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A Man Lost in the Gray Zone

DAVID LUBAN

The Rudolf Kastner trial was one of the three great scandals that rocked Israeli party politics in the 1950s (the others were the negotiations with Germany for Holocaust reparations and the so-called “Lavon affair”). Although Leora Bilsky describes it as an “almost forgotten trial,”1 it has not been forgotten by subsequent writers: it makes an important cameo appearance in Arendt’s *Eichmann in Jerusalem*; it features prominently in Tom Segev’s *The Seventh Million* (1991); Yehuda Bauer’s *Jews for Sale?* (1994) takes pains to refute the charges against Kastner; and it inspired two novels—Amos Elon’s *Timetable* (1980) and Neil Gordon’s cerebral thriller *The Sacrifice of Isaac* (1995). But the legal opinions have never until now attracted the thought or analysis they warrant, and Bilsky deserves gratitude for remedying this omission. With admirable insight and ingenuity, Bilsky focuses on the construction of the legal opinions as a form of literature. Her reading of Judge Halevi’s and Justice Agranat’s opinions centers on the way in which law is driven by metaphor—in Halevi’s case, the metaphor of contract; in Agranat’s, the metaphor of administrative decision making. Her article is a major contribution to our understanding of the Kastner case and to the way that, in a situation of intense moral ambiguity, legal analysis can be predetermined by a choice of metaphors.

I found Bilsky’s critique of Halevi’s opinion illuminating and accurate, with a few qualifications that I discuss below. Her analysis of Agranat’s opinion and her own view of Kastner (which closely resembles Agranat’s) raise more doubts. At the end of the day, however, I still find myself unable to answer the two basic questions, Who is Kastner? and How shall we judge what he did?

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It seems that everyone has a story to tell about Kastner. For Arendt, "the strange Mr. Kastner" is an emblem of the feckless Judenräte, who turns out to be morally less interesting than Eichmann, the "devil" to whom Halevi's opinion says he sold his soul. For Segev, Kastner is a sympathetic figure, deluded perhaps, but ultimately someone ensnared in the same Sophie's-Choice-like game that every Israeli rescuer had been playing for years. The real story for Segev is the politics of the trial itself. Bilsky is more sympathetic to Kastner's plight than either of these authors, following Agranat and Bauer in viewing Kastner as a resourceful Zionist rescuer taking a bold but unsuccessful gamble to save Jewish lives. By contrast, Kastner's persecutors saw him only as a symbol of the moral evil represented by the Mapai (Labor) Party, a self-seeking collaborator with Nazi evil. But, after pondering all these accounts of the Kastner story, I cannot escape the suspicion that the man and the choices he made remain fundamentally opaque and inscrutable.

I have three aims in this comment: first, to explain the few hesitations I have about Bilsky's interpretation; second, to place Bilsky's work in the historiography of the Kastner case by contrasting it with Arendt's and Segev's accounts; third, to explain why, at the end of the day, I fear that Kastner himself remains a cipher lost in the gray zone.

I

"The gray zone" is Primo Levi's label for the demimonde of Lager and ghetto inmates who imitated, collaborated with, or assisted the Nazis in return for marginally better treatment for themselves or others. They include the kapos in Auschwitz who bullied and brutalized their fellow inmates, the Special Squads who performed the physical labor of the gas chambers and crematoria, the clerks and helpers and camp administrators and ghetto bosses. Their motives varied widely: "terror, ideological seduction, servile imitation of the victor, myopic desire for any power whatsoever, even though ridiculously circumscribed in space and time, cowardice, and, finally, lucid calculation...." Importantly for understanding Kastner, some were heroes playing a dangerous game of double agency. And some only thought they were heroes.

Levi believes that we are fully entitled to exonerate or to condemn some of the inhabitants of the gray zone. But about others, he confesses impotentia judicandi. Consider the Auschwitz Special Squads—snatched direct-

ly from the boxcars, exhausted, bewildered, starving, then placed immediately to work in the crematoria, on pain of instant death (only to be killed a few months later by their own replacements). Levi pleads as follows: “I ask that we meditate on the story of the ‘crematorium ravens’ with pity and rigor, but that judgment of them be suspended.” Consider Chaim Rumkowski, the bizarre self-annointed “king of the Jews” who ruled at Nazi suffering over the Lodz ghetto, minting coins with his own image, yet sometimes taking substantial risks on behalf of his “subjects.” Levi writes that man “becomes all the more confused . . . the more he is subjected to tensions: at that point he evades our judgment, just as a compass goes wild at the magnetic pole.”

