# Chapter Three: Legislating the Nazis and Nazi Collaborators (Punishment) Law

**Survivors in Israel Seek Justice**

It was a hot summer’s day in July 1949 when a group of young Israel Defense Forces (IDF) soldiers stopped for refreshments at a small coffee shop in Ein Kerem, a neighborhood on the outskirts of Jerusalem. The group sat down at a table, and the shop owner, Joseph Paal, came over to take their order. At the sight of the one-eyed Joseph, one of the soldiers, Staff-Sgt. Yerachmiel Yanovsky, became agitated. He recognized the owner: “Blinder [Blind] Max” had been his *Blockältester* (barrack elder) in Block 10 of the Jaworzno concentration camp, an auxiliary camp of Auschwitz, and had beaten and tortured Yanovsky and his fellow prisoners. Yanovsky confronted Paal, who insisted that he had never heard of Jaworzno or of “Blinder Max.” Paal’s wife of three years, whom he had married after the Nazis murdered his first wife and children, was also present. She told the soldiers that now in their new country it was time to forget the past.[[1]](#endnote-1) Some survivors, like Paal’s wife, saw immigration as an opportunity to forget past conduct, and the new state as a place where one had the opportunity for a cleansed and absolved new start.

But the view of Paal’s wife was not accepted by survivors who did not and could not forget their tormentors. Many believed that the new state should not be soiled by those who collaborated with the Nazis, that it was a place for building a new and pure community. The image of Blinder Max in Ein Kerem stuck in Yanovsky’s mind. Four months later, in October 1949, Yanovsky met with an inmate from Block 10, David Levi, and told him that he had seen Blinder Max. At Levi’s prompting, the two went to a Jerusalem police station and filed a complaint. In February 1950, the police ordered Paal in for questioning. Paal remained adamant that he had never served as a *Blockältester* in Jaworzno.

The policeman called Yanovsky into the interrogation room and sat him across from Paal. Paal continued to deny the accusations. Yanovsky screamed at him in Yiddish: “You don’t know me? You didn’t hit me? You don’t know that I was one of the inmates in Block 10 in Jaworzno? You dare tell me that you are not Blinder Max?” Paal paled and answered, “Yes, I was in Jaworzno, and if I was there, does that make me a criminal?” The police released Paal shortly afterwards, but not because they believed he was innocent. They could not continue to hold him since in the newly established Jewish state no law applied to alleged collaborators.[[2]](#endnote-2)

Paal was not the only alleged collaborator released by the Israel Police for want of a law. In February 1949, the morning newspaper *Ha-Boker* published an open letter from a reader named Dov to the minister of justice, Pinchas Rosen. Dov described how a few days earlier he had sat at his desk in the civil registry when, to his amazement, a new immigrant whom he knew as the “commander of Jewish forced labor camps in upper Silesia” came into his office. This person, Dov wrote, had “helped the occupier arrange for the annihilation of Jews.” Dov immediately filed a complaint, and two days later the police summoned both the accused and Dov himself.

The police questioned the suspect and decided to arrest him. At that moment, the man brandished a document bearing a police letterhead and signed by Yerachmiel (Yaron) Lustig, head of the Israel Police Criminal Investigation Unit. The document stated that “one cannot prosecute a person in Israel for crimes conducted outside the State of Israel.” After seeing the suspect walk free, Dov turned to the Polish Consulate in Tel Aviv and demanded that the Polish authorities submit an extradition request to the State of Israel to have the accused sent back to stand trial in Poland. Dov ended his open letter to the minister of justice with a rebuke: “We, the survivors of the camps, see our persecutors from these very camps walking around the country with equal rights each and every day. We are forced to demand justice from the courts of foreign countries.” It was time, Dov implied, that the State of Israel enact a law that would make it possible to prosecute these criminals in Israel.[[3]](#endnote-3) One Knesset member pointed out the “saddening and abnormal situation,” that if “Goebbels and Goering, cursed be their names, were among us today, the hand of the law could not reach them.” How could the State of Israel criticize other nations for not trying their collaborators if it avoided prosecuting its own “war criminals”, he asked.[[4]](#endnote-4)

In the first two years of the state, 220,000 immigrants arrived from Europe and the number of incidents involving former functionaries grew. The Rehovot police took a woman into custody whom residents at the new Kfar Bilu immigrants’ camp accused of the deaths of several women in a Czechoslovak concentration camp.[[5]](#endnote-5) A day laborer at Kibbutz Givat Brenner spotted a kapo from Auschwitz and summoned the police to arrest him.[[6]](#endnote-6) A survivor confronted an IDF female soldier sipping coffee at the Eisen Café on Allenby Street in Tel Aviv, accusing her of being a member of the SS.[[7]](#endnote-7) In Haifa, two police officers detained a Jew whom they identified as a functionary in the camps in Germany.[[8]](#endnote-8) In the new immigrants’ camp of Beit Lid the police arrested a 29-year-old woman, a former barrack commander in Auschwitz.[[9]](#endnote-9)

“In the past two years there have been dozens and possibly even hundreds of such instances,” the journalist Yaakov Gal wrote in the popular afternoon daily *Maariv*. The police arrest suspects and then release them again within 24 hours, he added. “Indeed, it seems that in our country there is no law with which one can bring these kinds of war criminals to trial,” he wrote, referring to them, like the Knesset member cited above, as ‘war criminals,’ seeing them as one and the same with Axis war criminals.

