

# Caught between Continents

*The Holocaust and Israel's Attempt to Claim the European Jewish Diaspora*

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## Abstract

Israel's idea of its sovereignty over Jewish cultural production has been essential in defining national mythology and self-consciousness ever since its founding as a state in 1948. But by what right does Israel make such claims? This article examines that question through exploring three legal cases: Franz Kafka's manuscripts, the historical records of Jewish Vienna, and the literary estate of Lithuanian-born Chaim Grade. All three cases reveal a common jurisprudential and cultural logic, a rescue narrative that is central to the State of Israel itself. To this day, Israel maintains an idea of its sovereignty over Jewish cultural production, and a study of these cases demonstrates how the Holocaust plays as decisive a role in the creation and implementation of Israeli policy and jurisprudential practice as it has in its national identity more broadly.

## Article

After decades of legal wrangling, a Tel Aviv court ruled in June 2015 that the manuscripts of Franz Kafka must be handed over to the National Library of Israel.<sup>1</sup> The final batch of Kafka's papers arrived in Jerusalem on August 7, 2019.<sup>2</sup> Despite the fact that Kafka died in Prague in 1924, Israel's lawyers argued that his manuscripts ought to be the legal property of the Jewish nation-state. Yet by what right does Israel make such claims—even over the claims of other nations where the artists in question were citizens, or ignoring the ethno-religious identifications of the artists themselves? This article examines that question, exploring the fate of Kafka's manuscripts as well as legal battles over two other important archives with Jewish lineage: the historical records of Jewish Vienna and the literary estate of Lithuanian-born Chaim Grade.

The decisions in all three cases, adjudicated over many years, reveal a common jurisprudential and cultural logic, a rescue narrative that is central to the State of Israel itself. To this day, Israel maintains an idea of its sovereignty over Jewish cultural production, a defining national mythology since its founding as a state in 1948. And the

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<sup>1</sup> Ofer Aderet, "Court Rules: Kafka's Papers Belong in Israel's National Library," *Haaretz*, June 30, 2015, accessed November 6, 2018, <https://www.haaretz.com/israel-news/culture/.premium-court-rules-kafkas-papers-stay-in-israel-1.5374660>.

<sup>2</sup> Isabel Kershner, "A Yearslong Battle Over Kafka's Legacy Ends in Jerusalem," *The New York Times*, August 7, 2019, accessed August 11, 2019, <https://www.nytimes.com/2019/08/07/books/kafka-archive-jerusalem-israel.html>.

bedrock of this national story is laid bare in the Kafka case. For in the historical vacuum produced by an untimely death and inter-generational conflict over wills and inheritance, the new State of Israel laid claim to the Kafka papers as an orphaned, endangered legacy otherwise vulnerable to extinction. Although he was a Czech writer who was not an observant Jew and who died a quarter-century before its founding, Israel nevertheless celebrated the return of Kafka's work as a homecoming, using the historical memory of the Holocaust to assert itself as the rightful guardian of Jewish cultural material created anytime, anywhere in the world.

### **Prague: The Orphaned Legacy of Franz Kafka**

Franz Kafka never wanted his work to be published—or, for that matter, to be read at all. When Kafka died of tuberculosis in 1924, at age 41, he left all of his unpublished manuscripts to Max Brod, a friend and colleague, on the explicit condition that they be burned unread in their entirety.<sup>3</sup> Brod, of course, ignored the requests of his late friend, securing the posthumous publication of three of Kafka's most recognizable works in the first few years following Kafka's death: *The Trial* (1925), *The Castle* (1926), and *Amerika* (1927).<sup>4</sup> However, Brod soon recognized the existential threat posed by the rise of Nazism, not just to his own life but to the entire material legacy of Franz Kafka. Brod fled Prague in March 1939, the same evening the Nazis annexed Czechoslovakia, and made his way to Tel Aviv.<sup>5</sup> He carried with him a suitcase stuffed with Kafka's drawings, travel diaries, letters, and manuscripts.<sup>6</sup>

It was in Tel Aviv that Brod met Esther Hoffe, a similarly situated, German-speaking Jewish refugee from Czechoslovakia, and the two became immensely close. While there is some speculation that they were lovers, what is known is that Brod made Hoffe his secretary and passed the Kafka manuscripts to her upon his death with explicit instructions that they be donated to a public institution, if not in life, then immediately following her death.<sup>7</sup> While Brod left the final decision of where to donate the works up to his secretary, Israel's National Library was at the top of his list of suggested public institutions.<sup>8</sup>

Just as Brod disregarded Kafka's dying wishes, Hoffe neglected Brod's preference that the manuscripts be housed in a public institution. In 1988, Hoffe sold the manuscript for *The Trial* to a private collector for nearly \$2 million, and the text eventually made its way to the Literature Archive in Marbach, Germany.<sup>9</sup> When Hoffe died in 2007, at the age of 101, she bequeathed the Kafka manuscripts left to her by Brod to her two daughters, Eva Hoffe and Ruth Wiesler, who intended to sell more work to the Archive. Almost immediately, the

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<sup>3</sup> Elif Batuman, "Kafka's Last Trial," *The New York Times*, September 22, 2010, accessed November 6, 2018, <https://www.nytimes.com/2010/09/26/magazine/26kafka-t.html>.

