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### Ein Bericht aus einer Akademie: Writing about Germany's lost Jewish scholars, 80 years on

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**Ein Bericht aus einer Akademie: Writing About Germany’s Lost Jewish Scholars 80 Years On**

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This is an **uncorrected penultimate draft** of a chapter with the same title in Jason Grant Allen and Gerhard Dannemann (eds.), *FA Mann: The Lawyer and His Legacy* (Oxford University Press 2024), Ch 1. Please cite the published version, [available here](#).

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Abstract:

Keywords (please add at least 5):

**I. Introduction**

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<sup>1</sup> This chapter is dedicated to Inga Spillmann, my former host mother, with the greatest thanks and affection. I am writing this chapter near turapina/Ben Lomond in North Eastern lutruwita/Tasmania. I acknowledge the traditional ownership of this area by letteremairenner people and the role of today’s palawa people in our evolving society and relationship to the land.

This volume explores the life and work of F.A. Mann—a German-born and (mostly) German-educated jurist who spent the operative parts of his professional life in the United Kingdom (UK). The project on which the volume is based set out to understand Mann’s life as a lawyer and describe his legacy—in English law, and also in German, European, and international law.

As set out in the chapter by Gerhard Dannemann, Franziska Stamm and Christoph König, the project was catalysed by a bequest of documents to the Humboldt-Universität zu Berlin, where Mann read law and began his academic career.<sup>2</sup> This archive has formed the focal point of discussions by subject-matter experts within the various fields of Mann’s activity. Together with a memoir by Geoffrey Lewis<sup>3</sup> and Mann’s recently-published autobiography (edited (minimally by Wolfgang Ernst),<sup>4</sup> the archive provides a unique view into Mann’s life and work, his social network, and German and English society in the 20<sup>th</sup> century.

This Part explores Mann’s personal and professional biography. Following the aforementioned overview of Mann’s correspondence, Frank Mecklenburg’s chapter explores what it meant to be “German *and* Jewish” in what he calls the “Golden Years”. This provides some essential background, because Mann was in many ways a product of the peculiar history of Rhenish Jews and the cultural flourishing of Jews in German-speaking lands. Christoph König’s chapter explores Mann’s methodological and doctrinal orientation as a lawyer, framed by his educational background and his migration. Reut Yael Paz then explores what this background might have meant for Mann’s scholarship—particularly, for his seminal work on money. In the vein of earlier work on German-speaking Jewish international lawyers (including Mann’s friend Sir Hersch Lauterpacht), Paz situates Mann within distinctly Jewish and German traditions of cosmopolitan thought.<sup>5</sup>

Though not the primary focus of our project, discussion of the “Jewish dimension” arose at various times and in various contexts. My conclusion is that until one has brought order to some sticky and convoluted questions, one cannot know how to write about the legacy of an individual like Mann today. My aims in this chapter are thus to (i) provide some clarity on what those questions are, and (ii) to provide a few answers by way of my own opinion. These may

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<sup>2</sup> Then the Friedrich-Wilhelms-Universität.

<sup>3</sup> Geoffrey Lewis, *F.A. Mann: A Memoir* (Hart 2013).

<sup>4</sup> See F.A. Mann, *Life and Cases: Manuscript of an Autobiography* (posthumously edited by Wolfgang Ernst, Bonn University Press 2022).

<sup>5</sup> See Reut Yael Paz, *A Gateway Between a Distant God and a Cruel World* (Brill 2013). See also Leora Bilsky and Annette Weinke, *Jewish-European Émigré Lawyers: Twentieth Century International Humanitarian Law as Idea and Profession* (Wallstein 2021).

help to “frame” the Jewish dimension of our collective effort to understand Mann “the lawyer” and describe “his legacy”.

Although I am not an expert in Jewish Studies, what it means to belong to a group, the confluence of biological and social factors, and the legal treatment of identity has fascinated me from the beginning of my academic career.<sup>6</sup> Written at the end of a longer stint as a researcher in the German academy, this chapter also draws on my own experience over multiple periods in Germany and Austria in the 2010s and 2020s as an Australian Jew born in the 1980s.<sup>7</sup>

For his own part, Mann described his family as “non-practicing Jews” that nonetheless “felt Jews by background, history and tradition, although our noses were straight and our cultural status was wholly and firmly German.”<sup>8</sup> This tied in to his motivation to write an autobiography:

I write [an autobiography], because I am persuaded that it is my duty to tell the story of a world that has disappeared, but should not be forgotten, - the story of a highly cultured German Jewish bourgeois milieu which perished in Auschwitz, though my nearest and dearest succeeded in escaping. The history of the rise and fall of that social class merits to be preserved, but stands in danger of falling into oblivion.<sup>9</sup>

These statements by Mann about himself raise more questions than they give answers. What does it mean to have a “wholly and firmly German” “cultural status”? What were the defining characteristics of this “milieu”? Which of its characteristics were “German” and which “Jewish”? Before and during Mecklenburg’s Golden Years, how did the German and Jewish “bourgeois” worlds intersect, and how were they still disconnected? Given the outsized contribution of “highly educated, bourgeois” Jews to German culture, can we separate the two?

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<sup>6</sup> The first paper I ever published was on this topic, in the context of my own country’s legacy of genocide: see JG Allen, ‘Group Consent and the Nature of Group Belonging: Genomics, Race, and Indigenous Rights’ (2010) 20(2) *Journal of Law, Information and Science* 28. This gives me the position of being vicariously associated with two genocides—the victim community of one, and the perpetrator community of another.

<sup>7</sup> One must guard against generalising from personal anecdotes; however, gaining lived experience *is* the value of sojourning in another society. “Gonzo ethnography” is an emerging methodology that draws on the “gonzo journalism” typified in the works of Hunter S. Thompson in which the observer is an active participant in observed events: see EMI Sefcovic, “Toward a Conception of ‘Gonzo’ Ethnography” (1995) 19(1) *Journal of Communication Enquiry* 20. Tongue firmly in cheek, this does capture something about reaching considered hypotheses on the basis of interactions in which I was not a neutral observer. The value is the process of reflective equilibrium between what one *reads* about the world and one what *experiences* the world to be.

<sup>8</sup> F.A. Mann’s unpublished biography, 30. **REF TO PUBLISHED VERSION**? See also Nicola Gluckmann, ‘Past Imperfect, Future Tense: A Mother’s Letter about Loss, Storytelling, and the Profound Ambivalence of the German-Jewish Legacy’ in Gideon Reuveni and Diana Franklin (eds), *The Future of the German-Jewish Past* (Purdue University Press 2021) 53-54 (hereinafter Reuveni and Franklin, *German-Jewish Past*). This hints at the complexity of our subject matter. Was Mann here adopting the prosaic racial stereotype of Jews? (The phenomenon of Jewish anti-Semitism towards poorer, more religious, and often less-educated Jews from Eastern Europe is well-documented). Or is this written in an ironic style?

<sup>9</sup> F.A. Mann, *Life and Cases*, **[PAGE]**.

If not, how do we avoid subsuming the “Jewish” into the “German” or *vice versa*? Elsewhere, Mecklenburg asks how “German” this culture was. The answer must be informed by the fact that “being German” is a much broader cultural phenomenon than the post-1871 territorial entity we now call Germany; crucially, “[t]here is no Germany without Jews, and in turn German is one of the most important Jewish languages.”<sup>10</sup> However, although the idea that Jewish culture was central to German-speaking European culture is now well-established, on a social level Jews are still definitely conceptualized as the quintessential “Other”.<sup>11</sup>

Writing 80 years on, there are good reasons to avoid laying too much stress on the “Jewishness” of an assimilated, secular German Jew like Mann. In the worst case, such an over-emphasis distorts our understanding of Mann as an individual, and writes his legacy within the same categories that defined German society under National Socialism. However, if we stress his “Germanness” too much, we effectively expunge his legacy of a defining element. Worse still: in so doing, we both lose the opportunity to explore the uniquely Jewish contribution to German life, and erase the Jewish dimension of German culture from the historical record forever—the precise trend Mann sought to counter with his own autobiography.

In short, we must be open to the notion that Mann contributed so much to German cultural life not only because he was prosaically “more German than the Germans”, but also, somehow, *because he was a Jew*. This is, in turn, an important contribution to the effort of maintaining an authentic “culture of remembrance” [*Erinnerungskultur*] in German-speaking Europe today. In the maintenance of such a culture, it is sometimes most important what we say “by the by”—that is, in projects *not* specifically dedicated to Jewish Studies. A project like this, which is focused on Mann as a lawyer and on his substantive impact on the law, thus provides a context in which we can and must explore the Jewish dimension of his life and legacy.

## II. Stating the Obvious, and Answering a Question with a Question

The impacts of National Socialism on Mann’s life are one of the more obvious elements of his biography. Although Mann claims never to have experienced antisemitism in his early life,<sup>12</sup> it

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<sup>10</sup> Frank Mecklenburg, ‘Jewish and German: The Leo Baeck Institute Archives and Library’ in Reuveni and Franklin, *German-Jewish Past* (n 8) 224.

<sup>11</sup> Lisa Silverman, “Rethinking Jews, Antisemitism and Jewish Difference in Post-War Germany” in Reuveni and Franklin, *German-Jewish Past* (n 8) 136.

<sup>12</sup> REFERENCE TO AUTOBIOGRAPHY.

was characteristic of the society into which he was born. Walther Rathenau, a rough contemporary of Mann's father, wrote in 1911:

In the early years of every German Jew, there is a painful moment that can never be forgotten [in which] he becomes aware that he entered the world as a second-class citizen and that no amount of talent or merit would free him of that status.<sup>13</sup>

Nicola Gluckmann writes of her relative, Sir Otto Kahn-Freund, a contemporary of Mann's at the London School of Economics and a lifelong correspondent and friend:

"The single most important fact about my life is that I was born a Jew", wrote Otto in his unfinished personal memoir of 1979. Not "am a Jew" but "*born* a Jew". Despite his choice to live in a determinedly secular world, here by Otto's own admission was acknowledgment that his life was nevertheless defined by this one fact.<sup>14</sup>

Being born a Jew has, indeed, been a singular defining fact in many societies over many ages.<sup>15</sup> Jean Paul Sartre famously wrote that "[t]he one thing Jews can never choose is *not* to be a Jew".<sup>16</sup> Lisa Silverman explains that one who does so merely becomes an "inauthentic Jew"; "[f]or Sartre, this category is a theoretical impossibility, as a Jew who attempts this denial of subjectivity merely reinforces the terms that created them in the first place."<sup>17</sup> Being born a Jew is, it seems, an inescapable condition.<sup>18</sup>

20<sup>th</sup> century Germany was an extreme example, as even second-generation converts to Christianity were rooted out of the German body politic. Rathenau's moment must have come for Mann, too, possibly at some point in the 1920s as he entered adulthood, and certainly no later than the rise of the National Socialists to power in 1933. According to Sheer Ganor, "National Socialism violently negated claims to German-Jewishness as a culture and identity: its claimants and bearers faced expulsion and dispersion, or worse, deportation

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<sup>13</sup> Cited in Shulamit Volkov, 'Rewriting German History: Jewish Experience as a Corrective' (63<sup>rd</sup> Leo Baeck Memorial Lecture, 24 April 2022), [https://digipres.cjh.org/delivery/DeliveryManagerServlet?dps\\_pid=FL12607487](https://digipres.cjh.org/delivery/DeliveryManagerServlet?dps_pid=FL12607487), 14. Rathenau was assassinated in 1922 by right-wing militiamen while serving as Foreign Minister.

<sup>14</sup> Nicola Gluckmann, 'Past Imperfect, Future Tense: A Mother's Letter about Loss, Storytelling, and the Profound Ambivalence of the German-Jewish Legacy' in Reuveni and Franklin, *German-Jewish Past* (n 8) 52.

<sup>15</sup> Shulamit Volkov prefaces her 2006 book with a 1832 quote from Ludwig Börne: "It is like a miracle! I have experienced it a thousand times and it remains forever new to me. One blames me for being a Jew; the other forgives me for it; the third even praises me on this account; but they all think of it. As if they were caged in that magical Jewish circle, no one can get out." Shulamit Volkov, *Germans, Jews, and Antisemites: Trials in Emancipation* (Cambridge University Press 2006).

<sup>16</sup> Jean Paul Sartre, *Anti-Semite and Jew: An Exploration of the Etiology of Hate* (George Becker tr., Schocken Books 1944)69.

<sup>17</sup> Lisa Silverman, 'Rethinking Jews, Antisemitism and Jewish Difference in Postwar Germany' in Reuveni and Franklin, *German-Jewish Past* (n 8)140.

<sup>18</sup> See also Samuel Farber, "Deutscher and the Jews: On the Non-Jewish Jew – An Analysis and Personal Reflection" in Jack Jacobs (ed.), *Jews and Leftist Politics: Judaism, Israel, Anti-Semitism and Gender* (Cambridge University Press 2017), 331.

and annihilation.”<sup>19</sup> No doubt, this would have caused complex psychological reactions including self-alienation as the two halves of Mann’s professed culture delaminated—that is, as his fundamentally liminal cultural status was exposed.

On a superficial level, it is trite to say that Mann’s life would have unfolded differently but for the fact that he was Jewish.<sup>20</sup> Probably, like the vast majority of Germans, “Counterfactual Mann” would have remained in the country during its degradation under National Socialism. We would then be considering a very different biography—probably, one of a Berlin law professor rather than a London solicitor. Assuming that Counterfactual Mann would have had “our Mann’s” politics and temperament, we would now discuss how he navigated a treacherous landscape in which academic standards and integrity were debased, and how he rebuilt his life through the post-war period.<sup>21</sup> Counterfactual Mann’s work would almost certainly have remained more specific to German law; it is highly unlikely that he would have been a scholar of English law, and Mann attributed his own interest in international law to his experience of forced migration (and his friendship with Sir Hersch Lauterpacht).<sup>22</sup> His legacy would have been very different, too—perhaps, for example, a legacy of one dedicated to rebuilding academic standards in Germany following the war.<sup>23</sup>

The obvious point, then, is that Mann’s life took a very different course in response to world-historical developments in his lifetime. But is this all there is to be said about the “Jewish dimension” of his life? On a deeper level, for example, can we be sure that Counterfactual Mann

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<sup>19</sup> Sheer Ganor, “Generation in Flux: Diasporic Reflections on the Future of German-Jewishness” in in Reuveni and Franklin, *German-Jewish Past* (n 8) 14.