Levi’s effort to probe and chart the gray zone is tremendously important, but even more important is his very acknowledgment that it exists. Compare his nuanced approach, for example, with the view of Lucy Davidowicz, who categorically asserts that no Jewish leaders ever cooperated or collaborated with the Nazis. Davidowicz is able to reach this conclusion only because she identifies collaboration with treason: a collaborator was a Jew who hoped for a German victory. Yet she, too, acknowledges that, as the Final Solution took shape, some Jewish leaders tried to buy time by outfitting and supplying the German army and that eventually none of them had any option except “bargaining with the Devil”—the very phrase that Judge Halevi hurled at Kastner, borrowed by Davidowicz, obviously with the Kastner case in mind, to defend the Jewish leadership. Surely, bargaining with the Devil places them in the gray zone; etymologically, anyone who worked side-by-side with Nazis collaborated. But Davidowicz refuses to acknowledge shades of gray. Instead she quotes Zelig Kalmanovich: “‘All are guilty, or perhaps more truly, all are innocent and holy.’”

By contrast, Levi writes from a sense of two irresistible pressures. On the one hand is the pressure of the facts themselves, a pressure to withhold judgment where the moral preconditions of judgment seem so sparse. On the other hand is the fundamental human need to make sense of morally significant events by passing judgment on the men and women who, whatever their role, brought them to pass. That is: despite his repeated pleas not to judge the unjudgeable, Levi understands that remaining agnostic in the face of evil is a defeat. We need a map of the gray zone. And that is not just because we have an emotional need to judge the unjudgeable, but also because not all of its inhabitants are unjudgeable.


Where in the gray zone do we find Kastner, negotiating for the lives of his fellow townsmen and relatives, bargaining out Eichmann and Himmler's insane trucks-for-blood deal, testifying after the war on behalf of his Nazi bargaining partners? That Kastner belongs in the gray zone seems undeniable; but where he belongs in it, and whether he belongs among those who can be judged, remains obscure.

II

It was in April and May 1944, mere weeks before the beginning of the Final Solution in Hungary, that Kastner—a former journalist, a member of the Labor Zionist organization in Hungary, and vice-president of the Rescue Committee—negotiated the deal with Eichmann that formed the heart of the case against him. There are two differing accounts of the deal. Kastner said that it was a Nazi offer to sell six hundred Hungarian Jews—later bumped to almost 1700—for six million pengő (about $1.6 million), which the Jewish community succeeded in raising. Eichmann reported the terms of the deal differently (although this was not known at the time of the Kastner trial): Kastner, said Eichmann, “agreed to keep the Jews from resisting deportation—and even keep order in the camps—if I would close my eyes and let a few hundred or a few thousand young Jews emigrate illegally to Palestine. It was a good bargain.”5 No matter which version of the deal is correct—both Eichmann and Kastner had ample motive to lie if the other’s version is true—a total of 1684 Jews, carefully culled to include representatives of all major sections of Hungarian Jewry, were placed on a train to safety.6 (Borrowing Kastner’s own biblical metaphor for the rescue train, let me label this the “Noah’s-ark deal.”) Damningly for Kastner, they included almost four hundred from his hometown of Kluj, including several of his relatives. The implication that Kastner had helped Eichmann by deliberately failing to warn the Hungarian Jews of the fate in store for them, and that he had done so in return for saving “his” 1700 people, is the most serious accusation against him.

What was it like to negotiate with Eichmann? To get some sense of it, we may examine a second negotiation that Kastner was involved in, the trucks-for-blood deal. This story begins with Yoel Brand, a former Communist activist, Zionist, and expert on the underground rescue of Jews.