The term ‘war criminals’ was commonly used in this period in reference to Jewish functionaries. The phrase implied that the State of Israel was comparable to European states prosecuting their own war criminals. But this usage ignored the difference between Jews and non-Jews under Nazi rule. Whereas Jews could not escape the Nazi’s ultimate goal of destroying each and every Jew, non-Jews frequently joined the Nazis out of ideological affinity and with the hope that Germany’s victory would benefit them. Only after the Jungster trial – discussed below – which drew a distinction between Jews and non-Jews in relation to the Nazis and Nazi Collaborators (Punishment) Law (1950) did the use of the term ‘war criminals’ in reference to Jewish functionaries cease for the most part.[[10]](#endnote-10)

The use of the term ‘war criminals’ not only drew an equivalence between Jewish and non-Jewish collaborators, it also pointed to a common goal in Israel and Europe of removing soiled elements from society. An opinion editorial writer in the morning daily *Davar* complained that Israel was a safe haven for the “Jewish criminals and crooks whom foreign states have ejected.” The writer had cited a man whom a foreign court had sentenced in absentia to death for murdering hundreds of thousands of Jews, who was strolling Tel Aviv’s sunny streets and enjoying his new job and home. This kind of criminal, the writer pointed out, was liable to bring “disaster upon our country, violating state order and the general wellbeing of its society.” For this writer as for others, the presence of these corrupt individuals threatened to blemish the new society which strived to serve as a “light unto the nations.”[[11]](#endnote-11)

To deal with the functionaries, the police needed a tool that would allow it to respond to complaints against former functionaries and resolve its inability to arrest the suspects. Police Inspector Joseph Gorski wrote to Yerachmiel (Yaron) Lustig, head of the Israel Police Criminal Investigation Unit, and to Israel Police Commissioner Sahar Yechezkel:

Due to the lack of suitable laws in existing Israeli legislation, [criminals] are not being prosecuted here for crimes that they committed in Europe. On the contrary, the paradoxical situation is that many war criminals… are finding a safe haven in Israel. A large number of Jewish ‘kapos’ and other ‘privileged’ individuals are already in Israel, and the heads of security forces and the courts cannot prosecute them. I ask you, sirs, to take the necessary steps… to create suitable laws that will make it possible to bring these criminals to justice.[[12]](#endnote-12)

In October 1949, the director-general of the Ministry of Police, Ram Salomon, replied to Gorski, saying, “I wish to inform you that the Ministry of Justice is preparing a bill related to war criminals and collaborators. It is hoped that this bill will be brought to the Knesset in its next parliamentary session.”[[13]](#endnote-13)

**A Non-Jewish Militia Member Sighted in Israel**

But before the Ministry of Justice presented the “war criminals bill” to the Knesset, some survivors spotted a non-Jewish Slovak whom they identified as a collaborator. On 17 December 1949, the Israeli Hungarian-language paper *Új Kelet* (The New East) reported that new immigrants from Slovakia had sighted “a notorious leader of the Hlinka Guard who had actively participated in the destruction of the Slovakian Jewry.” An open letter from a reader to the minister of police, Bechor-Shalom Shitrit, described how this leader of the Slovak fascist militia, Andrej Banik, had “participated in shoving Jews into train cars that took them to the death camps. He put my uncle and his family in a car and they never returned from that journey,” the unidentified new immigrant wrote. Banik and his wife, Julia Mandel, a Jew who had converted to Christianity, were in Israel en route to Canada, the reader wrote, where “they hope to hide from suspicious eyes and continue their good life without interference while enjoying the property that they stole from murdered Jews.” The reader ended with an appeal to the minister of police: “I ask your honor not to allow this murderer to continue fleeing the full weight of justice.” Although no law existed in Israel to try war criminals, the editors added, “It is the duty of the legal authorities to arrest Banik… The Attorney General will find the appropriate clause by which to put Banik in the dock to be tried.”[[14]](#endnote-14)

The next day, in Beit Lid, a policeman named Tsvi Roth read the open letter in *Új Kelet* and inquired among the immigration camp inhabitants about Banik. They told him that Banik indeed lived in the immigration camp. On 20 December 1949, the police arrested him in tent 244 in the camp.[[15]](#endnote-15)

That same day, at around 10 a.m., Yitzhak Freiman, a man in his forties dressed in work clothes and with a scar above his eye, entered the police station. The commander, Sgt. Nathan Rabinowitz, and another policeman heard his account.[[16]](#endnote-16) In 1939, Freiman told the policemen, he had served as a translator in the 29th Battalion of the Hungarian army on the newly drawn border between Hungary and Slovakia, near Roznava. Sgt. Banik, dressed in the uniform of the Hlinka Guard (Hlinkova garda), the Slovakian fascist militia, was patrolling the other side of the border.[[17]](#endnote-17) Freiman, dressed in a Hungarian military uniform marked with a yellow star, watched as Banik abused Jews being deported to Slovakia. In one instance, he saw him stop a 65-year-old attorney, Lajos Grossman, strip him, and take his gold wedding ring. Banik then noticed Grossman’s gold teeth and ripped them out of his mouth. Freiman attempted to come to Grossman’s rescue. No law requires the killing of people, Freiman told the Slovak. In response to these words, Banik pulled out a dagger and slashed Freiman above the eye.

