**Research plan**

Using a comparative approach, my research analyzes legal responses to atrocity crimes and crimes of mass violence in criminal and civil litigation. My aim is to examine the normative frameworks, procedural tools, and legal remedies that are used to address historical injustices suffered by victims of these crimes, as individuals and as a collective. The research assumes that the law offers different ways to deal with the same crimes, based on different branches of law; Each of them has a different effect on whether and how a democratic regime can be built – or rebuilt – after the commission of such crimes. My methodology, combining historical legal research, doctrinal research, and critical theories, aims to go beyond the fields of positive law, as reflected in legislation and jurisprudence, and to analyze specific legal responses to atrocities in their historical, social, political, and cultural contexts.

In my doctoral thesis, I examined the trial of Ivan Demjanjuk—the third and final trial conducted in Israel against a non-Jewish defendant under the Nazi and Nazi Collaborators (Punishment) Law 1950. The research contributed to existing work in this field by shedding light on the educational, documentary, and political goals of atrocity crimes trials. In particular, it demonstrated for the first time the difficulties in achieving extralegal objectives through a criminal procedure in which the defendant is fully acquitted. This work formed the basis for two scholarly books in Hebrew[[1]](#footnote-1) and German.[[2]](#footnote-2)

As I argue in these books, the relationship between the traditional aims of criminal proceedings and the additional goals of trials relating to Holocaust crimes, provides insights into some of the broader questions regarding the relationships between law and memory, the contribution of the law to shaping collective memory, the relationship between legal rulings and historical truth, and the court’s ability to address historical questions. My conclusions are therefore relevant not only to legal deliberations regarding Nazi crimes, but also to broader discussions about legal judgments of perpetrators of atrocity crimes and crimes of mass violence—and, by extension, to any legal deliberation aimed at establishing historical truth regarding a definitive event in a nation’s past.

Through my postdoctoral work, I have begun exploring three new areas of scholarship in criminal, international, and civil law that have previously received scant attention from scholars, and to which I hope to contribute in the coming years.

**In the first area**, I examined the extensive involvement of the Israeli justice system in addressing Nazi crimes over the years, going beyond the scope of any specific criminal case. Within this framework, as part of my postdoctoral studies which I began when studying at the Simon Dubnow Institute for Jewish History and Culture in Leipzig, I am currently working on a book that explores the legal involvement, national and international experience of Gabriel Bach in prosecuting Nazi crimes. Born in Germany in 1927, Bach served in key positions in Israel as a prosecuting counsel, state attorney, and Supreme Court justice in four cases relating to the Holocaust and its perpetrators: the Kastner trial (1957), the Eichmann trial (1960–1962), the extradition hearing for Gustav Wagner in Brazil (1978–1979), and the Demjanjuk trial (1993). Through a partial discussion of each of these proceedings, my book will present a comprehensive picture of the evolution of Israel’s legal efforts in its first 50 years of statehood with regard to Nazi war criminals and collaborators. Alongside this historical discussion, another important contribution of this research is my analysis of Bach’s role as a “repeat player” in Holocaust trials. A repeat player is an individual who is familiar with the “rules of the game” and is experienced in dealing with them, in contrast to someone who is entering the legal arena for the first time. Legal and economics scholars have advanced several theories to explain the relative advantages of repeat players in legal proceedings. Against the background of these theories, my research explores Bach’s role in managing legal proceedings involving the Holocaust and its perpetrators. A number of thought-provoking and important questions arise: Can we distinguish patterns of thinking or basic assumptions that are common to Holocaust trials, whether these trials are criminal or civil proceedings? Is it possible to attribute to Bach a special “expertise” based on the experience he accrued in earlier cases and in light of his personal experiences as a Jew who escaped from Germany during the Second World War? Finally, what is the difference—if any—between Bach’s ability to express his worldview in his roles as prosecuting counsel, state attorney, and that of Supreme Court justices in the various Holocaust-related cases?

I presented an initial draft of my paper on this subject[[3]](#footnote-3) at a recent conference at the Leo Baeck Institute in Jerusalem, where I was invited to speak alongside former Supreme Court justices and diplomats from Germany and Israel. I also presented the paper at a 2022 researchers’ workshop organized by the faculty and the Dubnow Institute.

