ERNST J. COHN
BIOGRAPHY AND FAMILY MEMOIR

by

Henry J. Cohn
Dedicated to

Loretta, Carolyn,

Katy, Adam and Rosie

for whom this book was written
For the great majority of people, the years of their youth are the foundation on which their life is built. They almost always determine the cultural circle to which an adult is committed. That would certainly have been the case for me, had not the events of 1933 separated me with rapid and raw force from that German culture in which my ancestors had found their home for centuries.
## Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>1</td>
</tr>
<tr>
<td>Family Background and Early Education</td>
<td>3</td>
</tr>
<tr>
<td>Academic Career</td>
<td>10</td>
</tr>
<tr>
<td>The Cohn Affair (<em>Fall Cohn</em>)</td>
<td>15</td>
</tr>
<tr>
<td>Passage to England</td>
<td>28</td>
</tr>
<tr>
<td>World War II</td>
<td>37</td>
</tr>
<tr>
<td>The Rewards of Peace</td>
<td>43</td>
</tr>
<tr>
<td>The Marriage of Legal Practice and Scholarship</td>
<td>58</td>
</tr>
<tr>
<td>Politics</td>
<td>73</td>
</tr>
<tr>
<td>Judaism and the Jewish Community</td>
<td>79</td>
</tr>
<tr>
<td>Appreciation</td>
<td>87</td>
</tr>
<tr>
<td>Appendices</td>
<td>95</td>
</tr>
<tr>
<td>Bibliography</td>
<td>114</td>
</tr>
<tr>
<td>Acknowledgements</td>
<td>126</td>
</tr>
</tbody>
</table>
Foreword

My father, Ernst Joseph Cohn (1904–1976), Barrister-at-law, Dr.iur. (Breslau), Dr.habil. (Frankfurt am Main), Ph.D (London), LLD (London), Dr.iur. h.c. (Cologne), Dr.iur. h.c. (Frankfurt), O.B.E., was an academic prodigy, an internationally acclaimed scholar who published more than 200 books and articles, a brilliant, prolific and witty lecturer, a successful barrister, a Jew whose whole life was governed by the ethics of his religion, and a man of warmth who attracted a wide circle of friends and admirers. Additionally, his story deserves to be told for his family—and indeed for others who may be interested—as someone who lived through turbulent times, experiencing two world wars, the economic crises of the Weimar Republic, and persecution at the hands of the Nazi regime.

This account is based not only on the Cohn and Rosenbaum family papers (CFP and RFP), public archives, and publications listed at the end, but on my recollections of what he said and did. These memories come with the caveat that a witness of events between 44 and 80 years ago may well have a faulty recall. Nevertheless, since I have excluded memories that are contradicted by other evidence, what remains—and is indicated for the wary reader by italic text—are conversations and events which are very vivid in my mind.

After a chronological biography there will be separate sections on Ernst’s scholarly and practical legal work, his political views, and his devotion to Jewish study and communal activity, followed by an appreciation. The appendices are a small selection of short extracts from some of his less technical writings and from other sources conveying the atmosphere of his times.

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1 Reference works and standard books on German history are not cited. Abbreviations for archives and newspapers are resolved in the relevant parts of the bibliography.
The titles of Ernst’s writings, cited by dates, may be found in the bibliography.
Simplified family tree

Bernhard Cohn (1848-1926) m. Emilie Grassheim (1842-1913)
- Jacob Cohn (1868-1959) m. Martha Glaubitz (1872-c.1940)
  - Max Cohn (1871-1949) m. Charlotte Russ (1872-1944)
    - Henry Cohn (1875-1929) m. Dora Kirstein (1878-1953)
      - Carl Cohn (1879-1954) m. Agnes Kallman (1890-1976)
    - Richard Cohn (1889-1960) m. Stella Davidson (1892-1967)
      - 3 daughters, 2 other sons
  - Ernst J. Cohn (1904-1976) m. Marianne Rosenbaum (1914-2009)
    - Hans Cohn (1916-2004)
      - Fritz Cohn (c. 1918-c.2008)

- Franz Cohn (1893-c.1942) m. Ernestine Guttfeld (1892-c.1942)

- Max Cohn (1871-1949) m. Charlotte Russ (1872-1944)
  - Ernst J. Cohn (1904-1976) m. Marianne Rosenbaum (1914-2009)
    - Hans Cohn (1916-2004)
      - Fritz Cohn (c. 1918-c.2008)

- Jacob Cohn (1868-1959) m. Martha Glaubitz (1872-c.1940)
  - Max Cohn (1871-1949) m. Charlotte Russ (1872-1944)
    - Ernst J. Cohn (1904-1976) m. Marianne Rosenbaum (1914-2009)
      - Hans Cohn (1916-2004)
        - Fritz Cohn (c. 1918-c.2008)
Family Background and Early Education

As a small child Ernst could not pronounce his name and called himself Enti, which he was thereafter proud to acknowledge as his family nickname. His English friends later called him Ernie or by the initials with which he usually signed his name, E.J. During World War II Ernest was sometimes used by others. He was born on 7 August 1904 in Breslau (now Wrocław, Poland) in the province of Lower Silesia, the more southern of the two Silesias, at the south-eastern tip of the then German Empire. His parents were Max Cohn (1871–1949) and Charlotte Cohn, née Russ (1872–1944). Max was born in the small town of Reisen (now Rydzyna in Poland) in the Prussian province of Posen (Poznan), some 100 kilometres north of Breslau. Max’s merchant father

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2 I never called him Ernst; people did not then use their parents’ first names.
Bernhard, who later took the first name Samuel, and mother Emilie née Grassheim had six sons and three daughters who survived into adulthood and one son who died young. In the 1890s Max and several of his brothers moved to Breslau. From the middle of the nineteenth century, tens of thousands of Jews had left Posen, which had been under Polish rule until 1792, for larger German cities or the United States. The parents and the rest of the family followed to Breslau shortly afterwards, except for brother Henry who in 1890 had emigrated aged 15 to Philadelphia, and after whom I was named.

By the early twentieth century Max and two of his brothers had set up Max Cohn & Cie, a large and successful wholesale haberdashery in the centre of Breslau. The family lived at 16 Wölfstrasse, a small street in the new southern suburbs where the families of four of Max’s brothers and many of Breslau’s other Jews also resided. Breslau had some 30,000 Jews by 1930, or 5% of the city’s population of c. 600,000; it was the third largest Jewish community in the Empire after Berlin and Frankfurt. Of the many Breslau synagogues, the Liberal New Synagogue was the largest in Germany.
The largest Orthodox ‘Stork’ Synagogue, built in 1829 and now restored, occupied a central position in town very close to the Max Cohn store. One fifth of the Jews were recent immigrants from Poland and lived mostly in the poorer suburbs, the rest were either of families long resident in Breslau and Silesia, or, like the Cohns, from the formerly Polish provinces seized by Prussia in the late eighteenth century. Jews, including assimilated or converted Jews, had prominent roles in the cloth and other trades, as owners of department stores and manufactures, or as doctors, lawyers and university members, and played a large part in the city’s cultural life. Ernst proclaimed his lifelong allegiance to his home town:³

For the great majority of people, the years of their youth are the foundation on which their life is built. They almost always determine the cultural circle to which an adult is committed. That would certainly have been the case for me, had not the events of 1933 separated me with rapid and raw force from that German culture in which my ancestors had found their home for centuries of development. Nevertheless, my home province most strongly influenced, indeed determined, the path that I took. Breslau gave me the two lodestars by which ever since I have tried to direct my life’s path: Judaism and legal science.

³ Translated from Cohn (1973b), 109.
Charlotte and Max Cohn

Ernst’s mother, Charlotte, was the daughter of Isidor Russ, a furrier in Glogau, also in Lower Silesia and about 120 kilometres north-west of Breslau and half that distance south-west from Reisen. Charlotte worked full time in the family business and she and Max had no children besides Ernst. Nothing more can be discovered for certain about her family, but they probably included Ernst’s cousin Hans Schiftan and family who escaped to Liechtenstein, where they lived during and after World War II. Their daughter Inge moved to Stuttgart when she married Wolf Scriba and raised their own two children. As a young boy Ernst feared family visits to Tante Pitsch-Patsch, a surname meaning drip-drop, probably given to her husband’s family by an antisemitic Prussian official a century earlier. This aunt, likely to have also been a relative of Charlotte, had a dread of dirt. As soon as they entered the door, she made Ernst wash his hands, and again every hour until it was mercifully time to go home.
Ernst at about 7

His schooldays were spent from autumn 1910 until December 1921 in the junior and senior sections of the top boys’ grammar school in the city, the *Johannes-Gymnasium*. The city founded it in 1871 with the most unusual policy—especially given that Jews were such a small group—of recruiting both teachers and pupils in three equal proportions from the majority Protestant and the minority Catholic and Jewish populations of the city. Many of the Jewish boys, such as the historian Walter Laqueur and the sociologist Norbert Elias, later emigrated to England and became distinguished in their fields. Ernst’s surviving complete and detailed school record books (CFP) show that in his first five years
he was among the top ten in the class of around 30, thereafter often first and never below third. He studied Latin from the age of eight, adding French at ten, Greek at eleven, and English at fifteen. Modern languages were taught mainly by speaking and reading, with little grammar or rote learning, the same method he used when teaching his son German 40 years later. Hebrew was learnt at the New Synagogue which his family attended, Ernst more regularly than his parents.

_During World War I a delegation of Johannes-Gymnasium pupils marched on the town hall to demand additional hours of Greek instruction, with what result is not known._ The full syllabus included German literature, religion, history, geography and the sciences. Remarkably, towards the end of World War I his school historical atlas, in my possession, showed Germany’s recent defeats as well as victories. _Ernst had the habit of beginning his essays with a made-up quotation or poem which he attributed to ‘our great national author’, and the teachers, reluctant to reveal their ignorance, never asked who that might be._ Only at P.E. did he never shine. His history teacher, Willy Cohn (no relation, but his family lived opposite the Max Cohns), mentioned Ernst with approval in his diaries and later memoirs.⁴ _In the first of his two published autobiographical recollections Ernst did not allude to Willy, as in this account of his school days he concentrated on the very right-wing nationalist attitudes of some other teachers._⁵

⁵ I mislaid my copy of this article, and cannot find a reference for it.
Ernst as teenager in the garden at 16 Wölfstrasse

It was surely a trial for the family that Max, in his mid-40s and called from army reserves, was absent from Breslau for two years during the war as a quartermaster in Berlin, Frankfurt am Main, and Lodz in Poland, as his service book shows (CFP). The German population was reduced to near starvation by the combination of a British naval blockade with Germany’s transference of resources from ensuring civilian food supplies to heavy military expenditure. In Breslau there was eventually nothing to eat for weeks except tapioca. For the rest of his life Ernst would never touch semolina.
Academic Career

On completion of his Abitur (school leaving exam), Ernst registered as a law student at Leipzig university for the summer semester 1922. He then changed universities, as was often the custom among German students, moving to Breslau for one semester, Freiburg im Breisgau in the southern Rhineland for the next, and back to Breslau for the final three semesters until the winter of 1924/25. Already in the first semester at Leipzig his main interest was in German civil law—and the Roman law from which it, and most Continental law systems, are derived—which was to be the centrepiece of his professional life. But he also greatly appreciated lectures on criminal law by a Privatdozent (unsalaried lecturer paid by the hour), Dr. Gotthold Bohne, whose lectures on ‘Introduction to German law’ were of equal interest to me, when I attended them during a university semester at Cologne 32 years later, in the summer of 1954.6

The meticulous record which Ernst kept of the books which he lent out during his student years (CFP) sheds a fascinating light on his circle of relatives and friends and their common interests in German and English literature, music and art. Eleven books were lent to Wilhelm Cohn (no relative), a fellow law student with whom he remained friends for the rest of his life; when Wilhelm died six months before Ernst, they had known one another for 66 years, since early childhood.7

Germany suffered from escalating hyperinflation from mid-1922 until the end of 1923; the return to Breslau enabled Ernst to live at home, as he did for some years afterwards, and to save his father, who supported him financially in his studies, from an excessive burden. He later graphically described the very straitened circumstances in which most students at this time lived.8 During the 1920s his cousin Käthe Cohn (later Licht and

6 E.J. Cohn to G. Bohne, 20 May 1954, CFP.
7 Liselotte Cohn (Wilhelm’s widow) to H.J. Cohn, 19 Nov. 1975, CFP.
8 Cohn (1963), 241-2. See Appendix 1.
Trenter), who was fourteen years younger and lived with her parents Carl (Max’s brother and business partner) and Agnes Cohn in the apartment below the Max Cohns, was told by her parents to stop bouncing her ball against the back wall whenever ‘Ernst lernt’ (Ernst is studying).

Breslau university in 1934 (Wikipedia)

In July 1925, after three and a half years of study, he passed both the first state law examination as Assessor (graduate civil servant) and the oral examination for his lengthy doctoral thesis, the latter with the highest grade of summa cum laude, although as was customary he could not use the title Doktor until the full thesis was published in 1927. From August 1925 he held legal posts in Breslau with the state prosecutor’s office as Referendar (junior lawyer) and Gerichtsassessor (assistant magistrate, from April 1929). Six months in 1927/8 were spent working in a law practice in Berlin.

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9 What follows relies mainly on Breuning and Walther (2012).
Ernst in the 1920s

The Orthodox Jewish lawyer Max Pohle described the following encounter with Ernst in the Breslau court:

A blond giant of a man, whose good upbringing was instantly apparent, he had attracted a lot of positive attention as assistant to the [prosecuting] attorney with exceptional knowledge of the law and his unusual skill in arguing cases before the court. On one occasion he was facing a lawyer who, in his usual manner, tried to patronize the ‘young gentleman’ before the court. Cohn cut him down sharply, and his performance was talked about in lawyer circles for quite some time.¹⁰

During these years he also attended law seminars at the universities in Breslau and Berlin. In 1929 he both passed the second professional law exam in Breslau with the grade ‘good’ (April) and at Frankfurt am Main university gained the Habilitation (a second, even lengthier doctorate which qualified one to become a university teacher) in the fields of civil and

¹⁰ Written in Palestine in 1940 and translated from the German manuscript in Dunlap (2011), 288.
commercial law. It had been supervised by Professor Eberhard Bruck, a Roman law specialist who had supervised his first doctorate in Breslau but then moved to a chair in Frankfurt. Bruck also taught him to lecture without any notes, however complex the legal concepts to be explained, and for the rest of his life he only kept a few notes on a card in his pocket for the rare occasion on which he needed a reminder. The Habilitation was published in 1931, as were other academic publications. His teaching in Frankfurt (1929/32), as a Privatdozent paid by the hour, was interrupted for the year 1930/31 by a temporary salaried acting professorship in commercial law at the university of Kiel in Schleswig-Holstein, where he again considerably widened his circle of congenial colleagues and friends. It was nevertheless quite a formal place: on arrival in Kiel he had to call on each of the other professors in the faculty at their homes wearing formal dress and white gloves and leave a visiting card if they were not in. A pupil who attended his Kiel lectures on the general part of civil law was Helmut Coing, who became a distinguished law professor and later wrote:

I shall always remember these lectures for their clarity and liveliness…. Ernst Cohn admirably succeeded in bringing home to the students the advantages of our private law codification with its succinctness of concepts and the precision of language necessitating clear and exact thinking.11

At Frankfurt he taught for between 12 and 14 hours per week but failed in two attempts to have his post salaried at a time when his parents were still supporting him financially. The faculty gave strong support to his application, but the Prussian ministry of culture turned it down on grounds of cost. Relief came with news of his appointment in July 1932, just before his twenty-eighth birthday, to the post of full professor, very unusual at such a young age, to a chair in German civil and commercial law for the

11 Liber amicorum, 23; Lorenz, 326.
coming academic year at Breslau; he was then the youngest full professor of law in Germany. The appointment at once initiated the most dramatic turning point in his career and life.
The Cohn Affair (Fall Cohn)\textsuperscript{12}

For the next eight months the ‘Cohn case’ (or ‘Cohniade’\textsuperscript{13}) was to grab the attention of academic and Jewish circles in Germany and increasingly of the German and international press. It coincided exactly with a series of crises leading to the downfall of the Weimar Republic established in 1918. By the end of 1932 unemployment in the wake of the Great Depression had risen from five to six million and prospects were low for university graduates and the professional classes. On 31 July 1932 the Nazis had become the largest party in the Reichstag with 230 seats, but still with no majority. The number was even reduced to 196 seats at the elections of 6 November, but Hitler and his party continued to make hay out of the failings of changing governments. Under the slack presidency of the aged Field Marshall Hindenburg, Heinrich Brüning, who had been Reich chancellor for two years, had given way on 30 May 1932 to Franz von Papen, to be succeeded on 3 December by General Kurt von Schleicher and finally by Hitler on 30 January 1933.

