REMEMBER BERLIN

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The Association wishes to record its special gratitude to
THE RICH FOUNDATION (SWITZERLAND)
for its contribution to the Berlin Conference
Judge Hadassa Ben-Itto is the President of the International Association of Jewish Lawyers and Jurists. The following are her remarks at the opening session of the Berlin Conference.

“Hope’s roots lie not in ignoring the past, but in remembering it, in studying the lessons it taught us”

Hadassa Ben-Itto

I wish to thank Judge Fanssen, President of the Federal Administrative Court of Germany in Berlin, who has graciously agreed to host this conference in his court.

We are also grateful to the outgoing President of Germany, Dr. Roman Herzog, for his message which we printed in our programme.

We are pleased to announce that this conference is held under the auspices of the Secretary General of the Council of Europe, and we appreciate the fact that the Secretary General, Mr. Daniel Tarschys, has recognized the significance of holding such a conference in Germany, at the very end of this century that has witnessed so many horrors. We warmly welcome Ms. Martina Keller, from the European Court of Human Rights, who is here to represent the Council of Europe, and we are looking forward to her message.

It is with great pleasure that I welcome to this conference members of the International Association of Jewish Lawyers and Jurists, members of the German-Israeli Jurist Association, members of the Berlin Bar Association, colleagues and guest speakers, who have honoured us with their presence. This conference has aroused much
interest among our members as well as among lawyers in Berlin, and it is worth noting that we have here participants from 15 countries: Bulgaria, Canada, England, Finland, France, Holland, Hungary, Italy, Norway, Scotland, South Africa, Turkey, United States, Germany and Israel.

Some time ago our Association initiated an international project to commemorate our colleagues, Jewish lawyers and jurists, who perished in the Holocaust, and to mark their contribution to the law in their countries. To do so we decided to hold weekend seminars in various key cities in Europe which were formerly the home of thriving Jewish communities, and where Jewish lawyers and jurists were an integral part of the local legal community, at the bar, on the bench, and in academia. These colleagues of ours who were cruelly driven out first from their profession, then from their homes, and many were exterminated with their families, left behind a proud legacy which should not be forgotten. Long after they vanished, their contribution to the law in their respective countries is still alive, and deserves to be mentioned and remembered. Among them were outstanding legislators, prominent judges, legal philosophers, and famous lawyers, whose legacy serves to this day to enrich the jurisprudence and the body of precedents in the countries from which they were so cruelly uprooted.

Tragically it must be noted that most of their fellow members in the legal communities did not show much courage, and made almost no effort to protect their brethren in the law, or assist them in their time of great need. Some were even willing participants in the process of delegitimization of their former friends, using legal means to strip their colleagues of every basic human right.

When we first learned of the full scope of the Holocaust, we were so shocked by the sheer numbers, that we only spoke of the mass, of the six million human beings, of the one million children who were exterminated like vermin. In the beginning it was only families, like mine, which singled out the relatives whom they knew as individuals, as separate human beings, as fathers, mothers, sons, daughters, brothers, sisters, aunts, uncles and cousins, and we mourned them in private. Then the stories of individuals began to appear in the media, in literature, on the stage and on the screen, and we realized that the enormity of the human tragedy is not really grasped until one sees the face of one single human being who was there, the eyes of one child.

In time we realized that the six million Jews did not only perish in the physical sense. With them perished a tremendous intellectual and spiritual potential which can never be regained. The loss is not only ours, as Jews - no country, no city, no community which lost victims in the Holocaust, will ever be the same.

Each and every one of them deserves to be remembered as a human being who was destroyed by other evil human beings for no reason at all. But we, as an Association, propose to add one more aspect to the fabric of remembrance. We need to remember our brothers in the law as members of professional and intellectual communities, whose contribution to society lives on. In the framework of this project we plan to go from one country to another, all over Europe, where our colleagues lived and worked. We go in their footsteps, we re-visit the places which were their homes, where they lived, where they worked, where they taught, and we not only remember them, we talk about them in public, and remind those who need reminding who they were, what their legacy was, and what was done to them. We remind those who still live in the homes which were theirs, those who still work in their former chambers, those who teach in the same faculties, those who quote from their writings and read the books they have written, we remind all those that they were here and that their legacy lives on. This is how we propose to remember them and to commemorate them.

Last June we held the first of these conferences in Salonika, Greece, the former home of a famous Jewish community, which was almost entirely wiped out by the German occupiers. It was then suggested to us to hold this second conference here, in Berlin, on the occasion of the publication of the book “Anwalt Ohne Recht”, which tells the story of Jewish lawyers in Berlin and the fate that befell them under the Nazi regime. We responded positively to this suggestion and here we are holding this conference jointly with the German-Israeli Jurist Association and the Berlin Bar Association. I wish to thank both these Associations for their cooperation in organizing this conference.

The decision to hold this conference in Berlin was not an easy one. A number of our members criticized it, and others are not attending because, as they told us, they will not set foot in Germany. We understand their decision and we respect it.

It is no secret that the relationship between the Jewish people and Germany is very problematic. The official relations between Germany and Israel were established long ago, and it should be
said clearly that modern Germany has been a friend and a supporter of Israel on the international scene.

We also note that for the last 50 years Germany has been involved in a long and tortuous process of attempting to deal with its past, as is witnessed by the list of German speakers at this conference, who have been researching various aspects of this historical tragedy, and writing about it, and who readily accepted our invitation to participate in our deliberations.

We also note the fact that the German Parliament has passed anti-racist laws, and particularly a law forbidding the denial of the Holocaust. We follow closely trials held in various cities in Germany against Holocaust deniers, and we hope this process will continue as long as there still exist those who deny the existence of the gas chambers and preach that they were an invention of the Jews.

Yet, one cannot say that the account between us has been settled. Indeed, it will probably never be completely settled.

When my daughter first went to Germany, she chose to go to Dachau, all by herself. Standing there she noticed a young man who was lost in thought, also by himself. They got into a conversation and she learned that he was a German student. She then said to him: “it is obvious why I am here, but what are you doing here?” And he replied: “because this is not only your people’s history, it is also the history of my people”.

In conversations with young Germans I am often asked why they should feel responsible for what happened before they were born. “Why should we carry a burden of guilt?”, they ask.

Of course they carry no responsibility on the individual level. But is there a collective sense of guilt?

Indeed we are born as individuals, free to choose between good and evil, and we have the right to be judged as such. But we are not born in a vacuum. We are identified at birth with our family, with a particular community, an ethnic group, a nation, a religion, a political entity, a language, a culture. Actually, from our birth, we have very little choice in creating our personal identity. Even if we choose to separate ourselves from some of these identifying factors, they can come back to us in various forms: a grandchild who suddenly gets the urge to look for his roots, or a Hitler who ignores our choice and reminds us of who we are. Being part of a group has its benefits, but it also carries with it implied responsibility. We all carry with us our collective past, we can try to decide our present and our future, but as a people we can never disassociate ourselves from our history.

Whatever our relationship, now and in the future, our two peoples, the Jews and the Germans, are bound forever in a bond marked by the horrors of the Holocaust, the Jewish people as its victims, and the German people as its perpetrators.

Jews have been victimized many times and in many countries throughout our history. As a people without a country of our own, we never had the means to protect ourselves, or the weapons to fight back. The only thing left to us was remembrance. “Don’t forget, tell your children and your children’s children”, has become a national motto, our only way of dealing with discrimination, with persecution, with pogroms. Every year we sit down to a “seder” on Passover and tell our children what the Egyptians did to us thousands of years ago. Jews boycotted Spain for 500 years, as a response to the Inquisition.

Today, after Germany has opened a new page in its history, now that a normal open dialogue has become possible between Germans and Jews, we as individuals can come to Germany and conduct a normal, even friendly, relationship with Germans, who indeed carry no individual responsibility for the past. But we can do so only as long as both of us, Germans and Jews, carry on the memory of the past, and pass it on to our children.

If there is hope for a better future for all of us, its roots lie not in ignoring or evading the past, but in remembering it, in studying it, in teaching it, and in learning the lessons which it taught us.

This conference provides a forum not only for remembrance but also for frank and open discussions on matters which are constantly on all our minds. I welcome you all and I wish all of us fruitful deliberations.
"We were determined to publish the list of lawyers who suffered anti-Semitic persecution from 1933"

Bernhard Dombek

The first thing that came to mind when I read the motto of your conference “Remember Berlin” were songs, pop songs that were meant to evoke sweet, pleasant memories. But, of course, I knew that, during these days, we were not supposed to be remembering the pleasant Berlin that once was, but the fact that, behind the beautiful and splendid Berlin of the years before the war, the greatest atrocity imaginable lay hidden. Worse than that: an atrocity that was unimaginable - before it actually happened.

You began your meeting here in Berlin by going behind the scenes of the beautiful and splendid Grunewald district of Berlin to visit the Grunewald S-Bahn railway station. It was from there that 50,000 Berlin Jews began their final journey to the horrendous concentration camps. This way of beginning the conference made a huge impression on me.

That in why this is not a normal lawyer’s conference. And, I have to admit, words do not come easily to me today. Nevertheless, I will try to describe to you the background to this conference as I see it.

Four years ago, the Law Society of Tel Aviv paid a visit to the Law Society of Berlin. During this meeting, the Berlin lawyer Gerhard Jungfer gave a paper on the expulsion of Jewish lawyers in the years following 1933. Gerhard Jungfer had researched the fate of Jewish lawyers in this period and had written many articles and given many papers on the subject. After his presentation, Joel Levi - perhaps along with Shimon Tsur - asked if it would be possible to compile a list, a list of excluded lawyers, with names and perhaps their last known addresses, as well as some information about their final fate, if it was known. The idea was that the list might act as a sign that the exiled Jewish lawyers had not been forgotten. What they had suffered should not be forgotten. Drawing up a list like that was impossible, we were told by people who have done academic work on the subject. The files of the Berlin Law Society had been burnt. The gaps in the list would be too great. It would only be possible to follow up individual fates and Gerhard Jungfer and others had already done that.

We were determined not to accept that as an answer. We decided to attempt the seemingly impossible and were about to look for a young lawyer to carry out the research. But, as it happened, that was not necessary, because a fortunate coincidence came to our aid. Just a few days after we had taken our decision, Simone Ladwig-Winters rang and told me that she had just published a book about the Wertheim family. She had noticed that there was no comprehensive record of the fate of Jewish lawyers in Berlin after 1933. She was interested in the

Adv. Dr. Bernhard Dombek, the President of the Berlin Bar Association, chaired the opening session of the Berlin Conference. Here are his remarks translated from German.
subject, she told me, and asked if the Berlin Law Society was not also interested. Of course we were, and I asked her if she could start by making a list of the Jewish lawyers who had been excluded from the profession. She agreed.

She carried out this commission with great commitment and a high degree of expertise. The list of lawyers who suffered anti-Semitic persecution from 1933 onwards is virtually complete and she did not stop at simply making a list: it was accompanied by extensive documentation about the steps leading up to their expulsion. Last year, Simone Ladwig-Winters published a book about the marginalization of lawyers of Jewish origin. I still remember how it came out, in October last year, on the very same day that the German-Israeli Lawyers Association began its annual conference in Weimar. It was a particularly great pleasure and honour for me at that conference to be able to present the first two copies of this book - hot off the press - to Joel Levi and Dr. Himmelmann.

But the book was not the end of the story. Simon Ladwig-Winters suggested that we should also organize an exhibition. She made contact with the Centrum Judaicum and helped stage the exhibition.

What was so special about the book and the exhibition?

I believe it is the list, or rather the individual fates, that make such a profound impression. The focus of the exhibition was on them and I am sure that they will capture your attention too. When we learn that about a quarter of Berlin lawyers who were of Jewish origin were murdered we simply note the figure. It does not actually trigger moral outrage. This outrage only comes with each individual fate. The death of each individual is the scandalous injustice and that is why it is important that we learn about the fate of many individuals, not only that of famous lawyers whose names everyone in the legal profession still knows. We also learn about the fate of the ordinary lawyer who was not famous. He is also on the list. It is important that he, too, is not forgotten.

Many questions remain open:

One of them is easy to answer. What happens about making additions to the list, additions to the individual fates? It was not possible to find information about each person’s date of birth and death, nor about the course their lives took. When I presented one of the first books to the President of the Federal Law Society, Dr. Haas, he asked me if his grandfather was on the list. He was. But some of his data were missing and Dr. Haas had no problem in supplying them. Our expectation that there would be a large number of similar responses proved correct. We have already received a great volume of additional information and corrections so that we will be able to make a considerable number of corrections when we publish the second edition of the book. But, first of all, we want to sell the first edition. Tomorrow the book will be on sale here at this conference.

A second question that is still open is:

What was the reaction of the non-Jewish lawyers to the arbitrary exclusion of some of their colleagues? Nothing is known of any display of solidarity in protest against their colleagues having their license to practice revoked. There were some individuals who, as Adolf Arndt put it, behaved “decently”. The behaviour of non-Jewish lawyers and the role of the Law Societies have not yet been researched. I was pleased to hear that the Berlin Lawyers Association has commissioned a study of this kind. It will no doubt be just as important as the study that led to this book and exhibition. I am sure we will learn about the initial results of the study in Dr. Königseder’s paper later today. I am naturally very curious to hear what she has to say. I do not want to anticipate the study and the paper, but I feel able to predict that the research will prove that many of the non-Jewish lawyers were only too willing to join in the destruction of the civil identity of their colleagues (it is difficult to utter the word in this context) or at least to benevolently sanction this annihilation. That is also true of those lawyers who, following the resignation of the executive committee of the Law Society in Berlin on 22 March 1933, had the say in the self-governing body of lawyers and who, as early as June 1933, decreed that every member of the Association had to submit so-called proof of Aryan ancestry.

The outer form of the election of the Executive Committee of the Berlin Law Society on 22 April 1933 similarly left no doubt about the fact that the Association would become a means of implementing Nazi policies. Dr. Neubert, who was elected president at this meeting, reported the following to Dr. Freisler, Deputy Secretary in the Prussian Ministry of Justice.

“The meeting went according to plan and without incident. The assembly was attended by over 700 lawyers and an audience of
around 300. No objection was made to the public nature of the assembly. A resolution to hold new elections was passed with all except 7 in favour. Article 3 of the code of procedure was amended so that there was no discussion and only one round of voting by acclamation.

The communal list was elected with all bar 2 in favour. This means that the Executive Committee now consists of 24 lawyers who are either members of the NSDAP or are sympathetic to it, of 6 lawyers who belong to the Stahlhelm [Steel Helmets] or the DNVP [German National Party] and 3 members who, although their party affiliations are not known, can be assumed to be of right-wing persuasion. The meeting lasted half an hour”.

I need comment on one point only. The audience of 300 mentioned by the President were SA men in uniform who occupied every other row in the assembly hall.

And the last open question:

How was it possible that our book and this exhibition and, as a result of them, this conference, did not take place until 60 years after the events, at a time when there are practically no eyewitnesses anymore, a time in which people want to make a transition to a more relaxed, normal state?

I am ashamed to say that this question will have to remain open. There may well be explanations and justifications. But I think it would be highly embarrassing to mention them here.

Nevertheless, we can be pleased that at least the current Executive Committee of the Berlin Law Society has published this book, organized the exhibition and provided a degree of assistance to the conference.

Participants to the Conference laying wreath at the Grunewald Railway Station from which Jews were transported to their deaths.
“The expulsion of the Jewish lawyers was at the same time an extirpation of the culture out of the courtrooms”

Everhardt Franssen

welcome you to your conference in the building of
the Federal Administrative Court. It is a conference
which is dedicated to the destiny of Jewish lawyers in
Berlin after 1933, when Germany, with a speed
hardly deemed possible, started to turn from a still
reasonably functioning State governed by the rule of law to a
latrocinium.

The subject of your conference refers to the book “Anwalt
ohne Recht” [“Lawyer without Law”]. Without this book this
conference would not be held. This book, however, has its
history. It traces back to a question which was not asked but
heard anyway. The question resulted from a simple request. The
request was harmless. It concerned the transmission of a list of
Jewish lawyers who were admitted to the Bar in Berlin in 1933.
The request lost its harmlessness when it could not be granted.
When the request was made in 1995 no such list existed. The
question referring to that was not asked. It was no longer harm-
less, but of hidden explosive force. It was the modification of an
old question of biblical weight, the question what has become of
the brother. The challenge inherent in this has found a response
in the form of the mentioned book. It is moving and impressive,
a true book of law, and it has brought us together to our confer-
ence. Thus the circle closes.

The book lists 1,785 names. The bearers of these names were
Germans, and they loved their Germany as well as their
colleagues of that time who were not listed in the book. They

had already be-
come lawyers
without law when
they were driven
first out of the
courtrooms of
Berlin and then
out of the admin-
istration of jus-
tice from March
31, 1933. This
expulsion, how-
ever, was at the
same time an
extirpation of the
culture of law out of these courtrooms and the beginning of the
“Doppelstaat”, whose structures have been described in such a
vivid and impressive manner by Ernst Fränkel. As a Jewish
lawyer in Berlin Fränkel is also listed in the book of law.

Some of you are relatives of those who are named in the book.
It is an honour and a pleasure to me to have you with us today.
On this occasion I remember some very moving conversations
with Kurt Rosenfeld’s nephew. Rosenfeld was one of Berlin’s
great Jewish defence counsel in political proceedings, for
instance against Carl von Ossietzky, whom Rosenfeld defended
together with Max Alsberg, Alfred Apfel and Rudolf Oden, all
are listed in the book of law. They could not save him from
being convicted of treason by a prejudiced Senate of the
Reichsgericht. Kurt Rosenfeld was one of the two lawyers who
succeeded in summoning Hitler as a witness who completely lost

Judge Everhardt Franssen is President of the Federal Administrative Tribunal
in Germany, which was the venue of the Remember Berlin Conference. Following are his translated remarks from the opening session.
self-control when questioned. Hitler finally refused to testify, and therefore fines of 800 Mark and an additional 200 Mark for contempt of court were imposed on him. Once more Carl von Ossietzky and also Ernst Thälmann counted on Kurt Rosenfeld’s help. Carl von Ossietzky had been released from prison after an amnesty, but had soon been arrested again after the burning of the Reichstag. Ernst Thälmann had been tracked down by the police in his hiding place at the beginning of March 1933. Both of them asked in vain to be defended. Kurt Rosenfeld, by the way first Prussian Minister of Justice after the coup of 1918, could only avoid his own arrest, which would have meant his certain death, by his extremely fast escape to Prague.

Hans Litten was the other lawyer who succeeded in pressurizing Hitler in court. Litten appeared for the Communist joint plaintiffs who were victims of the infamous SA-Sturm 33. Handguns, knuckle-dusters or cudgels belonged to the equipment of this Sturm 33. Litten wanted to prove that the acts of violence committed by the Sturm 33 were based on a calculated party strategy. On May 8, 1931 he forced the witness Hitler to a testimony which caused not only disquiet in the party, but at the same time gave the impression of distancing himself from his own Reichspropagandaleiter. In a brochure, which attained a very large circulation in party sections, Goebbels had held that Parliament had to be scattered and that the enemy should be stamped to mush. After Litten’s statement the witness Hitler shouted out loud and went into hystericities. The intended statesmanlike pose had failed. After the takeover by the Nazis, friends urged Litten to go abroad. His mother, Irmgard Litten, has set out in her moving book “Eine Mutter kämpft gegen Hitler” (“A mother fights against Hitler”) that he rejected this with the words “millions of workers cannot get out, therefore I must stay here, mother fights against Hitler” that he rejected this with the words “millions of workers cannot get out, therefore I must stay here, too”. Hans Litten received a great deal of his mandates from the “Rote Hilfe” (“Red Help”), but he was not a Communist himself and had no affiliation with the KPD (Communist Party). He also by no means complied with the wishes of the “Rote Hilfe”, which from a certain time was no longer interested in acquittals, but rather in martyrs. Litten achieved his last great success in October 1932, when he defended nine Communists after a stormtrooper was inadvertently shot by his own men. All the accused Communists defended by Litten were acquitted.

Litten’s contribution to this acquittal is stated by Else Hirschmann in a report on this case, written by the pseudonym Gabriele Tergit in “Weltbühne”:

“The functions of the authorities in a sound legal proceeding are only carried out by the defence. In favour not only of the defendant, but in favour of the law, to prevent a multiple judicial murder. The judiciary came out of this trial unscathed because of the support of a Communist lawyer. The State owes the preservation of its authority to the inquiries of a Communist organization”.

Still, in the night after the burning of the Reichstag, Litten was arrested as a Communist. Max Alsberg, the great Jewish defence lawyer, refused to defend Litten, foreseeing what was still to come. Alsberg left Germany in the beginning of April 1933 and went to Switzerland. In September of the same year he committed suicide there. A letter written in exile shows which thoughts moved him:

“Everything I believed in has broken down... I am living in the German judicial system. Nothing has given me such fulfillment as my occupation with the judicial system”.

With these feelings the greatest German defence lawyer of the Weimar Republic departed this life.

In the concentration camp Hans Litten fell into the hands of the members of the murderous Sturm 33. His mother’s fight for her son’s life was in vain. Freisler reported that Hitler went crimson when he just heard the name Litten. Litten was tormented in such a horrible manner that he finally committed suicide in the concentration camp. His mother’s five-year struggle was unsuccessful. On her initiative high-ranking English politicians, among them Lord Allen, as well as the Minister of the Reichsheer Blomberg, C.J. Burckhardt and the former German crown prince intervened as mediators. Lord Allen was told by Ribbentrop on Hitler’s behalf that Litten was one of the intellectual leaders of Communism, and the crown prince had to take from Hitler: “Anyone who speaks up for Litten will be thrown into a camp, even if it is you!”

Hans Litten is still being remembered in Berlin. The street in front of the Landgericht (District Court) is named Littenstrasse in his honour. That was the name of the street already at the time of the German Democratic Republic, when the Highest Court (Oberstesgericht) resided in this courthouse. It seems that in the western part of the city after the reunification only the Nazi version about Hans Litten was known according to which Litten was an intellectual forerunner of Communism. The consequence seemed inevitable: The Littenstrasse should get its former name
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again. In this situation a more than 80 years old lady from Stuttgart wrote an outraged letter to Jutta Limbach, then Minister of Justice and now President of the Federal Constitutional Court. It was Margot Fürst, Hans Litten’s former secretary. She made clear who this Hans Litten really had been.

And thus in the year 2010, a lawyer who goes to a hearing at the District Court with his Referendar (trainee), may say to his young colleague: “Do you know, by the way, that this was once the building of the Highest Court of the German Democratic Republic?” And if his young colleague, as it is to be expected, answers “that is new to me”, the lawyer will reply: “But you certainly know, after whom the Littenstrasse has been named?” If the young colleague, as it may be assumed, says “no” again, the lawyer will reply: “He was one of the greatest of our profession! He belonged to the ten righteous for whose sake God would not let a city be ruined. After the end of our hearing I shall tell you something about his life”. The young trainee does not suspect that he owes this conversation to Margot Fürst, but he need not know this. And the lawyer has done what Fritz Stern, this year’s winner of the Peace Award of the German Book Trade, has expressed as follows:

“What is done in remembrance of those who acted in accordance with their conscience in isolation, pronounces a judgment on those who came after them: On us”.

Perhaps I should still mention that a public institution courageously intervened for Hans Litten after his arrest: It was the Berlin Bar Association, whose President was Ernst Wolff at that time. On March 3, 1933 Wolff wrote to the Prussian Minister of Justice concerning Litten, that it would be a great error to assume that a lawyer belongs to a political party because he defends members of this party in political trials. Wolff wrote that he wished to help his colleague who was erroneously suspected of subversive activities. That was - I quote Tillmann Krach - the last stirring of a self-conscious independent Bar, and one should perhaps add that Ernst Wolff, the author of this letter, is registered in the book of law, that means that he was a Jewish lawyer. He was one of the leading lawyers in business law and practice in Germany. He was a grandson of Eduard von Simson, the great Prussian Liberal, President of the German National Convention 1848/49, Bismarck’s antipode during the constitutional conflict in Prussia and the first President of the Reichsgericht. Among Wolff’s trainees are Adam von Trott zu Solz and Nikolaus von Halem, who lost their lives after July 20.

