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"There Wasn't a Righteous Person Among Them"

The Gray Zone of Collaboration in the Israeli Courtroom

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> The principal pitfall, in my opinion, that lies in wait for anyone who would conduct an objective trial concerning the behavior of those who took part in past actions—and even those in the recent past—stems from the fact that he [the judge] will not always strive to put himself in the shoes of the participants themselves; evaluate the problems they faced as they might have done; take into consideration sufficiently the needs of time and place, where they lived their lives; and understand life as they understood it.[1]

Prologue: Historical Reality in Juridical Language

Moshe (Marian) Puczyc and Mordechai Goldstein, Jewish residents of the Polish city of Ostrowiec,[2] were ordinary people whose lives were transformed by the tumult of war. They both served in the Jewish police force of the Ostrowiec ghetto and in the labor camp set up outside the city after the liquidation of the ghetto. In this chapter I focus on the legal proceedings conducted against them in an Israeli court: the trial of Puczyc, deputy commander of the ghetto

police force and later the commander of the camp police force; and the trial of Goldstein, an "ordinary" policeman.[3] The tension between the historical sphere, namely, the attempt to comprehend the complex reality of the ghetto and the camp, and the legal domain, which sought to reduce this reality to unequivocal juridical categories, lies at the center of my discussion. As I show, both cases represent the difficulties of the criminal law in struggling with the Holocaust in general and in the gray zone of collaboration in particular. Notwithstanding the common denominator, each of these cases found its own way to deal with the complicated phenomenon of Jewish collaboration within the narrow framework of legal categories.

During Israel's early years, the survivors posed a palpable threat to the myth of the heroic "new Jew," and they were subjected to critical judgment and blame.[4] The Italian philosopher Giorgio Agamben suggests that, "according to the law that what man despises is also what he fears resembles him, the *Muselmann* is universally avoided because everyone in the camp recognizes himself in his disfigured face."[5] The "new Israelis" likewise looked into the faces of the survivors and saw themselves, because they had, after all, come from the same Diaspora whose attributes they sought to erase, and it had only been by virtue of chance circumstances that they had been spared the fate of the survivors. Moreover, individual survival that was bereft of physical courage was not an eventuality that public discourse could entertain, all the more so if this was a matter of collaboration with the Germans as a means of survival, which was incompatible with the national ethos of the time.[6]

This is an appropriate place to mention that the Hebrew term *shituf pe'ula*, generally translated as "cooperation," by no means expresses the singularly negative connotation associated with the term *collaboration* in other languages, which denotes specifically cooperation with the enemy and implies perforce treason.[7] Quite ironically, these negative attitudes were actually reinforced by the survivors themselves through complaints that they lodged with the British Mandate police and later the Israeli police against other survivors whom they identified as former policemen, Judenrat members, or camp functionaries. This formed the social, cultural, and political backdrop to the Nazis and Nazi Collaborators (Punishment) Law of 1950 (5710 in the Jewish calendar), which was passed in August 1950 as a means of adjudicating mainly Jews suspected of collaboration with the Nazis rather than Nazi war criminals, because at that time it seemed inconceivable that a Nazi would be brought to trial in an Israeli court. Enacted only two years after Israel became an independent state, the law arrived too early to facilitate a historical perspective or an understanding of the lives of Jews

during the Holocaust. Several dozen Jews were indicted under this law from the end of 1950 up to at least the mid-1970s.[8] The press reported cases of people identified as former functionaries, generally through chance encounters in the streets, restaurants, parties, and elsewhere. The papers portrayed the commotion that occurred on these occasions and reported on subsequent arrests. After August 1950 many of these complaints turned into indictments in Israeli courts of law. The audience that attended the trials generally included survivors from the town, ghetto, or camp in which the accused had served.[9] Hanna Yablonka writes that in the Israeli context at the time, these trials were primarily "an internal affair in the life of the survivors."[10]

The Nazis and Nazi Collaborators (Punishment) Law was an attempt to conceptualize the destructive reality of the ghetto and the camp through categories derived from a sphere that seeks to impose a normative order that clearly distinguishes between right and wrong. The artificial transplantation of modern criminal law to a location in which the normal order had been overturned inevitably led to a clash between the modern state and "l'univers concentrationnaire."[11] Analysis of the testimonies and the judgments in the legal proceedings of both Puczyc and Goldstein also raises the question of whether it is possible to make value judgments about human situations in which the protagonists cannot be readily and clearly categorized as evil or good or as guilty or innocent within a judicial framework. The testimonies reveal a "gray zone," the expression coined by Primo Levi that denotes a sphere that is "poorly defined, where the two camps of masters and servants both diverge and converge. This gray zone possesses an incredibly complicated internal structure and contains within itself enough to confuse our need to judge."[12] The principal attributes of the gray zone are a restricted sphere of choice, difficulty in distinguishing between good and evil, collapse of the common values and morality, and the establishment of a moral code that fits the extreme circumstances in which preservation of life is the ultimate imperative. Puczyc and Goldstein operated within the gray zone of Ostrowiec until the dissolution of the ghetto and the labor camp. It was their gray zone as well as the gray zone of the entire Jewish population that was put on trial.

The narrative of the legal proceedings comprises not merely the stories of individual defendants but also the story of the Jewish police force, a body formed by order of the Nazis as the operational arm of the Judenrat. An official police force that possessed powers of enforcement had never been part of the Diaspora Jewish community's inner structure, because the Jews were subservient to the central regime regarding all matters pertaining to the enforcement of law and order. In this respect the Jewish ghetto police was an exceptional phenomenon

and thus was perceived as a foreign element. Before the period of deportations, the policemen engaged in activities associated with the administration of life in the ghetto, such as combating crime, maintaining order, and levying taxes, but they also engaged in activities that were directly linked to the German occupation, such as rounding up Jews for the purpose of forced labor or collecting, quite frequently by force, various valuable objects from Jewish houses on orders from the Germans. The period that rendered the Jewish ghetto police force notorious was that of the mass deportations, when Jewish policemen were actively involved in locating the Jews' hiding places and transferring them to assembly points, accompanying people to the trains, and loading them into the boxcars.[13] The police force, which represented the Nazis for all practical purposes and was even identified with them, was generally the most hated body in most ghettos.[14] In the complicated and fraught reality in which Jews performed functions in the service of the Nazis, the Jewish police force, or the Jüdischer Ordnungsdienst (Jewish Order Service) as it was known in German, occupied a singular position. In this respect the Jewish police force in Ostrowiec, which was formed in spring 1941, was unexceptional, other than the fact that, contrary to most ghettos, it possessed greater authority and exerted more influence than the Judenrat.[15]

My proposed reading of the testimonies and judgments does not restrict itself to just the legal narrative, which addresses the determination of guilt or innocence. My reading seeks to add a further historical and cultural narrative to the self-explanatory legal narrative, a reading that derives from the realization that the testimonies are not merely a means of establishing guilt or innocence. The proposed reading also perceives the testimonies as a means of conveying the reality of life in the ghetto and the camp, a story that does not necessarily involve the forbidden acts ascribed to the defendants.[16] This historical and cultural reading seeks to comprehend the total collapse of all that was familiar in the world to Ostrowiec's Jews, a reality that defies criminal categories and therefore can hardly be "heard" by the law. Through this historical and cultural reading I seek to reveal the tension between the gray zone of everyday life and the legal discourse that seeks to paint the reality of the ghetto and the camp in black (the prosecution) and white (the defense). I have no intention of resolving this tension but merely seek to expose it and to understand its origins.

The defendants themselves realized that in order to explain the unique connotations of "injury" or "assault" in the ghetto in relation to the meaning of these terms as they appear in the Nazis and Nazi Collaborators (Punishment) Law,[17] they would have to expand the boundaries of the legal narrative. This was the only way to explain how "injury" or "assault" lost their "criminal" meaning and

became an act of everyday life in the ghetto or an act of survival. Thus the testimonies enable us to begin to comprehend how acts committed by the policemen that are punishable from the perspective of Israeli law could be considered normative actions on the part of the policemen-defendants when one observes them from the perspective of the ghetto or the camp.[18] The narrative that emerges reveals that human life, even at the lowest rung of existence, is an intricate web of relationships, ties, and individual stories that are not contained in the uniform mold into which both contemporary public discourse in Israel and the legal process sought to place them. The legal files, crumbling with age in the Israel State Archive, bear witness to a painful and tormented human world that broke free of the boundaries of juridical language and was related in an archaic form of Hebrew, for the most part translated from the Yiddish.

This chapter is broken into two main sections. The first presents an analysis of the testimonies and judgment in the Puczyc trial, and the second analyzes the testimonies and judgment in the Goldstein trial. Both cases manifest the tension between the historical and the judicial spheres, between the reality of the gray zone and the binary nature of legal thought.

The Commander: Moshe Puczyc

Moshe (Marian) Puczyc was born in Warsaw in 1910. He received a broad education, spoke Hebrew already as a youngster, and came from a Zionist background. As he related in his testimony, he completed his studies at a Warsaw high school, continued to study at a Polish college in the Department of Administrative Law, and took a course in political science.[19] In 1936 he began to work as secretary to Dr. Emil Sommerstein, head of the Jewish delegation to the Polish Sejm, and he subsequently became the director of this delegation's archive until the outbreak of war. After the war began, he moved to Ostrowiec, where he was appointed head of the Judenrat's sanitation department in 1941. In his testimony he recounts that the head of the Judenrat, Yitshak Rubinstein, asked the Zionists to volunteer to perform various functions under the auspices of the Judenrat. Some time later, on the initiative of the head of the Judenrat, Puczyc was appointed deputy commander of the Jewish police force. The historian Aharon Weiss notes that the appointment was apparently made by virtue of family connections, because Puczyc was the son-in-law of Judenrat member Ya'akov Mintzberg.[20]

From the outset Puczyc came to prominence as a strong individual who overshadowed the police commander and forged ties with Judenrat functionaries and with the Nazis. When the police force commander was murdered by the Nazis early in the summer of 1944, just before the dissolution of the labor camp,

Puczyc was chosen to replace him and was, as he himself remarked, "omnipotent." Upon the dissolution of the camp, Puczyc was deported to Auschwitz together with the remaining Jews in the camp. When the war ended, Puczyc made his way to Munich, where he was elected to the Central Committee of Liberated Jews in the American Zone of Occupied Germany, on which he served as the first general secretary. In addition, he became a member of the central committee of the United Zionist Organization in Germany.[21] He immigrated to Israel in 1948 and worked at the Interior Ministry before his arrest.