6. Bilsky says 1685 (“Judging Evil,” 126), but the sources I have consulted all say 1684.
Around the time of the “Noah’s-ark” deal with Kastner, Eichmann summoned Brand to his office in the Budapest Hotel Majestic and said:

Do you know who I am? I have carried out the Aktionen in the Reich—in Poland—in Czechoslovakia. Now it is Hungary’s turn. I let you come here to talk business with you. Before that I investigated you—and your people. . . . And I have come to the conclusion that you still have resources. So I am ready to sell you—a million Jews. All of them I wouldn’t sell you. That much money and goods you don’t have. But a million—that will go. Goods for blood—blood for goods. You can gather up this million in countries which still have Jews. You can take it from Hungary. From Poland. From Austria. From Theresienstadt. From Auschwitz. From wherever you want. What do you want to save? Virile men? Grown women? Old people? Children? Sit down—and talk.7

As the negotiations proceeded, Eichmann agreed to a piecemeal deal to demonstrate his honesty (“You think we are all crooks. You hold us for what you are. Now I am going to prove to you that I trust you more than you trust me.”)—first, one hundred thousand Jews for a thousand trucks, then, for every additional thousand trucks an additional hundred thousand Jews. Eichmann told Brand that, as a sign of good faith, he would blow up Auschwitz as soon as the deal was consummated (a blatant lie, as Eichmann had no authority to do anything of the kind). As a reassurance to the Western Allies, Eichmann added that the trucks would be used only on the eastern front.

That this “deal” was fantasy is obvious, and Brand understood at the time that the Allies would never turn over ten thousand trucks to their enemy. Nevertheless, he thought that by keeping negotiations alive he might buy time for the Hungarian Jews. In mounting urgency, Brand relayed the deal to Zionist authorities, who in turn communicated it to the British and the Americans, where it apparently went all the way to the desks of Churchill and Roosevelt. The result was an ill-fated journey by Brand to Istanbul and Aleppo, where (as predicted by Irgun agents who forewarned Brand as he boarded the train to Aleppo) he was promptly arrested by the British and spirited away to detention in Cairo. From the point of view of the British and the Americans, the deal represented nothing more than an effort to drive a wedge into their alliance with Stalin.8 (Besides, as one British official in

Cairo exclaimed, “But Mr. Brand, what shall I do with those million Jews? Where shall I put them?”

Kastner resumed the trucks-for-blood negotiations after Brand’s fiasco, but to no avail. He continued to work with Eichmann’s pliably corrupt assistant Becher until almost the end of the war, and in June he succeeded in bartering money and coffee for eighteen thousand Hungarian Jews, two-thirds of whom lived out the war in Vienna. None too soon: when the Final Solution ended in Hungary in July, just two months after it began, more than four hundred thousand Hungarian Jews were dead.

Apparently, Kastner viewed all of his negotiations as a continuous heroic effort of rescue; taken as a group, they make the Noah’s-ark deal seem less exceptional and less suspicious. After the war Kastner moved to Israel, where he eventually became press spokesman for the Ministry of Commerce and Industry and a Mapai Party candidate for the Knesset. The final episode relevant to the Kastner trial occurred when Kastner testified on behalf of Eichmann’s assistant Becher at the latter’s postwar denazification trial. Kastner’s affidavit stated that Becher (a self-dealing conniver whose specialty was financial extortion from desperate Hungarian Jews) had saved 85,000 Jews. It went on:

There can be no doubt that Becher was one of the few SS leaders who had the courage to take a stand against the extermination program and who made an attempt to save human lives. . . . Becher did everything he could, given his position, to save innocent lives from the blind, murderous rampage of the Nazi leadership. For this reason I never for a minute doubted his good intentions, even if the form and basis for our negotiations were of an objectionable character.

The affidavit would return to haunt Kastner at his trial.

The trial itself, we should remember, was a libel action against the semi-crack semi-journalist Malkhiel Gruenvald, who had accused Kastner of collaboration with the Nazis, of conniving to save his own kinfolk and favorites, of enriching himself, and of secretly defending Becher. Gruenvald’s accusations threatened to embarrass Mapai, so the attorney general (a Mapai member) pressured the reluctant Kastner into what is surely the most improvident libel suit since Oscar Wilde.

