

Canada & France: Justice for Hassan Diab and the Unbearable Banality of Evil

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Great joy and relief came with the news this January 12th that French investigative judges issued an “order of final release” for Dr. Hassan Diab from a French maximum security prison. Dr. Diab, a sociology professor and Canadian citizen, was charged with bombing the Rue Copernic Synagogue in 1980. His release follows eight previous orders for his conditional release by four French judges which were all reversed on appeal. But so far this ruling appears to be final and is hopefully a very belated vindication of Dr. Diab and for truth and justice.

Contents

- [Support for Diab](#)
- [Cherry-Picked Evidence](#)
- [French Investigative Judges](#)
- [Background](#)

Since 2007 when France sought his extradition from Canada, credible and verifiable evidence testifying to his innocence was concealed or challenged by Canadian Crown and French anti-terrorism investigators. What followed was heartrending for Diab and for his family. His ten year ordeal warrants a study of the barriers to justice.

Early January also marks the anniversary of Zola's *J'Accuse*, the eloquent denunciation of politicized racism a century ago in France when French-Jewish Alfred Dreyfus was framed for treason. Hassan Diab's case in ways parallels the Dreyfus case. Jewish Dreyfus and Muslim Diab were arrested on the basis of flawed, fraudulent handwriting analysis at a time of politicized racism and nationalism.

Support for Diab

Diab has substantial public support in Canada, and there is absence of widespread public racism calling for 'Death to Jews' or 'Death to Arabs'. Supporting Diab were his devoted wife and friends, excellent lawyers and journalists, the Canadian Association of University Teachers and several unions, Amnesty International and the Canadian Civil Liberties Association, many prominent people, and progressive Jewish organizations in Canada and in France.

A careful review of Diab's case suggests that perhaps even more relevant than Zola is Hannah Arendt's "banality of evil" within the Canadian and French judicial process. During the entire investigation, the investigators seeking extradition and charges of terrorism opposed testimonies by experts and by Diab himself, concealed evidence, and made use of secret intelligence to falsify information. Among the factors that allowed for gross wrongdoing were Canada's extradition laws, anti-terrorism measures in both countries, political opportunism that capitalized on fears of

terrorism, and foreign interference.

There is also unclarity about who legitimately makes the enforceable decisions and this is where Arendt's work is insightful. What stands out in Diab's case is the interface between the personal and political, the individual and the institution. Arendt described the banality of evil in reporting the trial of Nazi war criminal Adolf Eichmann, a man focused exclusively on his own competence within his bureaucracy, a man so incapable of human relatedness and of self-criticism that he could not absorb the fact that he facilitated millions of deaths. Evil does not necessarily have a monstrous face. Shakespeare's *Merchant of Venice* also comes to mind in the excruciating exploration of legalistic cruelty and racism; in effect the accused Jew asks "can't you see I'm a person?" whereas on a human level, it is the clever prosecutor who is pitiless and unjust.

Diab was never charged with a crime but lost ten years of his life. He spent six years under strict house arrest in Canada, lost his university job, and was in solitary confinement in France in a maximum security prison for just over three years. He was charged \$30,000/year by the government for his monitoring device and had substantial legal fees. When he was finally extradited to France in November 2014, he was treated with gratuitous cruelty. Although the law allowed up to 45 days to carry out extradition, Diab was whisked away early the next day without being able to say goodbye to his pregnant wife and toddler daughter.

Between 2007 and 2014 Diab endured innumerable hearings in Canada that required constant challenges to Canadian extradition law and to the evidence presented by France and by an undisclosed foreign country. Robert J. Currie, an expert in extradition law at Dalhousie University, writes that Diab's "deplorable situation" in France was a "direct, even logical, result of the current state of Canadian extradition law. Specifically, our law prevents individuals sought for extradition from making any meaningful challenge to a foreign state's extradition request on the basis that the requesting state does not have sufficiently reliable evidence." Canada automatically presumes that the requesting state has solid evidence and a sound judicial system. Problems with Canadian extradition law were presented on behalf of Diab by expert witnesses, but to little avail as the Supreme Court refused to hear his case and Diab was immediately extradited to France. Currie pointed out that Canadian extradition judges were in effect "rubber stamps" and that justice for defendants was "practically unattainable."

Justice Robert Maranger, the Canadian investigative judge, maintained that he had to extradite Diab even though the evidence would not stand in a Canadian court and though the handwriting evidence was "illogical," "very problematic" and that a fair trial in France was "unlikely." The Canadian decision was questionably illegal because France had not even charged Dr. Diab; he was wanted for investigation which could lead to years in a French prison.