It took him six weeks to recuperate, Freiman stated. Once back at his post, he again observed Banik abusing Jews. This time, a Roznava Jew named Jacob Gutelon arrived at the border crossing with his three-year-old grandchild in tow. Banik eyed a small backpack that the child was carrying, threw the child to the ground, and pressed his boot on his throat. The child choked to death. From the backpack Banik pulled out a small Torah scroll, two marriage certificates, and two death certificates. Freiman concluded his testimony by stating without further evidence that “I estimate that with his own hands Banik killed nearly 45 families.”[[18]](#endnote-18)

Over the next two weeks the police investigated Banik, first at the Beit Lid police outpost and then at the police headquarters in Tel Aviv. First, the investigator, Sgt. Shmuel Menlas, listened to the suspect’s account of his life. Banik grew up in Lastovce, a small village near the Slovak-Hungarian border. Between September 1938 and March 1939 he served in a Slovak militia, where he wrote propaganda pamphlets against the Hungarian forces and also served as a guard on the Slovakian border with Hungary. In words that seemed to indicate that he had indeed served as a member of the fascist Hlinka Guard militia, Banik said that “Until March 1939 I worked on the border in civilian clothes, and I had a band with a special symbol. It was a blue band. [After Slovak Independence] in March we received military uniforms.” After Hungary occupied parts of southern Slovakia in March 1939, Banik escaped to Michalovce. “I was not in the army, but we received a uniform and instruction in the use of arms, and we received a salary for guarding the border.” A month later, after the redrawing of the border between Slovakia and Hungary, the army replaced them, and Banik quit his position in the militia. Then, Banik joined the Hlinka political party as a clerk and eventually became a journalist.[[19]](#endnote-19)

After Banik completed his account, the investigators questioned him. Had he been a member of the Hlinka Guard, the Slovakian fascist militia? “I was not a member of the Hlinka Guard,” he responded, in a way that seemed to contradict his earlier half-confession that he was a member of this organization. Yes, Banik admitted, his father had paid 300,000 korunas for a textile shop in Secovce that had previously been owned by Willey Klein, a Jew. After the war his father had voluntarily compensated Klein for his losses.

The police learned the suspicious information that en route to Israel from Czechoslovakia by way of Italy, Banik and his wife had attempted to leave the convoy of new immigrants. The heads of the convoy, however, refused to return his passport, and Banik had no choice but to come to Israel. The police seem to have suspected that Banik had joined the group of Jews immigrating to Israel only as a means of escaping his homeland of Czechoslovakia. Asked to explain his attempted escape, Banik responded that his wife just wanted to enjoy the Italian scenery before traveling to the Holy Land. The investigator then asked Banik to explain his reasons for coming to Israel. As a Catholic he wanted to see the sacred sites of the Holy Land, and he had also heard about the heroism of the Israelis during the War of Independence and wanted to observe it for himself, he said, seemingly trying to flatter his investigators’ national pride.[[20]](#endnote-20)

Banik was not the only non-Jewish suspect who was arrested by the Israel Police. Some survivors, betrayed in the past by their neighbors, saw all non-Jews as suspected collaborators. In one instance in November 1951, a new immigrant from Hungary identified Alfred Miller, a non-Jewish Hungarian waiter at the Passage Café in Tel Aviv, as the person who had handed him over to the Nazis. The police arrested Miller, who denied the accusations. Asked why he had come to the Jewish state, he answered that he had wanted to live in a place where the land was not drenched in innocent blood. Members of the Tel Aviv–based association of Hungarian Jews came to his defense, testifying that Miller had in fact saved young children from the hands of the Nazis. Months later the police cleared his name.[[21]](#endnote-21)

Rumors also circulated in the late 1940s that Adolf Eichmann, along with other Nazis, had joined the Arab forces and were wandering the country. Another rumor held that Eichmann had mingled into the community of survivors “with a grown beard and *payot* (sidelocks), speaking with his victims in Yiddish or Hebrew.” These rumors, as well as the arrest of Banik, would help influence at least one Knesset member to call for the legislation of the Nazis and Nazi Collaborators (Punishment) Law (1950) as a means not only to prosecute Jewish functionaries but also to prevent Nazis from coming to Israel.[[22]](#endnote-22)

Two months after the completion of Banik’s questioning, the police decided to drop the case, and informed the Czechoslovak Consulate to prepare for his deportation from Israel. Israel’s immigration minister, Moshe Shapira, signed the expulsion order.[[23]](#endnote-23) Then, for unknown reasons, the police shifted course and confiscated Banik’s passport. Despite strong suspicions, exacerbated by a report from “a friendly diplomatic source,” that Banik’s request to celebrate Christmas in a Jerusalem church with the Czechoslovakian counsel was a front for a planned escape across the border to Jordan, the police still had no legal basis for arresting him. But the police would not permit his exit from the country. Banik moved into the Orphelinat Jesus Adolescent Church in Nazareth and worked in the monastery’s gardens.[[24]](#endnote-24)