<sup>20</sup> What do we mean by “Jew” and “Jewish”, and what is the right set of terms to use? “Of Jewish extraction”? “Born to Jewish parents?” See, in particular, Frank Mecklenburg’s chapter in this volume on what it meant to be “German *and* Jewish” in the decades between emancipation and the rise of National Socialism. The experience of German Jews is most obviously distinguishable from the experience of Jews in Eastern Europe. For a contemporary account, see for example Jakob Wassermann, *Mein Weg als Deutscher und Jude* (Suhrkamp Jüdischer Verlag 2005). Some prefer to speak of “German-speaking Jews” or “Jews from German-speaking lands” to avoid eliding the fundamental problematic of what it meant to be “German *and* Jewish” in the relevant period.

<sup>21</sup> For example, see Carl Schmitt, ‘Die deutsche Rechtswissenschaft im Kampf gegen den jüdischen Geist: Schlusswort auf der Tagung der Reichsgruppe Hochschullehrer des NSRB vom 3. Und 4. Oktober 1936’ (1936) 41(2) Deutsche Juristen-Zeitung 1194.

<sup>22</sup> Apparently, Lauterpacht's LSE lectures introduced him to international law; staying with it was a reaction to emigration: "I continued my studies in the fields in which I felt a foreign-born and originally foreign trained lawyer could make the most valuable contribution, namely private international law and, later, public international law as well as their interrelationship." See FA Mann (Wolfgang Ernst ed.), *Life and Cases* (Bonn University Press 2021), 55. I am grateful to Christoph König for his input on this point.

<sup>23</sup> Indeed, despite having a “highly ambivalent” attitude towards Germany, Mann felt “considerable responsibility towards Germany”—for educating German youth (and giving them the opportunity to meet a Jew), and “rebuilding a sound intellectual standard” after the debasement of the university system. See Lawrence Collins, “F.A. Mann (1907—1991)” in Jack Beatson and Reinhard Zimmermann (eds.), *Jurists Uprooted* (Oxford University Press 2004) 440.

would have had the same politics and temperament if he had been born into a non-Jewish family? How might his background have informed (or even defined) Mann's outlook on life and indeed the law? For many of us, this is an exciting and very worthwhile avenue of enquiry—even if it requires some speculation.

For some good reasons, however, there is a natural instinct to avoid the “problem of identity”. I will explore what I see as the main reasons for this in the sections that follow. And yet, it was a point of discussion over the course of our project. My aim in this chapter is, therefore, to interrogate the context in which the question of Mann's identity arises for us today: in a scholarly project, with both biographical and substantive legal aims, at a German university in the third decade of the 21<sup>st</sup> century.

At the risk of being bromidic (or even gauche) the best answer to “the Jewish Question” is often “a Jewish question”. In response to the question: “Is there a Jewish art?” Harold Rosenberg (writing in the 1970s) suggested that the “Gentile answer” is a yes or no; the “Jewish answer” is: “What do you mean by Jewish art?”<sup>24</sup> Terry Cooney explains that the range of responses reflects the ongoing debate over the place of ethnicity in 20<sup>th</sup> century American culture:

[A]ny answer to his question presumes an outlook not just on the relation of ethnicity to art but on its importance for intellectual and social life in general. In no way was Rosenberg's “Jewish answer” meant to evade the question... he went on to assert at the end of his argument that “the most serious theme in Jewish life is the problem of identity.” To answer the question with a question recognized that there were multiple responses to this “problem” and directed particular attention toward the context within which any specific answer might be framed.<sup>25</sup>

Understanding any individual's life requires an understanding of their social, political, and legal context. This is perhaps particularly true of someone who identified as a Jew, or was identified by others as a Jew, in 20<sup>th</sup> century Germany: German, Jewish, and German-Jewish identity is particularly complex. Further, the context in which *we* are asking the question is just as important to grapple with as Mann's historical context. The place of ethnicity, and the relation between Jewishness, ethnicity, and religion, is no easier in early 21<sup>st</sup> century Europe than it was 20<sup>th</sup> century America.

A person's lived experience, including their subjective feelings of cultural belonging and self-identification, must be placed in their historical context. Mecklenburg's chapter provides the

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<sup>24</sup> Harold Rosenberg, ‘Is There a Jewish Art?’ in Harold Rosenberg, *Discovering the Present: Three Decades in Art, Culture, and Politics* (Chicago 1973) 223.

<sup>25</sup> Terry A Cooney, “New York Intellectuals and the Question of Jewish Identity” (1991) 80(3) *American Jewish History* 344, 344.



immediate context, with a focus on the economic life of Rhenish Jews and the punctuated liberalization of the professions in German-speaking lands. As Miriam Thulin explains, the broader picture of Jewish networks is framed by Jews' history (since antiquity) of mobility across territories and political boundaries, shared language and customs, and high literacy rates. But Jewish networks were also framed by social exclusion and prejudice against Jews by the majority population:

[A]t least in Christian Europe from the mid-fifteenth century until the elimination of the European Jewry by National Socialism, communication in the Jewish diaspora was characterised by a constant “dialectic of assimilation”, by a genuinely dialectical process between acculturation and self-assertion, between isolation and openness (towards wider society) in the history of the Jews. This is connected not only with problems related to the material environment of the Jews and their surrounding cultures, questions of relational history, the transfer processes, and interpretation and translation phenomena. Rather, it also involves questions of laws and demands towards the Jews like occupational limitations and social discrimination, as well as ambivalent, usually anti-Jewish and anti-Semitic, perceptions and attributions. These attributions, which very early regarded certain Jewish forms and structures of communication as threatening, surfaced in the 19th century especially as conspiracy theories, as a variety of critiques of capitalism or, often closely related to the latter, in the form of criticism of Jews for allegedly lacking a genuine Jewish country, state or land.<sup>26</sup>

All of these themes play out in Mann's biography. Real professional freedom, for example, was only realized in 1918 and ended tragically in the 1930s, as Mann reached professional maturity. Paz's chapter explores the association of Jews and capitalism, using this as an avenue to situate Mann within a distinctively German and Jewish cosmopolitan tradition. In the balance of this chapter, we will see themes including conspiracy (e.g. the myth of the “*Dolchstoß* agenda”) and the “dialectic of assimilation” recur, as well.

### **III. The Travails of German-Jewish Identity**

Identity is always a highly personal, and therefore idiosyncratic, question. It is full of paradoxes and self-contradictions. It is a sensitive matter. This is particularly so in the case of Jewish identity. Although most religious identities are mutually exclusive, with “ethno-religions” like Judaism there are additional layers above and below one's beliefs. I have many friends who

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<sup>26</sup> Mirjam Thulin, ‘Jewish Networks’ (European History Online, 3 December 2010), <http://ieg-ego.eu/en/threads/european-networks/jewish-networks> (last accessed 15 December 2022), citing Amos Funkenstein, “The Dialectics of Assimilation” (1995) 1(2) *Jewish Social Studies* 1.

proudly identify as “Jewish atheists”, some in the third generation!<sup>27</sup> In my experience, however, “non-Jewish Jews” cause non-Jewish Germans some confusion. From the 19th century, German Jews adopted a rhetorical position by which Jewishness was couched a matter of religious affiliation. This was a response to antisemitism more than it was as an expression of the Jewish tradition. Today, many Germans adopt the same approach, perhaps for want of any better starting point. The notion of secular Jewish culture is somewhat awkward in this scheme. Historical “non-Jewish Jews” that happened to be German are, too often, macadamised back into the category of “German” without differentiation.

German Jewish émigrés and refugees (and their descendants) face a peculiarly tortuous set of identity questions.<sup>28</sup> This is for many reasons, but I shall pick three illustrative ones. First, German Jews’ sense of Jewish identity is likely to be less informed by active religious observance and religious community participation. Second, German Jews are more likely to have been “assimilated” than (for example) their Eastern European counterparts, which is to say that they are more likely to have made active attempts to identify with the mainstream of German culture. Finally, the violent rejection of their bid at belonging to the political and cultural body of the “German people” has added layers of complexity.

Nicola Gluckmann’s open “letter” to her children gives a sense of the nuances, paradoxes, and, at times, self-contradictions of German-Jewish identity—both in her parents’ generation (as Holocaust-era refugees from Berlin) and in her own.<sup>29</sup> Describing the deliberate dissociation of her mother with the Anglo-Jewish community of post-War Britain, Gluckmann explains that

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<sup>27</sup> This suggests there is a “Jewish” way of being an atheist, and/or that there is something to being “Jewish” beyond religious belief and practice. Many non-religious Jews, especially progressive ones, have been described (and may describe themselves) as “non-Jewish Jews”, i.e. people who are a-religious or even anti-religion in a distinctively “Jewish” way. See Isaac Deutscher, *The Non-Jewish Jew and Other Essays* (Verso Books 2017). Somewhat more confusingly, my own mother is both a proud Jewess and a practicing Christian. She is accepted in our local Jewish community (which is Orthodox-led) as “Jewish”, but she would not be so accepted in many others, including even some more liberal communities who place more emphasis on belief and practice than on matrilineal descent. How my mother squares the circle is another matter. In her native New York, being Jewish is at least as much a question of descent and culture as religious affiliation. As a Catholic New Yorker once told me, “everyone from New York is half Jewish”. If history had played out differently, one could have said something similar of Berlin or Vienna? See Gabe Friedman, ‘What’s a ‘Jew of no religion’? 3 American Jews on their non-religious identities’ (Times of Israel, 7 June 2021) <https://www.timesofisrael.com/whats-a-jew-of-no-religion-3-american-jews-on-their-non-religious-identities/> accessed 26 April 2023; see also Peter Elias, *A Few from Afar: Jewish Lives in Tasmania from 1804* (Hobart Hebrew Congregation 2003).

<sup>28</sup> The choice of these terms—émigré *versus* refugee—is interesting in a few senses. First, it could be used to put distance between those who had the foresight and the means to leave before they became “refugees”. Secondly, it could be used to draw lines of connection between Jews who were literally forced to leave by violent displacement and those who chose to uproot themselves even in happier times. In the European context, of course, hindsight casts all Jewish migrants in a similar light.

<sup>29</sup> See Nicola Gluckmann, ‘Past Imperfect, Future Tense: A Mother’s Letter about Loss, Storytelling, and the Profound Ambivalence of the German-Jewish Legacy’ in Gideon Reuveni and Diana Franklin, *German-Jewish Past* (n 8).

her mother would identify as “Jewish not by religion but by ‘by *race*’”.<sup>30</sup> She responded to expulsion from the German body politic by doubling down on universalist values of international socialism. (This stands in contrast to Mann’s generally conservative political outlook, but is perhaps not dissimilar to Mann’s wife, Eleonore *née* Ehrlich, often referred to as Lore.) The failure of that post-war dream, however, and the resurgence of antisemitism in post-war Europe, “perhaps best explains some of the legacy of family ambivalence and alienation that [the younger generation has] inherited.”<sup>31</sup>

It would not be appropriate for me to conjecture about Mann in the way Gluckmann does about her mother. However, there are some facts of which we can take notice. As any migrant—let alone refugee—knows, identities are informed by trauma and dislocation as much as by agency; this has been observed to lead to complex psychological outcomes.<sup>32</sup> In effect, the destruction of European Jewry layered on top of the self-alienation implicit in the process of assimilation itself.<sup>33</sup> In retrospect, the figure of the 20<sup>th</sup> century German Jew is a dignified, but ultimately tragic one: the society to which he felt powerful belonging never quite reciprocated, and ultimately rejected him violently. As Gluckmann’s letter makes poignantly clear, it would be an error to take what this generation had to say about itself at face value.

#### IV. The Minefield (and Why We Must Enter It)

It is worthwhile and legitimate to explore the “Jewish dimension” when writing about Mann, the lawyer, and his and legacy. However, there are reasons to avoid overemphasizing the Jewish dimension. I wish to be equally candid about these reasons and will attempt to do them justice, even if I do not ultimately think they are convincing.

The first has been discussed already. Given Mann’s own views about Jewishness, we must not present a distorted or imbalanced picture. This would obviously be a poor outcome for a biographical volume. For example, we might give the impression that Mann was outspoken

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<sup>30</sup> *ibid* 53.

<sup>31</sup> *ibid*.

<sup>32</sup> See, e.g., Wendy Pearlman, ‘How Homeland Experiences Shape Refugee Belonging: Rethinking Exile, Home, and Integration in the Syrian Case’ (2023) 57(1) *International Migration Review* 160.

<sup>33</sup> The “self-hatred” of assimilated Jews is proverbial. See, for example: Ritchie Roberston, *The ‘Jewish Question’ in German Literature 1749-1939* (Oxford University Press 2001), particularly Ch 4 “Assimilation” on the “unusual self-description ‘a Jewish German’” adopted by Friedrich Blach; Jeffrey C Alexander, *The Civil Sphere* (Oxford University Press 2006), particularly Ch 18 “The Jewish Question: Anti-Semitism and the Failure of Assimilation”; Theodor Lessing, *Jewish Self-Hate* (PC Appelbaum tr., Berghahn Books 2021 [1930]); Philip Roth, *Portnoy’s Complaint* (Random House 1969); For a controversial revision, see Paul Reitter, *On the Origins of Jewish Self-Hatred* (Princeton University Press 2012).

about his Jewish identity or that he was religiously observant, both of which would be inaccurate. Several project members report that they had been unaware that Mann was a Jew when they first encountered his work. Others, who knew Mann personally, recalled that he avoided making too much of the matter—and expressed antipathy towards those that did.<sup>34</sup> While this must be taken seriously, it rather informs how we should go about our task than negates it.

The second is more serious. It can be difficult to talk about the influence of Jewish background on a person's life and work without falling unwittingly on stereotypes and prejudices about Jews—or appearing to.<sup>35</sup> On the one hand, there is a risk is of reductivism and essentializing the “Jewish experience” as one of dislocation and forced emigration. Jewish experiences differ over time and geography and must be considered in their context. On the other hand, exile and guest status actually *is* a central element of the Jewish experience. All Jewish narratives are informed by traditions of exile: it is a major theme in the tradition's canonical texts, and almost every Jewish community has a localized history of expulsion, often violent, humiliating, and impoverishing.<sup>36</sup> Outside of the United States, most Jewish families in the world today have experienced this in living memory.<sup>37</sup> Conversely, most of us who identify as Jews have experienced the thrill of meeting someone “exotic”, yet discovering an intimate sphere of shared Jewish identity and experience.<sup>38</sup>

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<sup>34</sup> According to an anecdote shared by Wolfgang Schön in one of our meetings, Mann criticized so-called “*Berufsjuden*” who made a “profession” out of being a Jew in the post-War years. (One could also translate *Beruf* as “vocation”, however, in which case these individuals might appear in a more sympathetic light.) Either way, I think it would be a serious error to read too much into this. Alan Posener describes that “for many returning Jewish émigrés [like his father], keeping a low profile and not asking too many questions was not only a matter of pride and pity but also made professional and private sense.” He continues that his father considered Heinz Galinski, the leader of the *Zentralrat der Juden* who remained “visibly and uncompromisingly Jewish” an embarrassment, “the kind of ‘pushy’ Jew he never wanted to be or be associated with”. However, his father also recognised that his own attitude “was in essence antisemitic”. Alan Posener, ‘No More Mr. Nice Guy: Questioning the Ideal of Assimilation’ in Gideon Reuveni and Diana Franklin (eds), *The Personal, the Historical, and the Making of German-Jewish Memory* (Purdue University Press 2021) 5-6.

