**Survivor, Legislator, and Jurist: Joseph Lamm’s Legal Legacy in Relation to the Nazis and Nazi Collaborators (Punishment) Law, 1950**

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Introduction

On May 3, 1951, a short item appeared in the newspaper *Haboker* about a highly unusual occurrence: a Member of the Knesset had left the legislative body and moved to the Tel Aviv District Court bench. The newly appointed judge, Dr. Joseph Michael Lamm, was honored in a festive ceremony attended by District Court judges, representatives of the Attorney General, jurists, and lawyers, all delivering congratulatory remarks.[[1]](#footnote-1) Actually, it would have been more accurate to report that Lamm had *returned* to his position as judge, having already served as a judge in the Tel Aviv Magistrates Court before becoming a member of Israel’s First Knesset. Lamm’s tenure as an MK, his service as a judge in two different courts, and later as rotating President of the District Court, represented yet more stops along a rich and lengthy career of public and political service that began already in his early adulthood in Vienna. Lamm saw nothing exceptional or problematic about shifting from the court to the Knesset and back. With rare candor, he openly suggested that a judge should not be expected to completely abstain from public activity or political involvement. On the contrary, he believed that even when sitting on the bench, judges cannot divest themselves of their social or political views.[[2]](#footnote-2)

To an outside observer, Lamm’s moves between the legislature and the judiciary seem remarkable, possibly even posing challenges to the faithful execution of his judicial duties. Indeed, his extraordinary “crossing of lines” is unique in Israel’s history. One central and potentially serious difficult issue involves the separation of powers between the legislature and the judiciary. Specifically, it is the court’s duty to interpret statutes and subject the legislature to judicial review. Lamm himself, interviewed upon his retirement from the bench, admitted that one case he had adjudicated had taught him “how hard it is to interpret laws that you yourself helped to legislate.”[[3]](#footnote-3) He was referring to the trial of Yehezkel Jungster, a Jewish Kapo who had been convicted of heinous crimes under the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950,[[4]](#footnote-4) and sentenced to death. Less than a year and a half before the trial, Lamm had been among those who had ushered this very bill into law. The debate over the bill in its various incarnations was one of the first contexts in which the issue of Jewish collaborators during the Holocaust had been addressed in a public discussion. Inevitably, questions of principle that straddled the line between criminal law and moral judgment arose, and Lamm took a very active part in this debate. He summoned his personal experience as a prisoner at the Dachau camp to validate his positions on issues germane to the bill—the uniqueness of the offenses it specified, the identity of those to be charged under it, and the punishment that should be imposed. Subsequently, Lamm would have to apply the same principles in practice in the courtroom, where they had to accord with his interpretations of the law in the Jungster verdict and sentencing and in the later exoneration of another defendant, Moshe Puczyc.

This article explores the judicial and historical aspects of Lamm’s unique role, as a Holocaust survivor, in passing the Nazis and Nazi Collaborators (Punishment) Bill into law. It also reviews his interpretation of the law in the Jungster and Puczyc trials. Lamm’s singular contribution to the history of this law arises from the three “hats” that he wore during this statute’s lifetime: those of a Holocaust survivor, a legislator, and a judge in the most serious trial held under its provisions. A thorough examination of Knesset committee minutes and detailed analysis of his verdicts will show that Lamm’s personal experience as a survivor of Dachau shaped his perception of the function of the Nazi and Nazi Collaborators (Punishment) Law and, accordingly, his determination of its content (as a legislator) and its meaning (as a judge).

The article adds to the growing number of important studies conducted in recent years on both the enactment of the law to bring Jews, themselves Holocaust survivors, who had been Kapos or members of the Jewish police, to justice, as well as the trials held under its provisions in Israeli courts of law.[[5]](#footnote-5) These studies have examined the fledgling state’s legal attempts to address the phenomenon of Jewish collaboration in the Holocaust. In many senses, this line of scholarship regenerates a fascinating historical episode that has been largely overlooked. It is only recently that this subject has received the attention it warrants in the historiography of Israel’s judicial approach to the Holocaust and, more broadly, in the assessment of how Israeli society coped with the Holocaust during the country’s first decade. However, in contrast to these other studies that have focused on the defendants brought to trial and the entirety of the judicial system that tried them, this article centers on the case one person who made a definitive contribution to shaping and implementing the law from a number of positions: survivor, legislator, and judge. Accordingly, this article makes a unique and important contribution to historical and judicial research on the Nazi and Nazi Collaborators Law and the Kapo trials in Israel.

There are four sections to the article. Section 1 presents Lamm’s biography. Section 2 focuses on Lamm’s role in passing the Nazis and Nazi Collaborators (Punishment) Law during the years 1949–1950. Section 3 discusses Lamm’s interpretation of the Law as manifested in the trials of two Jews, Yehezkel Jungster and Moshe Puczyc accused under the Law of having collaborated with the Nazis. After these three parts of the puzzle have been presented, the Conclusion draws the broad tableau, showing that Lamm’s personal experience in each “level” of the Law influenced his actions in regard to the Law in the “level” above it.

A Survivor and an Immigrant

Joseph Michael Lamm was born in 1899 in Wigdorovska, Galicia (then Austria), to a well-off Zionist family. In his adolescent years, he moved with his family to Vienna, where he finished his secondary studies at a gymnasium and advanced to the High School of International Trade, followed by doctoral studies in law at the University of Vienna (1924).[[6]](#footnote-6) Lamm's legal and political paths were intertwined. Already as a student, he made his foray into public activity, becoming involved in the *Tzeirei Zion* (Young Zionist) movement. Subsequently, a colleague of his would remark about this period of Lamm’s life: “I don’t know whether he spent more time studying law or in the Zionist Movement, but when he graduated, he had both legs planted in both fields.”[[7]](#footnote-7) After seven years as a law intern, he was admitted to the bar and opened his own practice.

Shortly after the infamous Kristallnacht on November 16, 1938, Lamm was arrested and sent to the Dachau concentration camp, where he was imprisoned for five weeks, in difficult conditions of cold and hunger, until his release on December 22, 1938. Little is known about Lamm’s Dachau incarceration. He never elaborated on it, and the camp documents merely reported his personal particulars, including his date and place of birth and his Jewish nationality. [[8]](#footnote-9) It is hard to know exactly how his internment there affected him, but it undoubtedly left its mark. Immediately after his release, Lamm took steps to obtain a “certificate” (Mandate Palestine immigration visa), and succeeded in reaching Palestine as an immigrant in September 1939.[[9]](#footnote-10)

Lamm soon became involved in public life in Palestine. During World War II, he served in the Palestine Volunteer Corps in the British Army. Following his discharge from the Army, he passed the bar exams and soon took up his profession as a lawyer, serving as the general prosecutor responsible for black market offenses. On the eve of the establishment of the state, he was appointed director of the legal department of the Office of Food Supply and Price Control. Even while occupied with his career, Lamm never ceased his immersion in public activities. He was involved in activities for immigrants from Austria and Germany, and was one of the founders of the New Aliyah Party (later known as the Progressive Party) as well as the New Aliyah Labor faction, a workers’ organization that operated within the New Aliyah Party and as a part of the World Socialist Zionist labor organization. Lamm quickly became one of the New Aliyah movement’s most prominent spokespersons, even though his views were sometimes unconventional. For example, already in 1944, he proposed that the party take a stand in favor of the establishment of a Jewish state – a position that was rejected at the time.[[10]](#footnote-11) Later on, he expressed strong positions at movement gatherings and in the movement journal on the struggle for statehood and the management of the Yishuv’s internal affairs. Among other things, he favored orderly preparations for receiving Jewish immigrants from Europe, repeal of the White Paper restrictions at the end of World War II, professional organization of labor in various sectors of the economy and industry, and expansion of the powers of the *Vaad HaLeumi*.(The National Committee)[[11]](#footnote-12) The party elected him as its representative to fourth *Asefat ha-Nivharim* (Electoral Assembly), to act as a deputy in the National Committee (1947–1944), and as a delegate to the 22nd Zionist Congress in 1946. In addition, Lamm was a member of the Executive Committee of the *Histadrut*, served as President of *B’nai B’rith* in Israel, and was a member of the Order of Freemasons in Palestine.

On September 1, 1948, just nine years after arriving in Israel, Lamm was appointed as a judge in the Tel Aviv Magistrates Court. Less than five months later, on February 14, 1949, he relinquished his robe and was elected to Israel’s First Knesset as a member of Ben-Gurion’s Mapai Party. In the Knesset, he served as a member of the Constitution, Law, and Justice Committee and the Public Services Committee. However, he soon discovered that he did not find political life attractive, describing it as “organizationally and conceptually suffocating.” He particularly objected to having to heed the party line on each and every vote.[[12]](#footnote-15) Therefore, after two years in the Knesset, Lamm resigned his seat and in early May 1951, returned to the judgeship, this time in the Tel Aviv District Court,[[13]](#footnote-17) an event marked by the previously mentioned festive ceremony in his honor. After 14 years on the bench, he was appointed rotating President of the court in August 1965. Lamm found his calling in court, rather than in the legislature, because as a judge he could “express his personality [and] his social views, regardless of whether they clashed with convention, the establishment, and even the opinions of judges in higher courts.”[[14]](#footnote-18)

Indeed, as a judge, Lamm was known in particular for his original, unconventional, and independent way of thinking and for taking pleasure in “bucking the tide.” His rulings did not always conform to the letter of the law—which in part had been inherited from Ottoman and Mandatory law and was ill-suited to the formative political reality. Often, he urged the legislator to amend the law to take into account not only the Israeli reality, but also Jewish history. For example, in reference to a dispute over land for settlement, Lamm wrote in his ruling, “I am unwilling to regard the supportive [English] [case law] as a rule that is binding on me as a judge in Israel.” And in regard to a conflict over the payment of alimony, he asked: “Does the principle that a Jew should not be required to support his children if their mother is a non-Jew actually still exist?” Lamm also opposed the judicial rule of “binding precedent”—adopted from common law—and claimed that any judge, in any court of law, was entitled to test the applicability of precedent to the relevant legislation on his or her own. In these respects, Lamm’s colleagues considered him a revolutionary “fighting judge” and the “Don Quixote” of the judicial system. He was also described as a judge who acted in accordance with the dictates of his conscience, his healthy common sense, and the sense of justice that guided him. A sociable person, he was considered a “man of the people and a judge of the people” who acted in the image and likeness of the biblical judge who sits at the town gates and administers law and justice to its inhabitants.[[15]](#footnote-19)

