

## Shades of Justice

### THE TRIAL OF SHOLOM SCHWARTZBARD AND DOVID BERGELSON'S AMONG REFUGEES<sup>1</sup>

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*Abstract. The paper reflects on the problem of justice to the victims of mass violence, such as the Jewish pogroms in the Ukraine in 1918–1919. It considers the 1926 trial of Sholom Schwartzbard, the assassin of the former Ukrainian leader Simon Petliura, and the story by the Russian Yiddish writer Dovid Bergelson "Among Immigrants." It argues that justice to the dead is similarly imperiled by the universal categories of law and by the particularist rhetoric of literature. In the trial, justice to the massacred Jews becomes dissolved in the rhetoric of universal justice for all humanity. In the story, it is belied by the excessive attention paid to the singularity of the person who claims to be justice's agent.*

How are we to reconcile the act of justice that must always concern singularity, individuals, irreplaceable groups and lives, the other or myself as other, in a unique situation, with rule, norm, value or the imperative of justice which necessarily have a general form, even if this generality prescribes a singular application in each case?<sup>2</sup>

### CIRCUMSTANCES OF THE CASE

On May 25, 1926, on a Parisian street in broad daylight, Sholom Schwartzbard, a Ukrainian Jew and naturalized French citizen, assassinated former President and the Commander-in-Chief of the Ukrainian Directory,

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*Law & Literature*, Vol. 19, Issue 1, pp. 15–43. ISSN 1535-685X, electronic ISSN 1541-2601. © 2007 by The Cardozo School of Law of Yeshiva University. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Rights and Permissions website, at <http://www.ucpressjournals.com/reprintinfo/asp>. DOI: 10.1525/lal.2007.19.1.15

Simon Petliura. When a gendarme arrived, Schwartzbard was still standing over his victim, making no effort to flee the scene or to resist arrest. He handed in the empty revolver and declared that he had killed a great murderer.

Upon arrival to the police station, the agitated Schwartzbard poured out the tale of centuries-long history of Jewish persecution in the Ukraine. He spoke of the seventeenth-century bloody massacres led by the Cossack leader Bogdan Khmelnitski, of pillage and devastation of Jewish homes, and of thousands upon thousands Jewish lives lost in the centuries of anti-Jewish violence. While the policemen failed to see the connection between the tale and the present murder, to Schwartzbard it was clear. In his eyes, the man he killed was a modern Khmelnitsky, a bloody murderer of thousands of innocent Jews massacred in the pogroms perpetrated by the Ukrainian army during the years of the Directory, from 1918 to 1920.<sup>3</sup> An avenger of his race and of his family, seventeen of whose members died in the pogroms, Schwartzbard wished to be put on trial to remind the world of the massacres it had ignored.<sup>4</sup>

On October 18, 1927, the Schwartzbard trial opened at the Paris Palace of Justice in a courtroom packed with 400 spectators. Eight days later the trial was over; it took just thirty-two minutes for the jury to reach a verdict. To the first of the five questions issued by the judge—"Was the accused, Sholom Schwartzbard, guilty of voluntarily striking blows which caused injuries to Mr. Simon Petliura on May 25, 1926?"—the jury answered no, rendering irrelevant the remaining four questions. Schwartzbard was acquitted. Upon hearing the verdict, the courtroom exploded with triumphant cries of "Vive la France!"

It is curious that a trial that received so much attention at the time and that involved so many celebrated public figures is now largely forgotten. One may be surprised to learn, for instance, that the list of witnesses for the defense included the names of Albert Einstein, Henry Bergson, Maxim Gorky, and Paul Langevin, or that Schwartzbard's leading attorney, Henry Torrès, later attempted to provide defense for Herschel Grynzspan, the Jewish youth who, in 1938, killed Assistant Secretary to the German Embassy in Paris Ernst von Rath—an event that the Nazis used to instigate the infamous Kristallnacht.<sup>5</sup> And yet, the Schwartzbard affair, which has so much to offer to scholars in different fields, is almost never discussed as a historical, cultural or legal event in its own right. If remembered at all, it is usually evoked within the narrower context of Petliura's political career and the controversy surrounding his role in the pogroms.

Even Hannah Arendt's brief discussion of the Schwartzbard trial in the "Epilogue" to *Eichmann in Jerusalem*, where she considers it in the context of searching for an alternative to Israel's abduction of Eichmann from Argentina, seems to have gone largely unnoticed. Observing that Argentina's legal and political reality doomed to failure any attempt at Eichmann's extradition, Arendt suggests that another option might have been killing him "right then and there, in the streets of Buenos Aires."<sup>6</sup> While she remains skeptical about assassination as "a solution to the problem of legalities that stand in the way of justice," the Schwartzbard affair, which she discusses as a historical precedent of just such a solution, figures in her account in a surprisingly sympathetic light.<sup>7</sup> Although from the legal standpoint, the earlier trial was also riddled with problems in that it was as much of a show as the Eichmann trial, in Schwartzbard's case justice was assisted by the fact that the drama's protagonist, "on whom all eyes [were] fastened," was "the true hero."<sup>8</sup> According to Arendt, the real risk of conviction Schwartzbard ran when he surrendered himself into the hands of the law, added to Jewish statelessness and the concomitant absence of a tribunal interested in prosecuting crimes against the Jewish people, set his act apart from the hypothetical assassination of Eichmann that she contemplates. The distinction she draws between the two cases seems to imply that unlike Eichmann's hypothetical assassination by state agents that would have been "altogether unjustifiable," Schwartzbard's assassination of Petliura did have a claim to justice.<sup>9</sup>

It is precisely the problem of justice as posed by the Schwartzbard case that interests me in this paper. By this I do not mean, however, that I want to consider the justness, either moral or legal, of Schwartzbard's act or of the jury's verdict. Nor do I want to debate the scope of Petliura's responsibility. Historians have addressed the latter question multiple times and will continue to do so in the future.<sup>10</sup> Instead, I want to reflect upon the trial as a cultural event that has much to reveal about how justice—particularly justice to *the dead*—is related to the politics of memory and identity.<sup>11</sup>

In arguing for acquittal, Schwartzbard's attorney Henry Torrès takes care to reassure the jury that in returning the verdict favorable to his client, they would not enshrine him as a hero—"for killing a man, even legitimately, is a great misfortune"—but rather they would do justice to the massacred Jews. It is not Schwartzbard who is at issue in the trial, Torrès declares; it is the pogroms.<sup>12</sup> Focusing on Torrès's closing argument,

however, I conclude that if we view the verdict as a sign of the jurors' concurrence, however partial, with the arguments of the defense and an expression of the sentiments that it sought to arouse, justice *to the dead* was at best incidental to the jury's decision.<sup>13</sup> What might have been more prominent in the jurors' minds was the symbolic project of fashioning the French national identity. Seduced by Torrès's depiction of the French national character as the champion of universal justice and human rights, the jury returned the verdict that best conformed to such a representation. The flavor of the elation that greeted the verdict attests to the fact that much of the public shared the jury's sentiment. But while Torrès's representation of the French struck the right chord with the jury, it is hard to see the trial's outcome as justice to the massacred Jews. I will argue that the reason lies with the rhetoric of universality that permeates Torrès's defense.

The second part of the essay focuses on a literary counterpart to history. It considers a short story by the Russian Yiddish author Dovid Bergelson that features an aspiring Jewish assassin. Written in 1924 in Berlin, the story, titled "Among Refugees," predates Schwartzbard's assassination but sketches out a similar drama. A young Jewish immigrant now residing in Berlin recognizes in one of his rooming-house neighbors a notorious pogromist. He determines to kill the murderer and turns to the immigrant community for help in procuring a gun. The Jewish community, however, remains unsympathetic to the young man's plan, refusing him the assistance he seeks but offering him psychiatric help instead. Creating a highly ambivalent portrait both of the would-be assassin and of the Jewish community, the story ends with the news of the young man's suicide.

In contrast to Torrès's defense, the story eschews the rhetoric of universality, focusing instead on the singularity of the assassin's personality and circumstances. Unlike Torrès, who presents Petliura's assassination as justice conceived in broad universal terms, Bergelson is far more cautious in his portrayal of a similar act. The story points to the difficulty in distinguishing between the projected assassination as an act of justice and a self-serving act of spite, caused by the young man's alienation from the community, already marginalized by its refugee status.