**The Knesset Deliberates the Nazis and Nazi Collaborators (Punishment) Bill**

In March 1950, the Ministry of Justice introduced to the Knesset the Nazis and Nazi Collaborators (Punishment) bill.[[25]](#endnote-25) Just two days later the Knesset unanimously approved a related law, the Crime of Genocide (Prevention and Punishment) Law (1950) that was based on the Convention on the Prevention and Punishment of the Crime of Genocide approved by the UN Assembly in December of 1948. While the two statutes in front of the Knesset closely relate and complement each other, the Crime of Genocide (Prevention and Punishment) Law (1950) aimed to prevent future “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group,” whereas the Nazis and Nazi Collaborators bill was a retroactive and extraterritorial bill that would allow the trial in Israeli courts of suspects in events that took place between 1933 and 1945 in Nazi occupied lands.[[26]](#endnote-26)

In early discussions of the bill, some Knesset members raised the question of what kind of court would try the defendants. “The criminals cannot be judged in an ordinary court, because the crime is not ordinary and so the procedure cannot be ordinary,” said Nahum Nir (Rafalkes), chair of the Knesset Law and Justice Committee. “I would suggest nominating five well-known people and giving them carte blanche, and I would tell them that they are not constrained by procedure and should judge according to their conscience, since this is not an ordinary trial.” Knesset member Yona Kesse agreed: “If we wish to be true to this tragic phenomenon in our history, we must establish a court of jurors.” These cases should not be tried in ordinary courts, Kesse explained, because the trials would have greater moral and symbolic significance if tried in honor courts, as had been the procedure in the DP camps and in Jewish communities in Europe. In their view moral judgment was more momentous than legal judgement.[[27]](#endnote-27)

Minister of Justice Rosen categorically rejected the idea of establishing a special court or a panel of jurors to try the collaborators. The existing state courts would hear the cases, Rosen determined. At a time when the government was laboring to move organizations from their fragmented pre-state status into a unified state system (*Mamlakhtiyut* – statism), for example by uniting the militant underground movements into the Israel Defense Forces (IDF) or the divergent political educational systems into one national system, it was unthinkable to suggest splitting the justice system into parallel systems of criminal and honor courts.[[28]](#endnote-28) Also, members of the justice system, both policy makers and prosecutors, seem to have sought harsh punishments. Honor courts and their social punishments did not suffice for the type of crime that these functionaries had committed.[[29]](#endnote-29)

The bill presented to the Knesset was officially titled in English the Nazis and Nazi Collaborators (Punishment) bill, but is more accurately translated from Hebrew as the Nazis and Nazi “Assistants” or “Helpers” (Punishment) bill.[[30]](#endnote-30) While the bill’s name implied that it targeted both Nazis and Nazi collaborators, the Minister of Justice Pinchas Rosen who introduced the bill to the Knesset did not foresee a future scenario in which a German perpetrator would face trial in Israel. “Nazi criminals who are guilty of the crimes listed in this law will not dare to come to Israel,” the minister said. For him and for the majority of Knesset members, the law addressed the German Nazis only symbolically, pointing at the Jewish State’s hostility to the regime that had annihilated millions of Jews. “In reality,” he said, “the law will apply less to Nazis than to their Jewish collaborators who are here in the State of Israel.”[[31]](#endnote-31)

A few exceptional Knesset members did, however, believe that Nazis might face trial in Israel. Knesset member Haim Rubin explained that while not currently feasible it might be the case in the future that Israel would seek the extradition of Nazis criminals. Another Knesset member, Adi Jabotinsky, surmised that one day some Nazi may by chance fall into the hands of Israelis.[[32]](#endnote-32) Knesset member Mordechai Nurock, who had lost his wife and two sons in the Holocaust, thought that Nazis had already penetrated Israel. During a June 1949 discussion he bemoaned that “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 them.”[[33]](#endnote-33) Rumors of non-Jews searching for refuge in the Jewish state were bolstered with the arrest of Banik in December 1949, but the majority of Knesset members saw the law as only symbolically aimed at German Nazis, and to be practically implemented only in the case of Jewish functionaries.[[34]](#endnote-34)

Knesset members took to the podium to express their views on the new bill. MK Yakov Gil, a former chief rabbi in the Jewish Brigade, expressed his bewilderment, shared by many other MKs, over the fact that this bill, the first to touch on the death of a third of the nation, lacked one word: “Jew.” The law seemed to adopt the spirit of the International Military Tribunal (IMT) Nuremberg trials that had almost completely obliterated the unique fate of the Jews in the Holocaust. The law’s formulator, Haim Wilkenfeld (Zadok) of the Ministry of Justice, had indeed used objective language, repeatedly referring to an offender as “a person.” It is time, Gil said, for “the government of an independent Jewish state, after two thousand years of the absence of such a state, to assert itself and write: ‘against Israel and humanity.’”[[35]](#endnote-35)