Even while serving as a judge, Lamm continued to become involved in important public issues, even going so far as to express political views and criticize government and other public policies.[[16]](#footnote-21) His refusal to step back from public activity even while a member of the judiciary reflects his view that “A judge need not be cut off from the people; on the contrary, he should be involved with the people and aware of what’s happening among them.”[[17]](#footnote-22) An avid soccer fan, he headed the Israel Football Association (1955–1959);[[18]](#footnote-24) he also fought on behalf of Soviet Jewry as World Vice President of B’nai B’rith. While serving on the bench, Lamm maintained his public activity on behalf of immigrants from Central Europe, held the presidency of the Organization of Central European Immigrants in Israel, and engaged in welfare activity for these immigrants. He was also active in the Greater Israel movement and was among those initiating the reinternment of Zeʼev Jabotinsky’s remains in Israel “as a way of reaching out to the various camps in the country.”[[19]](#footnote-25) In addition, he lectured at the Tel Aviv school of Law and Economics, where he taught a course in constitutional law, and at Tel Aviv University, where he gave a course on the history of the idea of statehood.[[20]](#footnote-26)

Lamm retired on June 1, 1969, after eighteen years as a District Court judge and about one year before reaching the statutory retirement age for judges (70), believing that he should vacate his post in favor of “talented young people who have been waiting for it.”[[21]](#footnote-27) Even after his retirement, Lamm continued to serve on various committees and participated in a number of arbitrations. He also chaired the Israel Consumer Council, remained active on the executive committee of the Association of Israelis of Central European Origin, and chaired the Israel-Austria Association. Joseph Lamm died on May 25, 1976, at the age of seventy-six, after a rich and engaged life. He and his wife Emma who died a year earlier, had no children.

A Legislator

The Law as a “Cultural Document”

On August 1, 1950, the Knesset passed the Nazis and Nazi Collaborators (Punishment) Law. The clear and declared purpose of the statute, as reflected in its legal content, was to establish a legal basis for the prosecution in Israel of Nazi criminals and their collaborators during World War II. Another, no less important objective can be adduced from between the lines from the explanatory notes to the bill and the remarks of Members of Knesset when the bill was presented to the plenum of the parliament and to the subcommittee dealing with it. This goal was educational and symbolic: to proclaim the State of Israel as the successor and the avenger of those who had perished.

However, while some Members of Knesset emphasized only one of these goals in their remarks, Lamm saw clearly that they were all part of a whole. Seizing the first opportunity that he had, when he presented the bill to the Knesset plenum, Lamm stressed that “This law is not theoretical. Our reckoning with the Nazis is not over and due to this law, we will yet have an opportunity to avenge Jewish blood.”[[22]](#footnote-28) He added, with emphasis, that the law should be invoked solely for the purpose that underlay its passage; meaning that it should not be seen as a political tool. These statements stand out against the background of those of parliamentarians on the Right who expressed themselves on acutely controversial and urgent issues, including the meaning of the *Ha’avara* (Transfer) Agreement that had been concluded between Nazi Germany and the Jewish Agency in 1933, the existence of diplomatic relations with West Germany, and signing the reparations accord, then being finalized.[[23]](#footnote-29) At the same time, however, Lamm appreciated the educational and declarative role of the law. In one of the first debates of the subcommittee that was tasked with discussing the clauses of the bill, he stated that “This law is not only for the sake of practice, but also for learning, and is a cultural document. … This is a special law, which in my opinion will be of required learning in all countries.”[[24]](#footnote-32) Indeed, the two dimensions of the law to which he points, the practical and symbolic, are embedded in the title of the law: the law was aimed to pursue “the Nazis” and their “collaborators.”[[25]](#footnote-33) In 1950 no one anticipated that any “Nazis,” let alone Adolf Eichmann or John Demjanjuk, would ever face trial in Israel. In this sense the law was a symbolic act by the Israeli legislator, stating that the Jewish nation has a moral obligation and commitment to pursue these criminals. The practical side of the law was embedded in the next words of the law, “Nazi collaborators,” which were aimed not only at non-Jews who assisted the Nazis but primarily at *Jewish* collaborators with the Nazis, namely, Jewish policemen and Jewish camp functionaries. In fact, the latter were the real target of this law. As justice minister, Pinchas Rosen pointed out from the Knesset podium, In reality, the law will apply less to Nazis than to their Jewish collaborators who are here in the State of Israel.[[26]](#footnote-34) As recent studies on the topic show, the main purpose of the law was to create a judicial instrument that would allow Jews suspected of collaborating with the Nazis to be tried in Israel. In the first two years of the State’s existence 220,000 immigrants arrived from Europe and in some instances encounters between survivors and their overseers in the ghettos and camps resulted in harsh exchanges, including cases of murder or attempted murder. This reality demanded the legislator’s response of directing these socially tense encounters from the public space into socially accepted venues such as the courtroom where they would be resolved.[[27]](#footnote-35) The Nazis and Nazi Collaborators (Punishment Law), however, was not put forward in a void; it must also be understood against the background of its judicial and historical setting, five years after the end of World War II. Two days after the presentation of the Nazis and Nazi Collaborators (Punishment) Law in March 1950, the Knesset approved the Crime of Genocide (Prevention and Punishment) Law 5710-1950,[[28]](#footnote-36) based on the Convention on the Prevention and Punishment of the Crime of Genocide approved by the UN Assembly in December of 1948.[[29]](#footnote-37) While the two statues in front of the Knesset were closely related and complemented each other, the Crime of Genocide (Prevention and Punishment) Law aimed to prevent future “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, (Article 1)” whereas the Nazis and Nazi Collaborators (Punishment) law was a retroactive and exterritorial measure that would allow Israeli courts to try individuals for event that had taken place between 1933 and 1945 in Nazi-occupied lands. Twas thus while waPlainly, then, the Nazis and Nazi Collaborators (Punishment) Law played a much more practical role.

The formulation of the proposed Nazis and Nazi Collaborators (Punishment) Law drew from the Convention on the Prevention and Punishment of the Crime of Genocide. In its different paragraphs the Nazis and Nazis Collaborators (Punishment) Law substituted the convention’s phrase of ‘members of the group’ with the word ‘Jews.’ Beyond the Convention’s paragraphs on ‘war crimes’ and on ‘crimes against humanity’ the Knesset committee added to the Nazis and Nazi Collaborators Law a unique paragraph of ‘crimes against the Jewish people.’ It also added subclauses that focused on cultural genocide and anti-Semitism. The Nazis and Nazi Collaborators Law took it another step forward, being tailored to serve as a means to take account of the tragedy that had befallen the Jewish people.

“There’s a difference between ‘collaborator’ and ‘collaborator’”

Lamm was an active participant in the deliberations of the Knesset Constitution, Law, and Justice Committee and the responsible subcommittee involving the theoretical and practical aspects of the Nazis and Nazi Collaborators (Punishment) Law. In fact, it was Lamm who presented the committee’s position to the Knesset plenum when the bill was put to a vote. With his legal background and knowledge of international law, he made a significant contribution to the committee’s discussions, weighing in the details of the various sections of the bill. Even more meaningful for Lamm than his legal expertise was his personal experience as a concentration camp prisoner—albeit for a short time, which appeared to influence his views on the issues of principle underlying the bill. Having actually lived through the experience, he was accorded a special status during the committee as a person who was indeed entitled to “judge his fellow man,” as in the Mishnaic adage, “Do not judge your fellow man until you have reached his place.”[[30]](#footnote-39)

The idea of enacting a law that would allow for the prosecution of Nazi criminals and collaborators was first mentioned in the Knesset in August 1949, when the Constitution, Law, and Justice Committee addressed the issue of “the problem of Jews suspected of collaborating with the Nazis in the camps.” In this context, the possibility was raised, theoretically at that point, of “passing a law for punishing criminals in the camps.” The committee members discussed both the declarative and theoretical aspects of such a statute, as well as the procedural difficulties that would surround its passage. In the course of the discussions, Lamm advised his colleagues about the practical aspects of such a law. It was his thinking that even if bringing Nazi collaborators to trial was morally justified, ultimately, the law would actually target Jews who had held relatively minor posts:

From the practical side of things, the great criminals won’t be there. Perhaps some little Kapo in a concentration camp came to Israel, and a Kapo is the most hated one of all. Anyone who was in a concentration camp knows the situation of the little Kapo. It’s easy to say that obeying an order doesn’t absolve a person of responsibility, but I saw people of very high moral stature, communists and socialists, whom no one could suspect of being predatory beasts from the human standpoint. I saw them as room superintendents, as Kapos, and how they turned into beasts within a day or two. I don’t know if this matter can be determined so easily. On the other hand, I know the displeasure of immigrants who had been in a camp when they discover someone who had been a Kapo and bring him to trial, and he goes free because there’s no way to do anything against him.[[31]](#footnote-41)

As this quotation suggests, Lamm understood keenly and with uncommon sensitivity the grim realities of life in the camps and the ghettos, which quickly drove otherwise normal and moral people into bestial and violent behavior. He also, however, understood the feelings of the survivors, who were surprised to find that their oppressors in the camps were not paying for their misdeeds. For Lamm, the proposed statute was meant to plot a middle course that would, on the one hand, assuage the survivors and deter them from taking the law into their hands and, on the other hand, reflect the complexity of the context. This unique insight was not shared by all the legislators; one may say, in fact, that it did not even belong to the few among them who themselves had survived the Holocaust.[[32]](#footnote-42) One may surmise that his unique perspective originated primarily in his value positions and his ability to understand and accommodate complex realities; undoubtedly, however, his personal biography and his legal training contributed to it.