Cherry-Picked Evidence

In one extradition hearing, Diab's lawyer Don Bayne pointed out that the assumption that foreign states could "omit, edit out, cherry-pick, or bury exonerating evidence." For example, palm and finger prints connected with the synagogue bombing did not match those of Diab but this was not disclosed by the French for two years. There was already other questionable evidence: "The Crown prosecutors admitted that there was confusion about the colour of the suspect's hair, which was variously described by witnesses as black, blond, brown, or dark with blond touches." The prosecutor responded that the inconsistencies in the French case were "simple and innocent mistakes" as the French magistrate was a "busy man."

Expert witnesses also pointed out the difference between evidence and intelligence. Intelligence is

allowable in extradition and anti-terrorism cases and does not require verifiability. Intelligence can be obtained secretly and can plausibly be connected with torture. Government investigations found that Maher Arar, Abdullah Almalki, Ahmad Abou-Elmaati, and Muayyed Nureddin were imprisoned and tortured in violation of the Canadian Charter of Rights. Canadian expert witness Wesley Wark stated that intelligence does not meet the legal standard of evidence and that “to deprive an individual of his liberty on the basis of such material would be manifestly unjust.” Stephane Bonifassi, a leading member of the Paris bar and an expert witness in French extradition cases, confirmed that intelligence is regularly used as a basis for conviction in terrorism cases in France. “French law makes no distinction between evidence and intelligence, and it is particularly difficult for a defence lawyer to challenge such intelligence.” Expert witness Kent Roach further stated that in Diab’s case, intelligence appears to come from an unidentified foreign government.

The detailed record of the case that is available on the Justice for Hassan website reports that the Canadian extradition judge refused Dr. Diab the opportunity to meaningfully challenge the evidence, claiming that he would have this opportunity in France. A Human Rights Watch report criticizes France for running unfair trials. The report states that there is a low standard of proof in terrorism cases and that French counterterrorism laws “undermine the right of those facing charges of terrorism to a fair trial.” Diab’s French lawyer stated that he “is detained because of the judges’ fear to be accused of laxity in the context of today’s fight against terrorism in France. Such a situation would be inconceivable in an ordinary law procedure.” Canadian Minister of Justice Rob Nicholson stated that he interpreted Canada’s Extradition Act in a “flexible manner” in surrendering Diab to France. Remarkably, the main evidence against Diab was finally withdrawn by France when it was proven that the handwriting samples were not even written by Diab. In the last year it was confirmed that Diab was in Lebanon writing university exams at the time of the bombing.

Though there were a number of allusions to foreign involvement, it was not until September 2017 that Israeli interference was identified. In Canada and in France, two Jewish organizations that are unquestioningly supportive of Israel and particularly vocal about Islamic terrorism have relentlessly accused Diab of terrorism. B’nai Brith and Friends of the Simon Wiesenthal Centre publicly demanded Diab’s extradition and his firing from Carleton University. Both organizations have members who have close ties with political leaders. As reported in the Israeli newspaper Ha’aretz, Wiesenthal Centre CEO Avi Benlolo called Diab “an accused terrorist mass murderer.”

On his website, Benlolo lists his connections with G.W. Bush, Bill Clinton, Shimon Peres, Tony Blair. He accompanied former Prime Minister Stephen Harper to Israel along with a member of the violent Jewish Defense League. In a startling passage from the 2017 book *The End of Europe*, published by Yale University press, the author James Kirchick appears to uncritically suggest that the Jewish Defense League was crucial in preventing a pogrom at a Parisian synagogue in 2014 which occurred during Israel’s Operation Protective Edge against Gaza. Kirchick writes that a crowd of several hundred people, chanting “death to the Jews” and wielding iron bars and axes, tried to break into the Don Isaac Abravanel synagogue in Paris. “Shimon Samuels, of the Simon Wiesenthal Center, reported seeing Socialist Party politicians in the crowd” and that one eyewitness reported that, had it not been for members of the vigilante Jewish Defense League, “the synagogue would have been destroyed, with all the people trapped inside.” Kirchick does not check the accuracy of this report. It was not widely reported, but other sources indicated that there were perhaps 100 protesters and they were not carrying iron bars and axes. Kirchick further implies that the red-green coalition in Europe endangers European civilization by minimizing the Islamic threat. It will be important to investigate the involvement of Israel and Zionist groups in Diab’s case.