<sup>35</sup> Robert Howse, ‘Review of Reut Yael Paz, A Gateway between a Distant God and a Cruel World: The Contribution of Jewish German-Speaking Scholars to International Law’ (2015) 26 *European Journal of International Law* 2, 557–558.

<sup>36</sup> Psalm 137: “By the rivers of Babylon we sat and wept when we remembered Zion.” Between memories of estrangement in Egypt and Babylon and the great Diaspora under the Romans, exile is a major theme in the Jewish tradition. Local expulsions have been a persistent theme, too, in European history, including in Germany. Expulsion from the British Isles and the Iberian Peninsular should be mentioned as well. There are virtually no Jewish communities without their own localized histories of exile.

<sup>37</sup> This is not just a phenomenon of modernity, either: see Simon Schama, *The Story of the Jews: Finding the Words (1000 BCE—1492 CE)* (The Bodley Head 2013) and *The Story of the Jews: Belonging (1492 CE—1900 CE)* (The Bodley Head 2017), which treat Jewish “deep” history in a grand sweep.

<sup>38</sup> For example, while in Berlin I met some Kurdish Jews who had organized a cross-community event with the Yazidi community. The contexts that permit an Anglophone Westerner to feel legitimate community with someone from Kurdistan is rare.

As Charles Kadushin observed a decade ago, the big picture of Jewish social networks has not been explored in a systematic, scholarly fashion as opposed to a conventional historical manner or anecdotally.<sup>39</sup> On an anecdotal level, many of Mann’s friends and professional contacts in England were Jewish émigrés and refugees, including (for example) Sir Hersch Lauterpacht<sup>40</sup> and Sir Otto Kahn-Freund. A more systematic historical network analysis of the archives may, in the future, enrich our understanding of Mann’s social world. Perhaps this volume might provoke further exploration of the Jewish dimension of Mann’s network—potentially linking up with others archives in a more systematic manner.

The third reason relates to the task before us most directly, and will occupy the balance of this chapter. Reducing Mann to *only* the “Jewish dimension” of his biography would perpetrate the very wrong committed against him by the National Socialists.<sup>41</sup> Christoph König discusses Mann’s displeasure, for example, at reading an article in the *Frankfurter Allgemeine Zeitung* (FAZ) which contained a “tasteless” reference to Mann’s friend and mentor: “That one calls Martin Wolff... ‘a great Jewish legal scholar’ is below the dignity of the [newspaper].”<sup>42</sup> Obviously, we do not want to write the same error large in such a book as this. However, that puts on the horns of a dilemma.

### **A. The Dilemma of Writing About German Jews**

Why did Mann object to Martin Wolff being identified as a “Jewish legal scholar”? He *was* a Jewish legal scholar! The wrong done to Mann and his generation was to label them as “Jews” and (therefore) as “non-Germans”—in an environment where Jews were despised and a raft of wicked legal consequences followed. This kind of attitude has always been latent within German (and indeed broader European) culture, erupting from time to time. Yet, the fact that a person is a Jew is an interesting data point from our modern perspective as people who do not see anything inherently negative about being Jewish. David Dyzenhaus, for example, observes that many of the great and good in 20<sup>th</sup> century jurisprudence were Jews: H.L.A. Hart, as well

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<sup>39</sup> See Charles Kadushin, ‘Social Networks and Jews’ (2011) 31 *Contemporary Jewry* 55, 59, mentioning examples of Diaspora networks over the millennia and noting some exceptions to this observation.

<sup>40</sup> Lauterpacht’s status as an ‘émigré’ or just a migrant is debated—see, for example, Martti Koskenniemi, “Sir Hersch Lauterpacht” in Reinhard Zimmermann and Jack Beatson (eds.), *Jurists Uprooted: German-speaking Émigré Lawyers in Twentieth-century Britain* (Oxford University Press 2004) 607. For my own part, looking at the ethno-political situation in Lauterpacht’s Galicia and what ultimately happened to Jews there, I would tend toward calling him an ‘émigré’.

<sup>41</sup> See Reinhard Zimmermann, ‘Was Heimat hieß, nun heißt es Hölle’ in Zimmermann and Beatson, *Jurists Uprooted* (n 22) Ch 1.

<sup>42</sup> *F.A. Mann* (20.09.1978). [GET REF FROM CHRISTOPH]. See also David Dyzenhaus’s review of the book in (2005) 55(4) *Journal of Legal Education* 606.

as his main counterpart, Hans Kelsen, his successor Ronald Dworkin, and others such as Joseph Raz and Lon Fuller. As Dyzenhaus writes in his review of Nicola Lacey's Hart biography:

It might seem that I am harping too much on the theme of the legal philosopher as the Jewish outsider. [Chapter 1 of Lacey's book is entitled "An Outsider on the Inside".] But it is striking that three of the four philosophers of law mentioned so far [the fourth being Carl Schmitt], and whose contributions to our thinking about the nature of law are likely the highpoints of the last century, are Jewish. And that theme manifests itself directly in Hart in a tension that runs throughout his work.<sup>43</sup>

That tension relates to the normativity of law and its relationship to moral normativity, which also preoccupied émigrés such as Gustav Radbruch.<sup>44</sup> This is a much easier argument to run for the case of a legal philosopher like Hart than for a jurist like Mann, but it provides some of the context for Paz's investigation of Mann's preoccupation with money. There, too, we might notice that the "monetary law triumvirate" of Martin Wolff, Mann, and Arthur Nussbaum were all Jews who worked in Berlin in the early 20<sup>th</sup> century as a phenomenon in search of an explanation.

It was rather the lack of contextual significance in FAZ article that was problematic. While studying for my LLM in Augsburg in 2009, I chanced across the report of a conference of German law professors held in Berlin in 1936 published in the *Deutsche Juristenzeitung* on the "struggle against the Jewish spirit in German legal science".<sup>45</sup> In his closing remarks, Carl Schmitt summarised the outcome of the conference:

The necessary task regarding the bibliography is very difficult; it is self-evidently necessary to determine, as accurately as possible, who is a Jew and who is not a Jew. Only on the basis of an accurate register can we continue work in the direction of library cataloguing... All legal writings by Jewish authors belong... without distinction to the library catalogue of the department "Judaica"... [O]nly when we solve the issue of the quotations, we will be able to remove the Jewish-infected literature, and attain, instead, German legal literature.<sup>46</sup>

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<sup>43</sup> David Dyzenhaus, 'Reviewed Work: A Life of HLA Hart: The Nightmare and the Noble Dream by Nicola Lacey' (2005) 55(4) *Journal of Legal Education* 606, 607.

<sup>44</sup> See John Bell, "Wolfgang Friedmann (1907-1972) (with an excursus on Gustav Radbruch [1978-1949])" in Jack Beatson and Reinhard Zimmermann (eds.), *Jurists Uprooted: German-Speaking Emigré Lawyers in Twentieth Century Britain* (Oxford University Press 2006).

<sup>45</sup> This text is (still) largely unknown, both within and outside Germany: see Reinhard Mehring, 'Carl Schmitt und der Antisemitismus: Ein unbekannter Text' (*Forum Historiae Iuris*, 31 March 2006), <http://www.forhistiur.de/zitat/0603mehring2.htm> (accessed 21 March 2023). The easiest way to find the text is on the Neo-Nazi website *Der Sturmer*, and the only existing translation of which I am aware is from Sunic Tomasovic, an Alt-Right thinker and disgraced University of California professor.

<sup>46</sup> Carl Schmitt, 'Schlußwort des Reichsgruppenwalters Staatsrat Prof. Dr. Carl Schmitt' (1936) 41(20) *Deutsche Juristenzeitung* 1194, 1194-1200. There is little secondary literature on this conference in English. In German, see Otmar Jung, "Der literarische Judenstern: Die Indizierung der 'jüdischen' Rechtsliteratur im nationalsozialistischen Deutschland" (2006) 54(1) *Vierteljahresshefte für Zeitgeschichte* 25; Christian Busse, '13

This was part of a general effort to “Aryanise” knowledge across the board—including, I would later discover, Nobel laureate Philipp Lenard’s four volumes on “German Physics”<sup>47</sup> in reaction to the perceived “Jewish” quality of Albert Einstein’s relativity theory. Against this background, the first thing we want to avoid is the contextually-inappropriate, reductive branding of a person as “a Jew”. This effort to identify Jews continues in our own century through different means such as the “echo” or triple parentheses that arose in 2014 and came to prominence in 2016.<sup>48</sup>

For these reasons, there is a persistent and very understandable tendency towards opening a project such as this with a nominal recognition of the “Jewish dimension” (for example: “X was a German of Jewish extraction” or “X was born to Jewish parents”), coupled with an intentional disengagement from the possible impacts of that dimension on their life and especially on their work. The emphasis is on integration and similarity rather than an exploration of the mysterious but powerful element that led a tiny minority—less than one per cent of the German population—to make an outsized contribution to its intellectual and cultural life, particularly in law.

Candidly, we came quite close to adopting such an approach in this volume, too. Above all, we do not want to relegate “F.A. Mann: The lawyer and his Legacy” to the “Judaica” section of the library! A chapter such as this credibly runs the risk of doing just that: this is a chapter about German Jewish identity, not about (for example) the law of money or arbitration. Giving the first horn of our dilemma wide berth is particularly understandable for our non-Jewish German colleagues. But that puts us on the second horn of the dilemma.

The reasons are complex. True, there are some darker patterns of “Jewish difference” manifesting variously as antisemitism and philosemitism, which I will come to later. As Mecklenburg writes, even 80 years on, “national identities are still standing in the way of a more common understanding of the many shared aspects of society, politics, and culture.”<sup>49</sup> But for the most part, what leads us to the second horn of the dilemma is very human and very understandable.

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“Eine Maske ist gefallen”: Die Berliner Tagung “Das Judentum und die Rechtswissenschaft” vom 3./4. Oktober 1936’ (2000) 33(4) *Nomos* 580.

<sup>47</sup> Philipp Lenard, *Deutsche Physik in 4 Bänden* (J. F. Lehmann, 1936).

<sup>48</sup> See Amanda Hess, ‘The the Alt-Right, the Message is in the Punctuation’ (New York Times, 10 June 2016), <https://www.nytimes.com/2016/06/11/arts/for-the-alt-right-the-message-is-in-the-punctuation.html>. For example, my name would be rendered (((Jason Allen))) in a Twitter post to identify me as a Jew.

<sup>49</sup> Frank Mecklenburg, “‘Jewish and German: The Leo Baeck Institute Archives and Library’ in Reuveni and Franklin, *German-Jewish Past* (n 8) 222.

At this point, a personal anecdote is illustrative. The title of this chapter draws on the title of Franz Kafka's short story about a chimpanzee called Rotpeter—*Ein Bericht für eine Akademie*.<sup>50</sup> In this story, Rotpeter is captured by humans, trained in the ways of humankind, and eventually gains a degree of recognition. The story is structured as a letter to a learned society, in which Rotpeter tells his life. Although he has adopted the trappings of humanity with superlative skill, his home life is that of a chimpanzee. In passages that smack of self-loathing, for example, we learn that his wife remains simian in her habits.

I studied Kafka's classical works during my undergraduate studies in German Language and Literature. Immediately, the story jumped out at me as an allegory of Jewish assimilation, and I raised this point in class. Bizarrely, my Austrian lecturer—who had in fact published widely on animal allegories in literature and even on German-speaking Jewish authors—summarily foreclosed the discussion. To interpret this story as an allegory of Jewish assimilation would place it on a Procrustean bed; it was an exploration of the human condition writ large, nothing less.

Kafka's *oeuvre* makes only a single explicit reference to Jewishness. It seems not to be a major theme in understanding his work. But as Walter Sokel argues, the conclusion that Jewishness was not important to his writing “would miss an essential dimension.”<sup>51</sup> Kafka in fact developed an intense interest in Judaism right at the time he began his mature work. Sokel argues that his personal journey, his family history, and the experience of Bohemian Jews more broadly informed the “profound discrepancy between the appearance of solidity and a reality of alienation and vague but persistent menace” characteristic of his writing.<sup>52</sup> Kafka is best understood against the historical conditions of Jews in the Hapsburg lands during their rapid industrialization and social transformation, including Jewish emancipation following the Revolution of 1848.

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<sup>50</sup> Franz Kafka, “Ein Bericht für eine Akademie” (1917) 2(8) *Der Jude* 559.

<sup>51</sup> Walter Sokel, ‘Kafka as a Jew’ (1999) 30(4) *New Literary History* 837. For an extensive discussion, including of the “three impossibilities” Kafka said faced Jews writing in German, see Galili Shahar, ‘The Dialectics of Tradition: German-Jewish Studies and the Future’ in Reuveni Franklin, *German-Jewish Past* (n 8), 89, 91-92.

<sup>52</sup> Kafka's parents reflected “the situation of the strenuously assimilating, but not yet fully assimilated, rising Jewish bourgeoisie” trying to advance economically socially in a society that was not ready to receive them as integrated equals. Walter Sokel, ‘Kafka as a Jew’ (1999) 30(4) *New Literary History* 837, 838.