Among the board members of the Association of Prussian Judges there was no such man as Ernst Wolff. There was no Jewish judge on this board. When in Magdeburg the Landgerichtsdirektor (Presiding Judge at the District Court) Friedrich Weisler still before the boycott day of April 1 was driven out of his post and asked his Association for help, the responding board member stated that he had “understanding for his tragic situation” and that he hoped “the necessary measures would be taken in a way that helps those concerned and considers the individual circumstances”. That was at worst sheer cynism and at best an illusion out of touch with reality. Still in 1933 Weisler moved to Berlin with his family and took part in the work on a commemoration by the Vorläufige Leitung (Preliminary Direction) of the Protestant Church. The force of its language is still impressive today. On June 4, 1936 the memorandum was handed over. We have every reason to assume that the following sentences of the memorandum were phrased by Weisler:

“If within the framework of the National Socialist ideology an anti-Semitism is imposed on Christians that obliges them to hate Jews, the Christian command obliging them to love their neighbours as themselves is opposed to that. The Protestant conscience that is aware of being jointly responsible for people and government is extremely burdened with the fact that in Germany, which calls itself a State governed by the rule of law, there are still concentration camps and that the measures of the Geheime Staatspolizei [Secret Police] are exempt from judicial review”.

On July 23, 1936, nine days before the opening of the Olympic Games in Berlin, not only these sentences, but the complete text of the memorandum was published by the Basler Nachrichten and the editorial lead of the newspaper remarks:

“There is no other institution any more that dares to tell something like that to the German Chancellor and Führer”.

Weisler is suspected of having arranged for the publication. That was his death sentence. In February 1937 he was literally stamped to death by SA men in the bunker of the KZ Sachsenhausen.

As far as we know, the Gestapo permitted only two women to take leave of a dead person in a concentration camp: one woman of her son, the other woman of her husband. In both cases the tortured bodies were wrapped in white linen, only the faces were
not covered. The dead persons were two prisoners from Berlin. One was a Jewish lawyer, the other one a Jewish judge. The names of the women were Irmgard Litten and Johanna Weisler.

Back to Ernst Wolff. He could still emigrate to England in 1939, and he returned to Germany after the war. Until 1950 he was President of the Highest Court of the British Zone, the predecessor of the Bundesgerichtshof. We owe a remarkable judgment to the Highest Court of the British Zone. Within the jurisdiction of this court were crimes against humanity according to Kontrollratsgesetz No. 10. The judgment is unfortunately almost forgotten today. It concerned Veit Harlan and his infamous film “Jud Süss”, and it was the starting point for a judgment of the Federal Constitutional Court that meanwhile has become famous. The District Court of Hamburg had acquitted Veit Harlan on the grounds that the film had had no consequences that would not have occurred without the film; the Court stated that evidence of the result of the act, that belongs to the legal elements of the offence, could not be furnished. With respect to that the Highest Court remarked, at the time of the production of the film the physical extermination of the Jews was still imminent, and that it had been inevitable, that the German public would hear about details despite secrecy orders; normally this knowledge about “acts of extermination which were by far more cruel, harsh and inhuman than all anti-Jewish measures known before in Germany... would have had necessarily caused disgust”. The Highest Court continued, that well calculated mass propaganda had aimed at diverting and blunting the legal conscience of the German people and that the core of this propaganda was the constant assertion, that one had to get rid of the Jews in the interest of the preservation of the German people. According to this Court, the film “Jud Süss” was a not unimportant tool of this agitation. The District Court Hamburg had to give a second ruling and again it acquitted Veit Harlan, this time on the grounds, that he had been under duress and there was a legal excuse because Goebbels had put him under intolerable pressure. When Veit Harlan shot a new film in 1950, Erich Lüth, Senatsrat in Hamburg, appealed for a boycott against a director who had belonged to the most important representatives of the murderous Nazi agitation against the Jews. He stated that the judgment of the District Court had only formally been an acquittal but in fact was a moral conviction. After the applications for an injunction by the producer and the distributor were successful both in the summary proceedings and in the decision on the merits, Lüth filed a constitutional complaint, which led to the most well-known and certainly one of the most important decisions of the Federal Constitutional Court. Today each student of the first semester is familiar with the “Lüth decision”. According to this decision the evaluations inherent in basic rights are also important to civil law and thus to the relations among citizens; the Civil Courts therefore may not prohibit opinions, which are expressed in public with serious intentions, as contrary to public policy because of the economic consequences intended thereby.

For a conference such as yours, besides lectures and discussions, personal conversations are important. I hope the ambience of our house offers many opportunities for such conversations. If after ten years one will say to the other: “Do you still remember the conference at the Federal Administrative Court?” this conference will have had long-term effects. I wish you and us such continuous effects.
Germany, Europe and Israel: Greetings

The President of the Federal Republic of Germany, Professor Dr. Roman Herzog

The National - Socialist racist lunacy persecuted, discriminated against and murdered Jews as well as their fellow sufferers. Jewish officials and judges were driven out of public office. Jewish offices, practices and businesses were boycotted. People were torn from the society to which they belonged and to which they wished to belong.

The Law of Admittance to the Legal Profession of April 7, 1933 actually disguised the injustice towards Jewish lawyers. What it really meant was ousting them from the legal profession. The legal community of the District of Berlin suffered most, as practically half of its members were Jewish. In addition to their personal suffering, the deligitimation, deportation and murder of Jewish jurists caused enormous loss to jurisprudence as well as to the daily legal practice.

Past events cannot be undone. However, the present generation must live in tolerance and understanding while always keeping the memory alive. Individual responsibility, mutual civic obligation and the political reality of democracy, pluralism and human rights build the alliance of goodwill without which we cannot exist.

Therefore, I congratulate the International Association of Jewish Lawyers and Jurists, the German-Israeli Jurists Association and the Berlin Bar Association for holding this year’s conference on the fate of Jewish lawyers in Berlin after 1933 and providing German and Jewish jurists with an opportunity to meet and exchange ideas.

I wish you a successful conference. May it enhance vigilance and understanding and may it deepen the consciousness of mutual responsibility in the future.
Adv. Martina Keller,  
The Council of Europe

As a representative of the Council of Europe, I am very honoured to take a part in this conference and I must, as such, transmit to you the best wishes for success of Daniel Tarschys, Secretary General of the Council of Europe.

As you know, the Council of Europe, the first European political institution which was founded in London on May 5th, 1949, has just celebrated its 50 years of existence, and the objectives of its founding fathers are today more relevant than ever.

Since the spectacular changes which occurred in Central and Eastern Europe at the end of the Eighties, the Council of Europe has encouraged the efforts deployed by countries which are seeking to establish democracy and make human rights respected.

The Council of Europe Jubilee also coincides with the coming into force of the Fundamental Law, which constitutes the basis of democratic Germany, as well as with the 10th anniversary of the fall of the Berlin Wall; Berlin that thus stands in the heart of a new Europe.

The Council of Europe was originally set up in order to serve as a barrier against dictatorship and tyranny and preclude it from ever again occurring. Its aim consisted of implementing “a tighter union between its Members... by concluding agreements and by adopting common action in the economic, social, cultural, scientific, legal and administrative fields, as well as by safeguarding and developing human rights and basic freedoms”.

All the actions of the Council of Europe are infused with the human rights theme. The cornerstone in this matter is the European Convention on Human Rights, which was signed in 1950, and which establishes for the first time a system of special protection of human rights, and allows the individual, once he has exhausted all the internal processes of appeal, to bring his case before the European Court for Human Rights in Strasbourg.

Today, the Council of Europe numbers 41 Member States. The present situation in Europe, the conflicts in former Yugoslavia, the recurrence of intolerance, racism, anti-Semitism and xenophobia show how difficult it is to achieve the objectives of democracy and protection of human rights, and how vigilant one must remain towards these objectives.

Let me conclude these few words by quoting an eminent personality who worked for the protection of human rights in Europe and throughout the world. I am thinking about Rene Cassin, the writer of the Universal Declaration on Human Rights, Nobel Peace Price holder and former President of the European Court for Human Rights, who said:

“I think that Humanity must not be desperate about its future. The sole danger is to get indifferent to horrors. Reason will allow a more just world to be built. There will be no peace on this planet as long as human rights are violated in any part of the world”.

Dr. Werner Himmelmann,  
Chairman of the Board of the German-Israeli Jurists Association

In the name of the German-Israeli Jurists Association, I welcome you most cordially in Berlin to our conference “Lawyers without Rights”.

It is a special pleasure to welcome those among you who set foot on German ground for the first time after so many years. We know how hard this is for you. Your coming here is a great honour for us.

Please don’t think that we are here to come to terms with the past, whatever this may mean. We can never come to terms with this past. It is a never-ending past.
Neither do we aim to ‘normalise’ the relationship between German and Jewish colleagues. This relationship may be good and it may even be excellent. Some of my best friends are Jewish colleagues. But our relationship can never be ‘normal’.

Neither do we think in the least that later generations may ‘forgive’ the perpetrators. Only the murdered victims themselves could forgive, if that is at all possible.

We want to remember. Remember Berlin - Berlin in 1933. That’s on our programme.

It is painful to remember.

It is deadly to forget.

He who forgets the names and fates of our persecuted and murdered Jewish colleagues will delete them forever from the book of history. He who does not write down these fates for the following generations kills the victims another time, puts them to a final death.

But he who remembers keeps the past alive. He honours the victims as much as we can still honour them today.

This remembrance is painful. The eyes of those who trace the dreadful destinies of our murdered colleagues fill with tears. How much greater the pain of those whose brother or parents were murdered.

“My pain is ever-lasting”, says the memorial stone of a former concentration camp Bergen-Belsen.

Nevertheless, remembrance will give us solace. It is a great comfort to know that you remember together with us.

When you are back in your home country, it will perhaps be a consolation to you to know that we will never forget our persecuted and murdered Jewish colleagues.

Klaus Bohlhoff, President of the International Bar Association

In my position as President of the International Bar Association and as a member of the German Bar I wholeheartedly welcome the conference organized in Berlin.

I have read and fully support the message submitted to the conference by the German Federal President, Roman Herzog, and I share his sentiment about what has happened and about the responsibilities of present and future generations.

The subject of the conference is highly challenging and timely. The Jewish contribution to the German culture generally, and in particular, to the development of German law and legal practice in the 19th and early 20th centuries is distinctive and indispensable. German cultural and intellectual life and the practice of law, in particular in Berlin during the first part of this century, would have been essentially different, in effect poorer without the Jewish contribution.

Your conference is invaluable in its effort to shed more light on this darkest chapter of German history and I wish you every success.
The series of conferences initiated by the International Association of Jewish Lawyers and Jurists in order to commemorate the Jewish jurists that fell victim to Nazi persecution began in Salonika in 1998. In this city National-Socialists, during World War Two, annihilated the centuries-old second bloom of an intensive encounter of Jewish, Spanish and Arab cultures.  

Today we have come together to commemorate the achievements and the fate of Jewish jurists in Germany after 1933, i.e. the brutal termination of an important part of what is commonly and - as I think in contrast to Gershom Scholem - adequately described as the German-Jewish symbiosis. Whenever this symbiosis is discussed, Berlin, of course, plays a prominent part as the capital of Germany and - at the same time - the center of Jewish life in Germany.

Quantitative Aspects
An evaluation of the achievements that Jewish jurists and jurists descending from Jewish families contributed to the development of German law encompasses both a quantitative and a qualitative dimension. Mrs. Ladwig-Winters deserves great credit for her publication “Anwalt ohne Recht”, especially insofar as she has not only made

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evident the statistical significance of the quantitative dimension but, beyond this, has - to the extent possible - given back to more than 1,800 attorneys and members of the Berlin Bar - over 50% of its 1933 membership - their biographies, and thereby has restored their postmortal dignity - irrespective of their individual merits and achievements. The numerical relationship just mentioned certainly reflected the specific situation in Berlin. One must, however, not forget that the percentage of Jewish attorneys ran up to 40% and more also in other big cities such as Frankfurt, Breslau and Mannheim to the effect that for the German Bar as a whole the percentage totalled roughly 30%. Lower, but still particularly significant, was the percentage of university law teachers (roughly 23%) and judges (roughly 7%) in 1933. The figures have to be evaluated in light of the fact that the Jewish segment of the German population never significantly exceeded 600,000 in absolute figures and 1% percentage-wise.

At all times, the strong Jewish representation within the legal profession in general and the Bar in particular has given rise to numerous speculations and theories. Leaving aside the despicable conspiracy fantasies concocted by the Nazis, the phenomenon of Jewish overrepresentation reflects aspects of history, cultural sociology and psychology. In this respect a lawyer should use restraint. Nonetheless, a few observations may be added:

- The exceptional inclination of Jewish education towards academic professions - even in well-to-do non-academic, e.g. business families - probably is connected to the traditional high esteem that Judaism shows for intellectual activities and for education - an esteem which has retained its guiding force even where religious ties have faded or been abandoned altogether;
- The specific inclination of Jewish students, it is submitted, for law studies, is partly due to the high priority Judaism attributes to the value of justice and to the strong legalistic character of traditional Jewish religious structures;
- The fact that among the various branches of the legal profession Jewish lawyers traditionally have preferred the Bar is linked to the long standing discrimination Jewish judges and civil servants were exposed to - discrimination that did not lose its effect on social and professional preferences even after the formal introduction of equal chances for professional careers and promotion.

Qualitative Aspects

Much more interesting than the quantitative dimension and its possible or probable explanation appears to be the qualitative contribution to the legal development in Germany by jurists who were Jewish or descended from Jewish families. In this respect we can distinguish between the 19th and the 20th century.

1. Overlooking legal developments and the legal profession in Germany during the 19th century, one does not encounter unbaptized Jewish lawyers, apart from very few exceptions. For Jews access to public office was virtually blocked, let alone professional advancement. On the other hand, we find an impressive array of leading jurists who descended from Jewish families, jurists who either had become Christians during the generation of their parents or had themselves converted to Christianity during childhood or adolescence. A few names may suffice as examples:

- Friedrich Julius Stahl, the legal philosopher and protagonist of Prussian Protestant state conservatism;
- Paul Laband, the important teacher of constitutional law during the German Empire;
- Heinrich Dernburg, the author of famous treatises on the law of Pandects and on Prussian Private Law and - as parliamentarian and judge;
- Eduard von Simson, the President of the German National Assembly of 1848/49, of the German Reichstag after 1871 and - after 1879 - of the Reichsgericht, the newly established German Supreme Court.

The biographies and the achievements of these personalities supply impressive evidence of the truth in Heinrich Heine’s famous word of the certificate of baptism being the “ticket of admission (Entrée billet) to European - in this case: German - culture”. As a baptized Jewish jurist one had entered the mainstream of German legal culture and development and some

5. It is, however, worth mentioning that Sigmund Zimmern, a legal historian, obtained his “Habilitation” (Privatdocent) at the University of Heidelberg as early as in 1818. In 1821 he was baptized and in the same year appointed full professor.
6. 1802-1861 (conversion in 1819).
7. 1838-1918 (conversion in 1857).
8. 1829-1907 (conversion with parents in 1841).
9. 1810-1899 (conversion in 1823).
psychologists might even recognize traces of overassimilation, e.g. in the personality of F. J. Stahl.

2. Towards the end of the 19th century we can already identify a few instances as evidence that unbaptized Jewish jurists too were beginning to have the chance of professional success and to bring about important achievements. One example is Georg Jellinek.\(^\text{10}\) He was a full professor of law on the Faculty of Law of the University of Heidelberg around the turn of the century and one of the most eminent scholars in constitutional and general public law. His principal work, the “Allgemeine Staatslehre”, had an enormous and lasting influence. Another example is Levin Goldschmidt.\(^\text{11}\) He is generally regarded as the most outstanding scholar of commercial law in the 19th century and in 1875 was appointed full professor in charge of the chair in commercial law at the Faculty of Law of Berlin University - the first specialized commercial law chair in Germany.

Glorious as these achievements may appear, the career of both was marked by various personal humiliations. Thus, Jellinek had to virtually flee from Vienna because of anti-Semitic attacks and the University of Heidelberg was the only one in Germany to offer him a chair. And for Goldschmidt it took an odyssey through a number of German States to finally get his “Habilitation” in Heidelberg.\(^\text{12}\)

3. Focusing on the 20th century one notices significant changes in the socio-psychological position of the Jewish population which also had its effect upon the Jewish segment within the legal profession:

- The gap between formal equality as well as the guarantee of equal access to public offices that Jews and Jewish jurists had achieved towards the end of the 19th century on the one hand and societal distance and rejection on the other increasingly widens at the beginning of the 20th century - a tendency which mounted still further after World War One and dates back to the 1880s, when nationalistic German and anti-Semitic ideas began to thrive - a historic period when - as one could say - German political culture derailed.
- The separation between baptized and unbaptized Jews, so important for societal acceptance or non-acceptance during most of the 19th century, loses its importance in the 20th century. Religion as a distinguishing mark is replaced by descent and - as a culmination of perversion - by race or what was deemed to be race.
- The growing trend towards academic education among the younger generations of Jews results in a sharp increase of Jewish representation within the Bar. Partly out of hidden strategies of rejection from inside the judiciary and civil service, partly out of their own free decision, Jews prefer the Bar as their field of professional activity in law because it offers opportunities for personal independence. It is therefore no surprise that during the first decades of the 20th century the contribution of Jewish jurists to the development of German law to a high degree stems from Jewish members of the Bar and here - mainly but not exclusively - from Berlin attorneys of Jewish origin.

It would certainly take hours just to enumerate all those jurists of Jewish origin who have influenced the development of German law. Anybody who is interested in getting a deeper insight into the achievements of individual Jewish lawyers can be referred to Peter Landau’s 80-page essay that he contributed to the book on “Deutsche Juristen jüdischer Herkunft” [German Jurists of Jewish Origin], edited by Heinrichs/Franzki/Schmalz/Stolleis, and published in 1993. The reader will come to the conclusion that during the late stage of the German Empire and during the Weimar Republic Jewish lawyers have made essential and outstanding contributions to all areas of German law. In the following I would rather like to work out four characteristics of the Jewish contribution without which, I believe, the development of German law would not have occurred at least in the same way as it, in fact, has occurred.

a. One essential element for which in particular Jewish lawyers deserve special credit is the blending of legal theory and legal practice. As scholarly interested and qualified practitioners, especially attorneys, they were particularly destined for such a mission. The great codifications of the late 19th century, as, e.g., the Commercial Code, the Civil Procedure Code and, finally, the Civil Code, marked a sharp turning point in the legal development of Germany. It was no longer possible to unfold the content and substance of these Codes by drawing on the Ius Commune, but by scholarly analysis and digestion of legal prac-
tice. In this respect especially, Jewish lawyers have accomplished pioneering work. I would like to mention above all Hermann Staub, an attorney in Berlin who discovered the “positive Vertragsverletzung”, and Max Hachenburg, an attorney from Mannheim. Their names are connected with the voluminous commentaries to the Commercial Code, the law of corporations and to the law of negotiable instruments. At that time these commentaries initiated a new type of legal literature without which present legal work cannot be imagined. The same is true of the extraordinarily intense activities of Jewish attorneys in editing law journals. Also in this regard the names of Max Hachenburg and Julius Magnus, a Berlin attorney who, for decades, was editor-in-chief of the “Juristische Wochenschrift”, the leading weekly law review, deserve special mention. It is in this and other law reviews that hitherto unknown types of legal literature such as comments on court decisions were cultivated - types of literature absolutely indispensable in present day legal work.

b. The blending of doctrine and practice has not only led to the practical development of classical areas of law, but vice versa has favoured the doctrinal evolution of new fields of law which demanded solutions to practical problems posed by an emerging modern industrial society. Not surprisingly, during the first decades of this century, new fields of law were created that today are already regarded as classical, among them, e. g., labour law, insurance law and competition law. In particular Jewish jurists deserve credit for this achievement. In labour law the names of Philipp Lotmar, Hugo Sinzheimer, and the Berlin civil servant Walter Kaske are to be mentioned; in insurance law Victor Ehrenberg and Ernst Bruck. The leading competition lawyers were Hermann Isay, Rudolf Isay and Julius Flechtheim. In the law of intellectual property the Berlin attorney Arnold Seligsohn was a prominent writer. The law of copyright and theatre law were prominently represented by Wenzel Goldbaum, also a Berlin attorney.

If one passes in review these innovative approaches to new areas of law, one can find a parallel to what Shulamit Volkov found out in her research about the careers of Jewish engineers and natural scientists: The bureaucratic and societal resistance against Jews entering the classical academic fields drove many of them into emerging branches of their respective discipline, here law, that turned out to be productive “niches”.

c. One field of law in which Jewish lawyers in particular achieved outstanding significance is international and comparative law. In this respect they greatly contributed to opening German legal science and culture to the international dimension of law. In public international law suffice it to mention the names of Erich Kaufmann, law professor on the Berlin Law Faculty before 1933, and Max Fleischmann law professor at the University of Halle. Their national and international influence was not only based upon their writings, but additionally, to a large part, on their service to the German government of the time as participants in international conferences, as acting lawyers at the Permanent International Tribunal in the Hague.

13. 1856-1904. 14. The German Civil Code (BGB) only knows the categories of impossibility (Unmöglichkeit) and default (Verzug) as cases of incomplete performance of an obligation. “Positive Vertragsverletzung” means every form of breach of contract other than impossibility or default. Staub, the author of a Commentary to the Commercial Code, was so famous among the German Bar that there was a saying that one day the inscription on Staub’s tombstone would read: “Here rests Hermann Staub - No commentary necessary”. 15. 1860-1951. 16. The blending of doctrine and practice as being cultivated by Jewish jurists with particular emphasis appears to be the starting point for an evolution which has brought German legal methodology into an intermediary position between traditional doctrine-oriented European continental and Anglo-American case-oriented thinking. 17. 1867-1944 (Theresienstadt). His family had settled in Berlin in 1699! 18. 1850-1922. Lothmar was Professor at the University of Bern (Switzerland). 19. 1875-1945. Sinzheimer was Professor of Law at the University of Frankfurt, emigrated to Holland in 1933 and died in September 1945 as a result of the persecution under the Nazi occupation. 20. 1882-1928. 21. 1851-1929. Ehrenberg was Professor of Law in Göttingen and Leipzig. 22. 1876-1942. Bruck was Professor in Hamburg. 23. 1873-1938, member of the Berlin Bar. 24. 1886-1956, brother of H. Isay and member of the Berlin Bar. R. Isay was also a leading scholar in mining law. 25. 1876-1940. Flechtheim headed the legal department of the big chemical corporation “IG-Farben AG”, was an Honorary Professor on the Berlin Law Faculty and emigrated to Switzerland in 1938. 26. 1854-1939. 27. 1881-1960. Goldbaum emigrated to France in 1933 and to South America in 1936. 28. Soziale Ursachen des Erfolgs in der Wissenschaft. Juden im Kaiserreich, Historische Zeitschrift (HZ) 245 (1987), pp. 315-342 (334). 29. 1880-1972. 30. 1872-1943. Fleischmann committed suicide to forestall imminent deportation.
and on international arbitration panels.