<sup>4</sup> Batuman, "Kafka's Last Trial," *The New York Times*.

<sup>5</sup> Adam Kirsch, "Who Gets to Claim Kafka?," *The Atlantic*, September 2018, accessed November 6, 2018, <https://www.theatlantic.com/magazine/archive/2018/09/franz-kafka-archives/565763/>.

<sup>6</sup> Batuman, "Kafka's Last Trial," *The New York Times*.

<sup>7</sup> Daniel K. Eisenbud, "Franz Kafka's Manuscripts Belong in National Library, Tel Aviv Court Says," *Jerusalem Post*, July 1, 2015, accessed November 6, 2018, <https://www.jpost.com/Israel-News/Culture/Franz-Kafkas-manuscripts-belong-in-National-Library-Tel-Aviv-court-says-407639>.

<sup>8</sup> Eisenbud, "Franz Kafka's Manuscripts Belong in National Library," *Jerusalem Post*.

<sup>9</sup> Batuman, "Kafka's Last Trial," *The New York Times*.

Israeli National Library challenged the legality of Hoffe's will and claimed that Kafka's work legally belonged in its possession.<sup>10</sup> The Tel Aviv District Court ruled in June 2015 that the manuscripts must be handed over to the National Library of Israel.<sup>11</sup>

Nearly a century after the writer's death, the recent Kafka decision is significant—and intriguing. It opens questions not only about the literary bequest of a master of western modernism who never wanted to be read, but also the conceptual and material legacies of the Jewish Diaspora with which he never identified.<sup>12</sup> The legal case began with a simple enough argument: Eva Hoffe and Ruth Weisler claimed their mother was the lawful inheritor of Brod's entire estate, which, they maintained, included the Kafka papers. Citing a 1952 gift-letter written by Brod to Esther Hoffe, the daughters argued that they had the legal right to do what they wished with the manuscripts, including selling them.<sup>13</sup> Furthermore, the sisters contended that the Kafka manuscripts were too valuable to be housed in an Israeli institution and could be better maintained at the state-of-the-art archive in Marbach.<sup>14</sup>

Lawyers for the National Library, however, interjected a complex argument that meshed legal reasoning with a larger, more conceptual self-understanding of the State of Israel relative to the Jewish Diaspora. The National Library first contended that Brod left Kafka's manuscripts to Hoffe as an executor rather than as a beneficiary of the material in her own right. Citing Brod's will from 1961, which clearly articulated that his literary estate be placed "with the library of the Hebrew University of Jerusalem, the Municipal Library in Tel Aviv or another public archive in Israel or abroad," Israel's lawyers argued that the Kafka papers should revert to the wishes articulated in Brod's will upon Hoffe's death.<sup>15</sup> Then, in addition to this strictly legal argument, Israel's lawyers articulated a sweeping conceptual claim. Kafka's national and ethnic identity as a Jew, they contended, meant that his manuscripts ought to be the legal property of Israel, the Jewish nation-state. David Blumberg, the chairman of the board of directors of the Israeli National Library, claimed Kafka's literary legacy by explicitly asserting that "the library does not intend to give up on cultural assets belonging to the Jewish people."<sup>16</sup> The object of Blumberg's prepositional phrase—"cultural assets belonging to the Jewish people"—bears extraordinary legal and cultural weight. It suggests that Kafka's mere identity as a Jew is sufficient for Israel to legally inherit his manuscripts. The logic is grounded in Israel's belief in its status as the cultural epicenter of international Jewry, the rightful legal inheritor of Jewish materials produced in the Diaspora.

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<sup>10</sup> Batuman, "Kafka's Last Trial," *The New York Times*.

<sup>11</sup> Aderet, "Court Rules: Kafka's Papers Belong in Israel's National Library," *Haaretz*.

<sup>12</sup> Benjamin Balint, *Kafka's Last Trial: The Case of a Literary Legacy* (New York: W. W. Norton & Company, 2018), 94.

<sup>13</sup> Eisenbud, "Franz Kafka's Manuscripts Belong in National Library," *Jerusalem Post*.

<sup>14</sup> Jack Buehrer, "Battle for Kafka Legacy Drags On," *Prague Post*, March 9, 2011, accessed November 6, 2018, <https://web.archive.org/web/20110615064737/http://www.praguepost.com/news/7768-battle-for-kafka-legacy-drags-on.html>.

<sup>15</sup> Batuman, "Kafka's Last Trial," *The New York Times*.