On his appointment at Breslau Ernst wrote to relatives in America: now that he was to be a Prussian civil servant, he had a guaranteed position for life (CFP). Nazi and other right-wing student groups allied in the Breslauer Waffenring were to show that this confidence was misplaced.\textsuperscript{14} Even in the depths of the university vacation, from mid-July, the local Silesian press, led by the right-wing Schlesische Zeitung, at once became both inspiration and mouthpiece for the students. The newspapers spread false rumours that Ernst was a social democrat and a friend of the Prussian Minister for Culture, Dr Adolf Grimme, who was supposed to have appointed him over the head of the law faculty. Ernst was no socialist, but favoured centre parties, and

\textsuperscript{12} This chapter is based principally on Helbig (1991), Breuning and Walther (2012), and Herzig (1997), supplemented by newspaper reports and the later published memoirs of contemporaries.

\textsuperscript{13} According to the Breslau University rector in his memoirs, Brockelheim, 56.

\textsuperscript{14} The student politics surrounding the case are not the subject of this book.
did not know the minister, whereas the faculty had unanimously decided to put his name at the top of the list of three candidates for consideration. The university failed to correct these errors of fact, though it declared itself committed to academic freedom. On 13 August the Nazi Schlesische Nationalsozialistische Beobachter published an article entitled ‘A Jew – professor of German law’ describing the appointment as a provocation to the students; if it were not revoked, they

... would not tolerate that Mr Cohn would dispense his Talmudic wisdom in Breslau, even if the scandal became so great that the university would be closed. Better a semester lost than that Mr Cohn be allowed to lecture for even one hour. The time for paper protests is over. There is no other way.¹⁵

The leader of the Breslau branch of the Nazi student association, Helmut Rössler, later said that Cohn was of the race which was responsible for the betrayal of the German people on 9 November 1918. This was the widespread accusation that the Jews were traitors who caused the humiliating capitulation of Germany at the end of the World War I. The continuing ructions led the university to postpone Ernst’s first lecture until one week after the start of the semester.

At 9 a.m. on 10 November he faced a crowded lecture hall and was immediately overwhelmed with whistles, foot stamping, nationalist songs and shouts like ‘Juden raus’ and ‘Cohn raus’. After fifteen minutes the rector (a vice-chancellor elected by the academic staff), the Orientalist Carl Brockelmann, hearing the rumpus, entered and tried in vain to secure quiet. He then called the police who brought order. For his 11 a.m. lecture Ernst appeared with the rector and a policeman. New protests led police reinforcements to empty the lecture hall and corridors so that the lecture could continue for students not involved in the

¹⁵ Quoted in a long article by Ernst Fraenkel on the front page of the Jewish Central-Verein Zeitung, 18 Nov. 1932; see also Ascher, 62.
protest. When Ernst left the building he was physically attacked despite the presence of a policeman, who was also abused. Hans Goldschmidt, a Jewish student, remonstrated with his fellow students and had his nose broken. Instead of disciplining the students, the rector negotiated with their leaders in the hope of averting further trouble. On receiving new student threats, he asked Ernst to postpone his next lecture for a week, to the latter’s bitter disappointment. Special arrangements were made for 17 November. Entry to the lecture was by ticket, granted subject to a promise not to disturb the lecture and only to those who had previously signed up for the course. The deputy dean of the faculty accompanied the lecturer with two lines of people for protection, but the students broke down the doors, threw tear gas bombs, and thumped and kicked the lecturer. Armed police cleared the whole university (which was then closed for three days) and accompanied Ernst to the supposed safety of the town hall, where however the large crowd of rioting students was supplemented by Nazi stormtroopers, the SA. The police eventually summoned a taxi to take him home.

The night before the next lecture two loud fireworks were let off outside the apartment of Ernst’s family. The lecture on 25 November was scheduled for a room in the law faculty on the third floor hermetically sealed off with barbed wire at the bottom of the stairs. Student passes were controlled at the entrance to the university by university janitors and the criminal police, with the streets around the university patrolled by foot and horse police with machine pistols. For a while the lectures continued under these impregnable conditions. A former student whom I met in Munich in 1959 said that students like him who had enrolled for Ernst’s course all just wanted to hear the lectures, while the troublemakers came from other faculties or were non-students, including the ringleader, an apprentice hairdresser. A police officer told the rector that the instigators were all known as convicted criminals, the strongmen of the Nazis.¹⁶ These

¹⁶ Brockelmann, 56.
outsiders could not be disciplined by the university and were not arrested by the police. At some point during the ongoing disturbances my father went ostentatiously to the relevant office to obtain a gun licence and less openly to a toy shop to buy a water pistol, which he carried in a half-visible manner to show that he was armed as a deterrent against further attacks.

On 1 December Karl Bornhausen, professor for Protestant theology, gave a lecture on ethics in which he praised the ‘struggle against Cohn’. This prompted another enormous demonstration disbanded by large numbers of police who confiscated 616 student cards allowing admittance to the university. The university would not ask the police to prosecute for the November disturbances for fear that students would be given fierce sentences under the law against terror activities. Internal disciplinary measures were taken on 3 December against just a handful of students who were defended by Bornhausen and two right-wing members of the law faculty. They received relatively mild sentences: eight (including Hans Goldschmidt who had opposed the student demonstrations) were threatened that they would be sent down if they repeated the offence, one had to repeat a semester, and three were given warnings. A similar incident took place on 12th December. Two separate conferences of all German university rectors and of Prussian rectors soon criticized the behaviour of Breslau university for not having the rioters prosecuted in the courts. Later, light sentences were again imposed, but these and subsequent disciplinary measures lapsed when the Nazis came to power.

Meanwhile the university’s representatives had been conducting negotiations with student delegates at the Ministry of Culture in Berlin, over 300 kilometres from Breslau. The new minister, Wilhelm Kähler, a right-wing nationalist and former economics professor at Greifswald, whose brother was until 1932 professor of history at Breslau, disliked the ‘Jewification’ of the professoriate but believed in freedom of expression for any professor once appointed and in the self-government of universities, which were entitled to make appointments without
student interference. He would only mediate but not impose his authority on the university, which however he advised should not allow itself to be browbeaten by students.\textsuperscript{17} He criticized the rector and law faculty dean, but also Ernst. The case was frequently discussed within the ministry and was on its way to becoming a national cause célèbre because the students used the national press to give a biased running commentary on events. After lengthy discussions in Berlin on 21 November, the deputy dean persuaded the four students representing different student bodies to withdraw their request for Cohn to be sent on leave. Yet after telephone consultations with their principals in Breslau they changed their mind the next day. Kähler received unofficial information that ‘the students were terrorized completely by a small political group.’

After the semester’s end another event escalated the conflict. On 22 December Ernst was one of some fifty people to receive a telephone call from the editor of the avowedly unpolitical Berlin sensational newspaper \textit{Montag Morgen} to enquire whether he thought asylum should be given in Germany to the Russian émigré Leon Trotsky, who was living temporarily in Denmark after abandoning his uncomfortable refuge in Turkey. At first reluctant, Ernst was persuaded by the editor’s argument that refusal would appear cowardice, and so commented on an issue not within his immediate professional expertise. He replied cautiously that first extensive enquiries should be made and the experience examined of other countries where Trotsky had stayed. Only then might asylum be considered. He concluded with a typically witty and pointed remark:

‘A man of letters (\textit{geistiger Arbeiter}) may appear worthy of protection; on the other hand, we have indeed no shortage of agitators and those who are only politicians.’

He probably had in mind his own situation as a non-political academic under threat. The paper omitted this last sentence

\textsuperscript{17} Kähler’s memoirs were written within a year of these events but only published in 1993, Oberdörfer, 82, 85–87.
from its report and distorted (or misheard on the telephone) Ernst’s words to mean that Trotsky should be granted asylum. This was taken up by the whole national press, the students and the university. Despite his apology to the rector for ‘going off the rails’, which he attributed to his inexperience in matters political, the Senate at the instigation of the rector at once reversed its protection for him and declared the next day that it was unbearable for the good order of the university that he should continue to teach because, by unnecessarily going public on a disputed political matter, he had not exercised the obligatory restraint.

The liberal Vossische Zeitung commented on 27 December that the Senate had capitulated to the street, yet attempted to uphold the fiction that they remained true to their principles of academic freedom; they lacked the courage of their convictions. Ten notable professors in various disciplines from different universities wrote to the paper condemning the actions of Breslau’s officials, although the German association of university teachers kept silent. On 29 December 700 current students and alumni of Breslau telegraphed the minister that senate and rector had seriously damaged freedom of expression and of academic teaching.18 By now the national and Jewish press for all Germany devoted extensive articles to the case.19 Ferdinand Tönnies, the internationally renowned philosopher and sociologist, and a professor at Kiel who may well have known Ernst, published a long letter in the Vossische Zeitung in which he pointed to ‘the danger of relapse into barbarism.’ He stressed that antisemitism had no place in the running of universities and other public institutions and defended Ernst’s comments about Trotsky as careful, unassailable and weighted more against Trotsky than for him; it was the Senate that deserved condemnation by the academic community.20 On 30 December the Nazi Völkischer Beobachter celebrated the victory of the students and demanded

18 Frankfurter Zeitung, 30 Dec.; JTA, 1 Jan. 1933.
19 See especially the long and balanced left-wing account by Böttcher, 49–52.
20 Cahnmann, 288–9.
that the rector, whom the students and the *Schlesische Zeitung* had also been attacking, must go too because of the ‘terror’ which he had deployed against freedom-loving students in the province of Silesia, the borderland that needed defending against Polish annexation designs.

In measured tones the Jewish *Central-Verein Zeitung* recounted the history of the case and declared it a test of the authority of the Prussian state. On the same 30 December the front page of the *Jüdisches Wochenblatt*, after judiciously analysing the wording of Ernst’s interview and the Senate’s statement, proclaimed the university’s actions as a scandalous act of moral turpitude. For three months, from November until February 1933, a special committee of the *Central-Verein* (an umbrella body for German Jewry similar to the British Board of Deputies) and, separately, Rabbi Leo Baeck, made representations to the ministry on Ernst’s behalf but were fobbed off by officials with unfulfilled promises that all would be well.

This case differed from those of four other Jewish professors who had previously been suspended by the Prussian ministry, after student protests coloured by antisemitism, because their main alleged shortcomings had been outspoken political views, as in the cases of Theodor Lessing at the Hannover Technical College in 1926 and Emil Gumbel at the University of Heidelberg just a few months earlier in August 1932. Now Breslau University was bowing to the student claim that Ernst, attacked originally only because he was a Jew, was also really a socialist and Trotskyite. Other Breslau professors had in previous years expressed strong right-wing political views with few repercussions. Many thought at the time that the Senate and law faculty seized the opportunity to get rid of someone whose presence had brought them so much trouble.

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21 The *Jüdische Rundschau* of 30 December also gave its first page to the case, which by now was being widely reported in the national and Jewish press of the United Kingdom and the USA. See Appendix 2.

22 Paucker, 141-2.
Ernst immediately took the initiative and went to Berlin just before Christmas to explain to the minister what had happened. Kähler thereupon summoned the rector, deputy rector and acting law dean for a meeting. Meanwhile the Senate on 2 January, although now divided in opinion about the wisdom of the suspension, confirmed the ‘leave’ it had granted Ernst for one semester and left it open that this might be prolonged until the end of the summer. At the 4 January Berlin meeting the minister merely had the university officials clarify that the Senate resolution of 23 December was not intended as a usurpation of his powers (as it actually was) but merely to restore order and protect the person of Professor Cohn, whose suspension was then referred for review to another Senate meeting on the 14th. The case rumbled on in the press and the Prussian state parliament. Whereas in mid-December the Nazi parliamentary group had raised it there, now it was the turn of the Socialist Party (SPD) to take the opposing view.

On 14 January, in hopes of saving his job and no doubt at the end of his tether, Ernst appeared before the Large Senate, including not just full professors but other teachers elected by the faculties (in all 137 were at the meeting23), to make an abject apology:

When I was presented by telephone with the newspaper opinion poll, I believed in the urgency of the moment that I could respond better with a reply which left the issue open than by refusing to answer. In that I unfortunately erred. It was also negligent that I did not bring the enquiry to the attention of the university authorities, which until then had stood by me with advice and action. It is a painful sentiment for me that in this manner the appearance of lacking gratitude and tact could arise, whereas, quite to the contrary, I felt myself obliged to upright thanks to the rector and Senate, and still do. I

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have often expressed this gratitude and gladly repeat it now.

I regret profoundly that the impression could be obtained from my conduct that I valued little the obligations which a single member owes to the whole body, and above all that the difficulties for the university have now grown and the Senate faces an aggravated situation.

In the present circumstances I have learnt to appreciate the overall position of this university and would like to take this opportunity to express openly in the circle of my colleagues that this knowledge will guide me in all my future steps.\textsuperscript{24}

The leading authority on \textit{Fall Cohn} commented with pardonable exaggeration that this kowtow was reminiscent of the Soviet show trials four years later.\textsuperscript{25} The Senate accepted the apology, agreed to let the matter rest, and added a lengthy exhortation to the students to respect academic freedom and preserve good

\textsuperscript{24} Extract translated from Herzig, 127 n. 64.
\textsuperscript{25} Heiber, 127.
order, which was to prove totally ineffective as the students immediately rejected the Senate’s statement.²⁶ Few of the law faculty stood up for Ernst, but after the war he acknowledged the strong support he had received from three of them and from a member of the Theology faculty, Professor Ernst Lohmeyer, one of several of that faculty who rallied round.²⁷

The arguments on both sides of the political divide continued fiercely in the press, as did fruitless consultations between the students and a committee of the Senate. Ernst resumed lecturing on 24 January with full police protection and arrests of many troublemakers. On the 27th, since the students could not reach his heavily fortified lecture room, other lectures were bombarded with tear gas, firecrackers and reactor tubes with evil-smelling oil. The national authorities of both the student association and even the Nazi party were as before not supportive of the Breslau action, which remained a local initiative supported by many local and national newspapers. The students presented the Ministry of Culture with a list of Ernst’s supposed acts of defiance and mockery of their actions, some of which ring true, e.g. that he conducted their singing like a choirmaster and raised his hat with a smile to their shouts as if they were ovations. He even lectured on the morning after the Nazi seizure of power in Berlin on 30 January, to the great annoyance of a large crowd of students assembled in front of the university. However, the rector on the next day required him to cease lecturing as the safety of his audience could no longer be guaranteed, since Nazi students had threatened to throw out of the window anyone trying to attend his classes;²⁸ the rector’s decision was soon confirmed by the ministry.