THE PROSECUTION: "THE MASTER OF LIFE AND DEATH"

In September 1950 Puczyc was indicted in the Tel Aviv District Court after an investigating judge in the Magistrate's Court found that there were grounds for putting him on trial.[22] The indictment listed thirteen separate counts, among which were indictments under Article 1 of the law, namely, war crimes and crimes against humanity, which carried a mandatory death penalty.

As is customary in criminal trials, the prosecution portrayed Puczyc as a rational, autonomous person in control of his life, both with regard to his choice to accept his role in the Jewish police and through the choices he made while functioning in his position. From the prosecution's perspective the fact that Puczyc was a Jew living in a ghetto and a camp, subject to the Nazis' authority and, like the rest of Jews, eventually destined for extermination, did not impinge on his freedom of choice. But the prosecution went further, presenting testimonies that cast a dark shadow over Puczyc's personality to reinforce the image of the defendant as someone who chose to abuse his power and authority partly because of his negative personality traits. This created an anomalous situation in the courtroom by applying a liberal line of thought to the extreme circumstances in which people lived during the Holocaust.

Most of the prosecution witnesses focused on the assertion that the defendant possessed the power to decide how to treat the members of the community. One of many examples is provided by a prosecution witness who maintained, "I don't know from whom the defendant received orders. . . . I believe he did whatever he wanted."[23] To underline his evil behavior, the witnesses compared Puczyc to other policemen. For example: "Blumenfeld was head of the police. He treated everyone very well. The defendant treated [people] like a murderer from beginning to end."[24] The witnesses did not make do with this comparison and compared the defendant to the Nazis: "He was the Himmler of the camp";[25] he "was the ruler, the master of life and death."[26] These testimonies present a process of demonization of the defendant, during which he acquired "Nazi" traits.

The witnesses spoke about the defendant's active involvement in the selection conducted during the second *Aktion* in the ghetto in January 1943 and about the power his status afforded him to determine whether people would live or die: "After some time the defendant told me that had he wanted to, he could have passed over my name and I would then have been sent to Treblinka, but that he hadn't wanted to do so."[27] The indictment sheet contains no charge relating to this event, but this testimony nevertheless constitutes part of the body of evidence owing to its great importance to the prosecution. It provides an additional perspective on the defendant's sphere of choice, even when the Nazis were present. Another prosecution witness described how, on the day of the second *Aktion*, a woman designated for deportation approached the defendant and exchanged words with him, which the witness could not hear: "I understood that she was asking for something. *It was well known that the defendant could assist her.* The defendant began to beat her with a whip. And I saw that she spread her arms imploringly. SS men came and took her."[28] This was not direct testimony because the witness did not overhear the conversation between the woman and the defendant, but the details are unimportant. The moment the testimony focused on the general "knowledge" ostensibly shared by all, according to which the defendant could have assisted the woman had he wished to do so, the prosecution achieved its goal, which was to place the defendant at center stage, where he exerted his free will. The perception of the defendant as an autonomous person is likewise manifested in his portrayal as being exceptional among the policemen themselves, because he was "the life and soul of the police force"[29] and "the only educated person among them [the police], since they were all simple people."[30]

The prosecution attempted to establish that the defendant collaborated with the Nazis for his own selfish interests, namely, the pursuit of authority and a desire to curry favor with the Nazis in the hope of saving himself. In legal terms these assertions carried no weight at all, but they were designed to establish the figure of the defendant not only as a person who acted of his own free will but also as someone who would harm others out of egoistic motives. We learn of his special relations with the Nazis from the defendant's response to the question referring to what the prosecution described as his habit of drinking with them. The defendant responded to this by relating that on certain occasions the Jewish policemen were required to serve drinks to the Nazis who came to the ghetto, because they would "force us to drink with them."[31] The direct questions were coupled with indirect insinuations to portray the defendant as a cruel individual who stood on his honor and who sought the company of the Nazis in order to save his life.

THE DEFENSE: "IF I SLAPPED SOMEONE ON THE CHEEK, IT WAS ALWAYS IN THE LINE OF DUTY"

The defense team naturally pursued a different path. The defense testimonies proceeded along two interconnected tracks that sought to enhance the figure of the defendant as a responsible public functionary on the one hand and to minimize his image as a cruel policeman on the other. These two processes went hand in hand.

The personal narrative traced by the defense ran counter to the prosecution's liberal narrative. Whereas the prosecution's narrative emanated from the liberal ethos that rests on the perception of the autonomous individual and his freedom of choice, the defense's narrative responded by presenting a man who was connected to the community and who pursued the general interest. The actions that the defendant *chose* to take and that are portrayed by the prosecution as proscribed acts turned out, according to the defense, to have been performed for the good of the community.

The initial step in constructing the defendant as a responsible public servant was to present his own testimony, in which he described his broad education, his public duties, and in particular his Zionist activity.[32] Puczyc portrayed his appointment to the post of deputy commander of the Jewish police force as having been forced upon him; he had by no means "pursued" honor: "The list I saw was an appointment order. Blumenfeld was appointed commander and I his deputy."[33] Puczyc furthermore stressed his inferior position in the police hierarchy: "Of the two of us, Blumenfeld [the police commander] and I, Blumenfeld was the major and the active [one]. . . . He would give me orders and I gave no order without permission and in some cases he annulled my orders."[34] Puczyc's public responsibility, according to his testimony, was an onerous burden: "Not only did I fail to make an effort to become an officer, I also did not attempt to enter the police force. With my connections I could have become a major actor and things would have been easier for me. I continually tried to resign from the police but . . . they did not agree."[35] He likewise failed to exploit an opportunity to escape from the camp: "I did not escape although I could easily have done so, but I did not do so because of my responsibility."[36]

Seeking to demonstrate that he accepted public responsibility beyond his formal roles, the defendant recalled his involvement in voluntary activity on behalf of the ghetto community, such as the establishment of workshops in the ghetto to provide employment for Jews and thereby forestall their deportation. He stressed that this activity "had nothing to do with the police, I did it voluntarily."[37] This account, related in the first-person singular, underscores the active

element in Puczyc's behavior: The defendant initiated, organized, and implemented projects, all for the good of the community.

Puczyc regarded his election to the Central Committee of the Liberated Jews in the American Zone of Occupied Germany following the war, with the support of former residents of Ostrowiec, as conclusive proof of his honorable behavior: "I was liberated together with many people from Ostrowiec who went with me . . . and I was elected to the committee after being proposed by the people of Ostrowiec. There were some forty to fifty former Ostrowiec residents in the camp. . . . I was active on the camp committee and then . . . elected to the Central Committee of Liberated Jews in Bavaria. I was chosen to be the first secretary of the Central Committee."[38] This story had of course nothing to do with the legal indictments, yet it acquired great significance because it presented a different picture from that of the prosecution with regard to the relationship between Puczyc and the people of Ostrowiec. It transpired that although his deeds as recounted by prosecution witnesses were ostensibly still "fresh" in their memory, the people of Ostrowiec supported him and his public activity. In other words, reality was far more complex than the prosecution would have it.

Puczyc recounted his activity among the displaced Jews at length.

> I began my activity as first secretary toward the end of May or the beginning of June 1945. . . . At that time they also founded the United Zionist Organization of Germany and I was elected as a delegate to the central body. My first action was to obtain from the American commander, General Patton, a license for the operation of the Central Committee. Then we organized aliyah [immigration to Palestine] activity in cooperation with the people of the [Jewish] Brigade.[39]

With a view to reinforcing the impression of his elevated public standing among the displaced Jews and in order to counter the assertions of witnesses regarding investigations of him because of his former position as deputy police commander in the ghetto and the camp, the defendant submitted documents that apparently cleared him of all guilt. Chief among these were photographs that showed him sharing a podium with David Ben-Gurion. The defense correctly believed that these photos would reinforce the public aspect of the defendant's persona.

Yet this is but one aspect of the story. We must remember that this was a criminal trial that would determine the defendant's fate, and for this reason Puczyc was obliged to work toward his acquittal rather than merely relating a historical narrative. Thus, alongside his effort to build up his image as a public

figure and a Zionist activist, he likewise tried to minimize as much as possible his resemblance to the figure of the cruel and power-seeking policeman constructed by the prosecution. He did this by portraying himself as someone who resorted to beatings only when left with no choice as he performed his duty, not as an end in itself.