In the field of private international and comparative law it is impossible to overestimate the significance of Jewish jurists and the role Berlin has played in this respect. Here we see the outstanding personality of Ernst Rabel.31 It was as early as in 1916 that he founded the Institute of Comparative Law at the University of Munich, at that time a pioneering enterprise. In 1926 Rabel was appointed full professor at the prestigious Law Faculty of Berlin University and, at the same time, first director of the newly established Kaiser-Wilhelm-Institute (today: Max-Planck-Institute) for Foreign Private Law and Private International Law (today in Hamburg). Like Kaufmann and Fleischmann, Rabel exercised a resounding influence not only through his scholarly writings but also through his activities in international fora and as a member of arbitration panels. The uniform law on the sale of goods in transborder sale transactions, which applies under the UN Convention on Contracts for the International Sale of Goods, finds its origins in the pioneering research on the unification of the law of sale of goods undertaken by Ernst Rabel during the late 1920s and the early 1930s.

The phalanx of German-Jewish scholars in private international law consisted, apart from Rabel, of two other members of the Berlin Law Faculty, i.e. Martin Wolff,32 the famous expert on the law of property, and Arthur Nusbaum.33 Both authored textbooks on the subject. Ernst Frankenstein,34 a member of the Berlin Bar, enriched legal literature on private international law by a four-volume monumental treatise. Karl Neumeyer,35 a professor on the Munich Faculty of Law, published a four-volume landmark treatise on international administrative law - a subject that was an almost undiscovered territory before.

d. Finally, especially Jewish jurists developed an interest in searching for new approaches in legal methodology at a time when traditional paths were all too beaten, as was the case with the Pandectistic approach around the turn of century. The so-called “School of Free Law” (Freirechtsschule) which advocated a maximum of justice-oriented flexibility for the judge in applying rules of law, was headed by Ernst Fuchs,36 a member of the Mannheim Bar. Progressive Jewish jurists even looked to the newly emerging social sciences for inspiration. Eugen Ehrlich37 who had joined the Faculty of Law at the University of Czernowitz (Bucovina) became the leading figure in the new discipline of sociology of law. In this context, methodological research began to develop interest in the social facts underlying legal rules and rulemaking (Rechtsstatsach-enforschung). This innovative approach is most closely linked to the name of Arthur Nusbaum, the already mentioned member of the Berlin Bar and of the Berlin Law Faculty. Last but not least, Hans Kelsen38 deserves to be mentioned. In the early 1930s he was a full professor on the Faculty of Law of Cologne University and acquired a world reputation as the founder of the “Pure Theory of Law” (Reine Rechtslehre).

The End and the Legacy

With the advent of Hitler and his appointment as Chancellor of the Reich on 30 January 1933 this era of German-Jewish legal culture came to a sudden and forcible end. April 139 and 740 1933, were the sinister dates which marked the beginning of the disintegration of the legal profession in Germany. It would, however, be wrong to regard the contribution of Jewish jurists to the legal development of Germany as having lost its impact as a result of the Nazi period. And this would be wrong for several reasons:

1. Even the twelve years of Nazi tyranny were not sufficient to delete the deep-rooted impact that Jewish jurists had left on the state of German law. It was, therefore, anything but a surprise that after the breakdown of the Hitler regime in 1945 the German legal profession again seized on these contributions without, however, adequately realizing and facing up to the

33. 1877-1964. Nusbaum was a member of the Berlin Bar and an Adjunct Professor at the Berlin Law Faculty.
34. 1881-1959. Frankenstein emigrated to France in 1933 and to England in 1936.
35. 1869-1941. Neumeyer and his wife committed suicide in July 1941.
36. 1859-1929.
37. 1862-1922.
38. 1881-1973. Kelsen had abandoned his chair at the University of Vienna following outbursts of anti-Semitic bias within the Faculty. He joined the Cologne Law Faculty in 1930, emigrated to Switzerland (University of Geneva) in 1933, to Czechoslovakia (University of Prague) in 1936, again to Geneva, then in 1940 to the US (Harvard, Berkeley).
39. On 1 April 1933, Jewish institutions, shops, law and medical offices were raided all over Germany as part of the “boycott day”.
40. 7 April 1933 is the date of the infamous “Gesetz zur Wiederherstellung des Berufsbeamtentums” (Act on the Restoration of Civil Service), as it is euphemistically called. The Act served as the legal basis for terminating the employment of civil servants of Jewish origin.
personal fate which the individual persons behind them or their families had gone through during the preceding period between 1933-1945.

2. Quite a substantial number of the expelled Jewish jurists regained their professional position and contributed to the reconstruction of a Germany that was to be committed to the rule of law. Suffice it to mention from the academic world the names of Erich Kaufmann, who again served the Office of the Federal Chancellor and the Foreign Office as adviser in public international law, of Prof. Gerhard Leibholz, who, as a judge in the Federal Constitutional Court, greatly influenced the development of constitutional law, and, finally, Prof. Leo Rosenberg, who was one of the giants in civil procedure.

3. Not only those Jewish jurists who had returned after World War Two, but also those who found themselves unable to permanently resettle in Germany often have rendered a lasting service to post-war legal developments and to the legal profession in Germany. This is particularly true of the younger academic generation which was excluded from the legal and academic profession and later, after their emigration mostly to the United States, obtained high-ranking positions in American universities. When, during the 1950s and 1960s, young German jurists had an opportunity to undergo supplementary legal education in Master Programs at American law schools, it was particularly those German émigrés who were ready to look after and help these German graduate students. As examples one should mention the names of Max Rheinstein (Chicago), Stefan Albrecht Riesenfeld (Berkeley) and Heinrich Kronstein (Georgetown). In so doing they indirectly influenced the German legal profession and the evolution of the legal system in Germany. Just one example: The fact that today Germany besides the US has one of the most refined systems of antitrust law certainly has something to do with the name of Heinrich Kronstein and his influence on his first and second generation disciples.

Concluding Observations

If one tries to pass in summarizing review the entire complex of the German-Jewish symbiosis and its impact on the development of German law and on the legal profession in Germany since the 19th century, one sees a Jewish contribution of an awe-inspiring breadth and depth. Something comparable may be found, if at all, only in the field of medicine. In order to fully grasp this dimension one should engage in a hypothetical intelectual experiment: At no time did the absolute figures of the Jewish population significantly exceed 600,000 which roughly represents the number of inhabitants of cities like Düsseldorf or Hannover. And then imagine that all those Jewish lawyers had grown out of one of these cities.

As already set forth earlier, this outstanding Jewish contribution to the German legal system and profession finds one of its causes in certain predispositions of a cultural-sociological and -psychological nature. In addition to these factors inherent in the living conditions of Jews in Germany another cause may well be seen in the strained relationship between the non-Jewish majority and the Jewish minority, so vividly described by the former US Secretary of the Treasury during the Carter Administration, W. Michael Blumenthal, a Nazi refugee from Berlin after 1933, in his recently published book “Die unsichtbare Mauer” [The Invisible Wall], in which he traces the history of his German-Jewish family back to the 17th century. And in an essay on Einstein’s Germany, Fritz Stern, the well-known historian who was forced to emigrate to the US during the 1930s and who is the winner of the 1999 Peace Prize of the German Book Trade, once described this phenomenon in the words:

“Germany mixed hospitality and hostility in a unique fashion and perhaps both were needed for the achievements.”

But - as we know - we have to be very cautious in assessing the beneficial effects of these kinds of relations between different segments of a population. Here too, there is truth in the words of Paracelsus, the famous pharmacist of the 16th century: “It is the dose that makes the poison.”

41. See note 29.
42. 1901 - 1982. Leibholz was Professor of Law in Göttingen from 1931 - 1933, emigrated to England in 1938, Visiting Professor in Oxford, and after World War Two again Professor in Göttingen. From 1951 to 1971 he was a justice on the Federal Constitutional Court.
43. 1879 - 1963. Rosenberg was Professor of Law in Gießen (1912 - 1932), Leipzig (1932-1934), and in Munich (since 1946).
44. 1899-1977.
46. 1897-1972. In addition to his professorship at Georgetown University Kronstein became full professor at Frankfurt University Faculty of Law in 1955.
47. Cited according to Koelbl, Jüdische Portraits - Photographien und Interviews, von Herlinde Koelbl, 1989, p. 231.
The Role of Jewish Lawyers in the Development of Law in Germany, and their Subsequent Destiny until 1945

Simone Ladwig-Winters

At the beginning of 1933 considerably more than half of the 3,400 Berlin lawyers, namely 1,835, were of Jewish extraction. With this high proportion Berlin occupied an exceptional position, since Berlin, being the capital of the Reich, was the seat of most of the large firms, authorities and associations. The fact that there were so many Jews in the legal profession had historical roots. By discrimination over centuries Jews were tied to a very few vocations - to a large extent in the commercial sphere. Many had been exposed to legal affairs - but even after the bestowal of equal rights they could not have nourished the thought of a legal vocation in public service, as judges, prosecutors or university professors.

The establishment of a free legal profession offered them the opportunity to work as jurists, without being affected by certain exclusions.

By handing-over the law-office from father to son or to several sons, said high proportion developed. I expressly say ‘from father to son’, since for women it became feasible only in the 1920’s to graduate as lawyer. In 1932/33, 20 Jewish women practiced law, whereas there were in 1933 only 15 women-lawyers who were not of Jewish descent. True, this number is very low, but a tendency is still discernible: The greater openness of Jewish families as compared to non-Jewish ones, caused the former to enable their daughters take up such a ‘male’ occupation as jurisprudence.

One of the most famous lawyers of Berlin, or even of Germany at the time of the Weimar Republic, was Max Alsberg.

In the beginning of the 1930s he also published a play: ‘The Pre-Trial Investigation’. If at present we watch this play which has also been filmed, then the first thing we notice is the moral impetus. An investigating magistrate, during his inquiries concerning the death of a prostitute, has also to include his son in the circle of suspected persons, and thereby is forced to give up his apparently independent, neutral position. But before matters develop to the point at which he not only has to bear the disgrace of having his son arrested as a potential murderer but to hand over the case to somebody else, the suspicions leading to the real perpetrator consolidate.

Alsberg wrote a play which is thoroughly German. It revolves around honour and morals. From today’s point of view this is an entirely non-modern play, but at that time things were looked upon differently: A judge’s son, a student, moving in twilight circles. And this was not only on the sly, but relatively out in the open. The social barriers have not yet been dissolved completely, but they are already very permeable: A student has a

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firm relationship with a young woman, a prostitute. She is way beneath him as far as family, education and property are concerned. The man does not appear to consider a permanent union, since he loves another woman, but when the prostitute meets her death, he is under suspicion. The very fact that he could be considered her murderer reveals the fragility of the security afforded by his social standing. Good family relations, a safe income of the father, high social reputation, do not protect him from disgrace. True, the upshot is a huge happy end, but the risk that matters could have taken another turn is quite evident. There are no longer solid norms of conduct, the strict separation between social strata has evaporated. The father’s position does not, in every case, secure the successful course of life of the descendants. The only fixed point in all this confusion is the law. And for this law the judge is even ready to make a sacrifice. He subjugates himself to the law, regardless of the individual consequences this may have for himself and for his family. The social relations came off the hinges, but justice and law represent a pillar providing support.

If one takes a close look at the author Max Alsberg, the picture becomes clear: He is an individual who stands for certain values, but who, simultaneously, carefully analyzes society. He defended the industrialist Stinnes, the German-nationalist politician Helfferich, just the same as Carl von Ossietzky. At the same time he made efforts to have the Code of Criminal Procedure reformed. Together with others he struggled for a strict recognition of the rights of the defendant. And simultaneously he engaged in teaching the propagation of this position. The organization of his law practice was also quite modern, for the standards of that time:

- 4 partners,
- 2 office managers with four assistants,
- 17 legal trainees,
- 6 articled clerks,
- 15 secretaries,
- 4 messengers

Total: 52 persons.

Still, it is not surprising that Alsberg was not quite uncomplicated in his personal relations, whenever his authority was being doubted. But that is another story. And despite the fact that his colleague Alfred Apfel reproached him for not being an explicitly political lawyer, it cannot be disregarded that Alsberg advocated a legal system which was marked by equality and liberty and which excluded improper use of power and arbitrariness. In this sense he was a representative of a modern democratic legal system.

The same is true for Erich Frey, who occupies a central position on the program: He, too, was a person who conducted spectacular cases. He was the first to recognize the press as an opinion-shaping organ and who included it in his trial strategy. He was extroverted, always dressed excellently though sometimes a bit eccentric, and he was aware of the importance of newspaper reporting of trials. For example, he had been one of the attorneys for the defense in the well-known trial against the wrestling association Immertreu. Incidentally, this was the only time Frey and Alsberg cooperated.

This was a case of the death of a journeyman carpenter after a brawl with members of the association, which in fact was a discretely camouflaged organization of criminals. Frey succeeded in presenting the not very clever and not very discreet accused to the press as ‘heavies’ and their respective ladies as ‘fast girls’. The importance of this tactic becomes evident if one considers that it subsequently served as a central motive in Brecht’s ‘Three Penny Opera’ and in Lang’s movie ‘M - A city is looking for a Murderer’. Frey deserves credit for the relatively light sentence meted out to the main defendant. He succeeded in presenting the accused as tough guys imbued with a natural sense of justice.

With his attitude of integrating the press - albeit not explicitly - in the proceedings, Frey led the way. At the same time it was clear that he considered himself primarily as attorney of his client, and not just as a ‘servant of the law’, as a lawyer’s task was later formulated by the National-Socialists. For him, the law provided the framework within which the defending attorney had to safeguard the interests of his client.

Frey may be regarded as the representative of the modern legal profession, which emerged in the 1920’s.

In general, Jewish lawyers recognized that society was undergoing changes, and that they, by their legal activities, were a medium within these changes. This was particularly true for lawyers dealing with criminal law, but also for those dealing with civil proceedings.

In order to really understand the situation at that time we must visualize the then existing circumstances. After the ‘Golden Age’ of the Jews in Germany in the first decade of the century, many considered themselves as fully recognized citizens of the
State, having equal rights. Imperial Germany had not banned anti-Semitism, but it had concealed it for utilitarian reasons. Many men went to the First World War euphorically. But later, the pointless killing of members of various States introduced many lawyers or those that wanted to become lawyers to completely new insights. They recognized that the public had to be better protected from government decisions by means of political processes. Having gone to war as silent patriots, they returned as patriotic democrats. And this, in many respects, had implications in respect of their professional activities.

Many went into politics, and there were even lawyers in Berlin who became ministers, such as the party-overlapping, highly esteemed Reimer Koch-Weser (as member of the German Democratic Party). He made efforts to reform the penal code, the divorce law and the rights of the illegitimate child.

But also young Ernst Fraenkel, an active member of the SPD [Social-Demokratische Partei Deutschlands - German Social-Democratic Party], who, later on, was to work on the ‘Doppelstaat’ [Double State], a sagacious analysis of the National-Socialist State, was an activist for social-equality. Fraenkel had certainly been influenced by his teacher Hugo Sinzheimer, who worked towards the collective regulation of labour laws by collective agreements. Whereas Fraenkel and his partner Franz L. Neumann, who were considered the young lions of the trade union movement, made labour law the focal point of their work, other lawyers were active in the newly growing sphere of the media. So, for example, the famous editor of the Juristische Wochenschrift [Legal Weekly], Julius Magnus, as well as Martin Beradt, who was rather prominent himself as an author, made copyright their focal point of work.

Upon researching documentation I was surprised to see how frequently I came across the literary and journalistic secondary activity of lawyers. If the dogmatic discussion of the law was founded in the Jewish tradition, the joy of dealing with the language was a consequence of legal work. In jurisprudence the written fixation of norms occupies a central position; in court proceedings the verbal elocution is of central importance. Those two verbal spheres complement each other and are able to mutually enrich each other. In the Twenties and the early Thirties both spheres enjoyed much attention. The classic discipline of speaking was carefully watched by court reporters. It almost reached the point of being given grades for verbal delivery.

Frey reports in his memoirs that he was able to speak for an entire hour, looking just once at his notes, when citing a reference. He did not remove his eyes from the judge for a moment. The observers appreciated both the strategy and the velocity of reaction during the proceedings, irrespective of this subjective demeanor.

Rudolf Olden was one of those whose testimonials were passed on to posterity. Besides his activity as lawyer he was also a journalist, inter alia for the Berliner Tageblatt [Berlin Daily], as well as a writer. It may be assumed, in principle, that a person able to deliver a more or less understandable article to a newspaper or a periodical, will not compose nonsensical statements of claim or defence. Olden, like many others, was also active politically. There were several prominent lawyers on the left, but there were also many who were engaged in the DDP [Deutsche Demokratische Partei], DVP [Deutsche Volkspartei - German People’s Party] or other parties, some even those on the political Right. Generally these jurists did not only make their contribution to the development of law, but also to culture and politics.

Berlin’s Jewish lawyers were active also in the sphere of the legal fixation of human rights. The lawyer Johannes Werthauer, who has been praised again and again as being wise and outstanding, was active, inter alia, in the scientific-humanitarian committee, which made efforts in the environs of the sexologist Magnus Hirschfeld in respect of the social acceptance of homosexuals.

While turning to the legal solution of newly relevant social problems and, in addition, publishing, these lawyers shaped the law. But I would describe their significance in a much more sweeping manner - they not only shaped the law, they shaped society too.

The deciding factor for this development was that the last feudal fetters were shed. Those, for example, were mirrored in Prussian real estate law which was still applicable in the 19th century. The democratic reorganization of the political structure now offered a chance for equality of rights in the social, ethnic and sexual realm.

For members of a minority it was justifiable self-interest to take part in the fixation of these promising beginnings. But still, the safeguarding of self-interest clearly took second place behind the rather humanistic idea of the common weal. The Jewish lawyers contributing to society were oriented less towards the past and more to the present. However, it was impossible to prevent social problems coming to a head.

And then, in 1933, came the crack-up.

A few brief facts in respect of the persons mentioned here:
Frey fled to South America in the spring of 1933, shortly before they were to be arrested.

Altsberg fled to Switzerland at the same time, where he committed suicide in the fall of 1933, obviously broken by circumstances.

Olden also fled at the end of February via Czechoslovakia and France to Great Britain, where he was later interned, after the beginning of the war in 1939, as an alien foreigner, and later he decided to emigrate to the USA. During the passage his ship was torpedoed in the Atlantic by a German submarine. Olden, his wife and many others lost their lives.

After power passed on to the National-Socialists, Jews were separated from non-Jews, just as in other vocations. For racist reasons, ‘non-Aryan’ lawyers were to cease practicing their profession.

In hindsight, the racist elimination policy of the National-Socialists may be divided into several stages. By using the term ‘elimination’ [Aussonderung] I do not wish to take over, negligently, the terms of National-Socialist newspeak. I rather use it as a stronger term for the expression ‘putting beyond bounds’ [Ausgrenzung], which is being used lately for the process of persecution of the Jewish minority after 1933.

First Stage: Terrorist - Politically Motivated - with Anti-Semitic Accent

After power was transferred to the National-Socialists, the socio-political engagement of many lawyers became untenable, it even constituted a danger for them.

During the first wave, until March 1933, many lawyers were arrested throughout the Reich. Some of them were murdered. With these person often several factors coincided: They had either been politically active or they otherwise aroused attention as functionaries of organizations. The fact that they were Jews was charged only as an aggravating factor, but as far as propaganda was concerned - most of the time their being Jewish occupied the center of the stage.

Second Stage: Beginning of April 1933

Upon Krell’s decree issued at the end of March 1933, in connection with the boycott throughout the Reich of Jewish shops, department stores, physicians and particularly lawyers on April 1, 1933, a separate law was to be introduced for the first time for all those who were considered Jews. The lawfully elected Board of the Bar Association had already resigned by that time.

All those who wanted to continue practicing their profession had to file a petition with the Bar Association for re-licensing. The deadline was the end of April 1933. Simultaneously every applicant was required to submit individually a declaration of loyalty towards the new government, as demanded in a circular.

The most brilliant formulation of all in respect of this requirement I found in the personal file of Ernst Fraenkel. Fraenkel’s formulation reflects his effort to comply with the compulsion in respect of loyalty, in order to be able to continue working, but without assuming a submissive attitude towards the new regime. Fraenkel indeed got his license back. And then, despite the danger to his own person, he continued to take on political cases. After the general prohibition from exercising the profession in 1938 he was able to emigrate to the USA and qualified in American law. After serving the USA in Korea, Fraenkel returned to Berlin and became professor at the German High School of Political Science [Deutsche Hochschule für Politik]. He was substantially engaged in the creation of the Free University and the Otto-Suhr-Institute, and later on he also taught there.

By virtue of Article 3 of the Law of the Restoration of the Professional Civil Service of April 7, 1933 most of the notaries were deprived of their position as notaries. For mere activity as lawyers - the Law in respect of Admission to the Legal Profession was promulgated on the same day, creating the formal basis for the ‘putting beyond bounds’.

According to this law a Jewish lawyer could continue to be licensed only if certain exceptions applied to him. For example if he had participated in World War One as a front-line fighter or if he already had a practice prior to 1914. How exacting the principles of recognition as a front-line fighter were, may be inferred from the personal files of the Federal Ministry of Justice: With the help of the applicant’s military papers it had to be proved, in each individual case, in which battles the applicant had participated. Many who volunteered for military service, but who for one reason or another did not fight in the first front-lines, were turned down.

Far-reaching consequences were connected with the Lawyers’ Law of 1933:
- As a rule it signified a prohibition to practice the profession for all lawyers younger than the age-group of 1902.
- In addition it affected almost all women.
The initial licensing of applicants who were considered to be Jewish, was impossible from this point on.

In the opinion of the Nazis the target number of Jewish lawyers in Berlin was to be 35 only (in accordance with the proportion of Jews in the population). However, because of the rules of exception, this number was considerably exceeded.

Exceptions which were not covered by the law were only admitted in extraordinarily exceptional cases. One of these covered Hanna Katz, born in 1895, licensed since 1930. She was permitted to continue working since she was the only German representative on the board of the International Law Association, where she was a member of the Trade Mark Committee. Because of economic interests Germany wanted to continue being represented in this organization. Therefore Hanna Katz was permitted to continue working as a lawyer, since this was the condition for her activity in the international organization. She indeed was - except for certain difficulties - the only Jewish woman working as a lawyer, until the general prohibition to practice was promulgated in 1938, and even after that date she was still allowed to practice for a short period as Ôconsulent’. In July 1941 she managed to reach the USA, and practiced there as a lawyer in New York.

In October 1933 a list was published, which contained all lawyers permitted to practice in Berlin. For internal purposes the names of Jewish lawyers were annotated with a small asterisk, but no special explanation was given for this. Approximately one third of the original number of Jewish lawyers lost their profession by the fall of 1933.

Third Stage: Deprivation of the Economic Basis

As mentioned above, the majority of Jewish lawyers had lost their license to practice as notaries. Even if they remained able to continue working as lawyers, the significance of this measure was a serious cut in the economic security of a law office. In addition, other, less important, regulations were promulgated, which still had far-reaching consequences. Among those I include the provision of May 23, 1933 concerning the dissolution of partnerships composed of Jewish and non-Jewish partners.

The temporary prohibition to represent clients promulgated in April 1933 led to considerable jolting of clients. Because of the forced dissolution of partnerships frequently law-offices had to be vacated, and more often than not clients did not follow the Jewish partner, but rather the non-Jewish one. This free choice, as it were, is, in my opinion not to be considered an anti-Semitic act on the part of the clients; in evaluating this phenomenon it should be taken into account that a person looking for assistance by a lawyer will not want to make a political statement by his choice, but will strive for reliable and permanent representation. And this was exactly what the Jewish lawyers no longer had to offer. Subsequently, the earnings of the Jewish law offices were reduced drastically. This phase of economic trimming included also the prohibition for a non-Jew to be represented by a Jewish lawyer in a legal aid case.

After the first wave of massive and overt pressure, after the end of 1933, the Nazis putatively acted more broadmindedly. The lawyers permitted to practice in 1933 maintained two thirds of their practice without being molested, albeit in a limited fashion. In 1934 the NSDAP [National-Sozialistische Arbeiter Partei - National-Socialist Labor Party] was rather more busy with internal party disputes.