Ernst complained to the ministry, as did the student leaders against him, and they all met officials who came to Breslau on 13 February to investigate the case, but nothing transpired. Ernst’s

²⁷ Ditt, 41–42.
²⁸ NYT, 1 Feb. 1933; JC, 10 Feb. 1933, 21–22. See also Appendix 2.
lectures for the summer semester were announced in the advance programme, but by then the university claimed not to know where he was. Minister Kähler, who had to resign on the Nazi seizure of power, made an official farewell visit on 4 February to President Hindenburg, who asked him what the Cohn case was all about.\textsuperscript{29} It had become the test case for many observers of how the Nazis would treat Jewish professors.\textsuperscript{30}

On 7 April the Law for the Protection of the Professional Civil Service proclaimed the ‘retirement’ of tenured non-Aryan civil servants, except those or whose fathers had served on the front in World War I. On the very same day Ernst was the only law professor to be sent his letter of effective dismissal;\textsuperscript{31} others followed during the next weeks and all ‘non-Aryans’ were soon dismissed and deprived of their pensions.

It is not known for certain whether Ernst’s books were among those in the public burning of 1750 kilograms of books of ‘unGerman spirit’ in Breslau on 10 May 1933, as biographies of socialist leaders by his teacher Willy Cohn were. Yet it is highly likely that the Nazi students who initiated these latest disturbances from the university, in conjunction with Professor Bornhausen who had urged on the demonstrators in 1932, would have consigned a few of Ernst’s books to the flames as well. It anyway became Nazi policy to ban the use of books by Jews in teaching. University librarians were ordered either to dispose of them or to keep them under lock and key inaccessible to students. To this day the dissertation published in 1927 is the only one of Ernst’s books, whether pre-war or post-war, listed in the online catalogue of Wroclaw University Library. Several of Willy Cohn’s books were republished in West Germany after the war as a kind of posthumous compensation as well as to replenish depleted university stocks. This thinking may also in part lie

\textsuperscript{29} Oberdörfer, 115.
\textsuperscript{30} JTA, Breslau, 12 Jan. 1933; NYT, 23 Jan. 1933; JC, 10 Feb. 1933, 21–22.
\textsuperscript{31} Göppinger, 93.
behind the republishing in 1995/6 of Ernst’s *Habilitation* and another book he had authored in 1931.\(^{32}\)

The Jewish community of Breslau had been profoundly affected by the ongoing saga in its midst. On 26 January 1933 its board of governors formed a committee to act against future attacks on Jewish rights after speakers had said that the Cohn case was not isolated but a general attack on Jews.\(^{33}\) Alongside Ernst, Jewish students bore the brunt of the antisemitic agitation. Hans Goldschmidt, who had been beaten up by the students and disciplined by the university for resisting them, was prompted as a staunch Zionist to hasten his departure for Palestine. Walter Hayek, a history and literature student, testified in 1996 that the Cohn case had convinced him that there was no future for him in Germany and he had left in 1933 before completing his doctorate.\(^{34}\) Lore Ollendorff was enthusiastic about the lectures and when Jewish students had been warned not to attend, she was one of the few who did. She was not hurt in the violent demonstration which followed but still testified to a Senate committee against the perpetrators. That night the Nazi head of the Breslau police came to her house to tell her and her mother that the police would protect her for 48 hours, but after that she would be on her own. She went to Paris the same night and never returned. The rest of her family were murdered in the Holocaust and so, as her daughter wrote, the incident saved her life.\(^{35}\)

On 9 January the most reliable Jewish reporter on the unfolding events, Josef Fraenkel (who later fled to the USA and became a renowned political scientist before returning to Germany after the war) summarized his view of the affair: Senate and law faculty had made a hardly heroic retreat in the face of rowdy students; the students knew that the two nationalist professors who defended them, Helfritz and Freytag-Loringhofen, had shown much less political restraint than Cohn when they had attacked

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\(^{32}\) The *Habilitation* was still widely read and consulted in 1976, Neumayer.

\(^{33}\) Ascher, 63-65.

\(^{34}\) Herzig, 246, 254.

\(^{35}\) Rayah Blumenthal to Henry Cohn, email, 4 June 2008, CFP.
the Weimar Republic; and university professors should show character and not merely impart knowledge, but in this case had hardly proved a role-model for students.\textsuperscript{36}

\begin{flushright}
\textsuperscript{36} Fraenkel, 609.
\end{flushright}
Passage to England

Ernst was highly fortunate in the friends he had acquired in Breslau and other universities, mostly non-Jews, though some had Jewish ancestors; they were to help him in the troubled years ahead. After the war he thanked in print several of those who had supported him during the university troubles. He described as his lifesaver a former fellow student, Alfred Hochheiser, who had become legal adviser to a trust administering the property and finances of the wealthy Upper Silesian princes of Pless.\textsuperscript{37} He now arranged for Ernst to be their legal agent for a lawsuit in Zürich. Ernst got permission from the new German regime to go, and was even able to take his precious library on his departure in late February or early March. For a Jew who was neither a Zionist nor a political refugee, this was a very early date to leave Germany as a result of Nazi persecution, before the antisemitic legislation of 7 April dismissing Jewish civil servants, academics, lawyers and teachers. He had been in post for six months, during which he taught, with interruptions, for less than three. \textit{His departure put paid to his hopes that he would in time become professor at the leading law school of Germany, that of Berlin.}

\textit{After two months he found that he could not make a living in Switzerland and contemplated returning to Germany. He wrote asking another friend, a Prussian Junker (name unknown to me) whether this was a good idea. The reply came that things would only get worse and he should not come back. This advice again saved his life. Some 10,000 early émigrés, about 10\% of those who had left, did return in the next two years, and not all made a second escape. On 15 May Ernst arrived in London. He had been one among the thirteen professors in all disciplines whose dismissal was publicized in Germany on 14 April as a triumph for the new policy against Jews and the ‘politically unreliable’. His notification reached England that day and he was later deprived of his pension with effect from the end of 1933. The income he}

\textsuperscript{37} Cohn (1963), 250.
lost was 12,000 Reichsmarks p.a., worth £840 in 1932/3 and £57,250 today.\textsuperscript{38}

A few weeks before Ernst came to London the Academic Assistance Council (AAC)\textsuperscript{39} was set up to assist the many immigrant university teachers to find appropriate work or financial support. Already in mid-June 1933 he submitted to it a long memorandum about named German refugee professors of law, explaining the five main fields of law in which they worked and the likelihood of their skills being of use in the United Kingdom or other countries. He concluded with a strong plea that an Institute of Comparative and Private Law be established in London to match those in major German and other Continental centres.\textsuperscript{40} During the following months he engaged in correspondence with the officials of the AAC and had his offer accepted to comment on the dossiers of refugee academic lawyers registered on their books. He contacted Sir William Beveridge (later Lord Beveridge) of the London School of Economics and many leading UK legal scholars at Oxford, Cambridge and elsewhere to seek support for his scheme for a research centre in comparative law at the University of London.\textsuperscript{41} He also responded to AAC requests for advice on the meaning of new laws affecting academics and their pensions issued by the German government.

In an interview with the AAC on 1 August 1934 ‘...he was doing practical legal work only in order to keep himself alive...’ and wanted to get back to academic work, if necessary going abroad.\textsuperscript{42} On 5 December he explained that although his position as a practising lawyer allowed him sufficient means to live, it was

\textsuperscript{38} BOD MS SPSL 262/9, fo. 410.
\textsuperscript{39} The AAC became the Society for the Protection of Learning and Science (SPSL) in 1936 and is now the Council for At-Risk Academics (CARA). Its records in Oxford are the best source for Ernst’s early years in England.
\textsuperscript{40} BOD MS SPSL 161/4, fos. 198–200; other copies and versions, including the original German version which Mrs D. Braham translated and typed, are at BOD MS SPSL 262/9, fos. 424–49.
\textsuperscript{41} Ibid., fos. 454–60.
\textsuperscript{42} Ibid., fo. 465.
unsatisfactory in that ‘... I am nearly prevented from spending my time on scientific work ...’; he wanted to teach as well ‘...as I have always been extraordinarily fond of [it]...’  

On 7 December he submitted his own extensive c.v. and list of publications seeking an academic post on the grounds that he only had his current work as a consultant on private international and German law to support himself. His preference was for an English-speaking country, or Scandinavia or South America, but definitely not the U.S.S.R. (for political and religious reasons) or tropical countries; he also offered meanwhile to teach comparative law without pay. Like so many other refugee scholars, except those at the very top of the tree in their discipline, he found that there were no openings in Britain and few elsewhere.

He had already come to terms with the likelihood of not obtaining a permanent academic post when in January 1934 he was admitted to Lincoln’s Inn and began to study for the bar exams at the Law School of the Inns of Court. The problem arose that the rules stipulated that non-British citizens were not entitled to practice at the bar. A Breslau colleague of his, Professor Walter Schmidt-Rimpler, who happened then to be visiting professor at the University of London, interceded to have Lincolns Inn waive the rule. The course involved the English common law system, quite different from the German one based on Roman law in which he had been both practitioner and legal scholar and teacher. He obtained a merit grade in the bar finals in 1937, a grade of which he was very proud as a recent immigrant. Many German Jewish refugee lawyers became solicitors or academic lawyers, but few others, if any, became barristers in fulltime practice. During the years 1937 to 1939 he gave lectures on Roman Law at Birkbeck College, London. In 1940 he became a PhD student at University College London, completing the 400-page thesis in 1944, an extraordinary feat

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43 Ibid., fo. 468.
44 Ibid., fos. 409–11.
during the war. It suggests that he was still keeping open the option to become a university professor again.

Probably by October 1933, possibly earlier, and certainly by November 1936, and until 1950, his office was at 2 Clements Inn (now replaced by a building of the London School of Economics). From at least early 1934 he had an older partner, Dr Alfred S. Abramowitz, another refugee lawyer and a former senior official in the Prussian Home Office, who stayed with him until after the war. Abramowitz ran the office during the years when Ernst was in the army, though the partners lost their records to enemy action in 1943. Much of their work in the 1930s will have been advising Germans, Jews and others, on how to transfer their money from Germany when the Nazi government was making that increasingly difficult. To avoid German censorship of letters and phone calls, he advised his wealthier clients to take a cruise which stopped offshore in Hull. They could not disembark without a visa, but he went on board on a small boat and spoke to them on deck away from listening ears. The ship’s captain was unable to arrest him in British territorial waters. He met other clients, or their lawyers, in Paris or Switzerland.

Once war broke out, the nature of his work for German Jewish refugees changed. For example, familiarity with the legal aspects of internment triggered his article of January 1941 highly critical of both the internment of refugees, which was contrary to international law, and the poor performance of the investigating tribunals. The previous July he had helped Otto Lehmann-Russbüldt, a leading German pacifist since World War I who had a Jewish wife, to appeal successfully against his internment in the Huyten camp. Ernst highlighted his client’s early warnings of the dangers of militarism and secured Wickham Steed, Editor of the Manchester Guardian, to give one of the testimonials which supported the case.46

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45 E.J. Cohn to E. J. Baumgartel, 14 May 1962, KCA K/PP60 Cohn/6/1.
46 Brinson & Furness, 118, 128.
Despite his busy legal practice and studies, Ernst found time to give academic lectures to learned bodies and publish fourteen articles in English-language law journals (and two in Italian on recent British law literature) between 1934 and 1939, though this was smaller than his German output between 1927 and 1933. He was also examiner in German for the Civil Service Commission from 1933 until 1939, and again in 1956.47

46 Anson Road, West Hampstead, was his first London address, but by September 1933 he was living at 6 Pembroke Place, Bayswater, closer to the centre of town. Marianne Rosenbaum (1914–2009), who had lived three doors away in Breslau, at 10 Wölfstrasse, arrived in London in October 1933, aged just 19. She had been threatened by the SS after a car accident when six of their men, while drunk, had driven their large vehicle into a friend’s car she was driving, which landed in a ditch. She was now able to persuade her father, hitherto reluctant to let her leave because he was training her to succeed him to run his large pharmacy, to support her emigration to England. Within six months my parents were married, on 12 April 1934. Marianne was then living at 27 Pembridge Square, W2, around the corner from Ernst. She had been informally engaged to the son of one of the Breslau rabbis, but his whole family had emigrated to Australia. Ernst and Marianne had known one another only slightly in Breslau, but it seems quite natural that two young refugees from the same street in their home town made contact in London, even though Ernst was ten years older.

The Kensington registry office where the marriage took place recorded that the witnesses were their fathers, Alfred Rosenbaum (1875–1956) and Max Cohn. Alfred and his wife Franziska Rosenbaum, née Berger (1883–1961), stayed in a boarding house in Regents Park Road, Finchley, to get the new home ready for the newly-weds on their return from

47 E.J. Cohn to H.J. Cohn, 16 Feb. 1956, CFP.
honeymoon. Charlotte Cohn may well have also travelled from Breslau. At that time and until May 1938 it was possible for Jews to travel abroad from Germany on temporary visits and to enter the UK without a visa. The Rosenbaums made four other trips, to Czechoslovakia, Switzerland and Italy, between 1934 and 1937. The wedding photo shows Marianne in a long white bridal gown, headdress, veil and train, and Ernst in black morning coat and top hat. It may therefore be assumed that they later had a Jewish wedding ceremony in a synagogue, possibly West London Reform, but to date the evidence has not emerged.

48 According to a postcard in Marianne’s collection (RFP), a useful trove for many of the following details.
On 5 February 1936 I arrived at a maternity home in Temple Fortune, Hendon, and three years later was at a kindergarten in Golders Green (RFP). Had my parents not become refugees, it is likely that that they would have married other partners. Like some others of the ‘second generation’ in refugee families, I have mixed feelings in recognizing that I and my descendants owe our lives to the political machinations of Adolf Hitler. I was born with the usual limbs, two arms and two legs, but also with two nationalities, British by place of birth and German by parentage. Moreover, I was British three years before my parents were naturalized in February 1939. In November 1941 Nazi legislation deprived us all of German nationality, but after the war it proved to be recoverable.

My parents had moved to a spacious semi-detached house at 10 South Crescent, Finchley, later renamed 29 North Crescent when these adjoining roads were combined. A London house of this type would then have cost more than £1,000 (£70,000 in 2018 terms, though today an equivalent house would fetch at least ten times that amount). In time Ernst’s practice became a good earner, though less so after the outbreak of war. In 1938 one client was asked for a fee of £200.49 This will have had to cover office and travel expenses, but was still a considerable sum, equivalent to about £13,000 in 2018. My parents’ lifestyle was also supported by the capital sum of 50,000 Reichsmarks which my mother in her later restitution claim declared as having been given by her father (RFP). It was equivalent to about £3,700 in 1934 or £258,000 in 2018. The house was still in Marianne’s name in 1941, when it was insured for £1,400, the contents for £2,000 (CFP). They had full-time domestic help, as their families had in Germany, a car for my mother to drive, and the means to travel both in the U.K. and to the Continent before the war. On the way home from honeymoon in the Swiss Alps they stopped in Zurich and Paris for my father to meet clients (RFP). They holidayed in Belgium (1935) and Paris (1938) and Ernst went alone on business.

49 E.J. Cohn to A.S. Abramowitz, postcard collection, RFP.
trips. They went on another journey combining holiday with work to Montreux, Geneva and Paris in June 1939, ten weeks before the outbreak of war. They were especially fortunate. One third of the German and Austrian refugees to the UK before the war, about 20,000 women, only gained entry through undertaking to take employment as domestics, which many found exceedingly hard.