When the committee completed its deliberations, the Minister of Justice, Pinchas Rosen, announced that his ministry would draft a bill on the subject and present it to the committee. Indeed, in late January 1950, the Ministry of Justice handed the Government Secretariat a draft bill titled “The Punishment of War Criminals Bill (1950).”[[33]](#footnote-43) It was referred directly to the Ministerial Committee on Legislative Affairs for debate and, on March 27, 1950, it was presented to the Knesset plenum for its first reading. Having passed the first reading, it was sent on to a subcommittee of the Constitution, Law, and Justice Committee. Once the subcommittee approved its wording, the discussion moved to the committee plenum. In the course of several sessions, the committee members debated a variety of objections to the sections of the bill.

A particularly heated debate broke out among the committee members regarding Section 10 of the bill, “Absolution of Criminal Liability,” exempting a defendant from criminal liability “(A) if he acted by commission or omission in order to spare himself from the threat of immediate mortal danger and the court is convinced that he did his best to prevent the outcomes of said act of commission or omission, or (B) if he acted by commission or omission in order to avert consequences more serious than those that resulted from the act or omission, and actually averted them ”[[34]](#footnote-44) This section of the bill reflected the legislature’s awareness of the special circumstances of Jews who could be prosecuted under the law even though they themselves had been persecuted. The provision was necessary because the general protections available to a criminal defendant would not otherwise be in effect under the terms of the law.[[35]](#footnote-45) This defense was not included in the original bill, but was added by the Ministry of Justice after the first meeting of the Constitution, Law, and Justice Committee, where Member of Knesset Zerach Warhaftig proposed that a distinction should be made between a “persecuting” person and a person who was himself “persecuted” while committing the crime, in terms of the degree of punishment. Warhaftig’s motion was rejected, but the distinction between the two found an expression in the section that allowed for absolving a defendant of criminal liability only when, according to the bill, the perpetrator himself had been a “persecuted person.”[[36]](#footnote-46)

The possibility of absolving some parties of criminal liability ignited a fierce debate that seemed to revolve more around moral and value worldviews than around purely legal disagreements. More profoundly, the dispute was associated with the sharp distinction that was accepted at the time, between members of the resistance organizations, the youth movements, and the partisans, who represented “heroism,” and the Judenraete, who were considered collaborators with the Nazis.[[37]](#footnote-47)

MKs Israel Bar-Yehuda and Hanan Ruppin (Mapam) were the main champions of the anti-absolution stance. There is no reason, they argued, to grant “total forgiveness” to criminals; the circumstances of offenders’ own mortal peril were relevant only to mitigate their sentences and not to exempt them from criminal liability. Bar-Yehuda and Ruppin were referring to the Judenraete, distinguishing them from members of the resistance movements. Only the latter, according to these two MKs, could be exempted from criminal liability.[[38]](#footnote-49) The majority opinion, however, favored leaving the broad exemption clause intact. Lamm himself, among the most conspicuous supporters of this majority position, noted that a person convicted of an offense under the provisions of the bill would carry an onerous stigma that would be no less significant than the legal judgement per se. He stressed his objection to focusing on the crime itself and sought to punish perpetrators for the purpose of deterrence only. Consequently, it was his position that the legislators should focus on the individual perpetrator, and thus allow for an exemption from criminal liability under appropriate circumstances. Thus, Lamm expressed his awareness of the complexity of the situation of those who commit criminal oppression while themselves being oppressed: “I think we mustn’t categorize people as criminal when any decent person knows that they would have done the same thing under the same circumstances.”[[39]](#footnote-50) The experiences seared into him as a camp prisoner, which inevitably exposed him to the harsh and sometimes seemingly impossible realities of life, enabled Lamm to perceive the greater complexity of these issues than did some other committee members, who thought it justified to prosecute anyone who had served in a police or Kapo capacity in ghettos and camps. Countering them, Lamm reasoned:

We need to distinguish between “collaborator” and “collaborator.” There’s a simple “collaborator” who committed no crime but rather helped to ensure order in the area for which he was responsible under Nazi rule. A “Kapo” in a camp who helped to maintain order, even if he had to use his disciplinary authority, isn’t a “collaborator” in his own mind. For me, such a person starts to be a “collaborator” the moment his work leaves his jurisdiction and he hands people over to the Nazi authority.[[40]](#footnote-51)

These remarks of Lamm’s show that even he, the defender of purported “collaborators,” believed in the existence of a clear moral red line that, when crossed, should subject the trespasser to justice: surrendering others to the Nazis. For this act, even to Lamm’s lenient way of thinking, there is no forgiveness. Lamm elaborated on this position when the bill was submitted for its second and third readings in August 1950. Presenting the Knesset plenum with the committee’s majority opinion, he again invoked his personal experience as evidence of the difficulty that arises in imposing a quasi-automatic moral judgment on an individual who has served in an “official” position without assessing the nature of that individual’s specific actions:[[41]](#footnote-52)

I myself was imprisoned in a camp and I know how many crimes were committed by the camp officials, not only Nazis but also aides who themselves were prisoners in the camps. But I also know of many cases in which such people, although themselves oppressed, did everything to prevent the crimes from occurring. There were various cases where a “Kapo” had to do something that, in our opinion, helped the Nazis, in order to spare his subordinates from grave injuries that might prove fatal. For example, if two people in a room that held a hundred people failed to maintain order—and this happened in many cases—the Nazi overseer, seeing that this or that prisoner’s closet was not kept in order, might lead out all hundred and make them stand barefoot for hours outside in the winter cold, below seventeen or eighteen degrees, or he would punish the block in other severe ways, all because two prisoners had committed a breach of order. And even if all the other prisoners tried to maintain order, it wouldn’t help them in such a case because the violator knew how to breach order without others discovering it ahead of time. In such a case, the only option was to impose a disciplinary punishment on the violator in order to spare the whole group from mortal danger. This is only one example among many. [...] It was asked: Who forced a person to be a “Kapo?” I tell you that there were people who accepted the job because the prisoners asked them to. [...] I know of prisoners who did holy work as “Kapos” or block overseers.[[42]](#footnote-53)

Thus, for Lamm, each case had to be tested in accordance with its circumstances and, in most instances, the mere fact that a person had been a Kapo was not de facto proof of that individual’s moral corruption. Consequently, Lamm believed it important to leave open the possibility for absolution from criminal liability under certain circumstances. It was in this context that he concluded his remarks at the meeting:

Members of the Knesset, do not forget that this whole Article [ Article No. 10] speaks about someone who’s being oppressed, and we mustn’t insist that an oppressed person should behave in a way other than the way all of us would behave, just to prove to Jewish history that he’s clean and fit. If I’m fighting for the rights of this oppressed person, I must have all of us in mind: how we might behave under the same circumstances. I dismiss the possibility that you and I, too, would behave differently than would many oppressed people who, if Member of Knesset Bar-Yehuda’s objection is accepted, would be held criminally liable even though they are innocent of crime.[[43]](#footnote-54)

Remarks from the heart were taken to heart by the legislators at that time. A majority of Members of the Knesset accepted Lamm’s position and the Nazi and Nazi Collaborators (Punishment) Bill that was ultimately passed into law included, in the end of the day, an exemption from liability under specified circumstances. However, paragraph 10 of the law was undoubtedly an exception, setting forth the rule that Kapos, Judenrate members and functionaries were guilty unless proven innocent.[[44]](#footnote-55)

Crime against the Jewish people

Another point of controversy among the committee members was the identity of the victims of the crimes. Would victims under the meaning of the proposed law include only Jews, or should victims include other peoples, thereby allowing for the prosecution of perpetrators of crimes against peoples other than Jews? As is well known, the uniqueness of the law, as ultimately enacted, is in its declaration of an act of “crime against the Jewish people” (Article 1) as “the principle offense” of this law. But initially, when the key section of the bill included only the offenses of “crimes against humanity” and “war crimes,” Lamm believed that the law should be reserved for crimes against *Jewish victims only*. In his view, this concludes the “mission” of the State of Israel in this area, leaving other countries to determine their legal responses to crimes against other peoples which committed in their boundaries.[[45]](#footnote-56) In Lamm’s opinion, the material difficulties presented by retroactively applying this law to crimes committed outside Israel’s borders justified empowering the state to bring an action only when the victim belonged to the Jewish people. Lamm stressed, in particular, that the law should not be used to prosecute an oppressed Jew who, to save himself, had collaborated with the Nazis *against members of other nations.* In this context, too, Lamm drew on his personal experience in Dachau in support of his position:

I can envision a case where a Jew collaborated with the Nazis against Poles when he was in a concentration camp with other peoples. I was in a camp together with Czechs, and I know that the Czechs behaved rather well. But I was also with oppressed Germans in the camp and I was willing to kill German prisoners in the Dachau camp. Should I have been prosecuted? Therefore, I propose that the crime of genocide be excluded from the law and that only crimes against the Jewish people be left in.[[46]](#footnote-57)

In several debates surrounding this question, the committee members agreed with Lamm’s position of principle and affirmed that the law should make special reference to crimes committed against the Jewish people. However, they contended that the statute should not be limited to anti-Jewish crimes only, but should apply equally to crimes against humanity and war crimes acknowledged in international law. Knesset Member Zerach Warhaftig, for example, argued, “If we omit crimes against humanity, it will seem as though we’re looking out for ourselves only. [...] It’s impossible to discriminate like that.”[[47]](#footnote-58) The chair of the committee, Nahum Nir-Rafalkes, agreed: “We have to start with the Jews; but I’m not just Jewish, I’m also human.”[[48]](#footnote-59) Thus, Lamm’s view was rejected, and an additional offense of “crimes against the Jewish people” was added to the bill in Section 1(a)(1). The contents of this new section were identical to the crime of Genocide set forth in the Genocide Convention, with one crucial difference: it referred only to Jews as victims.[[49]](#footnote-60)

In response to this legislative maneuver, Lamm stood his ground even more tenaciously. In his view, by writing the special offense of crimes against the Jewish people into the law, its application would be limited to crimes against the Jewish people and would exclude crimes committed against other peoples. Nahum Nir-Rafalkes, chair of the Knesset Law and Justice Committee, vehemently opposed Lamm’s position, stressing that, “If the committee clarifies the matter in the way Lamm proposes, we will have to prepare the whole bill all over.”[[50]](#footnote-61) Indeed, the committee ultimately rejected Lamm’s position, with the final wording of the bill referring not only to crimes against Jews, although the special and new category of “crimes against the Jewish people” appears in its preamble.[[51]](#footnote-62) In practice, however, with the single exception of Adolf Eichmann, no person has been tried in Israel under this law on the charge of having committed a crime against members of nationalities other than the Jewish people.

