

Yehudit Dori-Deston

Give the Benefit of the Doubt: Between the Death Penalty and Demjanjuk's Acquittal Due to Reasonable Doubt

This Article highlights the implicit connection between the severity of the punishment prescribed by law for a specific offense and the evidentiary threshold required to establish a conviction for that offense. It demonstrates this connection through a discussion of the trial of Ivan Demjanjuk, the last defendant to stand trial in Israel under the **Nazis and Nazi Collaborators (Punishment) Law, 1950** (“**the law**”), who was acquitted after a lengthy legal process. The central argument presented in the Article is that Demjanjuk’s acquittal due to reasonable doubt was largely a consequence of the death penalty to which he would have been sentenced if found guilty. It suggests that had the law allowed for a lesser punishment, the Supreme Court might have upheld Demjanjuk’s conviction in the District Court.

As the Article will illustrate, the outcome of a criminal trial against a Nazi war criminal in Israel could result in only one of two extremes: either acquittal, or conviction with the most severe punishment in the legal code – capital punishment. The pursuit of justice could have supported an intermediate outcome, such as conviction but with the imposition of a lesser sentence, which in turn would have allowed for a lower evidentiary threshold. However, the unequivocal provision in the law, which states that a person convicted of the offenses listed in its first section “shall be sentenced to death,” is largely declarative in nature. It was intended to reflect the moral and educational stance of the Israeli legislator – that there can be no forgiveness for the Nazis’ crimes. This provision created a difficulty, as it failed to account for the entire spectrum of acts that could constitute offenses under this law, as well as for the range of defendants who might have stood trial in Israel. Furthermore, the Gordian knot between the death penalty (and its symbolic-educational dimension) and the reasonableness of doubt (in its legal sense) led to an acquittal – a result that, to a large extent, did not fulfill the objectives of the law.