Read side by side, the story and Torrès's closing argument call attention to the impact that the categories of the particular and the universal have on the discourse of justice. In his 1989 lecture "Force of Law," Jacques Derrida

employed these categories to account for the aporetic character of justice that he has traced to its obligation to address particularity of a specific injustice in universalizing language of the law. To him, this double duty results in the inevitable predicament: each articulation of justice inescapably contains traces of injustice.<sup>14</sup> While my focus here is different, the paper draws on Derrida's discussion in that it presents the intersection between the trial and the story as an instance in which the problem of the universal and the particular in matters of justice comes to a head. It argues that just as universalizing rhetoric can render justice problematic by dissolving the specificity of injustice it seeks to address, a heightened emphasis on particularity can cause justice to become unintelligible even for the community on whose behalf it is done.

Recast on the plane of the law and literature movement, this discussion offers an opportunity to reexamine one of the field's most prominent trends—a vision of imaginative literature as a source of sensibilities and attitudes that, when embraced by the makers of legal decisions, are bound to result in more humane and more just interpretations of law. Concerned with representation of particularity and uniqueness (of individuals, their life circumstances, their interior worlds), literature, according to this view, presents a redeeming—and much needed—corrective to the impersonality and abstraction of law.<sup>15</sup>

In her recent discussion of the Eichmann trial, Shoshana Felman mobilized this type of argument to account for the event's cultural and historical significance. Drawing a distinction between "law's story" that strives to reconstruct "the totality of facts," and "art's story" that transcends that totality, Felman argued that the trial was a point of intersection between law and art.<sup>16</sup> For her, the artistic element was introduced through the personal testimonies of witnesses, particularly that of the writer K-Zetnik. Just like Arendt, whose reading of the trial serves both as a basis and a foil for her own argument, Felman also believes in the inescapable presence of a fictional element in any witness testimony. But in contrast to Arendt, for whom survivors' stories made the trial legally problematic, Felman sees them as crucial to its success. She welcomes what Arendt seeks to exclude—"the interpenetration of law and literature," of fact and fiction, of objective and subjective.<sup>17</sup> What for Arendt constitutes pollution, for Felman is fertilization. As a result of this encounter, law becomes wiser, as it is forced to contemplate its own limits.

My reading of the Schwartzbard trial and of Bergelson's story calls into question both these positions. While for Felman, justice for the dead requires attention to particularity (best afforded by art), and for Arendt, it needs an uncompromising commitment to the universal categories of law, Torrès's defense and Bergelson's story complicate these insights. In the following pages, I will argue that just as in the trial, justice for the massacred Jews becomes dissolved in Torrès's rhetoric of universal justice for all humanity, in the story it is belied by the excessive attention to the singularity of the person who claims to be its agent.

## THE TRIAL

On December 11, 1927, about a month and a half after the Schwartzbard trial was over, *Volia Rossii* (*The Will of Russia*), a Russian émigré periodical in Prague, published an article by S. Sumskii (pseudonym of Solomon Gitmanovich Kaplun) entitled "The Trial of Petliura and Schwartzbard."

In the article, Sumskii describes an informal interview with a gendarme who attended the entire trial in his official capacity and whom Sumskii describes as "a conscientious man" and "a perfect Frenchman."<sup>18</sup> When Sumskii asks the man what he thinks of the Schwartzbard affair, the gendarme steps out of his official role and responds as a "private individual" and a Frenchman. As a Frenchman, he believes that the case is a "Jewish matter," and as such has nothing to do with the French.<sup>19</sup>

In the 1930 Ukrainian pamphlet "Paris Tragedy. May 25, 1926," the author A. Iakovliv makes a similar observation. Although Paris is used to foreigners and immigrants, Iakovliv writes in his retrospective account of the trial, the Schwartzbard affair revealed that the issue at stake was alien to the jury, to the judge, and to the attorneys, unfamiliar with Ukrainian history and finding it equally difficult to relate either to Schwartzbard or to Petliura. But although the defense attorney was just as uninformed about Ukrainian history as the attorneys for the prosecution, Torrès, according to Iakovliv, had an advantage over his colleagues in that both he and his client were Jews. The intuitive rapport rooted in their shared nationality helped Torrès develop a successful defense strategy.<sup>20</sup>

Contrary to Iakovliv's speculations, however, in reality, Torrès and Schwartzbard had a difficult relationship. Despite the common bond of

Jewishness, they neither enjoyed complete understanding nor shared common goals.<sup>21</sup> While Schwartzbard saw his trial as an opportunity to remind the world about the Jewish massacres that it had chosen to ignore, Torrès had a case to win. These differing ambitions resulted in disputes about the appropriate course of action for the defense.

One of the most profound disagreements concerned Torrès's handling of the witnesses. Seven days into the trial, Torrès made a dramatic and unexpected decision to cut short the presentation of about 80 witnesses geared up by the Schwartzbard defense committee, an organization that assisted the defense with amassing evidence of Petliura's responsibility for the Jewish massacres.<sup>22</sup> Torrès believed that in the first week of the trial the jury had heard enough testimony to have recognized Petliura's responsibility and that further presentation of witnesses would be superfluous.<sup>23</sup>

And indeed, the jury did hear the hair-raising testimony of several eyewitnesses and victims of the pogroms, including the dramatic narrative of Haia Greenberg, a Red Cross nurse and a witness of the pogrom in Proskurov, and the testimony of Morris Goldstein, a famous Russian-Jewish attorney, who in the winter of 1918–19 was head of a Kiev-based committee of inquiry into the massacres. Ironically, these and some other expert witnesses, like the historian Tcherikover, were called not by the defense but by the prosecution. This allowed Torrès to claim at the end of day seven that the other side had made his case for him and that he was willing to forego the presentation of his witnesses in the interests of time. Believing that needlessly protracting the trial could be detrimental to his client's interests, Torrès moved straight to his closing argument.

The decision to curtail the hearing of the witnesses infuriated the Schwartzbard defense committee and put a profound rift between Torrès and his client. From the standpoint of the defense committee and Schwartzbard himself, Torrès's move was opportunistic and treacherous. Since they viewed the trial as a forum for exposing the atrocities perpetrated against Ukrainian Jews, to them, the silencing of the witnesses meant downplaying the violence they sought to expose to the fullest possible extent.

No matter how ostentatious and shocking, however, Torrès's decision to forego the presentation of the remaining witnesses could be seen not as a stand-alone incident but as a manifestation of his overall approach. Although not an end in itself, a careful calibration of the magnitude of Schwartzbard's act and, by implication, of the violence that it meant to avenge, was an inevitable result

of the broader strategies he adopted. Directed at overcoming the defender's otherness, these strategies ranged from presenting the case in terms of deliberate universalism and portraying Schwartzbard as an Everyman and an avenger of his family, to reconfiguring his identity as a Frenchman and painting him as a fighter for universal human rights and justice.

And yet Schwartzbard's transformation into an Everyman and a Frenchman was not sufficient for securing an acquittal. As Sumskaa's interview with the gendarme further reveals, unsupported by other strategies, it could, in fact, amplify the possibility of conviction. Thus, in addition to noting Schwartzbard's otherness, the gendarme also articulates the following distinction. Whereas in the Ukraine, Schwartzbard, as a Jew, would have been justified in killing Petliura, in France, as a Frenchman, he is not, or at least not completely. "As a Frenchman, you see, he does not have the right to kill in Paris. This is a Jewish matter that does not concern us, the French. And here, in Paris, it should be more important for Schwartzbard that he is a Frenchman than that he is a Jew," the gendarme says.<sup>24</sup> When asked how he would decide if he had served on Schwartzbard's jury, the gendarme answers as follows. If Schwartzbard were a Jew, he would have acquitted him, but as a Frenchman Schwartzbard needs to be judged but given the lightest possible punishment.<sup>25</sup>

The gendarme's remarks, spoken at the very end of the trial, reveal both the success of Torrès's strategies and the challenges he faced. On the one hand, in viewing Schwartzbard as a Frenchman, the gendarme confirms that toward the end of the trial Torrès has succeeded in recasting his client's identity as an Eastern Jew. I will return to this point in the next section to discuss how he went about this task. On the other hand, the gendarme's observation that it is precisely as a Frenchman that Schwartzbard deserves to be punished speaks to yet another challenge facing Torrès. What the gendarme's comment displays is an anxiety to keep acts of extra-legal justice, such as Petliura's assassination, beyond the borders of France. To him, as probably to many French people in and outside the courtroom, France appears as the land where not only are crimes like pogroms unthinkable, but where the rule of law ensures that private revenge does not need to stand in place of legal punishment. In France, to achieve justice, one does not need to take the law in one's hands because it is a land where law and justice coincide.