On August 1, 1950, after a debate in the Knesset plenum, the Nazis and Nazi Collaborators (Punishment) Law was adopted following its second and third readings.[[52]](#footnote-63) It was applied almost immediately, with Yehezkel Jungster and Moshe Puczyc among the first defendants. On the judge’s bench in Tel Aviv District Court, where Jungster’s and Puczyc’s trials took place, sat none other than Joseph Lamm, along with Judges Pinhas Avisar and Israel Levine. Together, they took up the question of the defendants’ criminal liability, as will be discussed in Section 3 of this article.

Mitigating the punishment: “There was no such person in the Gestapo”

One cannot conclude the discussion of Lamm’s contribution to Israel’s legislation on the Nazis and their collaborators crimes without examining his position on the appropriate severity of punishment. For this purpose, we should broad our discussion from the Nazis and Nazi Collaborators (Punishment) Law to the passage of the Crime of Genocide (Prevention and Punishment) Law. As mentioned, the two bills were debated concurrently in both the Knesset plenum and the Constitution, Law, and Justice Committee, and they were passed into law only half a year apart. For this reason, it is of interest to examine the stance of Lamm—an active participant in the debates in both forums—on the issues relevant to both bills, and especially the appropriate punishment for those convicted of Genocide crimes.

The Nazis and Nazi Collaborators (Punishment) Law established that those convicted of a crime against humanity, a war crime or crime against the Jewish people, will be sentenced to death (it should be mentioned that according to the bill there was an option for a more lenient punishment).[[53]](#footnote-66) Although by then the Knesset was already debating the repeal of capital punishment in Israel,[[54]](#footnote-67) this was not mentioned in the explanatory notes to the law, or in the Knesset proceedings (*Divre ha-Knesset*), or even in the subcommittee’s deliberations. However, the repeal of the death penalty and its consequences for the sentencing issue were discussed intensively during the parallel legislative proceedings for the anti-genocide bill.[[55]](#footnote-69) In particular, Lamm’s position on the question of the severity of punishment, yields especially interesting findings that may offer some insights into the issue.

In contrast to the Nazis and Nazi Collaborators (Punishment) Law, in the debates over the Genocide bill, both in the Knesset plenum and in the subcommittee, the legislators explicitly expressed their belief that even if the death penalty would be repealed for the general crime of murder, it should be retained in the anti-genocide law.[[56]](#footnote-71) Lamm himself clearly and explicitly insisted on this outcome, leaving no loophole for judicial interpretation. “If I were a judge,” he stressed, “I would say: Wherever it’s written that the punishment shall be like that for murder, the decision obtained for that punishment should apply in this case, too.”[[57]](#footnote-72) His words would prove prophetic, although he did not know it at the time.

When the anti-genocide bill was presented to the plenum for its second and third readings, Lamm clearly declared: “I object to prescribing the death penalty for general criminal offenses. But this objection, which I have maintained for decades, cannot dissuade me from seeking capital punishment for crimes that transcend all the crimes mentioned in the general criminal code.”[[58]](#footnote-73) Interestingly, Lamm steadfastly adhered to this approach for many years after. While serving as a Member of Knesset, he took the initiative of signing many fellow parliamentarians to a petition to the President of the State seeking clemency or mitigation of sentence for persons who had been sentenced to death before the State of Israel had been established. The President, Chaim Weizmann, an opponent of capital punishment in principle, met the petition’s demands, and commuted death penalties to life imprisonment.[[59]](#footnote-74) While Lamm, like Weizmann, opposed capital punishment for the crime of murder, he made an exception for persons found guilty of crimes against humanity, including Nazis and their accomplices, as well as terror activists, basing his position on considerations of deterrence.[[60]](#footnote-75) It is doubtful that deterrence was actually relevant to Nazi criminals; his attitude toward them was driven largely by considerations of retribution. For this reason, Lamm opposed the provision of the bill that provided for a penalty more lenient than death. Two decades after his activity on the committee, he elaborated on his position at the time in a newspaper interview:

I opposed this motion both in principle and in practice. I believed that if a capital penalty is established, the authority to deviate from it should not be given. [...] What is more, we claim that the Germans are lenient in their trials of Nazis.[[61]](#footnote-76)

Indeed, at the very outset of the legislative process, Lamm insisted that the death penalty should be set as a mandatory punishment and that the court should have discretion over imposing it. “There’s no judge anywhere who would sentence someone to death on his own counsel if he can impose a lighter penalty,” he reasoned.[[62]](#footnote-77) Nonetheless, Lamm did concede that the court should be allowed some narrow and strictly defined discretion to reduce an offender’s sentence, but only in clear-cut cases established by law in which the court would be allowed to apply leniency. Even then, Lamm stressed, a significant penalty of at least ten years in prison should be prescribed because “the court should not be given the option of imposing symbolic penalties on those guilty of genocide.” Therefore, Lamm insisted on setting not only an upper limit, the death penalty, but also a lower one: a minimum punishment that would thwart “[the] a possibility of sentencing any genocidal criminal to a symbolic minimum penalty of one day or even a fine of one [Israel] pound.”[[63]](#footnote-78) What were those circumstances that, where present, would motivate the court to impose a lighter sentence? Lamm, mounting the Knesset rostrum, proposed a wording very similar to that ultimately incorporated into the law:

A person found guilty of genocide should be sentenced to death; however, if he committed the act that constitutes the offense while complying with a law or an order of an authority that must be obeyed by law and did his best to attenuate, as far as possible, the severity of the outcomes of the offense—then the court should impose, in lieu of the death penalty, a term of imprisonment that should not fall short of ten years.[[64]](#footnote-79)

Most members of the subcommittee, and especially the chair, Nir-Rafalkes, opposed Lamm’s position on the grounds that it would tie the courts’ hands if at some future time cases came before the courts justifying a lighter penalty. Nir-Rafalkes presented the theoretical example of a “good man” in the Gestapo who felt sorry for Jewish children and therefore moved them to a place where he knew they would not be put to death. In response, Lamm, with the authority of someone who actually knew, shouted in response, “There was no such person in the Gestapo.”[[65]](#footnote-80)

Lamm’s position was ultimately accepted. In the Crime of Genocide Law, it is stated that, as a rule, the perpetrator of the crime of genocide shall face capital punishment except in unusual cases where two concomitant conditions are met: first, the defendant is absolved of criminal liability (even though the law makes no provision for this) or “grounds for forgiveness of the offense” are present; and second, the defendant “did his best to attenuate the severity of the outcomes of the offense.” This wording rather closely resembles that of Section 11 of the Nazis and Nazi Collaborators (Punishment) Law, which allows for mitigating the punishment if “extenuating circumstances” are present:

In determining the punishment of a person lawfully found guilty of an offense under this Law, the Court may take into account, as a factor mitigating the severity of the punishment, the following circumstances:

1. the person committed the offense under circumstances that, were it not for Section 8, would have absolved him of criminal liability or would have served as grounds for forgiveness of the offense, and did his best to attenuate the severity of the outcomes of the offense;
2. the offense was committed with the intent to prevent, and may have prevented, outcomes more severe than those caused by the offense;

However, if the offense at hand was committed under Section 1 (i.e. crime against humanity, war crime, or crime against the Jewish people), the Court shall not impose on the offender a punishment more lenient than a ten-year term of imprisonment.

Subsequently, Lamm described the death penalty that was eventually written into the Nazis and Nazi Collaborators (Punishment) Law as mandatory (“absolute capital punishment,” he said). However, he acknowledged that the judge had been left a “loophole” in interpreting the law so this punishment would not be imposed in cases where it was not justified. This interpretation, Lamm reasoned, represented the core of the work of a judge and distinguished the judge’s craft from that of the legislator:

Matters of law lend themselves to interpretations and the legislator can never know in advance what circumstances will be present when the Court will have to make its ruling. [...] Modern legislation is framework legislation that allows judges the possibility of interpreting matters in accordance with their worldview. [...] Our era is so dynamic that the legislator cannot foresee developments. Therefore, it is the duty of the judge’s craft to fill the gap.[[66]](#footnote-81)

Lamm was presented with such an opportunity to interpret the law when he sat in judgment shortly after the law went into effect. As described in the next part of this article, Section 11 of the Nazi and Nazi Collaborators (Punishment) Law quoted above, and the more lenient sentencing that it allows, would serve as the basis of Lamm’s ruling in the case of a defendant convicted of offenses under this law shortly after Lamm doffed his legislator’s hat and donned the judge’s robe.