In further discussions on the formulation of the law, the Knesset Constitution, Law, and Justice Committee decided to add to offenses in the law’s first paragraph of “crimes against humanity” and “war crimes” the offense of “crimes against the Jewish people.” Wilkenfeld formulated this on the basis of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide wording. He substituted the word “Jews” wherever the convention used the phrase “members of the group” in its first five sub-clauses, as for example in the first article where he replaced “Killing member of the group” with “Killing Jews.” He also added to the offense of “crimes against the Jewish people” two new sub-clauses that focused on cultural genocide and anti-Semitism: “(6) destroying or desecrating Jewish religious or cultural assets or values; (7) inciting to hatred of Jews.” The members of the Knesset subcommittee that formulated the bill adopted the new clause of “crimes against the Jewish people”, and after a short discussion decided to put it first, followed by “crimes against humanity,” and “war crimes.” The only justification for legislating this unique law, Knesset member Zerach Warhaftig reasoned, was that it pertained to Jewish victims, the prime target of the Nazi annihilation plan.[[36]](#endnote-36)

 While the legislators agreed to add the unique offense of crimes against the Jewish people which portrayed the Jews as victims, the majority refused to differentiate between a Jewish and a Nazi offender. The law speaks only of an offender as “a person,” positioning a Nazi SS man and a Jewish kapo as one and the same. Deputy Attorney General Wilkenfeld explained this choice not to distinguish between a Jew and a Nazi. How could one legally distinguish collaborators from Nazis, asked the attorney? “If there was a Nazi in the concentration camp who beat the people in the camp, and at the same camp there was a Jewish kapo who did the exact same thing, how could we apply a different clause to each of them?” The criminal acts of a Nazi and a Jew remained equal, Wilkenfeld asserted to the Knesset Constitution, Law, and Justice Committee. One should not regard the person committing the act but rather only the act itself, he insisted in face of criticism. The principle of equal justice under the law demanded that one should not allow the distinguishing of one group from another, he held, disregarding the different historical status of Germans and Jews in the context of Nazi rule, and the fact that Jewish lives were illegal within Nazi Germany. [[37]](#endnote-37)

When the committee discussed the sentence Jewish collaborators should receive, a debate ensued if and to what degree to take into account the Jewish origins of an accused.[[38]](#endnote-38) Responding to a suggestion to permit exempting a person from criminal responsibility for his actions in specific situations, MK Israel Bar-Yehuda (Idelsohn) of Mapam —a mining engineer by background who, despite his lack of legal training, was, according to another Knesset member who studied law, a brilliant legal mind — argued that irrespective of whether a person had acted under duress or in self-defense, a collaborator was guilty and the court should only be permitted to decide whether to commute his sentence. [[39]](#endnote-39) “I am opposed to… this kind of person being relieved [of legal responsibility] because he did what he did out of cowardice.” Bar-Yehuda, who was the father of a teenage daughter, continued: “If a person was told that if he did not kill another person, his daughter would be raped and killed, and, to save his daughter, he killed someone else, he is not, to my mind, relieved of criminal responsibility, even if he did all he could to prevent it.” [[40]](#endnote-40)

Behind this argument of Bar-Yehuda, who was joined by friends from his Mapam party, stood a deeper cultural and political argument. Mapam was closely associated with two of the youth movements, *ha-Shomer ha-Tzair* and *Dror*, that played a pivotal role in the different rebellions against the Nazis in Occupied Europe, including the most famous of them, the Warsaw Ghetto Uprising. During the war, the members of these two leftist youth movements were strongly opposed to the Jewish councils and police and viewed all who joined them as traitors. In the cultural scene that developed in Israel in the late 1940s and through the 1950s Mapam positioned itself as the representative of those rebels and took a strong position against any conciliatory approach towards those seen as collaborators. In their view, anyone who served in the Jewish council or police and kapos had crossed the line of loyalty and joined the opposing forces.[[41]](#endnote-41)

Knesset members from other parties, including the governing party of Mapai objected fiercely. Using the case of members of the Jewish councils, MK Zerach Warhaftig of the *ha-Poel ha-Mizrachi* party, who labored to save Jews during the Second World War in Lithuania, accused Bar-Yehuda of both lack of knowledge and falsification of facts:

There were instances in which a Jew accepted a position in the Jewish Council under duress after having been threatened, and there were instances in which individuals accepted such positions so as to do everything possible to lighten the burden on other Jews. It would be a crime on our part if we did not allow the court to relieve a person of criminal responsibility were it convinced that the defendant in question had accepted his appointment under duress and had done all he could have done to prevent the results of his actions.[[42]](#endnote-42)

MK Jacob Klivnov also rebuked Mapam Knesset members on the committee discussing the Nazis and Nazi Collaborator Law:

Whoever thinks of the situation of a Jew there, not with a biased perspective, but rather with a feeling of shared destiny, cannot but see that it was not betrayal, but often—and possibly in most cases—an act of courage and national loyalty on the part of those Jews who joined the Jewish Council. One could not have left those tens of thousands of Jews without any help or guidance. How can one say of a Jew who joined the Jewish Council that by his mere enlistment he became a collaborator with the Germans and cannot be forgiven? I protest against this view.[[43]](#endnote-43)