Furthermore, encoded in the gendarme's comments is an attitude that conforms to the positivistic understanding of law as an expression of contingencies of social relations rather than of universal moral values. Like Cesare Beccaria, an eighteenth-century utilitarian theoretician of punishment, the gendarme implicitly takes issue with those who think "that an act of cruelty committed, for example, in Constantinople, may be punished at Paris; for this abstracted reason that he who offends humanity, should have enemies in all mankind, and be the subject of universal execration."<sup>26</sup> It appears that just like Beccaria, the gendarme sees judges not as "the knights errant of human nature in general," but rather as the "guardians of particular conventions between men," and the process of judgment as dependent on the context in which it occurs.<sup>27</sup> While in Poland or the Ukraine, Schwartzbard's act would have been justifiable, for in killing Petliura Schwartzbard would have functioned in place of the missing just law that should have condemned Petliura to death for his role in the massacres, in Paris his assassination signifies something else. No longer does it mean justice for the pogroms but it is itself an infraction of the law. The gendarme's diverging interpretations of the same act in different contexts point to his doubt about the notions of universal justice and universal jurisdiction even over such crimes as pogroms.<sup>28</sup>

Torrès's defense demonstrates that he was aware of these sentiments and that he saw them as broadly matching the jury's. In addition to transforming Schwartzbard into a Frenchman, he faced yet another task. He had to safeguard the idea of France as a place where justice and law converge. To meet this challenge, Torrès, in contrast to the gendarme, conceives justice in intentionally universal terms. But while in Torrès's argument, justice does cut across state lines (just as it does across social divisions, religious differences and political disagreements), it nevertheless appears as a quintessentially French cause, a responsibility bequeathed on the French by the legacy of their revolution.

In arguing for Schwartzbard's acquittal, such representation allowed Torrès to entice the jury with a twofold opportunity. On the one hand, as a retroactive validation of Petliura's assassination, the acquittal symbolically formalized it as an act of justice and thus held the promise of reconstituting France as a land where justice coincides with the law. On the other, as a declaration of the nation's commitment to the idea of universal justice, an acquittal represented an opportunity for the French to reassert their national identity.

## SCHWARTZBARD: EVERYMAN AND FRENCHMAN

To overcome the alienating aura of difference that attaches to his client, Torrès both universalizes his experience and portrays him as a Frenchman. Even an allegation of Schwartzbard's anarchism becomes in Torrès's hands an occasion for highlighting the conventionality of his biography. His client's anarchism, Torrès insists, was purely theoretical and never translated into any political, let alone terrorist, action. It was anarchism of a Tolstoyan, idealist type. Echoing the attorney Fetiukovitch in Dostoevsky's *The Brothers Karamazov* who, when defending a client accused of patricide, scandalously asks the jury if *they* would not kill *their* father under the same circumstances, Torrès, too, calls on the jury to admit that they haven't been strangers to anarchistic impulses. And who wasn't more or less an anarchist when he was twenty, Torrès asks the jury.

But Schwartzbard is not your average Everyman. He is also a Frenchman. In recounting Schwartzbard's biography as part of his closing argument, Torrès repeatedly emphasizes his assimilation. Schwartzbard is a French citizen, who fought to defend France and its ideals next to the French soldiers in World War I. This is the only nation he knows, the only nation he serves, and the only nation he has fought for.<sup>29</sup> Among the first to enlist when the war broke out, he volunteered for the infantry, initially serving in the Foreign Legion and later on in a regular French unit. It is in infantry regiment No. 363 under the command of captain Rousset that the "little Russian Jew" becomes fully assimilated to the spirit of France. The transformation happens "through a more direct contact with French dignity" (*une accession plus direct à la dignité française*), through a more intimate participation in the life of our army.<sup>30</sup> No longer does he fight beside his "Jewish brothers of the past" but beside his "French brothers of today." He is wounded in combat, and he becomes "equal to them in valor and sacrifice."<sup>31</sup>

Torrès's rhetoric implies that by joining a French unit and by shedding his blood for France, Schwartzbard both rises above and leaves behind his now obsolete Jewishness. He also overcomes the proverbial Jewish passivity. No longer a wretched Jew crammed (*blottie*) into a ghetto waiting for a mystic deliverance and never opposing an armed attack with an armed resistance, Schwartzbard has been reborn, as it were, in the French likeness.<sup>32</sup> "Once one becomes a French citizen, like Schwartzbard, once one rubs shoulders with the lively freedom of the Paris crowd (*a coudoyé la*

liberté vivante de la foule parisienne), once one has clenched a hot rifle in the trenches as a French soldier, I say a new spirit, quivering (*frémissante*) and ardent, is awakened, and one strikes to achieve justice," Torrès declares.<sup>33</sup>

But to ensure acquittal, Torrès needs more than the jury's patronizing sympathy for his client, whom he has transformed from "a little Russian Jew" into a just as little Jewish Frenchman. He needs the jury to know that at stake is not just his client's fate but also their own national identity. As he urges the jury to enter his client's humanity and to look past the seeming differences that come between them, Torrès appeals, as it were, to the sense of universal justice that Petliura's crimes so horribly outraged. He claims that he is sure of the jury's verdict without even inquiring whether they are leftists or rightists, reactionaries or socialists, radicals or moderate republicans, readers of right press or left press.<sup>34</sup> He is sure because, regardless of all differences, the French have always come together in condemning the pogroms. Torrès reminds the jury of numerous occasions when people of such diverse convictions as Anatole France, a staunch supporter of Dreyfus and a communist sympathizer, and Albert de Mun, a prominent Catholic conservative, would unanimously denounce anti-Jewish pogroms.<sup>35</sup> Reminding the jury of the legacy of the French revolution which extended civil rights to Jews, Torrès casts the trial as a test of their commitment to the revolution's ideals and appeals to the "instinct of the French people," which "always accords with liberty, justice, courage and dignity of man, all men and therefore of Jews."<sup>36</sup>

This instinct, moreover, is not unique to the French. "[A]rdent, vigorous and incoercible like the blood in the veins of man," it apparently has a universal quality.<sup>37</sup> And this is fitting, for in Torrès' speech, the French revolution, whose ideals demand that Schwartzbard be acquitted, figures as the progenitor of all people and all nations. "[N]o living man," Torrès declares, "can't but say that he is more or less her son."<sup>38</sup> Although at the forefront of human civilization, the French, as portrayed by Torrès, are not an exclusive race of people, but representatives of all humanity. Not only do they appear to express the best in human nature, they also seem to express human nature the best. That is why in following their instinct and acquitting Schwartzbard, the jury would express, as it were, not their own personal sentiment, and not even the sentiment of their nation, but the sentiment of the entire humanity on whose behalf they will speak.

Torrès's argument resonates with the argument of the actor Firmin Gémier, who in a letter written to Torrès during the trial, stated that in killing

Petliura, Schwartzbard had been driven by the same feeling as he was when he defended France in WWI. Both times he acted “in the name of Justice, Law and Humanity” and was guided by the same “altruistic and magnanimous inspiration.”<sup>39</sup> Therefore, Gémier insists, the jury has only two options—either to condemn Petliura’s assassination as a crime and thus condemn as a crime the defense of France from the invaders, or to consider both as an act of heroism carried out “in the service of Humanity.”<sup>40</sup> Channeling this sentiment into the closing argument, Torrès urges the jury to recognize Schwartzbard as the defender of the ideals of liberty, justice, and dignity that are so dear to the French and to which, in the eyes of the French, people of all nations have equal rights. Schwartzbard has already proved how seriously he holds these ideals; now it is the jury’s turn to prove the same.