Regarding the *Aktion* of October 1942, the prosecution witnesses testified that Puczyc was present and took part in the deportation of Jews to their extermination, but Puczyc maintained: "On the first day of the deportation I coordinated police activities from the office of the Jewish council and I played no role outside. I would send policemen to every location I was ordered to, such as the collection of the dead and so forth."[40] Puczyc did not claim that the prosecution's testimonies were a libel designed to besmirch him and the Jewish police. Rather, he located himself as a clerk who sat by the telephone and obeyed orders. The defendant thereby distanced himself from the procedure whereby the Jews were assembled and deported to Treblinka: "I saw nothing of what happened on that day [the first day of the *Aktion*] adjacent to the labor office and the market, and heard about it from the reports that the policemen would submit to me."[41] Referring to the second operation in January 1943, the defendant stressed that he, alongside other policemen, made an effort to find work for the people in order to prevent their deportation.[42]

Puczyc presented the beatings frequently described by the witnesses as an integral part of his (and his colleagues') role as a policeman: "There was not one case in which I beat someone without a reason. I never beat [anyone] beyond the line of duty. If I slapped someone's cheek it was always in the line of duty."[43] The beatings were thus an integral part of his role, the local "rule" in fact. The manner in which the defense sought to portray the use of beating reveals the tension between the judicial discourse, namely, the Nazis and Nazi Collaborators (Punishment) Law, which stipulates that beating may constitute an offense ("injury," "assault," and so forth) and the historical discourse, represented through the description of reality, according to which beating was the norm. Therefore the defendant took care to point out that he beat people "only" in the line of duty. Thus was the essence of the beatings transformed from an unacceptable means used by those wielding power into a part of the laws of the ghetto and the camp. In other words, if one considers the nature of the beatings according to the circumstances of the time and the place at which they were administered, one begins to appreciate the perspective of the defendant (and in fact of the police in general), who were obliged to operate within a sphere of choice that was a total inversion of what those who were sitting in judgment of him could conceive.

THE JEWISH GHETTO POLICE

The defendant was not the only "actor." Apart from him, the Jewish ghetto police formed an integral part of the arguments of both the prosecution and the defense, although it played no part in the judicial course of the trial.[44] Both parties understood that, given the unprecedented circumstances, it was necessary to broaden the court's perspective beyond the judicial categories and the indictments. These testimonies were not meant to establish guilt but rather to frame the arena in which the actions attributed to the defendant had been taken.

The prosecution presented the Jewish police, an unknown organ in the annals of the Jewish communities, as a group of people, most of whom were heartless opportunists, who chose to exploit their position to accumulate money and to survive. Witnesses told of policemen who were known to be "experts in beatings."[45] With a view to underscoring the policemen's freedom of choice, the witnesses related that "in Ostrowiec there were good policemen who didn't bother people, but I don't remember their names."[46] The prosecution witnesses' admission that it had been possible to be a "good policeman" underscored the volitional element of the policemen's behavior and the choice to treat the Jews harshly. The picture of the police force that emerged from the prosecution testimonies accorded with that portrayed by external sources: This was the most hated of the Jewish authorities in the ghettos.[47]

In contrast to the general narrative presented by the prosecution, the defense's account of the police force can be distilled into a narrative of "public responsibility." The defense could not construct the Jewish policemen as "classic" victims because it was impossible to ignore the use of force or to deny it completely. Therefore the defense decided to alter the perspective and to present the behavior of the police, including its resort to beatings, not as actions that were either unequivocally good or evil but as actions associated with the exceptional circumstances.[48] For example, in response to claims by prosecution witnesses that Jewish policemen confiscated private property from owners who attempted to salvage it or that policemen demanded and received payments for freeing people from the prison (located in the ghetto) or for removing people from the lists of forced laborers or deportees, the defense maintained that what appeared to be confiscation of money from Jews was in fact part of a general plan to bribe Nazis in order to rescue Jews.

How, then, did the defense contend with a prosecutorial assertion such as this: "The police personnel lived very well. Between the first deportation in October 1942 and the second deportation in January 1943, they took money at every opportunity from the workers in the factory, and anyone who did not give

[to them] was removed from the factory."[49] Puczyc rebutted this accusation.

> First of all, the council would levy tax, and apart from that, if an order came in for certain objects [from the Nazis], it would be submitted to the same branch for fulfillment, without charge. On one occasion they took their time about fulfilling an order for furniture, and then the SS people went from house to house and beat people severely. The police did not intervene in any way in the collection of these objects, a committee of the council took care of this. If someone refused to hand over [items], the council would employ its own means.[50]

The defendant not only transferred the burden of guilt from the police to the Judenrat but at the same time recalled the context in which the events had occurred: The behavior of the police portrayed by the prosecution witnesses in terms of theft and a lack of solidarity was in fact prompted by the obligation to obey Nazis orders. The defendant thereby sought to legitimize the policemen's behavior: "If I caught someone robbing, I gave him a few slaps on the cheek, took the articles from him and sent him away; the other policemen did likewise. . . . We then conveyed these articles to the general store and distributed them among the people."[51]

Although the prosecution witnesses expressed no reservations about the acts of looting committed by "ordinary" Jews, they blamed the policemen for doing precisely the same thing. The phenomenon of looting empty apartments represented the upheaval in ghetto life, as people acted in ways they never would have contemplated under normal circumstances. Jews forcibly entered houses whose owners were forced to vacate them and looted whatever they could. Jewish police then stole from the thieves, maintaining that they were exercising their authority as policemen. They failed to consider the moral implications of their action (according to the moral criteria of their former lives) because these were the laws of the place.

By rights, the conduct of the police should have played no part in the proceedings, which were supposed to focus solely on the behavior of the defendant, Puczyc, yet the prosecution and the defense alike placed it on the judicial agenda. Both parties realized that they must, each from its own perspective, refract Puczyc's own story through the prism of police conduct because they sensed that it was all but impossible to convey what had transpired in those days solely by means of the judicial categories of the Nazis and Nazi Collaborators (Punishment) Law. The combined narratives of the prosecution, which portrayed the police as a cruel and self-seeking body, and of the defense, which described

the police as a communal body that operated under exceptional circumstances while attempting to cope with reality as it unfolded, displayed before the court a broader canvas than that encompassed in the indictment; thereby it augmented people's capacity to comprehend what had actually occurred and to appreciate that it could not be reduced to a matter of black and white but was, instead, a complex human tale. To this complex portrait we should add a number of prosecution testimonies that did not conform to this one-dimensional portrayal of the police. For example, one prosecution witness expressed an understanding of the need to impose order under the exceptional circumstances that prevailed in the ghetto and the camp but voiced reservations about the means used by the police: "There were things that they had to do, but they could have made things far easier."[52]

Twenty-seven prosecution witnesses and fourteen defense witnesses related the story of the defendant and the story of the Jewish community and the Jewish ghetto police in Ostrowiec. I have sought to present not a tale of guilt or innocence but rather a complex narrative of people who struggled to survive. The judgment, on the other hand, is a tale of extremes, because it represents the juridical imperative to arrive at an unequivocal decision: guilty or innocent.

THE VERDICT

It appears that Moshe Puczyc was not only among the first defendants tried according to the Nazis and Nazi Collaborators (Punishment) Law but also the first Jewish policeman to be indicted in an Israeli court. This was thus the first occasion on which Israeli judges came face to face with a senior functionary in a body that was one of the most hated in public discourse but whose day-to-day activities in the ghetto were unfamiliar to most Israelis. The lengthy judgment suggests that the judges made an effort to decipher the figures who appeared before them and the circumstances of their lives. I focus on the verdict's final section, which displays, to my mind, the most significant line of thought in the decision-making process. In this section the judges not only determined the legal verdict (guilty or innocent) but also revealed their position with regard to the reality they learned of during the course of the trial.

I suggest that we view the judges' path to their verdict as a process at whose base lay the perception of the defendant and the witnesses as victims. Yet these were two quite different types of victim, and the judges adopted diametrically opposite standpoints toward them. On the one hand, they augmented the figure of the defendant as victim as someone who "engaged in public activity already prior to the war and also thereafter, and when he was

assigned the unfortunate role of one of those primarily responsible for order and discipline in the life of the ghetto and the camp, he fulfilled his role in a public spirited manner, respecting the general good."[53] On the other hand, they accused the witnesses of being people "without a conscience, who, because of the grudge they bear toward the defendant owing to negligible harm he may have caused them, took the liberty to make false and serious accusations about the defendant that were utterly baseless."[54] On the one hand, the judges pointed to the defendant's prominent position among the general group of victims and underscored his activity on behalf of the community; on the other hand, taking their cue from the public discourse in Israel at the time, which regarded the Holocaust survivors as responsible for their own tragedy, they blamed the witnesses, as a group, for leveling false accusations at the defendant.[55] In choosing between the two types of victim, the judges unequivocally preferred the defendant, as they unreservedly rejected *all* the prosecution evidence and accept the defense's version.

From the outset of the judgment it is clear that the judges found themselves grappling with an awkward dissonance. Before them stood a defendant who differed considerably from the criminal representation to which they were accustomed, because his persona incorporated an unfamiliar hybrid between a public figure concerned with the good of the community and someone who admitted to having beaten Jews. To judges accustomed to binary thought patterns that perceive defendants as either good or evil, this hybrid figure presented a problem in coming to a decision. The difficulty manifested itself in the judges' thought process, as they sought a framework within which to place the defendant and thereby understand him. Unable to comprehend the destructive reality of the ghetto and the camp, they seized on two periods that could be understood more easily, namely, the periods before the war and after it, in the Jewish displaced persons (DP) camps.[56] Public activity was familiar territory to the judges, and they indeed focused on this. They portrayed the defendant as

> an educated man, active in the Zionist movement since his youth, [who] acts with conviction on behalf of the poor and the wretched . . . speaks amiably to everyone, strictly maintains the cleanliness in the huts and in times of stress, left with no choice, he occasionally slaps people's faces, he does his best and more to save human life, deports himself simply, without arrogance, wears regular clothes and no hat, apart from official occasions when he would wear the police hat.[57]

Relying on the defense testimonies, the judges created a superficial, one-dimensional figure, shaped according to the familiar mold of a responsible public figure in ordinary places and times. Nothing more. Thus, at a stroke, the descriptions of a defendant who used beatings to instill fear and to facilitate the handing over of Jews to the Gestapo were set aside. His behavior was reduced to one attribute, namely, public responsibility, which the judges placed at the center of the juridical narrative. This was the figure of the defendant that was accorded the seal of objective truth the moment it became a part of the judgment.