A Judge

The Jungster trial

As far as is known, Lamm presided over two trials that took place in Tel Aviv District Court in which the defendants were Jewish Kapos: that of Moshe Puczyc, deputy commander of the Jewish police in the Ostrowiec ghetto and camp, and that of Yehezkel Jungster, Kapo at the Gräditz and Faulbruck camps. Jungster, born in Będzin in 1911, was indicted for actions he had committed as “Chief Kapo,” in the aforementioned labor camps in 1943–1944. In the indictment, presented to Tel Aviv District Court in September 1951, Jungster was charged with five offenses under the Nazis and Nazi Collaborators (Punishment) Law, including war crimes and crimes against humanity, in both cases the law set a death penalty. According to the indictment, Jungster had treated prisoners with extreme cruelty, striding through the camps clutching a rubber-sheathed baton with metal studs, with which, as well as with his hands and feet, he assaulted anyone who crossed his path. Among other cruelties, Jungster beat prisoners as the morning wake-up call was sounded, as the prisoners marched to the morning roll call, as they rushed in fright down a narrow staircase to the roll call grounds, during the roll call, as they worked, and in the evening, as they returned from work, starving and broken from their grueling labor, and queuing for their meager and watered-down soup rations. In addition, according to the indictment, Jungster was also one of several Kapos whose task it was to punish prisoners by lashing them, which he did with great zeal.

The verdict: the perpetrator, the victim, and the crime

In its verdict, handed down on January 4, 1952, the District Court convicted Jungster of some of the violent offenses listed in the indictment and acquitted him of others, including the commission of a war crime. On the charge of a crime against humanity, the views were divided: Judges Avisar and Levine favored conviction, Lamm acquittal. The majority reasoned that the offenses for which the defendant had been found guilty together amounted to a crime against humanity because they satisfied two concomitant conditions. First, the acts at issue were “grave in nature and able to embitter a person’s life, humiliate him, [and] cause him serious bodily or mental anguish,” and second, they had been perpetrated against civilians on a large and systematic scale, “in a manner that the human conscience and emotion find outrageous.” Applying this standard to the defendant’s conduct, the majority believed that these two conditions had been met:

We are convinced that beatings cruelly delivered with a rubber baton to the hands and feet irrespective of where they land, even if there were some grounds for this, but especially in the absence of any grounds whatsoever, and all the more when the victims are frail, helpless, and despairing, where [the beatings] are administered morning and night against multiple prisoners, are inhuman acts.[...] It should be added here that, in our opinion, even a person who himself is persecuted and interned in the same camp as are his victims, is legally capable of committing a crime against humanity by perpetrating the inhuman acts that we described above against his fellow prisoners. Unlike a war criminal, the perpetrator of a crime against humanity need not be a person who identifies with the oppressive regime and its malicious intent.[[67]](#footnote-83)

Lamm, expressing the opposing minority view, argued that the gravity and extent of the actions are not the only litmus tests to be applied in defining an act as a crime against humanity. To convict a person of this offense, he maintained, the *intent to annihilate* all or most of the population against which the act was directed must also be demonstrated; in the defendant’s case, this meant the intent to annihilate Polish Jewry. Therefore, Lamm concluded, Jungster should be acquitted of this offense despite his brutal and cruel conduct, it not having been proven that he had intended to annihilate even one prisoner in the camp. In this context, Lamm drew a clear distinction between the actions of the Nazis and their accomplices, which were aimed at exterminating the Jewish people, and those of the defendant, who was “only an instrument in the Nazis’ hands” and “remained their aide only.” As such, “the defendant facilitated the attainment of the Nazis’ goal of exterminating the Jewish people—a ghastly role, but his intentions and those of the Nazis were intrinsically different.”[[68]](#footnote-84)

Lamm also mentioned the biblical account of the Jewish police who had been appointed to supervise the Jews who performed grueling labor in Egypt. These police had actually spared their own people, thereby suffering punishment from their Egyptian overseers, but later meriting inclusion in the Sanhedrin.[[69]](#footnote-85) Lamm then concluded succinctly, without elaborating: “And there were Kapos in our own times who were fit for the Sanhedrin and did not fear their Hitlerist overseers and did not oppress the prisoners.”[[70]](#footnote-86) Here Lamm referred back to the testimony of the main defense witness, who himself had held the post of Kapo, as had the defendant in the two camps and, in contrast to the defendant, “carried out his difficult duties without beating [prisoners] and without stirring their hatred.”[[71]](#footnote-87) Although it was not written into the verdict, the possibility that Lamm’s personal experience in Dachau led him to this conclusion cannot be dismissed. After all, even earlier in his role as legislator, Lamm had distinguished between “different types of Kapos,” emphasizing that he personally knew some among them who did “holy work.”[[72]](#footnote-88) Unlike them, and unlike the Jewish police who supervised their brethren in Egypt, the defendant “did not follow our forebears’ path. He treated prisoners cruelly and inhumanely. However, be his intention what it may, even the worst, this, notwithstanding everything, does not make him one of Hitler’s taskmasters insofar as his actions did not reveal an intent to annihilate us like [Hitler].”[[73]](#footnote-89)

According to Lamm’s interpretation, the actions of *Jewish collaborators* may transgress the other sections of the law, but would never add up to the grievous offenses listed in Section 1 of the law—a crime against the Jewish people, a crime against humanity, and a war crime. Thus, Lamm suggested an additional scale of reference for the offenses specified in the Nazis and Nazi Collaborators (Punishment) Law, transcending the familiar and self-evident test of the severity of the acts. The test for Lamm’s scale is intent: the three crimes listed under Section 1 of the law require a special and especially grave intent to exterminate the civilian population against which the offenses were committed. For the other offenses, only an “ordinary” *mens rea*, or mental intent. in accordance with the requirements of customary criminal code is needed.

Lamm's first and most important conclusion relates thus to the *perpetrator*: he cannot be a member of the victim's people. His second conclusion relates to the *identity of the victim* whom the perpetrator seek to annihilate. Consistent with the position he conveyed in the debates of the Knesset Constitution, Law, and Justice Committee, Joseph Lamm the judge interpreted the law in a manner relating it solely to offenses against *the Jewish people*:

Admittedly, [the Nazis and Nazi Collaborators (Punishment)] bill as submitted by the Government of Israel to the First Knesset did not mention the Jewish people explicitly, even though [this people] was the principal victim of the Nazis’ cruelest crimes, which were unequalled even in the Jewish people’s lengthy history. Only the legislator, on its own counsel, decided to establish crimes against the Jewish people as a special crime, additional to other crimes specified in the bill. It is undisputed that the sponsors of the bill intended, first and foremost, to punish those who committed crimes against Jews specifically. For this reason, instead of settling for generalities, the legislator determined that offenses committed against the Jewish people during the era of Nazi rule [should be considered] a specific offense.[[74]](#footnote-90)

The third and final conclusion refers to *the crime*. Following this interpretive assumption that the sole intention of the law was to punish perpetrators of crimes against the Jewish people and none other, Lamm concluded that Jews could not be convicted of crimes against the Jewish people and crimes against humanity under this statute because this statute refers to crimes against their own people. However, while he wrote this conclusion explicitly regarding crimes against the Jewish people (noting that even the prosecution had not placed Jews on trial for these offenses), he merely alludes to it regarding crimes against humanity. Nevertheless, the allusion was well understood. After Jungster’s trial, no more Jews were prosecuted for the charge of crimes against humanity.[[75]](#footnote-91)

Almost two decades in its aftermath, his unique opinion referring

The question of the defendant's intent to commit the crimes does not stand alone, but is accompanied by the question of the degree of punishment appropriate to the acts, and in this case, the death penalty. As will be discussed below, this fact hovered like a heavy cloud over the courtroom throughout the proceedings. Subsequently, in a different context,

The sentence: Death penalty

Indeed, an additional and even more important and principled controversy surfaced between Lamm and his partners on the bench, Avisar and Levine, concerning Jungster’s sentence. According to the majority view, once a defendant is convicted of a crime against humanity, “the law leaves us no choice but to sentence [him] to death.”[[76]](#footnote-98) Had the court been given discretion in sentencing, the majority opinion explained, the defendant should have received a ten-year prison term for his crime against humanity along with additional terms for assault and battery, to be served concurrently. Furthermore, there was reason to bear the defendant’s personal circumstances in mind—at the time of trial, he was ill with a malignant disease that had led to the amputation of one leg and paralysis of the other—and to mitigate the punishment considerably. The majority opinion explained that the legislator should have empowered the court to issue a sentence lighter than death for two reasons:

(a) It is quite clear that a criminal who himself is a Nazi or who identified with the barbaric regime of the vile Nazis is not the same as a criminal such as this defendant, who himself was persecuted and lived under inhuman conditions as did his victims.

(b) Not all criminal acts against humanity are similar in their severity and cruelty...[[77]](#footnote-99)

Lamm, in his minority opinion, also noted the starting assumption that the death penalty is mandatory and leaves the court no discretion in sentencing, as was his view when the law was enacted. In this case, however, according to his interpretation, the exception in Section 11(b) of the Nazis and Nazi Collaborators (Punishment) Law applied, and the court should be allowed to reduce the sentence to a prison term no shorter than ten years in a case where the defendant intended, in his actions, to prevent outcomes even graver than those occasioned by the offense. Lamm noted that this had not been proven in the trial, since the defense had focused on denying that the defendant had committed the crime at all. However, true to his method in rulings—to help defendants exercise their right to a defense in full[[78]](#footnote-100)—and given that the defendant had been convicted of a series of actions that added up to a crime against humanity but had committed no single act egregious enough to warrant this definition on its own, Lamm was convinced that “many of the defendant’s actions that only collectively constitute a ‘crime against humanity’ were indeed carried out with the intention of preventing graver outcomes and indeed prevented them.”[[79]](#footnote-101) Under these circumstances, Lamm found that Jungster should be sentenced to only ten years in prison for all the counts for which he had been convicted.