Also the leader of Mapai, David Ben-Gurion refused to criticize Jews who lived in the Holocaust, including members of the Jewish councils. He also opposed the view held by some, including members of Mapam, that not reprimanding those who served as members of the Jewish Council would weaken Israeli society and especially its youth. In a letter sent in 1955 he wrote that “the young generation in the Land of Israel has been educated on the actions of *ha-Shomer, ha-Haganah,* andthe IDFand there is no fear that the Jewish councils […] will affect our sons […].”[[44]](#endnote-44) To the contrary, members of Mapai feared that overstating the role of rebels in the Holocaust, might overshadow the overall lesson learnt from the Holocaust, namely, that the Jewish people in exile lived a passive life in which they could not defend themselves.[[45]](#endnote-45)

In the end, the Knesset adopted a version of the law’s tenth and eleventh paragraphs, which allowed the court to exempt from criminal responsibility or reduce their sentence only in the rare instances in which someone acted under the immediate threat of death or, alternatively, someone who “did or omitted to do the act with intent to avert consequences more serious than those that resulted from the act or omission, and actually averted them.”[[46]](#endnote-46) This legislation did not come before a debate between members of Mapai and Mapam about the way one should treat members of the Jewish councils, policemen and kapos. The representative of Mapam, Bar Yehuda, thought that the law should leave it in the hands of the court to decide if to release someone from legal responsibility. This permission to release from legal responsibility could apply to a person who was a member of the underground as well as a person who attempted to prevent worse consequences.[[47]](#endnote-47)

The representative of Mapai, Knesset member Joseph Lam, refused to accept the idea that only a representative of the underground or someone who acted to prevent worse consequences would be released from legal responsibility. He, like the leader of his party Ben-Gurion, presented a conciliatory approach to the Jewish masses in Europe:

Knesset Member, do not forget that this paragraph [no. 10] speaks of a persecuted person and we should not demand from a persecuted person – just in order to prove to history that the Jewish people is clean and kosher – that he behave in a different way from the way we all would have behaved. If I fight for the rights of that victim I see all of us, how we might have behaved in those circumstances; since I refute [the argument] that you and I would have behaved any different from many of the persecuted….

With a majority of five Knesset members the view presented by Lam was accepted. [[48]](#endnote-48)

Despite the opposition, the view that anyone who held office under the Nazis was incriminated also dominated among the leaders of the legal system. This new law, Minister of Justice Rosen told the Knesset, would provide accused survivors an opportunity “to prove their innocence and integrity in front of an authorized court.” Functionaries, in this view, were guilty unless proven innocent. He then added a quotation from the Hebrew Bible, “Therefore shall thy camp be holy,” (Deut. 23:14) implying that the law would help purify Israeli society.[[49]](#endnote-49)

With the completion of the legislation on 1 August 1950, the Nazis and Nazi Collaborators (Punishment) Law took immediate effect. The police and prosecutors had in their hands a tool with which they could charge former functionaries. It was now time to try Paal, Siegel, and Banik along with a dozen others.