<sup>16</sup> Judith Butler, "Who Owns Kafka?" *London Review of Books* 33, no. 5 (March 3, 2011): 2, accessed November 6, 2018, <http://www.f.waseda.jp/norm/noconts/Judith%20Butler%20Kafka.pdf>

### **Out from Europe: The Holocaust and the Assertion of Israeli Cultural Ownership**

Debates about the relationship between the State of Israel and the Jewish populations of the Diaspora spring from the same source as Israel itself. The claim that the relatively new nation is the rightful home of all Jewish culture, no matter when it was created or the country of origin of its creator, is firmly rooted in the way the modern State of Israel internalized the historical memory of the Holocaust. From the earliest days of the new state, Israeli policymakers formulated the “Ingathering of the Exiles” approach to Jewish immigration.<sup>17</sup> Early Zionist leaders understood the function of the new State to be a shelter for persecuted Jews throughout the world, a mandate that seemed particularly urgent in the wake of the destruction of Europe’s Jews. The Ingathering framework operated on a cultural level as well, for the young state understood itself as the sole safe haven for Jewish art and culture in a world that had so recently sought the annihilation of the Jews.<sup>18</sup> Judah Magnes, an early administrator of the Hebrew University in Jerusalem, emphasized the role that Israeli institutions would play in the preservation of Jewish material culture, remarking in 1946 that a Jewish state must be “the trustee of [the] spiritual goods which destroyed German Jewry left behind.”<sup>19</sup> Under Magnes’ leadership, Hebrew University formed the Committee for the Salvaging of Diaspora Treasures, a body of university faculty and administrators charged with identifying and gathering the property left behind by the Jewish communities murdered by the Nazis into the British Mandate.<sup>20</sup> Thus, the Holocaust has served—and continues to serve—as the conceptual lynchpin for Israel’s early desire “to be recognized as the national and spiritual center of the entire Jewish collectivity,” its core justification for why it is the lawful inheritor of the cultural record of the Diaspora.<sup>21</sup>

With that said, historians seem to disagree on when in Israel’s history the Holocaust became a prominent feature within its national consciousness. Yehiam Weitz and Idit Zertal, for example, posit that the memory of the Holocaust was actually quite marginal to the state’s collective identity during its early years. For one thing, Weitz and Zertal argue that the destroyed *shtetls* of Central and Eastern Europe were geographically removed from the new Jewish state and felt particularly distant amid Israel’s turbulent early years, namely the War of Independence.<sup>22</sup> Most crucially, they argue that the devastating memory of the Holocaust was not easily reconciled with the desire of the founding generation to construct a new Jewish identity of strength, bravery, and self-reliance. Much of the early discourse surrounding the Holocaust was wrapped in what Weitz and Zertal call the “guilt

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<sup>17</sup> “Declaration of Israel’s Independence, 1948,” The Avalon Project at the Yale Law School : Documents in Law, History and Diplomacy, 1996, accessed August 5, 2019, [https://avalon.law.yale.edu/20th\\_century/israel.asp](https://avalon.law.yale.edu/20th_century/israel.asp).

<sup>18</sup> For a more comprehensive overview of early Jewish efforts in Israel/Palestine to recover European cultural artifacts, and the cultural ideology that centered the Jewish State as the sole safe repository for these artifacts in the post-Holocaust world, see Elisabeth Gallas, “Building the New State: Israel and the European Jewish Cultural Heritage,” in *A Mortuary of Books: The Rescue of Jewish Culture after the Holocaust* (New York: New York University Press, 2019), 163-193.

<sup>19</sup> Balint, *Kafka’s Last Trial*, 104.

<sup>20</sup> Gallas, *A Mortuary of Books*, 165.

<sup>21</sup> Gallas, *A Mortuary of Books*, 165.

<sup>22</sup> Hanna Yablonka and Moshe Tlamim, “The Development of Holocaust Consciousness in Israel: The Nuremberg, Kapos, Kastner, and Eichmann Trials,” *Israel Studies* 8, no. 3 (Fall 2003): 9.

of the victim”—the deep psychosocial shame associated with the conception that millions of European Jews passively walked to the gas chambers without resisting the German soldiers who engineered their murder. For many of Israel’s founding leaders, the pervasive “sheep to the slaughter” narrative was a profound humiliation, a desecration of the Jewish national honor. Thus, the historical narrative of the Holocaust itself—what Zertal calls “the shame of their mothers and fathers”—was often marginalized within early Zionist discourse and Israeli collective memory.<sup>23</sup>