Although a universalist interpretation of the *Bericht* is plausible, a “Jewish assimilationist” interpretation is historically *more* plausible—and didactically important.<sup>53</sup> Indeed, Kafka’s friend (and later literary executor) Max Brod presented the story in precisely these terms:

Franz Kafka tells the story of an ape, who, captured by [the firm] Hagenbeck, becomes human through violence. And what a human! The worst, the dross of humanity reward him for his imitation efforts. *Is this not the most genius satire for assimilation that has ever been written?* One can read it in the latest issue of *Der Jude*. The assimilated [Jew] does not desire freedom or infinity, only an escape, a pitiful escape! It is grotesque and inspired in one breath. The involuntary freedom of God stands, menacingly, behind the animal-human comedy.<sup>54</sup>

In a tragic sense, to expunge the “Jewish dimension” of Kafka analysis is to erase the existence of his whole world—starting with the fact that there was a German-language literary magazine called *Der Jude* (“The Jew”) in Prague! My lecturer was a lovely woman who showed sensibility for the human condition, in all its complexity, and instilled in me a love of German-language literature. I do not believe that she intended this outcome. But she somehow froze when it came to the interpretation of the *Bericht*. I doubt that she could truly have been committed to her view; that would be an ignorant position, and she was no ignoramus. Why, then, did she “cancel” it in her classroom? She might have been uncomfortable by the animal allegory, assimilating Jews to chimpanzees. She might have been concerned that other students might not be able to discuss a Jewish assimilation allegory with sufficient nuance. As Yascha Mounk has observed, “the simplest interaction between Jew and Gentile [in Germany today can] degenerate into a politically correct comedy of errors”.<sup>55</sup>

Our position is subtly analogous if we underplay the “Jewish dimension” of Mann’s generation. The German Jewish culture that thrived before the Holocaust is, sadly, gone. Jewish life in Germany will never be what it was, let alone what it could have been but for its destruction between 1933 and 1945. Given Europe’s loss of Jews through murder and emigration, German-speaking culture will never be the same, either. This leads me to the key argument in this chapter: *The way we choose to talk and write about Jews like Mann determines whether and*

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<sup>53</sup> See the classic argument in WC Rubinstein, ‘Franz Kafka’s ‘A Report to an Academy’ (1954) 55 MLQ 359; see Jay Geller, *Bestiarium Judaicum: Unnatural Histories of the Jews* (Fordham University Press 2018) Ch 4 for an extensive discussion. See also Karlheinz Fingerhut, ‘“Manchmal nur, in dunkeln Zeiten”: Heine, Kafka, Celan—Schreibweisen jüdischer Selbstreflexion’ in JA Kruse (ed), *Heine-Jahrbuch 2002* (Springer 2002).

<sup>54</sup> Cited in Jürgen Born, *Franz Kafka: Kritik und Rezensionen zu seinem Lebzeiten 1912-1924* (Fischer Verlag 1979) 128. Translation my own, emphasis added. For particularly ham-fisted treatment of the matter (in a didactically-focused journal), see George Schulz-Behrend, ‘Kafka’s ‘Ein Bericht für eine Akademie’: An Interpretation’ (1963) 55(1) Monatshefte für Deutschen Unterricht, Deutsche Sprache und Literatur 1.

<sup>55</sup> Yascha Mounk, *Stranger in My Own Country: A Jewish Family in Modern Germany* (Macmillan 2014) 31.

*how their world is remembered—and, just as importantly, how the German-speaking world understands itself today.* Though the need for balance is paramount, if anything I think we should err on the side that seeks to remember, understand, and celebrate the uniqueness and fertility of German Jewish life in the early 20<sup>th</sup> century. Einstein called this a “titillating application” of his relativity theory, with a fair twist of irony himself:<sup>56</sup>

If my theory of relativity is proven successful, Germany will claim me as a German and France will declare me a citizen of the world. Should my theory prove untrue, France will say that I am a German, and Germany will declare that I am a Jew.<sup>57</sup>

To put it pointedly: if we label Mann now as a “German” without differentiation—if we fail to acknowledge adequately that he was *also* a Jew, we expunge the historical record of the fact that there were Jews in Germany, or that they made a contribution to German legal scholarship and culture. Further, if we avoid investigating what the fact of his “Jewishness” might *actually* have meant for his work and his contribution to law, we are in a sense both staying trapped within the Nazi categories and completing their “cleansing” of German legal science—paradoxically, even more so than would we put their works in the “Judaica” section. We are then also presenting a distorted view of German-speaking culture and German legal science, as well.

### **C. Relevance to our understanding of “FA Mann: the Lawyer and his Legacy”**

This introduces the broader context to our project, which embraces not only “the lawyer” but also his legacy. We are attempting here to understand Mann’s individual biography, in which “being Jewish” (whatever that means) was a major catalyst for disruptive change. Mann did not wear his Jewishness on his sleeve (and, because he left Germany, he was never forced to). Likewise, Mann was not a religiously observant Jew; observance of the rites and customs of Judaism seems not have to been very important in the way he lived his life.<sup>58</sup> In his letters to

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<sup>56</sup> ‘Today, I am called in Germany a “German scholar” and in England as a “Swiss Jew”; if I ever come into the position of being presented as a *bete noire*, then I would be the opposite—in Germany, a “Swiss Jew” and for the English a “German scholar”.’ Albert Einstein, ‘Was ist Relativitäts-Theorie?’ (28. November 1919), in Albert Einstein, *Mein Weltbild* (Querido Verlag 1934) 220, [http://germanhistorydocs.ghi-dc.org/docpage.cfm?docpage\\_id=5438&language=german](http://germanhistorydocs.ghi-dc.org/docpage.cfm?docpage_id=5438&language=german). Translation my own.

<sup>57</sup> Address at the Sorbonne, Paris, possibly early December 1929, in *New York Times* 16 February 1930. Cited in <https://www.oxfordreference.com/view/10.1093/acref/9780191826719.001.0001/q-oro-ed4-00003988>.

<sup>58</sup> Gluckmann’s observations on Kahn-Freund’s statement (about being “born a Jew”) provide an apt point of comparison: “Otto wasn’t trying to deny that he was Jewish, but he did want to be sure that his Jewishness could not be coopted by a religious Jewish community with whom he didn’t identify.” Nicola Gluckmann, “Past Imperfect, Future Tense: A Mother’s Letter about Loss, Storytelling, and the Profound Ambivalence of the German-Jewish Legacy” in Reuveni and Franklin (eds), *German-Jewish Past* (n 8) 52. Jewish rites featured to a

Lore from 1946 Berlin, I read some (for me highly relatable) gems such as: “I do not know how I should behave on Yom Kippur: go to a Committee Meeting? (No!) Go to the office? (No) Fast? (?)”.<sup>59</sup> Or: “Tonight is Jewish New Year. I feel rather bad that I am in Berlin without going to a Synagogue.”<sup>60</sup>

But religiosity is not really the aspect of “Jewishness” with which we are concerned here. We are looking for whatever it meant for Mann to be “Jewish by background and tradition” that was consistent with his notion of having “German cultural status”. In this, religion and participation in a religious community is only part of the picture.

Plausibly, Mann’s self-description was a response to the common assertion that Jews could not be “truly” or “wholly” German (or English, or French, etc). Even amongst German liberals of the late 19<sup>th</sup> and early 20<sup>th</sup> century, the attitude was widespread that Jews would have to sacrifice their distinctive “Jewishness”. To cite but one example of many, Theodor Mommsen in 1887 argued that the Jews must “pay the price [of] entry into a great nation” by “detach[ing] themselves, on their own part, of their uniqueness [and] breaking down completely the barriers between themselves and the rest of the German citizenry.”<sup>61</sup> This was a project to which many Jews of Mann’s generation were heavily committed. It ended disastrously. As Shulamit Volkov observes, a century of German Enlightenment still has to be rewritten from a Jewish perspective.<sup>62</sup>

So: being Jewish meant exile for Mann, with a whole cascade of practical consequences such as the decision (or imperative) to practice as a London solicitor. But exile must have entailed a cascade of more personal consequences, too. No person who identified, or was identified by

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limited extent in Mann’s death and burial. His funeral instructions stipulated that “There should be a Rabbi who will say Kaddisch, - the prayer which millions have said when they were killed where I ought to have been. If he insists, he may read in English a psalm, - but this is all.” Lord Lawrence Collins was ultimately in charge of Mann’s funeral arrangements, and said *kaddish*, as apparently no Rabbi could be found willing to officiate in the minimalist way that Mann stipulated. [KALIKA: REFERENCE TO TESTAMENTARY INSTRUCTIONS?]

<sup>59</sup> Mann Nachlass, FA Mann to Lore Mann, undated, RS1000\_NLMann\_0984.

<sup>60</sup> Mann Nachlass, FA Mann to Lore Mann, undated, RS1000\_NLMann\_0984.

<sup>61</sup> Theodor Mommsen, ‘Auch ein Wort über unser Judentum in Walter Boehlich (ed), *Der Berliner Antisemitismusstreit* (Frankfurt 1965) 227. The liberal Karl Rotteck went further in his speech to the parliament of Baden in 1833 that the requirement of state uniformity required no less than the end of Jewish history and the “dismantling of their nation”: Reinhard Rürup, ‘The Torturous and Thorny Path to Equality. ‘Jew Laws’ and Emancipatory Legislation in Germany from the late 18<sup>th</sup> Century’ (1986) 31 *Leo Baeck Institute Yearbook* 24 (hereinafter Rürup, ‘The Torturous and Thorny Path to Equality’). Both are cited in Shulamit Volkov, ‘Rewriting German History: Jewish Experience as a Corrective’ (n 13).

<sup>62</sup> See Shulamit Volkov, ‘Rewriting German History: Jewish Experience as a Corrective’ (n 13), [https://digipres.cjh.org/delivery/DeliveryManagerServlet?dps\\_pid=FL12607487](https://digipres.cjh.org/delivery/DeliveryManagerServlet?dps_pid=FL12607487); see also Rürup, Rürup, ‘The Torturous and Thorny Path to Equality’ (n 61)..

others, as Jewish could feel the same in 1945 as they did before 1933. Mann says little directly about this, but there are hints. For example, we read:

Today it poured for hours. I saw a few “clients” in the morning and at 5.30 I went to *Deutsches Theater* to see *Nathan der Weise*. The theatre is completely undamaged and as beautiful as ever. The acting was excellent with the exception of the sultan who was too bad for words. *The play is of course moving for us*, but as a play it is not really good and I find it rather hard going to take in this sort of dialogue. The theatre was sold out, but my uniform procured a good seat without difficulty. The audience clearly appreciated the play and there was a great deal of applause. What puzzled me was that when the Patriarch (who was first rate) said: *Der Jude wird verbannt* [“the Jew is banished”] a proportion of the audience which was not quite negligible laughed. I have no explanation. *I thought people were looking well. Many were nice and obviously cultured people.* They were not elegant, but adequately and partly well dressed. All of them looked clean, which I find difficult to understand, with my knowledge of heating facilities, German soap, etc.<sup>63</sup>

*Nathan der Weise* is a play by Gotthold Ephraim Lessing that communicates a plea for religious tolerance, which Mann evidently found laid it on a bit thick. It is of course moving “for us”—I presume “us Jews”.<sup>64</sup> He is baffled by the fact that an apparently bourgeois German audience—an audience that he might have felt were birds of his feather—responded with derision at a dramatic highpoint and “moral moment” in the play. These others did not identify with the same “us”. They were living in the rubble of 1946 Berlin. Very many of them would have been personally implicated (in one way or another) with the murder of European Jews. Some were probably wearing stolen clothing.<sup>65</sup> Though understated, this vignette speaks volumes.

Beyond the unfortunate consequences of persecution under National Socialism, and indeed beyond the negative factor of antisemitism generally, the fact of a person being born into a Jewish family in early 20<sup>th</sup> century Germany could mean a lot of things to their work. On one view, it is possible to approach Mann with no knowledge of the fact that he was a Jew and miss nothing of importance in his work. On the other hand, Mecklenburg’s chapter in this volume illustrates just how special the “Golden Years” of German emancipated Jewry were. It is important to remember how brief these years were, too: the exclusion of Jews from the civil service and the professions (including law) in 1935 occurred, after all, pursuant to a statute

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<sup>63</sup>Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984

<sup>64</sup> Lessing apparently modelled Nathan on his friend, Moses Mendelssohn, and perhaps his own experience of being banished for his free expression.

<sup>65</sup> The goods of deported Jews were auctioned in every German city, town, and village, especially from 1941, and this has been well-documented. See, for example, Wolfgang Dreßen, *Betrifft: Aktion 3: Deutsche verwerten jüdische Nachbarn. Dokumente zur Arisierung* (Aufbau Verlag 1998). Auctions for household items such as crockery and clothing are documented to have brought the state over 300 million *Reichsmark*, and participation was truly widespread. See also the 2018 *Mitteldeutsche Rundfunk* documentary by Jan Lorenzen und Michael Schönherr, *Die Versteigerer – Profiteure des Holocaust*.

calling for the “restoration” of the public service.<sup>66</sup> The civil service had only really opened to Jews in 1918; entry into the professions had been a generation earlier, and Mann’s experience of being a German Jewish lawyer in the third generation was highly unusual.

Given the space to rise, Jews had acted like leaven in German society. We are products of our social *milieu*, and that is a product of various factors working over historical time. Though less than one per cent of the German population, German Jews during these Golden Years came to occupy whole fractions of the legal profession and academy. This is a phenomenon that demands explanation—and that explanation must surely look for the “Jewish” element to their success, whatever it was.

Zooming out from Mann as an individual, this volume is also to evaluate his legacy. In the first instance, this involves an assessment of Mann’s impact on various legal systems’ literature and practices. It also involves a broader appreciation of the fact that a young man from Germany, who crossed borders literal and metaphorical, out of necessity as much as volition, had such an impact at all. In this, the “Jewish dimension” looms even larger than in our consideration of Mann as an individual. The aim is to situate Mann alongside an important cohort who both shared an uncommon fate in Germany and made an uncommon contribution to their new homelands. As Matthias Greffrath noted in his 1978 edited collection *Zerstörung einer Zukunft* [lit. “Destruction of a Future”]:

Some 3,000 professors left the German universities during fascism, the majority because they were Jews, leaving a deficit in intellectual and academic life that I think is felt to this day. The pro-fascists and collaborators that remained were none too eager to repatriate their exiled colleagues or indeed bring attention to the gap they left. *It was rather the student movement of the 1960s that looked back to the “lost intellectuals” of the Weimar period with anger and nostalgia, as they had been deprived of minds that would have had immense value for German intellectual and political life.*<sup>67</sup>

Every time we write about Mann’s generation, we lay another brick in the edifice of this history. How we lay each brick informs, tacitly, its historiography. The operative question is not Mann’s identity (i.e., how Mann identified himself) but *our identification of Mann*. In other words, the task before us invites (and requires) some conclusions about what it meant to have a “wholly and firmly German” “cultural status”—which cannot have been, and indeed was not, unchanged by the events of 1933-1945. Our understanding of Mann’s Jewish identity, therefore, is

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<sup>66</sup> The *Gesetz zur Wiederherstellung* (lit. Re-establishment) *des Berufsbeamtentums vom 7. April 1933*.