The Jewish ghetto police force in general underwent a similar process of exoneration. By adopting the public persona of the defendant, the judges likewise accepted the defense's version of the police force, largely ignoring the police's participation in deportations, beatings, exposure of hiding places, trade in work permits in exchange for money, and avarice. These events, which even the defense witnesses, including the defendant himself, admitted had occurred and which could thus have been used to trace a human image of the police on the scale between good and bad, found no place in the judgment. The judges thus created a "defense manifesto" for the Jewish police, the likes of which cannot be found even among those who experienced the events themselves.

Underlying the failure of the court to comprehend the defendant and to judge his actions in the context of temporal and spatial circumstances was a lack of knowledge on the judges' part and particularly their unwillingness to familiarize themselves with an exceptional reality and to contend with it. The judges did not seek to inquire about the world of the defendant and the witnesses, there and then, but took the opposite path: They drew the defendant and the witnesses toward their own world, here and now. The difference between these two actions has a decisive impact on the process of judgment, because someone who leaves his own sphere broadens his world by "visiting" unfamiliar places. On the other hand, someone who brings an unfamiliar world closer to the world he knows blurs the differences between the two worlds so that the world that was unfamiliar before the judgment process also remains so thereafter.[58]

Because the judges constructed the defendant in the mold of a public servant while differentiating and disconnecting him from the company of survivor witnesses, they turned the witnesses into a group of people lacking an individual identity, who were a priori defined as constituting a "problem": "In light of all this we are perplexed by the problem of why such a large number of people saw fit to come to court and to level a large number of most serious accusations against the defendant."[59] Yet the judges did not rest here. They proceeded to cast aspersions on the witnesses. As one delves further into the judgment, one becomes aware of

the process by which the image of the witnesses was besmirched by castigating their motives in coming to testify against the defendant while the persona of the defendant was meanwhile enhanced.

Upon reading the judgment, one becomes perturbed not only because of the generalized and monolithic manner in which the judges referred to the witnesses but also because of the blunt way they expressed this attitude. For example, as they examined the testimony of one of the prosecution witnesses who referred to the defendant's involvement in turning a Jewish boy over to the Nazis, the judges stated, "We can place no trust whatsoever in the witness . . . [and] he admitted that he was prepared to sell his conscience for a pair of shoes and some other benefit."[60] This statement rested on the witness's declaration during his cross-examination, according to which he had in the past signed documents attesting to the defendant's good behavior. This indeed detracted from the witness's reliability, but the judges were not content to note this and offer their personal opinion of the witness's behavior, determining that he was prepared to sell his conscience for "a pair of shoes and some other benefit." The judges thereby compounded their justified criticism by proceeding to level personal and irrelevant criticism, which echoes the public critique of the survivors for having survived at all and for the ways in which they had managed to survive.[61] The judges noted that a particular female prosecution witness "was prone to exaggeration,"[62] and the story of another witness was described as "a fantastic story. . . . It appears to us that these utterances are a product of imagination or base slander."[63] These are merely examples of the wide range of pejorative descriptions of the prosecution witnesses used by the judges.

Although it is not uncommon to come across blunt utterances addressed by judges to witnesses in criminal trials, it is most unusual to find a judgment that contains a sequence of pejorative references to *all* the prosecution witnesses. It is this sequence that exposes the judges' nonjudicial approach to the prosecution witnesses: They did not stop at rejecting their accounts because of the unreliability of the evidence itself, as befits a legal proceeding, but added their personal perspective, which had no essential bearing on the evidence. This was intimately linked to the image of the survivors in Israeli society. To the judges, the witnesses were hardly distinguishable as individuals and were in the main "a group," whereas they perceived the defendant to have a robust personality of his own. Trapped in their negative conceptual group image of the witnesses, the judges were unable to address the harsh reality laid out before them or to comprehend the reasons that led Jews to, for example, loot one another's possessions. Their lack of understanding led them to portray the prosecution witnesses as people

who "are unable to forgive the defendant for having confiscated their prey and attribute purely selfish intentions to people with respect to these actions."[64]

The defendant, by contrast, represented law and order and was, in other words, a man of moral stature. The judges thereby inverted the "reality" of the ghettos and the camps as construed by public discourse, which regarded the Jewish collaborators as morally wanting and the others as "ordinary" victims. The judges, for their part, perceived the ordinary victims to be "beasts of prey" and viewed the collaborating policeman as having acted nobly. This inversion of the role of the policeman, whom the public viewed with contempt, served the defendant as a protective suit, as it were, that preserved his personal and Jewish identity and raised him above the indistinct group of survivor witnesses.

The judges furthermore determined that the witnesses made false accusations against the defendant "through a lack of knowledge of all the details of the matter"[65] and thus regarded him as being responsible for their own catastrophe. The judges, who were not "there" and whose knowledge of life in the ghettos and the camps was in all likelihood limited (one should remember that the testimonies were heard in 1951–1952), adopted a patronizing attitude toward the witnesses who were not eligible, in their view, to testify about their own lives.[66] By dismissing the accounts of the witnesses, the judges in effect dismissed their lives and experiences and reduced them to envy and vengeance.

Dismissing the voice of the survivor victims was, as I suggest, the outcome of the disparity between historical and judicial narratives. It was likewise the outcome of what one may term the judges' selective hearing, because they listened to the witnesses' accounts through a filter of social background narratives that shaped reality and thus perceived the witnesses as unreliable. The combination of the failure to translate the witnesses' accounts into judicial language and this selective hearing eventually led to the collective conviction of the witnesses and, in turn, to the defendant's absolute exoneration.

The judicial procedure involving Puczyc's subordinate, the policeman Mordechai Goldstein, represents a different aspect of the law's attempt to come to terms with reality.

The Ordinary Policeman: Mordechai Goldstein

Compared to the legal procedure involving Moshe Puczyc, which produced hundreds of pages of transcript, the file of the legal procedure against Mordechai Goldstein is decidedly thin. The two defendants' life stories before the outbreak of war are likewise different. Born in the city of Lodz in Poland in 1911, Goldstein studied at a yeshiva (a traditional Jewish school) up to the age of

18 and worked as a textile merchant until war broke out. In December 1939 he escaped from Lodz and arrived in Ostrowiec together with his wife and son, who were both subsequently killed while attempting to escape the ghetto. Goldstein remained in the ghetto and was appointed a policeman shortly after the *Aktion* of October 1942. The testimonies tell us nothing about how he was liberated or what happened to him following the war.[67]

Goldstein was indicted in September 1951 in the Tel Aviv District Court.[68] The original indictment was amended by erasing the offense according to Article 1 of the Nazis and Nazi Collaborators (Punishment) Law, namely, a crime against humanity. This released Goldstein from the threat of having the death penalty imposed on him.[69] The accusations detail physical acts of varying severity committed against Jews as well as one count of delivering a group of people to a "hostile regime."

Unlike Puczyc, Goldstein was unable to present a narrative with any redeeming qualities to counter the prosecution's harsh portrayal of him as a policeman whose role boiled down to administering cruel and gratuitous beatings. Goldstein lacked all the attributes that had provided ammunition for the defense in the Puczyc trial. He lacked a broad education, and he had been neither a public figure nor a Zionist activist before the war or after it. He himself stressed that he had been a simple policeman. In this respect his attorney, Asher Levitsky, who served as Puczyc's defense attorney as well, was faced with a tougher task, because the case of Goldstein represented the "exposed" Jewish policeman, without redeeming qualities (such as education, a history of public or Zionist activity, and fluent Hebrew), which had helped to blur the aggressive elements presented by the prosecution in Puczyc's trial. Thus the Jewish ghetto police force, represented by Goldstein, the simple policeman, presented the defense attorney and the judge with a far more difficult and complex task than the court had confronted with regard to Puczyc, whose image as a Jewish policeman had been replaced with an image of a public servant.

The judicial narrative that emerges from the accusations against Goldstein is a uniform and superficial one, with a focus on beatings. As in the case of Puczyc, the prosecution testimonies were framed in liberal thought, which portrayed an autonomous individual who exercised freedom of choice. In these circumstances the defense sought to minimize the damage done by the prosecution testimonies by portraying the use of beatings as something of positive value. It claimed that these were no ordinary beatings but were, in fact, intended to prevent the collective punishment of Jews by the Nazis.

The day-to-day life of the camp and Goldstein's life as a Jewish policeman were located between the poles presented by the prosecution and the defense. To "take

into consideration sufficiently the needs of time and place, where *they* lived their lives; and understand life as *they* understood it,"[70] in the words of Justice Simon Agranat referring to the Kastner case, I propose a historical and cultural reading that plants the testimonies in the time and the place in which the events took place.

THE PROSECUTION: "SINCE BECOMING A POLICEMAN HE BEGAN TO BEAT"

According to the prosecution, Goldstein was a prime example of a policeman who chose to be evil. As one prosecution witness testified, "Since becoming a policeman he began to beat."[71] Goldstein's image was accordingly structured to portray a cruel and merciless policeman who committed the deeds attributed to him in order to survive. All the prosecution witnesses, at the preliminary examination and during the course of the District Court hearings alike, referred to Goldstein's gratuitous cruelty, although the law required no reference to the manner in which the deed was performed. Alongside the personal narrative of the defendant as a policeman who chose to be evil, the prosecution likewise transmitted the narrative of the Jewish police force, as it did in the Puczyc trial.