Conversely, prominent Israeli historian Anita Shapira disagrees with Weitz and Zertal, articulating that Holocaust memory has been a permeating current throughout the entirety of Israel’s conceptual history. For her, the Holocaust served as a foundational justification for the very existence of the Israeli state since 1948: the memory of the Holocaust in Israeli socio-political life “emphasized the historical continuity of Jewish life in the Diaspora, the Jewish tragedy, and the mission of Israel as a state of refugees and a living monument to the memory of those who perished.”<sup>24</sup> When it comes to the material record, Shapira’s argument seems vindicated. Indeed, the connection between the pre-state Jewish tragedy and the post-Holocaust Jewish state is prominently and concretely reflected in Israel’s early laws. Two years after establishment, Israel’s Knesset passed the Law of Return, which allowed for the unconditional acquisition of Israeli citizenship for any Jew in the Diaspora. Certainly, the Law of Return was not crafted in an ideological vacuum. Implemented only five years removed from Nazi Germany’s surrender in Europe, the Law of Return demonstrated Israel’s understanding that the Jews could, at any moment, be “exposed to the possibility of another Holocaust with no place to flee.”<sup>25</sup> The Law of Return provided the legal framework for the vast influx of Central and Eastern European Jewish refugees to Israel during its early years. Between establishment and 1960, nearly half a million Holocaust survivors emigrated to Israel.<sup>26</sup> Later, in 1953, the Knesset passed the Yad Vashem Law, which not only established the Yad Vashem Museum as Israel’s official memorial to the Holocaust but also formed the Holocaust Martyrs and Heroes Remembrance Authority, which was tasked with documenting European Jewry in the new state.<sup>27</sup> In 1960, with those half a million survivors firmly in Israel, the Knesset passed the Nazi and Nazi Collaborator Punishment Law; not only did this legislation codify a new criminal category—crimes against the Jews—but it also established the implicit understanding that, even as a young state, Israel felt strongly that the prosecution of Nazi war criminals was a unique responsibility it had to bear.<sup>28</sup> Perhaps most critical for the Kafka case is the Israeli Archives Law. Passed in 1955, the Archives Law gave vast discretionary oversight to the Israeli Chief Archivist, limited the extent to which historical materials could be removed from Israel, and, crucially, affected documents and historical

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<sup>23</sup> Yablonka and Tlamim, “The Development of Holocaust Consciousness in Israel,” 10.

<sup>24</sup> Anita Shapira, *Israel: A History* (Waltham, MA: Brandeis University Press, 2014), 261.

<sup>25</sup> Irving Greenberg, “Cloud of Smoke, Pillar of Fire,” in *Holocaust: Religious & Philosophical Implications*, eds. John K. Roth and Michael Berenbaum (St. Paul, MN: Paragon House, 1989), 337.

<sup>26</sup> Yablonka and Tlamim, “The Development of Holocaust Consciousness in Israel,” 9.

<sup>27</sup> Shapira, *Israel: A History*, 262.

<sup>28</sup> “Nazi and Nazi Collaborators Punishment Law,” Israeli Knesset, accessed June 23, 2019, <https://mfa.gov.il/mfa/mfa-archive/1950-1959/pages/nazis%20and%20nazi%20collaborators%20punishment-%20law-%20571.aspx>

artifacts that, regardless of where they are found or currently located, “might be an interest to examine [in order] to study the past of the nation, country or society, or [materials] connected to the memory or the deeds of the *anshei shem* [Jewish people].”<sup>29</sup>

All of these political developments had significant conceptual impacts for Israeli society, as the state came to understand itself as the singular Jewish safe haven in the post-Holocaust world. Shapira articulates that the “State of Israel [became] the symbol of the Jewish people continuing to live despite catastrophe, a concise expression of the lust for life and vitality of a nation that was on the verge of annihilation. The ability to translate the energies born of great despair into acts of creation and rebuilding made Israel the Jewish people’s post-Holocaust rehabilitation project.”<sup>30</sup> In other words, Israel in the 1950s understood its role in the world as the epicenter of post-Holocaust Jewry and cultural Jewishness. As such, several decades later, the Kafka lawyers argued that the Holocaust illustrated the urgent need to concentrate the Diaspora’s material legacies, all surviving cultural artifacts of the Jewish people, in the Jewish state.

But Kafka was not killed in the Holocaust. In fact, he died in 1924, nine years before Hitler came to power in Germany, fifteen years before the German invasion of Poland, and eighteen years before the infamous Wannsee Conference and the conceptualization of the “Final Solution.” If Israel’s self-understanding as the cultural inheritor of the Diaspora is predicated on the calamity inflicted on European Jewry by the Nazis, Israel’s use of this same argument to claim Kafka’s work should have seemed unsubstantiated and relatively unconvincing because Kafka’s own death long preceded Auschwitz. And yet, despite the temporal gaps between Kafka and the Holocaust, the destruction of European Jews was *still* used to justify the National Library’s legal claim on Brod’s estate and the Kafka manuscripts. Indeed, the memory of the Holocaust was manifest both in the formal legal language and in the historiographic literature surrounding the Kafka case. In the proceedings, significant attention was paid to the fact that Esther Hoffe had sold some of Kafka’s manuscripts not just to any archive but an archive *in Germany*. This was interpreted by those directly involved in the case and other commentators as a profound insult, citing the fact that several of Kafka’s family members died in the camps and ghettos of Europe and that Brod himself had fled Nazi persecution in 1939. Aviad Stollman, a curator for the National Library of Israel, wrote during the case that “there is nothing Brod would have wanted less than for his writings to go to Germany...not only because of his own experience, but Kafka had two siblings murdered in Auschwitz.”<sup>31</sup>

While Stollman’s assertion is slightly off—Kafka had three sisters murdered in Auschwitz—the Holocaust is still a prominent justification for Israel’s acquisition of Kafka’s work despite the fact that he himself died beforehand.<sup>32</sup> Otto Dov Kulka, an Israeli historian at

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<sup>29</sup> “Archives Law, 1955,” Israeli Knesset, accessed November 7, 2018, [https://fs.knesset.gov.il//2/Plenum/2\\_ptm\\_250508.pdf](https://fs.knesset.gov.il//2/Plenum/2_ptm_250508.pdf).

