**A Prisoner, 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, the newspaper *Haboker* reported about a highly unusual occurrence: a Member of the Knesset (MK) Dr. Joseph Michael Lamm had left the legislative body and was appointed to the Tel Aviv District Court bench.[[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 a rich and lengthy career of public and political service. 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, this shift between legislature and judiciary seems remarkable, possibly even posing challenges to his judicial duties. Indeed, this “crossing of lines” is unique in Israel’s history. One central and potentially serious 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. At the culmination of his carrier, Lamm admitted that one case had taught him “how hard it is to interpret laws that you yourself helped to legislate.”[[3]](#footnote-3) The case was that of Yehezkel Jungster, a Jewish Kapo who had been convicted of heinous crimes under the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950 (thereafter, NNCL),[[4]](#footnote-4) and sentenced to death, a verdict that was later overturned by the Supreme Court. 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.

To these deliberations of the Nazis and Nazi Collaborators (Punishment) bill, Lamm summoned his five weeks of experience as a prisoner at the Dachau camp. He argued about the uniqueness of the offenses, the identity of those to be charged, and the punishment that should be imposed. Subsequently, Lamm would apply these principles in the courtroom, in the Jungster verdict and in later in the verdict of another Kapo, Moshe Puczyc.[[5]](#footnote-5) This article unfurls the judicial and historical aspects of Lamm’s unique role in passing the Nazis and Nazi Collaborators (Punishment) Bill into law, and reviews his interpretation of the law in the Jungster and Puczyc trials.

The article joins other studies conducted on both the enactment of the NNCL to bring to justice Jewish Kapos or members of the Jewish police, themselves Holocaust survivors, as well as the trials held under its provisions in Israeli courts of law.[[6]](#footnote-6) These studies have examined the fledgling state’s legal attempts to address the phenomenon of Jewish collaboration in the Holocaust and the social unrest it aroused in the survivors’ community. This scholarship regenerates a historical episode that has been largely overlooked, and only recently 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 state’s first decade. As part of the broader scholarship on the place of a defendant who himself was a victim of historical circumstances, some of these studies have tried to examine how the law dealt with the unique phenomenon of these trials. Among other things, these studies sought to answer questions such as: under which categories of the criminal code were the actions of the defendants placed, whether the judges were able to apply the recognized criminal procedures, and whether the judges were impartial or did they tend to conduct more of a moral trial.

Unlike these studies that focused on the defendants and their trials, this article centers on the case of one person who made a definitive contribution to shaping and implementing the law from the three “hats” that he wore: a prisoner, a legislator, and a judge. Thus, Lamm had a unique point of view that none of his colleges had. The article argues that Lamm’s personal experience as a prisoner in Dachau shaped his perception of the function of the NNCL and, accordingly, his determination of its content (as a legislator) and its meaning (as a judge). Accordingly, this article makes a unique and important contribution to historical and judicial research on the NNCL and the Kapo trials in Israel.

The methodology used in examining Lamm’s positions was to review his appearances in the Knesset committee and plenum as well as a detailed analysis of his relevant verdicts. Unfortunately, Lamm left behind no written memories or autobiography. The attempt to reconstruct his personal experiences in Dachau will be thus made on the basis of secondary literature. Some use will also be made of journalistic sources reporting on his judicial actions, as well as on his obituaries.

The article constituted of five sections. In the first section, we present Lamm’s biography. Next, we shift to his role in legislating the NNCL. In the third section, we discuss Lamm’s interpretation of the Law in the trial of the Kapo Yehezkel Jungster. The Epilogue will compare the Jungster verdict and sentencing to that of Kapo Moshe Puczyc, who was tried and acquitted by the same panel shortly thereafter. The Conclusion of the article draws the broad tableau, showing that Lamm’s personal experience shaped his legislative view, which in turn shaped his rulings.

A Political Activist, a Prisoner, 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 and advanced to the High School of International Trade, followed by doctoral law studies at the University of Vienna (1924).[[7]](#footnote-7) Already as a student, Lamm’s legal and political paths were intertwined, becoming involved in the *Tzeirei Zion* (Young Zionist) movement. Subsequently, a colleague of his would remark: “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.”[[8]](#footnote-8)

During the 1938 annexation of Austria by Nazi Germany (*Anschluss*), Lamm practiced law in his own firm. Shortly after the November Pogrom (*Kristallnacht*), the Nazis arrested Lamm and sent him to the Dachau concentration camp, as part of “the vom-Rath Action”, a mass arrest of 20,000-30,000 Jewish men.[[9]](#footnote-9) Like many of the other “November Jews” prisoners, he was imprisoned for only five weeks. Little is known about Lamm’s incarceration, as he never elaborated on it, and the camp documents merely reported his personal particulars.[[10]](#footnote-10) It can be assumed, however, that his experience as a prisoner, under conditions of severe overcrowding, cold and hunger, left their mark.[[11]](#footnote-11)

The prisoner functionary system was established in the mid-1930s in Dachau. The Kapos served as labor supervisors over fellow prisoners and enforced order and discipline in the living quarters. Until 1938, appointments of Jewish prisoners as functionaries in Dachau were very rare. Jews ranked too low in the camp hierarchy to assume these positions. Nevertheless, by the time Lamm was arrested, the number of Jewish prisoners imprisoned grew significantly and changed the social composition of the prisoner population. As a result, the Nazis appointed also Jews as Kapos.[[12]](#footnote-12)