Generally speaking it turned out that the administration of justice would have collapsed if, as originally intended, abruptly all (but 35) Jewish lawyers had been precluded from practicing their profession. Until 1936 there was a steady deterioration of earnings. And once the Federal Court proclaimed that Jews died long ago ‘a death as citizens’, it must have become clear to all of those who had still not given up their hope in respect of a mitigation of Jew-baiting, that under these circumstances there was no long-term future for Jews in Germany.

But what were the alternatives? The large majority of lawyers’ families had lived for centuries in Germany. The basis of their social structure was there. An aggravating fact was that most of them had enjoyed a humanistic education and therefore anticipated problems of language abroad, quite apart from the differing legal systems. Many of them also felt they were too old.

And this was another result specifically of the first waves of elimination in 1933: The younger ones, those who were robbed of their professional future, tried very early in the game - for these reasons - to build up a livelihood outside of Germany, whereas the old ones, because of the arrangements of exceptions for certain classes of lawyers, were being kept in a permanent state of suspense.

Fourth Stage: Prohibition to Practice the Profession as a result of the Pogrom

The fourth stage of elimination (September 1938 to November 30, 1938) is to be regarded as being closely connected chron-
ologically to the pogrom which took place all over the Reich, which often is called ‘Reichskristallnacht’ [Federal-wide Crystal Night]. After the pogrom many Jewish lawyers from Berlin were also arrested, and were only released if they would agree to sign a declaration of commitment to leave the country. That decided their immediate future for many of them. At the arrest of 30,000 in November 1938 it appeared as if specifically middle-aged men were affected. Upon being released they emigrated, frequently assisted by their (often non-Jewish) spouses. The older ones, who had not been arrested, still lulled themselves into a sense of security.

In November 1938 the prohibition - as a matter of principle - for Jewish lawyers to practice, was promulgated by a regulation appended to the Federal Citizens’ Law. Whoever wanted to continue being active in the legal sphere had to try to be licensed as ‘consulent’. But this was an infinitely small proportion of the original number of the more than 1,800 Jewish lawyers. The elimination of Jewish lawyers from their professional standing was a process ranging over the period from January 1933 to the fall of 1938.

Although Jewish lawyers had rather homogeneous social and educational characteristics, they did not have homogeneous political views. Nevertheless, they believed in principles of the rule of law. They had to take cognizance of the terrorist perpetration of violence by governmental or quasi-governmental organs. But they still believed in the prevalence of democratic principles and did not expect that civilization was doomed permanently. They did not believe propaganda aimed at emotions would last. Therefore National-Socialism was assessed as a transient phenomenon.

The proximity of their profession to the State as such and the social recognition for which they struggled over the years, apparently caused people to try and cope with the racist elimination as an individual destiny. This aspect cannot be quantified, but it appears that political activities primarily unfolded from abroad.

More strongly noticeable at that time was a commitment to Zionist aims, something which had not been observed to that extent in the past. At the same time it should be emphasized again and again that a quite considerable number of lawyers of Jewish extraction had either turned their backs entirely on their faith (dissidents), or were baptized. Many were married to non-Jewish spouses, so merely for this reason alone they had only loose connections to either the community or to religion in general. For this circle a more intense stock-taking of their Jewish roots came into question only to a rather limited extent.

If one looks into the assistance given by non-Jewish lawyers one notices that over the course of time intercessions in favour of Jewish colleagues decreased considerably. Whereas Jews had to consider their economic livelihood and even their physical existence, others profited. And still, the afflicted ones reported only quite isolated cases of racial resentment in day-to-day relations.

Silent pity was practiced, but hardly any active assistance. Evidently active Nazis took part in taking over offices at the Bar Association. This also explains the fact that more and more racist aspects invaded the proceedings of the Courts of Honour.

The elimination of Jewish lawyers constituted, as far as their non-Jewish colleagues were concerned, an interesting exclusion of competition. At the same time, the situation of a relatively high proportion of Jewish lawyers was something quite out of the ordinary in the year 1938, since until the general prohibition to practice the profession there were still 800 lawyers in Berlin.

The legal situation was no different from that in other German cities. But because of the fact that many firms had their seat in Berlin, Berlin was relatively often the place of jurisdiction, and consequently until 1938 it was not possible to do entirely without Jewish lawyers. There is reason to believe that until the completion of the non-governmental ‘Aryanisation’ in 1938 there existed an increased regulatory demand, which meant that the focus of activity in civil law shifted only slightly, and perhaps not even that. However, in the sphere of criminal law the smear campaign against Jewish lawyers continued unabated, so that it may be assumed that the number of clients in this sphere was reduced drastically.

After 1938

Approximately 90 Berlin lawyers sought recognition as ‘consulents’. A ‘consulent’, being a Jew, was entitled to represent Jews. Some of those licensed as ‘consulents’ obviously sought recognition as additional security, since as early as 1939 their number was already considerably lower. In terms of exterior characteristics, the inferior status of a ‘consulent’, as compared to that of a lawyer, was documented by his being prohibited from entering the lawyers’ lounge, and he could no longer wear a robe.

Roughly one third of the ‘consulents’ were murdered. At the same time it is not possible to discern who died in a concentration camp of spotted typhus, of hunger or of gas, and who came under the category of being ‘presumed dead’. Some of them
survived until 1945, some in a camp, others in hiding, others again quite openly (most of them protected by a ‘mixed marriage’). In that respect the group of ‘consulents’ did not differ statistically from the total group.

However, the ‘consulents’ were not the only group of Berlin lawyers of Jewish extraction, who were busy in the legal sphere until the end.

It is relatively unknown that a large proportion of so-called half-breeds [Mischling], a group of some 70 persons, were permitted to work until nearly the end of the war. And this despite the fact that this group was already included by 1936 in a special list. Those individuals were not affected to the same degree by the ‘racial laws’ as were the ‘full blooded Jews’, i.e. they were not threatened to the same degree by ‘being put beyond bounds’, and were not subject to the same restrictions in the exercise of their profession as were the ‘consulents’.

But they too were still exposed to National-Socialist persecution, even though it appears that a considerable part of this group was active until 1945, whereas others were recruited to the ‘Organisation Todt’ or to other forms of forced labour. Trying to check on this matter, I was unable to discover any systematic method. Presumably, once the war started, practical considerations played a deciding part: All able-bodied men were recruited for military service. But even when the so-called half-breeds had been recruited for military service, they were discharged by 1941 at the latest. They were not subject to the same restrictions as were the ‘consulents’, i.e. they could be assigned without limitations to the maintenance of the judicial system. Apparently the Nazis did not succeed in preparing sufficient suitable, non-Jewish lawyers of the younger generation, or, respectively, that younger generation was required for war service.

What happened in general is the following:

Natural Death

About one sixth of the lawyers concerning whom there is some more information, died a natural death during the Nazi period. A considerable number of them were interned at Weissaensee. However, details of this group are affected by a measure of uncertainty, since it cannot be precluded that some committed suicide. In addition - after all, what does ‘natural death’ mean in an unnatural period. Concerning some of the persons it was reported that they died of a ‘broken heart’, but this too is included in the category of ‘natural death’.

Suicide

There is proof that 26 lawyers committed suicide. Half of them decided on this step quite shortly before deportation, frequently together with their spouse.

Deportation and Death

In the camps or ‘in the East’ about 217 Berlin Jewish lawyers perished. It was the older ones in particular, who were murdered this way. They could never have imagined that in the country they considered their homeland, civilization would be abolished to such an extent that they would be branded as aliens and enemies, to be killed in the end.

At this point I wish to report about a quite special document, which was also shown at the exhibition: a photo-album. I obtained this photo-album from the grandson of a former ‘lawyers’ official’ at the Regional Court. This lawyers’ official was an office manager at the lawyers’ lounge, the place at which lawyers changed clothes, bridged waiting periods or organized timetables for representing their clients. Naatz was not of Jewish extraction, did not have a university education, but he saw what was going on. With him it appeared to have been an urge to preserve a keepsake of Jewish lawyers, who at one time were so revered and then, later on, were so ignominiously chased out. And so he put together an album with a lot of passport photos of Jewish lawyers. Thus it became possible to produce copies of passport photos of some of the lawyers whose fate was researched.

I received this album together with other documents from the estate of Willy Naatz. And so I happened to notice a well fingered postcard. It bore a postal stamp of Theresienstadt and was dispatched by a Berlin lawyer by the name of Georg Siegmann.

In the text Siegmann asks Willy Naatz to go and see an acquaintance and try and find out why she did not write anymore. In a rather unconcealed manner he asks for food packages, by alluding to the delicious sandwiches Naatz used to serve at breakfast time (‘together with juicy anecdotes’). One must be aware of the fact that mail from Theresienstadt was censored and that no personal facts must be disclosed. This fact explains the formulation a bit further down on the postcard: ‘...there are, respectively were, many Berlin jurists and colleagues, also Justizrat [a honorific title meaning Judicial Adviser] Magnus.’ By this subterfuge Siegmann notified the lawyers’ official that the famous Magnus had died slightly previously. It is to be assumed that he starved.
Siegmann himself was transported to Auschwitz, where his traces were lost.

This is just an example. Prominent persons were murdered just the same as unknown ones. Achievements accomplished for the German community as a whole had lost their significance. Appraising the situation in hindsight it perhaps does not really matter whether somebody had been a famous trial lawyer or a simple lawyer with an office at Schönhauser Allee: The categorization of the victims would blur the vile character of the deeds. Any attack against physical integrity, but also against the practice of one’s profession, impairs human rights. To all victims of persecution applies the fact that they were attacked because they were considered to be Jews.

Anyway, 104 persons survived the camps or went underground in Berlin. Many were so weakened physically that they died soon after. Examples thereof were also shown at the exhibition.

**Emigration**

Approximately half of the lawyers (587) concerning whom more specific data exist, managed to emigrate. At this point an observation by a lawyer at that time should be noted: “This was no emigration, but an expulsion.”

And here is another point I wish to make quite unmistakably. Those that were able to emigrate, saved their bare life. The damage they often suffered physically, but also psychologically, must not be underestimated. Therefore we also know of cases in which individuals committed suicide, even when already safe abroad. Of course, there were others, who experienced emigration as a challenge of a new chance. But most of these were young, healthy and single men. Most of the lawyers were in another situation. At this point I have to be more concise: You will probably be interested to know, where the various lawyers went. Here I have ask you to refer to the more exact data in the book.

Shortly:

Most of the emigrants - later refugees - wanted to emigrate to the Anglo-Saxon countries, despite the completely different legal system there.

The destination desired by most emigrants was the USA, but many did not succeed in getting there. However, almost one fourth (138 or 23.5%) did manage to get there.

Palestine was another important destination for emigrants; about one-sixth (80) of the emigrating lawyers went there. For many that country presented a difficult test period. Despite intensive preparation for emigration, most of the lawyers, having been accustomed to office work, had difficulty in earning a living.

However, many of these “Jeckes” were later on active in the organization of the legal system in the State of Israel, which had become independent. In particular, lawyers who came from Berlin had a very important share therein.

For other persecuted lawyers there only remained the possibility of escaping to Shanghai, since no special visa was required for this destination. Others again reached South America, and there, too, they often had an important share in organizing legal structures of the State. But often they also moved into quite different fields of activities.

One of these refugees, the former manager of the Berlin Bar Association, Willy Altherthum, wrote about this subject:

“We have found a home, but not a homeland in Brazil. Our homeland is the wide world, full of light and vitality. We embrace it in our view respectfully and gratefully. We are partaking of the fortune of having been able to become citizens of the world”. (Willy Altherthum, 1944).

This would have been a beautiful concluding sentence, but I must still briefly make some remarks in respect of documentation: The destiny of a considerable number of the persons inquired into can be collected by laborious research. Perhaps you yourself are able to provide supplementary information. The general public of lawyers has paid much attention to this work. In order to reach an even more widespread public, the exhibition was shown in the Centrum Judaicum, which was created solely by contributions from the lawyers of Berlin. Altogether the echo in the press was very positive. Although hardly any publicity efforts had been made, the exhibition which was open from the end of November until the end of February, was well attended. The impressions the visitors gained are reflected in the visitors’ book.

In this visitors’ book may be found, on the one hand, confirmation of how important it was that historical processes and names were plucked out of oblivion, and on the other hand, reminiscences of contemporaries of that time. I have already received many very interesting supplements. I did not know, for example, that the lawyer Rehfisch, mentioned by me, had been a very well-known dramatist - even after 1945, or that one of the lawyers, Arthur Landsberger, wrote a book in the 1920’s which...
later turned into an almost horrible reality, by the name of “Berlin without Jews”. Entire estates have been delivered to the Centrum Judaicum or to me. Among them are very exciting cases, illustrating the consequences of the National-Socialist period beyond 1945.

It is further planned to show the exhibition, beginning in the fall, at Erfurt/Thuringia, in the course of which it will be supplemented and some parts of it will be changed. Insofar as this will still be possible, it will also be exhibited in Saxony and in Brandenburg.

The consequences hatched by Germany through persecution and war were not concluded in the year 1945 - they have still not been concluded to this very day. The destinies of individuals, with all their suffering, must not be repressed and forgotten, since these are not only individual destinies, but they reflect the ignorance and the megalomania of the entire society, in its worst form. The suffering of individuals must be published, in order to relieve them of their burden - to unburden them in the true sense of the word.

And in conclusion a quite personal remark: I have found work-
Hitler’s intention to eliminate Judaism did not lead right away to the extermination of Europe’s Jewry. Discrimination, expropriation, expulsion, and annihilation through slave labour were preliminary steps on the “twisted road to Auschwitz” (term by Karl Schleunes, *The Twisted Road to Auschwitz 1933-1939*, Urbana: University of Illinois Press, 1970).

Many of today’s finest historians have devoted their scholarly lives to what may be called the anatomy of the Holocaust. The shift from merely pushing the Jews into misery to murdering them outright, the acceleration or the slowing down of the killings, the exploitation of the genocidal opportunities of the war, the ambitions of competing Nazi leaders and minor bureaucrats trying to impress their Fuehrer, the mental state of the slaught- terers, the material needs of the German military and occupation regime - all these deadly factors are dealt with in hundreds and thousands of articles and books. With archives now opening in Eastern Europe, this admirable and indispensable work will have to continue for decades to come without hope of ever being complete.

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It is, thus, not so much the anatomy of the Holocaust but the anti-Jewish motive of Hitler as its initiator - “the culprit who gave all the other culprits their chance” (Clive James 1996, “Blaming the Germans: The Much Lauded Revisionist Study of the Holocaust [by Goldhagen] Goes too Far”, in *The New Yorker*, April 22, 1996) - that so far has evaded a satisfactory explanation. Any endeavour to approach this central problem anew cannot help but meet resistance and doubt. This author knows that what he sees as the distinction between Hitler’s anti-Jewish genocidal motive and all his other genocidal motives as well as the motives of all other genocidal perpetrators can - at best - be labeled a piece of scholarly fiction. A more detailed version of the author’s view may be found in his monographs *Warum Auschwitz?* (Reinbek: Rowohlt, 1995); *Why Was the Holocaust Different from all other Genocides?* (Bremen: Raphael-Lemkin-Institut fuer Xenophobie - und Genozidforschung, 1998), and *Lexikon der Voelkermorde*, Reinbek: Rowohlt, 1999. 2nd ed.).

Perplexities of Leading Researchers Concerning Hitler’s War against Judaism

(1) “The destruction of European Jewry might present a
problem which cannot be solved by historical analysis and historical conception. [...] We know what happened in every detail, we are acquainted with the course of events, but the underlying dynamic of the phenomenon slips through our grasp" (Saul Friedländer 1985, "Vom Antisemitismus zur Judenvernichtung: Eine historiographische Studie zur nationalsozialistischen Judenpolitik und Versuch einer Interpretation", in Jäckel, E., Rohwer, J., eds. (1985), Der Mord an den Juden im Zweiten Weltkrieg. Entschlubildung und Verwirklichung, Stuttgart: Deutsche Verlags-Anstalt, pp. 18-60/48 f.).

(2) “Even Heydrich [after he had received order to organize the ‘Final Solution’) seems to have been disturbed. Even he could not fully comprehend the consequences of these words” (Raul Hilberg 1985, “Podiumsdiskussion”, in Jäckel, E., Rohwer, J., eds. (1985), Der Mord an den Juden im Zweiten Weltkrieg. Entschlubildung und Verwirklichung, Stuttgart: Deutsche Verlags-Anstalt, p. 187).

(3) “The Holocaust is neither explicable nor understandable. It had no purpose. It was neither a liberation nor an event in a causal chain. Also in hindsight it cannot be incorporated into history - not even as its most terrible period. [...] What is irrational per se can never be integrated” (Agnes Heller 1993, “Schreiben nach Auschwitz? Schweigen über Auschwitz? Philosophische Betrachtungen eines Tabus. Die Weltzeituhr stand still”, in Die Zeit, May 7, 1993, pp. 61f/61).

(4) “There are still unanswered questions. We will have to turn our attention to Hitler once more. [He] stood alone at the top!” (Eberhard Jäckel 1996, “Der SS-Intellektuelle: Bedürfte es keiner Befehle Hitlers, um die Vernichtungspolitik in die Welt zu setzen?”, in Die Zeit, March 29, p.18).

(5) For the period of Hitler's life in Austria (1889-1913) “no anti-Semitic statement of the young H. has been transmitted. [...] Why anti-Semitism became the ultimate focus of H.’s career cannot be answered from his time in Linz and Vienna. This development belongs to later years. In 1919 [...] he already used very aggressive anti-Semitic phraseology” (Brigitte Hamann 1996, Hitler’s Wien: Lehrjahre eines Diktators, München & Zürich: Piper, pp. 498/ 502).

(6) “The question as to origin and content of Hitler’s own anti-Semitism is “so far unanswerable and probably unanswerable” (Joachim Fest 1996, “Der Auftrag kam von Hitler”, in Die Woche, November 29, 1996, pp. 38 f./39).


(8) “The real cause of this event [Auschwitz] no human will ever understand” (A. Müller [full first name not given], survivor of Auschwitz and member of the death march from Auschwitz to Buchenwald, in a letter to the German weekly Der Spiegel, September 1, 1997, p. 14).

(9) “Hitler has demonstrated in the most terrifying way what we are capable of. Yet, Auschwitz lies at the limit of explicity. Historians can describe how it got that far but why it happened is a completely different question” (Ian Kershaw 1998, “In gewisser Weise war er der Mann ohne Eigenschaften: Die Geschichte Hitlers ist auch die Geschichte seiner Unterschätzung. Ein Gespräch mit Ian Kershaw, dem Verfasser der neuen grossen Hitler-Biographie”, in Frankfurter Allgemeine Zeitung, October 1, 1998, pp. 44 f./44).

(10) “Simply to state the inexplicability of the [Holocaust] event will lead nowhere. [...] Since a theory of the Holocaust is lacking [...], the desire for understanding this event can only be fulfilled through time and again occupying oneself with it” (Ulrich Herbert 1998, editor’s introduction, Nationalsozialistische Vernichtungspolitik 1939-1945: Neue Forschungen und Kontroversen, Frankfurt am Main: Fischer-Taschenbuch Verlag, pp. 65 f).

(11) “The [Berlin] monument to be dedicated to the memory of Europe’s murdered Jews touches a question that strangely enough nobody asks. [...] Why were they killed? Different assumptions concerning the motive have been put forward. Yet, none is proven” (Jörg Friedrich 1999, “Die Logik der Vernichtung», in Frankfurter Allgemeine Zeitung, March 14, 1999, p. 11).


(13) “Hitler is explicable in principle, but that does not mean that he has been explained” (Yehuda Bauer 1999, in Ron Rosenbaum, Explaining Hitler: The Search for the Origin of his Evil (1998), New York: Harper Collins, p. 7).

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**Author’s Thesis on Hitler’s Anti-Jewish Motive**

The author has argued for more than half a decade that the rationale for the Holocaust was rooted in Hitler’s aim to delete from the German mind the Jewish code of ethics, with the sanctity of life and the respect for strangers at its core, by exterminating all of its “carriers”, *i.e.*, all Jews of flesh and blood.

Hitler wanted to reinstall the archaic rights to (i) infanticide - to strengthen Germany internally by killing handicapped newborn - and to (ii) genocide - to give Germany strategic superiority externally - by annihilating the monotheistic people of the Ten Commandments whom - as distinct from the Ancient Israelites - he regarded as the first abolishers of these archaic practices.

Soon after 1918, Hitler reached the conclusion that Germany could have won the First World War if it had acted more ruthlessly, *i.e.*, if it would have shed all respect for life and the laws of war. He seriously - albeit wrongly - believed that only the German Reich had been weakened by the adherence to “religious principles” and “pangs of consciousness”. Not to repeat this outcome of Germany’s “Jewification” became the focus of his entire political career.

Not only Jews, but also every Christian - or any other humanist - daring to defend his Jewish heritage, *i.e.*, the commandments regarding love and protection of life, fell prey to Nazi persecution. In the first Hitlerian model province - the “Warthegau” annexed from Poland - the Lutherans were put under Nazi control. One could not join the church before the age of 21 - and only after having obtained permission from a SS-panel. The Catholic Church was deprived of the Concordat-privileges which were confined to the old parts of the German Reich. Even Hitler’s Imperial Minister for the Churches was not allowed to visit the new Nazi province. However, a Christian had publicly to stand up for the values of life and love before he was taken away whereas Jews - as their “incurable” carriers - could not even save themselves by renouncing their faith.

In the cold language of the computer age one could say that Hitler smashed the hardware - Jewish men, women and children - to destroy the software - the Jewish code of ethics.

The German men of the Second World War were entrusted with the wearisome and bloody work of conquering and settling huge Eastern Lebensraum-territories. They were destined to kill 30 million Slavs outright. 30 million were destined to be worked to death, and 30 million were to be driven into Siberia. To perform this massive genocide, the Germans were to be relieved of the inhibitory effect caused by the infection with the Judaic “Thou shalt not kill!”.

Hitler understood that the implementation of a neo-archaic code of killing would last generations. Yet, his death’s-head SS-troops were the vanguard of the new creed mentally capable of doing the slaughtering right away. The many million soldiers of the Eastern campaigns, who were given the right to kill civilians without being court-marshaled, followed their SS-comrades through learning by doing. In the “Hitler Youth”, the entire next generation was trimmed to exchange consciousness, mercy and love with the commands of a merciless “eternal struggle”.

Hitler, of course, employed every brand of anti-Semites - religious opponents, racists, anti-Zionists, economic competitors, etc. Those of his subjects not yet ready to kill - foremost high ranking officers - were hammered with a shrill propaganda of ‘Jewish-plutocratic war mongers’ behind Churchill and Roosevelt and/or dangerous ‘Jewish-Bolshevik’ partisans behind all the German fronts. Yet, it was an exclusively Hitlerian intention that set the Holocaust apart from all other instances of genocide as well as all other persecutions of the Jews.

The Berlin Republic in a New Europe: Memory, Power and Interest

Andrei S. Markovits

As I am writing these lines, I am about to complete what surely must be one of the most exciting years of my rather eventful life and successful academic career: I am about to depart from a ten-months sojourn at the Wissenschaftskolleg zu Berlin - Institute for Advanced Study Berlin, a unique place of intellectual exchange and stimulation, where I spent the most stimulating year of my academic life. Whereas I will use other opportunities to praise the Kolleg and its fabulous Rektor Wolf Lepenies, I will concentrate my comments here on the larger developments of German politics as they unfolded during my ten-month stay at the Kolleg, in Berlin and in Germany. In particular, I would like to address the shift from what has come to be known as the Bonn Republic to the new entity commonly called the Berlin Republic. Some have expressed apprehension and fear about this shift. And for good reasons. After all, the last time Berlin was the capital of a united Germany, it was the capital of the most evil and murderous political regime in European history. Following National Socialism, the eastern part of the city became the capital of an ugly, repressive and intrusive regime which, though incomparably less murderous and genocidal than National Socialism, still embodied and represented that other great evil of 20th century political rule: Stalinism. Parallel to that development, the western part of the city became an island of liberalism, pluralism and tolerance - all wonderful qualities that, however, were sustained by a new political regime the capital of which lay far away in a little town on the beautiful Rhine river. For anybody who had come to respect, perhaps even like, Bonn as that symbol of Germany’s most successful democracy, the new Berlin experiment must have caused at least some anxieties, if not outright suspicions, as to the direction that this new adventure was to take yet another incarnation of Germany. The fact that this shift from Bonn to Berlin happened smoothly bespeaks the political maturity of the liberal democratic regime that the Bonn Republic succeeded in establishing firmly and soundly in Germany over the past 50 years. It should in no way detract from its historic significance.