Lamm adhered to his minority opinion against the formalistic majority. Nevertheless, in signing the sentence the three judges unanimously urged the President of the State “to take the circumstances noted above into account and to mitigate the defendant’s punishment as [you] see fit.”[[80]](#footnote-102) Jungster appealed to the Supreme Court and his appeal was heard by the President of the Court, Moshe Smoira, and Justices Yitzhak Olshan and Shneor Zalman Cheshin on April 7, 1952. In its ruling, handed down without explanation at the end of the discussion, the court accepted the appeal, vacated Jungster’s conviction for crimes against humanity, and repealed his death sentence. His convictions on the other counts were allowed to stand, for which he was sentenced to four prison terms of various lengths not exceeding two years, to be served concurrently. As far as can be determined, the rationale behind the Supreme Court decision was never offered. Two months later, Jungster was granted clemency and released from prison by order of the Minister of Police in view of his state of health.[[81]](#footnote-103) He died at home several days later.[[82]](#footnote-104)

Without doubt,, the trial was a landmark in Lamm's judicial career. Lamm displayed his awareness of the difficulty inherent in a judge interpreting a law that he or she had helped to draft. Thus he wrote:

Clearly I must be very cautious in my efforts to interpret the paragraph that defines the essence of a crime against humanity, since I personally took part, in my capacity as a member of the First Knesset, in drawing up the language that would be enshrined into law, and I have no doubt whatsoever that Lord Halsbury’s opinion makes much sense: the person responsible for formulating a law is the least suited to interpreting it because he may confuse his own intention with the purpose of the language that he used when he worded [it]. [...] When I interpret the meaning of a crime against humanity, I will try to distract myself from every intention I had as the law was being legislated and to bear in mind only the written letter in its own language, as though I will be seeing it for the first time when the trial at hand is presented to us.[[83]](#footnote-105)

Did Lamm’s acts on the bench really accord with his words? As we have seen, his verdict does more than allude to the views that he had expressed several years earlier as a legislator during the deliberations of the Constitution, Law, and Justice Committee. Overall, however, it seems that the interpretation Lamm gave in his verdict is broader than that found in the legislative history of the Nazis and Nazi Collaborators (Punishment) Law. Thus, his ruling in the Jungster case expressed his view that “the judge, by interpreting the law, actually makes law because he can introduce in his interpretations an intent that the legislator had never thought of.”[[84]](#footnote-106) However, if he had believed until then that “law is made by the judge, not by the legislator,” in the sense that judges are entitled to interpret the law as they wish, this case demonstrated the difficulty that arises when legislator and judge are one. Indeed, “Since that trial, I have concluded that one should not be both a judge and a legislator,” he admitted.[[85]](#footnote-107)

The Puczyc trial

The District Court’s majority ruling to sentence Jungster to death was an exceptional step. In fact, it was the first and last time in Israel’s history that this penalty was imposed on a Jewish defendant of crimes of this kind; subsequently only in the trial of the Nazi Adolf Eichmann. The Jungster ruling is also especially interesting in view of another verdict handed down by the same panel of judges only about two months later in the case of Moshe Puczyc, who had been placed on trial for war crimes, crimes against humanity, and additional offenses under the Nazis and Nazi Collaborators (Punishment) Law. The offenses attributed to him allegedly took place during his service as deputy commander of the Jewish police in the Ostrowiec ghetto and, afterwards, as commander of the Jewish police in the Ostrowiec camp, the labor camp that the Nazis had established after liquidating the Ostrowiec ghetto.[[86]](#footnote-110)

In a rare step, the judges dismissed all the charges after hearing some of the evidence, finding the testimonies of the twenty-seven prosecution witnesses unreliable, if not false, and giving credence to Puczyc’s own account. The fifty-two page ruling, delivered by Judge Avisar with the consent of Judges Levine and Lamm (exceptionally lengthy by the standards of rulings at the time) included copious historical background information about the establishment and operation of the ghetto and the camp, as well as the biography of Puczyc himself. He was born in Warsaw in 1910, was a public functionary and Zionist activist who had been active before, during, and after the war in various public capacities and had also held a government post after immigrating to Israel in late 1948. The written verdict portrays a complex picture of the grim reality of life in the ghetto and the camp. The judges clearly gave the defendant much leeway in view of the inhuman circumstances of this life and the terrible deed done under them. The ruling unequivocally declared that the defendant, who sometimes had beaten Jewish prisoners in the camp who were under his authority, should not be considered as having committed a crime against humanity. Therefore, in this case, in contrast to the Jungster trial, the judges saw no need to seek the extenuating circumstances set forth in Section 11 of the Nazis and Nazi Collaborators (Punishment) Law. In this context, the court noted in its ruling that:

We believe that the defendant did use his hands [slapped and punched] in various cases, but there was not even one case that could be termed an inhuman act in the sense of the Law. [...] What transcends all doubt, in our opinion, is that the defendant dealt with the public’s needs both before and after the war. When he was given the wretched task of being one of those most responsible for order and discipline in ghetto and camp life, he carried out this task by displaying a public-minded approach to the matter and out of awareness that he was acting for the public welfare. It is clear to us that he played a major part in concern for improving living conditions in the ghetto and the camp, sparing people from transports and even from death, and sheltering and protecting those who escaped.[[87]](#footnote-111)

At the conclusion of the ruling, the court went to the trouble of explaining why the witnesses had given false testimony themselves against the defendant: “The defendant appears to have overstated what he had done to eradicate scourges in public life.” This caused widespread anger because “some witnesses were embittered after having lost dear ones, and believed the defendant had played a role in their personal tragedies.” After all, “His dynamic character and his education made him the most conspicuous member of the leadership in the ghetto and the camp.” Furthermore, some witnesses had long wanted to punish him for “trivial injuries” that he had caused them.[[88]](#footnote-112) The court’s impression of Puczyc here differs radically from its impression of Jungster. In the latter’s case, the judges rejected the defense’s allegation of a conspiracy by the witnesses, finding that they had been objective and accurate in their account of Jungster’s character and conduct.[[89]](#footnote-113)

In fact, while the Puczyc verdict was based on the court’s view of the defendant as a loyal public servant who had acted for the public welfare, thus justifying his personal choices,[[90]](#footnote-114) the Jungster ruling rested on a diametrically opposite picture of the defendant as a vile and ruthless man who had accepted a position of power for personal gain and not because of duress. It is not out of the question that the general impression of Judges Avisar and Levine of the Defendant character and the factors that motivated him to act as he did, contributed to the very divergent outcomes they reached in the two cases. In contrast, Judge Lamm’s far more complex conception of the extent of freedom of choice of defendants who themselves had been prisoners in the ghettos and camps, was already evident in his ruling in the Jungster case, which nevertheless did not minimize the gravity of Jungster’s acts.

Summary

In an obituary published shortly after Lamm’s death in 1976, one of his colleagues wrote that “one of Lamm’s outstanding attributes was his custom of forming an opinion based on personal experience.” [[91]](#footnote-115) Indeed, as we have tried to show in this article, Lamm's experience in the camps significantly contributed to shaping his positions as one of the legislators who participated in the deliberations over the formulation of the Nazis and Nazi Collaborators (Punishment) Law. His weeks-long experience in the Dachau concentration camp helped him appreciate the complexity of the position in which the Jewish Kapos and functionaries found themselves. Borrowing from the language of Primo Levi, we can say that Lamm believed that these individuals operated within a “gray zone,” a reality that did not allow them to do good without also inflicting harm. His understanding of this reality led him to oppose the dogmatic views of some legislators who categorized *all* Jewish functionaries as criminals. He brought his highly personal knowledge of the functionaries’ complex motives to the formulation of the law, helping to include a special paragraph (paragraph 10) in the law about the “Absolution from Criminal Liability,” allowing the court to take into account the status of the defendant as a persecuted person in determining culpability. Also, having seen with his own eyes the collapse of normal people’s moral fabric in the face of Nazi brutality, transforming them into “crazed beasts,” Lamm understood that no one in the Nazi reality was immune to becoming a collaborator. The law, he believed, must take into account the impossible reality of that era and allow the court to lighten a defendant’s punishment under specific circumstances.

Drawing on his personal experience to formulate his opinions was not limited to Lamm’s role in legislating the law, also influenced his actions as a judge. His experience as both a survivor and as a legislator inspired him to argue on the bench for a more lenient ruling in the matter of Jungster. Unlike the other judges who heard the case, in reaching a judgment, Lamm assigned crucial significance to the intention of the camp functionary. Having seen both Nazis and Jewish functionaries in the camp, he understood that the two had acted out of very different intentions, the former seeking to completely obliterate the Jewish people, the latter acting out of either fear or cruelty, but definitely not for the purpose of destroying the Jewish nation. This distinction enabled him to find a way to exonerate Jungster of the charge of crimes against humanity. At a time when ideological outlooks framed the view of the behavior of Jews in the Nazi camps, Lamm built upon his experience as a survivor and a legislator to present a minority opinion that reflected the very complex reality of living under Nazi rule, an opinion that would later possibly serve the Supreme Court in sparing Jungster from execution.