Lamm was released on December 22, 1938. It is possible that his release was conditioned on the willingness to surrender his assets, as was common with many of “the November Jews,” or that his release was possible thanks to his earlier petition for emigration to Palestine.[[13]](#footnote-13) Either way, Lamm obtain a “certificate” (Mandate Palestine immigration visa), and arrived in Palestine in September 1939, just as the war broke out.[[14]](#footnote-14)

There, Lamm became involved in public life. During World War II, he served in the British Army Palestine Volunteer Corps. Following his discharge, he passed the bar exams and worked as a general prosecutor responsible for profiteering offenses. On the eve of the state’s establishment, he was appointed director of the legal department of the Office of Food Supply and Price Control. Even while serving in a public position, 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* political party as well as the *New Aliyah Labor Faction*, a workers’ organization.[[15]](#footnote-15) On August 1948, with the merger of the *New Aliyah* party with the *General Zionist* Party and the formation of the *Progressive* *Party*, Lamm joined the *Mapai* party.[[16]](#footnote-16) In addition, he was a member of the Executive Committee of the labor organization, the *Histadrut*.

Following the establishment of the state, Lamm was appointed as a judge in the Tel Aviv Magistrates Court, on September 1, 1948. Less than five months later, on February 14, 1949, he relinquished his robe and was elected to the First Knesset for *Mapai*. As MK he sat in the Constitution, Law, and Justice Committee and the Public Services Committee. However, he soon felt that political life was not fitting for him, describing it as “organizationally and conceptually suffocating.”[[17]](#footnote-17) After two years, Lamm resigned his seat and in early May 1951, returned to the judgeship at the Tel Aviv District Court, as referenced above. As a judge, unlike when he served as a legislator, Lamm felt 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.”[[18]](#footnote-18)

Indeed, Lamm was known in particular for his original, unconventional, and independent way of judicial practice. His rulings did not always conform to the letter of the law. His colleagues considered him a “fighting judge” and a “Don Quixote” of the judicial system. He was also described as a judge who acted in accordance with the dictates of his conscience and his common sense. A sociable person, he was considered a “man of the people and a judge of the people.”[[19]](#footnote-19)

Even while serving as a judge, Lamm was involved in public issues, going so far as expressing political views and criticizing public policies.[[20]](#footnote-20) His refusal to step back from public activity 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.”[[21]](#footnote-21) Lamm retired in 1969, after eighteen years as a District Court judge. He died in 1976.[[22]](#footnote-22)

A Legislator

The Law as a “Cultural Document”

On August 1, 1950, the Knesset passed the NNCL. The 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. Another, no less important objective, was educational and symbolic: to proclaim the State of Israel as the successor and the avenger of those who had perished. In deliberating the law some Members of Knesset emphasized only one of these goals in their remarks, however, Lamm saw clearly that they were all part of a whole. He 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.”[[23]](#footnote-23) Still Lamm appreciated the law’s educational and declarative role. In one of the first debates about 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-24)

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-25) In 1950 no one anticipated that any “Nazis,” let alone Eichmann or Demjanjuk, would ever face trial in Israel. In this sense the law was a symbolic act, stating that the Jewish nation has a moral obligation and right to pursue these criminals. The practical side of the law was embedded in the words, “Nazi collaborators,” which were aimed not only at non-Jews collaborators 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. In the Knesset, Minister of Justice Pinchas Rosen pointed out that in practice the law will apply less to Nazis than to their Jewish collaborators who had already settled in Israel.[[26]](#footnote-26) 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 by directing these socially tense encounters from the public space into socially accepted venues like the courtroom.[[27]](#footnote-27)

“There’s a Distinction Between ‘Collaborator’ and ‘Collaborator’”

Lamm was an active participant in the deliberations and formulation of the NNCL. With his legal background and knowledge of international law, he weighed in on 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.”[[28]](#footnote-28)

Lamm was not the only committee member who had personal experience of being incarcerated under the Nazi regime. Two other MKs were Holocaust survivors who lost their families in the Holocaust. One was Mordechai Nurock (*United Religious Front*) who advocated for the law, arguing that in Israel “On a daily basis former residents of Nazi concentration camps encounter Nazis and Jewish traitors who aided in the annihilation of members of the Jewish people, and the authorities can do nothing against it.”[[29]](#footnote-29) The other, Arye Sheftel (*Mapai*) dedicated his time to prosecute Nazis: he was a member of the Central Committee of Jews in Poland (*Centralny Komitet Żydów w Polsce*, CKŻP), and a member of a special committee which collected testimonies to the Nuremberg trials. Another MK—Zerach Warhaftig (*Ha-Poel Ha-Mizrachi*)—lived in Warsaw prior to the war, and when the war broke out had escaped to Lithuania. These Knesset members expressed different positions regarding the essential questions under deliberation: should the same law apply to the Nazis perpetrators and the Jewish Kapos? Should only acts committed against the Jewish people be considered a crime? And what is the appropriate punishment for the perpetrators of the crimes? These differing opinions show that the personal experience of those who fled the Nazi terror did not necessarily define their position regarding the law.[[30]](#footnote-30) Nevertheless, Lamm’s statements during the deliberation of the bill show that he himself considered his personal experience as very relevant. It influenced the way he saw the purpose of the law and the balances that he advocated setting within it.