<sup>30</sup> Shapira, *Israel: A History*, 471.

<sup>31</sup> Buehrer, “Battle for Kafka Legacy Drags On,” *Prague Post*.

<sup>32</sup> Phillip Roth, “Kafka Would Have Savored the Irony of Being a German Treasure,” *The New York Times*, November 27, 1988, accessed November 7, 2018, <https://www.nytimes.com/1988/11/27/opinion/l-kafka-would-have-savored-the-irony-of-being-a-german-treasure-934088.html>.

the Hebrew University of Jerusalem, slyly derided the daughters' argument that they should be free to sell Kafka's works to the archive: "Well, the Germans don't have a very good history of taking care of Kafka's things. They didn't take good care of his sisters."<sup>33</sup> Such arguments have two implications. For one thing, they seek to refute any conceptualization of Kafka as an inherently German writer. Rather, the Israeli lawyers sought to argue that Kafka's Jewish identity and the memory of German anti-Semitism forbid the possibility that his literary legacy be claimed as an example of German national culture, even while Kafka himself spoke fluent German.<sup>34</sup> These arguments further assert that the materials should remain in Israel as the center of post-Holocaust Jewry. Taken together, the Holocaust can be understood as fundamental to the relevant Israeli self-conceptualization in the Kafka case. The destruction of Europe's Jews is deployed to justify Israel's claims to legally inherit the materials of the Diaspora, even when the creator him/herself was not a victim of the Nazis.

### **Vienna: Holocaust Memory and Cultural Ownership in Central Europe**

Interestingly, the role of the Holocaust in defining the Israeli Diaspora archival relationship manifests in scenarios far removed from Franz Kafka. The fate of the archives of Vienna's Jewish community, for example, raises equally compelling questions. The Jews of Vienna had been collecting archival evidence of their community's existence since the seventeenth century and had accumulated almost three-hundred years' worth of material by the outbreak of World War II.<sup>35</sup> In the wake of the destruction of European Jewry, community leaders decided in 1952 to send the collection to the Central Archives for the History of the Jewish People in the newly created State of Israel for fear its contents would not be treated properly in post-Holocaust Austria.<sup>36</sup> In 2011, the revived and vibrant Jewish community of modern Vienna filed a lawsuit in a District Court in Jerusalem against the Central Archives arguing that the materials should be returned to Austria.<sup>37</sup> In an unprecedented legal maneuver, the Israeli Chief Archivist issued his own opinion on the matter (a document which will be discussed at further length later on), articulating that the materials ought to remain in Israel rather than be returned to their community of origin. Crucially, both the Jerusalem District Court and the Israeli Supreme Court endorsed the Chief Archivist's position, keeping the three-hundred-year-old Viennese archive in the legal possession of the Israeli state.<sup>38</sup>

As in the Kafka decision, it is essential to analyze the legal and conceptual arguments put forward by both the Viennese Jewish community and the Israeli Chief Archivist. The Viennese lawsuit, led by community leader Dr. Ariel Muzicant, articulated that the transfer of historical materials from Vienna to Jerusalem in the 1950s was only undertaken to protect the integrity of the materials at a challenging historical juncture for Central

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<sup>33</sup> Batuman, "Kafka's Last Trial," *The New York Times*.

<sup>34</sup> Balint, *Kafka's Last Trial*, 13.

<sup>35</sup> Aderet, "Battle Over Viennese Jewish Archive," *Haaretz*.

<sup>36</sup> Aderet, "Battle Over Viennese Jewish Archive," *Haaretz*.

<sup>37</sup> Benjamin Weinthal, "Vienna's Jewish Archives to Remain in Israel's Hands," *Jerusalem Post*, October 16, 2012, accessed November 9, 2018, <https://www.jpost.com/Jewish-World/Jewish-News/Viennas-Jewish-archives-to-remain-in-Israelis-hands>.

<sup>38</sup> Aderet, "Battle Over Viennese Jewish Archive," *Haaretz*.