In 1950, the depths and complexities of the Holocaust were not yet understood. Many, including legislators and judges, did not truly comprehend the unprecedented nature of this event. It was only due to legislators who had experienced life under Nazi rule, like Lamm, that the Nazis and Nazi Collaborators (Punishment) Law was formulated in a way that took account, at least in part, of the morally incomprehensible conditions that existed under the oppressive Nazi régime. Today, it is quite common to regard Justice Moshe Landau’s ruling in *Hirsch Barenblat v. Attorney General—*the last major trial in Israel of a Jewish collaborator, in this case the head of the Jewish police in a Polish town—as a symbol of a change of perception toward the prosecution of Jews, themselves Holocaust survivors, under the Punishment Law. Landau’s famous remarks in his verdict continue to resonate:

And it is also the bitter truth that “in the atmosphere of [the] extraordinary pressure of those days, moral concepts and values changed.” But it would be hypocritical and arrogant on our part—on the part of those who never stood in their place and on the part of those who succeeded in escaping from there, like the prosecution witnesses—to make this truth a cause for criticizing those “little men” who did not rise to the heights of moral supremacy when mercilessly oppressed by a regime whose first aim was to remove the human image from their faces. And we are not permitted to interpret the elements of the special offenses defined in the Nazis and Nazi Collaborators (Punishment) Law, 1950, by some standard of moral conduct that only few are capable of attaining. One cannot impute to the legislator an intention to demand a level of conduct that the community cannot sustain, especially as we are dealing with ex post facto laws…. … the prohibitions of the criminal law, including the Nazi and Nazi Collaborators (Punishment) Law, were not written for the exceptional heroes but for ordinary mortals with tall their weaknesses.[[92]](#footnote-116)

In fact, however, Joseph Lamm had advocated this view fourteen years earlier, demanding that legislators and jurists contemplate the actions and behavior of victims in the Holocaust not from the vantage point of their current existence, but, rather, from that of the impossible realities of the Nazi concentration camps. Ultimately, it was this point of view that brought an end to the trials in Israel against Jews who had served as functionaries in the camps.[[93]](#footnote-117)

1. “From Morning to Morning, From Dan to Eilat: Dr. Lamm is Now a Judge,” *HaBoker* 03.05.1951 (Hebrew). [↑](#footnote-ref-1)
2. Ram Evron, “A Judge Dwell Among His People–And Not Above It,” *LaMerhav* 06.06.1969 (Hebrew). [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. “The Nazis and Nazi Collaborators (Punishment) Law (5170–1950),” passed Aug. 01, 1950, *The Law Book* 57, 281 (1950). [↑](#footnote-ref-4)
5. Dan Porat, *Bitter Reckoning: Israel Tries Holocaust Survivors as Nazi Collaborators* (Harvard University Press/Belknap, 2019); Rivka Brot, *In the Gray Zone: The Jewish Kapo on Trial. Trials of Jews Collaborating with the Nazis* (Ra’ananna: The Open University, Tel Aviv University and Ben Gurion University, 2019) (Hebrew); Orna Ben-Naftali and Yogev Tuval, “Punishing International Crimes Committed by the Persecuted: The Kapo Trials in Israel (1950s–1960s),” *Journal of International Criminal Justice*, 4 (2006), 128–78, esp. 130–49; Hanna Yablonka, “The Law for Punishment of the Nazis and their Collaborators: Legislation, Implementation, and Attitudes,” *Cathedra*,82 (1996), 135–52, esp. 139–46 (Hebrew); Yechiam Weitz, “The Law for Punishment of the Nazis and their Collaborators as Image and Reflection of Public Opinion,” *Cathedra*, 82 (1996), 153–64 (Hebrew); Michael J. Bazyler and Frank M. Tuerkheimer, *Forgotten Trials of the Holocaust* (New-York: NYU Press, 2014); Laura Jockusch and Gabriel N. Finder (eds.), *Jewish Honor Courts: Revenge, Retribution and Reconciliation in Europe and Israel after the Holocaust* (Detroit, Michigan: Wayne University Press, 2015); David Engel, “Who Is a Collaborator? The Trials of Michal Weichert,” in *The Jews in Poland*, ed. Slawomir Kapralski (Krakow: Jagiellonian University, 1999), 2:339–70. [↑](#footnote-ref-5)
6. See אוסף התעודות in the Yad V'ashem Archive, O.30 file No. 272 item No. 11056458. [↑](#footnote-ref-6)
7. Y. Shilo, “In Memory: A Memorial held in Memory of Judge Lamm in Beit Hapraklit on Sept. 28, 1978,” *Hapraklit* 31 (1977–1978), 174–77, esp. 174 (Hebrew). [↑](#footnote-ref-7)
8. KZ-Gedenkstätte Dachau, Häftling Josef Michael Lamm. [↑](#footnote-ref-9)
9. “Judge Dr. Joseph Lamm Deceased,” *Maariv* 26.05.1976 (Hebrew); Shraga Har-Gil, “The People behind the Headlines: Dr. Lamm is Retiring,” *Maariv* 04.06.1969 (Hebrew). [↑](#footnote-ref-10)
10. No byline, “People of Repute: Talking about Them This Week: the Judge-Gentleman,” *Maariv,* 18.07. 1948, p. \_\_\_ (Hebrew); D. Diyouknai, “Leaders in Israel: Dr. Joseph Lamm,” *Maariv,* 08.08.1956, p. 8 (Hebrew). [↑](#footnote-ref-11)
11. See "Amudim – Aliya Hadasha weekly" (Tel Aviv): Vol 1 No.15, p.8 (03.11.1944); Vol 1 No.24, p.8 (12.11.1945); Vol 1 No. 29, p.4 (09.02.1945); Vol 2 No. 6-5, p.14 (19.10.1945); Vol 2 No. 13-12, p.6-5 (07.12.1945); Vol 2 No 26, p.3 (17.05.1946); Vol 2 No 28, p.7 (14.06.1946). [↑](#footnote-ref-12)
12. Yossi Beilin, “To Be an Israeli Judge,” *Davar* 10.05.1974 (Hebrew); Shilo, “In Memory,” 175; Y. Tonik, “In the Memory of Judge J. M. Lamm z”l,” *Hapraklit* 31 (1977–1978), 178–80 (Hebrew); Yosef Lapid, “The Judge Who Called a ‘Foul’ in Rehovot,” *Maariv,* 12.01.1960, p. \_\_\_ (Hebrew) 12.01.1960, עמוד (Hebrew); D. Diyouknai, “Leaders in Israel: Dr. Joseph Lamm,” *Maariv* 03.08.1956, 8 (Hebrew). [↑](#footnote-ref-15)
13. “Dr. Lamm is Now a Judge.” [↑](#footnote-ref-17)
14. Shilo, “In Memory,” 175. [↑](#footnote-ref-18)
15. D. Diyouknai, “Leaders in Israel: Dr. Joseph Lamm,” *Maariv,* 08.08.1956, p. 8 (Hebrew); see also Yosef Lapid, “The Judge Who Called a ‘Foul’ in Rehovot,” *Maariv,* 12.01.1960, p. \_\_\_ (Hebrew); Shilo, “In Memory,” 175-176. [↑](#footnote-ref-19)
16. Tonik, “In the Memory,” 178. [↑](#footnote-ref-21)
17. “Dr. Y. Lamm: The Judge is Set the Law,” *HaTzofe* 01.06.1969 (Hebrew). [↑](#footnote-ref-22)
18. Ruth Bondy, “In Private (*Be-arbaa ayinim*),” *Davar* 25.11.1969, 3 (Hebrew); “Leaders in Israel: Dr. Joseph Lamm,” *Maariv* 03.08.1956, 8 (Hebrew); Yosef Lapid, “The Judge Who Called a ‘Foul’ in Rehovot,” *Maariv,* 12.01.1960, עמוד (Hebrew). [↑](#footnote-ref-24)
19. “The Judge Set the Law.” See: Evron, “A Judge Dwell Among His People.” [↑](#footnote-ref-25)
20. Har-Gil, “Dr. Lamm is Retiring.” For Lamm’s edited lectures of his first course, see” Joseph Lamm, *The Formation and Essence of The Constitution: A General Introduction* (Tel-Aviv: The School of Law and Economics in Tel-Aviv, 1957) (Hebrew). For the edited lectures of his second course, see: idem, *History of the Political Idea* (Tel-Aviv: The Reproduction Factory, 1966) (Hebrew). [↑](#footnote-ref-26)
21. Evron, “A Judge Dwelling among His People.” See also, “Judge Lamm is Retiring,” *LaMerhav* 30.05.1969 (Hebrew). [↑](#footnote-ref-27)
22. *Divre ha-Knesset,* March 27, 1950, p. 1160. [↑](#footnote-ref-28)
23. Remarks by MK Meir Wilner (Maki), *Divre ha-Knesset,* March 27, 1950, p. 1159; remarks by MK Ari Jabotinsky (Herut), ibid., p. 1153. [↑](#footnote-ref-29)
24. Knesset Constitution, Law, and Justice Committee, May 23, 1950, Knesset Archives, 6 (Hebrew). [↑](#footnote-ref-32)
25. For a discussions in the objectives of the law, see: Porat, *Bitter Reckoning*, 74–80; Brot, *In the Gray Zone*, 167–181; Yehudit Dori Deston, “Demjanjuk’s Israeli Trial: The End of Nazi Prosecution in Israel” (Ph.D. diss., Hebrew University of Jerusalem, 2017) (Hebrew), 40–46. [↑](#footnote-ref-33)
26. *Divre ha-Knesset*, Mar. 27, 1950, 1148. See also דבריו של זרח ורהפטיג באותו מעמד, p.1152 [↑](#footnote-ref-34)
27. Yablonka, the Law for Punishment, 140-139; Porat, Bitter Reckoning, 70-67; Brot, In the Gray Zone, 170, 179. [↑](#footnote-ref-35)
28. Book of Laws 42, 137 (1950). [↑](#footnote-ref-36)
29. On the UN Convention and its acceptance in Israel see: Rotem Giladi "Not Our Salvation: Israel, the Genocide Convention, and the World Court 1950–1951," Diplomacy & Statecraft, 26(3), 473-493 (2015); Haim Cohn, *A Personal Introduction: an Autobiography* (Dvir, 2005, Hebrew), p. 332. [↑](#footnote-ref-37)
30. Avot 2:4. [↑](#footnote-ref-39)
31. Knesset Constitution, Law, and Justice Committee, Aug. 08, 1949, Knesset Archives, 9–10 (Hebrew). [↑](#footnote-ref-41)
32. In this context, one may, for example, examine the remarks of Members of Knesset who had survived the Holocaust: Mordechai Nurock (United Religious Front), among the initiators of the bill, and Arye Sheftel (Mapai), in the first debate over the bill in the Knesset plenum, March 27, 1950, and in other forums.

