti-Semitic at all but 'only' 'criticism of Israel.' In other words, those raising concerns about the existence of contemporary anti-Semitism are merely "playing the anti-Semitism card."²³ The Livingstone Formulation is itself anti-Semitic because it sees a "secret agenda" behind the charge of anti-Semitism, which is to silence Israel's critics. As Fine notes, "one dodgy presumption behind this argument is that Israel cannot be defended openly, so that is defenders have to resort to underhand tactics."²⁴

Ward's statement is a perfect illustration of the Livingstone Formulation. His comment seems to imply that there is a powerful Zionist lobby lurking in the background whose sole purpose is to silence critics of Israel by accusing them of anti-Semitism. While Ward strongly suggests that an ad hominem attack is being made on him by that "huge operation out there, a machine almost", it is, in fact, he who is making an ad hominem attack on those who question contemporary anti-Semitism. Rather than the "huge operation" deflecting criticism of Israel, he, Ward, is deflecting legitimate concerns about anti-Semitism. He is moving the debate from legitimate questions about anti-Semitism to accusations of being dishonest in order to protect Israel from criticism. This is a major problem because, as Fine notes, it prevents the identification of changing forms of anti-Semitism and the marshalling of active resistance to it.²⁵

Denial of Anti-Semitism and the Accusation of Bad Faith: *Mr R. Fraser v The University & College Union*.

The Livingstone Formulation was recently deployed by a court of law. In *Mr R Fraser v University & College Union* (22nd March 2013),²⁶ the Central London Employment Tribunal dismissed a claim against the University and College Union (UCU) alleging institutional anti-Semitism in the Union which harassed the Jewish claimant by causing him to be subjected to a hostile environment. There were ten distinct grounds outlined in the complaint which, the claimant alleged, constituted anti-Semitic conduct on the part of the Union. One of those grounds was the Union's obsessive and unlawful pursuit of a boycott policy against Israeli academics and no others in the world.

In its wholesale dismissal of the case on all ten grounds, the Employment Tribunal decided that it was not required or prepared to rule on the meaning or definition of anti-Semitism, including the EUMC Working

²² BBC News Politics: 'David Ward summoned by Clegg after 'Jews' comments,' (13/02/13); <http://www.bbc.co.uk/news/uk-politics-21446292> [accessed 23/02/13].

²³ David Hirsh, 'Accusations of malicious intent in debates about the Palestine-Israel conflict and about antisemitism' *Transversal*, January 2010, Graz, Austria.

²⁴ Robert Fine, 'On doing the sociology of anti-Semitism', *European Sociological Association Newsletter*, Issue 33, Winter 2012, p. 5.

²⁵ Robert Fine, 'Fighting with Phantoms', op. cit. fn. 19, p. 476.

²⁶ *Mr R Fraser v University & College Union* (22/03/13) <http://www.judiciary.gov.uk/media/judgments/2013/> [accessed 29/03/13].

Definition²⁷ put forward by the claimant and disavowed by the Union. Noting that some members of the Union did not like the EUMC Definition of anti-Semitism on the grounds that it brands attacks on Zionism as anti-Semitic and precludes criticism of Israel, while others, such as the claimant himself, did like it, the Tribunal concluded that there were legitimately held differences of view on what constitutes anti-Semitism and where the line should be drawn in relation to when criticism of Israel becomes anti-Semitic, and that this, moreover is the “stuff of political debate.”²⁸

The Tribunal’s refusal to even consider the possibility of anti-Semitism in the Union constitutes a denial of anti-Semitism. Denis MacShane, Britain’s former Minister for Europe, Chair of the 2008 All Party Parliamentary Committee of Inquiry into Anti-Semitism, was a witness for the claimant in the case. He told *Ha’aretz* newspaper that,

I was a witness at the tribunal, and it was clear that I was facing three middle-class English people who ... just refused to accept that anti-Semitism is a contemporary problem. I looked at their implacable, indifferent, bored faces and knew that the case was lost.²⁹

Further, the Tribunal’s denial of anti-Semitism was accompanied by the Livingstone Formulation. The Tribunal chose to view the claimant’s allegations of anti-Semitism, which had been supported by no less than thirty four witnesses, as an attempt to silence free political debate in the Union. Noting that the claimant was the child of refugees from the Holocaust and that “so long and terrible has been the persecution of the Jewish people through history”³⁰ the Tribunal stated,

We greatly regret that the case was ever brought. At heart, it represents an impermissible attempt to achieve a political end by litigious means. It would be very unfortunate if an exercise of this sort were ever repeated.³¹

Denial of Anti-Semitism and the Accusation of Bad Faith: The Relevance of the Holocaust

As this paper is concerned with the misuses of the Holocaust in political and legal judgment in the UK, one might wonder why the denial of contemporary anti-Semitism and its associated allegation of bad faith are relevant. At first blush it would appear that there is no connection, but as Seymour and Fine have argued, there is a connection between the way the Holocaust is remembered and the denial of contemporary anti-Semitism.