**In my second area** of study, I have expanded my research focus to civil law, which is also widely used to offer legal remedies for historical injustices. Civil litigation related to atrocity crimes draws on various branches of law, including compensation claims, restitution claims, and (in cases of atrocity crime denials) defamation claims. Although these civil law tools have always been available, the passage of time since the Second World War has heightened their importance in view of the diminishing relevance of criminal law tools for dealing with war criminals. In this context, I am currently working with Dr. Iris Nachum of the Department of History on a study tracing the legal definition of a “Holocaust survivor” entitled to compensation, through an examination of the legislative process of the Victims of Nazi Persecution Law 1957 (“the Victims Law”) and its interpretation in court decisions. The answer to the question of “Who is a Holocaust survivor?” from the perspective of the law is closely related to the issue of the periodization of the Holocaust, and to its geographical boundaries. The principles for determining eligibility for compensation and the way this is calculated under the Victims Law, are similar, albeit not identical, to those in German law. It was also for this reason that the Israeli Supreme Court has followed German law when interpreting the Victims Law, applying the eligibility criteria established in German law almost point by point. These insights give rise to a broader principled discussion regarding which country should be entitled to define who is a Holocaust survivor. Should it be Germany, on whose soil the crimes were committed, or Israel, which sees itself as representing Holocaust victims and survivors—and by virtue of this, received reparations payments from Germany? This question becomes even more pertinent when we consider that Israel has continued to pay compensation to eligible survivors according to the Victims Law many years after reparations payments from Germany ended. The initial findings of this work will be presented at the 16th Annual Conference of the Israeli Law and History Association in Jerusalem in October 2023, and in the “Quantifying the Holocaust” international conference in Paris in May 2024.

**My third area** of interest applies a comparative perspective to the first two areas described above, and explores the differences between the uses of criminal and civil law tools for dealing with atrocity crimes. This perspective is unique and innovative. It departs from existing legal and historical research, which focuses on just one of these branches of law, to observe them in an integrative way. My assumption is that both criminal and civil proceedings on atrocity crimes seek to administer justice. However, while criminal law proceedings aim to mete out justice to the perpetrators, whose crimes are the focus of the trial, civil law focuses on delivering justice to the victims. The transition between these two types of proceedings thus points to a decision to focus legal action on just one side of the equation—offenders or victims.

The choice of civil or criminal litigation raises important sub-questions regarding the identities of the litigating parties (the state or a private individual), the place of victims and the platform given them to present their narratives, and the nature of the remedies sought in the proceedings. Although the choice between these two routes depends on context and circumstances, it is also positively related to the principles of recognition and legitimacy. Furthermore, the choice of criminal or civil law raises a number of important questions that go beyond the scope of the legal process itself and extend to the realms of the public, social, and political. From a public perspective, for example, the choice of criminal or civil law may sharpen the differences between providing compensation to individual victims and providing collective compensation for an entire group of victims, such that individuals are prevented from claiming a right or remedy.

More broadly, my research asks whether it is possible to discern any shift within the courts from criminal to civil litigation, or vice versa, with respect to the legal discussion of atrocity crimes. In this regard, it is particularly salient to compare different countries and examine whether there is any relationship between the country where such a shift occurred and its role in either committing atrocity crimes or in rehabilitating victims.

Changes in the nature of legal proceedings in Israel and Germany in relation to the Holocaust, its perpetrators, and its victims clearly show that such a shift has indeed occurred. The few criminal proceedings against Holocaust perpetrators in Israel have been replaced by civil compensation claims for Holocaust survivors. These continue to occupy the judicial system today, almost eight decades after the end of the Second World War, broaden the scope of those eligible for compensation. In contrast, Germany has seen a shift in recent years toward addressing Nazi war crimes through criminal proceedings—after several decades in which the German judicial authorities disassociated themselves from the matter.[[4]](#footnote-4) The shift between criminal and civil litigation, which differ greatly in terms of their nature, purpose, and procedural rules, is no accident. Nor is it a coincidence that the shifts in Israel and Germany represent mirror images of the other. The decision to observe this phenomenon in these two countries is particularly interesting, given that Germany was responsible for committing the atrocity crimes, while Israel has declared itself as representing the victims of those same crimes. The legislation enabling these proceedings in these two countries is not merely technical and formal—it also is a deep reflection of the varying concepts of memory and forgetting, guilt and revenge, commemoration and forgiveness.

By using a comparative perspective to examine the criminal and civil contexts (state and international) of Nazi crimes, my work offers broad insights into the complementary relationships between these different branches of law. It also sheds light on the legal remedies offered by statutory and case law in response to atrocity crimes, including compliance with protecting individual and collective rights. Together, these three strands of research described above form a comprehensive body of work that is deeply committed to an interdisciplinary understanding of the legal tools for dealing with historical injustices, and the way in which the law helps shape historical memory.

1. Yehudit Dori Deston, The Last Trial: The Demjanjuk Trial and the End of Nazi Prosecution in Israel (The Hebrew University Magnes press, forthcoming 2024). [↑](#footnote-ref-1)
2. Yehudit Dori Deston, Der Demjanjuk-Prozess(Göttingen: Vandenhoeck & Ruprecht, Schriften des Dubnow-Instituts, Bd. 36, forthcoming 2024). [↑](#footnote-ref-2)
3. Yehudit Dori Deston, *A Prosecutor, the State Attorney and a Justice: Gabriel Bach* *as a Repeat Player in the Prosecution of Nazis in the State of Israel* (unpublished manuscript). [↑](#footnote-ref-3)
4. See: Yehudit Dori Deston, “*When one Door Closes, Another Opens*”*: The Demjanjuk Trials in Israel (1986–1993) and in Germany (2009–2011)*, 14 Lessons and Legacies, Northwestern University Press, 86 (2021). [↑](#footnote-ref-4)