This shift was yet another landmark - perhaps the most significant - that occurred in Germany in the middle of April of this year which was already so rich in anniversaries and major historic events: The German Bundestag, that symbolic bastion of Germany’s most successful democracy, relocated into a building whose very name was still being contested barely a few weeks before this momentous move was to occur. There simply can be no better symbolic example for the complexity of Germany’s modern identity than the naming controversy over the Bundestag-Reichstag that baffled foreigners but seemed all too plausible to Germans and those acquainted with the travails of recent German history. To be sure: There can be no doubt about the fact that the whole debate about the identity, the characteristics, the form and the content of the Berlin Republic has

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that we are witnessing “only” a Wechsel of a Regierungssitz not even that of a Regierung, let alone that of a political regime - the change will be major and is worthy of all the ink that has already been spilled and certainly will continue to be so for the foreseeable future. Whenever anything new is created in social and political life, it leads to a contestation of its form and content. As we know from fine studies in comparative politics, the form and content of this contestation has major ramifications for the later outcome of this new Gebilde. Above all, whoever, succeeds in gaining the upper hand in the first phases of the struggle has a major advantage in shaping the future contours of this entity. To be sure: The process is not irrevocable, nor is it irreversible. And perhaps the most vibrant sign of a healthy democratic polity is that the process is never concluded. But history teaches us that the beginning steps are crucial.

I have consistently argued that by dint of the shifts in 1989 and 1990 - in Germany, Europe, indeed the world - we are in the beginning stages of a contestation of a new entity that in its German context can be conveniently labeled the Berlin Republic. One can quibble about the name and I have no vested interest in calling it this; but what I do firmly believe is that this contestation has begun; that it includes not only the form and content of Germany, but also of Europe; and that it will lead to a very different entity than the one that preceded it which - again for convenience’s sake - many have called the Bonn Republic. This contestation will of course not be a wholesale affair. It will not entail all aspects of German public and political life. Indeed, what is quite surprising, especially given the enormity of the changes, is that on many key issues there has been - and will remain - remarkable continuity from Bonn to Berlin, with absolutely no contestation to speak of. The most important realm where this will remain the case is that of democracy. Whatever the shortcomings of the Bonn project may have been - and which polity does not have those - one success is impressive: the staying power of the country’s democratic institutions and political culture. This is as rock-solid in today’s Germany as in any other liberal democracy of the world, bar none.

Where the arena of contestation is wide open, I would argue, is in the realm of Germany’s power. Here, the shifts in 1989/1990 have been so profound, the re-organization of the coordinates of power so major in Europe and the post-Cold War world, that a contestation in this realm is not restricted to Germany. That is exactly what President George Bush meant with his ill-fated term of the New World Order. This has been largely viewed by Europeans - the French in particular - as sheer American arrogance. While this might be the case in some instances, it is not so much a matter of American arrogance, I suggest, but that of American ignorance, an ignorance that is not due to American incompetence as so many Europeans wish in their Schadenfreude, except, of course, when once again they need the Americans to resolve a European conflict that they themselves are incompetent to confront, but due to the immense complexity of global developments whose proper coordinates are still being contested. Just as we see a contestation in terms of this new world order where things are everything but orderly, we see a related and parallel contestation of power in the entity conveniently called the Berlin Republic. And that is what the debate will be about: How will the Berlin Republic wield its power in Europe and beyond? The answer remains unknown, of course, but I envision the following trajectory: While I believe that Germany will exercise its power in a much more unencumbered manner than it used to in its Bonn past - a development which in and of itself is not terrible; I am also convinced that in order to do so the country will have to ease the burden of Auschwitz - a development that I most certainly dread. Whereas it is not theoretically compelling that these two developments occur hand in hand, I believe that it will be empirically contingent. Already the battle of collective memories points in that direction. The German right cannot wait to normalize the Holocaust, please note: not to deny it. Instead, to relativize it, historize it, make it yet another of the many horrors of this passing century, above all, to subordinate it to that other of major horrors, Stalinism. That is exactly what the Schwarzbuch, and many of its German supporters, tried to do. Add to that Martin Walser’s infamous speech in early October 1998 which tried to get the German liberal left on board of this new unbourned path in this new Berlin Republic, and the picture looks not so pretty as to what kind of identity and discourse some powerful people want this Republic to project. Particularly
disturbing is the fact that some powerful people of the 68-er generation have been trying to use their biologically safe “Gnade der spaeten Geburt” to introduce a tenor to the discourse in the Berlin Republic that - from their quarters - would have been unthinkable in the Bonn Republic. Thus, it would have been unthinkable for Chancellor Kohl to say - like Chancellor Schroeder did - that poets have certain welcome liberties to state things that politicians simply cannot. Moreover, a certain tone has entered the left-liberal milieu that would have been illegitimate a few years ago. Rudolf Augstein’s anti-Semitic diatribes and Hans Magnus Enzensberger’s self-congratulatory statements about the “gutmuetige Deutsche” are but two stark examples of this relatively new but quite worrisome shift in the acceptability of hitherto unacceptable tones and contents in Germany’s public debate. Add to this the frightening, though not totally surprising, shift to the far right on the part of some of the most vaunted members of the New Left (the so-called ‘68-ers) such as Horst Mahler and Bernd Rabehl as the most prominent ones among a considerable number, and a potential re-orientation of intellectual and political permissibility is currently under way in the nascent Berlin Republic. Of particular worry is also a growing suspicion towards and discomfort with the values of liberal democracy in the five Laender of the former East Germany. As such serious analysts like Jutta Limbach and Joachim Gauck remind us, there seems to be developing an alarming disdain for values such as freedom in the eastern Laender together with a glorification of the alleged “good old days” of the G.D.R. While few citizens in the new Laender would like to have the G.D.R. restored, many extol it post hoc as the better of the two Germanies and are in the process of developing a sentimental attachment to it which is accompanied by contempt and disregard for the values of liberal democracy. Add to this the obvious presence of a right-wing youth culture which - certainly among young men in the smaller towns and rural areas of the five Laender - has become as commonplace and part of the norm as countercultural values and habits have been part of the equivalent West German milieu over the past twenty five years, and we might face a situation that might not be an auspicious sign for the continued health of democracy in the developing Berlin Republic.

But for the time being, to my great delight, Walser, his many fans and the intellectual critics of the Berlin Republic’s continued anchoring in Western-style liberal democracy were not left to delineate the new Republic’s discourse uncontested. A number of leading intellectuals contested the Walserian vision in a palpable manner - and I would argue successfully to a large degree. After all, one of Walser’s and his fans’ wishes and hopes had been to foil the erection of a Holocaust Memorial in the center of the country’s new/old capital. They clearly were foiled in their endeavour because it is quite clear now that some kind of Holocaust Memorial will be built, maybe not the exact kind that this memorial’s valiant supporters had wanted, but still, a memorial of some kind will be erected within eye sight from the Reichstag. And that is exactly as it should be: One thousand years of murderous European anti-Semitism culminating in the industrial destruction of six million Jews at the hands of Germans should receive a monument precisely in the very heart of the capital city in which this act was planned and where it now has been in the process of being atoned.

The Walser-Bubis controversy, the Mahnmal debate and many others are all manifestations of a vivid and lively contestation that informs the democratic culture of this new republic. It inherited this democracy from its Bonn predecessor. Whatever the name of the new locus for the Berlin Republic’s parliament will end up being the most common in the years to come, I am quite certain that lively contestation will be its hallmark just as it had been that of its predecessor in Bonn. As such, the old Bonn Republic, will remain alive and well in its new quarters.

It is with this optimistic assessment of the Berlin Republic’s democratic future that I depart back to the United States. My fears about Germany will never vanish completely. The murder of 27 members of my family at the hands of Germans during the Holocaust simply will never make me rest at ease about the development of Germany’s politics and society. But the great level of comfort that I have come to know, appreciate and experience is completely the result of the Bonn Republic’s impressive achievements in establishing a vibrant and stable democratic culture where little of either existed in the past. For that, the Bonn Republic will always be assured my ever-lasting gratitude.
Seven Remarks about the Future of the Nazi Past

Norbert Frei

My statement for this panel has been announced under the title “The Threat of Nazism in the Future”. I am afraid to say that I have serious doubts whether I can tackle such a prognosis here. As an historian, I am quite used to forecasting events that have already happened, i.e. I am used to looking for explanations why something happened in a future which for us has become the past. But I am not an expert in forecasting a future ‘future’.

However, I think what I could do here is to share with you some observations on how the Germans confronted their Nazi past in the past and to look at what we may expect from them in this regard for the future. In that sense, I believe even an historian is entitled to what I agreed to do here, namely, make some remarks about “the Future of the Nazi Past”.

I will concentrate on seven brief points:

1. Immediately after the end of the Third Reich, the overwhelming majority of “ordinary Germans” were not willing to critically review their personal involvement in Nazi politics and Nazi crimes. Only a minority, some intellectuals and Weimar democrats shared the view of the Allies that there had to be a thorough political purge. Without the massive intervention of the Allies - in particular the Americans - Denazification would have taken place to a much smaller extent, and it would probably have been limited to just the main War Criminals (the so-called Hauptkriegsverbrecher). To blame everything on Hitler and a few other high Nazi officials was very popular in postwar Germany.

2. But there was another interesting way in which the Germans tried to avoid any critical self-introspection: the invention of what became known as the collective guilt theory. For postwar Germans, the assertion that they were held collectively guilty by the Allies for what had happened during the Nazi period served as an almost perfect argument for rejecting any personal and individual responsibility at all. This collective guilt theory fitted well into the political framework of amnesty and amnesia which characterized the early years of the Federal Republic, the period of what I call Vergangenheitspolitik.1 It was a very successful attempt to neutralize almost all of the implications of the former Denazification program. Subsequently, in the mid-Fifties most politicians of the Federal Republic believed that the political problem of the Nazi past was more or less solved - and that in a couple of years nobody would speak anymore about what was now called “those 12 unholy years”.

3. But exactly during the late Fifties - as a reaction to the implications of the former period of Vergangenheitspolitik - a slow but unstoppable process of critical reconsideration of the Nazi past came into being. A milestone in this process was the Auschwitz trial which took place in Frankfurt/Main from 1963

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to 1965. For the first time in postwar Germany, this trial meant a genuine societal confrontation with the actual meaning of the Holocaust. Of course, there were several reasons for this shift, but probably most important was a generational change which finally led to “1968”. In addition, there were the achievements of the new postwar discipline of contemporary history which for the younger Germans served as an eye-opener. But of considerable impact on the student generation was also a permanent campaign against and critique of the scandals of the “unsolved Nazi Past” in West-Germany which originated from the notoriously “anti-fascist” GDR.

4. After 1968, Vergangenheitsbewältigung increasingly became part of West Germany’s political culture. However, for about the next decade, the 68ers themselves were more interested in general theories about fascism and in the critique of capitalism as the precondition of fascism than in the real German Nazi case. Much could be said about this, but in the late 1970s and in the early 1980s those fixations began to loosen and a new period of public interest in the Nazi past took place. Indications for this were the very successful screening of the Holocaust TV-series in January 1979, the scholarly Reichstag conference on the occasion of the 50th anniversary of the Nazi seizure of power in 1983 and some new approaches in historiography like the Alltagsgeschichte [history from below].

Since then, public attention to the Nazi past was - and still is - steadily growing in Germany. This holds true despite the Historikerstreit of the mid-1980s and despite Martin Walser’s Frankfurt Friedenspreis speech of 1998, i.e. despite almost regular interventions from those who are considering this concern for the past as wrong or even dangerous for Germany’s future and/or “identity”.

5. Let me say just one word about the “quality” of this ongoing process of remembrance: The more time goes by, the more detailed and scrupulous the will to remember seems to become. To me it is obvious that this has also to do with the departure of the contemporaries of the Nazi past which by now we are definitely witnessing - both on the side of the victims and on the side of the perpetrators and bystanders.

6. At the same time we are witnessing a process which one could call the transience of the memory of the Holocaust from the Jewish, Israeli, and German collective memory into what one might call a universal memory. It seems as if the Holocaust is about to be transformed into the general symbol and incarnation of the horrors of the violent 20th century and its break of civilization (Zivilisationsbruch, Urverbrechen). This accompanies a growing awareness of collaboration and participation during World War Two in many other European countries.

7. If nothing else, it is this universalization of memory and awareness which shall ensure that the Germans will not attempt - and will not be able - to draw a final line under their Nazi past in any foreseeable future. Quite to the contrary, and this is what I wanted to argue here: Despite the fact that during the immediate postwar period the Germans (and not only the Germans) lacked a language to address what later on was called the Holocaust, and despite a chronology of scandals in the 1960s and even later, the Federal Republic for some decades now has established a political culture in which the critical reflection of the Nazi past is of central importance. One might call this a Dialektik der Aufklärung about a past which will never go away.

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Participants to the Berlin Conference attending panel discussions
By way of opening this panel I shall tell you that I too belong to the second generation of Jewish lawyers in Germany. Actually - like John Kennedy in his day - I also can say: “Ich bin eine Berlinerin”. More years ago than I care to remember I was born in Berlin Friedrichshagen to Rechtsanwalt Ernst Feilchenfeld and his wife Dr. Maja nee Rosenblatt. My father was born in Hamburg and grew up in Fuerth, where my grandfather Dr. Alfred Feilchenfeld was the director of the Jewish Secondary School. My father volunteered to serve the Kaiser in the 1914-18 World War, and was badly wounded on the French front. After a year in a field hospital he was released from the army and went on to study law at the universities of Bamberg, Heidelberg and Wuerzberg. At Wuerzberg he met my mother, who was studying medicine there. They got married and when they had both completed their studies, they moved to Berlin, where my father found work and thus I happened to be born there.

But I did not stay long. When I was barely a year old the family moved to Nuremberg, where both my parents started their private practices at No. 10 Fuerther Strasse. My father was an ardent Zionist, a good speaker and a charming handsome man. Soon he was elected President of Bnei Brith in Nuremberg. As a wounded veteran he was allowed to continue to practice after the disbarment of Jewish lawyers at the beginning of 1933, but because of his Zionist activities he was arrested in April of that year. Luckily for us, the police commander was an army comrade of his, and through him my mother obtained his release after a few days. For my parents this was the signal to leave the Fatherland. They had no hesitation as to their destination: Palestine. But to get an Entry Certificate you had to be a “capitalist” - you had to show you owned 1000 pounds Sterling. So the whole family - brothers, sisters, cousins enlisted to raise that sum, and off went my young parents with three small children to the unknown Promised Land. The only event from that journey which sticks to my mind is that on the train to Trieste, my beloved doll fell to the ground and its pretty porcelain head was shattered to pieces. That was my private tragedy.

My father knew some Hebrew from childhood, mother had no clue. So what would such a couple of professionals do in the new country? The self-appointed

The third session of the Berlin Conference dealt with The Fate of Jewish Lawyers in Berlin Under the Nazi Regime. Presentations follow.
advisors all said “Umsatteln” - i.e. don’t try to find work in your professions, which in any case entails preparing for and passing examinations, but rather use the “capital” you brought to found some enterprise which does not yet exist. It was poor advice, but not knowing any better they took it. They went into partnership with a pair of expert pastry bakers, immigrants from Hungary, and founded the Cafe Rehavia in Jerusalem. This really filled a need felt by other immigrants from Western Europe, who enjoyed having coffee and cake on the terrace and exchanging gossip. But my parents had no business sense, they did not know how to deal with the personnel, they did not know how to influence the authorities to permit opening the Cafe on the Sabbath - which would be the best day for business, etc. So in a few years the “capital” they had brought went down the drain, they sold the Cafe for a song to someone better versed in the handling of it, and they started to look for the sort of work for which they had been trained. Mother “interned” for two years without pay at the Bikur Holim Hospital, after which she was licensed as a pediatrician while father took a job with an insurance company. The family moved out of Rehavia to a less prestigious quarter, my brother and I had to quit school at age 16 in order to help keep the family. We made up for it later by external studies and both obtained our matriculation with honours from London University - but I cannot say it was easy for us youngsters, even though we knew how lucky we were to have been spared the hell of the Holocaust.

Of my parents’ family my father’s oldest sister survived during the war in Berlin, hiding at various places and suffering hunger, being without ration cards. When she emigrated to America after the War, she no longer had the strength to overcome a bout of pneumonia, and died soon after her arrival there. Another sister with family managed to get to the USA shortly before the War, the youngest brother escaped during the War and illegally entered Palestine and was interned by the British in the Athlit Camp. His wife and baby who could not join him were deported and perished in the Holocaust. My mother’s only sister Olga with her husband and child escaped at the very last moment and ended up in Bolivia. She died there at an early age because she could not stand the climate. I well remember the deep sorrow of my mother not only because of that death, but at not having been able to see and help her beloved sister. Her son who is my age, married a girl from Columbia and has been living there ever since.

This shortly is the story of one family which can count itself lucky to have escaped hell, but which has been dispersed all over the globe and suffered great anguish as well as material deprivations. My father had a stroke on his 60th birthday and died 5 years later after prolonged suffering. Only when I grew up could I comprehend how deeply he was wounded by the betrayal of his comrades at arms, and his colleagues. He never spoke of that, but I believe he died of a broken heart.
The Expulsion of Jewish Lawyers from their Profession

Tillmann Krach

To begin with - a personal remark: My book about “Jewish Lawyers in Prussia” and about the destruction of the free legal profession in the ‘Third Reich’ appeared eight years ago.

I gave my first lecture about this subject seven years ago at Bonn on the occasion of a memorial event; by far the majority of the visitors were lawyers from Bonn and its surroundings, whereas most of today’s listeners are persons, who either themselves or their relatives were victims of the Nazi dictatorship, or who, at any rate, are acquainted with a family afflicted by this fate. They traveled all this way, to Berlin of all places, to the center of terror. Therefore this event represents something quite special also to me.

Introduction

A Joke?

When queried as to the names of the twelve apostles, a first-grader of a junior high school in Berlin replied: “Ruben, Simon, Levi, Juda, Issaschar, Sebulon...” etc. The teacher rejected this as being wrong and wanted to know what were the names enumerated by the student. A fellow-student replied: “He enumerated the lawyers at the Regional Court I.”

An Anecdote!

The lawyers from Mainz accredited to the Superior Regional Court at Darmstadt before the ‘seizure of power’ were all, by chance, of unusually tall stature. One day all four of them appeared in front of the division for civil matters, which caused the presiding judge to remark: “Oh, four German oaks!” The Jewish colleague Herz took a step forward and said: “Only three, Mr. Presiding Judge! Three, and one cedar of Lebanon.”

The joke and the anecdote provide more information concerning social relations than many a historic-sociological discourse. If one wishes to do so, one may see in these few sentences a reflection of the entire tension and tragedy of Jewish life in Germany prior to 1933, both the stigmatization and discrimination, as well as the integration - born by self-assertion. The often conjured symbiosis between Jews and Germans prior to the seizure of power by Hitler was in permanent jeopardy, but it existed, as is evidenced again and again, particularly in this retrospective. A particularly striking example is the rooting in the intellectual bourgeoisie, as documented by the considerable number of Jewish lawyers (and physicians). At more exacting inspection one is necessarily led to make the connection between the formative and the successful history of the free legal profession in Germany and the social advancement of Jewish jurists - but applying logical consistency, also between the destruction of the free legal profession and the discrimination of the Jewish population as directed by the State in the years following 1933.

However, it is important, first of all, to get acquainted with the starting situation, and therefore a retrospective survey is necessary. The fact that in Berlin (but also in Breslau and in Frankfurt) half of the lawyers were members of the Jewish community - and in many other big cities at least approximately a third - must not
just be mentioned, but should also be explained, in order to pull the rug from under any speculation, from the start. The most important reason for the disproportional participation - in relation to their proportion in the population - of Jewish Germans in the legal profession should be sought in the period preceding 1919: It was the discrimination - at first directed by the State, then tolerated by the State, and since 1850 ruled unconstitutional - of Jewish candidates and the members of the legal profession belonging to the Jewish faith. Even prior to the introduction of the freedom of the legal profession in 1879 there were already relatively more Jewish than Protestant or Catholic lawyers in Prussia, and afterwards their numbers rose steeply: From 146 in December 1880 (7.3%) to 885 at the end of 1893 (25.4%), and finally 1,287 at the end of the year 1904 (27.4%). On the other hand, the number of Jewish judges remained constantly low (at 4%).

The rise of the anti-Semitic movement did not contribute to the liberalization of the practice of the Prussian legal administrative body in regard to employment and promotion. Therefore, the expectations placed in the Weimar Republic were considerable, but equality of opportunity no longer sufficed in order to undo - as far as Jewish jurists were concerned - the already well-cemented distorted professional structure. Anybody who gave some thought to the situation - and presumably there were not many - attempted to see something positive in this situation, as did, for example, Sigbert Feuchtwanger, who already in 1922 urged his non-Jewish colleagues “to rise above emotional likes and dislikes and clarify to themselves what, objectively, was the significance of the Jewish impact”. The ‘people’s State’ should not inquire into the ‘race’ of its citizen, but into his ‘achievement’. “The State should value the achiever if his achievement is valuable, even if it bears the stamp of his racial particularity, yes particularly if it does bear it”.

It is a fact that numerous Jewish colleagues reached considerable fame as lawyers, without people giving thought as to their faith, let alone their ‘race’, and this in all branches of the law (and not only on the floor of the criminal court at Berlin-Moabit), and in addition as representatives of their colleagues on panels and associations. In this latter capacity they struggled predominantly and vehemently against endeavours to introduce the *numerus clausus*, i.e. to re-abolish free access to the vocational standing to which their fathers and grandfathers owed their chance of making the long yearned-for career.

This is the place to mention several additional names, which were not cited in previous lectures, namely the Jewish members of the executive of the German Association of Advocates [Deutscher Anwaltsverein - DAV] - Adolf Heilberg, Max Hachenburg, Julius Magnus, Albert Pinner, Max Friedländer, and, of course, the President of the German Association of Advocates during the years 1924 till 1932, Martin Drucker of Leipzig. One year prior to the ‘seizure of power’ 12 out of the 25 members of the executives were of Jewish descent. In addition to Albert Pinner, Erich Eyck and Ernst Wolff should be mentioned.

Reading once again - the names of these colleagues and describe them as ‘Jewish Lawyers’, we must pause and clarify to ourselves, that presumably none of them would have labeled himself as a ‘Jewish Lawyer’. The way they comprehended themselves, professionally, was of course as ‘German’ lawyers - if necessary of ‘Jewish faith’ - and the Jewish identity usually expressed itself in their professional work only if the person concerned acted in his legal capacity also for Jewish organizations (such as the Central Association of German Citizens of the Jewish Faith).

**The Legal Profession in the Sight of the Nazis**

The Nazis made their opinions about the legal profession quite clear in June 1932 on the occasion of a debate in the Prussian parliament. After a Social-Democratic representative pointed to the less than irreproachable past of one of the representatives belonging to the National-Socialist Workers’ Party [NSDAP - Nazi Party] - namely, the many previous convictions imposed on the parliamentary representative and lawyer Roland Freisler by [lawyers’] Courts of Honour - the representative Kube took the floor and informed the Prussian parliament that, literally:

“...The conceptions of honour of your Bar Associations cannot induce the NSDAP to make the judgments of some Bar Association or another the yardstick of our political conception or of our conception of honour... In your Bar Associations there are so many - and I use the term intentionally - Jew-boys of the most unscrupulous kind, that we do not grant to these fellows any right whatsoever to sit in judgment upon any of us.”