European Jews: “They [the archival materials] belong to us, and when times were difficult, we sent them to Israel as a loan... Now we are trying to retrieve documents... and build a Jewish archive for them in Austria, and the archive in Jerusalem is ignoring us.”<sup>39</sup> The argument put forward by Israel’s Central Archives is considerably more complex. First, from a strictly legal standpoint, the Israelis contended that the transfer was permanent. Before the Jerusalem District Court deferred to the decision of Yaacov Lozowick, the Israeli Chief Archivist at the time, Lozowick wrote publicly that the transfer from Vienna was intended to be permanent because the community was unable to properly preserve Jewish documents in the late 1940s and early 1950s: “In the years following World War II, the community was left with no assets and no ability to guarantee the preservation of the documents in a protected and proper mode. For these reasons, the community chose to deposit the collection for safekeeping in the Central Archives.”<sup>40</sup>

However, it is clear from reading Lozowick’s writing that the primary argument for retaining the Viennese materials in Israel rather than returning them to Central Europe is a conceptual one. Like the National Library lawyers argued over Kafka, Lozowick contended that the archives of Jewish Vienna belong in Israel because they are historical materials of the Jewish people and are therefore able to be claimed as the legal property of the Jewish state. Israel, according to Lozowick’s conceptual framework, is the cultural axis around which the entirety of the Jewish world rotates: “The transfer of the collection [from Vienna] to Israel was an ideological expression of the Viennese Jewish community accepting the centrality of the new Jewish state—otherwise it could have been transferred to London or New York...The founders of the archival world in Israel in the middle of the twentieth century regarded the state as the center of world documentation of the Jewish people.”<sup>41</sup> Within this framework, Lozowick understands Israel to be the essential Jewish cultural hub, and as such, he is able to assert a legally viable claim of ownership over the historical materials produced elsewhere in the Jewish world. Such a sweeping argument has incalculable consequences for the status of property ownership and cultural production in the Jewish Diaspora, and Lozowick’s claim would be almost indefensible if he had not grounded it in the unique calamity of the Holocaust. In his decision, Lozowick asserts the following: “When [the Viennese archive] is in Jerusalem, it is part of Jewish heritage. Its expulsion from Jerusalem would send it to the periphery of the Jewish world. The leaders of the community after the Holocaust understood this well, so they sent their archives to the center so that their community would be remembered forever in the center.”<sup>42</sup> As in the Kafka case, the historical memory of the Holocaust serves to justify Israel’s self-conceptualization as the center of the Jewish world. As Lozowick states, the role of Israel, particularly in an archival sense, is to keep the memory of the murdered Jews of Central and Eastern Europe alive in the modern Jewish state. This implicitly asserts that adequate Holocaust memorialization can *only* be achieved in the State of Israel, for the memory of the

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<sup>39</sup> Weinthal, “Vienna’s Jewish Archive,” *Jerusalem Post*.

<sup>40</sup> Yaacov Lozowick, “The Decision of the State Archives on the Collections of the Archives of the Jewish Community in Vienna,” Israel State Archives, October 15, 2012, 4, accessed November 9, 2018, <https://drive.google.com/file/d/0B45gJhLdDCqqdnJPM05taXBrRXc/view>.

<sup>41</sup> Lozowick, “The Decision of the State Archives,” 13.

<sup>42</sup> Lozowick, “The Decision of the State Archives,” 13.



murdered Jews of Vienna would be memorialized far from the epicenter of Jewish cultural life if the archive were returned to Austria.

### **Vilnius: A Hebrew Claim on a Decidedly Yiddish Writer**

Still, the examples of the Viennese archive and the Kafka manuscripts each have two significant complications. For one thing, both cases concern claims made by Israel over materials that were already physically located in Israel: the Viennese archive had been in Israel since the 1950s and the Kafka manuscripts had arrived in 1939 in the suitcase of Max Brod and were sitting in a Tel Aviv apartment at the time of the lawsuit. The fact that the materials were already in Israel, or the territory that would later become the modern state, strengthened Israel's claim considerably since any other nation would need to convincingly demonstrate, to an Israeli judge, that the artifacts could be better preserved outside the country for any such move to be justified. What's more, both examples cited thus far have had significant legal factors at play relative to their sweeping cultural implications. In the case of the Viennese archives, the legal question was whether or not the transfer to Jerusalem was permanent; for Kafka, it was whether or not Brod named Hoffe as a beneficiary or simply an executor of his estate. These legal factors could obscure the extent to which Israel's post-Holocaust understanding of itself was at play when asserting its claim over these historical artifacts.