The need to enact a law to prosecute Nazi criminals and collaborators was first mentioned in August 1949, when the Knesset 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 of “passing a law for punishing criminals in the camps.” In the course of the discussions, Lamm advised his colleagues about the practical aspects of such a law. He thought that even if bringing collaborators to trial was morally justified, ultimately, the law would 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 supervisors, 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-31)

Lamm keenly understood the grim realities of life in the camps, which drove otherwise normal and moral people into bestial and violent behavior. He also, however, identified with survivors, who were shocked to find their oppressors were not paying for their misdeeds. For Lamm, the proposed statute was meant to plot a middle course that would, both assuage the survivors and at the same time reflect the complexity of the circumstances within the Holocaust.

When the committee completed its deliberations, Rosen announced that his ministry would draft a bill 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).”[[32]](#footnote-32) It was referred directly to the Ministerial Committee on Legislative Affairs for debate and, on March 1950, it was presented to the Knesset plenum and from there on to the Constitution, Law, and Justice Committee for deliberation.

A heated debate broke out among the committee members regarding Section 10 of the Law (as ultimately enacted), “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.

This section, which was not included in the original bill, reflected the legislature’s awareness of the special circumstances of Jewish defendants who themselves were victims. The provision was necessary because the general protections available to a defendant would not be in effect under the terms of the law.[[33]](#footnote-33) Therefore, this defense was added after the first meeting of the Constitution, Law, and Justice Committee, where Warhaftig proposed a distinction be drawn in punishment between a “persecuting” perpetrator and a “persecuted” perpetrator. Warhaftig’s motion was rejected, but the distinction found an expression in the section that allowed for absolving a defendant of criminal liability only when the perpetrator himself had been a “persecuted person.”[[34]](#footnote-34)

The possibility of absolving some parties of criminal liability ignited a fierce debate that revolved more around morality and values than around legal disagreements. More profoundly, the dispute was associated with the sharp distinction that dominated at the time, between members of the resistance organizations, youth movements, and partisans, viewed as “heroes,” and the *Jüdenraete* members, viewed as collaborators.[[35]](#footnote-35)

MKs Israel Bar-Yehuda and Hanan Ruppin (*Mapam*) strongly opposed the absolution stance. There is no reason, they argued, to grant “total forgiveness” to criminals; the circumstances of offenders from the *Jüdenrate* who feared mortal peril was relevant only to mitigate their sentences, not their criminal liability. Only the members of the resistance movement, these two MKs argued, could be exempted from criminal liability.[[36]](#footnote-36)

The majority favored leaving the broad exemption clause intact. Lamm, among the most conspicuous supporters of this majority position, noted that a person convicted would carry an onerous stigma that would be no less significant than the legal judgement per se. He objected to focusing on the crime alone and sought punishment for the purpose of deterrence only. Consequently, he believed legislators should focus on individual perpetrators, and allow for an exemption from criminal liability under appropriate circumstances. Speaking of Jewish collaborators, Lamm stated that “I think we mustn’t categorize people as criminals when any decent person knows that they would have done the same thing under the same circumstances.”[[37]](#footnote-37) His experiences as a camp prisoner inevitably exposed him to the harsh and impossible realities of life in camp. 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, in his own mind, a “collaborator.” 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.[[38]](#footnote-38)

Lamm, the defender of purported “collaborators,” however, believed in the existence of a clear moral red line that, which when crossed, should subject the trespasser to justice: surrendering others to the Nazis. For this act, even to Lamm’s lenient view, there is no forgiveness. He elaborated on this position when the bill was submitted for its second and third readings in August 1950. Presenting the committee’s majority opinion, he again invoked his personal experience as evidence of the difficulty of imposing a quasi-automatic moral judgment on an individual who has served in an “official” position without assessing that individual’s specific actions:

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.[[39]](#footnote-39)

Thus, for Lamm, one must examine the specific circumstances of each case and, the mere fact that a person served as a Kapo was not proof of moral corruption. Consequently, Lamm believed it was important to leave open the possibility for absolution from criminal liability under certain circumstances. It was in this context that he concluded his remarks:

Members of the Knesset, do not forget that this whole 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 kosher. 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.[[40]](#footnote-40)

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 ultimately the NNCL passed with an exemption from liability under specified circumstances.

Crime Against the Jewish People

Another controversy among the committee members was on the issue of the victims’ identity. Would victims under the proposed law include only Jews, or should it allow for victims 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, Israel had a “mission” to punish perpetrators against the Jews, leaving others to determine their legal responses to criminals who committed crimes within their boundaries.[[41]](#footnote-41) In his 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 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.[[42]](#footnote-42)

In several debates, 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 apply equally to crimes against humanity and war crimes against non-Jews. 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.”[[43]](#footnote-43) The committee chair, Nahum Nir-Rafalkes (*Mapam*), agreed: “We have to start with the Jews; but I’m not just Jewish, I’m also human.”[[44]](#footnote-44) Thus, Lamm’s view was rejected, and the bill referred not only to crimes against Jews, although the special and new category of “crimes against the Jewish people” appears in its preamble.[[45]](#footnote-45) In practice, however, with the single exception of 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, the NNCL was adopted. 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 their trials took place, sat alongside Judges Pinhas Avisar and Israel Levine none other than Lamm himself.