### SCHWARTZBARD’S REVENGE

But what or whom did Schwartzbard avenge? Schwartzbard himself believed that he avenged the Jewish people. In the express letter he sent his wife on the day of the assassination, he revealed his intention to kill Petliura and his wish that his father’s tombstone be inscribed with the following words: “Isaac, the son of Moïse Schwartzbard! Rest in peace, a great Jewish spirit! Your son Sholom has avenged the sacred and innocent blood of his Jewish brothers and the suffering of the entire people of Israel.”<sup>41</sup>

Torrès’s position, however, was more complicated. On the one hand, in responding to the accusations of political conspiracy that painted Schwartzbard as a Bolshevik agent and a member of a terrorist group, Torrès argued that the case had nothing to do with politics. Three days into the trial, the *New York Times* reported him as saying, “My client avenged his race, in which there are persons of many political beliefs. This is not a political crime.”<sup>42</sup> Towards the end of the proceedings, however, Torrès readjusted his strategy. “There is no ‘people’ in the sense of the word ‘nation’ for Schwartzbard to avenge (“pas de ‘people’ au sens national du mot à venger pour Schwartzbard...”),” he declared in the closing argument, but only “the unfortunate whose suffering he witnessed, the unfortunate one finds in his own family, gentlemen of the Jury. Two of his brothers-in-law, his uncle, his father’s wife and twelve of her cousins were murdered in the pogroms of Balta, Krivoe Ozero, Ovrouch, among

others...”<sup>43</sup> Schwartzbard could not have avenged his people for the same reason that he could not be a “national” hero: “because,” Torrès explains, “not for Schwartzbard, nor for me, nor for others, there is such a thing as Jewish ‘nationality.’”<sup>44</sup>

The logic of Torrès’s defense indicates that he felt more optimistic about securing an acquittal for his client as an Everyman who has avenged the deaths of his relatives or as a Frenchman who stood up for universal justice than as a Jew who had punished the perpetrator of mass violence against his people. From the standpoint of justice *to the dead*, however, both representations have important pitfalls. What Torrès’s defense highlights is precisely the problems that attach to the use of universalizing rhetoric in the discourse of justice. If the only justice available to *the dead* is purely symbolic in nature and if it consists, at least in part, in putting the wrongs committed against them in a proper historical and political perspective, Torrès did little to secure it. As we will see in the next section, the same rhetorical strategies that helped Torrès to overcome the alienating sense of otherness that clung to his client and to his client’s cause were also responsible for erasing the particular nature both of his act and of the suffering that he had avenged. The fact that such universalizing may have perilous implications is further underscored by the unsettling resemblance between some elements of Torrès’s defense and the arguments of the opposing side.

## RHETORIC OF THE UNIVERSAL AND JUSTICE TO THE PARTICULAR

Torrès’s presentation of his client as a Frenchman fighting for justice conceived in broad universal terms led inescapably to the downplaying of Schwartzbard’s own Jewishness and the Jewishness of the victims he claimed to avenge. Folded in the universalizing rhetoric of humanity modeled after French likeness, Schwartzbard ceases to be a Jew. In fact, in Torrès’s discourse, the very participation in the project of universal justice has an alchemical effect of erasing the Other’s otherness. It is precisely Schwartzbard’s fight for justice—whether as a soldier in World War I or as Petliura’s assassin—that constitutes the best evidence of his Frenchness. As an agent of justice, he is called upon to overcome his Jewishness, and in carrying it out he proves that he has done so successfully.

But it is not just Schwartzbard's own Jewishness that gets subsumed under the universalizing discourse of the defense. In presenting Schwartzbard as an Everyman avenging the deaths of his relatives, Torrès both localizes the political import of his act and glosses over the distinct nature of the violence Schwartzbard sought to expose. Indeed, if there is no such thing as Jewish nationality, as we have earlier seen Torrès claim, then hardly any crimes can be committed against *the Jews*. Viewed this way, the Schwartzbard case anticipates and dramatizes the dual orientation of the concept of crimes against humanity as it was conceived and applied in the Nuremberg trials. In the words of Guyora Binder,

A crime against humanity harms a victim because of her unique origins or beliefs; yet the interest harmed is always the victim's universality, her 'humanity'. According to the Nuremberg formula, when a Jew is killed because of her Jewishness, it is not her Jewishness that is attacked. To the contrary, it is this excessive attention to her Jewishness that dehumanizes her. In short, to view her as nothing more than a Jew is to see her as less than human.<sup>45</sup>

But while it could be that seeing victims on the aggressor's terms—in this case as just Jews—means to replicate their dehumanization, not seeing them as Jews presents another danger. If justice is to include the responsibility of addressing a concrete wrong, losing sight of that wrong's specificity behind such universalizing categories as human rights and crimes against humanity may imperil the work of justice.

In "Force of Law," a 1989 lecture in which Jacques Derrida famously—and controversially—equated justice with deconstruction, he argued that justice can only be experienced as a possibility of the impossible.<sup>46</sup> Because all of its articulations inescapably contain in themselves residues of injustice, justice is never fully achievable in the present and can only exist as an idea.<sup>47</sup> Suspended between the pole of calculative, conceptual, formalizable knowledge encoded in law and the pole of non-formalizable, situational, unique ethical response, justice is doomed to an aporetic existence.<sup>48</sup> According to Derrida, the reason for the permanent deferral of justice lies in its obligation to be both universal and specific at once.

Reflecting on Derrida's discussion of justice in "Force of Law" and elsewhere, the legal scholar Mariana Valverde extends it to argue that like justice, injustice is also "always historically specific." For this reason, she believes, it is "unjust for philosophers to leave historical details to political

activists and human rights lawyers.”<sup>49</sup> The idea Valverde brings to the fore concerns the relationship between justice and history. She seems to suggest that the responsibility before the past and the future, without which justice is impossible, demands attention to the historical specificity of injustice it seeks to address. As it demonstrates the ease with which universalizing rhetoric can be co-opted in writing histories that fail that responsibility, Torrès’s defense illustrates Valverde’s point. Indeed, if injustice is always historically specific, the memory instituted by Torrès’s defense is at best unhelpful and at worst antithetical to the work of justice. One could argue, for instance, that as he draws on universalizing rhetoric to dissolve the particularity of injustice perpetrated against Ukrainian Jews, he creates an account of history that neglects its responsibility both to the past and (all the more poignantly on the brink of the Holocaust) to the future, and thus fails justice itself. As we will see in the next section, this account both rhetorically replicates the past injustice and mirrors the arguments of those who seek to erase the memory of it.

## TORRÉS AND PETLIURA’S SUPPORTERS

The problems of Torrès’s universalizing rhetoric are highlighted by an uneasy resemblance that his arguments bear to the arguments of the prosecution. Just like Torrès, the prosecution and Schwartzbard’s detractors more broadly resisted the idea that at the heart of the Schwartzbard affair lay a specifically Jewish issue. But while Torrès sought to limit the number of the avenged to the members of Schwartzbard’s family, the opposing side was looking to broaden the pool of victims by including in it the Ukrainian people and even other nationalities of the Russian Empire. They presented the 1918–19 pogroms not as mass violence directed against the Jews, but as the fallout of the Revolution that affected Jews and non-Jews alike.

One of the most influential voices articulating this position belonged to the prosecution’s leading witness—the historian and the former Minister of Foreign Affairs of the Ukrainian Republic, Oleksander Shulgin. Both in his writings and trial testimony, Shulgin argued that from a historical point of view, the calamities called Jewish pogroms were but a particular case of much bigger misfortunes—such as, for instance, the recent famine caused by the Bolsheviks and the persecutions of Ukrainian patriots by the Cheka.<sup>50</sup> In the article entitled “Criminality or Naiveté” published in the Ukrainian periodical

*Trižub* during the week of the trial, Shulgin wrote that not just tens of thousands Jews died during the years of the Revolution and the Civil War but “hundreds of thousands Ukrainians, Russians, Poles, Georgians and all those who had the misfortune of being born” in the vast territories of the Russian Empire.<sup>51</sup> In his trial testimony, Shulgin emphasized that the matter at hand was not Jewish pogroms, but the pogrom of the entire Ukraine by the Bolsheviks.<sup>52</sup> Petliura’s assassination, he hoped, would show the world that the entire Ukraine was a victim of the pogroms and reveal the truth about the great suffering of the Ukrainian people.<sup>53</sup>

Although the universalizing categories employed by Shulgin and Torrès differ significantly, they contribute to creating arguments that are oddly analogous. Whereas Shulgin subsumes Jewish suffering under a much broader category of Revolutionary and Civil war violence in order to render moot the question of responsibility, Torrès urges the jury to allot (symbolic) responsibility for that suffering, but not without similarly universalizing it first. In so denying the specific nature of Jewish suffering, both Shulgin and Torrès create accounts of the past that are highly problematic. While Shulgin distorts the past by denying the existence of anti-Semitism, Torrès replicates it by rhetorically obliterating the Jewish people: “not for Schwartzbard, nor for me, nor for others, there is such a thing as Jewish ‘nationality.’”