The next few weeks will hopefully see Dr. Diab home with his family and with the large number of people who have worked for his release and full exoneration. Understanding his ordeal should motivate fundamental change to Canada’s extradition law and yield insights about the sociology and

politics of injustice. Questions arise about how and why the banality of a small number of people can wreak havoc on the justice system and cause torment to many.

Judith Deutsch

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French Investigative Judges Dismiss Allegations

Dr. Hassan Diab Set to be Released from Prison in France

On 12 January 2018, Judges Jean-Marc Herbaut and Richard Foltzer (“Juges d’instruction anti-terroristes”) dismissed the allegations against Dr. Hassan Diab and ordered his immediate release from detention. An overwhelming body of evidence shows Dr. Diab cannot have been in France in 1980 when the attack was perpetrated, as many elements confirm he was in Beirut during that period of time. The decision also notably underlines the numerous contradictions and misstatements contained in the intelligence which cast serious doubts about their reliability, as well as the fact that Dr. Diab’s handwriting, fingerprints, palm prints, physical description, and age do not match those of the suspect identified in 1980.

After more than three years in solitary confinement in a French prison, Dr. Diab is set to be released from detention today.

Dr. Diab’s lawyers in France, William Bourdon, Apolline Cagnat, and Amélie Lefebvre, stated that:

“This decision in such a serious terrorism case is exceptional. It must remind us that the acknowledgement of a suspect’s innocence in a terrorism case is always a long road but can be obtained with relentless work. The decision is founded on the demonstration of the impossibility to attribute to Hassan Diab any responsibility in the attack, as we have not ceased to claim. The respect owed to the victims and their legitimate need for justice must not be confused with the prosecutor’s obstinacy whose potential appeal would be completely contrary to the law and facts.”

Don Bayne, Dr. Diab’s lawyer in Canada, remarked,

“We’re elated, relieved and thankful. Thankful to the French judges for their wisdom and courage to buck political and social pressure to make a completely just decision, something that we believe the courts in Canada failed to do at every level. Thankful that Dr. Diab’s wife, Rania Tfaily, led the fight for justice with such dignity and perseverance. Thankful to Minister Freeland, Sam Moyer, Maria Lamani, and others at Global Affairs Canada for their genuine and impressive support to a Canadian who never should have been extradited. And thankful for the efforts of the wonderful Canadians who make up the Hassan Diab Support Committee. We would add this – now is the time for the Justice Minister, indeed the Prime Minister, to order a complete review of the Extradition Act and procedures that led to years of injustice for an innocent Canadian. How could Canada have extradited a Canadian to France when France never, never had a case against Dr. Diab fit to go to trial? How? Because of Canada’s Extradition Act, of the procedures it enables to strip Canadians of liberty unjustly. This Canadian was extradited on overwhelmingly unreliable evidence yet every Canadian court allowed this to happen. So while we are thankful and relieved that justice has been

served, we must ensure the system is corrected so that no other Canadian experiences what Dr. Diab has."

Background

Dr. Hassan Diab is a Canadian citizen and sociology professor who lived in Ottawa. He was extradited from Canada to France in November 2014 even though the Canadian extradition judge Robert Maranger described the evidence presented against Dr. Hassan Diab as "very problematic," "convoluted," "illogical," and "suspect." However, given the low threshold of evidence in Canada's extradition law, the judge felt compelled to order Hassan Diab's extradition in November 2014.

Four French judges have ordered Dr. Diab's conditional release eight times in the last 20 months, most recently in November 2017. However, each time the Paris prosecutor appealed, and the French Court of Appeal overturned the release orders due to the political climate in France.

Dr. Diab has a lifelong record of opposition to bigotry and discrimination, as attested by family, long-time friends, and colleagues. He has always maintained his innocence and strongly condemned the 1980 crime. He has unequivocally stated that "my life has been turned upside down because of unfounded allegations and suspicions. I am innocent of the accusations against me. I have never engaged in terrorism. I have never participated in any terrorist attacks. I am not an anti-Semite."

Dr. Diab has the support of thousands of individuals and organizations in Canada and around the world.

This press release published on the justiceforhassandiab.org website.

P.S.

* The Bullet. Socialist Project. January 15, 2018:

<https://socialistproject.ca/2018/01/justice-hassan-diab-unbearable-banality-evil/>

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