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 and more specifically, his attitude toward the death penalty for those convicted of Genocide crimes. For this purpose, we should broaden our discussion to the passing of the Crime of Genocide (Prevention and Punishment) Law 5710-1950 (thereafter, “the Genocide Prevention Law”), six months earlier,[[46]](#footnote-46) which was formulated based on the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

It was in these years that the Knesset was also debating the repeal of capital punishment.[[47]](#footnote-47) The NNCL established that those convicted of a crime against humanity, a war crime or a crime against the Jewish people, will be sentenced to death; in their debates the legislators didn’t seem to take into account the repeal of the death penalty and its consequences for the sentencing issue.[[48]](#footnote-48) At the same time, in the legislative proceedings over the Genocide Prevention bill, 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 Genocide Prevention Law.[[49]](#footnote-49) Lamm himself clearly 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.”[[50]](#footnote-50) As we shall see, his words would prove prophetic.

When the Genocide Prevention bill was presented to the plenum, Lamm 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.”[[51]](#footnote-51) Interestingly, Lamm steadfastly adhered to this approach for many years after. While serving as an MK, he took the initiative of signing many fellow parliamentarians to a petition to the State President seeking clemency or mitigation of sentence for criminals sentenced to death prior to the establishment of Israel. The President, Chaim Weizmann, an opponent of capital punishment, met the petition’s demands, and commuted death penalties to life imprisonment.[[52]](#footnote-52) While Lamm opposed capital punishment for the crime of murder, he made an exception for criminals who were found guilty of crimes against humanity, including Nazis and their accomplices, as well as terror activists, basing his position on considerations of deterrence.[[53]](#footnote-53) It is doubtful that deterrence was actually relevant to Nazi criminals; toward them he was driven largely by retribution. For this reason, he opposed the provision of the bill that provided for a penalty more lenient than death.[[54]](#footnote-54)

Indeed, at the very outset of the legislative process of the Genocide Prevention Law, Lamm insisted that the death penalty should be set as a mandatory punishment and that in general the court should not have discretion over imposing it. Nonetheless, he 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 defined by the law. Even then, Lamm demanded imposing a significant penalty of at least ten years of imprisonment so “the court should not be given the option of imposing symbolic penalties on those guilty of Genocide.” Therefore, he insisted on setting not only an upper limit, the death penalty, but also a lower one: a minimum punishment that would thwart “a possibility of sentencing any genocidal criminal to a symbolic minimum penalty of one day or even a fine of one [Israeli] pound.”[[55]](#footnote-55)

What were those circumstances that, where present, would allow the court to impose a lighter sentence? Lamm 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.[[56]](#footnote-56)

Most members of the subcommittee, and especially 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 than capital punishment, and yet these cases will not fit the narrow criteria of the exception to the law. Nir-Rafalkes presented the theoretical example of a “good man” in the Gestapo who saved Jewish children. Lamm responded: “There was no such person in the Gestapo.”[[57]](#footnote-57)

Lamm’s position was ultimately accepted. The Genocide Prevention law states as a rule, that, 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 closely resembles that of Section 11 of the NNCL, which allows for mitigating the punishment if “extenuating circumstances” existed:

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.

Was the death penalty, according to Lamm, mandatory? Subsequently, he gave a positive answer to this question. However, he acknowledged that the judge had been left a “loophole” to interpret the law so this punishment would not be imposed in cases where it was not justified. This ability to interpret the law, Lamm reasoned, represented what distinguished a judge’ 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.[[58]](#footnote-58)

Shortly after the law went into effect, Lamm sat in judgment when such an opportunity to interpret the law presented itself. As described in the article’s next part, Section 11 of the NNCL, and the more lenient sentencing that it allows, would serve as the basis of Lamm’s ruling shortly after he hung up his legislator’s hat and donned the judge’s robe.

A Judge

The Jungster Trial

A year after the NNCL was enacted, Lamm presided over the trial of Yehezkel Jungster, a Jewish Kapo at the Grodziszcze and Faulbruck camps. Jungster, born in Będzin in 1911, was indicted for actions he had committed as Kapo in 1943-1944. The indictment, presented to Tel Aviv District Court in September 1951, charged Jungster with five offenses under the NNCL, including war crimes and crimes against humanity, both of which carried 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 prisoners. In addition, according to the indictment, Jungster punished prisoners with lashing them, on his own initiative, with great zeal. Lamm had difficulty listening to the testimonies at Jungster’s trial; perhaps they evoked dark memories. The looming outcome of the trial left him sleepless.