Among the friends who helped the Cohns to settle in were Edward Iwi (1904–66) and his wife Esther (1908–73), who were respectively a solicitor and barrister; their sons Quentin and David, the latter my playmate after the war, became respectively a barrister and a solicitor. Edward was a Welsh-born Jew, an expert on British constitutional law, and prominent in the Anglo-Jewish Association. One of Ernst’s efforts to adapt to local customs was to learn how to smoke a pipe; he also took to cigars (see his wedding photo), though mostly the lighter Dutch kind, not heavy Cuban Havanas.

A major responsibility which greatly troubled him for several years was the need to extract his relatives from Germany, especially urgent after Kristallnacht, the pogrom on 9/10 November 1938 in which hundreds of synagogues were destroyed, Jewish shops badly damaged, and 30,000 Jewish men sent to concentration camps. From February 1938 until July 1939 he stood guarantor for 14 family members to be allowed entry to Britain. With the help of World Jewish Relief records it is possible to establish with considerable probability that these rescued persons were Ernst’s parents (Max and Charlotte Cohn), his parents-in-law (Alfred and Franziska Rosenbaum), Marianne’s sister Ursel with her husband Dr Fritz Lehmann (accompanied by nine-year-old daughter Renate), Ernst’s cousin Kaethe and husband Herbert Licht, his cousin Heinz and wife Ann Cohn, his uncle Richard and wife Stella Cohn, and his uncle Carl and wife Agnes Cohn (who soon moved on to Argentina). Ernst had to provide for each of them a formal guarantee of £50 (about £6,500 in 2018 prices) in case they were unable to support themselves. Apart from the anxiety of securing their entry, he would not have had the means to meet all these obligations if called upon, and
suffered long periods of severe insomnia which several doctors could not cure. Then he and Marianne went for a weekend’s rest in Wales at a hotel with a water mill. The clanking of the mill kept my mother awake all night, but father’s insomnia was cured. Many years after their later divorce, he still felt gratitude for her care in looking after him during that period.

Another relative, who came to the house on Ernst’s thirty-fifth birthday in August 1939, was Klaus Peter Cohn, the seventeen-year-old son of Ernst’s cousin Franz. He may have come by Kindertransport from Dresden or on his own or with his Uncle Carl. His parents, both medical doctors, his two sisters and a brother-in-law were all murdered in the Holocaust, as were seven other members of the Cohn family and ten of Marianne’s Rosenbaum and her mother’s Berger relatives. Those who, with the help of Ernst’s guarantees, were spared their fate and that of six million others, later expressed their profound gratitude.

Ernst in 1939, by a refugee artist

50 Register of books lent, CFP.
World War II

After war was declared on 3 September there were seven months of ‘phoney war’ when nothing earthshattering happened, but there was increasing alarm in Britain that the German army would invade and many people left London. By the winter my mother and I had been evacuated in her car to a farmhouse in mid-Wales, where we were later joined by her sister Ursel and her daughter Renate (later known as Reni). In the depths of this exceptionally cold winter we had to break the ice on the well to obtain water.

After the invasion of Norway in April 1940, followed quickly by those of Belgium, the Netherlands and France, Hitler ordered his army command in July to draw up detailed plans for the invasion of Britain, Operation Sea Lion. At the same time Walter Schellenberg in the Reich Main Security Office was tasked with drawing up a list (the Sonderfahndungsliste, meaning Special Manhunt List but known in English as the Black Book) of people who, with their families, would be arrested by the Gestapo after the conquest. It was not difficult to envisage their likely fate. This list became known in London by August, probably through the agency of the Czech secret service (or possibly from their Polish counterparts), whose head, Frantisek Moravec, and leading members had been spirited to London by the British Secret Intelligence Service (SIS), the predecessor of MI6, in March 1939. Moravec had a German agent, Paul Thümmel, a disaffected member of the German Abwehr (the German military intelligence), who sent them the various invasion plans anonymously through a Swiss contact.\(^51\) Discounting double counting and other errors, the list had some 2,700 names. Many leading British personalities were only informed after the war that they had been fingered, but SIS told Ernst at the time, perhaps because they knew him to have been persona non grata with the Nazis in Germany. My parents decided that Wales was not safe enough and discovered that there were by then only two countries in the British Empire, New Zealand and Jamaica, where it was still possible to send the money for our maintenance which

\(^{51}\) Morvec, 178; Jeffrey, 399; Trow.
my father stayed behind to earn while waiting for his army call-up papers. Coming from central Europe, they had to consult an atlas to discover that Jamaica was much closer to Britain, and so it was to Jamaica we embarked from Liverpool that autumn in a convoy of merchant ships accompanied by a naval vessel and shadowed at times by a U-Boat. While we were in London preparing to leave, I recall a night after the Blitz on London had started on 7 September when we listened to the radio and slept in our concrete Anderson shelter, half-buried in the garden with a corrugated iron roof covered by turf.

Ernst continued his legal practice and writing until joining up on 11 April 1941 for military service with the Royal Artillery at Larkhill Camp on Salisbury Plain, two miles north of Stonehenge. In 1891/3 and again from 1915 his father had also served as an artilleryman, but in the Kaiser’s Prussian army. Ernst was declared medically unfit for frontline service because of flat feet which were a permanent condition requiring him to have shoes with raised insoles for the rest of his life. After training as a Battery Surveyor, he joined the 41st Survey Training Regiment in August 1941 as an assistant instructor in the School of Survey, a wing of the School of Artillery. The surveyors used theodolites, triangulation and other technical means to discover enemy positions and guide the gunners. The BBC People’s War website has interesting accounts by an ex-soldier of the work and conditions at Larkhill. The huts used as billets and classrooms were of World War I vintage. The camp was hit only three times during the war by enemy bombers, suffering 15 dead and 35 wounded. It may well have been safer than living in London. The volume of training increased throughout the war, since the number of survey regiments grew from a handful to eleven as they were deployed throughout Britain and in overseas theatres. It was also the case that gunnery surveyors had to work with their relatively primitive instruments on high ground within sight of the enemy, who were able to pick them off with

53 James, 79.
54 Mangilli-Climpson, 80–82.
impunity. The War Office had to send a new batch of recruits every three months, the length of the course. Ernst’s military records show that he rose steadily, if slowly, through the ranks to become Lance Sergeant in September 1943. Part of his duties was to act as drill sergeant, for which he certainly had the voice to command the motley crew, including academics, teachers and professional people, who became surveyors and trainers.

Ernst had an important additional military role. From September 1942 he was, during his spare time, in charge of the Army Legal Advice Bureau for Larkhill and the nearby camp of Bulford, in addition to his continuing role as a trainer of gunnery surveyors. The War Office established a network of such centres throughout the army to help soldiers deal with financial, marital and other problems arising from being absent from home. He later wrote that in his less than two years in this role he had dealt with between 300 and 400 cases of divorce. At Larkhill he also appeared before the magistrates’ court in Salisbury to defend army drivers who at weekends had taken their comrades to celebrate in the town and through their own inebriation had then caused an accident. The London barrister rang rings round the local magistrates and the guilty parties often got off scot free, which made Ernst popular. The experience advising soldiers led to his publishing an article in December 1943 on legal aid in the British army and fed into his major contribution to reforming legal aid to the poor, published shortly before.

There were lighter moments during the war. The War Office decided that it would be healthier for the soldiers to replace standard white loaves in the mess by dark bread like that Ernst had enjoyed in Germany. His comrades hated it and to his great delight passed him all their bread. To his regret, after a few weeks the War Office capitulated to complaints from the men and resumed supplies of white bread only. On another occasion the War Office failed to send any recruits at the usual three-monthly interval. The surveyor trainers passed the unexpected holiday in the middle of the war by arranging classes for an informal university. Ernst taught law and attended classes in Spanish and Philosophy given by leading scholars. Ernst was great friends with

55 Cohn (1946b), 409.
another Jewish sergeant, Ernst (Ernie) Fairweather, with whom he kept in regular contact after the war. He and I were invited to several Passover Seders with Ernie’s family. There were also reunions of the veterans after the war.

Sergeant Cohn, 1943/44

In May 1943 Ernst passed the War Office Selection Board for an Emergency Commission and was recommended in September for the Allied Military Government for Occupied Territories (AMGOT). Planning had been taking place for some time for the consequences of victory in the war, for which the Allied governments engaged many German Jewish refugee lawyers from 1942 onwards in an advisory capacity.\textsuperscript{56} The Foreign Office had its attention drawn to Ernst’s expertise in German law in December 1943 and early the next year he was actively seeking a suitable post. After three years at Larkhill, in April 1944, he joined the newly created Special Legal Research Unit for Germany and Austria (SLUGA), attached to section G5 (the department for civil

\textsuperscript{56} The work of the changing alphabet soup of committees is charted in Reusch (1980 and 1985) and Etzel (1992).
administration) of Supreme Headquarters Allied Expeditionary Force (SHAEF). The Americans alone financed the legal branch and supplied its head and four other members. Nevertheless, Ernst as the sole Briton served it the longest and had most influence on its work. He was also in charge of its large specialist library.

The unit’s assigned task of denazification was both to prepare studies to eliminate all German and Austrian laws which discriminated against people on the grounds of their ethnicity or political or religious views and to advise on legislation for the military government of the defeated countries. After six months, separate control commissions were established for each of the Allies; American members of SLUGA went off to their commission and were rarely consulted by the British section. Over a dozen new British members were recruited and became in April 1945 the British Special Legal Research Unit (BSLRU), which Ernst chaired, of the Control Commission for Germany British Element (CCGBE).

He reported that, until March 1945, 278 opinions had been presented on different aspects of German law; the length of many was 50–100 pages. Sometimes fierce discussions took place on changes which certain British members of the Control Commission wished to introduce to make German law and democratic systems more like the British model, especially in the field of municipal government; this Ernst opposed. Another issue which exercised him were proposals to turn the clock back by reintroducing German legislation which the Nazis had removed but which by 1945 had been overtaken by changed circumstances. Many of the unit’s legislative proposals were not adopted, but the memos were later relied upon by the British Control Commission, which also used the Military Government Handbook which Ernst had a major hand in drafting. Surviving parts of his working papers contain an early draft of April 1944, based on previous research, and another compiled in 1951/2.57 4,500 copies of this bulky work were printed and distributed to become the ‘Bible’ of British officers and officials in Germany. It formed the basis for the Manual of German Law in two volumes

57 KCA, K/PP60 Cohn,19.i, 19.ii, 20.
and two editions after the war, his major publication in English. He continued work in this field as a part-time consultant to both the Control Office for Germany and Austria and the Foreign Office between 1945 and 1950.
**The Rewards of Peace**

Ernst resumed living in London in April 1944, but all did not go smoothly in his private life. His mother died in August 1944 and his ageing father became more dependent on him. My mother and I returned from Jamaica in the early summer of 1945 after the German capitulation in May. The atmosphere quickly became tense in the household as it became apparent that Marianne had found someone else (Lewis Earle) in Jamaica. Five years of separation had taken their toll on the marriage. Once more the ultimate consequences of Nazi policies had impinged on family life. After a few months my mother and I left North Crescent to live in a rented room in North London and then for several months with her sister Ursel Lehmann and husband Fritz in Drayton Park, near the Arsenal football ground. On returning to London I attended King Alfred School, a progressive private school in North End Road, Golders Green, which is still flourishing. On 4 December 1945 I was made a ward of court, which placed restrictions on where I might live, and from which I was not released until a week before my eighteenth birthday in 1954. As divorce proceedings advanced, my mother returned to Jamaica and sold the house, and in 1946 I went to live with my father and grandfather Max at 10 Rosemary Avenue, Finchley, not far from Finchley Central station. This was a small terrace house with a long garden leading down to a cutting for the Northern Line of the underground. For a time we had a housekeeper, Frau Ehrlich, a most pleasant German Jewish refugee.

In the summer of 1948 we moved, without Frau Ehrlich, to a large detached corner house, 59 Etchingham Park Road, facing Victoria Park in Finchley. This was a short walk from the trolleybus which took me to my grant-maintained school, Haberdashers’ Aske’s Boys School in Cricklewood (now in Elstree), which I had attended from autumn 1947.
The house was large enough to accommodate the three of us plus a young man who came to care for Grandpa Max. My father and I dearly loved him, though he became increasingly ill and as a result sometimes irritable. He was too unwell to attend my Barmitzvah in February 1949 and died a few weeks later. Ernst’s uncle Richard Cohn and his wife Stella were having difficulty in making ends meet and came to keep house for us, occupying the large front room. Ernst soon found mutual attraction with a client, Helen Haag, a widowed Jewish refugee from Hamburg who, after a short stay in England, had sailed early in the war with her husband and three children on a ship which was torpedoed off Canada. They had then lived in Skokie, Illinois, in the United States. Ernst and Helen married in December 1950, which began a period of renewed happiness in his life. He was also very fond of her three grown children, Harold, Fred and Liese (Lee), and their children, and went often with Helen to visit them in the States, or they came to England. I got on well with the whole family and still do, except for a short interlude at age 16, when I behaved badly towards Helen.

Ernst helped Richard and Stella to buy a house in West Finchley, but there was a falling out, never resolved, with their sons Hans and Fritz, who believed that he owed their parents a pension as
well. Ernst was also disappointed in his cousin Franz’s son Klaus Cohn, who had come to England in 1939 aged 17 but lost all his family in the Holocaust and, perhaps because of the resulting trauma, failed to find himself gainful employment. Klaus changed his name to Keith Collins, married in 1951, and emigrated to Australia, never to be heard from again. These quarrels will have distressed Ernst, who made a point of keeping contact with and visiting other relatives in this country, Israel and the United States.

His financial position slowly eased in the years after 1945. As well as resuming his law practice, he was appointed part-time legal consultant to the Foreign Office (until 1950) to continue the task of advising on legislation for occupied Germany until the Federal Republic was established in 1949. A payslip (CFP) shows that his part-time remuneration in 1947 was £720 p.a., equivalent to £27,450 today. The new German government in its early years reinstated civil servants like my father who had been deprived of their posts, paid him arrears for the lost years of employment, and then a full salary at current rates without many teaching obligations. These payments continued at the same generous level in retirement. This salary and fees from German clients were mostly retained in a German bank to pay for work travel expenses, holidays, and investment in shares. The Basic Law of the Federal Republic entitled those who had been deprived of their German nationality in 1941, and their descendants, to reclaim it. I did not do so until 1978, but my father did much earlier; my mother never did, but somewhat to my surprise my daughter and her three children acquired their German passports with alacrity once Brexit came to dominate British politics from 2016.

Former Breslau professors were assigned to the university of Cologne. Soon after the war Ernst went to lecture there—and also at Bonn—where he told the law students, mostly war veterans and some of them badly wounded, that it was their task to build a democracy better than the Weimar Republic had been. He was the first Jewish professor to speak at the Cologne law faculty after the war. I recall accompanying him there in about 1947; we stood at a window high up in our hotel and saw all the devastation
round about in the old city centre caused by Allied bombing. By the time I spent the summer semester in 1954 as a student of Economics at Cologne (with exemption from fees because my father was honorary professor there), the city centre had been largely rebuilt.