<sup>67</sup> Matthias Greffrath, *Zerstörung einer Zukunft: Gespräche mit emigrierten Sozialwissenschaftlern* (Rohwolt Taschenbuch 1979). The excerpt here as cited in Jack Zipes, ‘The Holocaust and the Vicissitudes of Jewish Identity’ (1980) 20(2) *New German Critique* 155, 167.

inextricably bound with our understanding of *German* identity and the way that Germans have negotiated their own identity politics in the wake of the Holocaust.<sup>68</sup>

Another thing to mention from this perspective is that Holocaust studies and the cultural dynamics between Jews and Germans is not the monopoly of German Jews any more than it is the monopoly of non-Jewish Germans. More than anything else, the Holocaust made it the legitimate concern of every Jew. Understanding the complexities of German-Jewish relations, therefore, is a topic of legitimate concern to us all—and it justifies some probing of non-Jewish Germans and also of German Jews like Mann. As Zipes observed some time ago:

The vicissitudes of Jewish identity... must be carefully qualified by the fact that [studies of the subject often] represent the experiences of middle-class Jewish intellectuals who have generally remained at a distance from the mainstream of organized Jewish life. There is something dangerous and grotesque about historical-biographical anthologies which single out “special Jews” for treatment. There is a hint that the major crime of the Holocaust was that it deprived Germany of great Jewish intellectuals and scientists, as if the little Jewish tailor Hans Cohn was expendable, but the great minds like Einstein had to be saved—and were saved—at all costs. Such careful distinctions were not made by the Nazis, unless money and public pressure were used to bribe them to release prominent Jews. Otherwise, all Jews were equal under fascism, and their *common* suffering, beliefs, and fate are not revealed in these books. West German readers learn mainly about the vicissitudes of Jewish identity from a special point of view.<sup>69</sup>

We cannot really examine an *émigré* like Mann without making it mean something beyond him *qua* individual. In the background, a binary system of mutually exclusive “German” and “Jewish” categories seems to slip back into our thinking. Thus, engaging with the context into which Mann’s legacy extends—our contemporary social circumstances—is an implicit part of our task.

The appropriateness of Einstein’s relativity metaphor is that certain features of reality depend on observer, and change in virtue of being observed. If Jewish identity is relative to the perspective of the observer, we must ask ourselves what our own position is. What are we seeking to achieve in a project like this, at a German university 80 years on? We are not, and cannot be, purely “descriptive” when speaking and writing about Jews, Germans, and the Holocaust. As I will explain in the next section, there is a kind of struggle for the heart and soul of German-speaking Europe on this exact question. We desperately need to find new ways of

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<sup>68</sup> On the importance of (non-Jewish) German identity to the historiography of the Holocaust—what we might call a kind of “culture war” of its own—see A Dirk Moses, ‘The Non-German German and the German German: Dilemmas of Identity after the Holocaust’ (2007) 101 *New German Critique* 45.

<sup>69</sup> Jack Zipes, ‘The Holocaust and the Vicissitudes of Jewish Identity’ (1980) 20(2) *New German Critique* 155, 176.

dealing with the past and integrating the concept of “being Jewish” into German-speaking Europe’s self-conception.

The tragedy of our failure would not be one just one for Jews. Given the outsized contribution that Jews made to life and culture in Germany (and other German-speaking lands) over the centuries, we would lose something essential to understanding German culture as a whole. Modern Germany would not be what it is today without the positive contribution of Jews, or the negative consequences of their expulsion and destruction. Especially following the Holocaust, “German German” identity can no more exist independently of its dialectic relationship with “Jewish German” identity than the reverse.

## V. The Contemporary Context

At this stage, it is necessary to delve into the contemporary context of our project. As Grefrath’s quote, above, suggests, the interest in exploring German Jewish *émigrés* in recent decades is partly a product of the nostalgia and good intentions of German scholars of the post-War generation—often those associated with the student movement of 1968, dubbed affectionally the “68er”. But despite these good intentions, we are still some way from the goal. Surprisingly, conditions within the Germany academy have only recently become amenable to having honest conversations about the matter.

The dominant narrative of post-War Germany revolves around a project of “overcoming the past” [*Vergangenheitsbewältigung*], first and foremost through building an *Erinnerungskultur* around the Holocaust as an accomplished fact in German-speaking Europe. It is tempting to take this project as a successful *fait accompli*. As A. Dirk Moses wrote in 2007, the proposition “that the Federal Republic has adopted a healthy democratic culture around the memory of the Holocaust has almost become a platitude”.<sup>70</sup> In the Anglosphere (and among liberal Anglophone Jews), this fact tends to be accepted unreflectingly, and it has been lauded as an example of how to deal with some of our own dirty laundry.<sup>71</sup> This vision of “Germanness” is represented in popular culture—for example, by the diverse group (including punks,

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<sup>70</sup> A Dirk Moses, ‘The Non-German German and the German German: Dilemmas of Identity After the Holocaust’ (2007) 34(2) *New German Critique* 45 (hereinafter, Moses, ‘Identity After the Holocaust’).

<sup>71</sup> See, for example, Susan Nieman, *Learning from the Germans: Race and the Memory of Evil* (Macmillan 2019).

Birkenstock-wearing müsli-eaters, and a Haredi Jew with *payot*) in the comedian Jan Böhmermann’s satirical music video “Be Deutsch!”.<sup>72</sup>

This is a comforting story. However, my experience of the *Vergangenheitsbewältigung* is not so straightforward. As Moses observes, the dominant narrative is “explicitly Whiggish”.<sup>73</sup> Its success—and sincerity—is hotly debated in German-speaking Europe. The 2000s were rocked by scandalous revelations about the *éminences grises* of Germany society (and the academy), leading to a “virulent identity crisis of the Germans”<sup>74</sup> which is both historically and conceptually bound up with the question of Jewish identity and identification. As Böhmermann’s video makes clear, one’s attitude towards diversity in Germany—and Jews in particular—is integral to what it means to “be Deutsch”. However, let us not forget that Böhmermann’s song was composed in 2016 in response to the rise of the New Right; the vision of Germanness it portrays is mythic. It is good public relations, but wholly unreflective of any stable notion of German identity I have encountered.

The main (and most challenging) polemical thrust of this chapter is that, if we choose to tell Mann’s story *as if* the project of *Vergangenheitsbewältigung* had been unproblematically successful, we would be doing ourselves, our readers, and indeed Mann’s legacy a disservice. Let us postulate (as neutrally as we can) that *Vergangenheitsbewältigung* is “incomplete”. Paradoxically, far from being over, we may be among the very first to look this problem in the eye. Failing, therefore, to engage with the Jewish dimension of Mann’s biography would be an abdication of our responsibility, in the present day, to situate his dislocation within its broader historical context in a way that is meaningful for the present and future generations. This is something that became acutely clear to me, working from within the German academy for an extended period, that may not be apparent in the Anglophone world, in particular.

### **A. Mann’s impression of denazification**

The roots of this incompleteness stretch back to the earliest days of German defeat and the reconstruction of modern Germany. Perhaps the best place to start is with Mann’s experiences in Berlin immediately post-War. Consider Mann’s fellow theatre-goers who, after all that had happened, could laugh at the declaration “*Der Jude wird verbannt!*”. It is beyond the scope of

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<sup>72</sup> See ZDF, Magazine Royale, ‘Be Deutsch!’ (2016) <https://www.youtube.com/watch?v=HMQkV5cTuoY> last accessed 26 April 2023.

<sup>73</sup> Moses, ‘Identity After the Holocaust’ (n 72).

<sup>74</sup> Thomas Lindemann, ‘Es kommt spat, aber zur rechten Zeit’ (Die Welt, 8 May 2005), cited in Moses, ‘Identity After the Holocaust’ (n 72), 49.



this chapter to explore the complexities of post-War Germany in detail.<sup>75</sup> The short point is that, especially from the late 1940s, an enormous number of former active Nazis were granted amnesty and reintegrated into German society. It is generally thought that this policy achieved, through education and “soul searching”, a kind of social alchemy: Nazis in, good democratic Germans out.

Mann, however, was not impressed by the process of “denazification” and made some observations that are salutary to consider today. For starters, he took a dismal view of his immediate superiors, the efficacy of the whole system, and the state of cooperation between the Allied powers. His letters from this period to Lore reveal some precious insights into the state of Berlin society at the time and what must have been a truly surreal experience for him, returning after less than a decade to a very different world. It is hard to know what to make of them; profound, and profoundly sad, observations are made about the physical state of Berlin—clearly, from the perspective of someone who identifies with the place and its people:

I came into contact with German students and professors and this morning I even saw something of the terrible problems of the refugees from the East. There are 7½ million of these people and the misery of these people surpasses anything I have yet seen. We must continuously think of the misery the Germans have done to people in the East, Jews etc—in order not to be overwhelmed by sympathy. But two wrongs don't make one right.<sup>76</sup>

Many of the contents are troubling. An early missive reports:

I then took the *Stadtbahn* to *Zoo* where I happened to run into Reuss—you may remember him as a *Fakultätsassistent*. We recognised each other. He: “*Wir kennen uns doch.*” [“We know each other!”] I: “*Wir haben uns einmal gekannt.*” [“We knew each other once.”] We got talking and he asked about [you] and others and altogether emphasised his anti-Nazidom. But I have not forgotten his efforts in the [unknown organization] and have asked [Miss S] to search for and send me the references. When I have them I intend to pay him a visit at his office in *Kurfürstendamm* where he carries on a lucrative practice as *Rechtsanwalt & Notar*. He is a Nazi all right, and altogether it is *zum Kotzen* [lit. it makes we want to vomit].<sup>77</sup>

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<sup>75</sup> See, in particular, Norbert Frei, *Adenauer's Germany and the Nazi Past* (Joel Golb trans., Columbia University Press 2003), an English translation of a 1996 German classic.

<sup>76</sup> My wife's grandmother, who fled East Prussia (Königsberg/Kaliningrad), was one of these 7.5 million—many Germans have a grandparent from that cohort. Incidentally, speaking to her older sister in Sydney in 2018 gave us a very different impression of matters than speaking to her. While my grandmother-in-law had been a child, and had fled to what became the German Democratic Republic, her sister left for Australia and came into contact with other European refugees—including Jews. She saw herself much less a victim of historical circumstances and could articulate a coherent sense of collective responsibility as a German (whose brothers had fought in the East) without personal moral failure.

<sup>77</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984. In her seminal work on the subject, Anna-Maria Lösch opines that Reuss made an accommodation with the Nazis but was treated

We read of a visit to Walter Schmidt and family in August 1946:

They are nice people and almost the first who told me that the Nazis are alive and kicking and preparing their new *Dolchstoß* Agenda [i.e. the conspiracy that German Jews “stabbed Germany in the back” in the First World War]. I never doubted it. They also said that anti-Semitism was still the same.

I asked them how many people they know who wanted Germany to lose the war. Their answer was that the question could not arise. Anti-Nazis thought the war was lost from the beginning. I am not so certain; I think this feeling began only in 1941. It was quite an interesting evening, because I learned a lot about conditions here.<sup>78</sup>

Mann describes the Kohlrausches as a German family of the “best bourgeois” type. Probably because Eduard Kohlrausch was Lore’s doctoral supervisor, the letters contain several passages on this family and their predicament:

They asked a lot about old friends, your mother, E and all your family and their attitude towards what happened to the Jews is the same as ours... Of course we avoided the purely political topics, - their wounds are too open, though insofar as Nazidom is concerned there did not appear to be any difference of opinion. What I mean is their condemnation of Nazidom is loud and largely genuine, particularly insofar as Jews are concerned, where particularly Mrs K.’s attitude was unambiguous.<sup>79</sup>

However, the basic difference of perspective between Jewish and non-Jewish Germans appears:

But the hopelessness of their situation is overpowering and my feeling also is that they make a sharp distinction between Nazis and the German people (including the *Wehrmacht* [i.e. the ordinary German military]) which I cannot accept and which we did not discuss. They did say, however, that there were so very few Nazis! It is a wall of protection and justification which they build for themselves.<sup>80</sup>

It may be that Mann gave Kohlrausch somewhat of a free pass, perhaps as Kohlrausch had taken some early steps to curb antisemitic excesses while Dean of the Law Faculty in Berlin (including a letter to Adolf Hitler in 1933 protesting the excesses of National Socialist student groups against Jews and burning books).<sup>81</sup> However, Kohlrausch was not a straightforward character, and may not have been completely straight with Mann. The leading study by Holger Karitzky concludes that Kohlrausch’s conduct through the years of the National Socialist regime were characterized by “ambivalence, changeability, incoherence, and transformative

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with suspicion due to his former involvement with the Social Democrat Party (SPD): see Anna-Maria von Lösche, *Der nackte Geist: Die juristische Fakultät der Berliner* (Mohr Seibek 1999), 237, 350.

<sup>78</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>79</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>80</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>81</sup> See <https://perspectives.ushmm.org/item/telegram-regarding-the-action-against-the-un-german-spirit> (last accessed 16 March 2023).

capacity.”<sup>82</sup> Kohlrausch’s career had already stretched over the German Empire, Weimar Republic and National Socialist period; with the end of the latter, Kohlrausch set about continuing career “as uninterruptedly as he had in 1933”:<sup>83</sup>

He was considered—and considered himself—a renowned expert who would be needed by the Allies (including the Soviets) for criminal law reform, and to a significant degree pushed forward his views in relevant commissions. But when his (generally known and initially undisputed) membership in the Gürtner Criminal Law Commission became a subject of political evaluation (possibly due to the emerging Cold War), he was relieved of his duties; tirelessly striving for his rehabilitation, he died in early 1948.<sup>84</sup>

For criminal law professors, these years were a time of “extreme uncertainty and high mobility under difficult conditions,” as they were “concerned about uncertain career prospects, handicapped by denazification proceedings, and limited by precarious institutional settings.”<sup>85</sup> Although they were certainly no worse off than the rest of the population, their living and working conditions were perhaps subjectively experienced as particularly difficult by this highly privileged social group.<sup>86</sup>

Mann describes his contact with the Heidelberg law professor and later politician Eduard Wahl:

He is in a poor state. He is reinstated as Professor in Heidelberg; although he was a party-member (involuntarily, so he says), he was denazified on account of his close connexion with the events of July 1944 [i.e. the plot by German military leaders to assassinate Hitler]. He lost his wife and now lives with his mother-in-law [...] who looks after his three little girls of 6, 4 and 2. The youngest seems to be in very poor condition because of undernourishment and I gave him a few things which almost made him cry, and me too. It is terribly hard.

He is a real German, though, with that typical *Wehleidigkeit* [self-pity] and incapacity of seeing or believing in the suffering of others. He is violently anti-Russian and proud of the achievements of the Germans in many ways and I am certain he would gladly give a second Hitler another chance. But in

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<sup>82</sup> Holger Karitzky, *Eduard Kohlrausch: Kriminalpolitik in vier Systemen—Eine strafrechtsgeschichtliche Biographie* (Berliner Juristische Universitätschriften, Strafrecht 15, 2002), 70, cited in Thomas Vormbaum, ‘Eduard Kohlrausch (1874–1948) Opportunismus oder Kontinuität?’ in Stefan Grundmann and others(eds), *Festschrift 200 Jahre Juristische Fakultät der Humboldt-Universität zu Berlin: Geschichte, Gegenwart und Zukunft* (De Gruyter 2010) 525.