One final example solidifies that Israel's logic when claiming ownership over the cultural artifacts of the Jewish Diaspora is inherently linked with the memorialization of the Holocaust. That example is the fate of the literary estate of Chaim Grade. Grade was a writer and poet born in an Orthodox family in Vilnius in 1910.<sup>43</sup> During the War, Grade fled eastward and sought refuge in the Soviet Union. When he returned to Lithuania after the War, he discovered that the Nazis had killed both his wife and his mother; in 1948, the same year Israel was established, Grade emigrated to the United States and settled in the Bronx.<sup>44</sup> Grade's literary career dealt exclusively with Ashkenazi themes and philosophy. His most highly acclaimed novels, *The Agunah* (1961) and *The Yeshiva* (1967), are both set in prewar Lithuania and the majority of his poetry dealt with the immense trauma of the Holocaust.<sup>45</sup> After his death, Grade's second wife, who died in 2010, failed to legally file her will. As a result, his entire estate fell into the hands of the public administrator for Bronx County.<sup>46</sup> Detached from any legal provenance, where, then, should Grade's orphaned legacy—"40 boxes of [his] letters, manuscripts and photographs, and 20,000 books from [his] personal library"—be housed?<sup>47</sup> In 2013, the Bronx public administrator awarded

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<sup>43</sup> Richard F. Shepard, "Chaim Grade, Yiddish Novelist and Poet on the Holocaust, Dies," *The New York Times*, July 1, 1982, accessed November 7, 2018, <https://www.nytimes.com/1982/07/01/obituaries/chaim-grade-yiddish-novelist-and-poet-on-the-holocaust-dies.html>.

<sup>44</sup> Shepard, "Chaim Grade, Yiddish Novelist and Poet on the Holocaust, Dies," *The New York Times*.

<sup>45</sup> Shepard, "Chaim Grade, Yiddish Novelist and Poet on the Holocaust, Dies," *The New York Times*.

<sup>46</sup> Adam Soclof, "YIVO, National Library of Israel Team to Acquire Chaim Grade Collection," *Jewish Telegraph Agency*, February 13, 2013, accessed November 7, 2018, <https://www.jta.org/2013/02/13/arts-entertainment/yivo-national-library-of-israel-team-to-acquire-chaim-grade-collection>.

<sup>47</sup> Soclof, "YIVO, National Library of Israel Team to Acquire Chaim Grade Collection," *Jewish Telegraph Agency*.

joint ownership of Grade's literary estate to the YIVO Institute of Jewish Research in New York and the National Library of Israel.<sup>48</sup>

At least half of this decision is bewildering. Grade, after all, was a *Yiddish* writer, not a Hebrew one. In fact, he was quite resistant to his works being translated from Yiddish to any other language during his early career.<sup>49</sup> Furthermore, he was decidedly not an Israeli, as he left Europe in the wake of the Holocaust and settled in New York, the quintessential metropole of the Jewish Diaspora. Grade neither traveled to Israel during his lifetime nor chose to write about "Israeli" themes typical of modern Hebrew literature, such as the *kibbutz* movement, the ethos of the new, muscular, and self-sufficient Jew, or the cultivation of the land in Israel. Instead, his work depicted a distinctly Ashkenazi, Yiddish-speaking, Old-World Jewish experience. Given these factors alone, it is rather remarkable that YIVO's claim to the entirety of Grade's work was deemed insufficient. But what is more, YIVO was established in Grade's own hometown, Vilnius, in 1925 to serve as a cultural archive for Jewish life in Eastern Europe. With the outbreak of World War II, YIVO recognized the need to move Jewish historical materials out of Europe and felt that the United States represented the essence of the Jewish Diaspora.<sup>50</sup> Once relocated to New York, YIVO's collections sought to be "the primary source of the documentary history of East European Jewry and the surviving record of millions of lives of Jewish victims of the Holocaust."<sup>51</sup> YIVO's historical trajectory is almost identical to Grade's: both were born in Vilnius but established themselves in New York with an exclusive focus on documenting Jewish life in Eastern Europe, particularly relative to the Nazi horror from which they both survived.

Yet even though YIVO appeared able to put forward the stronger claim, the National Library of Israel was successful in securing shared successor rights.<sup>52</sup> Importantly, the Grade decision does not possess any of the legal quagmires seen in the Kafka or Vienna cases, nor were Grade's manuscripts physically located in Israel at the time of the decision. Rather, Israel was able to successfully claim Grade's literary legacy as its own simply by virtue of Grade being a Jew and by his proximity to the Holocaust. In the National Library's statement after the decision, Grade is described as having "lost his family in the

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<sup>48</sup> Soclof, "YIVO, National Library of Israel Team to Acquire Chaim Grade Collection," *Jewish Telegraph Agency*.

<sup>49</sup> Curt Leviant, "Translating and Remembering Chaim Grade," *Jewish Review of Books*, Winter 2011, accessed November 7, 2018, <https://jewishreviewofbooks.com/articles/272/translating-and-remembering-chaim-grade/>.

<sup>50</sup> Silvia Schenkolewski-Kroll, "Jewish Archives and Archival Documents: Israel and the Diaspora," *Archival Science* 16 (2016): 309-326, accessed November 7, 2018, [https://www.researchgate.net/publication/282545878\\_Jewish\\_archives\\_and\\_archival\\_documents\\_Israel\\_and\\_the\\_Diaspora](https://www.researchgate.net/publication/282545878_Jewish_archives_and_archival_documents_Israel_and_the_Diaspora).

<sup>51</sup> Cecile Esther Kuznitz, *YIVO and the Making of Modern Jewish Culture: Scholarship for the Yiddish Nation* (New York, NY: Cambridge University Press, 2014), 12.