After nearly six wartime years unable to travel outside Britain, Ernst resumed frequent visits to Germany and other countries. Unlike his old friend Wilhelm Cohn, who like most members of the Control Commission (from 1949 the High Commission) went to live in Germany,\(^58\) Ernst remained based in London. Yet in the years after the war he went on frequent trips to both the British and American zones and to Berlin to assess the situation for the Foreign Office and Control Commission. He was energetic in encouraging other refugee lawyers to return to take responsible legal posts there. In the winter of 1946 he went to Berlin for several weeks with his private ‘white list’ of lawyers who had not been compromised in the Nazi administration of law and might be recommended for judicial posts. His 50-page report on British legal measures in Northwest Germany met with defensive reaction from the occupation officials.\(^59\) On such visits he travelled in the uniform of a colonel assigned to him by the Control Commission, although he still only had the army rank of sergeant. One day he made a courtesy call on a former colleague. The professor’s wife answered the door, looked at the uniform in alarm, and said that her husband was not at home. Only when Ernst explained their old friendship did he emerge from a back room.

From the beginning of the war Ernst had begun to think about the consequences for its end. In January 1940 he published a short article urging that the peace negotiations include measures for compensating the victims of Nazi persecution throughout Europe.\(^60\) His May 1940 lecture to the Grotius Society on ‘The Problems of War Crimes today’, published in 1941, initiated the lengthy wartime debate among scholars and governments on this

\(^{58}\) Wilhelm stayed there in British service and retired to Wiesbaden in the 1960s.


\(^{60}\) Cohn (1940).
pressing topic. Nevertheless, he refused an invitation to work in the War Crimes Department to prepare for the Nuremberg trials on the grounds that a Jew could not be expected to have, or be seen to have, the impartial approach required of a prosecuting team. The volume of his work for the Foreign Office declined just before and after the creation of the Federal Republic in 1949, but even after he ceased to be permanent counsel in 1950 his advice was sought on an *ad hoc* basis for several years.

At this time he was in close contact with a man who had already led an adventurous life and was to be at the centre of one of the great spy mysteries of the 1950s. Dr Otto John had been Ernst’s student at Frankfurt and in 1935 went to work for the German airline *Lufthansa*. From 1938 until 1944 he was heavily involved in what proved to be the ineffective plotting of army generals and civilians to remove Hitler. John flew regularly to Madrid on airline business which enabled him to make contact for the conspirators with British and American agents. When the assassination plot of 20 July 1944 failed miserably, he fled from Berlin via Madrid and Portugal to London. He was at first interned but then engaged to assist the Political Warfare Executive in a minor capacity. Later he interrogated high-ranking German military prisoners and after the war prepared evidence for the Nuremberg and later trials of war criminals. Ernst met him again through the Control Commission in the early summer of 1946 and invited him to join his law practice. John at first deferred this offer but then worked with Ernst during the years 1947 to 1950 as an adviser on German and international law, with specific reference to restitution cases, while also engaged in his work on war crimes trials. In 1950 he returned to Germany and became president of the new West German internal security agency, the Federal Office for the Protection of the Constitution. I paid him a courtesy call in his Cologne office when a university student there during July 1954.

Just a few days later he crossed to East Berlin and began after a while to make propaganda for the German Democratic Republic of East Germany and for Russia. He criticized the Federal Republic

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61 The lecture/article and ensuing controversy are discussed at length in Segesser, 362 ff. See also Appendix 3.
as being authoritarian, militaristic, too closely aligned with the Western powers, and infected by former Nazis. After eighteen months he defected back to West Germany and claimed that he had been drugged and kidnapped by a Russian agent and then played along with his captors in Berlin and Russia, until he found an opportunity to escape. The West German supreme court, in which both the judge and the prosecuting counsel were former Nazis, did not accept this argument and sentenced him to four years in prison, double what the prosecution had sought. He was released by President Theodor Heuss after eighteen months in July 1958, though not given a presidential pardon until 1986. Ernst had written two extremely polite letters to the President’s son Ernst on John’s behalf in the autumn of 1957. He had learnt from John’s Jewish wife, Lucie, that she had heard from the younger Heuss that his father thought that Otto John’s passage to East Berlin was an ‘adventure out of curiosity’. Ernst did not accept such ‘psychologizing’. Yet he not only vouched for John’s character as a result of their long friendship but through connections had been able to speak to him in prison during the trial and above all had been present at the supreme court in Karlsruhe on the day when the main prosecution witnesses gave evidence. His professional view on the basis of the evidence was that John had been kidnapped and that the judgement of the court was faulty. Ernst Heuss conveyed his father’s reply that legally the President was not able to intervene, which my father perfectly understood.

Controversy has raged to this day as to the truth of John’s assertions of innocence, graphically presented in his memoirs. More recent research based on partly released Russian secret service sources and those of Germany and the western allies strongly suggests that he originally went voluntarily to have discussions with Russian officials but was then drugged and not allowed to return when he refused to cooperate with the KGB. He did then cooperate, which was the west German secret service policy for captured agents, until able to make good his escape. He died in exile in Austria after failing in five attempts to clear his

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63 E.J. Cohn to E.L. Heuss, 21 Oct. & 6 Nov. 1957, IWM Duxford, Otto John papers, Box 18. Hett & Wala, 58, note 108 has only one letter, and the wrong date for that one.
name, bedevilled by his own wild conspiracy theories.\textsuperscript{64} I cannot recall Ernst later commenting on this case or whether he had further contact with his former pupil and colleague.

In 1950 Ernst joined the barristers’ chambers at 5 New Square, Lincolns Inn, where he worked for the next 25 years until the end of his life, becoming head of chambers in the last few years. As much of his practice involved German and Swiss law and he often appeared in courts or met clients abroad, he could record in 1969 that it was his custom to travel to Germany four to five times a year.\textsuperscript{65} He usually visited more than one city for appointments on his trips and insisted on staying at the best hotels at the clients’ expense. His telegram address was appropriately ‘Contilaw London’. His volume of published scholarship related to his legal practice soon returned to the same level as when he had been a full-time academic. From 1940 until 1945, during the war, he managed to publish six journal articles and complete a lengthy dissertation. In 1946 he published a book and in 1947 seven more articles. The pace was kept up until the end of his life and two major publications appeared posthumously in the following two years.

The strong desire to be an active academic teacher never left him. \textit{Shortly after the war he was offered the opportunity of a chair in law at a South African university. There were no doubt personal reasons for not wishing to emigrate a second time, especially in those years, but he also told me later that he was resolved never again to be an employee of the state after his experiences in Germany, and universities were directly or indirectly controlled by states.} He found other outlets for teaching with little or no pay. The attachment to Cologne university involved a few lectures during an annual visit of a week or more. This regular appointment shifted to the university where he had been \textit{Privatdozent}, Frankfurt am Main. In 1957 he was made Honorary Professor there and every year gave four lectures on English law in each of the two semesters.\textsuperscript{66} In 1962 he lectured for several weeks on the German Civil Code at the Faculty of

\textsuperscript{64}John (1972), see especially 183–98; Hett & Wala is a reliable account.

\textsuperscript{65}MIZ, Mikrofilm MA 1500, Rolle 77.

\textsuperscript{66}Liber amicorum, 11.
Comparative Law at the International University of Comparative Sciences in Luxembourg.

From 1964 to 1966 he taught German law to students at the University of Surrey in Guildford. King’s College London appointed him Visiting Honorary Professor in European Law in 1967; from 1969 the course he taught there was ‘Elements of German Civil Law’. The College employed a paid full-time assistant, qualified in German law, who marked the assigned essays and gave lectures when Ernst was abroad or ill. The students were asked to consider his amusingly couched fictitious cases and resolve their legal conundrums with the aid of the Civil Code and commentaries. His one research student was David Southern, at Oxford University which, as in my case too, allowed supervisors to be appointed from other universities. Since receiving his doctorate in 1976, Southern has become a leading QC (Queen’s Counsel) in tax law, a bencher of Lincoln’s Inn, and Professor and Director of the School of Tax Law at Queen Mary College London. Interviewed for The Times Law section in 2008, he ascribed his decision to become a barrister to ‘... the influence of my doctoral supervisor, Ernst Joseph Cohn .... He regarded law as something written in the stars, rather than a set of rules to be played with.’ Ernst also lectured occasionally on the law of international trade to the Inns of Court School of Law and elsewhere on international commercial arbitration, as well as giving single lectures at other English and German universities and research institutions, and in Switzerland.

67 KCA, K/PP60 Cohn, 17.
68 The Times, 5 Feb. 2008, Law section, p.3. I owe this reference to the kindness of Professor Sir Graham Zellick.
I often experienced directly my father’s ability and enthusiasm as a teacher. On my return from Jamaica he began to teach me German, since I had forgotten what I had picked up as a small child. Most evenings I watched over his shoulder while he typed a page of a story as he made it up, Die Bärgeschichte, about animals with amusing German names who got up to improbable antics. In later years he would summarize at the breakfast table the interesting legal case on which he had recently been working. In that way I learned, with examples, to distinguish between the private and public forms of international law, which stood me in good stead for a question in the general paper (called ‘gentlemen’s paper’ by us students) in my Oxford History Finals in 1957. He ensured that I went to good private schools and when the headmaster at Haberdashers’ put me on the wrong history A-level course for entry to Oxford and a possible scholarship, Ernst arranged for the head of History at St Pauls School for Boys, Philip Whitting, who inspired many other academic historians, to coach me privately to success in the entrance scholarship. When I was preparing for the entry paper in foreign languages, Ernst helped me to add Spanish, which he had learnt during the war, to my French, German and Latin. His support and encouragement in many ways continued throughout my academic career.
From 1954 until his death I saw less of him than before. My next six years were spent studying in Oxford or, during 1958/9, in Germany, and dividing my time in vacations between London and visiting my mother in Jamaica. In 1959 Ernst did call on me in Munich when I was working in the state archives housed in the grandiloquent former Nazi headquarters reminiscent of those depicted in Charlie Chaplin’s classic satirical film, *The Great Dictator* (1940). On hearing of the building’s history, Ernst made a point of entering just to use the toilet. After marrying Ruth Harris (1937–2002) in 1960 I had university lecturing posts successively in Glasgow, Leicester, and the University of Warwick in Coventry, and communicated with my father only by telephone, the occasional letter, and rare visits. When meeting we discussed matters of the moment rather than his reminiscences about his early life, which I have since come to regret. At the back of my mind I had the idea that he would in retirement write his own memoirs on the lines of the two chapters he had already published, but it was not to be. However, consultation of archive holdings, contemporary newspapers, the considerable literature about Ernst’s life and times, and a sampling of his extensive published work have all enabled me to find out a great deal about him that I had not known, and probably more than might have been obtained even in a well-structured series of interviews.
Shortly after our daughter Carolyn was born in August 1961, her mother fell ill with schizophrenia and from time to time went to hospital. During one of these periods, in 1964/5, Carolyn spent several months being looked after by Ernst and Helen in their home, since 1960 at 67 Highfield Gardens, Golders Green. All three seem to have been very happy with this arrangement. Helen did not enjoy good health for a number of years and sadly passed away in December 1967, to the sorrow of all of us who knew or were related to her, but especially Ernst.
Ernst and Helen, c. 1965, at Highfield Gardens

In 1972 he married Rita, née Jaffé, widow of Rudolf Edler, a solicitor who had also been a fellow officer with Ernst in the World Jewish Congress (British Section). Rita lived in an upmarket but smaller house at 16 Randolph Avenue, Maida Vale, which she did not wish to leave. Ernst moved there, sold his house in Golders Green and disposed of most of his furniture, some pieces of which came to me in Coventry. Of these the living room suite was replaced after many years, but two fine glass-fronted Hille cabinets are still in our London apartment, having travelled via Coventry and Birmingham, as did some of his glass-fronted ‘barristers’ bookcases’. At the age of 65 Ernst had learnt to drive, albeit with a licence only for automatic-gearbox cars, and was as happy as any young man with a sports car when driving to work (parking in Lincoln’s Inn Square) or into the countryside. In the 1950s he became a member of the Reform Club in Pall Mall where he could meet like-minded liberals of all political persuasions and entertain foreign clients, who were impressed with the imposing building. Later he switched to the nearby and equally imposing Royal Automobile Club for the sake of its splendid basement swimming pool, in which I too enjoyed the occasional swim.
For two decades from the 1950s he was able to enjoy foreign travel for pleasure as well as work. Some of this was to visit relatives in Israel and the United States. Travel purely for vacation was very often to Switzerland, on which I accompanied him when a boy and was amazed at the size of the Wiener Schnitzel overlapping the side of a large plate in the hotel at a time when England was still subject to food rationing. By contrast, in 1952 he and I stayed at Hotel Europe in Lucerne with a British delegation to some conference. All found the food at breakfast very poor until Ernst ‘... told the manager a few home truths ...’ and matters improved, as one of the others reminded him six years later. With Helen we also spent a holiday at Spiez on the Lake of Thun in 1955, an excellent spot from which to explore the mountains and lakes.

Towards the end of his life Ernst received many forms of recognition for his academic and professional achievements. In 1964 the Law faculty of the University of Cologne awarded him an Honorary Doctorate in Law with the citation that

... he had decisively furthered the connection between German and English law through his profound and discerning researches, through riveting lectures to the academic youth and through compelling exposition in the courts of England and Germany.\(^\text{70}\)

The following year he was awarded a University of London LL.D (not an honorary degree but one based on published work) for ‘a substantial, distinct and original contribution to legal science’.\(^\text{71}\)

In 1973 he became a Fellow of King’s College, the highest honour that institution can bestow. Fulsome 70th birthday tributes were paid to him in 1974 in the German Juristische Zeitschrift and Jewish publications. The two highest forms of recognition came just in time during his last year. In June 1975 he was awarded the O.B.E. ‘for services to English law’, although he was too ill to go to Buckingham Palace to collect the medal. A story lies behind this award which betrays the secretive manner in which such

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69 E.J. Cohn to H.J. Cohn, 8 Oct. 1958, CFP.
70 Translated from the German of the splendid bound and cased certificate, CFP.
71 Liber amicorum, 11.
honours were granted at that time, and for all I know still sometimes are. Ernst arranged with his friend Ronald Graveson, Professor of International Law at King’s College, a QC to whom he was sometimes junior barrister, and his literary collaborator, that he would recommend Ronald for the Federal German Cross of Merit (Bundesverdienstkreuz) and Ronald would recommend him for an English honour.⁷² Both men richly deserved their recognition but might well not have received it without this ruse. A few months later thirteen of Ernst’s English and German academic colleagues published a Festschrift in his honour, Liber amicorum Ernst J. Cohn, which was jointly edited by the head of his department at King’s and a professor at Würzburg University who had been external examiner for his course at King’s. In the final stages of his illness I read out passages to him and later thanked the contributors in writing on his behalf.

Ernst had in general enjoyed good health and probably benefitted from his preference for walking in both town and country, as well as regular swimming. In his sixties he did require a stay in hospital for a hernia operation which was then a more serious and dangerous procedure than it has since become. He was a great believer in homeopathic medicine and trusted in his physician who was also a fully qualified doctor; it was perhaps no mere coincidence that his cousin Franz, murdered in the Holocaust, had practised both regular and homeopathic medicine.⁷³ This misplaced trust was to be Ernst’s undoing. About eighteen months before his death the doctor failed to have his serious bowel complaints properly investigated, so that cancer of the colon was diagnosed too late to be successfully treated by the methods then available. Although his last year was exceedingly uncomfortable, he tried as best he could to continue working, but the caseload dropped off, and he still went on holidays. The last ten weeks were spent in the private London Clinic, Marylebone. Even there, he continued to dictate letters of both a business and a private nature to his secretary and to me. He was visited by many friends and often by Rabbi Dow Marmur of Alyth synagogue. With the support of my sympathetic head of

⁷² Graveson afterwards thanked Ernst for his support, R. Graveson to E.J. Cohn, 3 Dec. 1975, CFP.
⁷³ Heidel, 276.
department at the University of Warwick, Professor Jack Scarisbrick, I was able to leave Coventry mid-afternoon on workdays and so spend an hour or two with my father almost every day. This became more of a need for me when, halfway through, his wife Rita found it too stressful to visit at all and never saw Ernst again. His cancer specialist told me that he would not let Ernst suffer, though I was not aware at the time that this meant medication even if it shortened life. I left his bedside for a short time on the evening of 1 January 1976, during which he passed away.
The Marriage of Legal Practice and Scholarship

The two professions which Ernst pursued, as legal practitioner and academic scholar cum teacher, are rarely combined by one person and might appear to the uninitiated to be only loosely connected. In his case, virtually unique, they were pursued concurrently. He saw them as closely linked, since his day-to-day legal practice often informed the scholarship he pursued, while his written legal opinions for clients relied on and cited his scholarly knowledge of both the English and German legal systems and of the intricacies of private international law. This symbiosis was underpinned by his intensive training and experience in both the court systems and the academic scholarship of the two countries and the wider field of comparative law.