<sup>83</sup> Ibid 526.

<sup>84</sup> Ibid.

<sup>85</sup> Petra Gödecke, ‘Criminal Law after National Socialism: The Renaissance of Natural Law and the Beginnings of Penal Reform in West Germany’ in Richard F. Wetzell (ed), *Crime and Criminal Justice in Modern Germany* (Berghahn Books 2014), 280. <https://library.oapen.org/bitstream/handle/20.500.12657/29607/1000326.pdf;jsessionid=E94A163712F8684F02DBD300D1086CA1?sequence=1>.

<sup>86</sup> Ibid.

spite of all this it would be nonsensical to call him a Nazi, - his brother, a lunatic, was involved in September 1941 and this, probably, opened his eyes. He always was and still is an odd fellow, but quite likeable, very intelligent and from my point of view interesting, because he told me many things... I cannot help saying the utter hopelessness pervading this man made a great impression on me and, since I am weak, evoked my sympathy.<sup>87</sup>

Consistent with this attitude, in 1949 Wahl became a politician in Konrad Adenauer's government and was an active member of the so-called *Heidelberger Juristenkreis*, which lobbied for amnesty for Nazi war criminals in the first half of the 1950s under a policy of drawing a *Schlussstrich* ["closing line"] under the Nazi past.<sup>88</sup>

Perhaps the most moving recollection is about a family friend called Lydia. Unfortunately, I could not decipher much of the passage. The upshot is: "I could write volumes about Lydia who is the only real anti-Nazi (as opposed to non-Nazi) I have met here."<sup>89</sup> Lydia was apparently suspected of being a *Mischling* (a person of mixed Jewish and German descent), though it appears from context that she was not. Mann writes of her: "She does not complain about anything, but managed quite well (on RM 200 a month) and is happy that the war is lost."<sup>90</sup>

This is a powerful litmus test and, perhaps (still) identifying as a German, Mann has mentioned it twice in the above passages: from the point of view of any given person, was Germany "liberated" from a vile regime, or was it "defeated"? Even today, among third-generation beneficiaries of democratic rule in Germany, this debate can escalate quickly. It seems to be emotionally challenging for a great number of Germans to identify with the Allies (*qua* "liberators") against their own grandparents, despite the greater degree of ideological alignment with the former.<sup>91</sup>

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<sup>87</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984. I am unsure of the reference to September 1941, but suspect it is to events in Operation Barbarossa in the East. I am also unsure whether the brother was a "lunatic" in the sense of being a Nazi or more literally.

<sup>88</sup> See further Philipp Glahé, 'The Heidelberg Circle of Jurists and Its Struggle against Allied Jurisdiction: Amnesty-Lobbyism and Impunity-Demands for National Socialist War Criminals (1949–1955)' (2019) 22(1) *Journal of the History of International Law / Revue d'histoire du droit international* 1. [https://brill.com/view/journals/jhil/22/1/article-p1\\_1.xml](https://brill.com/view/journals/jhil/22/1/article-p1_1.xml).

<sup>89</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>90</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>91</sup> Anecdotally, I have been told, unsolicited, that the Second World War was "all the Allies' fault"—that "we would have taken care of Hitler eventually". In my experience, such conversations tend to crop up after a certain time, as a friendship evolves. Perhaps they are to test the waters; in most cases, the budding friendship has not survived this fundamental difference of perspective and opinion. In other cases, where both parties have been willing to invest the effort, a deeper friendship has blossomed which is based on honesty, empathy, and even solidarity as joint heirs of a traumatic past (albeit with very different inheritances).

The attitude in the decades immediately post-War was clear: Germany had been defeated. This was also the position taken by the Allies in 1945.<sup>92</sup> In the 1980s the official line changed when the Federal Republic of Germany's President Richard von Weizsäcker adopted a liberation narrative of the Allied victory.<sup>93</sup> From that point, it might seem that all “good” Germans are “Lydias” now. The truth of it is more subtle, however. Although it is more morally comfortable for democratically-minded Germans to feel society of mind with the Allies than with National Socialist Germany, the liberation narrative interacts with German victimhood narratives in problematical ways, as it posits a gap between the populace (as “victims”) and their government that is pure fiction.<sup>94</sup>

Contemporary opinion polls suggest that something is going quite wrong. In 2020, a poll run by *Die Zeit* found that more than half of Germans believe that a “few criminals” instigated the Second World War and perpetrated the Holocaust.<sup>95</sup> This is, of course, total nonsense, perhaps best illustrated in the recent demolition of the “innocent *Wehrmacht* myth” (to which Kohlrausch already subscribed).<sup>96</sup> In Austria and the former East Germany, the story is more complex still: in the latter, the official line was that the German Democratic Republic was the heir to the anti-fascist resistance and that its citizens were “the good Germans”.<sup>97</sup> In Austrian historiography, much has been made of the *Anschluss* [annexation] and the view that the

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<sup>92</sup> See, for example, US 740.00119 Control (Germany)/4–2645, *Directive to Commander in Chief of United States Forces of Occupation Regarding the Military Government of Germany*, <https://history.state.gov/historicaldocuments/frus1945v03/d351#:~:text=Germany%20will%20not%20be%20occupied,just%20but%20firm%20and%20aloof..>

<sup>93</sup> See “Excerpts from Speech by German President” (NY Times, 9 May 1985), <https://www.nytimes.com/1985/05/09/world/excerpts-from-speech-by-german-president.html>.

<sup>94</sup> A very competent op-ed treatment of the problematic is found in James Angelos, ‘Was Nazi Germany Defeated or Liberated? Germans Can't Decide’ (NY Times, 8 May 2021), <https://www.nytimes.com/2021/05/08/opinion/germany-v-e-day-liberation-nazi-history.html> accessed 26 April 2023.

<sup>95</sup> See Christian Staas, ‘Das Ende der Selbstgewissheit’ (Die Zeit, 28 April 2020), <https://www.zeit.de/2020/19/erinnerungskultur-nationalsozialismus-aufarbeitung-deutschland-rechtsextremismus-umfrage/komplettansicht> accessed 26 April 2023..

<sup>96</sup> This is the myth that the “ordinary” German soldiers were largely ignorant, and innocent, of the atrocities committed by the SS and their ilk. See, eg, DA Harrisville, *The Virtuous Wehrmacht: Crafting the Myth of the German Soldier on the Eastern Front, 1941-1944* (Cornell University Press 2021); Hannes Heer and others, (eds), *The Discursive Construction of History: Remembering the Wehrmacht's War of Annihilation* (Palgrave-Macmillan 2008).

<sup>97</sup> See, eg, Edgar Wolfrum, ‘Geschichte der Erinnerungskultur in der DDR und BRD’ (Bundeszentrale für politische Bildung, 26 August 2008), <https://www.bpb.de/themen/erinnerung/geschichte-und-erinnerung/39814/geschichte-der-erinnerungskultur-in-der-ddr-und-brd/#node-content-title-2> accessed 26 April 2023. Anecdotally, this attitude remains widespread—along with the non sequitur that “if we were anti-fascist, we cannot be anti-Semites” even while espousing revisionist and otherwise dubious opinions. This is, in my view, part of what is enabling the rise of contemporary right wing extremism in the former East.

Austrians were “Hitlers first victims”, cancelling out their active participation.<sup>98</sup> In the past decades, a kind of resentment has become increasingly evident in the former West, too.<sup>99</sup> Alan Posener points to the rhetoric of Pope Benedict XVI which casts the German people as an unwitting instrument of the Nazis rather than as a political community committed to its government’s course of action. This in turn bolsters the view that “enough is enough” and that “too much self-examination and breast-beating somehow damages the German psyche, that it is time for a new self-confidence, that the nation needs to see the Nazi crimes in perspective.”<sup>100</sup>

Another founding myth of the *Bundesrepublik* is of the so-called “rubble women” (*Trümmerfrauen*) who cleared the German cities of rubble to be used in reconstruction. In fact, this myth is not only inaccurate but positively misleading. As Leonie Treber has demonstrated, most of the work was in fact done by men and machines. Most of the work was done as a form of punishment for National Socialist criminals, although a few volunteers (who were paid with extra food rations) of both sexes were employed as well.<sup>101</sup> The campaign to present these women as heroes of the German post-war miracle began already in 1945 and 1946, while Mann was still in Berlin; however, those who did so were either being punished for their political activities or were doing so out of economic necessity (sometimes because their accounts had been frozen for their political involvement). This explains Mann’s otherwise jarring comment in a letter to Lore from Berlin:

Incidentally, a sight typical of Berlin and most pleasant for my eyes is a horde of women clearing away *débris* in terrible heat, - these are functionaries of *NS Frauenschaft*. If only one could be certain that the right ones have [been] selected, that justice has been done. I know that denunciations are so numerous that there is no certainty on this point.<sup>102</sup>

This reminds us that we must be sensitive to the ambiguity of it all. Mann recounts his meeting with a family called the Plochmanns in 1946:

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<sup>98</sup> See Julia Hitz, ‘Austria Faces Up to Nazi Past’ (*Deutsche Welle*, 10 December 2021), <https://www.dw.com/en/austria-faces-up-to-nazi-past-in-auschwitz/a-59471005> accessed 26 April 2023. See also Klaus Hödl, “Jewish Studies without the ‘Other’” in Reuveni and Franklin, *The German-Jewish Past* (n 8) 122. The admission by Austrian political leaders that Austrians had, indeed, been actively involved in the Holocaust only occurred in the 1990s.

<sup>99</sup> See, eg, Emily Schultheiss, ‘Teaching the Holocaust in Germany as a Resurgent Far Right Questions It’ (*The Atlantic*, 10 April 2019), <https://www.theatlantic.com/international/archive/2019/04/germany-far-right-holocaust-education-survivors/586357/> accessed 26 April 2023.

<sup>100</sup> Alan Posener, ‘Don’t let Auschwitz be forgotten’ (*The Guardian*, 27 January 2010), [https://www.theguardian.com/commentisfree/belief/2010/jan/26/auschwitz-jews-germany-islam?CMP=gu\\_com](https://www.theguardian.com/commentisfree/belief/2010/jan/26/auschwitz-jews-germany-islam?CMP=gu_com) accessed 26 April 2023.

<sup>101</sup> See Leonie Trebers, *Mythos Trümmerfrauen: Von der Trümmerbeseitigung in der Kriegs- und Nachkriegszeit und der Entstehung eines deutschen Erinnerungsortes* (Klartext Verlag 2015), also printed under the same title in shorter form by the Bundeszentrum für politische Bildung (Schriftenreihe 1655), [https://www.bpb.de/system/files/dokument\\_pdf/Textauszug\\_Mythos%20Tr%C3%BCmmerfrauen.pdf](https://www.bpb.de/system/files/dokument_pdf/Textauszug_Mythos%20Tr%C3%BCmmerfrauen.pdf).

<sup>102</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

They are very nice people, and Mrs P. has particularly impressed me. I am certain that without her the husband would have gone down the drain a long time ago; it is curious that everywhere women are so much stronger than men. They did not complain about the loss of most of their property as about food. They realise that this and many other consequences of the war must not only be borne, but are justifiable and even just. But, as I have said before, it is his position that causes the trouble. I know he did join the party and he says himself others may have had greater strength of character. But it meant so little. He was no Nazi, and although he would have been open to severe blame if he had joined at an earlier date and although he must even be punished for having joined in 1943 or so, I cannot help feeling that it is just silly to debar him from useful work more than a year after the end of the war.<sup>103</sup>

Any project on a society-wide scale lets some of the worst offenders go and sanctions those who really should be allowed to get on with their lives. The problem, Mann concluded, is that the mechanical test of “member or non-member” was too superficial a methodology for rooting out the National Socialist element from German society:

In the later years of the regime things were by far too complicated for such crude distinction. [T]hey were not all Nazis in the real sense of the word. But of course they were German nationalists, “patriots”, militarists, soldiers, and it is for this reason that Germany cannot be kept in bondage, - and the “good Germans”, as e.g. Plochmann, will agree. If you think of Kohlrausch you will see what I mean. It is an impossible problem, and the only solution is: control at the top, but let them live their lives. *Forget the past except insofar as the real criminals are concerned. These should be hanged. They still amount to many hundred thousand.* And in my view they include those who brought the regime into power, but not those who were or became *Mitläufer* [i.e. those complicit but not active]. There were too many of them, and this is the practical difficulty. The *Lydias* are rare. And the tantalising trouble is that, as everybody will tell you, the real Nazis are to a large extent still in their positions. Which is an additional reason for depriving “denazification” of all sense.<sup>104</sup>

Lest Mann be misunderstood, it bears repeating: in this passage, he both (i) calls for a widespread amnesty and (ii) calls for the execution, by hanging, of “many hundred thousand” individuals. That never happened. The modern Germany we know is a product of letting those many hundred thousand criminals resume their lives, careers, and family roles.

## VI. A Contested Work in Progress

Although it is uncomfortable to say it out loud, modern Germany is a product of this past. Mann’s “many hundred thousand” came from all walks of life—including academics. For several decades, this was intentionally ignored—even as the official project of overcoming the

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<sup>103</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>104</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984. Emphasis mine.

past through building a culture of remembrance was launched. In a sense, perhaps the *Erinnerungskultur* was the *quid pro quo* for the desired *Schlussstrich*: stylized remembrance, focused on a “few criminals” and divorced from the lived realities of the National Socialist era.

Perhaps nothing is more illustrative of this than the *Deutscher Historikertag*, the leading annual historical conference in Germany, held in Frankfurt in 1998. One of the panels dealt with the role of leading German historians in the Third Reich. The upshot was that the luminaries of the historical academy had been more deeply implicated in the regime than they had let on. They had been silent or even obscured their involvement. While this is unsurprising in itself, the extent of the problem, and its implications for the historiography of what had been written about the Third Reich, sent shockwaves throughout the German historical academy. In parallel developments, a seminal publication of 1997 by Saul Friedländer brought, to a unique extent, the Jewish perspective into the historical narrative for the first time.<sup>105</sup> As Volkov explains, even German historians concerned with antisemitism had excluded the Jewish (“victim”) perspective from scholarly studies—on the grounds that it overshadowed academic rigour.<sup>106</sup>

Why did this occur only in 1998? The “second generational” change played an important role, as Hannah Feesche writes.<sup>107</sup> In Germany, the teacher-student relationship is peculiarly characterized by dependency and patronage; this discouraged critical questioning.<sup>108</sup> By 1998, most of the offending historians were dead, such that reckonings could be made without the appearance of a personal denunciation. Reunification in 1990 had brought a new set of historical sources and points of comparison. As Max Planck said of the sciences, historiography also advances one funeral at a time.<sup>109</sup> According to Volkov, “[o]nly a younger generation of historians finally learned to listen to the Jewish voice and found it advantageous for their

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<sup>105</sup> Saul Friedländer, *Nazi Germany and the Jews: The Years of Persecution, 1933–1939* (HarperCollins 1997); see also Saul Friedländer, *Nazi Germany and the Jews: The Years of Extermination, 1939–1945* (HarperCollins 2007).