<sup>52</sup> For a discussion of the competing cultural ideologies that drive the "latent rivalry" between YIVO and Israeli cultural institutions, such as the National Library of Israel, see Bilha Shilo, "When YIVO Was Defined by Territory: Two Perspectives on the Restitution of YIVO's Collections," in *Contested Heritage: Jewish Cultural Property After 1945*, eds. Elisabeth Gallas, Anna Holzer-kawalko, Caroline Jessen, and Yfaat Weiss (Göttingen: Vandenhoeck & Ruprecht GmbH & Co., 2019), 79-90.

Holocaust.”<sup>53</sup> Although a brief biographical detail, this inclusion seems to suggest that the Holocaust was an important explanation for Israel’s pursuit of Grade’s work in the first place, and a crucial justification for awarding shared ownership to Israel. Thus, the Grade decision, perhaps even more clearly than the Kafka and Vienna cases, underscores Israel’s deep—and very effective—assertion that the memory of the Holocaust centers Israel as the cultural locus of *all* Jewish materials and artistic contributions, even those produced by Jews in the Diaspora who neither traveled nor expressed any connection to Israel.

### **Caught Between Continents: Sovereignty, Identity, and the Claim to Inherit Jewish History**

From these three cases, it is clear that the Holocaust plays as decisive a role in the creation and implementation of Israeli policy and jurisprudential practice as it has in its national identity more broadly. As Israeli institutions have launched legal cases to inherit the works of Jewish artists, even those who may have died before the wholesale destruction of European Jewry, they have used the memory and trauma of the Holocaust to legitimize and empower their claims. At first, the close association between the Holocaust and the Israeli state may not seem so contentious, considering the state was founded three years removed from Germany’s surrender with the explicit intention of ingathering Jewish refugees. However, such articulations posit several sweeping implications that could potentially redefine the form of Holocaust commemoration and assert Israeli primacy over all other Jewish communities across the globe.

To begin with, these articulations imply that Israel alone bears the trauma of the Holocaust. While it should be noted that Israel has the highest population of Holocaust survivors in the world today (189,500), Israel is not the only country to which survivors of the death camps fled following liberation.<sup>54</sup> The United States, for example, is home to roughly 100,000 survivors, half of whom live in the metropolitan area surrounding New York City.<sup>55</sup> Australia has the largest per-capita Holocaust survivor population outside Israel with particularly high concentrations in Sydney and Melbourne.<sup>56</sup> As such, it seems rather odd that Israel has been successful in using the Holocaust—a European tragedy occurring in the years preceding the establishment of the Jewish state—as a justification in court.

Even more important, these articulations, while specifically related to Holocaust memory and commemoration, posit dangers to the Israeli-Diaspora relationship. Indeed, the ability of Israel to legally inherit the art and historical materials of Jews born abroad poses an

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<sup>53</sup> “BeShutafus: Forming Partnerships to Preserve Yiddish Literature,” National Library of Israel, accessed November 7, 2018, <http://web.nli.org.il/sites/NLI/English/collections/jewish-collection/Pages/beshutafus.aspx>.

<sup>54</sup> Marcy Oster, “Worldwide Population of 14.7 Million Jews Falls Short of Pre-War Numbers,” *Jerusalem Post*, April 21, 2020, accessed July 25, 2020, <https://www.jpost.com/diaspora/worldwide-population-of-147-million-jews-falls-short-of-pre-war-numbers-625299>.

<sup>55</sup> Shachar Peled, “On Holocaust Remembrance Day: A Third of Survivors in the US Are Poor,” CNN, January 27, 2017, accessed November 26, 2018, <https://www.cnn.com/2017/01/27/us/holocaust-survivor-poverty/index.html>.

<sup>56</sup> Charmaine Joffe, Henry Brodaty, Georgina Luscombe, and Frederick Ehrlich, “The Sydney Holocaust Study: Posttraumatic Stress Disorder and Other Psychosocial Morbidity in an Aged Community Sample,” *Journal of Traumatic Stress* 16, no. 1 (February 2003): 39-47.

existential threat to the very vitality of Jewish identity in the Diaspora. If the Holocaust can be employed as an argumentative trump card to claim the cultural legacy of the Diaspora—even when the artist was only tangentially or posthumously impacted—then Israel has secured the right to hold and possess *anything* Jewish. As such, Israel's broad claim to own the Diaspora essentially destroys the Diaspora, for it rejects the idea that Jewish materials can retain their essential Jewishness outside of the State of Israel. In the largest sense, these decisions threaten to shift the most basic foundations not only of cultural ownership but of Jewish identity altogether. With a few favorable decisions, Israel has effectively obtained a monopoly on the material and historical legacy of the entire Jewish people and has asserted itself as the central gatekeeper for what it means to be a Jew in the world. And with the Holocaust holding almost invincible argumentative sway, it remains to be seen how far Israel's self-proclaimed cultural powers will extend.