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 and acquitted him of others, including that of war crime. The judges disagreed on the charge of a crime against humanity: Avisar and Levine favored conviction, Lamm acquittal. The majority reasoned that bringing together the guilty offenses amounted to a crime against humanity. They satisfied two concomitant conditions. First, the offenses 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.” The defendant’s conduct, the majority believed, had met these two conditions:

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.[[59]](#footnote-59)

Lamm opposed this view. He argued that the gravity and extent of the actions do not stand alone in defining an act as a crime against humanity. The *intent to annihilate* all or most of the population against which the act was directed, he maintained, must also be demonstrated; in the defendant’s case, this meant the intent to annihilate, for example, “Polish Jewry.” Lamm concluded that Jungster should be acquitted of this offense despite his brutal and cruel conduct, since no intention to annihilate even one prisoner in the camp was proven. He drew a clear distinction between the Nazis who 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.”[[60]](#footnote-60)

Lamm also mentioned the biblical account of the Jewish police appointed to supervise their brethren 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*.[[61]](#footnote-61) Lamm concluded: “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.”[[62]](#footnote-62) Although it was not written into the verdict, it is possible that Lamm’s personal experience in Dachau shaped his view. After all, even as legislator, Lamm had distinguished between “different types of Kapos,” some among them who did “holy work.”[[63]](#footnote-63) Unlike them, 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].”[[64]](#footnote-64)

According to Lamm’s interpretation, *Jewish collaborators* 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. Only the other sections of the law would apply to them. Thus, Lamm suggested an additional scale of reference for the offenses specified in the NNCL, 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 was required.

Lamm’s most important conclusion relates thus to the *perpetrator*: he or she cannot be a member of the victim’s group. His second conclusion relates to the *identity of the victim* whom the perpetrator seeks to annihilate. Consistent with the position he conveyed in the debates of the Knesset Constitution, Law, and Justice Committee, 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.[[65]](#footnote-65)

Lamm’s interpretation, although in the minority opinion, was well understood. After Jungster’s trial, no more Jews were prosecuted for the charge of crimes against humanity.[[66]](#footnote-66)

The question of the defendant’s intent to commit the crimes does not stand alone, but is accompanied by the question of the punishment appropriate to the acts, and in this case, the death penalty. As will be discussed next, this fact hovered over the courtroom throughout the proceedings. Subsequently, in a different context, Lamm acknowledged an explicit connection between the question of intent and the severity of punishment the perpetrator should face. “The death penalty,” he said, “should be given to a person who intended to harm a Jew *qua* Jew, whereas all [this defendant] wanted was to make his life more comfortable.”[[67]](#footnote-67)

The Sentence: Death Penalty

Indeed, an even more principled controversy surfaced between Lamm and his partners on the bench, Avisar and Levine, concerning Jungster’s sentence. The majority held that once a defendant is convicted of a crime against humanity, “the law leaves us no choice but to sentence [him] to death.”[[68]](#footnote-68) Had the law given the court discretion, the majority opinion explained, they would have sentenced the defendant to a ten-year prison term for his crime against humanity along with additional terms for assault and battery, to be served concurrently. Furthermore, they believed the law did not provide for accounting for the defendant’s personal circumstances—at the time of trial, he was terminally ill—and to mitigate the punishment considerably. The majority 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.[[69]](#footnote-69)

Lamm, in his minority opinion, also noted the starting assumption that the death penalty is mandatory. In this case, however, he argued, the exception in Section 11(b) of the NNCL applied, and the court should 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 focused on denying that the defendant had committed the crime at all. However, true to his method—to help defendants exercise their right to a defense in full—and given that the defendant had been convicted of a series of actions that added up to a crime against humanity but had not committed a 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.”[[70]](#footnote-70) At the end of the day, Lamm found that Jungster should be sentenced to ten years in prison for all counts.

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.”[[71]](#footnote-71) Jungster appealed to the Supreme Court. In its ruling, on April 7, 1952, it vacated Jungster’s conviction for crimes against humanity, and repealed his death sentence. His convictions on the other counts were allowed to stand and 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, due to health reasons, Jungster was released from prison.[[72]](#footnote-72) He died at home several days later.[[73]](#footnote-73)

The trial was a landmark in Lamm’s career. He displayed his awareness of the difficulty inherent in a judge interpreting a law that he or she took part in drafting. 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.[[74]](#footnote-74)

Did Lamm’s acts on the bench really accord with his words? It seems that the interpretation in his verdict is broader than that found in the legislative history of the NNCL. 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.”[[75]](#footnote-75) However, if up until then he had believed 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 demonstrates for him 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.[[76]](#footnote-76)

Epilogue

The sentencing of Jungster to death was exceptional. In fact, it was the first and last time in Israel’s history that this penalty was imposed on a Jewish defendant for crimes of this kind. Jungster’s verdict is also especially interesting in view of another verdict handed down by the same panel about two months later in the case of Moshe Puczyc, who was tried simultaneously to Jungster, for war crimes and crimes against humanity allegedly committed during his service as deputy commander of the Jewish police in Ostrowiec.[[77]](#footnote-77)