<sup>106</sup> See Martin Broszat and Saul Friedländer, ‘Um die Historisierung des Nationalsozialismus. Ein Briefwechsel’ (1988) 36 *Vierteljahresheft für Zeitgeschichte* 339.

<sup>107</sup> Hannah Feesche, ‘Warum erst jetzt?’ (Göttinger Institut für Demokratieforschung, 22 September 2014), <https://www.demokratie-goettingen.de/blog/warum-erst-jetzt> (last accessed 1 September 2022), translation my own.

<sup>108</sup> Of the Austrian universities, Klaus Hödl explains that a “secluded intellectual atmosphere” prevails in which “scholarly innovations occur not because of—but rather despite—given structures.” See Klaus Hödl, ‘Jewish Studies without the ‘Other’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 123. Hödl was describing an incident at the Karl-Franzens-Universität in Graz, where I spent an exchange summer in 2005.

<sup>109</sup> “A new scientific truth does not triumph by convincing its opponents and making them see the light, but rather because its opponents eventually die, and a new generation grows up that is familiar with it.” Max Planck, *Scientific Autobiography and Other Papers* (Philosophical Library 195), 33, 97.



work.”<sup>110</sup> This generation in turn made genuine and extensive efforts to unravel the silence they confronted as teenagers, and deliver on the promise of a genuine culture of remembrance. However, their efforts remain incomplete: as a mentor of mine once said, “*wir sind auf halber Strecke geblieben*”.<sup>111</sup> There are also blind-spots in the post-war generation’s view of German-Jewish relations, too. In many respects, a second tranche of real work is only just beginning now. This position frames our investigation of Mann, because it is this context in which we are writing about him and his legacy.

### A. Complicated, with Highs and Lows

Despite the policy of shining light in dark corners [*Aufklärungspolitik*, where *Aufklärung* means “clarification” and “enlightenment”], a typical poll finds that almost half of young Germans report knowing little about the Holocaust; in Austria, 12% of young people said they had never heard of the Holocaust and four out of 10 Austrian adults said that they knew “just a little” about it.<sup>112</sup> German Foreign Minister Heiko Maas rightly declared this ignorance to be “dangerous”.<sup>113</sup> It shows that the school-based approach to dealing with the past has not been effective. Recently, we have witnessed the rise of the New Right in Germany, as elsewhere, and a perceptible shift in the public debate about the past. This is typified by the rise of the populist party *Alternative für Deutschland* (AfD), whose Björn Höcke called for a “180 degree turn in the policy of remembrance” in a 2017 speech:

We Germans, our people, are the only people in the whole world that has planted a memorial of shame in the heart of its capital city. And today we are not in the position to grieve our own victims [i.e. fallen *Wehrmacht* soldiers]. Instead of bringing the next generation in contact with the great philanthropists, the renowned, world-changing philosophers, the musicians, the genius explorers and inventors, of which we have so many... German history is made mean and ridiculous. And this stupid policy of overcoming the past [*Bewältigungspolitik*] lames us even more than in Franz Joseph Strauß’s times. We need nothing short of a 180 degree turn in the policy of remembrance. It cannot, it must not, and it will not continue so. There is no moral duty of self-nullification.<sup>114</sup>

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<sup>110</sup> Volkov, ‘Rewriting German History’ (n 13) 18.

<sup>111</sup> Literally, “we got stuck halfway”. My thanks to Dr. Kurt Husemann for this, and many other insights that have made my relationship with Germany both deeper and more positive.

<sup>112</sup> Richard Allen Greene, ‘A Shadow Over Europe: Antisemitism in Europe’ (CNN, 2018) <https://edition.cnn.com/interactive/2018/11/europe/antisemitism-poll-2018-intl/> last accessed 26 April 2023.

<sup>113</sup> Heiko Maas, ‘Das Unwissen der jungen Deutschen ist gefährlich’ (*Die Welt*, 27 January 2019), <https://www.welt.de/debatte/kommentare/article187748332/Heiko-Maas-Das-Unwissen-der-jungen-Deutschen-ist-gefaehrlich.html> accessed 26 April 2023.

<sup>114</sup> Björn Höcke, [https://www.zeit.de/news/2017-01/18/parteien-die-hoecke-rede-von-dresden-in-wortlaut-auszuegen-18171207?utm\\_referrer=https%3A%2F%2Fwww.google.com%2F](https://www.zeit.de/news/2017-01/18/parteien-die-hoecke-rede-von-dresden-in-wortlaut-auszuegen-18171207?utm_referrer=https%3A%2F%2Fwww.google.com%2F).

This attitude is not, however, new: the speech itself calls back to Strauß, a conservative politician from the south, who in 1969 called for an end to the “eternal *Vergangenheitsbewältigung* as a societal task of perpetual atonement” and the “cult of guilt”.<sup>115</sup> Posener describes Strauß’s Germany, to which his father returned in the 1960s, as an uncomfortable place for Jews.<sup>116</sup> The difference is that we are unaccustomed to hearing such sentiments expressed in public discourse after a decade or two of thinking the job was done.

In view of these continuities, some modern scholars fundamentally doubt the sincerity of the post-War project. Samuel Salzborn, for example, calls it the country’s “biggest lie”.<sup>117</sup> According to Salzborn’s analysis, invocations of the standard formulae are undermined by private denial, relativization, and counter-narratives of German victimhood that are grossly miscalibrated. Over the decades, old structures of thinking about Jews have been remarkably persistent, and they are working their way further and further into the mainstream today.<sup>118</sup> Beyond the AfD, resurgence in antisemitic tropes in the context of the COVID-19 pandemic,<sup>119</sup> for example, again revealed that they are a fixture of German political culture.<sup>120</sup>

This manifests in what Salzborn calls “*Schuldabwehrantisemitismus*” [lit. “guilt-avoidance antisemitism”]. His argument is an exegesis on a familiar theme in Holocaust studies since Theodor Adorno’s essay observing the role-reversal of victim and perpetrator.<sup>121</sup> The psychological response to guilt is guilt-avoidance [*Schuldabwehr*], and the best way to do this is to find reasons that justify the wrong done to the victim while laying emphasis on the perpetrator’s own suffering. The desire to avoid guilt is particularly complex when it is a

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<sup>115</sup> See Robert D. Meyer, “Der ‚Schlussstrich‘ hilft dem Ressentiment Die NS-Zeit als Vogelschiss der Geschichte zu betrachten, ist Beschlusslage der AfD“ (ND Aktuell, 15 June 2018), <https://www.nd-aktuell.de/artikel/1091312.geschichtspolitik-der-afd-der-schlussstrich-hilft-dem-ressentiment.html> accessed 26 April 2023.

<sup>116</sup> Alan Posener, ‘No More Mr Nice Guy: Questioning the Ideal of Assimilation’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 5.

<sup>117</sup> Samuel Salzborn, *Kollektive Unschuld: Die Abwehr der Shoah im deutschen Erinnern* (Hentrich und Hentrich Verlag Berlin 2020).

<sup>118</sup> See, e.g., Monika Schwarz-Friesel, Evyatar Friesel and Jehuda Reinharz, *Aktueller Antisemitismus – ein Phänomen der Mitte* (De Gruyter 2010).

<sup>119</sup> Edna Bonhomme, Germany’s Anti-vaccination History Is Riddled With Anti-Semitism (The Atlantic, 2 May 2021) <https://www.theatlantic.com/health/archive/2021/05/anti-vaccination-germany-anti-semitism/618777/> accessed 16 April 2023.

<sup>120</sup> See Jewish World Congress, “Jeder vierte Deutsche denkt antisemitisch” (*Süddeutsche Zeitung*, 23 Oktober 2019), <https://www.sueddeutsche.de/politik/antisemitismus-deutschland-juedischer-weltkongress-1.4652536> (last accessed 30 May 2023).

<sup>121</sup> Theodor Adorno, “Schuld und Abwehr” in Theodor Adorno, *Soziologische Schriften II.2* (Suhrkamp 2003 [1955]); see also Michael Höttemann, “Die Abwehr der Antisemitismuskritik Zur Logik, Form und Intention der Solidarisierung mit Günter Grass” in Marc Grimm and Bodo Kahmann (eds.), *Antisemitismus im 21. Jahrhundert: Virulenz einer alten Feindschaft in Zeiten von Islamismus und Terror* (De Gruyter 2018).

collective guilt for which one does not, and indeed should not, feel personal moral responsibility. The impulse to *Schuldabwehr* is, however, utterly corrosive of the very idea of an *Erinnerungskultur*. As Adorno wrote: “the past is no longer safe from the present, which is again dedicated to forgetting in the act of remembering.”<sup>122</sup>

Younger Jewish voices include writers such as Max Czollek, who labels the *Erinnerungspolitik* a “Theatre of Reconciliation”. According to Czollek, Germans carry out ritualized acts of remembrance mainly for the purpose of proving to themselves that they have distanced themselves from the crimes of the National Socialist period. In this stylized process, Jews have a “kind of ideological work” of reassuring the Germans of their own good intentions manifested in the ritualized act of remembering. It is a form of “theatre”, he argues, because the supposed reconciliation is on a public stage in which the relationship to the audience is more important than the relationship to reality.<sup>123</sup>

Elsewhere, Czollek explains that the “German collective” is constructed through a shared desire for normality and positive national pride, citing Max Horkheimer’s observation from the 1960s:

[T]he Germans’ recognition of guilt after the defeat of National Socialism was a splendid process for preserving a *völkisch* feeling of commonality in the postwar period. The main thing was to preserve the We.<sup>124</sup>

Early on in the history of West Germany, in particular, Jewish people were given a role to confirm this national catharsis. But it is a passive role that is fundamentally altruistic. Further, their mere presence suffices: if Jews exist in Germany, National Socialism *must* be a thing of the past.<sup>125</sup> There is no need to engage with Jewish life on its own terms at all.

There is, in my experience, a clear disconnect between the public discourse and the private conversations held in German-speaking Europe. What we are seeing now is nothing but people speaking their private minds in public. This realization has been shocking to me, as I believe it has been to many others. My relationship with Germany began with a school exchange in 2001—in what Alan Posener describes as the high-point of German philosemitism. The *68er*

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<sup>122</sup> Theodor W Adorno, *Minima Moralia. Reflexionen aus dem beschädigten Leben* (Subricamp 1951) 53 cited in Imke Meyer, ‘Ein Schandgesetz erkennt man, nach dem alles angerichtet ist’: Täter-Opfer- Konstellationen in Ingeborg Bachmanns Erzählung ‘Unter Mördern und Irren’ (1998) 31(1) *Modern Austrian Literature* 39, 39.

<sup>123</sup> Max Czollek, *Versöhnungstheater* (Carl Hanser Verlag 2023), 5 (translation my own). In another essay, Czollek refers to Michal Bodemann’s idea of the “theatre of memory”: see Michal Bodemann, *Gedächtnistheater. Die jüdische Gemeinschaft und ihre deutsche Erfindung* (Rotbuch, 1996); Max Czollek (Jon Cho-Polizzi trans.), “Overcoming the Present [*Gegenwärtsbewältigung*]” (2020) 12(2) *TRANSIT* 144.

<sup>124</sup> Max Czollek (Jon Cho-Polizzi trans.), “Overcoming the Present [*Gegenwärtsbewältigung*]” (2020) 12(2) *TRANSIT* 144, 146, citing Max Horkheimer, *Notizen 1950-1969 und Dämmerung. Notizen in Deutschland* (Fischer 1974), 200. Translation in original.

<sup>125</sup> Max Czollek (Jon Cho-Polizzi trans.), “Overcoming the Present [*Gegenwärtsbewältigung*]” (2020) 12(2) *TRANSIT* 144, 146.

generation was ascendant and could now begin the work of *Aufklärung* in earnest. According to Posener, the Jewish Museum in Berlin seemed the ideal flagship for the message:<sup>126</sup>

The permanent exhibition at the Jewish Museum celebrated “2,000 years of German-Jewish history” and the essential message... was reassuring: the Jews aren’t threatening anybody... [A]part from a few dietary quirks and strange rituals... Jews are just like ordinary Germans and always have been. The exhibition said a lot about the contribution of individual Jews to German society—as businesspeople, scientists, politicians, intellectuals, and artists—and almost nothing about Judaism as a religion, or anti-Judaism as a driving force of Western civilization since the earliest days of Christianity. It also said next to nothing about Zionism or about Israel, where German-Jewish life continued 1933 and German Jews played a key role in the formation of the Jewish state.<sup>127</sup>

Posener describes the subsequent phase of the Museum, and the controversies under its second (non-Jewish) director, ultimately leading to his resignation.<sup>128</sup> Posener also tables the very serious proposition that German philosemitism can be, and often is, a kind of “reverse antisemitism”. The negative aspects of “Jewishness” are attributed to Israel, while the “model minority” Western European Jew is idealized as intelligent, industrious, secular, etc—“a better sort of ‘other’ as portrayed by the Jewish Museum.”<sup>129</sup> This ideal is the same one that is weaponized against other groups (such as Turks and Arabs). As Lisa Silverman writes, antisemitism and philosemitism are components of a larger ordering system of Jewish difference that continues to operate in modern Central Europe.<sup>130</sup>

The evolution of popular culture is equally disheartening. In recent decades, a spate of German-language media has been produced which presents a hackneyed view of the past that both emphasizes German victimhood and either ignores or glosses over the presence of Jews in

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<sup>126</sup> I visited this museum as a 17-year-old exchange student. It was a formative experience for me, both in terms of its presentation of Jewish life in Europe and the modern German response to it. I visited with my host mother (a trained historian and *68er*) during a visit to Berlin in 2001. For an exploration of the Jewish Museum, which is run mainly by non-Jews and is an institution of the German state rather than a Jewish organization, see Michal Friedländer, ‘From Object to Subject: Representing Jews and Jewishness at the Jewish Museum Berlin’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 42. Friedländer was behind the controversial, but in my view ingenious, exhibition labelled as a “Jew in a Box” whereby contemporary German Jews volunteered to sit in the museum and answer questions as an inversion (and subversion) of the traditional objectification of Jews in the German museum tradition.

<sup>127</sup> Alan Posener, ‘No More Mister Nice Guy: Questioning the Ideal of Assimilation’ in Reuveni and Franklin (eds), *The Personal, the Historical, and the Making of German-Jewish Memory* (Purdue University Press 2021), 8.