Against such invectives both the Bar Associations and the German Lawyers Association put up a fight, the latter represented by its president, Rudolf Dix, who expressed himself, to be sure, with some caution, as he regretted “the human and political lack of culture” of these insulting words, “irrespective what one’s position may be from the ideological, political or race-connected attitude vis-à-vis the Jewish question”. But even this was unbearable, as far as Freisler was concerned. What he uttered only several days later in the Prussian parliament sounded as follows:

“The German people and, as I emphasize, the German lawyer as
such, categorically will not stand for being compared with such a body as is presented by the present Judified legal profession...

Who, Mr. President, gave you the right to speak of the human and political lack of culture of the leaders of the greatest national revival movement of Germany? At most, precisely the Jews in the legal profession, who elected you to be President. (…)"

Only half a year later the lawyers of Berlin proved by their ballot that they indeed were not (yet) ready to see to the “De-Judification” of the Board of their Bar, two thirds of which were members of the Jewish community. This despite the fact that they did have the opportunity, for the first time, to vote for declared National-Socialists, instead they voted with a considerable majority for a panel presented by the Lawyers’ Association of Berlin, headed (once again) by the lawyers Ernst Wolff and Felix Pick - both of Jewish extraction.

The ‘Seizure of Power’ and its Results

The events which occurred in regard to the legal profession between February and May 1933 appear, retrospectively, so unbelievable, that one desperately searches, again and again, for explanations. There are, of course, explanations, but they cannot be packed into a poster-like statement and served as a palatable dish. The most important prerequisite for understanding the events following the ‘seizure of power’ is the exact knowledge of the events. As in many other economic and social spheres, the measures taken by the new rulers in respect of lawyers neither followed a plan nor did they proceed in a linear fashion. In addition to the widespread erroneous belief that, anyway, all this could not last long, the inconsistency of the policy of the new rulers towards lawyers certainly contributed to massive misconceptions of the situation. This was the case both among Jewish as well as among non-Jewish colleagues. The remark of a prominent trial lawyer from Königsberg, trying to reassure his ‘Aryan’ partner, may serve as an example:

“You are much too pessimistic. Of what importance is a new-baked lawyer who thinks he has it made? (…) If somebody is in real deep trouble, what does he care whether I am a Jew or not.”

The events and the measures taken during the first phase of the expulsion from the profession have already been described in detail by the previous speakers. The result should be mentioned again, namely that out of the 1,879 Jewish lawyers who had been admitted to the District Bar before the coming into force of the Lawyers’ Law, 1,458 were permitted to keep their license. From that point on the number of lawyers declined steadily to 671 on November 30, 1938. In an implementing regulation to the Lawyers’ Law the Federal Minister of Justice proclaimed that every lawyer who still practiced his profession would remain “in full possession of his professional rights”, and that he could be neither “hindered nor interfered with” in the practice of his profession.

Before that there were violent riots against Jewish lawyers in Frankfurt.

The lawyer Bruno Blau thinks, retrospectively:

“It was the general view that being able to remain in the profession as lawyer and notary presented a quite special stroke of luck, which one must not forfeit.”

However, to quote a colleague from Mainz:

“…the legal occupation grew more and more unpleasant as the years went by. It is … remarkable that it took a relatively long time till the spirit of the courts became swerved by the Nazis and this was attributable to the independence of the German judges who had been appointed prior to the Nazi period…). However, at the lower courts, who were often manned by young judges, the Nazi spirit was more and more noticeable, and the same was true for the public prosecutor’s office…”.

Glimpses into the Professional Routine

Formally, the same frames of references applied to ‘Aryan’ and ‘Non-Aryan’ colleagues. The procedural law did not differentiate between the lawyers who initiated proceedings. But the canons of professional ethics did not grant the same measure of protection to everyone. Jewish colleagues had to be very careful in their conduct and in their airing of opinions (even within the circle of colleagues) in order to stay clear of the jurisdiction of the lawyers’ disciplinary court. Until 1938 there was no stigmatization of Jewish colleagues in everyday routine, except for the fact that since November 1937 they were explicitly prohibited from greeting the court with the ‘German salute’ [the raised right arm] - which was a restriction which very few would have considered as such….

The constraint exerted on so-called mixed law-offices, to disentangle themselves from their Jewish partners, was at first very heavy. The key-date as to what constituted a ‘proscribed’ partnership was September 15, 1930, the day of parliamentary elections at which the NSDAP registered significant gains for the first time. However, these directives became largely obsolete after the promulgation of the decree cited above of October 1, 1933 - and presumably lost their practical significance by then, since most
‘mixed law-offices’ had already been dissolved at that time - under accompanying circumstances which were either more or less pleasant.

The calls for boycotting and the pillory actions could destroy lawyers’ livelihoods, particularly in rural areas. Whereas Jewish lawyers in big cities suffered primarily because of the discontinuation of mandates by the authority, there were attempts in smaller places to exert pressure on the clients of the ostracized colleagues. In this respect the BNSDJ [Bund National-Socialistischer Deutscher Juristen - League of National-Socialist German Jurists] was particularly energetic. In Kassel, for example, the names of Jewish lawyers and their clients were published in the newspaper; in Magdeburg clients received anti-Semitic hate-mail; in Berlin the head of the vocational group ‘Lawyers’ within the BNSDJ sent a (written) reminder concerning the termination of retainers which had been terminated long ago anyway; in Köstrin a large board was erected on which all the Jews still residing there were noted down, including name and profession. The Ministry refused to take steps in those cases, since this was only “a matter of sub-organizations of the NSDAP.”

In Particular: The Results of the Assignment Practice

The loss of legal aid cases was economically aggravating. At the same time the assignment of cases of non-Jewish litigants to Jewish lawyers had not been explicitly forbidden. At the end of May 1933, it was only pointed out to the courts in a decree - characteristically not for publication - that there was no need to re-assign lawyers of “non-Aryan extraction ... at this stage to legal aid cases...”. The Court of Appeals established in February 1934 that it had been customary for months at courts in Berlin “not to assign legal aid cases of Aryan litigants to non-Aryan lawyers”, which practice should also “be condoned in view of the recognition of the significance of the racial question”. At the Court of Appeals there also circulated a list of the lawyers admitted to that court, in which the ‘non-Aryans’ were marked by a typed-in ‘X’ in the column reserved for ‘Remarks’. This ‘X’ was to be found near 256 names, which constituted almost half of the names appearing there.

After October 1934 the tasks of the Prussian Ministry of Justice were transferred to the Federal Ministry, and promptly a new directive appeared, but this directive was of only limited help to Jewish lawyers. True, it said there that at the time of selecting a lawyer for a legal aid case “the wishes of the party should be considered as far as possible”, but if such wishes were not being uttered, it was to be assumed, as a matter of principle, that an “Aryan party would expect an Aryan lawyer to be assigned”. The result in Berlin was a month and a half later: At the Court of Appeals three senates assigned Jewish attorneys, under the assumption that this was desired; five did not do so. At the Regional Court three chambers decided positively, the rest negatively.

These unworthy doings culminated definitely and, as was to be expected, disappointingly for the Jewish colleagues - in the issue of the first ordinance to the Federal Citizens’ Law dated November 14, 1935. According to this law, Jews could no longer hold any public office, and a decree issued by Gürtnner made it clear to the courts “that it would not be in the spirit of this ordinance to appoint Jews as legal aid lawyers, as counsels for the defense appointed by the court, as receivers, as trustees in composition proceedings, or as sequestrators, or to entrust them with the safeguarding of similar tasks”.

In some places, however, the implementation of this decree encountered difficulties, since it was to be apprehended that there would not be enough ‘Aryan’ lawyers willing to represent Jewish parties. Indeed, an assignment even had to be rescinded if the lawyer concerned argued that the representation of a Jew would bring him “into conflict with his duties as member of the Party”. To be sure, only very few lawyers were members of the Nazi party. But also the regular members of the League of the Guardians of the Law - and by far most of the lawyers were organized therein - had to maintain ‘utmost discretion in their personal and professional conduct vis-à-vis Jews’ as it said in the “Jew-regulation of the German Legal Front” dated September 1935. In the last analysis it was for non-members of the party a question of moral courage, whether they would declare themselves ready to defend Jewish litigants or not. At any rate, they did not have to fear sanctions if they did so.

Preparation and Execution of a Universal Prohibition on Pursuing the Profession

This set of problems became obsolete on November 30, 1938. Since, starting at this date, there were no longer any Jewish lawyers in the German Reich, but only so-called ‘consultents’, a small number of former lawyers who were permitted to represent their fellow-sufferers only.

The solution of the dilemma described above was found, after exhaustive deliberations at the Federal Ministry of Justice, as early as the spring of 1938. It was facilitated by the steadily decreasing number of Jewish Germans, including, of course, lawyers, and it was brought about, in the end, by the ‘Anschluss’ [annexation] of Austria, since in Vienna there still remained, even
after the imposition of 738 prohibits of representation, 936 ‘non-Aryan’ active lawyers - double the number of ‘Aryan’ ones. It was therefore agreed very rapidly at the Federal Ministry of Justice, that all Jews should be prohibited from practicing their profession, and that only a few chosen lawyers - though they could not be designated as such - would remain active. In July all Presidents of the State Superior Courts received a letter from Berlin, marked “Secret! Very Urgent!”, in which they were required to check immediately “whether and how many Jewish consultants have to be admitted to practice in your district, which location is to be allocated to them as their seat, and for which district they should be appointed”. For this purpose the number of legal cases in which a Jew or a Jewish company were involved as plaintiff, as defendant or as accused should be ascertained.

These inquiries led to the fixing of the number of consultants for the various State Superior Court Districts. In the District of the Court of Appeals at first 49 were admitted, which meant that more than 600 Jewish lawyers lost their license. Priority was given to seriously disabled combat veterans; but of course, first of all, they had to undergo a hearing procedure by the Gestapo. Earnings which exceeded a certain limit had to be paid over to the Federal Organization of Lawyers, which in turn could grant subsistence subsidies to excluded lawyers upon being petitioned by them - but in practice this hardly ever occurred, to the best of my knowledge.

The Vice-President of the Federal Organization of Lawyers wrote in the Juristische Wochenschrift [Legal Weekly] at the end of October 1938:

“The solution chosen by the legislators is a worthy compromise, dictated by ideology. The ethnic German deserves a German protector of the law! The Jew deserves a Jewish consultant. Now, again, the German attorney may proudly call himself Lawyer.”

Before the court the ‘consultants’ did, indeed, have the same rights as lawyers. Their repudiation was possible - since June 1940 - in criminal matters, exclusively. The discrimination expressed itself in their title, the interdiction to wear a robe and compulsory Yellow Star, and applied even to a spouse in a so-called privileged mixed-marriage, which in theory exempted the spouse from the above. In order to be at all able to pursue their activity they were permitted - contrary to their Jewish fellow-sufferers - to keep a typewriter, and they could be permitted, upon suitable petition, the use of public means of transport. However, their status of ‘consultant’ did not protect them from deportation. It appears that only those were spared who lived in a ‘privileged mixed-marriage’ (i.e. were married to a non-Jewess and had children considered as ‘Aryans’).

Conclusion

The so-called State-sustaining circles at the turn of the century may have considered the influx of Jewish entrants into the lawyers’ profession as the lesser evil; after all - lawyers represented the lowest class of the traditional legal vocations. Today we regard with pride their forensic and scientific achievements in the years and decades before the Hitler-regime. Their rise and success, but for that very reason also the discrimination against them, expulsion and murder, reflects the history of the free legal profession in Germany. And this also means, of course, that the new beginning after 1945 suffered from a blood-letting as far as legal personnel is concerned, the scale and consequence of which have still not been grasped today.

The designation of the ‘non-Aryan’ colleagues as lawyers ‘ohne Recht’, ‘without law’ or ‘without rights’*, as is said in the collection of portraits by Simone Ladwig-Winters, is well-chosen, if one understands it correctly: From a purely formal juridical view they did, indeed, largely enjoy in the exercise of their profession the same protection of the legal procedure as did their ‘Aryan’ colleagues, but their professional standing was no longer the same - the Lawyers’ Law of April 1933 abolished the free legal profession for the Jewish part of the population. ‘Without Law’ [or ‘without rights’] in the wider sense also means: Without protection from social discrimination, independently of exercising one’s profession. How hard this must have been cannot be understood by outsiders; we may get a notion of it by listening to the few contemporary witnesses still alive who belong to the ‘afflicted ones’, as they are often called so euphemistically in this context. But this must not prevent us from describing the historic developments as precisely as possible and from researching the causes and contexts with the tools at our disposal at present. I have tried to do so, particularly concerning the former, with this contribution.

* A pun meaning either ‘Lawyer without Law’ or ‘Lawyer without Rights’.
The Role of the Bar Association of Berlin in the Exclusion of Jewish Colleagues

Angelika Königseder

Since the coming into force of the Lawyers’ Ordinance of 1878 all lawyers admitted to the State Superior Courts of a district were organized in a Bar Association. From the beginning there was no doubt at all about the legal form of the Bar Association as a body corporate under public law, though it had not been explicitly fixed in writing. The Bar Associations were the organ by which lawyers ruled their affairs autonomously. The Bar Associations, by their participation in the administration of justice through the Courts of Honour, by the admission procedure to the Bar and by the shaping of the substance of the legal profession, exerted decisive influence on the development of the profession. The institution of the Bar Associations was not eliminated even during National-Socialism; however, their powers were clipped more and more in the course of the years, until they were practically excluded as an organ by which lawyers ruled their affairs autonomously.

The urging dated March 31, 1933 in the notoriously ill-famed decree by Kerrl (Hanns Kerrl was Federal Commissioner for the Prussian legal administration, and from April 21, 1933, Prussian Minister of Justice) “to bring about the collective resignation of the Boards of the Bar Associations... by suitable negotiations” had already been preceded on March 28, 1933 by the Board of the Berlin Bar Association. “In view of the political developments”, so said the decision of the plenum of the Board of the Bar, “all members of the Board of the Bar Association make their function available.” According to Kerrl’s decree a commissioner should be entrusted with the “temporary safeguarding of activities.” This function as commissioner started the career of the lawyer Reinhard Neubert, and Neubert would remain until 1945 the top functionary of the legal profession.

From the beginning, the new commissioner forcefully stimulated the expulsion of the Jewish colleagues, which had been initiated by Hanns Kerrl. Already as early as April 8, 1933 he transmitted to Kerrl a list of 35 lawyers of “non-German extraction” concerning whose appearance in court he had no misgivings. By this he transcended far beyond the “Law concerning Admission to the Legal Profession” dated April 7, 1933,

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which, however, was promulgated only on April 10. This law made it possible to rescind the license of Jewish lawyers admitted to the Bar after August 1, 1914, or of those lawyers who were not war veterans. After the implementation of the law more than 1,200 Jewish lawyers retained their license in the District Court of Appeals. Simultaneously Neubert provided all lawyers of “German descent” with red permits enabling them, after examination of their “Aryan extraction” - none of their grandparents were to be Jewish - to enter court buildings.

On April 11, Kerrl published a circular decree instructing the commissioners to advertise a meeting for the re-election of the Boards of the Bar Associations on April 22, “at 3 p.m.”. The elections were to be held “without exchange of views, by acclamation, by an absolute majority”. To Kerrl it appeared “appropriate that the commissioners should compose their list of recommendations in conjunction with the chiefs of the regional legal authority of the NSDAP [National-Socialistische Deutsche Arbeiter-Partei - the Nazi Party] or with the president of the regional group of the League of National-Socialist Jurists”. These meetings “should be open to the public”. (As a matter of fact, the ‘public’ proved to be composed of SA [storm troopers] and party members). Neubert followed orders and convened the meeting on April 13. No resistance at all was offered against being given very specific orders by the Federal Justice Commissioner - even the time of the day was prescribed.

Ronald Freisler, Director of the Prussian Ministry of Justice, clarified once again in the press and the radio, immediately before the ‘election’, that the new rulers ‘definitely attributed importance to the ‘election’ and the ‘bringing into line’ [Gleichschaltung - removal of Jewish personnel] connected therewith of the most important lawyers’ organization. However, he also left no doubt that the government would disregard eventual unpleasant occurrences. The ‘Deutsche Allgemeine Zeitung’ [German General Newspaper] quoted him:

“In recent years the legal profession truly mirrored the inner disruption of the German nation. It consisted largely of alien elements which were eliminated by the national revolution and which should be disposed of forever.... This is the time at which the lawyer, conscious of his being German, is able to take his destiny into his own hands. Now he is free to see to it that the German legal profession be cleansed. If tomorrow’s elections should cause disappointment, then the Prussian government and the people would overcome it. The disappointment would be the legal profession’s only.”

The ‘election’ of the new Board of the Bar Association took place on April 22. Reinhard Neubert, who had managed the Board of the Bar Association as commissioner since March 31 and who characteristically appeared dressed in the uniform of the party, was now elected chairman. On that very day he reported to the Director of the Prussian Ministry of Justice, Preisler, about the run of events at the meeting, from his point of view:

“The meeting took its course according to plan and without incidents. The meeting was attended by more than 700 lawyers and by an audience of approximately 300 persons. No opposition was raised as to the meeting being open to the public. It was decided by all but 7 votes to conduct the elections ... by acclamation without exchange of views, in one ballot. The joint list was elected by all but 2 votes. Accordingly, the Board consisted of 24 lawyers belonging to the NSDAP or closely connected with it, 6 lawyers belonging to the Stahlhelm [‘The Steelhelmet’ - a nationalistic organization] or to the DNVP [Deutsch-Nationale Volks-Partei - German National People’s Party], and 3 members who, though their party affiliation has not been established, could be considered as having right-wing opinions. The meeting lasted for half an hour.”

5. GStA Rep. 84a Nr. 20363. The Commissioner for the Board of the Berlin Bar Association to the Prussian Minister of Justice. Report concerning the Reform of the Legal Profession at the Bar Association, Berlin, April 11, 1933.
6. GStA Rep. 84a (2.5.1) Nr. 67. The Federal Commissioner to the President of the Court of Appeals and all the other Presidents of the State Superior Courts. Re: New Elections to the Board of the Bar Association, April 11, 1933.
7. GStA Rep. 84a MF 1251. The Commissioner for the Board of the Berlin Bar Association to the Prussian Minister of Justice. Re: Decree dated April 11, 1933, April 13, 1933.
9. GStA Rep. 84a Nr. 20155. Board of the Bar Association at Berlin to the Prussian Ministry of Justice. Attention the Director of the Ministry Dr. Freisler. Re: New Elections to the Board of the Bar Association at Berlin, April 22, 1933.
The ‘Deutsche Allgemeine Zeitung’ interpreted the election result slightly differently. According to its report the Board of 33 members was composed of 11 members of the NSDAP, 11 members of the DNVP, and 11 non-party members. Thus, Neubert attempted to embellish the picture of the Berlin Board of the Bar Association, in order to save Freisler the ‘disappointment’ of which he had spoken on the radio a day previously.

By the election of Karl Deutschmann, Wolfgang Hercher, Otto Kampecke, Reinhard Neubert, Werner Ranz, Hans Wöstemiek and Wolfgang Zarnack - staunch, and partly even fanatical, members of the NSDAP joined the Board of the Bar Association, so no doubt could remain as to the future orientation of the Board. Reinhard Neubert became chairman, his deputy was Wolfgang Hercher. Together with Willy Hahn, Werner Pünder, Willy Reinberger, Alfred Richter, Wilhelm Scholz, Hans Viereck and Ernst Wollmann seven members were members of the previous as well as of the new Board.

I should like to present to you briefly the biography of these 7 lawyers who formed the bridge between the former and the new Board. Justizrat [a honorific title approximately signifying Judicial Advisor] Dr. Willy Hahn had been for many years one of the best known conservative lawyers at Berlin. In 1922/23 he defended, together with Walter Luetgebrune and Alfons Sack the two chief accused E.W. and H.G. Techow in the trial dealing with the murder of Foreign Minister Rathenau. Hahn, a leading functionary of the ‘Reichsbund Deutschnationaler Recht-sanwälte’ [Federal League of German-National Lawyers] kept up close contacts with the leadership of the DNVP, to which he was close politically. In addition, he shared the anti-Semitism latent in his party, pleading at the DNVP party convention in 1922 for the exclusion of the prominent Jewish lawyer Max Alsberg from legal proceedings against the [political] Right. However, Hahn was no adherent of National-Socialist or other extreme right-wing circles, who urged a revolutionary transformation of the State. In that respect he may be considered as being representative of a part of the conservatively minded non-Jewish Berlin lawyers, which is also reflected in his activity of many years’ duration as a functionary of the Berlin Lawyers’ Association and of the Bar Association. Even after the ‘seizure of power’ Hahn remained true to the policy of the DNVP. He became chairman of the ‘Federal League of German-National Jurists’ [Reichsbund deutschnationaler Juristen] founded at Berlin on April 4, 1933, which was supposed to promote the German-National Party. Hahn emphasized in his inaugural speech that this was a matter of an extension of the professional organization within the DNVP. He explicitly stressed that the principles of the old Prussian State administration, namely the separation of the legal branch from the administrative branch, had to be adhered to. Neither could the independence of judges be undermined. And despite this Neubert included Justizrat Hahn in the list which was to be voted upon on April 22, 1933. After having been elected, Hahn permitted himself to be temporarily tied in with the system; he became Chairman of Department I of the Board of the Bar Association and Neubert’s deputy, as well as Chairman of Department I of the Court of Honour and the Berlin delegate of the Federal Bar Association. Obviously Hahn repeatedly came in conflict with the fanatic member of the Board of the Bar Association, Deutschmann, the latter reproaching him for allegedly being a free-mason and for having defended liberal parsons and leaders of the SPD. According to Deutschmann’s testimony Hahn submitted his resignation from the Board of the Bar Association in 1938/39. Hahn died in 1942.
Dr. Werner Pünder, born 1885, was a well-established lawyer at the Berlin Court of Appeals. Having courageously stood up for the widow and the son of Erich Klausener, the leader of “Catholic Action” murdered in connection with the “Röhm Putsch”, for which activity Pünder and Erich Wedell, his partner in the law firm, were taken by the Gestapo [Secret State Police] into preventive custody for four weeks in 1935, Pünder must be considered a completely uncharacteristic representative on the Board of the Bar Association. It is regrettable that there are no sources about the reaction of his colleagues on the Board in respect of this courageous defense of the liberty of the legal profession.

Little is known about Willy Reinberger, Advocate, who, as an independent, emerged victoriously against the National-Socialist candidates Neuberg and Ludwig at the by-election to the Board of the Bar Association on February 11, 1933. He resigned as early as February 1934 from the Board of the Bar Association. It cannot be inferred from the sources whether his success in the elections and therefore his possibly tense relations with Neubert, who in the meantime had become influential, played a role in his resignation. When Reinberger died on July 6, 1944, he was a lawyer at the Federal Court and was temporarily in charge of managing the tasks of the President of the Bar Association at the Federal Court.

Dr. Alfred Richter was born in 1878 and had been admitted as a lawyer at the Court of Appeals since 1907; in 1919 he was appointed notary. In 1919/1920 he was appointed a sponsor-member of the SS. In 1939 he did not join the NSDAP, he did become after April 22, 1933 Chairman of Department III of the Berlin Court of Honour. In April 1939 he was appointed Justizrat. Until his voluntary resignation as lawyer and notary on December 4, 1944 - presumably for reasons of health - he remained a member of the Board of the Berlin Bar Association.