The range of his publications is easy to explore in libraries and online. Their significance for the advance of legislation and scholarship has been evaluated by others with the legal expertise which I lack. This section attempts to highlight just three aspects of his legal work: the connection between his practice and his writings, his desire not merely to analyse the law but to press for its reform, and the role of comparative law in his thought.

Less easy to assess than a scholar’s legal writings is the caseload of a barrister, except when they publish their own record, since, as I was told by Ernst’s clerk of chambers, after a barrister’s retirement or death his working papers are returned to the clients. However, it later transpired that while many of Ernst’s legal papers are therefore not available, a sizeable number for some reason formed part of his archive passed to King’s College London. Much light is shed on the varied nature of his work by the sixteen large boxes of files, without a detailed catalogue and the pages unnumbered, which contain legal opinions, affidavits presented to courts, and correspondence over the years 1952 to 1975. The use of both English and German required him to

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74 The best examples are Jabs (1999) in German, and in English by Lorenz (2004), a German law professor specializing as Ernst did in civil law and comparative law.
75 KCA, K/PP60 Cohn/1–16.
employ a series of long-serving secretaries (notably Catherine Stern and Rotraud Beard) proficient in both languages and, from 1947 to the early fifties, the qualified German lawyer assistants Otto John and G. Meyer; the latter also helped to write the first edition of the *Manual of German Law*.

With the exception of some incoming letters, the surviving documents are only drafts or copies. Drafts were sometimes typed on Ernst’s typewriter at home, the rest dictated, a few handwritten, and more had his handwritten amendments. *One secretary complained that he sounded like Winston Churchill when speaking into the poor-quality dictating machines of the day, but like Donald Duck when she played the tape back.* Some opinions were short, others thirty pages or more. Occasionally he was sharply critical of the opinions of opposing lawyers, including colleagues like F.A. Mann with whom he was otherwise on friendly terms. The outcome of cases is only rarely known. My sampling of the records in just two days at the archive will, I hope, give an indication of the range of his clients and the subject matter of their litigation.

The cases involved private individuals, commercial companies, and charitable and other corporations. Ernst’s task was to explain to clients and English and foreign lawyers and courts both the differences between their jurisdictions and the nature of private international law, which he once expounded as ‘... not an international law at all, but merely part of the national law which the courts of different countries have to apply and which differs from country to country....’ The greater number of cases concerned German law, but the similar laws of Switzerland in its federal and cantonal courts and Liechtenstein also featured. He declared that he had appeared in many Swiss courts and that his writings on Swiss law were published there and had been quoted with approval by the Federal Swiss Supreme Court. On other occasions he elucidated in his cases or published work the laws of Gibraltar, Ireland, Israel, Monaco, Norway, Portugal, and Venezuela, and the effects of the Treaty of Rome and the European Union on legal issues. He recorded as early as 1956 that

76 Ibid., 8.
he had appeared in courts as an expert witness in over 100 cases.  

While some individual clients, or those against whom Ernst’s clients brought suits, were ordinary people with modest issues to resolve, many were rich enough to afford at least one solicitor and one barrister with the associated costs. A large number were the major and minor nobility of Europe whose families and wealth were scattered through different European countries. They included Emilia Princess Romanoff, Count Peter Metternich, Prince Aly Salomone Khan (the ‘golden prince’, son and father of successive Aga Khans), Begum Aga Khan, Princess Theodora Marquess of Baden, Baroness von Hindenburg, Madame and Alexandrine de Rothschild; and also the German industrialists, Fritz Thyssen and family.

One interesting case concerned Anna Anderson, who claimed to be Grand Duchess Anastasia Romanoff, the youngest daughter of Tsar Nicholas, who was murdered with all his family by Russian Communists in 1918. She had lived in Germany and since the late 1920s won some support for her cause. Sensationalist reports followed in the media of several countries, as well as in plays, novels and films based on her story. In the middle of a long-running dispute between Fox Films and Gala Film Distributors over rival films called Anastasia, the High Court Chancery Division received a report in 1957, which Ernst had secured at short notice, that a court in Berlin had declared Anna not to be the Grand Duchess. His old friend Wilhelm Cohn, then working in the legal department of the British Military Government in Berlin, had searched the records of the local court at the weekend when the offices were normally closed and sent his report by telegram and the proof documents by plane to be collected from the airport in London.

Ernst rarely played a part in criminal trials but he did in the defence in 1945 of William Joyce, known as Lord Haw-Haw, who had broadcast for German State Radio to Britain between 1939 and 1945. My father’s name is not in the trial records or a recent

78 Cohn (1956), 70; Jabs, 59.
79 KCA, K/PP60 Cohn, 3/1; law report in The Times, 1 Feb. 1957, p.5.
biography of Joyce, nor can I recall the nature of his involvement, but since the case turned on issues of nationality as well as the nature of treason, he may have given opinions for defending counsel on nationality or on Joyce’s formal contract with the propaganda radio station. Joyce was convicted and executed.

The diverse subject matter of cases brought by individuals included wills and trusts, marriage and divorce, child maintenance, nationality, domicile, conflict of laws, and the authentication of foreign documents for the British or foreign courts. In the early post-war years, cases of restitution and compensation for Jewish victims of Nazi persecution were common, though in some instances he had to explain to the clients that they did not have sufficient evidence to bring a claim, or even that he was too busy to take on more work.

There was also a British Foreign Compensation Commission to which Germans appealed for compensation for their property confiscated during the war. Ernst appeared several times before this body during a fortnight’s hearing in 1959 of claims brought by Count Alexander I von Hochberg (whose portrait hangs in the National Gallery, London), later head of the Pless family whose foundation had briefly employed Ernst in 1933. The count’s estates, estimated to be worth £15,500,000 (over £350,000,000 in 2018), had been nationalized by the post-war Polish government. The issue was whether he had British or German nationality as well as Polish, and this was still at stake in opinions which Ernst wrote in 1966. Some years earlier he had published a letter urging the British government to be less restrictive in returning confiscated enemy property, since many victims of the Holocaust had been disadvantaged by its policy; other countries were more liberal. Otto John later reported that in the late 1940s he had helped Ernst to find assets of the former German Empire which the Nazis had concealed in neutral countries.

Some clients had legal recourse to solve disputes over the publication of their works. Ernst advised the highly-regarded
scholars of English local history, H.P.R. Finberg and W.G. Hoskins, that the publishers Jonathan Cape should not have destroyed the unsold copies of their book *Devonshire Studies* (1952) but remaindered them and offered the authors copies. The much-published Austrian author and poet, Emil Alphons Rheinhardt, became an opponent of Nazism, lived in exile in France and joined the Resistance before being taken to Dachau, where he died in February 1945. He told a fellow prisoner (probably the Netherlander Nico Rost) that he wished that his works should go to Miss M.E.T. Fisher as his sole literary heir. Ernst advised her that this verbal bequest was not valid under German or Austrian law, so that the Austrian state inherited from the intestate author. However, by 1959 the copyright had expired and anyone could publish a translation and secure the copyright as editor. The case was successful but there is no evidence that Miss Fisher ever published the translation.

In 1959 Rabbis S.D. Sassoon and E. Wiesenberg published a 600-page Hebrew translation (*Perush ‘al Be-reshit u-Shemot*) of the Arabic manuscript commentary on the first two books of the Hebrew Bible written in the twelfth century by Moses Maimonides. Rabbi Wiesenberg (a member like Ernst of the Society for Jewish Study) claimed damages because his role as author was not recognised on the cover of the book, only inside. Ernst confirmed that Wiesenber was entitled to the copyright but he was dubious about the claim, though he called Sassoon’s counter-claim spurious. He thought £1,000 would be a suitable settlement and in the end £750 (about £17,000 today) was agreed, which he thought a good result, as well he might for a book with such a limited readership—only two copies are traceable in British research libraries.

Publishers too sought advice about copyright in different countries, especially for translations. Pasternak’s *Dr Zhivago*, Arthur Schnitzler’s play *Anatole*, a German translation of G. B. Shaw, and the distribution rights for Franz Lehar’s operetta *The
*Merry Widow* are examples of works which received Ernst’s attention.

Commercial companies naturally needed legal advice for transactions involving more than one country, sometimes several. At issue were contracts, including licensing agreements, trade names, employment matters, and taxation. One question was whether German turnover tax should be paid on goods delivered to British troops resident in the country. Another concerned the use of the term ‘milk powder’ in Germany. In 1975 Ernst gave expert evidence on German nationality law for the Crown in *Oppenheimer v. Cattermole (Inspector of Taxes)* which was accepted by the five judges in the House of Lords (then the highest court in the land), thereby overturning an Appeal Court decision in favour of the plaintiff. British and American firms who needed guidance included Boosey & Hawkes (music publishers), Twentieth Century Fox, Guardian Assurance Company, Horlicks, Jaeger, Kenwood Manufacturing Co., British Nuclear Fuels, Westland Helicopters, and Beecham Group. German banks and Israeli shipping companies figured frequently. Among other German companies were Daimler Benz and Carl Zeiss. Charities and Trusts were the Central Council of the Jews of Germany, the Jewish Trust Corporation, The Church of Scientology and the London Foot and Mouth Painting Artists. There were many others in all these categories.

Increasingly from the 1960s, firms avoided expensive and time-consuming court systems and had recourse to arbitration courts, with Ernst appearing both for the parties and occasionally as one of the arbitrators. In 1971–73 the Greek government appointed him as an additional member of the Arbitral Tribunal for a major case against Germany for claims arising from the London Debt Agreement of 1953. Several of his publications reflected this new aspect to his practice (1965b, 1967b, 1977). Towards the

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86 11 Nov. 1959, ibid., 3/2.
89 See generally the list below of Ernst’s publications, identifiable by their dates. Other articles not in that list also treat of many of the topics discussed here.
end of his life Ernst regretted that his application to become a QC had failed, which he attributed to most of his work having been not as an advocate in the High Court, but as an expert witness or in courts or arbitration cases outside the British court system.

In Germany Ernst’s research and teaching had been governed largely by his academic interests, but thereafter they were also strongly influenced by, successively, the experiences of emigration, war service, and as legal adviser to government agencies for the occupation of Germany, and then they followed the direction of his post-war legal practice. While still in his twenties in Germany he had published three books and sundry articles, notes on law topics and reviews totalling some 800 pages in print. The themes were all connected with agency in German commercial law and the procedures for its judicial administration, but already his German doctoral thesis devoted fifty pages to a comparative survey of what Swiss, Austrian, English, American and French law had to say on his chosen topic. The similar but longer section in his Habilitation added Italian law to the above list. For this second doctorate the stated purpose was to show how other countries might benefit from the adoption of some of the provisions in German law.

The importance of the study of comparative law was taken up in the proposals he advanced—immediately on arrival in England—for the establishment in London of an institute of comparative law along the lines of those on the Continent. He elaborated on his argument in an article of 1939 for a Scottish law journal, Juridical Review, adding that the need was now all the more urgent that the formerly excellent comparative law institutes in Berlin and Rome had fallen under the sway of Nazi and Fascist states. Nothing could be done during the war, but afterwards others took up the cause and the British Institute of International and Comparative Law, today housed in an imposing modern building, Charles Clore House in Russell Square, was created in 1958 by the merger of the Society of Comparative Legislation with the Grotius Society, the latter a body to which Ernst had lectured and in whose Transactions some of his articles appeared, as they did in the journals of international and comparative law associated with the other bodies mentioned above. Many of his
publications were to make extensive surveys of the laws of other countries, buttressed by historical evidence, in order to support specific proposals for the reform of English law.

His campaigning energy was diverted during the war to the reform of legal aid for the poor, in which he played an important role. His zeal in this cause went in tandem with his experience in advising soldiers on Salisbury Plain, but he had also been following the legal aid columns in the press of Germany, Switzerland and the U.K. for some time. In the months before he published his account of legal aid to military personnel, there appeared in the Law Quarterly Review his seminal double-length article on legal aid for the poor in civil cases, written on his own admission when on active service living far from libraries and partly reliant on his correspondence with other scholars and on older books in his possession. Its powerful critique, with a moral cutting edge, of existing British provisions was buttressed by a thorough review of the systems in other countries, on some of which he based his own detailed recommendations. These went well beyond those previously advanced in 1942 by the Haldane Society. His arguments had both immediate and long-term effects. In 2017 the solicitors Hodge Jones & Allen held an evening meeting for 80 young lawyers on the life of a legal aid practitioner. The evening began and ended with a quotation from Ernst’s article of 1943:

[T]he state is responsible for the law. That law again is made for the protection of all citizens, poor and rich alike. It is therefore the duty of the state to make its machinery work alike, for the rich and the poor.  

In 1944 the article was distributed to Members of Parliament and Ernst appeared as a witness before its Rushcliffe Committee which published recommendations for reform in 1945. These ultimately led to the Legal Aid and Advice Act (1949) which

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90 See Appendix 5.
91 Cohn (1943a). See Appendix 4.
established a comprehensive state support system administered by the Law Society on behalf of lawyers in private practice, just as he had insisted against others who had wanted a state service. The 1949 Act contained many of his proposals. Meanwhile he had published other articles on the subject and a book on legal aid (1946), jointly authored with Robert Egerton, a solicitor and fellow campaigner, as a guide for lawyers and social workers.

Legal aid was not the only cause for reform of the law which Ernst took up during the war. In January 1944 he wrote a lengthy memorandum on English company law in comparison with that in ten European countries. In July of that year he and Dr Ernst Wolff, a former president of the Berlin Lawyers’ Association, were among those who gave evidence on the basis of their two memoranda to the Company Law Amendment Committee, chaired by Judge Lionel Cohen, looking into the revision of the Companies Act (1929). The resultant act of 1947, revised in 1948, has since been replaced by many others. When the second, but not final, report of the Denning Committee on Divorce recommended that a reconciliation service should be part of the machinery of justice, Ernst criticized this as inadvisable in the light of experience in many European countries (1946). Instead, the work was assigned in 1949 to the National Marriage Guidance Council (founded in 1938, now known as Relate).

Other research by Ernst during the war also set the tone for his publications of the following thirty years. The title of his typewritten London PhD thesis, “Comparative Justice and Legal Reform”, summarized a major linkage of his interests. After a critical review of the discipline of comparative jurisprudence it examined three case studies: the maintenance of illegitimate children, forms of property and arrestment, and in pari turpitudine (on how to resolve an issue when both parties in a case have committed some fault). Surprisingly, the thesis was never turned into a book, nor apparently were any parts published as articles, and the thesis itself is almost never cited in subsequent literature by others. Possibly the author was just too

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93 Minutes of Evidence 22, 7 July 1944, CFP.
94 Copies are in KCA, K/PP60 Cohn, 18 and University College London Library.
busy with his legal practice and other scholarship to find time to revise it for publication.