In a rare move, the judges acquitted the defendant of all charges, finding the testimonies of the twenty-seven prosecution witnesses unreliable, if not false, and giving credence to Puczyc’s own account. The ruling, delivered by Judge Avisar with the consent of Judges Levine and Lamm, portrays the complex and grim reality in the ghetto and the camp. The judges gave the defendant much leeway in view of the inhuman circumstances of life. The ruling unequivocally declared that the defendant, who sometimes had beaten Jewish prisoners under his authority, should not be considered as having committed a crime against humanity. In this context, the court noted in its ruling that:

We believe that the defendant did use his hands [to slap and punch] 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.[[78]](#footnote-78)

In the conclusion, the court explained why witnesses had given false testimony: “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.[[79]](#footnote-79) The court’s impression of Puczyc 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.[[80]](#footnote-80)

In fact, while the court viewed Puczyc as a loyal public servant who had acted for the public welfare, thus justifying his actions,[[81]](#footnote-81) they viewed Jungster in diametrically opposing terms as a vile and ruthless man who took a position of power for personal gain and not under duress. It is possible that the general impression of Judges Avisar and Levine of the defendant’s character, contributed to the very divergent outcomes they reached in the two cases. In contrast, Judge Lamm’s far more complex conception of freedom of choice who 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, his colleague wrote that “one of Lamm’s outstanding attributes was his custom of forming an opinion based on personal experience.”[[82]](#footnote-82) Indeed, as we have tried to show, Lamm’s experience in the camps significantly contributed to shaping his positions in the deliberations over the formulation of the NNCL. 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. Lamm believed that these individuals operated within 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 who categorized *all* Jewish functionaries as criminals. He brought this highly personal knowledge to the formulation of the law, helping to include a special section in the law about the “Absolution from Criminal Liability,” (Section 10) allowing the court to account for the status of the defendant as a persecuted person in determining culpability. Also, having seen the collapse of normal people’s moral fabric in the face of Nazi brutality, transforming them into “beasts”, in his words, Lamm understood that no one in the Nazi reality was immune from 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 was not limited to Lamm’s legislating but also influenced his rulings. His experience as both a prisoner and as a legislator inspired him to argue for a more lenient ruling in the matter of Jungster. Unlike the other judges who heard the case, Lamm assigned crucial significance to the intention of the camp functionary. Having seen both Nazis perpetrators 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 out of either fear or cruelty, but definitely not with an intention to destroy the Jewish people. 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 prisoner and a legislator to present a 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 NNCL was formulated in a way that took account, at least in part, of the morally incomprehensible conditions that existed under the Nazi regime. 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—as a symbol of a change of perception toward the prosecution of Jews, themselves Holocaust survivors, under the NNCL. Landau’s 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 Nazis and Nazi Collaborators (Punishment) Law, were not written for the exceptional heroes but for ordinary mortals with tall their weaknesses.[[83]](#footnote-83)

In fact, 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 visceral point of view that brought an end to the trials in Israel against Jews Kapos and functionaries.