The Schwartzbard trial highlights the importance of how “justice’s saying” is said, to use James Hatley’s language.<sup>54</sup> Among other things, it calls attention to the problems that attach to the use of universalizing rhetoric to represent the experience of a victimized group. “We must learn,” Hatley writes, “to attend to the very words in which we speak our judgments, since these words and their tones become the building blocks for the construction of our own identities, of our own responsibility for all else that exists.”<sup>55</sup>

Hatley’s insight is particularly appropriate for the Schwartzbard case. Fully realizing the power of the rhetoric of justice as a unifying force, Torrès appeals to the jury’s sense of national identity and pride. He urges them to reassert their Frenchness and their commitment to the ideal of universal justice by returning the verdict of acquittal. In the process, however, he not only erases Schwartzbard’s Jewishness and refuses to recognize the existence of the Jewish people. He also instrumentalizes the dead in the project of reasserting the French national identity. The universal human being to whom justice is due and by whom justice is served is firmly modeled, in Torrès’s discourse, after French likeness.

In addition to highlighting the pitfalls of universalizing in the matters of justice, however, Torrès's defense also poses questions of a different order. It raises the possibility that the problem lies not with the idea of universalism but with the fact that the rhetoric that articulates it may never be sufficiently universal.<sup>56</sup> In the hands of embodied human beings, this rhetoric may never become fully emancipated from discourses of national or other forms of collective identity, thus running very real risks of resulting in what one might be tempted to call bigoted egalitarianism.

### "AMONG REFUGEES"

Questions of memory and justice are also crucial to Dovid Bergelson's short story "Among Refugees" ("Tsvishn emigrantn").<sup>57</sup> Written in Berlin two years before the Schwartzbard affair, during Bergelson's voluntary exile following the Bolshevik revolution, "Among Refugees" profiles a Schwartzbard-like character and depicts the events leading to a similar assassination. While in a typical modernist fashion the story refrains from commenting on the motivations of its protagonists, creating an atmosphere of irresolution, anxiety, and ambivalence, it offers a strikingly complex context in which to consider the idea of justice and its intelligibility. In contrast to Torrès's defense, Bergelson avoids universalizing the assassin's experience or his cause, emphasizing instead their specificity and singularity. Everything about the story's main character, from his unattractive appearance, to unhappy and lonely childhood, to present alienation, sets him apart from the other people around him. An eternal outsider, he is driven to action by his longing to be noticed by the indifferent world oblivious to his existence. The last act he contemplates—the murder of a notorious pogromist—is no exception. A permutation of his lifelong desire to commit an act of spite, the projected assassination arises from the feelings of resentment and exclusion that are all too personal to be recognized as justice.

The story's protagonist is a self-proclaimed "Jewish terrorist," a young refugee from the Volhynia area, who remains nameless and who visits the narrator, a writer and a Bergelson-like figure, in Berlin.<sup>58</sup> The young man requests the narrator's assistance in obtaining a gun. He is preparing to kill a notorious pogromist who is described as worse than the founder of the Black Hundreds or the chief instigator of the Kishinev pogrom, one of the bloodiest

in Russian pre-revolutionary history. The pogromist, who, as we learn later, is responsible for the death of the young man's grandfather, is now in Berlin, rooming in the same lodging house: the young man in room number three, the pogromist in room number five. The two men wipe their feet on the same doormat, put their shoes out for polishing in the same hallway, run into each other in the corridor. The pogromist does not recognize his neighbor, but the young man knows the pogromist since his childhood, "from every Jewish trouble, from a lot of different troubles."<sup>59</sup>

While most of the story is taken up by the young man's own account of his life leading to the assassination, it is framed, and sometimes interrupted, by the narrator's commentary. The visitor gives the writer "the impression of someone who had breathlessly traveled a long distance" and who "had come to [him] along twisted and confused roads."<sup>60</sup> The young man looks dusty, even though there is not a speck of dust on him, his "whole body" reminding the narrator "of the gray dust on the far roads of small towns."<sup>61</sup> But the physical feature that reflects the young man's character is his cheekbones. Representing the young man's self-division, his cheekbones are symbolic of his alienation on the one hand, and his thirst for human contact, on the other.

He had high cheekbones, which were uneven and made his cheeks look disparate. The right cheek was the same as on all faces—a cheek that wants to enjoy the world, that says: "I want to be with people."

His left cheek, however, was crooked; it looked as though it were at war with the world—it had fallen out of favor with life, and therefore life had fallen out of favor with it. The left cheek made the young man look ugly, but apparently he sided with it. He reminded me of a mother who has a beautiful child and a freak—for justice' sake he was on the side of the hideous left cheek and bore its badness within himself.<sup>62</sup>

Strongly reminiscent of Dostoevsky's *Underground Man*, the young man appears torn between his desire for love and appreciation and his spiteful and resentful impulses. His own embedded narrative bears out the narrator's insights. It follows right upon the young man's self-introduction, which, the narrator remarks, he does politely, as if "speaking on behalf of his right cheek." Soon, however, the young man's host becomes conscious of a change. He senses "that the difficult and terrible thing he had to tell me was

beginning.” The young man begins his life-story—and later appeals for help—“on behalf of his left cheek, the crooked one.”<sup>63</sup>

The young man’s account presents further evidence of his profound alienation and internal struggle. He grows up painfully conscious of what he perceives to be his unsightliness, which he views as a family trait. Ever since his childhood, “his face has been squashed and twisted as if it had been run over.”<sup>64</sup> He believes that he is the most unattractive of all the young men he knows and attributes his alienation from early age to his ugliness. As a young boy, he lives “apart from other children, all alone, like an orphan.”<sup>65</sup> The other boys never notice him, as if he did not exist at all.

His orphanage, however, is not merely metaphorical. He loses both parents at the age of eight, and since then is raised by his grandfather. The house they live in is empty and desolate, for all of his grandfather’s children have died for reasons that remain unnamed in the story. In the memory of every child, the old man sets up or hangs a clock. Gradually, the clocks fill all rooms of the house. Each of them, the young man comments, “is a grave, a memorial candle.”<sup>66</sup> Every morning, at dawn, the grandfather winds them all, “like a mother who starts the day by feeding her children.”<sup>67</sup> The old man’s very face looks like a clock—“the nose is the hand, the eyes are two numbers.”<sup>68</sup> When the clocks strike, the grandfather echoes their chiming with a humming noise that resembles a cat snoring. Like everyone in the family, including the young man himself, he cannot carry a tune.

This big and deserted house represents an analogy to the young man’s left cheek. Just like that cheek, it shuns human contact, keeping its windows always shut, opening its doors only for those who come to pay the old man interest on their loans. Also like the left cheek, it stands face to face with a very different house, right across the street. This other house is full of life and merry-making; its windows and balconies are always open. It is inhabited by the large and happy Pinsky family. The Pinskys give banquets. They play the piano. They have many girls—the lovely Pinsky sisters who ride bicycles, have birthday parties, and invite schoolboys. Excluded from this life, the young boy observes it from his grandfather’s window, as he falls in love with the youngest of the Pinsky girls.

As he watches the life of the Pinskys, while wandering among the memorial clocks in his Grandfather’s desolate house, the young man conceives his lifelong wish. He decides to do something “for spite,” something “that no one across the way, over on that merry balcony, would do.”<sup>69</sup> And for spite, he

comments, “you can do something ugly” or you can do “something lovely—it’s all the same, so long as it’s for spite.”<sup>70</sup>

The subsequent direction of the young man’s life is determined by this drive—to do something for spite. Like Schwartzbard, he fights in the war, without trying to avoid the draft, as others did, “as though for spite,” and returns from it having temporarily expended his drive and feeling sorry for his loss. Later he goes to Palestine, as a common laborer, also “as though for spite.” Still later, when the children from wealthy families move to Palestine, he leaves for Berlin, where he tries his hand in writing. Having begun a story that, as he later realizes, encodes his own search for an act of spite, he abandons writing. It is exactly at this time that the pogromist takes lodging at the rooming house.