Wilhelm Scholz was also born in 1878 and was licensed as lawyer in Berlin. He was appointed a notary in 1922. In the grounds for the recommendation to award him the title Justizrat in 1939, emphasis was placed on his activities during many years in the professional organization and the considerable prestige he enjoyed among his colleagues and the judiciary. He was said to have deserved special merit “since the ‘seizure of power’ in respect of the cleaning-up and the building-anew of the legal profession at Berlin”. Scholz managed Department II of the Board of the Bar Association at Berlin and was Deputy Chairman of the Court of Honour of that same department. He tried to keep his distance from politics. During the time of the Weimar Republic he had belonged for several years to the DNVP; however, he did not join the NSDAP after 1933, but was sponsor-member of the SS. Like Hahn, he also had conflicts with Deutschmann, his colleague on the Board. The latter considered the conservative attitude of the two, associated as they were with the NDVP, as not being radical enough.

Dr. Hans Viereck was born in Poznan, He was a lawyer in Berlin from 1921, and from 1931 also a notary. Like Scholz, he did not join the party, but was a sponsor-member of the SS. In 1939 he was appointed Justizrat. After the war Viereck was again active as lawyer and notary in Berlin.

What is surprising is that Dr. Ernst Wollmann was permitted to remain a member of the Board of the Bar Association beyond April 22, 1933. He withdrew from that body only in February 1934. Wollmann, born in 1891 and admitted to the Bar in 1921, was considered a ‘half-Jew’ according to the National-Socialist racial laws, although his father had already been baptized; the parents of the latter were Jews. Possibly Neubert and his political friends knew nothing about this in the spring of 1933. Since Wollmann was married to a non-Jewish wife, his marriage was considered ‘privileged’, and until his wife died in a bombing raid in 1944 he was thus protected from deportation. He continued to function as
a lawyer. Several summonses to the Gestapo in 1944 and 1945 did not, for some reason, lead to his arrest; his partners who served in the war endorsed maintaining the law office, which in the meantime had been moved to Wollmann’s apartment, after the destruction caused by bombing raids. After the war Wollmann was one of the first lawyers licensed again, in Berlin. He died in 1967.

These biographies elucidate the dimensions of the upheaval which took place on the Board of the Bar Association at Berlin in April of 1933. Hardly any influence and success was left by the new Board to the few ‘old-time’ Board members, after the Bar Association had been ‘brought into line’. Reinberger and Wollmann already resigned in February 1934; Hahn, the successful lawyer, did the same in 1938/39, worn down by his conflicts with Deutschmann. Werner Pünder, by standing up for the dependents of Klausener, presented an exception, from any point of view. Hahn, Richter, Scholz and Viereck, experienced lawyers of many years’ standing, were indeed ready to assume functions in the Board of the Bar Association, but did not join the NSDAP and apparently continued to remain true to their conservative ideology. As may be discerned clearly from the example of Hahn, they were by no means free of anti-Semitism, but they declined the primitive catchwords of the National-Socialists. They were engaged in representing their professional standing, but they were not active in party politics. In that respect they may definitely be considered as typical representatives of the legal profession in Berlin after 1933.

Despite the fact that the Board of the Bar Association was composed of fewer members of the NSDAP than Neubert reported to Freisler, it subsequently played a pioneering part in the exclusion of Jewish colleagues, and completely violated the liberal tradition of its predecessors. Instead of the active and well-established legal personalities until that time, it was now composed of loyal followers of Neubert, except for a few exceptions. Its strategy of currying favour as manifested in the subsequent months - by which it possibly attempted to improve the tense relations between the NSDAP and the legal profession which had prevailed prior to 1933, in order to prevent a total ‘bringing into line’ and thereby a descent into insignificance - had fatal consequences not only for the Jewish lawyers, but also for the freedom of the legal profession as a whole.

In no other State Superior Court District did Kerrl’s circular decree dated April 11, 1933 and the subsequent ‘election’ on April 22, effect a personal upheaval comparable to that at Berlin. For many years Jewish lawyers had influenced and devised the policy of the Bar Association. At the elections to the Board in December 1928 Ernst Wolff relieved Ernst Heinitz as chairman; furthermore, the first seven Board members elected with an absolute majority in the first ballot were Jewish lawyers.28 In 1931, 20 out of the 32 members of the Board of the Bar Association were Jewish.

Between January 9 and January 13, 1933 elections took place for 16 offices at the Board of the Bar Association, which had become vacant by rotation.29 For the first time politics played a part in such an election, since the NSDAP presented a list of its own, at which the names of Reinhard Neubert and Richard Frost appeared. In addition, the Lawyers’ Association of Berlin presented a list which traditionally got most of the votes; among others it recommended the re-election of Ernst Wolff as chairman. The third list at that election consisted of lawyers who opposed the strict separation between lawyers appearing before Regional Courts and those appearing before Courts of Appeal.30 During the last days of the Weimar Republic political developments only had limited influence on the professional representation of lawyers. Berlin lawyers voted according to legal and professional factors and wide circles rejected politicization and the thrust to the political right connected therewith. 1,292 members of the Bar Association cast their ballots; the vote was unequivocal. For the first time in many years no second ballot was necessary, since 16 candidates attained an absolute majority of votes already in the first ballot. Ernst

30. Tempo Nr. 6, January 7, 1933, in GStA Rep. 84a Nr. 20156.
Wolff and Felix Pick got more than 1,000 votes. None of them was elected as representative of Jewish lawyers, but they were considered lawyers of renown and experience in activities connected to professional status. The two National-Socialist candidates Reinhard Neubert and Richard Frost, who remained far behind with 324 and 283 votes respectively, did not have a chance. This election, shortly before the National-Socialist seizure of power, pointed to a legal profession at Berlin which largely followed the principle that in the elections to the Bar Association priority should be given to professional considerations.

However, it must not be disregarded that among the close to 1,300 voters more than 300 voted for Reinhard Neubert. Since it is to be assumed that hardly any Jewish lawyers voted for the NS-candidate, and since according to the composition of the legal profession at Berlin approximately half of the voters were Jews, almost half of the non-Jewish voters, after all, cast their vote for Neuberg or respectively also for Frost. Obviously it was not quite clear to all those belonging to this circle what were the aims for which Neubert and Frost stood, since the considerable number of votes cast for some of the Jewish candidates points to the fact that some of those entitled to vote cast their vote for both the Jewish as well as the National-Socialist candidates. In these cases this probably was not a matter of open anti-Semitism; however, the lawyers were definitely susceptible to the NS-ideology.

As late as at the occasion of the by-elections to the Board of the Bar Association on February 11, 1933, the lawyers of Berlin showed that they had not yet been infested by National-Socialism. The lawyers Willy Reinberger and Heinrich Stern received 313 and 306 votes respectively, whereas the National-Socialist candidates Fritz Ludwig and Wolfgang Zarnack suffered a clear defeat with 26 and 21 votes respectively.31 By electing Heinrich Stern, a vote of confidence was once again expressed to a Jewish colleague.

Only the ‘election’ of April 22 effected the radical change - a self-confident professional organization which had felt obliged to its members turned into a weak representation of interests, in bondage to the new ideology and submissively subjugated to it.

The question remains, what made possible this total upheaval and the resisted ‘bringing into line’ of the Berlin Bar Association. There can be no doubt as to the strong engagement of the Jewish lawyers in the professional organization; until 1933 they left a considerable mark on its policy. No objection worthy of the name appears to have been raised on the part of non-Jews. On the contrary, the election results were often so unequivocal that apparently the non-Jewish members of the Bar Association also expressed their confidence in the Jewish functionaries. Until January 1933 political views and anti-Semitism did not play a part in the elections to the Bar Association.

Elections had customarily been held according to issues of professional standing and professional policy. This points to the fact that in the professional routine - apart from a few exceptions - there were no fears of contact between Jewish and non-Jewish lawyers, something which also would have caused difficulties in practice because of the large proportion of Jewish lawyers in the capital. Subsequently, an ideological or traditional anti-Semitism can hardly have been the deciding criterion in the ‘bringing into line’ of the Bar Association.

However, subsequent development certainly allows the conclusion that a latent anti-Semitism had been present in the legal profession of Berlin, which was primarily nourished by the difficult economic situation of the legal profession since the global economic depression, at the latest, but probably already as early as since 1914. The Jewish lawyers, who often personified the later-on much extolled liberalism of the Berlin legal profession, were put out of action during the first three weeks in April of 1933 which were so decisive in respect of the ‘bringing into line’. As a result of the Kerrl-decree of March 31 and the “Law concerning Admission to the Legal Profession” dated April 7, they had to struggle for their individual professional livelihood, which was severely threatened. The concern about freedom of the Bar Association had to be satisfied with second place. This would have been the obligation of the non-Jewish lawyers who - save for a few exceptions - wretchedly failed in this task. There were various reasons for this failure. Some profited considerably by the upheaval, since they now gained new retainers. Others welcomed the upheaval, since to them, as adherents of National-Socialism, an adaptation of the Bar Association to the new State appeared desirable. It is difficult to discern the motives of the many hangers-on who meekly accepted the ‘bringing into line’.

Their motives probably did not differ from those of other professional groups which also faced the "bringing into line" of their organizations inactively and without uttering a word. Fearing for one’s own professional livelihood, lack of moral courage in view of the threatening gestures made by the SA [storm-troopers] and the party, helplessness, possibly also lack of interest or inadequate perception of the consequences may have played a part. The hindsight assumption that eventual resistance against the "bringing into line" of the professional representation would have been crowned with little success cannot serve as justification for the complete failure of the members of the Bar Association in this situation, which was fatal for their professional representation.

A particularly repulsive example of the conduct of the new Board of the Bar Association was the denunciation of ‘Communist’ lawyers, which were to be deprived of their license according to the Lawyers’ Law of April 7, 1933. On May 11 the Berlin Bar Association dispatched a list to the Prussian Minister of Justice with the names of 33 lawyers who allegedly had been active "in the spirit of Communism." The list which included Max Alsberg, Alfred Apfel, Ludwig Barbasch, Arthur Brandt, Erich Frey, Josef Herzfeld, Hans Litten and Kurt Rosenfeld, named some of the most prominent trial Jewish lawyers of Berlin, who - apart from Alsberg, who only conducted a political trial in the ‘Weltbühne’ process - often appeared in court against the National-Socialist lawyers now setting the tone. Many of them presented, as it were, a symbol of a liberal legal defense culture in the Weimar Republic. Now at last, the National-Socialist lawyers were able to act out their newly gained power against their prominent and frequently successful colleagues; presumably many previous defeats in court were compensated for thereby and injured self-respect was avenged. This list of denunciations drastically demonstrated the decline of the cultural heritage of Berlin’s lawyers. Incidentally, in a similar manner the Bar Association acted towards lawyers concerning whom the Bar Association doubted their front line military service.33

In its meeting on May 23, 1933 the Board of the Bar Association decided on “Directives of the Board of the Bar Association for the execution of the measures by the federal government for the cleaning up of the legal profession”. According to the directives any “professional ties with a person having legal knowledge, whose license to practice law has been refused or rescinded, or who has been excluded from the legal profession, or against whose licensing there is objection because of his non-Aryan extraction or Communist activity” was inadmissible. In order to remove any doubt as to the intention of these directives and in order to preclude the last tiny spark of a possible solidarity towards Jewish lawyers, the Board of the Bar Association emphasized that “any activity which enables a lawyer, whose power to represent clients was rescinded, to circumvent this prohibition, as well as the acceptance and conduct of cases under participation of the lawyer to whom the prohibition to represent clients does apply” was also inadmissible. In addition, lawyers of “Aryan and non-Aryan descent” were no longer permitted to found partnerships or joint law-offices. Moreover, a partnership founded after September 14, 1930 - this date marks the landslide victory of the NSDAP at the parliamentary elections - had to be dissolved.34 Concerning the promulgation of these directives it is particularly important to remember that this act of non-solidarity ensued without any pressure on the part of the State or the party.

Three weeks later, on June 13, 1933, the Board of the Bar Association decided to demand from all members a ‘proof of being Aryan’, except if it was unassailably clear that they were ‘non-Aryan’35. The case of a lawyer who lodged a complaint at the Bar Association proves that this decision was persistently executed: He claimed he was Aryan and had already dispatched a filled-out form to the President of the Regional Court at Berlin. He had been a lawyer since 1894 and notary since 1910. Now he wanted to be informed by virtue of which legal regulations he was supposed to fill out another form and obtain once more all

32. GStA Rep. 84a Nr. 20363. Board of the Bar Association at Berlin to the Prussian Ministry of Justice, May 11, 1933.
33. E.g. Letter of the Board of the Bar Association at Berlin to the President of the Court of Appeals. Re: Licensing of non-Aryan Lawyers, June 27, 1933, in GStA Rep. 84a Nr. 20363.
the necessary documents. The Board of
the Bar Association replied that proof of
‘his racial extraction’ belonged to the
obligations of a lawyer. It was said that
by virtue of its power of supervision the
Board of the Bar Association had a posi-
tion similar to that of a disciplinary
authority, and therefore had the right and
the obligation of clearing up factual situa-
tions. The reprimanded lawyer turned to
the Court of Appeals - and lost his case
before the 1st Civil Senate, which found
for the Board of the Bar Association,
explaining that the Board’s decision was
within the limits of its powers.

These new ‘directives’ of the Bar
Association affronted the Jewish
lawyers. Apparently, however, by that
time they had lost any illusions about the
policy of their professional organization.
They directed their complaints, therefore,
no longer directly to the Board of the Bar
Association, from which they probably
no longer expected any assistance, but
turned to the Prussian Ministry of Justice
which, under the leadership of Kerrl, was
not known for its amicable policy
towards Jews. The fact that despite this
the representatives of the Jewish lawyers
preferred the Justice Ministry as the
partner to be approached with their
complaints, testifies to the aggressive
activities of the Board of the Bar
Association. The prohibition of part-
nerships between ‘Aryans and non-Aryans’
contravened, in the view of the Jewish
lawyers, the equal position of the lawyers
who were permitted to keep their license,
as had been promised by the Ministry.
The Ministry attempted to stay clear of
the matter and declared that it could not
influence the directives of the Bar
Association, since it was an “autonomous
body of the free legal profession”.37

However, the tactic of precluding the
complete ‘bringing into line’ of the Bar
Association by preemptive obedience did
not work out. The Bar Associations lost
their legal capacity when the new Federal
Lawyers’ Ordinance was promulgated in
1936. True, the Chairman of the Bar
Association was given the title of ‘President’ which was pleasing to the
ear, but he was demoted to be only recip-
ient of orders from the Federal Bar
Association, which took over the legal
succession of all the Bar Associations.
Thereby, the principle of authoritarian
leadership [‘Führerprinzip’] prevailed also
at the Bar Associations. The system
of elections to the Bar Associations was
abolished; the Presidents were appointed
for a period of five years by the Federal
Minister of Justice by agreement with
the federal leader of the BNSDJ.
[League of National-Socialist German
jurists - Bund National-Socialistischer
Deutscher Juristen] and in accordance
with the suggestion of the President of
the Federal Bar Association.38

The commentary to the new Federal
Lawyers’ Ordinance explained very
clearly the subordinate position now held
by the Presidents of the Bar Association:

“The President is only an organ of the
Federal Bar Organization which means
that essentially he has no autonomous
authority and tasks but performs these
as a local sub-agency deriving
authority and tasks from the superior
organs... The Associations have no
further ties with the former Boards of
the Bar Association, although they are
still named the same. They have some
similarity with the previous Boards of
the Bar Associations, but in accordance
with the principle of authoritarian lead-
ership [‘Führerprinzip’] they only
retain advisory functions. They are
organs of the Federal Bar Organization
and have no legal capacity.”39

Seven years later the “Decree for the
Change and Completion of the Federal
Lawyers’ Ordinance” dated March 1,
1943 awarded the right of supervising the
Presidents of the Bar Associations to the
President of the State Superior Court
officiating at the time.40 He was author-
ized “to give instructions forthwith in
case of danger”.

By the “Second Wartime Measures
Ordinance” dated September 27, 1944 the
Bar Associations were in fact abolished.
Their affairs were to be handled exclu-
sively by the President. Only the Deputy
President continued to hold office; the
task of all other members of the board
was thereby concluded.41

It should be mentioned at this point
that this research concerning the Berlin
legal profession during the period of
National-Socialism was made possible
by financing by the Berlin Lawyers,
Association.

36. GStA Rep. 84a MF 1252. Report of the
Board of the Bar Association at Berlin
concerning the year 1933, p. 14f.
37. GStA Rep. 84a MF 1198. Minutes of the
deliberation on Friday, July 7, 1933 at the
Prussian Ministry of Justice, re: Jewish
Lawyers.
38. Reichs-Rechtsanwaltsordnung [Federal
Lawyers’ Ordinance] in the version
of February 21, 1936, 54 and 55.
39. Erwin Noack. Kommentar zur Reichs-
Rechtsanwaltsordnung [Commentary to the
Federal Lawyers’ Ordinance] in the version
See also a similar commentary of: Deutsche
40. RGBI 1943 I, p. 123ff.
41. Ostler, Die Deutschen Rechtsanwälte [The
German Lawyers], p. 298.
Dear Friends, participants of the conference “Remember Berlin”.

A few of those present here have expressed their willingness to share with us their memories of some Jewish Berlin jurists. Among those who will participate in this quite unique panel are also several survivors of the Holocaust.

The participants in this panel will not speak about those who perished in the Holocaust, they will not speak about those who were gassed in Auschwitz or liquidated in Trewniki or tortured and executed in Minsk, Riga and other sites of extermination. It would seem that the families and all those who were close to the Berlin jurists who were killed in the liquidation camps, also perished in the Holocaust, and if any survived the camps, they have since died.

Moreover, not a single person approached us who was able to share his or her memories of a jurist who died together with the other six million Jewish victims of the Holocaust. In perhaps one exception, a jurist who was transported to and died in Theresienstadt, left behind a person who was close to him and remembers him.

There is another case but it is not exactly an exception: a son, an internationally known personality, will speak about his parents who committed suicide, here, in this city. Most of the others are nearly forgotten, though many of their names appear in the files of Yad Vashem. I said ‘nearly forgotten’ as quite a few researchers, professors of history, continue to remind us of the fate of some prominent jurists who were victims of the Nazi regime and liquidated. Many Jewish jurists, though not all of them, are commemorated in the book “Anwald Ohne Recht”.

The participants of this panel will remind us how, in a gradual process, first professional rights and afterwards basic human rights were denied to these jurists, how they were persecuted, how they escaped the fate of many others, who those jurists were, and what their contri-
bution was to the law of pre-Nazi Germany.

By mentioning and describing in this panel the tragedy of a few jurists, victims of persecution, we shall pay tribute not only to those individuals, but to all Jewish jurists, judges, lawyers, and professors of law who lived in pre-Nazi Germany.

His Excellency President Roman Herzog stated in his message to this conference, that half of the lawyers in Berlin in the pre-Nazi period were Jewish. In January 1933 there were in Berlin 1,835 Jewish jurists.

Apparently, it has not been possible to collect data on the fate of all these people. A list has been distributed to you of 400 who were liquidated after being transported to various death camps and extermination sites. As the persecution of Jews in Germany started, there was a period of about seven years during which the lucky ones could leave Germany. More than 600 succeeded in leaving during this period. A few were helped by German friends, concealed their identity and survived. About the fate of many others we know nothing, they just disappeared.

The Jewish jurists in Berlin were not the only Jewish jurists in Germany; there were many others, whose fate was similar to that of the Berlin lawyers. We really need a continuation of the book: "Anwalt Ohne Recht". Many could not, and some did not want to part from Germany, although they had enough time to do so, and like most Jewish jurists in Central and Eastern Europe they perished in the extermination camps.

As you also learned during this conference, many of those who left or escaped from Germany made major contributions not only to the legal system of their new countries of residence and citizenship, but also to the economy, culture, and well-being of those countries. Some of them were among the builders of New Israel. Among the prominent Jewish jurists who came from Germany to Israel, I would like to mention a few names: Pinhas Rosen, who was Minister of Justice for many years, made a decisive contribution to the legal system in Israel; Haim Cohn, world famous and still very active, the fighter for human rights, who among other most prominent public functions, served as Minister of Justice and finally as Deputy President of the Supreme Court; Yeshaya Foerder who was prominent in economic fields, and Dr. Ziefgfried Moses who was the first State Comptroller.

Jewish jurists who came from Germany to the U.S.A., have played a major role in many spheres of American life.

That is what Germany lost: loyal, devoted and very talented citizens.

This is the last Panel of this conference. Sharing memories among ourselves is not enough.

We came here together with our German friends, not only to commemorate Jewish jurists who perished in the Holocaust, and to pay a tribute to those who survived those dark days and years, but also in order that this conference serve as a warning light that all of us must be alert that this should not happen again.

Has the lesson been learned? By many yes, by a minority no.

There are some very disturbing, frightening signs. Under the cover of democracy, freedom of speech and freedom of organization, the anti-Semites are again growing in strength.

There are disturbing and frightening signs. On the other hand there are also encouraging signs. The very fact that the Council of Europe representing so many European countries saw it fit and perhaps its duty to take this conference under its auspices, symbolizes the fact that the European governments and most of the European people are aware of the danger constituted by hatred, racism and anti-Semitism.

Not only governments, but also all people of good will, all those who believe that this danger should be fought with all available means, should unite in their efforts to prevent a new disaster.

Germany, the German people, German intellectuals, German jurists, should be in the forefront of this fight.

Let us all do our utmost to have a better, more promising and less frightening millennium.
My Jewish ancestors appear first in documents established in Stargard and Freienwalde/Pommer: in 1813 Jakob Aron declared that he had adopted the name of Arndt as a family name. According to Section 4 of the Regulation of 14th March 1812, he thus became a native and citizen of the Kingdom of Prussia. His son, my great-grandfather, Jakob Arndt, a merchant, took an oath of allegiance on 14th May 1839 and became a citizen of the city of Freienwalde. He had been born in 1818 in that city, was married to Rahel Lewin and they had three children. It is not known when my great-grandfather Jakob moved to Berlin where he settled in the “quarter of barns”. It is related that he was cantor in the synagogue. He was buried in the cemetery of Berlin-Weissensee in 1902, where later his daughters Jenny Diefenthal (in 1936) and Henriette Arnheim (in April 1937) were also buried.

My grandfather Gustav Adolf Arndt, born in 1849, deceased in 1926, took up law studies after graduation from the French High School in Berlin. He was baptized in December 1875. He married Louise Zabler who was of old Hessian-Prussian nobility.

While my grandfather, who was a Professor of Public Law and Mining Law, held the position of President of the University of Königsberg/Prussia, my father was born in 1904. After a childhood in Eastern Prussia he grew up in Berlin and Marburg. He studied law in Berlin, Marburg and Halle. Limited financial circumstances stood in the way of his dream to become a physician, there were two brothers and one sister who had to get an education.

After the two exams (which are necessary in Germany to enter a judicial career), he joined defence lawyer Professor Dr. Max Alsberg, as Assistant at the University, judge at the District Court of Moabit in Berlin. His part in the trials of George Gross, indicted for blasphemy (depicting Jesus Christ with a gas mask) and in the Kurfürstendamm trial against State Attorney members is well-known.

In 1926 he married Ruth Helbing, the sister of his best friend Claus.

Contrary to the majority of Germans, my father had thoroughly read Hitler’s book “Mein Kampf” and he took the aims of the National-Socialists seriously. When he had to resign from office as a judge after Hitler’s accession to power he did not see a way out by going abroad; it seemed impossible for a young lawyer who was married and had two children to make a living in countries the language of which he did not master (having studied Greek and Latin in school). Surprisingly he was admitted to the Bar although he had not participated in the First World War nor had he been a lawyer before 1914 (those being the minimal exceptions for Jews).