1. **Chapter Three**

Testimony of Yerachmiel Yanovsky, March 18, 1951, *Attorney General v. Joseph P.*, Magistrates Court Judicial Inquiry, located in the District Court file, ISA, RG/31/LAW/48/51. [↑](#endnote-ref-1)
2. Testimony of Yerachmiel Yanovsky, March 18, 1951, *Attorney General v. Joseph P.*, Magistrates Court Judicial Inquiry, located in the District Court file, ISA, RG/31/LAW/48/51. [↑](#endnote-ref-2)
3. *Ha-Boker*, February 28, 1949. In no instance did the State of Israel extradite to any country anyone accused of committing crimes during World War II. One request for extradition of a Holocaust survivor, Jacob Kozeleuk, who lived in Israel was filed by the Czechoslovakian consulate in Israel. A brief reference to this request see in ISA, MFA/130/1884/7 (no date, no names). An amateur historian, Amir Haskel, has written a book about Jacob Kozeleuk attempting to clear his name. See Amir Haskel, Soher mi-blok 11 (Yavneh: Hotsaʼat Shorashim, 2013). At one instance Israeli authorities did consider requesting information of “Jewish collaborators” from the Belgian authorities but ended up not doing so. Israel’s diplomatic mission, Belgium to Foreign Ministry Legal Advisor, April 18, 1951, ISA, MFA/130/1884/7. [↑](#endnote-ref-3)
4. Mordechai Nurock, *Divrei ha-Knesset*, November 29, 1949, p. 187. [↑](#endnote-ref-4)
5. *Al ha-Mishmar*, *Haaretz*, and *Ha-Boker*, September 6, 1949. [↑](#endnote-ref-5)
6. *Ha-Boker*, August 18, 1949. [↑](#endnote-ref-6)
7. *Ha-Boker*, *Ha-Tzofeh*, and *The* *Palestine Post*, October 10, 1948. [↑](#endnote-ref-7)
8. *Davar*, October 19, 1948. [↑](#endnote-ref-8)
9. *Ha-Boker*, July 7, 1949. For other examples, see *Davar*, *Haaretz*, and *The* *Palestine Post*, March 27, 1949; and *Davar*, January 29, 1950. [↑](#endnote-ref-9)
10. *Maariv*, June 22, 1949; Yablonka, “The Law for Punishment,” 142; Jockusch, *Rehabilitating the Past?*, 53. [↑](#endnote-ref-10)
11. *Davar*, March 17, 1949. [↑](#endnote-ref-11)
12. Joseph Gorski to Head of Criminal Investigation Unit, July 6, 1949, ISA, RG/74/IP/2162/45. [↑](#endnote-ref-12)
13. Ram Salomon to Police Inspector, October 18, 1949, ISA, RG/74/IP/2162/45. [↑](#endnote-ref-13)
14. *Új Kelet*, December 17, 1949. For a seminar paper written about the Banik trial see Lachan Sarid, “The Trial of Andrej Banik – The First Trial Based on the Nazis and Nazi Collaborator Law,” Hebrew University Faculty of Law, 2012. [↑](#endnote-ref-14)
15. Testimony of Tsvi Roth, May 31, 1951, *Attorney General v. Banik*, ISA, RG/33/LAW/121/51; Banik diary, Czechoslovak Embassy in Tel Aviv, Box 8, Czech Ministry of Foreign Affairs Archive, Prague (hereafter Archiv MZV). [↑](#endnote-ref-15)
16. Banik diary, Czechoslovak Embassy in Tel Aviv, Box 8, Archiv MZV. [↑](#endnote-ref-16)
17. For more on the formation of the Hlinka Guard, see Yeshayahu Jelinek, “Storm Troopers in Slovakia: The Rodobrana and the Hlinka Guard,” *Journal of Contemporary History* 6(3) (1971), 97–119. [↑](#endnote-ref-17)
18. Testimony of Yitzhak Freiman, December 20, 1949, *Attorney General v. Banik*, ISA, RG/33/LAW/121/51. [↑](#endnote-ref-18)
19. All quotes from the police investigation of Banik, December 20, 21, and 27, 1949, January 1 and 3, 1950, *Attorney General v. Banik*, ISA, RG/33/LAW/121/51. [↑](#endnote-ref-19)
20. Police investigation of Banik, December 20, 21, and 27, 1949, January 1 and 3, 1950, *Attorney General v. Banik*, ISA, RG/33/LAW/121/51. [↑](#endnote-ref-20)
21. *Ha-Boker*, November 23, 1950; *Herut*, November 24, 1950; *Haaretz*, November 24, 1950; *Yedioth Ahronoth*, December 15, 1950; *Maariv*, April 5, 1951. Another case of a non-Jew suspected of collaboration was a woman soldier arrested on Allenby Street in Tel Aviv. See *Ha-Boker*, *Ha-Tzofeh*, and *The* *Palestine Post*, October 10, 1948. [↑](#endnote-ref-21)
22. *Ha-Mashkif,* January 17, 1946; *Maariv* & *Al-Hamishmar*, March 5, 1948; *Maariv,* May 4, 1951. [↑](#endnote-ref-22)
23. Expulsion order, ISA, MFA/130/1884/6. [↑](#endnote-ref-23)
24. N. Stavi, Assistant Inspector General Investigation Branch, Israel Police Force Headquarters to Consulate General, Czechoslovak Republic, Jerusalem, March 7, 1950, Czechoslovak Embassy in Tel Aviv, Box 8, Archiv MZV; *Ha-Boker*, September 27, 1950; Israel Attorney General to Czechoslovak Consul General, December 24, 1950; Foreign Ministry Legal Advisor to Attorney General, April 19, 1951, ISA, MFA/130/1884/7. [↑](#endnote-ref-24)
25. This Nazis and Nazi Collaborators Law (1950) has been discussed in several publications. See: Yehudit Dori Deston, *Demjanjuk's Israeli Trial: The End of Nazi Prosecution in Israel* (Ph.D. diss., Hebrew University of Jerusalem, 2017, pp. 39-48; Itamar Levin, *Kapo in Tel Aviv: Prosecution in Israel of Jews Accused of Collaboration with the Nazis* (Jerusalem: Yad Izhak Ben-Zvi & Moreshet, 2015), 23-40; Rivka Brot, *Between Community and State: The Trials of Jewish Collaborators with the Nazis* (Ph.D. diss., Tel Aviv University, 2015), 152-181; Hemda Gur-Arie, Knowing the Unknown: The Holocaust in Israeli Judgment (Ph.D. diss., Tel Aviv University, 2007), pp. 173-178; 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), 130-149; Hanna Yablonka, “The Law for Punishment of the Nazis and their Collaborators: Legislation, Implementation, and Attitudes,” *Cathedra,* (December 1996), 139-146; Yechiam Weitz, “The Law for Punishment of the Nazis and their Collaborators as Image and Reflection of Public Opinion,” *Cathedra*, (December 1996), 153-154. [↑](#endnote-ref-25)