Let’s consider Seymour’s argument first. In his 2007 book, *Law, Antisemitism and the Holocaust*, he critiques the explanations of Friedrich Nietzsche, Jean-Paul Sartre, Jean-Francois Lyotard, and Giorgio Agamben for the causes of anti-Semitism and the Holocaust. He shows that, despite their differences, they all lead to a

²⁷ This definition says that criticism of Israel is a manifestation of anti-Semitism in certain circumstances, such as where Israel is Nazified or where classic anti-Semitic tropes, such as conspiracy theory or the blood libel, are used to refer to Israel.

²⁸ See, *Mr R Fraser v University & College Union*, op. cit. fn. 26, para, 53.

²⁹ Denis MacShane, ‘Wake Up to the Antisemitism, You Complacent British Middle Classes’, *Ha’aretz*, 30th April, 2013, <http://brandeiscenter.com/blog/wake-up-to-the-anti-semitism-you-complacent-british-middle-classes/> [accessed 30/04/13].

³⁰ See, *Mr R Fraser v University & College Union*, op. cit., fn. 26, para, 51.

³¹ See, *Mr R Fraser v University & College Union*, op. cit., fn. 26. para, 178.

‘universalist’ perspective on the Holocaust in which all Jewish specificity is lost. Seymour refers to this as ‘Holocaust dissolution,’ which results in the ‘commodification of Holocaust memory.’³²

Then in his conference paper delivered at Harvard Law School in March this year, *Critical Theory: the Holocaust, Human Rights and Antisemitism*, Seymour critiques the explanations of Zygmunt Bauman, Michel Foucault and Giorgio Agamben for anti-Semitism and the Holocaust and demonstrates that, despite some differences, a unifying theme in their work is the equation of the Holocaust with the ‘nation-state’ and ‘modernity’.

Drawing on both his 2007 book and his 2013 conference paper, Seymour argues that the theoretical development in which the Holocaust comes to be ‘dissolved’ within the broad concept of ‘modernity’ and the ‘abstract universalism of human rights’ gives rise to two distinct consequences. These are that genocidal anti-Semitism is strictly equated with modernity, which has now been transcended; and the theoretical inability to recognise anti-Semitism in its non-genocidal form, both in the ‘old’ Europe and the ‘new.’ Seymour believes that this accounts for the denial of contemporary anti-Semitism, as well as the intensity of that denial and the accusations of ‘bad faith’ and Jewish ‘particularism’ that frequently accompanies it.³³

Fine agrees with Seymour’s view, but bases his analysis on the nationalism/post-nationalism dichotomy. Fine argues that Jurgen Habermas’s conception of post-nationalism represents the ‘new’ post-national Europe as the civilised continent in which anti-Semitism is a thing of the past, overcome by the defeat of fascism and the development of the European Union. This consignment of anti-Semitism to the ‘old’ Europe prevents the ‘new’ Europe from maintaining an on-going critical engagement with it, as advocated by Habermas. It is for this reason that whenever concerns are expressed about contemporary anti-Semitism, it is denied and translated into an attempt to stifle legitimate criticism of Israel, along with the frequent accusation that those claiming anti-Semitism are reverting back to a national and un-European “exclusivity.”³⁴

Conclusion

In this paper I have used a recent political judgment and a recent legal judgment in an attempt to illustrate and explain the correspondence between the Holocaust and contemporary anti-Semitism in the UK, by which I mean the manifestation of irrational forms of hostility to Israel / Zionism/ Zionists in discourses around the Israel-Palestine conflict. On the one hand, the ‘Holocaust’ serves as a means to express such irrational hostility, precipitating further resentment towards, and even hatred of, UK Jews; on the other hand, the ‘Holocaust’, being associated as it is with a genocidal anti-Semitism that has long been consigned to history, serves to prevent such manifestations of irrational hostility to Israel / Zionism /Zionists, and the anti-Jewish animus they foster, from being acknowledged and resisted. It’s as if the use of the Holocaust to perpetuate anti-Semitism is juxtaposed against the naïve assumption that all anti-Semitism was dissolved in the fires of Auschwitz.

I believe that there is a pressing need for changes in the way we think about anti-Semitism in the UK. There needs to be recognition that anti-Semitism may take many forms, that it is protean, and that it is not always easy to distinguish hatred of Israel from hatred of Jews. As Fine notes,

³² David M. Seymour, *Law, Antisemitism and the Holocaust*, London: Glasshouse-Routledge, 2007, Chapter 4.

³³ David M. Seymour, *Critical Theory: the Holocaust, Human Rights and Antisemitism*, paper given at Harvard Law School, Critical Legal Theory Conference, March 2013.

³⁴ Robert Fine, ‘Nationalism, Postnationalism, Antisemitism’, op. cit., fn. 20, pp. 415-416.

Antisemitism may or may not be openly expressed. It may linger in the discursive nooks and crannies of well-honed anti-Semitic motifs: conspiracy, secret power, blood lust, etc. As is the case in the presentation of self in everyday life, the forms of appearance of the new anti-Semitism may not immediately reveal what lies behind the scenes.³⁵

It is precisely because it takes the work of judgement and understanding to identify contemporary anti-Semitism that those who raise concerns about it need to be taken seriously. It is simply not good enough for a member of parliament and a court of law to insult those people with an accusation of acting in bad faith.

³⁵ Robert Fine, 'Fighting with phantoms,' op. cit. fn.19, p. 476.