By contrast, the wartime handbook on German law, prepared for the occupation of Germany and for internal distribution to the occupying forces only, morphed into Ernst’s most widely read and appreciated work, The Manual of German Law. The first edition, in two volumes (1950/1952) was still written under the auspices of the Foreign Office with the needs of British staff in the British zone of Germany primarily in mind. Ernst was the general editor who inspired the whole, which had four other contributors; he wrote all but 60 pages of the first volume though just 30 in the shorter second one. Apart from his general introduction, the topics covered were civil law and procedure, commercial law, criminal law and procedure, and private international law. It was such a success with a wider reading public of British lawyers that the British Institute of International and Comparative Law (with which he had long been associated) sponsored a second edition (1968/1971), 200 pages longer and extensively revised and recast. Ernst wrote the whole of the first volume with the help of a research assistant and contributed a new chapter on the conflict of laws to the second, for which three of the other four contributors wrote on new topics: bankruptcy, nationality, and East German family law.

Scholarly reviews were universally favourable and the book was widely used in British universities where German and Continental law courses were taught, not just to his students at King’s College and the University of Surrey. Until 1996 it was on the curriculum at University College London and at Oxford.95 Students in Germany also found it a usefully clear introduction. A third edition was contemplated in 1991, but an author could not be found. During the 1990s and after, other British authors wrote large similar handbooks which incorporated the extensive more recent influence of European law on German law and thereby rendered the Manual obsolete.

Meanwhile Ernst had turned his attention to equipping German lawyers, who already had at their disposal works in German about

95 Jabs, 59.
substantive British law, with explanations of the procedure in our courts which is so different from their own. As with much of his writing, these books and articles were based on lectures he had previously given. They preserved the clarity and much of the humour which made him such a popular teacher with other professors, students, and general audiences. Topics covered included the course of a trial and the roles of judges and lawyers (1949, 1951a, 1956, 1958, 1973c). The experience of his practice was likewise incorporated in expositions on the treatment of enemy property in Britain (published in both English and German, 1950, 1951), copyright (1963a), company law (1963b, 1964), conflict of laws (1936, 1939, 1963), domicile (1955), and international sales (1968a). He compared the British system of a divided legal profession of barristers and solicitors with the German, American and other unified systems (1960/61) and expressed his preference for the division in a lead article in The Times of 19 April 1966 after criticism of it had become widespread. He also preferred the greater reliance in Britain on oral proceedings and cross-examination absent in Germany. The newspaper article provoked lively responses.

Ernst was moreover keen to share his views with a wider audience than those who read academic publications. Two favoured vehicles were The Fortnightly Review in the mid-1940s and the letters page in The Times, to which between 1939 and 1975 he contributed dozens of comments on matters legal. The series began with a long leading letter (24 March 1939) on what should happen after the German occupation of Czechoslovakia to the bank balances there belonging to Czechs living abroad and to foreign firms. The last letter (30 October 1975) concerned practices in advertising imports that might involve unfair competition. It led to two responses; to one of these he dictated a letter of thanks twelve days later from his final sickbed (CFP). Other topics included neutrality in war (early April 1940), the Domicile Bill (13 April 1959), pollution at sea (22 Jan. 1972), crimes against the state (14 Aug. & 6 Sept. 1973), sovereignty within the European Economic Union (21 Jan. 1975), and others of a political as well as legal nature described below. He also

96 See Appendix 7.
contributed a large number of notes to various German and English publications on legislation and legal cases, as well as reviews of books, too many to enter on the printed lists of his publications or to discuss here.

It benefits a prolific author to keep good relations with his publishers. The State Library in Berlin holds an extensive correspondence (not consulted by me) which Ernst conducted with the publishers Mohr in Tübingen in the 1930s, 1950s and 1960s. He advised the North Holland (now Elsevier) publishing house to set up its Law programme and remained its consultant. 97 He joined committees to which he—and others—thought he could make a useful contribution. In 1963 these included the Common Market committee of the British Institute of International Law and the International Relations sub-committee of the Bar Council. 98

Above all Ernst was loyal to the network of colleagues who had helped him in Germany and those he later knew professionally. He contributed articles to Festschriften for ten of them (e.g. 1951a, 1953, 1970, 1973a & b). His year at the University of Kiel in 1930/31 left lasting memories. He wrote a tribute to his Jewish colleague there, Otto Opet, who for many years struggled in vain despite his excellent publication record to obtain from the Prussian government a salary appropriate to his teaching duties and promotion to full professor (1973a). In 1938 Ernst helped his mentor and supervisor of his first two dissertations, Eberhard Bruck, who was sacked from his Roman law chair because of his part-Jewish ancestry and had difficulty, at his advanced age and with a family to support, in finding a placement abroad in his field.

Ernst’s correspondence, and that of others, with the Society for the Protection of Science and Learning led to Bruck becoming a research associate in law at Harvard the following year. 99 On the death in 1961 of a Breslau colleague whom he had known since their Frankfurt days in 1928, Professor Theodor Süß, Ernst wrote:

97 North London Publishing Co. to Rita Cohn, 9 Jan. 1976, CFP. See also Cohn (1977).
98 Van Dyke.
99 BOD, MS SPSL 262/6, fos. 354, 357, 371, 378.
As long as I live, I shall not forget the loyalty and courage which Theodor Süß demonstrated in those past years which were the darkest and for me personally the most difficult .... He [also] made very heavy sacrifices for his persecuted Jewish friends ....

Ernst also wrote obituaries for both Bruck and Süß.

Another colleague who stood by him in 1932 was the Professor of Protestant Theology, Ernst Lohmeyer. In November 1946 two witnesses testified that Lohmeyer had been physically attacked several times for defending Ernst. He had also made enemies by housing several other persecuted Jewish colleagues and students in his summer house. Like other German professors he was drafted into the army and ended the war as commandant of the town of Greifswald, where he had been reluctantly dragged into the murderous German occupation policy. The Russian occupying army arrested him as a war criminal. Ernst’s character reference for him in 1946 stated that Lohmeyer was always a convinced and courageous anti-Nazi, had given him strong and resolute support, and once stood in front of him to shield him from attacking students. He declared himself convinced that, had Lohmeyer been rector of the university in 1932, his strong personality and democratic convictions would have suppressed the student unrest from the outset. Nevertheless, the verdict of the Russian military tribunal led to Lohmeyer being shot, as were many others.

Ernst’s staunchest professorial friend was Erich Schwinge, an expert in criminal law, who proved to be as controversial a figure as Otto John. Erich and Ernst met when they were both very young temporary professors in vacant chairs at Kiel university. After Erich became professor at Halle they met again at Halle railway station in February 1933, when Ernst was leaving the country for Switzerland. Schwinge also remained friendly with his former mentor and supervisor, another Jewish refugee, Max Grünhut, who became a distinguished professor at Oxford.

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100 Translated from Nipperdey, 195.
101 Köhn, 63–66; Weigelt, 312.
102 Schwinge (1976).
Schwinge was a right-wing conservative active in politics but in the 1930s wrote articles in veiled terms attacking plans by Nazi lawyers to subordinate military justice, on which he had become an expert, to the discretion of judges serving the needs of the state rather than the rule of law. He was academically disadvantaged in Germany because his wife had an Arab, i.e. non-Aryan, grandmother and so he took a professorship in Vienna. Because he had written the standard textbook on military justice, he was made a military judge during the war. In France, Belgium and Russia he instigated as judge or prosecutor more than a dozen of the many thousands of cases in which soldiers were condemned to death for desertion, self-mutilation, looting and similar offences. Nevertheless, he was soon reinstated after the war with the help of several testimonials, including one from Ernst.\(^\text{103}\) He may well have been the professor whose wife at first refused to let Ernst in when he arrived after the war in a British military vehicle and uniform. Schwinge became professor again in Marburg and defended dozens of German ex-soldiers accused in France and Italy of war crimes, for many of whom he secured acquittals or light sentences.

In 1964 he came under attack from extreme left-wing students in Marburg, inspired by a Marxist sociology professor, Wolfgang Abendroth. For years he had to defend himself with court injunctions and university disciplinary procedures against demonstrations and articles in the student and national press demanding his dismissal. Among his strong defenders was Ernst, who came to talk to the students in Marburg\(^\text{104}\) and nine years later contributed an introductory biography of Schwinge to the latter’s \textit{Festschrift} in which he dismissed the student charges as based on total misunderstandings.\(^\text{105}\) However, from 1987 onwards several leading historians at the Military History Research Centre in Freiburg am Breisgau produced weighty volumes\(^\text{106}\) with more damning evidence against Schwinge, but also with abusive and intemperate language. Their agenda was to secure by political means the rehabilitation of those condemned

\(^{103}\) 24 June 1946, Wüllner, 851.
\(^{104}\) Wüllner, 851.
\(^{105}\) Cohn (1973b), 3–5.
\(^{106}\) E.g. Garbe; Saar; Wüllner.
in the wartime military courts, a result achieved after much difficulty by legislation between 1998 and 2009. Earlier Schwinge had defended himself vigorously in several books and an autobiography published posthumously in 1997. He argued that harsh punishments were necessary in times of dire wartime emergency, but also that social misfits and those who failed to show military discipline deserved to be eliminated from society.\textsuperscript{107} Until a few weeks before his death Ernst corresponded with Schwinge, but did not live to experience these later controversies, which might well have tested his loyalty to his old friend.

\textsuperscript{107} Schwinge-Stumpf.
Politics

No thinking person who lived through the tumultuous times of the Weimar Republic could fail to be deeply concerned about politics. When in England, Ernst’s concern for legal reform continued as before to have political ramifications, witness his appearances before parliamentary committees for reform of legal aid to the poor, company law and divorce law.

Yet until after World War II he did not join a political party. When a student at Freiburg im Breisgau in 1923 he became a member of the Demokratischer Studentenbund (League of Democratic Students), but only for one year. Published biographies of Ernst claim that during the Weimar Republic he supported the Deutsche Staatspartei (DSP); this party was formed in 1930 by the amalgamation of the Deutsche Demokratische Partei (DDP), a liberal party known as the ‘party of Jews and professors’, with a more right-wing and nationalist centre party which infused it with antisemitism. It may be that Ernst had voted for the DDP and DSP and then in the last Weimar elections switched to the Zentrum, a Catholic party at this time and the least antisemitic of them all. He told me that he had voted for Zentrum, though he may have meant centre parties in general. He had read Mein Kampf soon after publication (his copy, now in my library, was published in 1924) and he immediately took its alarming messages very seriously. He strongly contested the contention of Nazi and nationalist students in 1932 that he was some kind of Trotskyite. At Frankfurt in 1930 his mentor Eberhard Bruck forecast to his close friends the end of German culture and the trahison des clercs, the failure of academics to halt the decline. Soon after, in Kiel, Ernst was one of a group of law faculty colleagues to whom Professor Otto Opet expressed the view that it was unavoidable that the present order would be destroyed, a world war break out, and the

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108 MIZ, Mikrofilm MA 1500, Rolle 77. This personal c.v. submitted by Ernst to the Munich Institute for Contemporary History in the late 1960s is useful for details of his memberships.
109 Liber amicorum, 9.
110 Cohn (1961), 161.
German Empire go under, a remarkably prescient prophesy.\textsuperscript{111} The tragedy was that the minority of liberal professors and the like-minded in other walks of life could do nothing to stop the rot, and many accommodated with the Nazis once they were in power.

Ernst thereafter took the balanced view that there always remained democratic Germans who were not anti-Semites, people to whom every support and encouragement should be given. He was both the first Jewish professor to be attacked by the Nazis solely for being a Jew and one of the first Jews to return to Germany to lecture on law after the war. He regarded Communist forms of totalitarianism with the same hatred that he brought to Nazism. It pained him that Breslau and Silesia had fallen under Polish rule. He refused to revisit Breslau as long as this was the case; I respected his view and stayed away until seventeen years after the fall of Communism in Poland. He was a whole-hearted supporter of the Silesians driven out to West Germany after the war, contributed many short articles to their publications—notably those edited by one of their leading spokesmen, Dr Herbert Hupka, a top executive of Bavarian State Radio and later a member of the \textit{Bundestag} (the parliament of the Federal Republic of Germany)—and attended their reunions when he could. At one such meeting in Hanover a reporter asked him why he expressed solidarity with those who had forced him to emigrate. His reply was that he had been driven out by Hitler, his fellow Silesians by Stalin.\textsuperscript{112}

In England, Ernst’s article on ‘The political parties and legal aid’ (1945) was severely critical of the position taken by the Labour Party in the ongoing discussion about reform of legal aid to the poor, less so in the case of the Conservatives. Being as hostile to post-war Communist regimes as he had been to pre-war Nazi and Fascist ones, his natural home was the Conservative Party. He joined the Society of Conservative Lawyers in 1960, becoming chair of its comparative law section in 1968. His second wife Helen was active in the Finchley party on behalf of its MP, Margaret Thatcher. When Helen gave lifts to voters at a general

\textsuperscript{111} Cohn (1973a), 231.
\textsuperscript{112} Niedermeier.
election, Ernst and I took turns to accompany her as protection against those seeking on behalf of the Opposition to prevent this practice. He publicly supported British intervention in the Suez crisis.\footnote{Breuning & Walther, 85.} \textit{Towards the end of his life he said he would have liked to become an MP,} but he had taken no active steps towards that end.

After the war Ernst followed the political scene in Germany closely. He was in equal parts damning of those former Nazis who continued to hold high office in politics, the bureaucracy and the legal profession, and supportive of those democratic forces in the country which sought to make good the damage done under Nazi rule. He believed that lessons could be learnt from what went wrong in the Weimar Republic and that the Allied political settlement in Germany had many faults. His letter of 15 May 1951 in \textit{The Times} explained that the recent success of neo-Nazism in Lower Saxony was partly due to the Allied decision to create a federal structure in Germany against much advice received at the time. It facilitated demagogues who could not have operated on a national scale. The Nazis had similarly gained a foothold in Bavaria in the years 1923/25. Germany now had a dozen cabinets and interminable conferences between governments supporting a top-heavy bureaucracy.

Already under Weimar he had been critical of the prevalence of right-wing nationalism and antisemitism among school teachers, university professors and the legal profession up to the judiciary. In a critical book review of 1960 he wrote:

\begin{quote}
... open resistance to the democratic order of the Weimar Republic became the most characteristic feature of the majority of the German courts after 1918. A spirit of unbridled nationalism motivated the numerous acquittals of nationalist trespassers against the liberal political laws of the Weimar regime .... There were few aspects of German life where the stage for the advent of Nazism was better set than the German judiciary.\footnote{WLB, 14.i (1960), 11. See also Appendix 8.}
\end{quote}
This argument was set out more fully in both editions of volume 1 of the Manual of German Law. His research student Richard Southern completed a dissertation on the Weimar judiciary, which unfortunately has apparently not been published. Ernst’s interest in the history of Germany in the first half of the twentieth century led him to review many books in English about this period.