Gruenvald was represented by an ambitious and talented right-wing law-

10. Ibid., 545.
11. Quoted in Segev, *The Seventh Million*, 269. Segev claims that Becher’s help to the Jews was merely an effort to create an alibi for himself, and Bauer reaches the same conclusion. Becher, who had substantial blood on his hands, lived out his years as a “respectable” multimillionaire bon vivant, with a taste for horseback riding and adultery.
yer named Shmuel Tamir. Tamir’s defense was quite straightforward: he argued that Gruenvald had not libeled Kastner because the accusations were true. And one of Tamir’s coups was to find and produce in court Kastner’s affidavit in the Becher trial, after Kastner had testified that he had not really tried to help Becher.

After Kastner was caught out in that small, embarrassed semi-lie, things only got worse. Tamir produced as a witness Yoel Palgi, one of the daring Jewish paratroopers who had secretly dropped into Hungary on a mission of warning and resistance. He testified that Kastner, fearful that their presence would land the Hungarian Jews in trouble, persuaded Palgi and a fellow paratrooper to turn themselves in to the Gestapo. Palgi eventually escaped, but the other paratrooper perished. And Tamir got Palgi to admit that he had lied about this incident earlier to cover for Kastner. Judge Halevi’s initially favorable views began to turn increasingly against Kastner. Eventually, Halevi produced the opinion that forms the centerpiece of Bilsky’s essay—an opinion that Segev describes as “one of the most heartless in the history of Israel, perhaps the most heartless ever.”

III

The most important part of Halevi’s opinion, which Bilsky so incisively dissects, is this:

The temptation was great. K. was offered the opportunity to save six hundred souls from the impending Holocaust. To rescue them would be both a personal achievement and a Zionist victory. No wonder he accepted the offer without hesitation. But “timeo Danaos et dona ferentis” [beware of Greeks bearing gifts]. In accepting the offer, K. sold his soul to the devil.

Bilsky rightly treats this passage as the centerpiece of Halevi’s opinion, but we should not forget that his judgment turned on other findings as well. Halevi found that Gruenvald had written the truth about Kastner’s postwar aid to Becher and that Kastner had lied about it on the stand. He dismissed as irrelevant the evidence of the trucks-for-blood bargain, even though it would have displayed the Noah’s-ark deal in a more favorable light by

12. I am taking this account of the trial from Segev, The Seventh Million, 266–71.
13. The most famous of the paratroopers was the twenty-three-year-old poet and Israeli national heroine Hannah Senesh, who was captured by the Nazis, tortured (bearing up with legendary bravery and dignity), and executed.
15. Ibid., 282.
showing that both were episodes in a continuing effort to save Jews, an effort involving many people besides Kastner. On the basis of Palgi’s testimony, Halevi held that Kastner double-crossed the paratroopers and, again, that Kastner lied when he stated that he had done all he could to help them. And Halevi held that Kastner had collaborated with the Nazis by bargaining for blood with them.

So far as I can tell, Bilsky’s analysis touches only the last of these findings, not the Becher or paratrooper findings, which themselves are quite damaging to Kastner. Even if Halevi had not concluded that Kastner had made a diabolical contract with Eichmann, he might well have found that Kastner’s behavior in the paratrooper episode—sabotaging their mission to avoid trouble—amounted to collaboration. By neglecting the Becher and paratrooper findings, I fear that Bilsky has moved Kastner into a whiter part of the gray zone than he deserves.

Yet surely she is right that Judge Halevi’s contract analysis, highlighted by his image of Faustian bargains and Greek gifts, presupposes a condition of arm’s-length business normalcy wholly absent from the catastrophic world of terror and death that Kastner inhabited. A more telling case of being blinded by a metaphor would be hard to find.

IV

In *Eichmann in Jerusalem*, Arendt twice quotes Halevi’s judgment that Kastner sold his soul to the Devil. But she does not have the legal imagery of contract on her mind. Rather, she sees in Kastner evidence for the major theses of her own book.