    בדיון הראשון על הצעת החוק במליאת הכנסת, ביום 27.3.1950. [↑](#footnote-ref-42)
33. Brot, *In the Gray Zone*, 182. [↑](#footnote-ref-43)
34. “Nazi and Nazi Collaborators (Punishment) Bill (5170–1950),” *Bills*,vol. 36, 119 (Hebrew). לבדוק [↑](#footnote-ref-44)
35. See paragraphs 34(12) and 34(13) to the Israeli Criminal code; See also Brot, *In the Gray Zone*, 188–189. [↑](#footnote-ref-45)
36. Knesset Constitution, Law, and Justice Committee, Jun. 12, 1950, 3–4 (Zerach Warhaftig’ speech); Ibid., May 23, 1950 (KM Haim Yosef Zadok [Wilkenfeld]’s speech), see also his speech in Knesset Constitution, Law, and Justice Committee, Jul. 26, 1950, 9. [↑](#footnote-ref-46)
37. Roni Stauber, *A Lesson for this Generation—Holocaust and Heroism in Israeli Public Discourse in the 1950s* (Jerusalem: Yad Ben-Zvi Press and Ben-Gurion Research Center, Sede Boker Campus, 2000), 71–72, 95; Porat, *Bitter Reckoning,* 77–79; Brot, *The Gray Zone,* 171–173; Natan Alterman, *On Both Paths: Pages from the Notebook* (Tel Aviv, 1989, Hebrew), epilogue by Dan Laor. [↑](#footnote-ref-47)
38. See KM Yisrael Bar-Yehuda’s speech in *Divre ha-Knesset*, Aug. 1, 1950, 2394 (Hebrew). [↑](#footnote-ref-49)
39. Knesset Constitution, Law, and Justice Committee, Jul. 12, 1950, 8. [↑](#footnote-ref-50)
40. Ibid., Jun. 12, 1950, 3. [↑](#footnote-ref-51)
41. Primo Levi, “The Gray Zone,” in idem, *The Drowned and the Saved*, trans. Raymond Rosenthal (New York: Vintage, 1989), 45–44, 49, 59. [↑](#footnote-ref-52)
42. *Divre ha-Knesset*, Aug. 1, 1950, 2394–395. [↑](#footnote-ref-53)
43. Ibid., 2395. [↑](#footnote-ref-54)
44. Porat, Bitter Reckoning, 80. [↑](#footnote-ref-55)
45. Remarks by Lamm in the Knesset plenum as the bill was presented for its first reading, session of March 27, 1950, p. 1160. [↑](#footnote-ref-56)
46. Knesset Constitution, Law, and Justice Committee, Jul. 12, 1950, 26; ibid., May 23, 1950, 1–2. [↑](#footnote-ref-57)
47. Knesset Constitution, Law, and Justice Committee, May 23, 1950, 3. [↑](#footnote-ref-58)
48. Ibid., 4. [↑](#footnote-ref-59)
49. For a discussion in the new and unique offense “Crimes against the Jewish People” in Israeli law, see: Yehudit Dori Deston, “‘When one Door Closes, Another Opens’: The Demjanjuk Trials in Israel (1986–1993) and in Germany (2009–2011),” *Lessons and Legacies XIV: The Holocaust in the Twenty-First Century; Relevance and Challenges in the Digital Age*, eds. Tim Cole, and Simone Gigliotti (Evanston, Illinois: Northwestern University Press, 2020), 86–108, esp. 92. [↑](#footnote-ref-60)
50. Knesset Constitution, Law, and Justice Committee, May 23, 1950, 27. [↑](#footnote-ref-61)
51. Knesset Constitution, Law, and Justice Committee, Jul. 26, 1950, 18. [↑](#footnote-ref-62)
52. The law was published in “*Reshumot*” and entered into force a week later, in 09.08.1950. [↑](#footnote-ref-63)
53. For a discussion whether the Death penalty is a mandatory one, see: Dori Deston, “The Demjanjuk Trial,” 219–228. [↑](#footnote-ref-66)
54. The first draft of a government bill to abolish the death penalty in the State of Israel was tabled in the Knesset in July 1949. This bill was first introduced to the Knesset plenum only a year later–in July 1950. In between, in March 1950, the Nazi and Nazi collaborators Law bill was introduced for “first reading,” And the Knesset passed the law on Crime of Genocide (Prevention and Punishment) Law. After three debates held by the Knesset on the bill to abolish the death penalty, the proposal was transferred to the Constitution, Law and Justice Committee, and the proposal was rolled out to the Knesset plenum and back to the committee. It was only at the beginning of 1954 that the death penalty in relation to the offense of murder was abolished in legislation. See: Penal Code Amendment Law (Abolition of the Death Penalty for Murder), 5714-1. [↑](#footnote-ref-67)
55. “Crime of Genocide (Prevention and Punishment) Bill )5709–1949),” *Bills*,vol. 27, 37 (Hebrew). [↑](#footnote-ref-69)
56. *Divre ha-Knesset*, 3, 318; 4, 1103, 1230 [↑](#footnote-ref-71)
57. Knesset Constitution, Law, and Justice Committee, Mar. 29, 1950, 7. The statute relating to genocide in the bill provides that "one convicted of this crime should face a penalty equivalent to that for murder, or one more lenient." [↑](#footnote-ref-72)
58. *Divre ha-Knesset*, Mar. 21, 1950, 1103. [↑](#footnote-ref-73)
59. Shaul Hon, “‘Death by Hanging’, the Section Nullified, was Renewed: A Jew was Sentenced to Death and Died by Heaven,” *Maariv* 17.02.1961 (Hebrew). [↑](#footnote-ref-74)
60. Ibid. [↑](#footnote-ref-75)
61. Shaul Schiff, “A Conversation with Dr. J. Lamm: Between Leniency and Execution of Judgment,” *HaTzofe* 06.06.1969 (Hebrew). [↑](#footnote-ref-76)
62. Ibid. [↑](#footnote-ref-77)
63. Ibid; For Lamm’s stance on the minimum penalty, see also Knesset Constitution, Law, and Justice Committee, Mar. 29, 1950, 4. [↑](#footnote-ref-78)
64. Ibid. [↑](#footnote-ref-79)
65. *Divre ha-Knesset*, Mar. 21, 1950, 1104. [↑](#footnote-ref-80)
66. Evron, “A Judge Dwelling among His People.” [↑](#footnote-ref-81)
67. Verdict, Attorney General v. Yehezkel Jungster, *Piske Din*, vol. 5 (1952–1951), Criminal Case 9/51, 157, 165. [↑](#footnote-ref-83)
68. Ibid., 176–77. [↑](#footnote-ref-84)
69. Rashi’s commentary on Exodus 5:14, see also *Exodus Rabba* 5:20. [↑](#footnote-ref-85)
70. Jungster, *Piske Din*, vol. 5, 177. [↑](#footnote-ref-86)
71. Ibid., 160. [↑](#footnote-ref-87)
72. *Divre ha-Knesset*, Aug. 1, 1950, 2394–395. [↑](#footnote-ref-88)
73. Ibid., 177. [↑](#footnote-ref-89)
74. Ibid., 168. [↑](#footnote-ref-90)
75. Porat, *Bitter Reckoning*, 147–48; Brot, *In the Gray Zone*, 364. [↑](#footnote-ref-91)
76. Jungster, *Piske Din*, vol. 5, 178. [↑](#footnote-ref-98)
77. Ibid., 178. [↑](#footnote-ref-99)
78. Schiff, “A Conversation with Dr. J. Lamm.” [↑](#footnote-ref-100)
79. Jungster, *Piske Din*, vol. 5, 180. [↑](#footnote-ref-101)
80. Ibid. [↑](#footnote-ref-102)
81. Hon, “‘Death by Hanging’.” [↑](#footnote-ref-103)
82. Porat, *Bitter Reckoning*, 148. [↑](#footnote-ref-104)
83. Jungster, *Piske Din*, vol. 5, 168–169. [↑](#footnote-ref-105)
84. “The Judge Set the Law.” [↑](#footnote-ref-106)
85. Both quotes are from Lamm’s interview with Schiff (“A Conversation with Dr. J. Lamm”). [↑](#footnote-ref-107)
86. Verdict, Attorney General v. Moshe Puczyc (10.3.1952), Criminal Case 10/51, 2–3 (not published). [↑](#footnote-ref-110)
87. Ibid., 49–50. [↑](#footnote-ref-111)
88. Ibid., 51–52. [↑](#footnote-ref-112)
89. Jungster, *Piske Din*, vol. 5, 161. [↑](#footnote-ref-113)
90. For a critical analysis of the verdict, according to which the court chose in the same matter to hear the case as a regular criminal case and to dismiss the “story” of the prosecution about the Jewish police and its role as a collaborator; See Brot, *In the Gray Zone*, 284–301. [↑](#footnote-ref-114)
91. Shilo, “In Memory,” 174. [↑](#footnote-ref-115)
92. Hirsch Barenblat v. Attorney General, *Piske Din*, vol. 18 (2), 77/64, 101. For a detailed analysis of this trial see Hemda Gur-Arie, “Here and There: The Trial of Hirsch Bernbladt,” *Tel Aviv University Law Review* 34 (2011), 239–85; Leora Bilsky and Hemda Gur-Aryeh, "The Judenrat as Collaborator: Libel Law in the Service of Memory," *Mishpat u-Mimshal* 12, 33-82, 53 (2009) (Hebrew); Avihu Ronen, Hadas Agmon, and Asaf Danziger, “Collaborator or would-be Rescuer? The Barenblat Trial and the Image of a Jewish Council Member in 1960s Israel,” *Yad Vashem Studies* 39 (2011), 117–67; Dan Porat, *Bitter Reckoning*, 187–209. [↑](#footnote-ref-116)
93. Only one trial followed the Barenblat trial, the case of Attorney General v. Lube Gritzmacher which took place in 1972 (ISA RG/32/Law/116/71(. This trial, however, was against a Jewish tourist from West Germany and thus can be seen an exception to the larger series of the Kapo trials. Dan Porat, *Bitter Reckoning,* 209–12. [↑](#footnote-ref-117)