For example, in the preliminary examination a prosecution witness described the cruel manner of the defendant: "The defendant used to walk around with a stick. . . . I saw him beating the people of the camp in Ostrowiec . . . everyone feared him. They feared him more than the German. When a German would enter the hut, he would not beat [us]. The defendant beat [us]. The Germans were not present when he beat [people]."[72] One of the witnesses described an event during which the defendant had beaten a prisoner for no reason (so the witness believed): "I asked the defendant why he was beating him, and then the defendant ran toward me like a menacing beast; I took hold of him with both my arms and he then began to call for policemen to be brought to help."[73] The defendant's cruelty, according to the prosecution, did not stop at beatings: "The defendant would chase people out of the hut at night in winter by beating [them] with a stick and with shoes. He didn't give the people time to get dressed. They went out into the cold undressed."[74] A different prosecution witness underscored the volitional element of the defendant's behavior: "When we asked him why he beat [us], he replied that he wished to do so."[75] These descriptions were not required to convict the defendant, because they did not contain elements of the offenses with which he was charged, yet the prosecution nevertheless prompted the witnesses to recount these details because they highlighted the defendant's choices.[76]

In fact, it was one of the prosecution witnesses who, perhaps inadvertently, modified the dark portrait painted by the prosecution when he attempted to

explain Goldstein's behavior: "After several weeks I approached the defendant and said to him: 'Motel, we know each other after all; why did you beat me? We were on our own.' He replied and said to me that since they deported his wife, he had become completely wild."[77] This testimony deviated from the line taken by the prosecution and presented the camp as a whirlpool that swept up people, who lost their former lives in an instant. Although this testimony was superfluous as far as the prosecution was concerned, it in fact portrayed actual reality and reinforces my assertion that it was precisely those who had been there, those who had experienced the catastrophic reality firsthand, who were able to represent reality rather than making do with one-sided descriptions designed to reinforce judicial arguments.

THE DEFENSE: "IN SOME CASES IT WAS ABSOLUTELY NECESSARY TO BEAT"

As I have noted, defending Goldstein proved a complex task, far more exacting than defending Puczyc. How, then, did the defense attorney choose to portray Goldstein in a way that would enable the judge to understand him? This is how Goldstein explained the accusations that the prosecution witnesses leveled at him: "It is not true that I regularly beat [people], but I do not say that I never beat a Jew. In some cases it was absolutely necessary to beat in order to head off vengeance on the part of the Gentiles."[78] The beatings were thus dictated by reality; they were a part of the concern for the general good and the maintenance of order in the camp: "They didn't beat people gratuitously. They occasionally beat [people] to maintain order or because people evaded work."[79] Goldstein did not deny the accusations made against him but located them within a certain context: He had no choice, and he acted in good faith. It was necessary to beat people in order to expose cases of theft from the plant where some of the camp's prisoners were employed (because of the Germans' threat of collective punishment should the thefts fail to cease) or to motivate the shirkers (because the Polish plant managers threatened to submit the names of shirkers and lingerers to the Nazis).

This is, in fact, the crux of the defense argument: If Goldstein did beat people, he did so in the line of his duty to impose order and to preempt Nazi actions that harmed Jews. When, during the course of the cross-examination, the prosecutor sought to substantiate the prosecution argument that Goldstein had beaten Jewish prisoners because he chose to do so, Goldstein responded as follows: "It was prohibited to beat [people] for no reason; the injured party could lodge a complaint with the commander of the Jewish police, and the policeman would be punished. No one complained about me."[80] Goldstein's evidence

illuminates the difference between a modern police force and the police in the ghetto and the camp: Resorting to beating was not exceptional but was rather the rule, an integral part of the policemen's authority. The beatings, so Goldstein maintained, were not an end in themselves but a means to survival, designed to keep the Nazis away from the camp area. It is therefore no surprise that the judges in both Goldstein's and Puczyc's cases found it difficult to comprehend this reality and to incorporate it into their familiar thought patterns.

Other defense witnesses similarly portrayed the police as having the general interest in mind: "Someone who fell into line had nothing to fear. If shirkers and so forth collected a slap from a policeman, that was for the general good."[81] From the defense testimonies the police in general, along with Goldstein, did not appear to be a body that pursued authority or that was intent on gaining personal benefits. The following observation by a defense witness can be understood in the same vein: "Ostrowiec camp was far better. There were no sadistic beatings; one was not required to doff one's hat and to stand at attention before the Jewish policemen. The policemen did not prevent us from contacting Poles on the outside and returning with products we had bought. We did not suffer hunger."[82]

The prosecution narrative of the cruel policeman and the defense narrative of the responsible policeman were laid before the judge. He, for his part, was obliged to come to a clear-cut decision, to determine innocence or guilt, to decide between black and white.

THE VERDICT

In mid-July 1953, exactly two months after the trial began, Judge Benjamin Cohen read out the verdict in the case of the policeman Mordechai Goldstein. This is a fascinating document. It is structured differently from conventional criminal judgments and thereby indicates that the judge realized that he was treading in unknown territory. The verdict includes, as usual, the decision finding Goldstein guilty of some charges and the sentence meted out to him. However, contrary to usual practice, instead of merely determining the defendant's innocence or guilt, the judge added a section to the verdict titled "I Shall End with a General Comment," in which he expressed his feelings about the gray reality that had been revealed to him.

The first section of the verdict contains a judicial analysis that is utterly detached from the historical context of the events. Not only did the Ostrowiec labor camp, where the events attributed to Goldstein took place, hardly feature here, but it also appears that the destructive circumstances under which the Jews lived evaporated. The judge analyzed events related by the witnesses by using

what he termed "common sense." This was a most unusual means of analysis of historical events that were so far removed from common sense. The legal discourse contained not a hint of comprehension of the exceptional circumstances of the physical reality, nor was there any indication of empathy. The thought process revealed in the first section of the verdict reflects the fraught encounter between the historical and the judicial spheres and the difficulty on the part of legal discourse to broaden its scope when faced with a reality unfamiliar and incomprehensible to the legal discourse, even though the facts were clearly evident. The judge analyzed the indictments, although one cannot understand from the analysis what actually occurred in each case. The result was that in a judgment that addressed a Jewish policeman and Jews living in a camp, their presence was hardly felt.

In the first section of the judgment in the Puczyc case one can almost physically sense the ghetto and the camp and the horror of daily life there. Conversely, in the Goldstein verdict the testimonies are hardly mentioned. Reality is absent. One senses that the judge found an escape from unfamiliar reality in a judicial analysis devoid of context. This spare report indeed meets the normative expectations of a legal decision, yet the fact that the survivors' testimonies are absent precisely at a point at which they should be the focus of the discussion is congruent, I suggest, with the public approach prevalent at the time, which deprived the survivors of their status as witnesses authorized to retell their personal stories.[83]

Upon concluding the purely legal analysis but before proceeding to announce the defendant's sentence, the judge began a fresh section, surprisingly frank it must be said, with the words "I shall end with a general remark." This is the most significant part of the judgment. It is an unusual passage devoid of judicial rulings, in which the judge collects his personal thoughts. In the first part of the verdict the judge speaks in the binary language of legal proceedings, guilty or innocent. In the second part he broadens his perspective beyond that of criminal law as he addresses the persona of the defendant and the nature of the place where he operated alongside the other Jewish policemen. This is ostensibly a superfluous section. The judge could have concluded the verdict upon determining on which counts to convict Goldstein and on which he would be exonerated. But he did not do so.

The historical and cultural reading I offer of this section of the judgment reveals that the judge senses that, although it contains "correct" answers to "correct" legal questions, the judicial analysis misses the crux of the matter. This feeling led the judge to take the unusual step of adding a personal, critical point of view, which constitutes a form of admission of judging Goldstein according

to the mandatory tools that the Nazis and Nazi Collaborators (Punishment) Law placed at his disposal. It manifests the tension between the judicial sphere (delivering a verdict according to rigid legal categories) and the historical sphere (the gray zone in which the policemen and the other Jews existed, all of whom were ordinary people who perpetrated deeds that they never would have contemplated under regular circumstances). The judge acutely senses this tension. In the first judicial section he manifests the "judge" in him, who accepts a priori the constraints of legal discourse and judges Goldstein according to the law. Yet it is the sense of unease that arises precisely because of his acceptance of the yoke of the law and his respect for its constraints that leads him to this "general remark." Here he is able to some extent to loosen the legal harness and voice criticism of the Nazis and Nazi Collaborators (Punishment) Law. This is an attempt to adhere to the boundaries of the restricted categorical legal discourse while refusing to relinquish the critical personal view.

When the judge casts off the limitations of the law and the obligation to come to a decision—guilty or innocent—he is able to understand Goldstein as he was: "a decent man of average temperament and a good Jew throughout the year."[84] In other words, the terrible reality did not change him, and, having been an ordinary man before the Holocaust, he remained thus during its course, even if the extreme circumstances led him to exhibit attributes or to take actions that would never have emerged in regular times. This conclusion, which was in fact unnecessary for the sake of coming to a decision about the defendant's guilt or innocence, is vitally important because it reflects a more balanced view than what is required and facilitated by legal discourse. Goldstein is here not merely a Jewish policeman who beat other Jews in the line of duty but a "decent Jew" like most of the policemen and the camp prisoners, and the judge states this explicitly: "I am convinced that the defendant did not behave differently from any other average person of average temperament who saw the links of society dismantling around him and who was placed in a position of authority."[85] These reflections represent the historical rather than the legal sphere, the reality experienced by living people that was revealed to the judge by the witnesses and by Goldstein himself, and not as the law perceived it. In this "actual" reality in which, on the one hand, "the links of society were dismantling," in the judge's words, and in which, on the other hand, authority was placed in the hands of people who were unaccustomed to it, someone who had previously been a decent Jew could continue to be a decent Jew and fulfill the role of a policeman. A man could remain decent even when performing his duties; it was the fraught circumstances in which these duties were performed that manifested other aspects of

the same person. In his general remark the judge views Goldstein as "everyman": not as an angel, because he "possessed an average temperament," but neither as a sadist, because "I found no stain of sadism in the defendant's behavior."[86]

The general remark shows that the judge was able to comprehend the gray zone of the life of the ghetto and the camp, the life that drove people to a state in which the difference between right and wrong, between what was prohibited and what was permitted, became utterly blurred. It was only when the gray zone revealed itself that the judge could state that "the defendant too, to some extent, came to think lightly of employing beatings. Rather than serving him as a last resort when there was no alternative, beatings served him sometimes as his first resort."[87] This statement reflects a realistic view of the role of a Jewish policeman rather than a judicial view. It is only when the judge comprehended reality and not merely the legal rule that he was able to determine that "the general routine of the Jewish police force in the aforementioned places of detention did not exceed what it considered at the time to be reasonable for the purpose of maintaining good order."[88] These comments exceeded what was legally called for because, as I have previously mentioned, the Jewish police force was not on trial. All this turned the general remark into a singular legal document that represents the complexity and the difficulty encountered by the judicial system in grappling with the gray zone of collaboration: On the one hand, there is the legal narrative that relies on the facts listed in the indictment, whereas on the other hand, there is the historical narrative, which rests on the actual reality, the gray zone of the labor camp in the city of Ostrowiec.