The Eichmann book stirred a storm of controversy over two central theses. The first was that the Jewish leadership, the Jewish councils or “Judenräte,” had actively assisted the Nazis in peaceably rounding up the Jews—not, to be sure, out of treachery, but out of the catastrophically false belief that expediting the roundup would make it less cruel. In Arendt’s eyes, the leaders engaged in a kind of communal auto-euthanasia, behaving as if extermination was inevitable and their sole responsibility was to make it as painless as possible. Instead, the fact is that when the Jews did not actively aid their enemies, more of them survived, but when their leaders organized their own deportation, most perished. Her second thesis is that Eichmann’s personality was not that of a sadist, a fanatic, an antisemite, a monster, a Richard III, or—please note—a devil. Rather, he exhibits the banality of evil. The Kastner affair sheds light on both theses.

A reader who examines the dozen passages in *Eichmann in Jerusalem* discussing Kastner quickly realizes that he is Arendt’s poster child for the sins of the *Judenräte*. (She either did not know or chose not to mention that Kastner never belonged to a *Judenrat*.) She accepts Eichmann’s improbable account of the Noah’s-ark deal, namely that in return for some Jewish lives Kastner promised to help keep the Hungarian Jews docile.¹⁸ And her thesis could not be more condemnatory: “To a Jew this role of the Jewish leaders in the destruction of their own people is undoubtedly the darkest chapter of the whole dark story.” Arendt expresses little doubt about their motivations—“we can sense how they enjoyed their new power”—and when she turns to Kastner “[t]he truth is even more gruesome.” Why? Here she focuses on his efforts to include prominent Jews and functionaries among the 1684 destined for rescue. Analyzing what was “morally so disastrous in the acceptance of these privileged categories,” she paraphrases Kastner’s thinking as follows: “it went without saying that a famous Jew had more right to stay alive than an ordinary one.”¹⁹

It went without saying because, of course, Kastner never said it. My sense is that although Arendt *may* have been right about Kastner, her judgments outstrip what we actually know, which is precious little. No one ever accused Arendt of *impotentia judicandi*, and there is no sign in *Eichmann in Jerusalem* that she shares Levi’s reluctance to judge anyone and everyone in the gray zone. To be sure, the language she scornfully quotes from Kastner—that selecting who should live and who should perish “required more courage than to face death”²⁰—is bathetic and self-serving, particularly coming from someone in comparative safety who was consigning others to their deaths. But it also strikes me as the way that an egotistical man (as Kastner apparently was²¹) might phrase his authentic sense of awe and inadequacy at the horrifying responsibility that had fallen his lot. Egotism is a vice, not a sin.

Arendt’s merciless diagnosis of Kastner, seizing on his disagreeable phraseology as part of her indictment of him, exemplifies one of *Eichmann in Jerusalem*’s central ideas: that in the “moral collapse the Nazis caused in respectable European society”²² wickedness invariably came cloaked in elevated phrases and orotund words. Arendt’s method as a moral critic is to rip through those words and plainly describe the reality they try to con-

¹⁸. Ibid., 42. However, elsewhere in the book, apparently without noticing the inconsistency, Arendt also accepts Kastner’s version that the deal was a strict cash-for-lives trade. Ibid., 143.
¹⁹. Ibid., 117, 118, 132.
²⁰. Ibid., 132.
Indeed, the central insight of the book, her diagnosis of Eichmann, is that he is a man whose inability to confront reality without resorting to slogans and clichés rendered him incapable of thinking and therefore incapable of moral judgment.  

This brings us to her treatment of Judge Halevi’s image of Kastner selling his soul to the Devil. Astoundingly, Eichmann on the witness stand praised Kastner as someone who (like Eichmann himself) would do anything for his ideals. Arendt comments with utmost sarcasm, “in Halevi’s opinion, Kastner had ‘sold his soul to the devil.’ Now that the devil himself was in the dock he turned out to be an ‘idealist,’ and though it may be hard to believe, it is quite possible that the one who sold his soul had also been an ‘idealist.’”

But of course what she really thinks is that Kastner had sold his soul, not to the Devil, but to a mediocre bureaucrat whose every attempt at self-explanation made him seem ridiculous: “everybody could see that [Eichmann] was not a ‘monster,’ but it was difficult indeed not to suspect that he was a clown.”