26. The Crime of Genocide (Prevention and Punishment) Law (1950), see: <http://preventgenocide.org/il/law1950.htm> (last accessed on July 25, 2017). The UN Convention on the Prevention and Punishment of the Crime of Genocide, see: <http://www.hrweb.org/legal/genocide.html>(last accessed on July 25, 2017). See also Dori Deston, *Demjanjuk's Israeli Trial*, p. 40. [↑](#endnote-ref-26)
27. Knesset Constitution, Law, and Justice Committee, August 10, 1949, Knesset Archive, pp. 12-13; Knesset Constitution, Law, and Justice Committee, August 10, 1949, Knesset Archive, pp. 11–13. See also Adi Jabotinsky who called for the establishment of a special court but more for political reasons than for judicial ones. *Divrei ha-Knesset,* March 27, 1950, 1153. [↑](#endnote-ref-27)
28. *Divrei ha-Knesset*, March 27, 1950, 1147-1148; For a similar view see Knesset member Hannan Rubin, Knesset Constitution, Law, and Justice Committee, August 10, 1949, Knesset Archive, p. 6; Nir Kedar, *Mamlakhtiyu: ha-Tefisah ha-Ezrahit shel David Ben-Guryon* (Jerusalem: Yad Izhak Ben-Zvi, 2009). [↑](#endnote-ref-28)
29. While there is no explicit reference to this view in the Knesset, as will be pointed out later prosecutors attempted to get the harshest possible punishments, including the death penalty, to defendants, indicating that social punishment was not an option for them. [↑](#endnote-ref-29)
30. *Divrei ha-Knesset*, March 27, 1950, 1147. In earlier versions of the bill the title of the law only spoke about “war criminals” with no distinction between the “Nazis and Nazi Collaborators.” Knesset Constitution, Law, and Justice Committee, August 10, 1949, Knesset Archive, pp. 2–4 & *Divrei ha-Knesset*, November 29, 1949, 187. [↑](#endnote-ref-30)
31. *Divrei ha-Knesset*, March 27, 1950, 1148, 1161. [↑](#endnote-ref-31)
32. Knesset Constitution, Law, and Justice Committee, August 10, 1949, p. 6; The Knesset Constitution, Law, and Justice Committee discussed the possibility of extradition of a Nazi criminal in its deliberations related to The Crime of Genocide (Prevention and Punishment) Law, 1950, December 28, 1949; *Divrei ha-Knesset*, March 27, 1950, 1153. See also, Rotem Giladi, “Not Our Salvation: Israel, the Genocide Convention, and the World Court 1950–1951,” *Diplomacy and Statecraft,* 26 (2015), 473-492. On Schacht see chapter seven. [↑](#endnote-ref-32)
33. *Divrei ha-Knesset*, June 29, 1949, 868. See also, *Divrei ha-Knesset,* March 27, 1950, 1147. [↑](#endnote-ref-33)
34. On the question if the law was formulated with the thought that Nazis may stand trial in Israel and the implications of such a view, see Yehudit Dori Deston, *Demjanjuk's Israeli Trial: The End of Nazi Prosecution in Israel* (Ph.D. diss., Hebrew University of Jerusalem, 2017), pp. 222-226. [↑](#endnote-ref-34)
35. *Divrei ha-Knesset*, March 27, 1950, 1154. See also Gil’s view in an op-ed he published in *Ha-Boker*, April 13, 1950; and *Hatza’ot hok* 36 (February 28, 1950). See also “Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal,” *Yearbook of the International Law Commission*,1950,vol. 2, para. 97. [↑](#endnote-ref-35)
36. This offense of crimes against the Jewish people was already mentioned in passing in the ruling of the Polish State Court ruling in the case of Barenblat cited above in chapter one; also earlier, in honor courts in DP camps in Germany this offense existed. See Laura Jockusch, “In Search of Retribution: Nazi Collaborators Trials in Jewish Courts in Postwar Germany,” *Revenge, Retribution, Reconciliation*, 138. [↑](#endnote-ref-36)
37. Knesset Constitution, Law, and Justice Committee, May 23, 1950, ISA, RG/60/K/25/17, pp. 1–3, 8–9. [↑](#endnote-ref-37)
38. Knesset Constitution, Law, and Justice Committee, June 12, 1950, ISA, RG/60/K/25/17, pp. 3–4; and July 24, 1950, p. 1. [↑](#endnote-ref-38)
39. Yohanan Bader, *Ha-Knesset va-ani* (Jerusalem: Idanim, 1979), 40–41. [↑](#endnote-ref-39)
40. Knesset Constitution, Law, and Justice Committee, July 12, 1950, Knesset Archive, pp. 6–7. [↑](#endnote-ref-40)
41. Stauber, *Ha-Lekah la-Dor*, 71-72. [↑](#endnote-ref-41)
42. Knesset Constitution, Law, and Justice Committee, July 12, 1950, Knesset Archive, p. 7. [↑](#endnote-ref-42)
43. Knesset Constitution, Law, and Justice Committee, July 12, 1950, Knesset Archive, p. 15. [↑](#endnote-ref-43)
44. Cited in Stauber, *Ha-Lekah la-Dor*, 67-69. [↑](#endnote-ref-44)
45. Stauber, *Ha-Lekah la-Dor*, 71. [↑](#endnote-ref-45)
46. Nazis and Nazi Collaborators Punishment Law (1950), sec. 10. [↑](#endnote-ref-46)
47. Divrei ha-Knesset, August 1, 1950, 2394. [↑](#endnote-ref-47)
48. Divrei ha-Knesset, August 1, 1950, 2935-2396. [↑](#endnote-ref-48)
49. *Divrei ha-Knesset*, March 27, 1950, 1148. [↑](#endnote-ref-49)