<sup>128</sup> Alan Posener, ‘No More Mister Nice Guy: Questioning the Ideal of Assimilation’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 8. *Inter alia*, the Central Council of Jews in Germany called for the removal of the word “Jewish” in the Museum’s title: <https://twitter.com/zentralratjuden/status/1138364310294540288>.

<sup>129</sup> Alan Posener, ‘No More Mister Nice Guy: Questioning the Ideal of Assimilation’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 8.

<sup>130</sup> Lisa Silverman, ‘Rethinking Jews, Antisemitism and Jewish Difference in Post-War Germany’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 136.

Germany and their position in German society.<sup>131</sup> In a modern Europe, in which large proportions of youth are totally unaware of what really happened, these otherwise hyper-realistic historical dramas play an important didactic function.

Notably, young German Jews like Czollek have different Jewish histories and backgrounds, and (like myself) engage with German-speaking Europe on a different basis to German Jewish émigrés and their descendants. Many of today's German Jews have grandparents, for example, who fought with the Red Army, which changes their perspective considerably. Posener describes their approach as “No More Mr Nice Guy”, and questions the ideal of assimilation fundamentally:

Instead of papering over cultural differences, a Jewish view of Jewish history needs to stress them; needs to stress the strangeness of being Jewish, of being the archetypal Other not only in Christian, but also in Enlightenment thought... Jewish assimilation was a noble enterprise, but it was doomed and, in certain moments, even my father knew that. Writing to his mother from France in February 1935, he says he intends to go to Palestine, because he “can’t always be the little man who apologises for his existence” and that he “cannot imagine passing this fate onto a child—again to love, where he is hated, and to live where he is only tolerated.”<sup>132</sup>

On the German side, too, a new generation is engaging with the past and critically reassessing the whole mess. König's biographical work on Mann is perhaps exemplary of this.<sup>133</sup> It remains to be seen how this next generation discharges its stewardship of the *Erinnerungskultur*. On the one hand, they may feel distant enough from the events of 1933-1945 to approach the matter more objectively: paradoxically, perhaps, *because* they do not feel as burdened by collective guilt, they may be less invested in collective *Schuldabwehr*. Alternatively, they may wish to achieve the *Schlussstrich* sought in the 1950s, and finally succeed.<sup>134</sup>

## B. Israel and Modern European Anti-Semitism

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<sup>131</sup> For example, see this op ed on *Babylon Berlin*: Alan Posener, ‘German TV Is Sanitizing History: A New Wave of Historical Dramas is Telling the Wrong Stories About the Country’s Past’ (Foreign Policy, 9 April 2018), <https://foreignpolicy.com/2018/04/09/dont-mention-the-war-germany-television-holocaust-anti-semitism-babylon-berlin-europe/>.

<sup>132</sup> Alan Posener, ‘No More Mister Nice Guy: Questioning the Ideal of Assimilation’ in Reuveni and Franklin, *The German-Jewish Past* (n 8) 9.

<sup>133</sup> In addition to his chapter in this volume, König is writing a more comprehensive legal biography of Mann as an output of this project.

<sup>134</sup> On the half-life of collective memory and attention, see Cristian Candia, C Jara-Figueroa, Carlos Rodriguez-Sickert, Albert-László Barabási and César A. Hidalgo, “The Universal Decay of Collective Memory and Attention” (2019) 3(1) *Nature Human Behaviour* 82. Biographies seem to survive longest—20-30 years—and music has the shortest shelf-life. Remembering interacts with technologies of recording in interesting ways.

Israel itself is not a major theme in our treatment of Mann or his legacy. There are a few mentions of the State of Israel in his letters; Mann maintained familial and professional connections with people in the country, but was no Zionist. He wrote in 1946 about the position taken by the Jewish Agency *vis-à-vis* the actions of the paramilitary group the Irgun:<sup>135</sup>

No papers have arrived here since Friday. I hope very much that they will be here this morning. I read the Palestine Debate in *The Times*, but could not find that part of Churchill's speech which Pöps mentions in his letter. I share most of the excitement about Palestine, but not all of it. It is quite obvious to my mind that the Jewish Agency has instigated and supports and shields this terrorism which I condemn as severely as I condemned the horrors of the Nazis. So long as this continues, the Jewish Agency, representing terrorism, must share the blame. It is essential to stick to moral values, and if one fails, as the Jewish Agency has done, one forfeits the right to complain.<sup>136</sup>

Elsewhere he wrote of Irgun's bombing of the British military headquarters in Jerusalem at the King David Hotel: "This is very bad indeed. I only hope the Jewish authorities will not try to explain or court sympathy for such a shocking thing."<sup>137</sup> At the time, of course, Mann himself was a uniformed officer in British Army headquarters in Berlin. Perhaps here, again, he felt the two halves of his identity and status in tension.

Even though we might like to avoid it, it is necessary to briefly touch on Israel. Israel provides the ultimate context for Adorno's victim-perpetrator reversal, such that questions of 20<sup>th</sup> century German-Jewish identification and identity interact with modern narratives around the "Israel Question" in complex ways. In particular, because Israel gives critics a plausible basis on which to make arguments about Jews (for example, taking the above, an equivalency between the crimes of the Nazi state and the crimes of para-military organisations that led to the creation of the Jewish state), it provides an ideal rhetorical standpoint from which to make cloaked antisemitic arguments and, simultaneously, criticize those who seek to point out contemporary antisemitism.<sup>138</sup>

At the outset some basic facts must be stated: First, there is room for Europeans of all backgrounds, including Germans, to criticize the Israeli government—and indeed Israeli society, just as they might criticize Jordanian or Costa Rican society. Secondly, many Jews of Mann's generation were critical of Israel and many Jews today are anti-Zionist. It is *per se*

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<sup>135</sup> The official position of the Jewish Agency for Palestine was ultimately more nuanced than this; see eg, *The Jewish Plan for Palestine: Memoranda and Statements Presented to the United Nations Special Committee on Palestine* (United Nations 1947), 32, 41, 264.

<sup>136</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>137</sup> Mann Nachlass, Letter from FA Mann to Lore Mann, undated 1946, RS1000\_NLMann\_0984.

<sup>138</sup> See Michael Höttemann, 'Die Abwehr der Antisemitismuskritik Zur Logik, Form und Intention der Solidarisierung mit Günter Grass' in Marc Grimm and Bodo Kahmann (eds), *Antisemitism in the 21st Century: The Virulence of an Old Hatred in the Era of Islamism and Terrorism* (De Gruyter 2018).

legitimate to take their views into consideration and even marshal them in support of a genuine and principled objection to some feature of Israeli government and society. Thirdly, however, the way that many Europeans choose to engage with the complex situation of Israel and Palestine is a manifestation of latent antisemitism rather than legitimate engagement with the issues.

About a decade ago, Monika Schwarz-Friesel and Jehuda Reinharz analysed some 14,000 letters sent (unsolicited) to the *Zentralrat der Juden in Deutschland* and the Israeli Embassy in Berlin.<sup>139</sup> Their book “meticulously dissects” the components of current German debate and identifies the way that modern criticism of Israel plays out ancient tropes: Jews as parasites, as quintessential “Others,” as Christ-murderers, and even as child murderers in a modern twist on the medieval blood libel.<sup>140</sup> Thomas Kühne summarises:

Traditional clichés... gain traction only through assimilation into current politics, most prominently condemnation of Israel. The conflation of traditional antisemitism (or anti-Judaism) and current anti-Israel expressions is crucial: instead of criticizing aspects of Israeli political behavior, writers deny the legitimacy of Israel altogether, simultaneously holding all Jews (or those in Germany) responsible for Israel’s alleged evil-doing.<sup>141</sup>

My anecdotal experience, sadly, supports this: I have been accused of supporting “child murderers and land thieves” because I was wearing a *kippah* on a Berlin street, by a well-dressed middle-aged German man.<sup>142</sup> (Recall Mann’s fellow theatre-goers). I do not usually wear a *kippah*; I did so for a time in Berlin because the German Government Commissioner on Antisemitism, Felix Klein, had in May 2019 advised Jewish men not to wear them in public in light of a recent spike in antisemitic violence.<sup>143</sup>

The currency of problematic attitudes towards Jews in the educated middle has been well-documented.<sup>144</sup> The same, tired old antisemitic tropes are dressed up as progressive criticism

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<sup>139</sup> Monika Schwarz-Friesel and Jehuda Reinharz, *Die Sprache der Judenfeindschaft im 21. Jahrhundert* (Walter de Gruyter 2013).

<sup>140</sup> Thomas Kühne, ‘Monika Schwarz-Friesel and Jehuda Reinharz, *Die Sprache der Judenfeindschaft im 21. Jahrhundert*’ (2015) 29(2) *Holocaust and Genocide Studies* 301.

<sup>141</sup> *ibid.*

<sup>142</sup> I was asked what the “rag” [*Lappen*] on my head meant, to which I answered “that I am a Jew”. In response, the man told me it meant that I “supported land thieves and child murderers”.

<sup>143</sup> Shaun Walker, ‘Jews in Germany warned of risks of wearing kippah cap in public’ (The Guardian, 26 May 2019) <https://www.theguardian.com/world/2019/may/26/jews-in-germany-warned-of-risks-of-wearing-kippah-cap-in-public> accessed 26 April 2023; ‘German official warns Jews against wearing yarmulkes’ (DW, 25 May 2019) <https://www.dw.com/en/german-official-warns-jews-against-wearing-kippahs-in-public/a-48874433> accessed 16 April 2023 .

<sup>144</sup> Monika Schwarz-Friesel, ‘“Antisemitism 2.0”—the spreading of Jew-hatred on the World Wide Web’ in Armin Lange and others, *Comprehending and Confronting Antisemitism: A Multi-faceted Approach* (De Gruyter 2020); see also Werner Bergmann, *Antisemitism In Europe Today: The Phenomena, The Conflicts* (Jewish Museum Berlin) <https://www.jmberlin.de/en/online-publication-antisemitism-europe-today> accessed 26 April 2023.

of Israel in ways that blur lines between what it means to be “German”, “Jewish”, “Zionist” and “Israeli”. Again, recent data from a sample of European countries illustrates the predicament: (i) nearly one in five polled said that antisemitism in their countries was a response to the everyday behavior of Jewish people; (ii) one in three said that Israel uses the Holocaust to justify its actions (one in five disagreed with this proposition); (iii) one in three said that supporters of Israel use accusations of antisemitism to shut down criticism of Israel, while only one in 10 said that was not true.<sup>145</sup> Within these poll results lies evidence of a “perfidious perpetrator-victim reversal” that places the blame for antisemitism on Jews themselves.<sup>146</sup> It is deployed to give European antisemites a veneer of respectability and helps to square their antisemitism with their professed liberal or progressive world-view.

This makes it imperative that we guard against the “weaponization” of Jewish voices (such as Mann’s) in ways that could play into an antisemitic agenda—or, more saliently, in ways that could play into the *Schuldabwehr* tendencies of Germans or the tendency to divide the world into “good” Jews (those that criticize Israel—best of all by equipping Zionism to Nazism) and “bad” Jews (Zionists). This does not preclude any legitimate avenue of critical engagement with the situation in the Middle East.

## VII. Conclusion

Max Fürst, a German writer and Holocaust survivor wrote: “The role Jewishness plays in my life today can only be attributed to the way it was imposed upon me through Hitler.”<sup>147</sup> I am sure the same could be said of many German Jewish lives, especially those with identities we might label “assimilated”, “secular”, “atheist”, or who converted to another religion. Despite this fact, when writing about these lives today, it is important to explore the “Jewish dimension” with open curiosity.

If we do so in the right manner, it does not reinforce the National Socialist categories. It unlocks the often oft-observed contribution of Jewish people and culture to German-speaking culture and civilization. This is at very real risk of being forgotten. If we write about Mann as an “undifferentiated German”, we push that memory a further inch towards oblivion. More subtly, but just as importantly, if we fail to explore what is *Jewish* about Mann’s “bourgeois German

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<sup>145</sup> Richard Allen Greene, ‘A Shadow Over Europe: Antisemitism in Europe’ (CNN, 2018) <https://edition.cnn.com/interactive/2018/11/europe/antisemitism-poll-2018-intl/> accessed 26 April 2023.

<sup>146</sup> <https://hannah-project.eu/without-israel-there-would-be-no-antisemitism/>.

<sup>147</sup> Cited in Jack Zipes, “The Holocaust and the Vicissitudes of Jewish Identity” (1980) 20(2) *New German Critique* 155, 163.



Jewish milieu”, we fail to understand the *German* culture and civilization to which it made such outsized contributions. Mann had good prudential and intimate psychological reasons to stress that he and his family had a “wholly and firmly German” “cultural status”. To us, in the present day, however, his claim may have to be interpreted in a way that would have surprised Mann and his contemporaries.

It is our job to enquire, because the enquiry itself is the major contribution we can make towards the project of the *Erinnerungskultur*—a project which is for the benefit of Jews generally and of non-Jewish Germans. That project is in a state of transition, and its success is by no means assured. Its demise takes the form of a ritualized theatre in which truths are inverted and narratives are manipulated to serve the psychological needs of those Germans who prefer not to face the difficult historical truth head-on. Unfortunately, evidence is not encouraging that things are developing in a positive direction.

Not only projects with an explicit Holocaust focus are relevant to countering these trends. In fact, the ones that incidentally touch on the historiography of the Holocaust may be even more important to the production of a healthy culture today. This project saw us talk about a German Jew. That forced us to talk about, and indeed argue about, what being a “German Jew” meant then and means now, and whether asking this multi-layered question is even appropriate in a project like this. Our discussions convinced me that this chapter was an important one to write.

In closing, I would like to thank my fellow project members and affiliates, who were exemplary in our discussions on this difficult topic. As foreshadowed earlier, there was a diversity of opinion in our large group—and, as one might expect, some of the starkest differences of opinion were in fact between members of our group who identify as Jewish. It is a small achievement in itself that these debates could be held under the auspices of the Humboldt-Universität zu Berlin and supported by the *Deutsche Forschungsgemeinschaft*.<sup>148</sup> May there be many more in years to come.

## ***Bibliography***

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<sup>148</sup> On the history of the DFG, including its support of various projects on racial pseudo-science and the ethnographic research that supported the Eastern expansion, see: [https://www.dfg.de/dfg\\_magazin/aus\\_der\\_dfg/geschichte/zeit\\_des\\_nationalsozialismus/index.html](https://www.dfg.de/dfg_magazin/aus_der_dfg/geschichte/zeit_des_nationalsozialismus/index.html); <https://www.gepris-historisch.dfg.de/>