And it is also difficult not to suspect that Halevi’s metaphor was in the forefront of Arendt’s mind as she sat in the Jerusalem courtroom while the very same Halevi presided over a trial in which Eichmann was testifying about Kastner. If so, must she not have been thinking that Halevi, too, had resorted to a grand-sounding but false phrase, referring to Eichmann as the Devil when in fact he was not a devil, but a clown, and his bargaining partner was not Dr. Faust, but Dr. Kastner? Her reflections on the Kastner case may well represent the origins of her “banality of evil” idea. That idea, I think, is one of the major moral discoveries of the twentieth century. For all her insight, however, it is far from obvious that Arendt actually cared whether she got Kastner right.

V

To Tom Segev as well, Kastner matters only as an episode within two larger stories. The first, which Segev relates in great and depressing detail, is the story of how the Zionists of Palestine, both Labor and Revisionist, responded to the Nazi crisis. The story, in brief, is that they viewed it almost en-

23. Ibid., 47–48. This central idea of the book was elaborated in her essay “Thinking and Moral Considerations,” *Social Research* 38 (1971): 417–46, perhaps her most important contribution to moral theory.


25. Ibid., 54.
tirely from their own parochial political standpoints. Nothing expresses this better than an amazing statement Segev quotes from Ben-Gurion: “If I knew that it was possible to save all the children in Germany by transporting them to England, but only half of them by transporting them to Palestine, I would choose the second. . . .”26 Agents of both Labor Zionism and Revisionism combed through Europe, looking for “the best human material” to rescue (and trying to ensure that those they rescued would support the rescuer’s politics once they arrived in Palestine). A leader of the Rescue Committee, to which Kastner belonged, wrote a memorandum in 1943 that asked, “Whom to save: . . . Should we help everyone in need, without regard to the quality of the people? Should we not give this activity a Zionist-national character and try foremost to save those who can be of use to the Land of Israel and to Jewry?”27

Viewed in this light, Kastner’s careful gleaning of those 1684 Jews takes on a different coloration than either Halevi or Arendt gives it. To Segev, it represents something like the unofficial policy of the Zionist movement. (Segev does not mention, however, that Kastner conscientiously included virulently anti-Zionist Satmar Hasidim, and anti-Labor Revisionists, on the Noah’s-ark train.)28 It was, furthermore, a policy that both Labor and Revisionism indulged in.29 But it took on a slightly more complex twist because Labor wanted to save those most committed to the pioneering spirit, while the Revisionists’ constituency was largely the less politicized, nonsocialist East European masses. For that reason, Revisionism’s politicized selection criterion was to be unselective, to rescue as many as possible. This made the Revisionists look less elitist and more impartially humanitarian, but Segev stresses that their calculation was every bit as political as that of Labor.

The latter point is important to the second part of Segev’s story, the politics of the trial itself. It was, in contemporary terms, not unlike the Paula Jones case: right-wing lawyers trying to humiliate the left and, if possible, to bring down the government. (It should be noted that the trial took place in an election year.) Not only was Kastner a Labor stalwart, his actions made a convenient symbol of what the right took to be Labor’s orientation toward rescue during the war. The Revisionists hated him—hated him

26. Quoted in Segev, The Seventh Million, 28. To be fair to Ben-Gurion, at the time he made this statement (December 1938), almost no one actually believed that Hitler meant to murder all the Jews. On the efforts of Ben-Gurion and the Jewish Agency to save Jews, even at the cost of nation building in Palestine, see Bauer, Jews for Sale? 184, 188.
27. Quoted in Segev, The Seventh Million, 100.
enough, in fact, to assassinate him shortly before he was exonerated on appeal.

There is more. In order to show that Kastner’s “collaboration” with the Nazis had actually cost Jewish lives, Tamir argued that Kastner had deliberately withheld all he knew about Auschwitz and the Final Solution from the Hungarian Jewish community in order to remain on Eichmann’s good side. Had he sounded the tocsin, Tamir intimated, the Jewish masses could have fled or resisted. Kastner and the Judenräte had exhibited the typical sniveling mentality of the exile, the very opposite of the tough and combative mentality of Israelis.30

Tamir’s argument was based on two false assumptions: that the Hungarian Jews did not already know what the Nazis had in store for them, and that had the Jews been warned they had opportunities to fight or flee. In fact, many escapees and refugees had come to Hungary bearing news of the Final Solution; the Hungarian Jews knew. The problem was that there was no place to run and hide in the Hungarian plain, and no time to organize resistance.31