The arrival of the pogromist has a strangely positive effect on the young man. He feels lighter, “as though [he isn’t] alone anymore.”<sup>71</sup> He does not understand why he feels so joyous but the reader knows that with the arrival of the pogromist, the act of spite he has been desperately searching for has finally taken a distinct shape. He determines to kill the pogromist. The projected assassination gives his life purpose, filling it with a promise of doing something “that no one across the way, over on that merry balcony, would do.” The very thought of the assassination fills the young man with happiness. For the first time in his life, he notices the beauty of a summer day and feels reconciled with people.<sup>72</sup> He compares his new feeling for them to “that of a man who has to go on a long trip and is having a difficult time saying goodbye to his family: he hasn’t even managed to embrace them, as is proper, to hug them tight, as is proper, but he does have to leave.”<sup>73</sup>

With the appearance of the pogromist, the young man feels more complete, as if “some portion of [him] had arrived.”<sup>74</sup> In fact, his dependence on the newly found purpose is so powerful that when the pogromist is absent from his room, the young man is overcome with depression. He counts minutes until his return, feeling that his heart will explode if the absence is too prolonged.

At the same time, the newfound state of completeness is accompanied by a sense of destiny that, in turn, brings self-fragmentation of a different kind. The young man feels “as if someone had given [him] an assignment and had said: ‘You have to do it by such and such a time, in such and such a place.’”<sup>75</sup> He dismisses his host’s question as to when he determined to kill

the pogromist as absurd. “Does a man decide on a thing like that?”<sup>76</sup> He feels as if everything has been prepared for him in advance. All he has to do “is to accept and carry it out.”<sup>77</sup> The very idea of assassination has originated not with him but with someone else, and the pity he feels for his grandfather, perished at the hands of the pogromist, “is not really [his] either, it too belongs to someone else.”<sup>78</sup>

The division of the self articulated in these passages has little to do with an attempt to diffuse responsibility for the projected killing. The fact that the young man’s feeling of self-worth pivots on the need to carry it out does not permit such a reading. But this fragmentation can be accounted for in other terms. One could argue, for instance, that it has to do with the magnitude of his cause. Transcending his personal motives, it leaves the young man feeling like an agent of a bigger force. Like Schwartzbard, he sees himself—and wants to be seen—as the instrument of Jewish justice. Because “the thing [he is] about to do is not just [his] thing,” he demands assistance as “his due.”<sup>79</sup> To carry out his mission, he needs a gun.

The Jewish community, however, represented in the story by five community leaders and later by the writer, denies him assistance. The first meeting is set up by one Beryl Hum, a man who used to know the young terrorist’s grandfather back at home. The young man dislikes Beryl Hum but believes that as someone who is always involved in Jewish groups, the man has a responsibility to help. Beryl Hum seems to be just as bewildered by the young man’s squalid appearance as he is impressed by the force of his proposition.

“That’s incredible!” he said. “Simply... why, in Palestine, if an Arab kills a Jew, then a couple of hours later, you’ll find a dead Arab. And here, among so many Jews, all these pogromists are running around scot-free, and there’s not a single Jew around to get rid of even one pogromist. A strange people! What a strange people!”<sup>80</sup>

The following day, Beryl Hum takes the young terrorist to see five “important figures in the community.”<sup>81</sup> After some whispering and consulting among themselves, they offer the young man psychiatric treatment and a stay in a sanitarium. The young man is deeply insulted. He fails to comprehend how these men can doubt his sanity for wanting “to kill a pogromist who’s guilty of so much bloodshed.”<sup>82</sup> Neither can he understand the speed of Beryl Hum’s volte-face. From one day to the next, he goes from seemingly embracing the young man’s cause to seeing it as madness.

It is after his failure to procure a gun with the help of the five important men that the young terrorist pays a visit to the writer. "Writers," he says, "[are] the conscience of the nation. They are its nerves. They present their nation to the world. People read a writer's works because they want to learn how his nation lived in his time."<sup>83</sup>

If the young man is right about writers and their mission, the portrait of Jews that emerges from Bergelson's own story is far from sympathetic. Represented by the five important men, Jewish refugees in Berlin seem to be too fearful or too self-absorbed to think of retribution. Just like the Jews of Copenhagen, from which the pogromist safely arrives, they seem to be more "preoccupied with their own bits of life" than with hunting down the murderer.<sup>84</sup> Unafraid of retaliation, the pogromist enjoys his peace of mind and signs his name with a flourish. The thought of hiding or concealing his identity never crosses his mind. "We're like bedbugs in his eyes," the young man tells the writer. "I, you, all the victims he's massacred."<sup>85</sup>

But while the story does not side with the five important men, it also remains highly ambivalent in its presentation of the would-be assassin and the projected act. The writer is shocked to see the young man's face towards the end of their conversation.

His crooked left cheek was burning as though with a dark, steely fire. His right cheek was drowsy right up to the eye and was practically out of the running. It seemed lifeless. The burning cheek was in control with its entire crookedness. And the young man himself was no longer speaking simply. It was as though he were quarreling with me, demanding his due from me. And the thing he was demanding was minor: a gun.<sup>86</sup>

Towards the end of the story, the young man's misanthropic, antagonistic, and spiteful impulses take over, stamping out the more life-loving and genial side of his personality.

Like the five important men, the writer does not offer assistance to the young man, nor does he express his opinion about the act his visitor contemplates. The story ends with the news of the young man's suicide. In his last note, the young man explains that he has found a solution to his problem. "Behind the mirror that hangs in my room, there is a hook. The rope on which the mirror hangs is strong enough... I understand everything now: I am a refugee... among refugees... I don't want to be one anymore...."<sup>87</sup> The young man's last statement points to his feeling of

double isolation—he is an outsider among outsiders. The last proof of his alienation comes when the community on whose behalf he wants to carry out an act of justice refuses to support it. To the five important men, it appears instead as manifestation of the young man's pathology.

But it is not just the five important men who feel wary about the would-be terrorist and his plan. The reader, too, becomes implicated in a similar response, although perhaps for different reasons. She cannot but feel that, quite apart from its extra-legal nature, the justness of the young man's act is further complicated by his motives. Haunted by the young man's life story and his dream of "doing something for spite," the reader cannot easily dismiss the suspicion that the driving force behind the projected killing is not only—and perhaps not so much—a thirst for justice but also a spiteful desire, cultivated for years, to do a "thing that no one across the way, on that merry balcony, would do."

A descendant of Dostoevsky's *Underground Man*, the would-be terrorist desperately wants recognition from the world he despises. Sitting on a park bench, he daydreams about the aftermath of his act. Central to his fantasies is the image of the Pinsky family. "They'll find out later, as soon as I've done the thing. They'll learn about it at dusk, from evening prayers. It will be cloudy out. It will be raining. Or else the sky may be clear, the sun may be setting."<sup>88</sup> Regardless of the weather, however, one thing is indisputable. After he carries out the act, his life will change. "No matter: every future moment of my life seems strange, every moment that will come later, after I do the thing."<sup>89</sup> The young man sits on the bench for days, nurturing his dream, feeling at such times that he cares nothing "about this whole foreign cauldron of yours with its hubbub and with all the people scurrying around in it and filling it up." He cares nothing "about them even if she is here—Pinsky's daughter—one of the people for whom [he is] going to do the thing."<sup>90</sup>

By so strongly highlighting the personal dimension of the terrorist's motivation, "Among Refugees" makes it difficult to see his act as one of justice. And yet, with the death of the young man, the memorial candles whose flickering the writer perceives in his visitor's gaze, become forever extinguished. In the world of the story, there is hardly anybody who is likely to take up the young terrorist's cause. The pogromist's crimes will remain unpunished, for the Jews of Berlin will continue to be preoccupied with their own "bits of life," forgetful of their dead. The young man's suicide means the

end of the grandfather's line, the line of those who guard memorial candles and keep the clocks running.