After all this, the judge remarks that "the law obliges me to judge the defendant." Finding Goldstein guilty on four counts of the indictment, he sentenced him to one month in prison. This light sentence reflects the sentiment that the judge expressed before the verdict: "I am indeed unable to dismiss the thought that, had the Attorney General's representative been aware of my decisions beforehand, he would not have set the machinery of the law in process against the defendant in the first place."[89]

Epilogue: The Gray Zone in Court

Their different outcomes notwithstanding—Puczyc's full acquittal and Goldstein's partial conviction and light sentence—the two judgments display a similar pattern of thought. They both expose both the difficulty and the challenge presented by the encounter between legal discourse and the historical gray zone. From this perspective one should distinguish between the personal outcome—both defendants won "favorable" judgments as far as they were concerned—and the general outcome,

which signified that both judgments erased the historical confrontation "from there," namely, the individual and communal confrontation between the survivors and the defendants, by focusing on the other confrontation, which took place "here," in the judicial arena between the state and the defendants. The voice of the victims was erased in both proceedings. In Puczyc's case the judges exposed the confrontation between the witnesses and the defendant, only to reduce it to a matter of the scheming on the part of the witnesses at the expense of the defendant, explained by their being "bitter and unscrupulous" people.[90] In Goldstein's case the confrontation between the witnesses and the defendant was not manifested in the judgment at all. Thus neither judgment enabled the survivor witnesses to make their voice heard, to gain the opportunity to turn themselves and their stories into a part of the historical narrative of the Holocaust.

In this respect these legal proceedings represent the obverse of the Eichmann trial: Gideon Hausner, the prosecutor at the Eichmann trial, created a clear-cut distinction between perpetrator and victim by aligning the survivors unequivocally with the prosecution against the actual perpetrator, Adolf Eichmann. In doing so, Hausner deviated from the narrow criminal perception that put the defendant and proof of his guilt at the center of the legal proceeding. From Hausner's point of view, it was a necessary step in order to take advantage of the proceedings to divert blame from the victims to those who bore the brunt of the guilt—in this case one defendant who stood in for the system he served. Hausner chose to represent the witnesses as a homogeneous group of survivors, with no distinction between "ordinary" Jews and Jews who had been functionaries; they all represented the absolute good with which the Israelis could easily identify.[91] None of this happened at the trials of Puczyc and Goldstein, or in fact at any of the trials involving Jews indicted under the Nazis and Nazi Collaborators (Punishment) Law, especially because the defendants, like the witnesses, were, after all, victims themselves. The difference between the Eichmann trial and the trials of Jews under the Nazis and Nazi Collaborators (Punishment) Law is the difficulty encountered by the law in coming to terms with the gray zone of collaboration.

It is thus worth noting that the Eichmann trial, held in 1961, was not the first occasion that Holocaust survivors were offered an official legal platform to make their voices heard. The trials of Jewish collaborators, the earliest of which were held at the end of 1950, in fact constituted the first opportunity for the public to hear the voices of Holocaust survivors other than "heroes," such as ghetto fighters and partisans, and to listen to their stories. Yet the public failed to take advantage of this opportunity. As a result, despite the legal platform offered

them, the stories of the witnesses remained locked within the confines of the courtroom and failed to be incorporated into Israeli collective memory.

Examination of Israel's historical and social context in the early 1950s suggests that the times were perhaps not ripe for focusing on the victims. This was a period of recovery in the wake of the War of Independence and the establishment of routine life in the new nation—and of a process of recuperation and integration of the survivors. Moreover, contemporary social discourse perceived the Holocaust survivors, apart from the "heroes," as "tainted" victims who were morally compromised by their very survival. Their very capacity to recount the Holocaust was thus held against them. This discourse was manifested in the Nazis and Nazi Collaborators (Punishment) Law and the indictments submitted on the strength of it. All these factors worked against acceptance of the witnesses in the trials of alleged Jewish collaborators as recognized narrators. The cases of both Puczyc and Goldstein show us that the encounter between actual reality and binary legal categories is a problematic one, yet it is not an impossible one. The fact that some of the witnesses for the prosecution expressed, as I have attempted to demonstrate, an understanding of the complicated role of the Jewish ghetto police in light of the extreme circumstances that obtained in the ghetto shows us the advantage of a historical and cultural reading of these trials as a means of comprehending a unique reality within the legal framework.

Notes

Translated from Hebrew by Avner Greenberg.

1. Justice Simon Agranat, The "Kastner Trial," Criminal Appeal (CrA)232/55, *Attorney General v. Gruenwald*, 12 Piskey Din. 2017, 2058 (Hebrew).

2. The city's full name is Ostrowiec Swietokrzyski, but it was called Ostrowce (in Yiddish) by the Jews. It is located in south-central Poland, formerly in the province of Kielce and nowadays in the province of Świętokrzyskie. The city was captured by the Germans on September 7, 1939, and liberated by the Red Army on January 16, 1945. The city's Jewish community dates back to the sixteenth century. Throughout its existence the Jewish community in Ostrowiec lived a vibrant religious and social life. The interwar period witnessed a flowering of cultural life alongside burgeoning Zionist activity and the growth of the Bund association. Ten thousand Jews lived in Ostrowiec on the eve of World War II. Toward the end of September 1939 the German authorities ordered the Jews to form a Jewish council, or Judenrat, headed initially by an attorney by the name of Zeitel, whom the Germans soon replaced with Yitshak Rubinstein, the former chairman of the city's Zionist organization and a member of the city council. Many of the city's Jews were employed in local industrial plants. The ghetto in Ostrowiec was established in April 1941, and a Jewish police force was formed on the order of the German mayor. The Judenrat appointed Ber Blumenfeld, deputy chairman

of the city's Maccabi association and a soldier in the Polish army, to command the force. The ghetto housed approximately 15,000 individuals, among whom were many refugees. Moshe Puczyc was appointed head of the sanitation department and subsequently deputy commander of the Jewish police force. After the roundup of Jews by German forces or *Aktion* of January 1942, the Jewish police took over the Judenrat, which practically ceased functioning. On October 10, the ghetto was surrounded by SS and Gestapo officers, Polish policemen, and others, and 2,000 of the city's Jews were deported to Treblinka. Several hundred other Jews were murdered in the ghetto. Upon conclusion of this *Aktion* the "small ghetto" was established. On January 10, 1943, the Germans conducted another *Aktion* in the "small ghetto" and another 2,000 Jews were deported to Treblinka. At this point about 1,000 Jews remained in the small ghetto, and they were moved to a labor camp outside the city two months later. Puczyc was put in charge of the Jewish camp police. The ghetto was entirely liquidated in April 1943, and Ostrowiec was declared *judenrein* (cleansed of Jews). In July 1944, as the Red Army approached the area, the labor camp was likewise liquidated and its inmates were deported to Auschwitz. Few of them survived. This account is based on Avraham Wein, ed., *Pinkas hakehilot: entsiklopedia shel ha-yeshuvim ha-yehudi'im* [Register of the Communities: Encyclopedia of the Jewish Settlements] (Jerusalem: Yad Vashem, 1999), 7: 52–58. See also Gershon Silberberg, ed., *Sefer Ostrowiec: le-zikaron ule-eidut* [The Ostrowiec Book: Memory and Testimony], published by the Organization of Ostrowiec Immigrants in Israel (year and place of publication unspecified). The book is accessible on the website of the New York Public Library at http://yizkor.nypl.org/index.php?id=1958 (accessed July 29, 2014). In addition, see Aharon Weiss, "Ha-mishtarah ha-yehudit be-general gouvernement uve-shlezia ilit be-tekufat ha-shoah" [The Jewish Police Force in the General Government and in Upper Silesia During the Holocaust Period], Ph.D. diss., The Hebrew University at Jerusalem, 1973, 335–40.

3. Criminal Case (CrC) (Tel Aviv) 10/51, *Attorney General v. Moshe Puczyc*, State Archives 3354-bet; CrC (Tel Aviv) 93/52, *Attorney General v. Mordechai Goldstein*, State Archives 2314/93-bet.

4. As the author and journalist Ruth Bondi wrote in her autobiography: "Yet here, in Israel, the Jews also asked me: how come you remained alive? What did you have to do in order to survive? And in their eyes a glint of suspicion: Kapo? Whore? . . . And how come was it precisely I who remained alive when these [others] were murdered?" See Ruth Bondi, *Shevarim Shleimim* [Whole Fragments] (Tel Aviv: Gevanim, 2002). It was commonly believed that the kapos, a general term denoting functionaries, managed to survive by virtue of their role; their very survival was thus perceived as immoral.

5. Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller Roazen (New York: Zone Books, 1999), 52.