According to Segev, Tamir’s questionable argument played to a kind of collective neurosis that prevented Israelis from acknowledging the Holocaust or admitting that they had been just as helpless as the European Jews to do anything about it. Until the Eichmann trial in 1960, the Holocaust was something that happened to them, the other kind of Jew, the grovelers and connivers of the Diaspora. And Kastner’s persecutors used the trial to forge an association in the mind of the Israeli public between Kastner, the Judenräte, the exile mentality, and Labor’s policy toward rescue and immigration. It was a lethal mix.

But Segev’s analysis of the politics of the Kastner trial has very little to do with Kastner himself. Although he never states his own view of Kastner explicitly, Segev makes it clear that he sympathizes with the appellate opinion that cleared Kastner. He does not, however, say why. His point is basically that Kastner had only been doing what Zionist functionaries across the political spectrum did—compromise, rescue, and select on the basis of their movement’s needs.


Notice that Tamir’s is a different accusation against the Judenräte than Arendt’s. She never indulged in Tamir’s fantasy that the Jews might have fled or resisted, and in fact she argued that to accuse them of going like lambs to the slaughter is merely cruel. Her point was not that the Judenräte undermined resistance, but that they actively, if unwittingly, facilitated slaughter.

What shall we say of Justice Agranat’s opinion, which (as Bilsky analyzes it), subsumes the Kastner case to the categories of administrative law, asking whether Kastner discharged his responsibilities reasonably under the circumstances? Here, the guiding metaphor is not the private law of contract, but the public law requiring officials to balance the risks and benefits of their policies in a reasonable way, given the information available to them when they decide.

One problem with this analysis is that Kastner was not a public official and had no political mandate for engaging in utilitarian calculation involving the lives of the community. A bigger problem is that the whole question of what is reasonable under such insane circumstances, what counts as an appropriate weighing of risks and benefits, seems profoundly unanswerable. The trucks-for-blood negotiation is unimaginable, even after we somehow get over the threshold insanity of bartering trucks for blood. Did Eichmann (or Himmler, who masterminded the deal) actually think that Brand or Kastner could get the Allies to give ten thousand trucks to Germany during the thick of the war? Could Himmler have believed Nazi propaganda about the cabalistic power of World Jewry over the highest counsels of the West? Did Kastner believe it? Did Himmler believe that the West was fighting the war solely on behalf of the Jews and would jump at the chance to save them? Did he think that by assuring the Western allies that the trucks would be used only on the eastern front, he would excite their anticommunism? Did he actually want the Allies to reject the deal so that they, too, would have Jewish blood on their hands—or so that they would be placed in the perverse position of ratifying the Nazi view that Jewish lives count for nothing?

For that matter, did Eichmann or Himmler think that they had the authority to release a million Hungarian Jews in return for the trucks? Even though the Führer valued Jewish lives at less than zero, Eichmann and Himmler knew only too well that he placed an enormous value on Jewish deaths. Why think that Hitler would relinquish them?

All these questions about the motivations of Eichmann and his superiors must have been going through the minds of Brand and Kastner. Even in the upside-down universe they inhabited, how could they have divorced themselves from the realization that the negotiation was entirely imaginary?

32. According to Bauer, the answer is yes, although Brand was never under any similar illusions. See Bauer, Jews for Sale? 170.
34. On this motivation, see Bauer, Jews for Sale? 167, 178, 186.
Did Kastner decide reasonably? On the one side lies the certain moral wrong of trying to deliver war materiel to the Nazis and of trafficking with murderers for months. On the other lies the gamble: a minuscule probability of saving a great number of Jews. Risk-benefit calculation is at its most dubious in "zero-infinity dilemmas," when probabilities are tiny and consequences enormous—that is why there is no such thing as an objectively reasonable price for a high-stakes, one-in-ten-million chance Lotto ticket. In such cases calculation is only a caricature of rationality. Yet a zero-infinity dilemma is precisely the gamble that Kastner anted in to at the cost of morally clean hands. For that reason it is deeply unclear that Justice Agranat was entitled to conclude that Kastner acted reasonably. Recall Levi's imagery: the reasonableness of Kastner's decision evades our judgment, just as a compass goes wild at the magnetic pole. Bilsky has not persuaded me that the metaphor of administrative law is less misleading than Judge Halevi's metaphor of private contract. How can we speak of reasonable choice in circumstances where no choice is reasonable? Agranat was surely correct that Kastner did not act treacherously, but that conclusion has little if anything to do with administrative law.