## CONCLUSION

While in Bergelson's story the image of the running clock symbolizes remembrance, encoding time as an eternal reminder of one's duty to the dead, in the context of the Schwartzbard trial the symbolic work of the clock is conceived differently. In *The Will of Russia* feature, S. Sumskaa reports that on the first day of the proceedings, the bronze clock at the Paris Palace of Justice spontaneously stopped, providing the commentator with an appropriate metaphor. In Sumskaa's view, the image of the stopped clock suits the trial perfectly, for both the defendant (incidentally a watchmaker himself) and the Ukrainian witnesses continue to harbor all the sentiments of 1919. "As if eight years had not passed, and what years," he exclaims in bewilderment, "and as if there had not been exile, as if everything remains as before!"<sup>91</sup> For Sumskaa, the image of the stopped clock reflects the parties' inability to put the past behind them, while the opposing image of the running clock symbolizes not remembering the dead, as it does in the story, but rather forgetting. "The entire trial of Schwartzbard, with its questions, witnesses and tragedies," Sumskaa concludes, "must remain in the past. All efforts must go into that, and if the trial teaches us this lesson, then perhaps it was not entirely useless," he adds somewhat incongruously.<sup>92</sup>

Sumskaa's attitude towards the past seems to resemble the attitude of the five important men in Bergelson's story. Just as Sumskaa, they are shocked at the young man's desire to stir it. But while the reader is put off by the timidity and self-absorption of the community leaders, she also hesitates to give her sympathy to the young man. Instead, she is invited to ponder whether an act of resentment, arising from the deeply personal feelings of isolation and inferiority, can at the same time be an act of justice—carried out on behalf and in the name of a community that it means to avenge. Or to use the young man's language, whether something ugly can be at the same time something lovely.<sup>93</sup>

In addition to the more familiar questions about correct ways of dealing with the past and responding to past injustices, the Schwartzbard trial and Bergelson's story invite one to contemplate yet another issue. When considered side by side, they draw attention to the precarious existence of

justice between the poles of the universal and the particular. While Torrès, in effect, subverts his client's project of finding justice for the dead through memory by portraying him as a representative of all humanity, Bergelson treats his character so much as an individual and so little as a representative human (or even a representative Jew) that seeing his planned act as justice on behalf of the massacred Jews becomes equally impossible. In the end, the dead are either misappropriated, as in the trial, or forgotten, as in the story.

The ways in which Torrès fails to articulate justice for the dead and Bergelson refrains from doing so invite one to contemplate the impact that an emphasis on the universal (exemplified in law) and a focus on the particular (more typical of literature) may have on discourse of justice. In contrast to Arendt, who believes that justice for the Holocaust victims can be articulated only in the language of universals, and to Felman, who argues that it can be achieved only when that language is interrupted—and intercrossed—by survivors' personal narratives, I have suggested that justice for the victims of mass violence is threatened by both discourses. Whereas Torrès's closing argument points to the ways in which universalizing categories may render justice problematic by erasing the specificity of injustice, Bergelson's story shows that a heightened attention to particularity can pose a comparable danger. It demonstrates how an emphasis on singularity—often seen as a feature of literary imagination and praised as an antithesis to dehumanizing and abstraction-dealing universalities of law—can, in fact, dissolve justice in the particulars of unique stories so absolutely as to render it too personal or too banal to be intelligible as justice.

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1. The research for this article was supported by the Keene State College Professional Development Grant. I am very grateful to Bill Doreski, Harriet Murav, Irina Parkanian, Bruce Rosenstock, and Leo Zaibert for reading and commenting on earlier drafts of this paper. I would also like to thank Mark Antaki and Paul Vincent for directing me to some of the readings. This research would not have been possible without the bibliographical expertise of Linda Madden of ILL at Keene State College, Helen Sullivan of Slavic Reference Service at the University of Illinois, Urbana-Champaign, Svetlana Mangutova at the National Library of Russia, and the staff of the YIVO Institute for Jewish Research and of the Jewish and Slavic divisions of New York Public Library, particularly Lyudmila Shpilevaya (NYPL) and Fruma Mohrer (YIVO).
  2. Jacques Derrida, "Force of Law: The Mystical Foundation of Authority," *Deconstruction and the Possibility of Justice*, Drucilla Cornell, Michel Rosenfeld, David Gray Carlson, eds. (New York: Routledge, 1992).

3. This discussion draws on Saul S. Friedman, *Pogromchik: The Assassination of Simon Petliura* (New York: Hart Publishing, 1976), which remains the most detailed, although polemic, account of the Schwartzbard trial to date. While the literature on Jewish-Ukrainian relations before and after the Revolution and the Civil War is quite extensive, the current scholarship pertaining to the Schwartzbard case is very limited. For more recent discussions in English, see Howard M. Sachar, *Dreamland* (New York: Knopf, 2002), 3–5, 14–19, and Henry Abramson, *A Prayer for the Government: Ukrainians and Jews in Revolutionary Times, 1917–1920* (Cambridge: Harvard University Press, 1999), 168–178.
4. The highest estimated number of victims that I have come across appears in Sachar, who writes that “a slaughter annihilated possibly 150,000 additional Jewish lives and orphaned at least as many children.” See Sachar, *supra* note 2 at 18.
5. In the recent novel *Les Vengeurs: Un même geste désespéré* (Paris: Fayard, 2004), Jean Nainchrik has Schwartzbard and Grynspan meet.
6. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: The Viking Press, 1963), 243. Given Arendt’s objections to the Eichmann trial, her more positive assessment of the Schwartzbard affair is puzzling. Even to a layperson, the disregard for the law (generously compensated by the participants’ passion for oratory and theatricality) displayed in the course of the Schwartzbard trial is obvious and striking. One could argue, in fact, that the ostentatious and deliberate way in which it focused on the pogroms and Petliura’s alleged responsibility for them had magnified what Arendt saw as the main problem of the Eichmann trial—its lack of attention to the criminal.
7. *Id.*, at 244.
8. *Id.*, at 244.
9. *Id.*, at 245.
10. The debate over Petliura’s culpability over pogroms continues to this date. A useful and balanced overview of the scholarship on the question can be found in Abramson, *supra* note 2 at 175–178.
11. For a valuable explication of theory and practice of the kind of criticism that views law as culture, see Guyora Binder and Robert Weisberg, “Cultural Criticism of Law,” *Literary Criticisms of Law* (Princeton: Princeton University Press, 2000), Chapter 6.
12. Henry Torrès, *Le procès des pogromes; plaidoirie, suivie des témoignages des Mmes la comtesse de Noailles et Séverine, MM. A. Aulard, Pierre Bonardi...[e.a.]* (Paris: Les Éditions de France, 1928), 38. Unless otherwise indicated, all translations from French, Russian and Ukrainian are mine.
13. By “justice to the dead,” I mean purely symbolic justice rather than any form of material compensation to the survivors or their descendants.
14. For a sympathetic discussion of this idea, see, for instance, Stephen Feldman, “The Politics of Postmodern Jurisprudence,” 95 *Michigan Law Review* 166–202 (October 1996). For a much more critical view, see Jack Balkin, “Transcendental Deconstruction; Transcendent Justice,” 92 *Michigan Law Review* 1131–1186 (March 1994).
15. For a critical assessment of this trend, see Binder and Weisberg, *supra* note 10 at Chapter 3. Also see David Simpson, *Situatedness, or Why We Keep Saying Where We Are Coming From* (Durham: Duke University Press, 2002), 136–145.
16. Shoshana Felman, *The Juridical Unconsciousness: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002), 152, 156.
17. *Id.*, at 145.
18. S. Sumski, *Volia Rossii* (Prague: E. Lazarev, December 11, 1927), 72–91, 79.
19. *Id.*, at 80.
20. Andrii Iakovliv, *Pariťka tragediia. 25. travnia 1926 roku* (Prague: 1930), 27.
21. Another reason why Iakovliv is probably overstating the sense of solidarity between the attorney and his client has to do with the fact that Schwartzbard was an Eastern, Yiddish-speaking Jew, likely to be looked down upon by the more acculturated European Jews like Torrès. On the relationship between Jewish identity and language, see chapter 5 in Sander Gilman, *Jewish Self-Hatred: Anti-Semitism and the*