1. “From Morning to Morning, From Dan to Eilat: Dr. Lamm is Now a Judge,” *HaBoker*, May 3, 1951 (Hebrew). [↑](#footnote-ref-1)
2. Ram Evron, “A Judge Dwell Among His People–And Not Above It,” *LaMerhav*, June 6, 1969 (Hebrew). [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. “The Nazis and Nazi Collaborators (Punishment) Law (5170–1950),” passed August 1, 1950, *The Law Book* 57, 281 (1950). [↑](#footnote-ref-4)
5. There are similarities between Lamm’s personal and professional path, as prisoner and judge who tried perpetrators of crimes committed during the Holocaust, to that of Emil Stanisław Rappaport, a Polish Jewish Supreme Court justice who was held as a prisoner for almost a year in Pawiak and Mokotow. In 1946, Rappaport was one of the justices in the Supreme National Tribunal of Poland who tried Arthur Greiser, the Nazi governor (Gauleiter) of western Poland, and sentenced him to death (although he himself was an opponent of the death penalty). Yet, the two are also distinct, most importantly since Rappaport did not serve as legislator and he did not try someone who was a prisoner, but rather a perpetrator. See: Andrew Kornbluth, *The August Trials: The Holocaust and Postwar Justice in Poland* (Cambridge, Mass.: Harvard University Press, 2021), 102-7, 127, 195-94. [↑](#footnote-ref-5)
6. Dan Porat, *Bitter Reckoning: Israel Tries Holocaust Survivors as Nazi Collaborators* (Cambridge, Mass.: 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; Hanna Yablonka, “The Law for Punishment of the Nazis and their Collaborators: Legislation, Implementation, and Attitudes,” *Cathedra* 82 (1996): 135-52 (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, Mich.: 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-6)
7. See Yad V’ashem Archive O.30, file 272. [↑](#footnote-ref-7)
8. 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-8)
9. Kim Wünschmann, *Before Auschwitz* (Cambridge, Mass.: Harvard University Press, 2015), 196-200. [↑](#footnote-ref-9)
10. KZ-Gedenkstätte Dachau, Häftling Josef Michael Lamm, personal correspondence between author Dan Porat and KZ Gedenkstätte Dachacu, July 4, 2013. [↑](#footnote-ref-10)
11. For an account of the Jewish prisoners’ life in Dachau, see: Wünschmann, *Before Auschwitz*, 205-7. [↑](#footnote-ref-11)
12. Ibid, 218-22. [↑](#footnote-ref-12)
13. Ibid, 206. [↑](#footnote-ref-13)
14. “Judge Dr. Joseph Lamm Deceased,” *Maariv* May 26,1976 (Hebrew); Shraga Har-Gil, “The People Behind the Headlines: Dr. Lamm is Retiring,” *Maariv* June 4, 1969 (Hebrew). [↑](#footnote-ref-14)
15. [↑](#footnote-ref-15)
16. See: “Amudim–Aliya Hadasha Weekly” (Tel Aviv, Hebrew): November 3, 1944, 8; November 12, 1945, 8; February 9, 1945, 4; October 19, 1945, 14; December 7, 1945, 6-5; May 17, 1946; June 14, 1946, 7. See also: Yoav Gelber, *New Homeland*: *The Immigration from Central Europe and its Absorption in Eretz Israel 1933-1948* (Jerusalem: Leo Baeck Institute and Yad Izhak Ben- Zvi, 1990), 575-79 (Hebrew). Ibid, 603. [↑](#footnote-ref-16)
17. Yossi Beilin, “To Be an Israeli Judge,” *Davar*, May 5, 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*, January 12, 1960 (Hebrew); D. Diyouknai, “Leaders in Israel: Dr. Joseph Lamm,” *Maariv*, August 3, 1956, 8 (Hebrew). [↑](#footnote-ref-17)
18. Shilo, “In Memory,” 175. [↑](#footnote-ref-18)
19. Diyouknai, “Leaders in Israel,” 8; see also Lapid, “The Judge”; Shilo, “In Memory,” 175-76. [↑](#footnote-ref-19)
20. Tonik, “In the Memory,” 178. [↑](#footnote-ref-20)
21. “Dr. Y. Lamm: The Judge is Set the Law,” *HaTzofe*, June 1, 1969 (Hebrew). [↑](#footnote-ref-21)
22. Evron, “A Judge Dwelling among His People.” See also, “Judge Lamm is Retiring,” *LaMerhav*,May 30, 1969 (Hebrew). [↑](#footnote-ref-22)
23. *Divre ha-Knesset,* March 27, 1950, 1160 (Hebrew). [↑](#footnote-ref-23)
24. Knesset Constitution, Law, and Justice Committee, May 23, 1950, Knesset Archives, 6 (Hebrew). [↑](#footnote-ref-24)
25. For discussions in the objectives of the law, see: Porat, *Bitter Reckoning*, 74-80; Brot, *In the Gray Zone*, 167-81; Yehudit Dori Deston, “Demjanjuk’s Israeli Trial: The End of Nazi Prosecution in Israel” (Ph.D. diss., Hebrew University of Jerusalem, 2017), 40-46 (Hebrew). [↑](#footnote-ref-25)
26. *Divre ha-Knesset*, March 27, 1950, 1148. See also 1152 (Zerach Warhaftig’ speech) (Hebrew). [↑](#footnote-ref-26)
27. Yablonka, “The Law for Punishment,” 140-39; Porat, *Bitter Reckoning*, 70-67; Brot, *In the Gray Zone*, 170, 179. [↑](#footnote-ref-27)
28. *Mishnah* *Avot* 2:4. [↑](#footnote-ref-28)
29. *Divrei ha-Knesset*, June 29, 1949, 868. See also Porat, *Bitter Reckoning*, 76-75; Yablonka, “The Law for Punishment,” 140; Itamar Levin, *Kapo in Tel Aviv, Prosecution in Israel of Jews Accused of Collaboration with the Nazis* (Jerusalem: Yad Izhak Ben- Zvi, 2016), 30 (Hebrew). [↑](#footnote-ref-29)
30. In this context, one may, for example, examine the remarks of Nurock and Sheftel in the first debate over the bill in the Knesset plenum: *Divre ha-Knesset,* March 27, 1950, 1151-48. [↑](#footnote-ref-30)