VII

Near the end of her article, Bilsky paints her own portrait of Kastner. For her, the sheer grandiosity of the plan to save a million Jews explains why Kastner found the gamble appealing. "Kastner was a Zionist committed to . . . activism, self-help, and self-assertion. . . . [A]s a Zionist, Kastner did not see himself limited to conventional ways of action . . . and was willing to try radical action such as negotiations with the Nazis over fantastic plans such as the 'blood for trucks' idea. . . . Kastner was not of the passive brand. . . ."35

In other words, Kastner's actions can be explained by the fact that he had the opposite of the exile mentality that his persecutors and Judge Halevi tagged him with. Nor was he as feckless as Arendt painted him. On the contrary: he was bold and resourceful, a visionary, unconventional, "can-do" Zionist Zorro. According to Bilsky's interpretation, Justice Agranat's opinion, insisting that a judge put himself in Kastner's shoes and Kastner's mentality, recognizes that a high-stakes gamble might be reasonable for such a man under the circumstances.

Perhaps Bilsky is right; but, like Arendt's opinion in the opposite direction, it seems to me to overstep the evidence. Bilsky's portrait of Kastner

does not readily square with Eichmann's testimony that Kastner offered to help pacify the Hungarian Jews in return for 1684 lives (perhaps Bilsky thinks Eichmann was lying, or that Kastner was just buying time); nor with Kastner's self-serving selection of his relatives and people from his hometown for the Noah's-ark train; nor with Kastner urging the two paratroopers to turn themselves in; nor with Kastner's efforts on Becher's behalf after the war.36

Levi doesn't call it the gray zone for nothing.

IX

"From many signs," Levi writes,

it would seem the time has come to explore the space which separates . . . the victims from the persecutors, and to do so with a lighter hand, and with a less turbid spirit than has been done. . . . Only a schematic rhetoric can claim that that space is empty: it never is, it is studded with obscene or pathetic figures (sometimes they possess both qualities simultaneously) whom it is indispensible to know if we want to know the human species. . . .

Was Kastner obscene or pathetic? Was he reasonable or heroic? Even after reading the insight-studded treatments of Kastner by Bilsky, Arendt, Segev, and Bauer, it seems to me impossible to answer these questions. In that case, how should a court of law have treated him and his accuser Gruenvald? Here I will turn to Levi for the last time: "The condition of the offended does not exclude culpability, which is often objectively serious, but I know of no human tribunal to which one could delegate the judgment."

If Levi is right, no court should have been placed in the position of condemning or exonerating Kastner—but, of course, the libel action and Shmuel Tamir's truth-defense left no room for the passive virtues: the court must either accept the truth of Gruenvald's accusations or reject them.38 It seems that whatever illumination we seek of the gray zone must come from

36. Why did Kastner help Becher? His accusers intimated that it was to buy Becher's silence, while Segev quotes a friend of Kastner's who believed that Kastner wanted to experience one more time the power over life and death. See Segev, The Seventh Million, 268. Bauer believes that Kastner simply thought Becher deserved help because he had helped to save lives. See Bauer, Jews for Sale? 250. I suspect Kastner had to believe that Becher was a worthy partner in order to believe that he himself played an honorable role working with him.


38. As Maoz explains, this point was made in Justice Goitein's opinion in the Kastner appeal. See Maoz, "Historical Adjudication," 593–94.
elsewhere than the law. For Arendt, it comes from her theories of politics and moral psychology; for Segev, from his understanding of Zionist politics; for Kastner’s enemies, from the contempt they felt for the mentality of the exile and their Labor adversaries; for Bilsky, from her idea of what is reasonable for a bold Zionist rescuer. Unfortunately, it may no longer be Kastner that is illuminated.