



Jack Beatson, Autor des Buches: „Jurists Uprooted - German-Speaking Emigré Lawyers in Twentieth Century Britain“

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Once home, now hell: ‘Was Heimat hiess, nun heist es Hölle.’

At the start of 1933 over three thousand of the practising lawyers in Prussia, nearly 30%, were Jewish or of Jewish descent; in Berlin over seventeen-hundred, more than half.

This exhibition charts the life of fifteen such German lawyers from 1933 through the years of Hitler’s regime and – for those who survived – beyond. Of this small sample one took his own life and three were murdered in concentration camps. The rest escaped to England, America or Palestine. Of the few that after the War returned to Germany, three worked energetically to restore the integrity of its legal system.

Of those who came to England, some rose to the summits of the legal profession. Michael Kerr was appointed to the Appeal Court and became Treasurer of Lincoln’s Inn. Friedrich (Francis) Mann, who first came to notice with *The Legal Aspect of Money* (1938), became a partner in Herbert Smith and rounded off four decades of study and practice with *Foreign Affairs in English Courts* (1986).

Here in the Temple there are men and women still at the Bar and on the Bench who owe debts of deep personal gratitude to the scholars among these exiles who stayed in England, 'to bring in my scientific harvest' as Fritz Schulz (then in Oxford) expressed it, 'storing up winter provision for the future.' Martin Wolff reached England at the height of his career, and in Oxford wrote his classic *Private International Law* (1945). His students included both Francis Mann and Kurt Lipstein. Lipstein became Professor of Comparative Law at Cambridge and a Bencher of Middle Temple. All lawyers know of his *Private International Law* (1976) and of his work, as author and co-editor, on the *International Encyclopaedia of Comparative Law* and on successive editions of *Dicey*; his pupils still speak of him as an extraordinary teacher and friend. Guenter Treitel arrived on the *Kindertransport* as a ten-year-old boy with a label round his neck; he would become the Venerian Professor at All Souls, the author of *Treitel on Contract*.

Among *Dicey*'s other editors was Otto Kahn-Freund, who also joined Middle Temple, held chairs at the LSE and Oxford and was eventually knighted. In March 1933, in the Berlin Labour Court, Kahn-Freund had declared unlawful the dismissal of three radio technicians for being communist party members or supporters. It was an act of courage for which Kahn-Freund was immediately suspended and soon dismissed from the judicial service.

German jurisprudence and legal policy was already being corrupted by theorists such as Carl Schmitt, who wrote in 1934 an article, 'The *Führer* protects the law' and in 1935 chaired a conference on 'The Jewry in Legal Science' in which he claimed that the Jews must be 'eliminated' from German legal life; by fighting the Jews, German lawyers would be doing the work of the Lord. Schmitt's interpretation of the *Ausnahmezustand* (State of Exception), the power of sovereign dictatorship and its creation of a new constitution made him the chief theorist of early Nazism. When, by contrast, the Home Secretary in England claimed in 1942 the right to detain a man

suspected of hostile associations (Robert Liversidge, né Jacob Perlsweig, the son of a rabbi) without disclosing the evidence on which he was acting, – and the House of Lords upheld the Home Secretary's decision, – Lord Atkin was free to give one of the century's most famous dissenting judgments:

In England, amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.

Lawyers without Rights is a sobering exhibition; there is naught for our comfort here. As we hear of the darkness deepening over the Continent, perhaps we might be heartened by such light as still shone, here in England. When Lipstein and his student Michael Kerr were detained as enemy aliens in Bury St Edmunds, it became clear that Kerr would miss his finals at Cambridge. Lipstein reconstructed the Roman Law paper from memory, Kerr wrote his answers on lavatory paper with a borrowed pen, and Lipstein awarded them a first.

The German-Jewish lawyers who came to England inspired and informed half a century of English lawyers and English law. When Germany became a hell, England offered a home, whose hospitality these lawyers repaid with the scientific harvest of their whole life's work.

For details of the German-Jewish lawyers mentioned above, J. Beatson and R. Zimmermann, *Jurists Uprooted: German-speaking Émigré Lawyers in Twentieth-century Britain*, Oxford 2004.