31. Knesset Constitution, Law, and Justice Committee, August 8, 1949, Knesset Archives, 9-10. [↑](#footnote-ref-31)
32. Brot, *In the Gray Zone*, 182. For the Bill as presented to the Knesset and officially published, see: “Nazis and Nazi Collaborators (Punishment) Bill (5170-1950),” *Bills*,vol. 36, 119 (1950). [↑](#footnote-ref-32)
33. See paragraphs 34(12) and 34(13) to the Israeli Criminal code; See also Brot, *In the Gray Zone*, 188-89. [↑](#footnote-ref-33)
34. Knesset Constitution, Law, and Justice Committee, June 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, July 26, 1950, 9. [↑](#footnote-ref-34)
35. 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 (Hebrew); Porat, *Bitter Reckoning,* 77-79; Brot, *The Gray Zone,* 171-73; Natan Alterman, *Alterman’s Notebooks: On Both Paths–Pages from the Notebook* (vol. 5, HaKibbutz HaMeuchad: Tel Aviv, 1989) (Hebrew). [↑](#footnote-ref-35)
36. *Divre ha-Knesset*, August 1, 1950, 2394 (Yisrael Bar-Yehuda’s speech). [↑](#footnote-ref-36)
37. Knesset Constitution, Law, and Justice Committee, July 12, 1950, 8. [↑](#footnote-ref-37)
38. Ibid., 3. [↑](#footnote-ref-38)
39. *Divre ha-Knesset*, August 1, 1950, 2394–95. [↑](#footnote-ref-39)
40. Ibid., 2395. [↑](#footnote-ref-40)
41. *Divre ha-Knesset,* March 27, 1950, 1160. [↑](#footnote-ref-41)
42. Knesset Constitution, Law, and Justice Committee, July 12, 1950, 26; May 23, 1950, 1-2. [↑](#footnote-ref-42)
43. Ibid., May 23, 1950, 3. [↑](#footnote-ref-43)
44. Ibid., 4. [↑](#footnote-ref-44)
45. Ibid., July 26, 1950, 18. For a discussion of 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, Ill.: Northwestern University Press, 2020), 86-108, esp. 92. [↑](#footnote-ref-45)
46. *Book of Laws* 42, 137 (1950). [↑](#footnote-ref-46)
47. 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; However, 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), 5714-15. [↑](#footnote-ref-47)
48. For a discussion whether the Death penalty is a mandatory one, see: Dori Deston, “The Demjanjuk Trial,” 219-28. [↑](#footnote-ref-48)
49. *Divre ha-Knesset*, 3, 318; 4, 1103, 1230 להוסיף תאריך [↑](#footnote-ref-49)
50. Knesset Constitution, Law, and Justice Committee, March 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-50)
51. *Divre ha-Knesset*, March 21, 1950, 1103. [↑](#footnote-ref-51)
52. Shaul Hon, “‘Death by Hanging’, the Section Nullified, was Renewed: A Jew was Sentenced to Death and Died by Heaven,” *Maariv*, February 17, 1961 (Hebrew). [↑](#footnote-ref-52)
53. Ibid. [↑](#footnote-ref-53)
54. Shaul Schiff, “A Conversation with Dr. J. Lamm: Between Leniency and Execution of Judgment,” *HaTzofe*, June 6, 1969 (Hebrew). [↑](#footnote-ref-54)
55. Knesset Constitution, Law, and Justice Committee, March 29, 1950, 4. [↑](#footnote-ref-55)
56. Ibid. [↑](#footnote-ref-56)
57. *Divre ha-Knesset*, March 21, 1950, 1104. [↑](#footnote-ref-57)
58. Evron, “A Judge Dwelling among His People.” [↑](#footnote-ref-58)
59. Verdict, Attorney General v. Yehezkel Jungster, *Piske Din*, vol. 5 (1952-1951), Criminal Case 9/51, 157, 165 (“Jungster, Verdict”). [↑](#footnote-ref-59)
60. Ibid., 176-77. [↑](#footnote-ref-60)
61. Rashi’s commentary on Exodus 5:14, see also *Exodus Rabba* 5:20. [↑](#footnote-ref-61)
62. Jungster, Verdict, 177. [↑](#footnote-ref-62)
63. *Divre ha-Knesset*, August 1, 1950, 2394-95. [↑](#footnote-ref-63)
64. Ibid., 177. [↑](#footnote-ref-64)
65. Ibid., 168. [↑](#footnote-ref-65)
66. Porat, *Bitter Reckoning*, 147-48; Brot, *In the Gray Zone*, 364. [↑](#footnote-ref-66)
67. The quote is from Lamm’s interview with Schiff (“A Conversation with Dr. J. Lamm”). [↑](#footnote-ref-67)
68. Jungster, Verdict, 178. [↑](#footnote-ref-68)
69. Ibid. [↑](#footnote-ref-69)
70. Jungster, Verdict, 180. [↑](#footnote-ref-70)
71. Ibid. [↑](#footnote-ref-71)
72. Hon, “‘Death by Hanging’.” [↑](#footnote-ref-72)
73. Porat, *Bitter Reckoning*, 148. [↑](#footnote-ref-73)
74. Jungster, Verdict. 168-169. [↑](#footnote-ref-74)
75. “The Judge is Set the Law.” [↑](#footnote-ref-75)
76. Both quotes are from Lamm’s interview with Schiff (“A Conversation with Dr. J. Lamm”). [↑](#footnote-ref-76)
77. Verdict, Attorney General v. Moshe Puczyc (10.3.1952), Criminal Case 10/51, 2-3 (not published). [↑](#footnote-ref-77)
78. Ibid., 49-50. [↑](#footnote-ref-78)
79. Ibid., 51-52. [↑](#footnote-ref-79)
80. Jungster, Verdict, 161. [↑](#footnote-ref-80)
81. For a critical analysis of the verdict, see: Brot, *In the Gray Zone*, 284-301. [↑](#footnote-ref-81)
82. Shilo, “In Memory,” 174. [↑](#footnote-ref-82)
83. Verdict, 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 (Hebrew); Leora Bilsky and Hemda Gur-Aryeh, “The Judenrat as Collaborator: Libel Law in the Service of Memory,” *Mishpat u-Mimshal* 12 (2009), 33-82, 53 (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; Porat, *Bitter Reckoning*, 187-209. [↑](#footnote-ref-83)