Maybe his excellent grades in the exams or a still existing influence from the side of his father-in-law contributed to this favourable decision. Still, the exercise of the profession was restricted and weighed heavily on the beginner. Yet gradually he acquired a reputation and confidence with his clients, whom he could assist with the formalities of emigration, in transferring money abroad and in getting relatives released who were in prison or even KZ.

The lawyers’ office which he held together with his associates Fritz Schonbeck and Dr. Dodo Halpert was repeatedly searched clandestinely by the Gestapo. So they moved to Kurfürstendamm in 1935 where office and living quarters could be combined.
Although his consultancy including some trips abroad for conferences with his clients who had managed to emigrate, took a lot of time, my father extricated some time to follow his artistic and intellectual inclinations: he translated poems of Verlaine and Rimbaud, books of André Gide and Roger Martin du Gare as well as works about Robespierre. This permitted him to go through the trying times which nearly suffocated him. He also wrote his own poems. He established lasting friendships with artists: Schmidt-Rottluff who was under painting prohibition and had several visits by the Gestapo to control whether the paintbrush was wet or not; he was invited to paint in our Kurfürstendamm apartment. For Werner Scholz he arranged to buy a house in Alpbach/Tirol, and brought his paintings out of the studio at Nollendorfplatz in the basement. Scholz had lost his right arm in World War One.

My father convinced Oskar Kokoschka in Prague that he was no longer safe there and bought by means of borrowed client money two seats on one of the last planes to London for Oskar Kokoschka and his wife Olda. Kathe Kollwitz and Ernst Barlach were financially and morally supported.

The Nazi’s transgressions vis-à-vis the Jews and opposing groups and persons could not be overlooked in Berlin, the terror was mounting. But when at the beginning of World War Two which caught us in Switzerland, my father tried to leave at least my mother and me in presumably safe Switzerland he failed, despite all efforts. Thus we all returned to Berlin.

Dodo Halpert had already died towards the end of the Thirties. The fact that he had thrown himself before a bus was kept away from me. The Schönbeck family whose private Jewish kindergarten I attended up to 1936 emigrated to London during the summer of 1939. After the beginning of the war they were kept for years separately in camps.

How much Adolf Arndt suffered by reason of his helplessness against the Nazi terror may be seen from an excerpt of his intervention in the Bundestag’s debate on a statute of limitations for crimes on 10th March, 1965:

“I myself am guilty, too. Because I did not go out on the street and cry out loud when I saw that the Jews were taken away from among us by lorry-load. I did not put on the yellow badge and declare: I also! There was one exception: Women of Berlin, the non-Jewish wives of Jews who had been arrested and put into custody in the Gestapo-department in the ‘Grosse Hamburger Strasse’. These women appeared spontaneously and without prior contact - they even did not know what course of action they wanted to follow: accompany their husbands or ask for their release - in such numbers that the Gestapo felt compelled to release the men. But I know I am also guilty. I dare not say I have done enough. I do not know who dares to. But that is an obligation of ours, an inheritance…”

And in 1947 at the conference of international lawyers in Konstanz when the German lawyers were boycotted by their foreign colleagues he exclaimed in pain:

“For the Jews I was an Aryan, and for the Aryans I was a Jew, for foreign friends I am a German, and all I want is just to be a human being among human beings?”

In 1943 the Bar no longer had any use for lawyer Adolf Arndt, and he was ‘drawn into service’, meaning he had to work where the authorities wanted him to. After 20 July 1944, he had to report to the Gestapo and was put behind barbed wire together with other half-Jews or people related to Jews or with Jewish in-laws.

My mother and my brother had considerable difficulties travelling from Silesia to Berlin. My mother and I lived in Silesia in the country house my mother’s family had there, but it was not allowed to travel further than 50 kilometres from one’s residence. All efforts to get help for my father were in vain. Destiny’s irony provided that all people from whom my mother had expected help were involved in the conspiracy (to assassinate Hitler) of 20th July. My Mother’s eldest brother, who had joined the Nazis already by the end of the Twenties made it known to his sister through his staff officer “that nobody could withdraw from their duty any longer”, and that he could not help her. At the Quay 17, Grunewald Railway Station my parents said goodbye to each other - however, this transport of half-Jews and in-laws, together with convicts was not on its way to one of the extermination camps, but for Paris where my father was attached to the Organization Todt.

The convicts considered the half-Jews as innocent victims of Nazi persecution and gave them a helping hand wherever they could, for example by doing voluntary physical labour in their place.

After some weeks in Paris an armament plant in Forbach/Saar needed four accountants: Organization Todt sent two grandnephews of the painter Max Liebermann, one person from the Rhineland and Adolf Arndt. In Forbach these four were guarded by a one-armed soldier. When he grew aware that his prisoner’s
wife and daughter lived in Silesia in supposed safety, he entreated my father to make us move to the West, although my parents did not expect atrocities from the Soviet Army. The guardian sent his prisoner Arndt with forged papers to Silesia so he could take care of his wife and daughter. In early December, at 2 a.m., Adolf Arndt arrived in Silesia having covered the last kilometres on foot, finding the house full of refugees from Breslau, himself being there illegally. My parents presumed it would be best to remain in Silesia. If need be the daughter was to try to get to Halle and to stay with her grandaunt or to Marburg joining her grandmother there. Unexpectedly, their son Claus also showed up for a few days in Silesia before being drafted on 16th December, 1944. He had passed an ‘emergency’ final exam from high school, served in the Labour Brigade (Arbeitsdienst) and as anti-aircraft helper. But a letter arrived from Forbach in which the Liebermann twins told my father that a secretary had noticed his disappearance and was about to denounce the guardian. My father did not want to put the guardian at risk and returned to Forbach without delay. The guardian disapproved of my father’s return without taking his wife and daughter to the West and tried to persuade my father to make a second journey.

This guardian and the other three accountants survived. Out of the 400 prisoners who had been brought to Paris, my father has not found a single living soul after the war, despite year long searches. By mid February 1945 Ruth and Adolf Arndt said goodbye to their 14 year old daughter who set out with a wagon train to the West. They did not know that they themselves were with my “illegal” father we finally got to Westfalia where we obtained refuge on the estate of relatives of the Bodelschwingh family. Our property was: 1 rucksack, 1 suitcase, 1 illegal person. Not long after the Americans occupied the area, it was possible to get identification papers for my father in a center 10 kilometres away, to which I accompanied him for the purposes of identification.

The end of the Nazi terror, our hope and belief in a new beginning for Germany gave us strength and confidence. Using a pig lorry Adolf Arndt set out to find out whether his mother in Marburg was still alive. In the summer of 1945 we moved to Marburg. Adolf Arndt was newly admitted to the Bar. Later he was appointed senior public prosecutor. In 1946 he was appointed head of division in the Justice Department of Hessia under Ernst August Zinn.

After membership in the Economic Council he was elected in 1949 to the Bundestag (Federal Parliament). We moved to Bonn in 1950.

Democracy was being built in Western Germany, there was engagement in legislation, and a draft prepared for a German Constitutional Court. In 1963/64 my father was Senator for Science and Art of the City of Berlin and returned to the Bundestag in 1964.

Adolf Arndt was called “Crown Jurist” of SPD; he repeatedly represented the German Federal States (Länder) before the Constitutional Court. He was so taken by his work that he fell seriously ill, needed nursing in Kassel, and died before the age of 70.
The newly reconstructed central synagogue of Berlin
My name is Steinar Bugge. I am studying Law at the University of Oslo in Norway. I am doing my last year. I do not belong to the second generation, but to the third. I have been invited here, because I have been preoccupied with the subject through my studies and my grandfather, Erich Meyer, who was a lawyer and half Jewish - a so called “mischling”. For the study of Law, everybody has to do an optional subject, but instead of this, it is possible to write a thesis. I chose to do the latter, and I have written a thesis on how the Nazis cleansed the legal world of Jews, and how my grandfather as an individual was affected by this. The main source for my research, was a collection of almost 600 pages of documents left behind by my grandfather. Among other things, the collection contains the correspondence he had with the Nazi authorities. The documents were kept by my grandmother during the war. Since she died they have been kept by my uncle here in Berlin. Because he was worried they might get lost, he wanted to make copies of the material for safety. Some years ago, I came to Berlin to help him in this work. Two interviews recorded on tape with my grandmother, Charlotte Pohl, and other literature on the subject constitute other sources. I was employed at the Department of Legal History when I was doing my research and writing. To use the thesis in my study, I have been looking at the matter from a legal point of view. Because I wanted to put my grandfather in a context instead of just writing his biography, I also studied the Nazis’ way of coming to power and how they then used this power to get rid of the Jews, through terror at first, but later through formal steps, such as legislation. This research was also necessary for me to get the full picture and fully understand the background to the documents, because they do not say anything themselves about the context in which they were received or written. It also took me a lot of time to reconstruct the correspondence and to sort out the relationship of the documents to one another, because as we copied them, we put them together by dates, not by content.

In my talk, I want first to give a presentation of Erich Meyer. Then I shall look at how he was affected by the Nazi regulations professionally, as a lawyer and notary. As he was later very much affected as a private person, I shall also be looking into this matter. After presenting Erich Meyer, I shall say something about the further family history, and I shall conclude by sharing some of my personal experiences.

Erich Meyer
Erich Meyer, in the official papers referred to as Erich Meyer I, as there were two of them, was born in 1888 as the second
oldest of 9 siblings. His father was Jewish and belonged to the Mosaic faith. His mother was a so-called “Aryan” and belonged to the Evangelical faith, which made Erich Meyer a “half Jew”. Before the marriage the parents agreed that the children should be raised in the Christian faith, and all nine children were baptized and confirmed. As a student he was a member of a fighting student association, and won several fencing matches. Through these fights he got his mensur scar.

He volunteered for World War One together with 5 of his brothers, and fought continuously at the front for two and a half years from 1914 until he was captured in 1917. He was then a lieutenant. He managed to flee the camp two and a half years later, as the first of 400 captured officers. His war career would later be of decisive importance to his career as a lawyer under the Nazis.

Meyer became a lawyer in 1923, and after being employed in the Berlin-Karlsruher Industrie-Werke for some years, he settled down as a lawyer with his own practice. In 1930 he also became a notary. Politically he belonged to the right. When he was a prisoner-of-war in 1918, he strongly opposed a group of so-called November-socialists in the camp, which was formed after the Communist revolution in Germany. He had a German-nationalistic conviction, and was positive to the Nazis’ activities, at least in the early years. He also supported an SA troop financially.

a. How he was affected as a lawyer and notary

At the beginning of April 1933, Meyer was denied access to the courts, as all lawyers of Jewish origin were. His notary authority was also withdrawn. According to the Nazi regulations, he had to apply to get his licences back. My documents are mainly dated in the period of April through May 1933. In the year of 1933, altogether 35 applications and communications are referred to. 31 of these are dated in April and May. This means that Meyer on average had to deal with a new communication every second day during this period. This was in addition to his regular work as a lawyer. To keep up the speed, it seems, by comparing the typewriting in Meyer’s documents, that he wrote all applications, certificates and statements in his office, and then he used to run around in person to get the different signatures needed. I think this shows the desperate situation people were put in, by getting their existence annulled over night. All of a sudden they had to give an account of who they were, and their whole personality was questioned. Meyer being one of almost 2,000 Jewish lawyers in Berlin, this also shows what a quantity of applications the administration would have had to deal with.

Twice during the month of April, they also had to start all over again, because the local authorities represented by Hanns Kerrl regarded the applications as insufficient according to the law issued by the central government. Very short deadlines were stipulated. I guess this was both to harass the victims as well as to exhaust them, and I suppose many of them dropped out with that number of applications. There is also reason to believe that not everyone was given equal information about how to proceed in their applications. As an example, people had to apply for certificates proving that they had not been Communists. These certificates were needed to get their licenses back. Meyer received confidential information by telephone, that in order to receive these “non-Communist certificates”, he needed to send in certificates from other suitable personalities, such as military unions or German-nationalistic personalities, stating that he had in no way supported Communist activities. This means that beside the official selection of Communists and non-Communists - Communist is here to be understood in a very wide sense - there was an unofficial selection going on among the non-Communists when it came to who received the confidential information.

Erich Meyer, being a front-line soldier from World War One, was given back his licences both as a lawyer and a notary, as the law made exceptions for this group. He got his licences back in the middle of July 1933, after three and a half months of intensive correspondence, but in the list of lawyers by the court, his name would be tagged with a little star, marking his Jewish origin.

Before I go on with the biography and look at how Meyer was affected by the Nazi regime as a private person, I want to point out some aspects in Meyer’s history that I find interesting, and which I have been much preoccupied with in the writing of my thesis, as it is written with a legal angle.

First of all I think it is interesting to see how the Nazis got their ideology through in the legal language and justice by using existing terms and phrases. Instead of creating new terms which would clearly mark a change, they gave the old terms a new content, and all Acts and provisions were to be interpreted in accordance with the “National-Socialist way of viewing the world”. By doing so, they managed to change the system from within, little by little, instead of throwing the old system overboard and creating a whole new system, which would probably have led to uncertainty and anxiety in the establishment.
To some extent it was impossible for the Nazis not to introduce new terms, and they did not want totally to avoid this either. They wanted to change some of the legal language “to mark the new order”. They met great difficulties when they wanted to use terms from their political propaganda as legal terms. One example is “race”. How can one define it as a legal term, and what criteria are to be used to see if someone fits the definition or not? The Nazis themselves claimed “race” not to be a political, but a biological term. However, they did not find any other way of defining it than connection with the Jewish religion. Their whole race ideology was based upon illogical reasoning right from the start.

Several aspects concerning Erich Meyer, bring forward these problems in law when it comes to how to define marginal cases and how to deal with them. As a case, I think it was interesting to study Erich Meyer, because he really ended up in-between all the time. The two main groups of enemies that the Nazis started to cleanse, were Jews and Communists. Concerning the cleansing of the Jews, among other things, exception was made for front-line soldiers from World War One. Due to the first actions, Meyer was shut out as a “non-Aryan”, but as a front-line soldier, he was let in again. Because of his right-nationalistic political conviction, he was not affected by the cleansing of the Communists. And by being “half-Jewish”, not completely Jewish, he changed status as the terms were defined in the laws, going from non-Aryan to mischling of the first degree. Without his status as a front-line soldier, or if he had been a Communist, he would have been removed immediately without any possibility of exception. As I understand it, he was not regarded as Jewish under Jewish law, because he had been baptized a Christian. In 1933 this put Meyer in the awkward position that as a nationalistic mischling who was baptized and raised in Christianity, and did not have any connections with the Jewish community, he was shut out although he really wanted to participate and join the movement.

b. How he was affected as a private person

In 1934, they wanted to cleanse Meyer’s student association. He received information about this, and was told that he would have to leave. Meyer protested against this, and also had a personal meeting with the council. They regarded Meyer’s case as being so exceptional, that they would do everything possible to prevent him from being excluded. Whether Meyer was excluded or not, I do not know, but it is likely that he was allowed to stay.

Meyer married in 1924. They were divorced in 1937, and there were no children from this marriage. His wife, Lucie Neufeldt, died in 1942. She was at the time hospitalized in a psychiatric hospital, and the family assume she “was helped to die” as a result of the so called “wild euthanasia”. This was executed in the aftermath of the official euthanasia operations which were put an end to in the autumn of 1941.

Later in 1937 Meyer met my grandmother, Charlotte Pohl. With her he had two children. My mother, born in 1940 and my uncle, born in 1943. The couple moved in together in 1938. At that time they were not allowed to marry, because he was a mischling and she was an “Aryan”. Under the Protection of the Blood Act, one of the three Nuremberg Acts, it was forbidden for Aryans to marry Jews. As a mischling, Meyer had the opportunity to apply for permission to get married, but such applications were in principle to be rejected. In 1940, as Charlotte Pohl was pregnant with their first child, they wanted to marry, and applied for permission to do so. According to the rule, the application was rejected, and instead they were put under surveillance and “encouraged” by the Gestapo to move apart in 1941. Together with their daughter, Charlotte Pohl left their common flat, and lived for one year in Marienbadt in Czechoslovakia. The couple then moved back in together. According to Charlotte Pohl, they were informed on by neighbours in 1943, and had to separate once again. She was at the time pregnant with the second child, something they kept secret from the Gestapo. They were denied any personal contact as well as contact in writing or by telephone. For this purpose Erich Meyer was put under surveillance. Charlotte Pohl got herself a flat outside Berlin where they continued to meet in secret. After this, she lived in fear that she might be thrown out of her flat, and that Erich would be put in a concentration camp. This kind of relationship was not without risk, and the fear was legitimate as the Protection of the Blood Act also banned “disgrace of the race”, that was extra marital relations between Aryans and Jews. The penalty under the Act could be from one day to 15 years imprisonment. Combined with other laws death sentences were passed in some cases. In 1952 Charlotte Pohl had her relationship with Erich Meyer legalised as marriage. The children were then considered born in wedlock.

c. Did Meyer change his view on Nazism?

There is no doubt that Meyer politically belonged to the right, but there are circumstances indicating that Meyer changed his
view on Nazism as this developed. According to Charlotte Pohl, they were walking together along the Kurfürstendamm on the night of 9th November 1938 - Kristallnacht. They witnessed destruction and plundering of Jewish property, and they saw the synagogue on fire. Meyer then chose, together with Pohl, to go and see a Jewish couple, a brother and sister named Knopf, who were close friends of his. In their flat, the door had been knocked in and the furniture had been broken. Then they went to see Knopf’s mother, and found a Star of David put on her door. The brother and sister had managed to get to safety this time, but were later deported from Berlin to Warsaw. The German Evangelical Church kept silent about the pogrom, and the Catholic Church did not take any clear stand on the violations. While Meyer in one of his letters in 1933 emphasizes that he had never withdrawn from the Evangelical Church, there is a certificate dated December 1939 confirming that Meyer did so. If there is a direct connection between the evasive attitude of the church and Meyer’s withdrawal, I do not know.

As I have shown earlier, the race legislation gradually made a great impact on Meyer’s private life. As an irony of fate considering Meyer’s political conviction, the flat Charlotte Pohl had got herself was placed in an area where Communism was strongly represented. Meyer could meet his family relatively safely, as they were covered by Communists.

All these circumstances taken into consideration, I find it likely that his outspoken National-Socialist sympathies from 1933, must have changed character throughout the 1930s and 1940s.

d. The End

Meyer stayed in office until 1943. He was then shut out once again. The president of the court “Kammergericht” declared the mischlings to be unnecessary, and they were reported to the Ministry of Justice and the Nazi-party. Meyer, as a mischling, was threatened by service in the “Organisation Todt”. However, he received permission to build up his legal practice once again, I suppose after another intensive bout of correspondence. Of course it is impossible to know how the situation would have developed for Erich Meyer, but there is nothing in my material that shows that he should not have been able to stay in office until 1945 and onwards. On 22nd November 1943, Meyer visited his family in the flat outside Berlin. Despite requests from Charlotte Pohl to stay overnight, he went back to Berlin because of appointments the next day. The same night, a bomb attack was carried out on Berlin.

The Kaiser-Wilhelm-Memorial Church was destroyed that night. From her shelter outside the city, Charlotte Pohl saw the horizon coloured red by the city being on fire. The very same night, she walked into town, to Meyer’s flat and office, which she found bombed out. The house porter told her that he had talked with Meyer the night before, and Meyer had then left the house. Erich Meyer died during the air raid that night, and was last seen in a bowling hall with several of his friends. As a three-year-old, my mother remembered how the little family went to the bomb crater to toss in flowers. Charlotte Pohl together with some other widows, placed the remains of their husbands in a common grave at the churchyard of Ruhleben in Berlin. The burial place and the stone carrying the inscription are registered and protected as a war memorial.

The further story of the family

In 1948, my mother was very weak due to malnutrition. She was picked out, together with other weak children, to go to Norway in a group of children to be transported to improve their health. The transport was an aid to children of Jewish origin. She stayed with a Norwegian couple without children of their own. Back in Berlin, in the winter of 1948-49, during the Russian blockade, my mother suffered from pneumonia, and she survived thanks to the allied air bridge, but she was very weak. Together with her brother this time, she was sent with a group of children being transported to Norway once again to recover. They stayed with the same couple. Adoptions were not supposed to take place as a result of these transports, all children should return to Germany.

However, my mother was asked if she would like to stay in Norway. I really think it says much about the conditions in Berlin at the time, when my mother as an eight-year old child answered yes to this question, instead of going back to her own family. The couple were not well situated financially, and did not dare to take two children. My uncle was sent back, but the grown ups around him, thought it was better not to tell him anything about the arrangement, so as the train was about to leave, he did not know that his sister was not coming. He ran around looking for her, and was in the end put on the train, and informed aboard what was happening. The vicar responsible for the transportation and the adoption of my mother, told my mother some years ago that the worst picture he had in his mind
My mother abandoned her German background, it was not easy being German in Norway in the post war period or later, actually. She did keep in touch with her biological family though, and her brother came to visit her in Norway all through their childhood and youth. He learnt Norwegian, and my mother forgot most of her German.

My mother became a child psychologist, and has specialized in children in crisis and children as surviving relatives. She has also been very much preoccupied with children as victims of war, and has been engaged in Mozambique, Zimbabwe and Yugoslavia. She was also the first psychologist in Norway to write about children with bi-cultural adolescence. She married a Norwegian, and had three sons, of whom I am the middle one.

Charlotte Pohl died in Berlin in 1985. I remember her very well, but at the time she died, I had just started speaking German, so I never really got the chance to speak with her directly. At her own wish, she was buried in my home town, Kristiansand, in Norway.

**My own experiences**

When thinking back on how it has been to grow up with this history in the family, I think the main impression made on me, is the silence with which these things have been surrounded. I guess it is often seen in the second generation that one really does not talk about this kind of thing. I have always known about my mother’s background, but instead of being an open subject, it has been more of an open secret. I remember very well the feeling whenever the subject was raised, especially with strangers in the house. We are not supposed to talk about this, I thought, and was nervous in view of my mother’s reaction to it. I can still get the feeling. The last ten years though, it has also been an open subject in our family. Because of this, it was of course very interesting for me really to look into the matter as I have done now through my thesis. My mother supported me very much in my project, but she was not much of a help in the gathering of material, so to speak.

My brothers and I have always felt attracted to Berlin, and we have been visiting a lot, both together with my mother, but also alone and with our friends. Our attraction towards Berlin, and the feeling of belonging here, have to some extent been painful for my mother, as she feels she has her family and identity in Norway and belongs there. She really does not have many good memories from Berlin. I do not know if one unconsciously seeks one’s roots, but it is strange to see the professional choices made by my brothers and myself. My elder brother has, among other languages, studied German at the university, I am into law, and my younger brother did two years of military service including officers training school, before he went on with engineering. My younger brother committed suicide over a love story a little more than a year ago. From a psychological point of view, I have recently learnt, as one aspect of his suicide, that looking at the problems resulting from persecution in a three-generation perspective, one can often see that when it comes to dealing with crises, the third generation often chooses the dramatic solutions to the problems, such as suicide.

I think the main impression made by this whole body of material concerning the cleansing, is how quickly it started. A little more than a month after the Nazis came to power, at the beginning of March 1933, the first actions were organized by the Party and SA. One month thereafter, legislation for the cleansing was put into effect by the central government - the Reich. Especially the fact that the legislation was carried through so quickly, really throws a strong spotlight on the central role played by the jurists when it came to carrying out the Nazi revolution, and thereby the important role they played in the Nazification of Germany. The subject also highlights, in an extreme way, the eternal dilemma between law and morals, and the problems the jurists face concerning “legal positivism or conscience”, meaning whether to go by the rule of law or follow one’s own standards. These terms do not have to be contradictory, but the subject shows that situations may arise when it can be more important as a jurist, to protect personal integrity and go by one’s own conscience, instead of blindly hiding behind a legal positivistic attitude. To me as a law student, it was interesting to experience this, and I think it is important to carry this experience with me in my further career.
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