- Hidden Language of the Jews* (Baltimore: The John Hopkins University Press, 1986). That Schwartzbard had only an imperfect command of French, which further highlighted his otherness, was noted by many commentators. See, for instance, *Dokument Sudovoi Pomilki: Protses Svartsbarda* (Paris: Natsionalistichne Vidavnistvo v Evropi, 1958), 23.
22. The committee, which included such well-known historians as Tcherikower and Schechtman, assembled documents supporting the charge of Petliura's complicity in the pogroms and published them in English and French under the titles *The Pogroms in the Ukraine under the Ukrainian Governments (1917–1920): Historical Survey with Documents and Photographs* (London, 1927) and *Les Pogromes en Ukraine sous les Gouvernements Ukrainiens (1917–1920): Aperçu historique et documents* (Paris, 1927). In response, the commemorative committee of Simon Petliura published a volume that purported to present their version of the events and to clear Petliura's name. See *Documents sur les pogromes en Ukraine et l'assassinat de Simon Petlura à Paris (1917–1921–1926)* (Paris: Comité commémoratif Simon Petlura, Librairie du Tridant, 1927).
  23. The exception was Professor Paul Langevin, and one other witness, who testified for the defense.
  24. See Iakovliv, *supra* note 19 at 80.
  25. *Id.*, at 80.
  26. Cesare Becarria, *An Essay on Crimes and Punishments*, trans. (Boston: Branden Publishing, 1983), 65.
  27. *Id.*, at 65.
  28. Incidentally, in so predicating the valuation of Schwartzbard act on the twin considerations of place and national identity, the gendarme seems to point to one of the problematic aspects of crimes against humanity, namely, the question of their jurisdiction. As Antonio Cassese points out, a power or even an obligation of national court to bring to justice perpetrators of crimes against humanity under the principle of universality of jurisdiction poses both theoretical and practical problems. Cassese notes that this power is not contested when there exist links based on territoriality (crimes committed on the territory of the prosecuting state) or on nationality (the perpetrator or the victim has the nationality of the prosecuting state), but the question arises "when such links are lacking and the universality principle is invoked." Cassese goes on to say that "the only case where a person has been tried for crimes against humanity in a state with which he had no links is *Eichmann*" (446). See "Crimes Against Humanity: Comments on Some Problematical Aspects," in *The International Legal System in Quest of Equity and Universality* (Boston: Martinus Nijhoff Publishers, 2001), 429–447.
  29. See Torrès, *supra* note 11 at 12.
  30. *Id.*, at 21.
  31. *Id.*, at 22.
  32. *Id.*, at 24.
  33. *Id.*, at 26.
  34. *Id.*, at 6.
  35. *Id.*, at 8.
  36. *Id.*, at 48.
  37. *Id.*
  38. *Id.*
  39. *Id.*, at 72.
  40. *Id.*, at 72–73.
  41. *Id.*, at 52.
  42. *The New York Times*, October 20, 1927, at 11.
  43. See Torrès, *supra* note 11 at 38.
  44. *Id.*, at 12.
  45. Guyora Binder, "Representing Nazism: Advocacy and Identity at the Trial of Klaus Barbie," 98 *Yale Law Journal* 1348 (1989).
  46. See Derrida, *supra* note 1 at 27.

47. While Derrida is reluctant to assimilate his "idea of justice" to any of the existing versions of transcendent or regulative ideas that claim to themselves "absolute privilege and absolute singularity," some of his readers remain skeptical. *Id.*, at 25. Douglas Litowitz, for instance, argues that Derrida's conception of justice borrows heavily from Plato and Kant and is thus vitiated by a similar metaphysics of presence that he critiques in their philosophy and attempts to overcome in his own. See "Derrida on Law and Justice: Borrowing (Illicitly?) From Plato and Kant," *Canadian Journal of Law and Jurisprudence* 325–346 (July 1995). Also see Balkin, *supra* note 13 at 1138. Simon Chesterman defends Derrida's position by making a distinction between the notion of justice as "a regulative idea in itself" and the notion of justice as occupying "the space of a transcendence." See "Beyond Fusion Fallacy: The Transformation of Equity and Derrida's 'The Force of Law,'" 24 *Journal of Law and Society* 350–376, 362 (September 1997).
48. For Derrida's discussion of three examples of this aporia, see Derrida, *supra* note 1 at 22–29.
49. Mariana Valverde, "Derrida's Justice and Foucault's Freedom: Ethics, History, and Social Movements," 24 *Law and Social Inquiry* 655–676, 660 (Summer 1999).
50. Aleksandre Choulguine, *L'Ukraine et le cauchemar rouge: les massacres en Ukraine* (Paris: J. Tallandier, 1927), 52–55.
51. Oleksander Shulgin, "Zlochinnist' chi Naïvnost," *Trizub*, October 21, 1927, 1. Another indirect participant of the trial (his deposition was read to support the accusation of Schwartzbard's involvement in political conspiracy) who questioned the use of the term pogrom in reference to post-revolutionary violence was I.G. Dobkovski, the former Vice Commissar of Jewish Affairs in Moscow. In "Ubiistvo Petliury i provokatsiia na evreiskoi ulitse. Golos evreia," (Paris: 1927), 9, he wrote that in wartime even an attack against Jews as Jews can hardly be called a pogrom because at work are "entirely different instincts and mores (nrvy)." "
52. *Prosess Schwartzbarda v Parižskom sude* (Leningrad: Krasnaia Gazeta, 1928), 28.
53. Shulgin expresses similar sentiments in Choulguine, *supra* note 48 at 55.
54. James Hatley, "Nameless Memory: Levinas, Witness, and Politics," *Justice and the Politics of Memory*, Series: *Religion and Public Life*, vol. 33 (New Brunswick: Transaction Publishers, 2003), 45.
55. *Id.*, at 46.
56. In this regard, Schwartzbard's own discourse, which blends messianic rhetoric with the rhetoric of universality, mirrors Torrès's. According to Schwartzbard, the Jewish claim to exclusivity is inseparable from the Jews' role as the liberators of humanity. In the letter to his relatives from June 6, 1926, he wrote, "We are the ones who have given the world a God, the Bible, the morality. We carry in ourselves the great mission of freedom, of universal emancipation. We are people of sacred martyrs, a people that wants to free the world from slavery and decadence. We must begin to free ourselves and liberate others afterward." Quoted in Friedman, *supra* note 2 at 86.
57. The story originally appeared in Dovid Bergelson, *Collected Works*, vol. 5 (B. Kletskin: Vilnius, 1930). For a recent discussion of Bergelson's years in Berlin, see Gennady Estraiikh, *In Harness: Yiddish Writers' Romance with Communism* (Syracuse: Syracuse University Press, 2005), 67–70. I am very grateful to Harriet Murav for bringing this story to my attention.
58. Dovid Bergelson, *The Shadows of Berlin. The Berlin Stories of Dovid Bergelson*, trans. Joachim Neugroschel (San Francisco: City Lights Books, 2005), 22.
59. *Id.*, at 25.
60. *Id.*, at 22.
61. *Id.*, at 21–22.
62. *Id.*, at 22–23.
63. *Id.*, at 24.
64. *Id.*, at 25.
65. *Id.*, at 25.
66. *Id.*, at 27.

67. *Id.*, at 26.  
 68. *Id.*, at 27.  
 69. *Id.*, at 27.  
 70. *Id.*, at 28.  
 71. *Id.*, at 29.  
 72. *Id.*, at 31–32.  
 73. *Id.*, at 31.  
 74. *Id.*, at 29.  
 75. *Id.*, at 34.  
 76. *Id.*, at 31.  
 77. *Id.*, at 34.  
 78. *Id.*, at 31.  
 79. *Id.*, at 37–38, 43.  
 80. *Id.*, at 38.  
 81. *Id.*, at 40.  
 82. *Id.*, at 41.  
 83. *Id.*, at 42.  
 84. *Id.*, at 33.  
 85. *Id.*, at 33.  
 86. *Id.*, at 43.  
 87. *Id.*, at 85.  
 88. *Id.*, at 36.  
 89. *Id.*, at 36.  
 90. *Id.*, at 36.  
 91. See Sumskaa, *supra* note 2 at 91.  
 92. *Id.*  
 93. Some observers of the Schwartzbard trial seem to have confronted a similar dilemma. Sumskaa, for instance, has difficulty distinguishing between the loftier cause of justice and possible pettier motives that might have driven Schwartzbard. “There was something in [Schwartzbard’s] testimony,” Sumskaa writes, “that repulsed one (ottalkivalo), and something that attracted one (pokorialo)—the hideous and the almost biblical.” “Who is this man filled to the brims with hatred?” he muses. “A fanatic, capable of burning his hand on fire, or a petty shop-keeper (lavochnik), who now feels that he is on the pedestal, alien to simple human emotions and certain of his acquittal?” See Sumskaa, *supra* note 17 at 52.

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