6. Anita Shapira, *Ha-halikhah al ikav ha-ofek* [Walking on the Horizon] (Tel Aviv: Am Oved, 1988), 325–54; Roni Stauber, *The Holocaust in Israeli Public Debate in the 1950s: Ideology and Memory*, trans. Elizabeth Yuval (London: Vallentine Mitchell, 2007).

7. The etymological origin of the word *collaboration* is Latin, in which it had a neutral connotation of joint action or cooperation. The historian Timothy Brook writes that

following Marshall Petain's declaration on French radio on October 30, 1942, six days after meeting Hitler, to the effect that there was "collaboration" between France and Germany, the term acquired a negative connotation and became synonymous with political cooperation with an occupying force. See Timothy Brook, *Collaboration, Japanese Agents, and Local Elites* (Cambridge, MA: Harvard University Press, 2005), 1.

8. The precise number of such trials is not known. It has been asserted that after the Eichmann trial the state ceased to indict Jews suspected of collaboration. See Hannah Yablonka, "Ha-hok le-asiyat din be-natsim uve-ozreihem: heibet nosaf le-she'eilat ha-yisra'elim, ha-nitsolim, veha-shoah" [The Nazis and Nazi Collaborators Punishment Law: A Further Aspect of the Question of the Israelis, the Survivors, and the Holocaust], *Cathedra* 82 (1997): 151. Yet to the best of my knowledge such trials were held at least up to the 1970s.

9. For example, a report on the preliminary examination of Puczyc in the Tel Aviv Magistrate's Court stated that "the investigation of Moshe Puczyc . . . continued yesterday . . . marked by considerable tension, as the testimony of the witnesses was disturbed from time to time by interruptions from the audience of ex-Ostrowiecians that completely filled the hall." "Eiduyot meza'aza'ot be-mishpat Puczyc" [Shocking Testimonies at the Puczyc Trial], *Ha'aretz* (January 24, 1951).

10. Yablonka, "Ha-hok le-asiyat din be-natsim uve-ozreihem," 147.

11. See the memoirs of David Rousset, *L'univers Concentrationnaire* (1946), which were translated into English under the title *The Other Kingdom*, trans. Ramon Guthrie (New York: H. Fertig, 1982 [1947]).

12. Primo Levi, *The Drowned and the Saved*, trans. Raymond Rosenthal (London: Sphere Books, 1989), 42.

13. On the relations between the community and the ghetto police, see Isaiah Trunk, *Judenrat: The Jewish Councils in Eastern Europe Under Nazi Occupation* (Lincoln: University of Nebraska Press, 1996), 172–85; and Weiss, "Ha-mishtara ha-yehudit," 335–40. For a report by an individual Jewish policeman in the Warsaw ghetto, see the memoir by Stanislaw Adler, *In the Warsaw Ghetto, 1940–1943: An Account of a Witness* (Jerusalem: Yad Vashem, 1984).

14. Many diaries and memoirs have noted the cruelty of the Jewish ghetto police force. For example, Emanuel Ringelblum writes about the Warsaw ghetto following the large deportation to Treblinka in the summer of 1942: "The cruelty of the Jewish police force at times surpassed that of the Germans, the Ukrainians, and the Latvians. A good number of hiding places were uncovered by the Jewish police force, which sought to be holier than the Pope, to find favor with the occupier. [On more than one occasion] victims who evaded the Germans fell into the hands of a Jewish policeman. . . . In general, the Jewish police force displayed really wild, incomprehensible brutality. From whence did our Jews find such murderousness? When did we raise these hundreds of murderers, all those who seized children in the streets, threw them into carts, and dragged them to the *Umschlagplatz*." Emanuel Ringelblum, *Yoman ve-reshimot mi-tekufat ha-milhamah, getto varsha, September 1939–December 1942* [A Diary and Notes from the Period of War, Warsaw Ghetto, September 1939–December 1942] (Jerusalem: Yad Vashem, 992), 429. For more on

this topic, see Yosef Zelkowicz, *Be-yamim ha-nora'im ha-hem: reshimot mi-getto Lodz* [In Those Terrible Days: Notes from Lodz Ghetto], trans. Arieh Ben Menahem and Yosef Rav (Jerusalem: Yad Vashem, 1994), 306; David Liver, *Ir Ha-meitim: hashmadat ha-yehudim be-aizor Zagłębie* [City of the Dead: The Extermination of the Jews in the Zagłębie Region], trans. A. S. Stein (Tel Aviv: Twersky, 1946), 34; and Moshe Maltz, *Years of Horror, Glimpse of Hope: The Diary of a Family in Hiding*, trans. Gertrude Hirschler (New York: Shengold, 1993), 52.

15. Regarding the relations between the Judenrat and the Jewish police force, the historian Aharon Weiss classifies Ostrowiec as belonging to the ghettos in which the Judenrat deferred to the police force. He maintains that the Germans encouraged such processes and exploited these circumstances to punish "disobedient" Judenräte. See Aharon Weiss, "Ha-yahasim bein ha-yudenrat, ha-mishtara ha-yehudit, veha-mahteret ha-yehudit ha-lohemet be-Krakow" [The Relations Between the Judenrat, the Jewish Police Force, and the Fighting Jewish Underground in Kraków], *Masu'ah* 5.111 (1977): 177.

16. Robert Cover, "Nomos and Narrative," in Martha Minow, Michael Ryan, and Austin Sara, eds., *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press, 1993), 95; Austin Sarat and Thomas R. Kearns, "Writing History and Registering Memory in Legal Decisions and Legal Practices: An Introduction," in Austin Sarat and Thomas R. Kearns, eds., *History, Memory, and the Law* (Ann Arbor: University of Michigan Press, 1999), 1–24.

17. The various offenses are listed in Article 2 of the Nazis and Nazi Collaborators (Punishment) Law by means of reference to the Israeli criminal law in force at the time, the Criminal Law Ordinance of 1936.

18. Dan Diner, "Historical Understanding and Counterrationality: The Judenrat as Epistemological Vantage," in Saul Friedländer, ed., *Probing the Limits of Representation, Nazism, and the Final Solution* (Cambridge, MA: Harvard University Press, 1992), 128–42.

19. According to his own testimony, Puczyc was not a lawyer, although on occasion he is referred to as such. See Zeev W. Mankowitz, *Life Between Memory and Hope: The Survivors of the Holocaust in Occupied Germany* (Cambridge, UK: Cambridge University Press, 2002), 102; and Yehuda Bauer, "The Initial Organization of the Holocaust Survivors in Bavaria," *Yad Vashem Studies* 8 (1970): 127–57.

20. Weiss, "Ha-mishtarah ha-yehudit," 195–98. These biographical details are derived from the following sources: the prosecutor's introductory remarks in *Attorney General v. Moshe Puczyc*, p. 3; and the defendant's main testimony in the same case, pp. 123–71; and Weiss, "Ha-mishtarah ha-yehudit." Weiss notes that he provides details about Puczyc on account of the important role he played in the life of the community. See Weiss, "Ha-mishtara ha-yehudit," 196.

21. Mankowitz, *Between Memory and Hope*, 101n21.

22. The trial began on December 12, 1951. Three judges presided over the proceedings, because this was a serious criminal indictment, as Puczyc was accused, among other matters, of offenses that carried the death penalty (a crime against humanity and a war crime). The presiding judge was Justice Pinhas Avisar, and sitting alongside him

were Justice Israel Levine and Justice Joseph Lam. The prosecutor was an attorney by the name of Tomkowicz, and Puczyc was represented by attorneys Asher Levitsky and Yitzhak Tunik. The verdict was announced on March 10, 1952.

23. Prosecution witness Moshe Bamberg, cross-examination, *Attorney General v. Moshe Puczyc*, p. 16 (emphasis mine).

24. Prosecution witness Zvi Katz, direct examination, *Attorney General v. Moshe Puczyc*, p. 86.

25. Prosecution witness Yitshak Birnzweig, direct examination, *Attorney General v. Moshe Puczyc*, p. 39.

26. Prosecution witness Moshe Bamberg, direct examination, *Attorney General v. Moshe Puczyc*, p. 15. The witness provides examples that demonstrate Puczyc's control over the fate of others: "[He] would not allow people to go out to work since he suspected they may escape. He would take money from people and thereby prevented them from making contact with Poles and obtaining help."

27. Prosecution witness Aharon Friedental, direct examination, *Attorney General v. Moshe Puczyc*, p. 49. Those whose names were called were selected to work; those whose names were not called were sent to Treblinka.

28. Prosecution witness Pinhas Steinhart, direct examination, *Attorney General v. Moshe Puczyc*, pp. 92–93 (emphasis mine).

29. Prosecution witness Aharon Friedental, direct examination, *Attorney General v. Moshe Puczyc*, p. 47.

30. Prosecution witness Aharon Friedental, direct examination, *Attorney General v. Moshe Puczyc*, p. 47.

31. Moshe Puczyc, cross-examination, *Attorney General v. Moshe Puczyc*, p. 174. The defendant denied the accusation that he had fraternized with the Germans, apart from the occasions when it was necessary to bribe them. On this matter his evidence accords with descriptions found in external sources regarding the need to bribe the Germans with money and alcohol. See also Trunk, *Judenrat*, 349–58.

32. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 124.

33. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 125.

34. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 140. It should be noted that this account contradicts the descriptions of the prosecution and defense witnesses, according to which the figure of Puczyc, the deputy, overshadowed that of Blumenfeld, the commander.

35. Moshe Puczyc, cross-examination, *Attorney General v. Moshe Puczyc*, p. 173.

36. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 164.

37. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 128 (emphasis mine).

38. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, pp. 167–69 (emphasis mine). On Puczyc's election to the first central committee, see prosecution witness Moshe Bamberg, cross-examination, *Attorney General v. Moshe Puczyc*, p. 16.

39. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 169. I have reservations regarding the historical reliability of Puczyc's factual account. But historical reliability and accuracy are not the primary issue here. What is important is the manner in which Puczyc attempts to construct his image in the eyes of the judges, in direct contrast to the image created by the prosecution.
40. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 131 (emphasis mine).
41. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 130.
42. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 137.
43. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 167.
44. The mere fact that a person served in the ghetto police force did not constitute an offense under the Nazis and Nazi Collaborators (Punishment) Law. Those who were indicted were tried solely for their behavior while performing their duties.
45. Prosecution witness Yisrael Loewental, direct examination, *Attorney General v. Moshe Puczyc*, p. 62.
46. Prosecution witness Yisrael Sherman, cross-examination, *Attorney General v. Moshe Puczyc*, p. 81.
47. For accounts of various Jewish police forces, see Cover, "Nomos and Narrative"; and Sarat and Kearns, "Writing History."
48. On the topic of rationality and counterrationality, see Diner, "Historical Understanding."
49. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 127.
50. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 127.
51. Moshe Puczyc, direct examination, *Attorney General v. Moshe Puczyc*, p. 158.
52. Prosecution witness Hanania Malakhi (Sherman), cross-examination, *Attorney General v. Moshe Puczyc*, p. 61.
53. Verdict, *Attorney General v. Moshe Puczyc*, p. 50.
54. Verdict, *Attorney General v. Moshe Puczyc*, p. 52. It is difficult to ignore the contradictions in the words of the judges themselves regarding the defendant's status in the ghetto and the camp. On occasion they refer to him as "merely" the deputy police commander, who thus cannot be held responsible for the behavior of the police; and on other occasions he is "the most prominent among the heads of the ghetto and the camp." These inconsistencies lend weight to the assertion that the judges found it difficult to comprehend Puczyc's persona and therefore constructed an imagined figure.
55. See, for example, Bondi, *Shevarim Shleimim*.
56. Verdict, *Attorney General v. Moshe Puczyc*, p. 13.
57. Verdict, *Attorney General v. Moshe Puczyc*, p. 14.
58. "To think with an enlarged mentality means that one trains one's imagination to go visiting." See Hannah Arendt, *Lectures on Kant's Political Philosophy*, ed. Ronald Beiner (Chicago: University of Chicago Press, 1982), 42–43.

59. Verdict, *Attorney General v. Moshe Puczyc*, p. 51.

60. Verdict, *Attorney General v. Moshe Puczyc*, p. 16.

61. On the prevalent images of the survivors among the Israeli public and among themselves, see Hanna Yablonka, *Survivors of the Holocaust: Israel After the War* (London: Macmillan, 1999), 9–78.

62. Verdict, *Attorney General v. Moshe Puczyc*, p. 24.

63. Verdict, *Attorney General v. Moshe Puczyc*, p. 32.

64. Verdict, *Attorney General v. Moshe Puczyc*, p. 51.

65. Verdict, *Attorney General v. Moshe Puczyc*, p. 52.

66. The approach of the judges in general is indicative of a prevalent attitude at the time, which regarded survivors as unreliable witnesses, primarily owing to the suspicion that their traumatic experiences had affected their memory. On this issue, see Gideon Hausner, *Justice in Jerusalem* (New York: Harper & Row, 1966), 294–97, esp. 297. Of Puczyc's three judges, Justice Lam was the only one who had experienced the Holocaust, although he had in effect escaped it. He was arrested in 1938 while in Vienna and sent to the Dachau concentration camp, where he remained for about one year. He arrived in Palestine in 1939. Justice Lam served as a member of parliament (Knesset) when the Nazis and Nazi Collaborators (Punishment) Law was passed, and he indeed adopted a different view from that of the majority opinion during the debates over the new law, which placed sweeping blame on the collaborators. In the trial of the kapo Yehezkel Ingster, over which the same three judges who tried Puczyc presided, the defendant was convicted and sentenced to death (a conviction subsequently annulled upon appeal to the Supreme Court). Judge Lam believed that the two other judges at the District Court convicted Ingster of a "crime against humanity" on the strength of a sequence of actions rather than of one single deed. Thus, because he believed that some of these actions met the stipulation of the defense provided by the Nazis and Nazi Collaborators (Punishment) Law, he deemed it correct to commute the death penalty and to impose a sentence of ten years' imprisonment. See CrC (Tel Aviv) 9/51, *Attorney General v. Yehezkel Ingster*, Psakim Mekhozim (District Court Judgments) 5753(2) 267. Because the verdict in Puczyc's trial was unanimous, we cannot identify differences of opinion among the three judges.

67. These details are derived from Goldstein's statement to the police and from his direct evidence. See *Attorney General v. Mordechai Goldstein*, pp. 21–22. Goldstein maintained that he had been active on various Zionist committees and had engaged in philanthropic matters. The testimonies in the police file reveal that Goldstein escaped from the camp shortly before it was dissolved. See *Attorney General v. Mordechai Goldstein*, preliminary examination, p. 8. I have found no additional biographical details in external sources.

68. The first indictment submitted to the District Court is not found in the file. The trial was conducted before a single judge, Benjamin Cohen, rather than before a panel of three judges, as in Puczyc's trial because, following the amended indictment, Goldstein was not accused of committing a crime against humanity or a war crime. The first hearing took place on May 18, 1953, and continued until July 7, 1953. The judgment

was delivered on July 15, 1953, about eighteen months after the judgment in the Puczyc trial. The state was represented by an attorney by the name of Tal, and Goldstein was represented by attorney Asher Levitsky, the same lawyer who represented Puczyc. Although both trials revolved around the same ghetto and camp and the same police force, the judgment in the Goldstein case makes no mention of Puczyc's trial. During his direct examination Goldstein relates that he was invited by the prosecution to testify in the Puczyc trial, to which he responded, "I said that I knew of nothing bad against Puczyc" (*Attorney General v. Mordechai Goldstein*, p. 24). Eventually Goldstein was not invited to testify.

69. The annulment of the accusations according to Article 1 of the Nazis and Nazi Collaborators (Punishment) Law led to Goldstein's release on bail following a prolonged detention.

70. Justice Simon Agranat, The "Kastner Trial," Criminal Appeal (CrA) 232/55, *Attorney General v. Gruenwald*, 12 Piskey Din. 2017, 2058 (Hebrew).

71. Prosecution witness Ephraim (Fishel) Pipek, direct examination, *Attorney General v. Mordechai Goldstein*, p. 19. Pipek appeared as a prosecution witness in Puczyc's trial as well.

72. Prosecution witness Yokheved Schiff, preliminary examination, *Attorney General v. Mordechai Goldstein*, p. 1.

73. Prosecution witness Ya'akov Schneider, direct examination, *Attorney General v. Mordechai Goldstein*, p. 4.

74. Prosecution witness Ya'akov Fuchs, preliminary examination, *Attorney General v. Mordechai Goldstein*, p. 8.

75. Prosecution witness Ephraim Pipek, direct examination, *Attorney General v. Mordechai Goldstein*, p. 4.

76. The witnesses were perhaps coached to testify in this manner to preclude the defendant's possible reliance on Article 10 (exemption from criminal responsibility) or Article 11 (circumstances indicating a mitigation of sentence), although the transcript provides no indication of such reliance.

77. Prosecution witness Ephraim Pipek, *Attorney General v. Mordechai Goldstein*, p. 19.

78. Defense witness Yosef Schneider, direct examination, *Attorney General v. Mordechai Goldstein*, p. 31.

79. Defense witness Yosef Schneider, direct examination, *Attorney General v. Mordechai Goldstein*, p. 31.

80. Mordechai Goldstein, cross-examination, *Attorney General v. Mordechai Goldstein*, p. 30.

81. Defense witness Yosef Schneider, direct examination, *Attorney General v. Mordechai Goldstein*, p. 31.

82. Defense witness Yosef Schneider, direct examination, *Attorney General v. Mordechai Goldstein*, p. 31.

83. An exceptional incident that occurred during the cross-examination of a prosecution witness perhaps indicates the judge's personal attitude toward survivor witnesses.

Fearing self-incrimination, the judge disallows the question "Did you kill a Jew following the liberation?" He explains as follows: "This is a *primitive* witness, who does not understand the fine distinctions of the law" (*Attorney General v. Mordechai Goldstein*, p. 31n3). The judge could have selected a different word to describe a witness as a layman unfamiliar with the mysteries of the law, yet he chose to describe him as a "primitive witness." This choice, I suggest, indicates the judge's mental sphere, which regards survivors as "primitive witnesses," who, because of their traumatic experiences, are not competent to report on events in which they participated.

84. Verdict, *Attorney General v. Mordechai Goldstein*, p. 38.

85. Verdict, *Attorney General v. Mordechai Goldstein*, p. 39.

86. In this respect the judge's approach resembles that of one of the prosecution witnesses, who said, "There were also cases in which the police were in the right, since not everyone always behaved properly." Prosecution witness Ya'akov Teomim, cross-examination, *Attorney General v. Mordechai Goldstein*, p. 11.

87. Verdict, *Attorney General v. Mordechai Goldstein*, p. 39.

88. Verdict, *Attorney General v. Mordechai Goldstein*, p. 39.

89. Verdict, *Attorney General v. Mordechai Goldstein*, p. 39.

90. For a discussion of the manner in which Puczyc's judges tarnished the witnesses' characters, see "The Verdict" subsection of "The Commander: Moshe Puczyc" main section. The judges did not regard Puczyc to be a "classic" victim. They divested him of the traits of "victim" by constructing him as a public and Zionist activist.

91. On the Eichmann trial and the role of the witnesses, see Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor: University of Michigan Press, 2004), 85–115; and Lawrence Douglas, *The Memory of Judgment: Making Law and the History of Trials of the Holocaust* (New Haven, CT: Yale University Press, 2001), 97–182.