From 1949 until 1961 he worked together with the founder and director, Dr Alfred Wiener, and the staff of the Wiener Library in London, still going strong and since 2019 as the Wiener Holocaust Library, which has an unrivalled collection of information about Nazism and the Holocaust. Ernst and Wiener not only met and telephoned but engaged in regular correspondence which exchanged news not only about affairs in Germany but on health and other personal matters. The two gentlemen, who had lived many years in Britain and were accustomed to use the English language, nevertheless kept bilingual secretaries for their work and communicated with one another in their native German. They sent one another copies of items from the German press and information about professors and other persons with possibly Nazi pasts. For his work on restitution cases Ernst was interested in receiving background historical information about brutality by the Nazi police and SA, maladministration by financial officials, and the treatment of the Aryan wives of Jews. Both men expressed their appreciation of the benefits which they received from this cooperation.\textsuperscript{115}

In the post-war decades many in the Jewish community were, perhaps understandably, unforgiving to Germany and its people. Ernst took pains to keep them informed about the true state of affairs, the good as well as the bad. In a discussion of Neo-Nazism and antisemitism at the May 1962 meeting of the National Council of the World Jewish Congress (British Section), he was reported as saying:

\begin{quote}
\ldots from his own experience and his own frequent visits to Germany the real danger lay not in the numerous, yet in
\end{quote}

\textsuperscript{115} WL, 3000/9/1/282 Professor Ernst Joseph Cohn; WL 3000/9/1/1493 Eric M. Warburg, 16 & 21 March 1949.
total membership small neo-Nazi groups which were out of favour with the public in general but in the possibility of a resuscitation of a German People’s Party, on whose backs the Nazis had climbed to power in the 1930s. The cry of this group [which had not yet formed a party] was for resettlement in lands from which they had been moved in the immediate post-war years.\footnote{\textit{USSC}, MS 238/1/8.}

Ernst’s articles and correspondence in the Jewish press informed readers about legal and political developments in Germany. In 1954 he praised the West German constitutional court and government for refusing pensions to civil servants of the Nazi period who had not been exonerated and reintegrated into state service. He also named four law professors with Nazi pasts who had been reappointed in universities.\footnote{‘Purged of the Past’, \textit{WLB}, 8.i-ii, p. 4.} One of these, Reinhart Maurach, had been a specialist on eastern Europe in Breslau and after the war in Munich and the subject of correspondence between Ernst and Alfred Wiener.

The following year Ernst explained that a recent agreement between Bonn and Paris had improved chances for the restitution of property confiscated by the Nazis; he contrasted what west European governments had done with the failure of eastern ones to act.\footnote{‘Paris Pacts and Claims on Germany’, \textit{JC}, 20 May 1955, p. 17.} In 1961 he became embroiled in a local controversy over the decision by the borough of Hendon to twin with Tempelhof, the Berlin suburb and home to the aerodrome used for the Berlin airlift to relieve the western part of the city from the blockade imposed by the Russians and East Germans. Rev. Leslie Hardman of Hendon United Synagogue, a heroic figure as one of the two first Jewish chaplains to enter the Bergen-Belsen complex in 1945, had persuaded his 700-strong congregation by a show of hands in a service to join the opposition to the twinning on the grounds that the Germans had expressed hardly any regret over the Holocaust. In a letter to the \textit{Jewish Chronicle} Ernst listed many speeches of apology by German presidents and other leading politicians, and concluded in typically combative manner:
The Jewish public is entitled to be informed who drafted this misleading statement. The information would throw light on the question whether sheer ignorance and gross recklessness are alone responsible for it or whether subtler forces have been at work. The Rev. Mr. Hardman may perhaps have added to the attractiveness of the Divine service held by his congregation by turning one of them into a ‘well-nigh unanimous’ plebiscite of the kind hitherto associated with dictatorial rather than with spiritual ‘leaders’. But such demonstrations will not impress anyone. Opinions based on falsehoods have no value.\(^{119}\)

Rev. Hardman defended himself vigorously and the controversy rumbled on in the Jewish press.\(^{120}\)

Immediately after the Six-Day War in 1967 Ernst turned his biting wit against Jews relying on ‘the Communist propaganda line’ to argue that Israel was the aggressor and that the Arab powers should be rearmed.\(^{121}\) Shortly afterwards he took issue with the claim by the former editor of the *New Statesman*, Kingsley Martin, that ‘... the Labour movement always sides with the underdog ... ’; this was false as far as Jews were concerned. He castigated the Attlee-Bevin government over their attitude to Jewish immigration to Palestine and reparations for Jewish victims of Nazism, and for doing nothing to help Israel in the Six-Day War. By regarding Israel now as the top dog when it was surrounded by the vast Arab world, Martin’s myopic view ‘... explains why left-wing “intellectuals” have during the past 50 years been the most persistent wreckers of all those values in which they so loudly profess to believe’.\(^{122}\) Ernst’s political interventions often had a Jewish context, and similarly his activities in the Jewish community sometimes had a political dimension.

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\(^{121}\) *JC*, 23 June 1967, p. 6.

\(^{122}\) *JC*, 3 Nov. 1967, p. 8.
Judaism and the Jewish Community

The parents of both Ernst and Marianne were largely secular Jews who nevertheless belonged to the Jewish community and a synagogue in Breslau (as almost all Jews did), but were not observant and rarely attended synagogue, and became even more secular after their emigration. Yet Marianne and Ernst were committed Jews of the Liberal/Reform persuasion from their early years in Germany and throughout their lives. The year after their marriage they joined the North Western Reform Synagogue (now known as Alyth after the cul-de-sac, Alyth Gardens, in which it lies), and Ernst remained an active member to the end. He regularly attended services and in later years gave the occasional sermon, particularly on High Holydays. I remember as a youngster being embarrassed when he read or sang the prayers loudly, or began a prayer before the rabbi did. I would tug his sleeve; he gave a wry smile, desisted for a while, and then reverted to his enthusiastic participation. He got on especially well with Rabbi Werner van der Zyl, a German refugee who served from 1943 to 1958 and Rabbi Dow Marmur (1969–83), but had been horrified when after my birth the then American rabbi, Dr Solomon Starrels, urged him not to deprive me of the greatest food God had given to the world: pork.

Not only did Ernst worship regularly at home and at Alyth, but on his frequent travels he tried whenever possible to attend synagogues. I remember as a youth being with him at an Orthodox synagogue in Frankfurt where we were invited to take part in the priestly blessing of the congregation by the Cohanim, something not done in non-Orthodox synagogues. He wrote in 1969 that he had attended Liberal or Reform services during the previous two years in Jerusalem, Haifa, Tel Aviv, and Skokie, Illinois, and Orthodox or Conservative ones in London, Chicago, Kfar Shmaryahu (north of Tel Aviv), Berlin, Frankfurt am Main, Basle, Leicester, Coventry and Plymouth.\textsuperscript{123} Towards the end of his life he wrote informative and amusing articles for the Alyth magazine about the more interesting of his visits to overseas synagogues, with particular reference to the lessons which their

\textsuperscript{123} Centre, Sept. 1969, pp. 3-4.
different liturgies might offer for his home synagogue. In the month after his death, a notable piece appeared about High Holydays spent in Geneva.  

Early in 1936, a few months after becoming a member of Alyth, Ernst was elected to its governing Council. In the next two years he joined the rota of wardens, became chair of a new committee to establish a library, and was chosen for the ritual and education committees; he also went on the editorial committee of the *Synagogue Review* of the Reform movement. He attended Council regularly, even as an invited observer during his first year in army service. At Larkhill he had visits or written contact every few months from Jewish army chaplains. Even during the war he wrote making suggestions about the Alyth services. He rejoined the Council in 1945, though his attendance became sporadic, but he was again on the ritual and education committees during the 1950s and later on still communicated his critical views on the music as well as prayers used. To the end he objected to overlong services and needless repetitions of prayers. In the following decade he abstained from seeking higher office because of his many other commitments, until in 1972 he was elected President in succession to his distinguished predecessors Rabbi Leo Baeck and Professor Norman Bentwich. This was largely an honorific post; he hardly ever attended Council, of which he was automatically a member, but chaired Annual General Meetings, to which he also gave well-received addresses. Some of the annual lectures in memory of Herbert Licht, the first husband of his cousin Käthe, were among those he gave to congregants.

Throughout his time in England Ernst was active in national and international Jewish institutions. He joined the World Jewish Congress (British Section) (WJC(BS)) when it was created in 1936 and soon became one of its two (later three) Assistant Honorary

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125 His role at Alyth is chronicled in the minutes of its Council, the annual reports, and the pages of *Centre*, all kept in its archive.
126 Record supplied by AJEX (Association of Jewish Ex-servicemen and Women).
Secretaries. The WJC aimed to be ‘the diplomatic arm of the Jewish people’ by making representations throughout the world when their interests were in danger. It set out to embrace both Zionists and non-Zionists, only adopting a committed Zionist stance once the state of Israel was established in 1948, but still advancing issues other than those of Israel. Once the Jewish communities in most of Europe came under Nazi rule, the WJC (BS) became the mouthpiece for the desperate Jews of all Europe until the war ended. It was dissolved in 1974 when some of its functions passed to the Institute of Jewish Affairs, of which Ernst became a supporter, and other aspects remained with the international WJC. The WJC(BS) did make many political representations on important issues on behalf of the British Jewish community, especially during the war and its aftermath, and also tried to organize cultural and other events. It was an early sponsor of the Jewish Book Week and Jewish Music Week. In these and other respects it acted in place of the Board of Deputies, which objected to such poaching, and other bodies.

After the war, Ernst sat as London representative on the largest body of the WJC(BS), the National Council, from 1954 until at least 1965. It conducted elections and considered reports from the constituent parts. He became one of its two, later three, vice-chairmen from 1955, but refused to stand again in 1960 as he held honorary office in another body to which he had committed some years before;\(^\text{128}\) this was the Society for Jewish Study. He was a member of the main decision-making body of the WJC(BS), the Executive Council, from 1956 to 1966, when he resigned after his friend Dr Stephen Roth, Secretary-General since 1952, disillusioned with lack of support from the Executive Council, had himself resigned.\(^\text{129}\) Ernst sat longest on the Cultural Committee, from 1952 until 1972, and also on the Political Committee intermittently between 1955 and 1971. He sat on several short-term ad hoc sub-committees of these bodies and chaired some meetings.

The most important and longer-lasting was the Editorial Sub-Committee of the Cultural Committee from 1952; its main task

\(^{128}\) USSC, MS 238/1/8, Feb. 1960.
\(^{129}\) Sept. 1966, ibid., 238/1/4.
was to publish a series of short, informative but also scholarly books for the educated Jewish public, the Popular Jewish Library, later rebranded as the World Jewish Library. Ernst was one of three pre-publication readers who without reservation recommended the Rev. Abraham Cohen’s *The Parting of the Ways. Judaism and the Rise of Christianity* (1954), the most successful of the 18 volumes published. Unfortunately—Ernst was among the critics—the others sold less well, unsatisfactory publishers had to be replaced twice, the WJC(BS) lost money, and the series was discontinued.

Ernst’s attendance at meetings of the numerous WJC bodies with their large memberships was at some periods minimal, but when present he often spoke on legal issues and those affecting Germany. He was the only German refugee to have such a prominent place in its deliberations. He had a second-tier leadership role in the WJC(BS), but at times took on tasks whose importance was acknowledged by the leaders. At a plenary conference in 1943 of the International Commission for Penal Reconstruction and Development (a precursor of the UN War Crimes Commission) at St James’s Palace, London, Ernst presented, together with E.L. Easterman, a fellow Assistant Secretary of WJC(BS), a memorandum—which Ernst had largely written—trying to persuade the Allies that atrocities against the Jews were a war crime and a crime against humanity. After publishing his article on war crimes in 1941 he had made contact with academics in Cambridge, Hersch Lauterpacht and J.W.C. Turner, who met him in Cambridge and helped him to amend the draft of his memorandum. In 1954 Ernst went with the Political Director of the European Executive of the WJC to the Foreign Office to discuss how the settlement of cases before the Restitution Appeal Court in the British Zone of Germany might be speeded up. As a member of the Executive’s sub-committee on claims, he attended meetings in 1958 of the United Restitution

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130 Ibid., 238/1/1.
132 29 July 1943, A.L. Easterman to H.J. Cohn, 29 Jan. 1976, CFP.
133 10 letters from 3 June 1942 to 29 Jan. 1944 in FSUL.
Office which distributed monies provided by the German government to compensate victims of the Holocaust.  

He also gave lectures for the WJC, as at its Manchester Regional Conference in 1956 and in a panel with an Orthodox and a Liberal Rabbi at Jewish Book Week on ‘The Jewish Concept of Justice’ in 1972. In 1953 he became very angry and wrote to Rabbi Leo Baeck and Alfred Wiener that he had resigned from the Association of Jewish Refugees (AJR), which he had joined at its foundation in 1941, because its Executive had disaffiliated from the WJC(BS) without consulting the members. Wiener was shocked by the letter’s tone: ‘... as Professor Cohn, whose words are otherwise weighed and lacking in passion, would normally hardly write such letters .... At some point he became reconciled with the AJR. In 1963 he gave a lecture on the Jewish historian Heinrich Graetz at its AGM.

Ernst and admirers at a WJC meeting, c. 1970

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135 USSC, MS 238/1/3; KCA, K/PP60/4/2.
137 Arranged 3 Feb. 1972, USSC, MS 238/1/5.
138 16 & 19 June 1953, WL, MS 3000/9/1/282.
139 AJR, July 1963, p. 4.
Ernst’s main Jewish involvement for his first two decades in England was with the WJC(BS), but thereafter the Society for Jewish Study (SJS) became more important. This shift coincided with his growing interest in writing on Jewish topics. As chairman of the SJS from 1954 until 1960, he chaired its committee and lecture meetings. When in 1969 the SJS merged with the Society for Jewish Theology, he objected to the dictatorial manner in which this was carried out, but not to the merger itself. He was also from 1962 a member of the governing body of the Leo Baeck College in Finchley for the training of rabbis and teachers for the Progressive Jewish movements.

In 1954 he acquired his copy, in 14 volumes, of the classic work by the Breslau-based scholar, Heinrich Graetz, 
*Geschichte der Juden*, which was the foundation, after further research, for his article on Graetz, published twice (1960, 1963). It formed the basis of many lectures he gave in Germany, Switzerland and the U.K. Other scholarly articles were on non-Orthodox Jewish marriages in English synagogues and three German Jewish lawyers (1970, 1972). One of his successors as President of Alyth, Jeffrey Rose, wrote that ‘... he could study a blatt gemara, a page of Talmud, with the best of them....’ This may be somewhat of an exaggeration. Already in 1938 he published an article on a topic in comparative law which devoted a page to citations from the Bible, Talmud, and the medieval Jewish commentator Rashi. However, I never observed him studying the Talmud in the Hebrew and Aramaic languages intensively and strongly suspect that he relied principally on translations, such as his beautifully bound two volumes of Lazarus Goldschmidt’s commented edition and German translation of the civil and criminal law sections of the Babylonian Talmud, now in the library of the Leo Baeck College.

Much of Ernst’s writing on Jewish matters was for the enlightenment of lay people and in semi-popular works and newspapers. Several items after the war served the purpose of informing the German public about Jews and Judaism. In the monthly magazine of the West German universities he countered

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what he considered the mistaken views about Judaism of Rev. Hans Kosmala, a Protestant missionary of German origin living in London. Among other errors which he corrected, he seized on Kosmala’s central notion that the chosenness of the Jewish people was a privilege which separated them from the rest of the world by a kind of overweening nationalist pride, whereas Ernst saw it as a duty which covenanted them by their behaviour both as individuals and as a people to set an example to others.\textsuperscript{142} He combined his love of teaching Jewish history with that for his home city and Silesia in a short article on the Jews of Breslau, first published in 1955 in a collection of essays and reprinted in nine editions until 1990 (1955b).

In letters to the \textit{Jewish Chronicle} Ernst was prepared to upbraid leading upholders of Orthodoxy when defending the Reform and Liberal forms of Progressive Judaism. The Orthodox fundamentalist interpretation of the Bible was the subject on which he took most issue. Progressive Jews could not be expected to live by that approach; he was proud to be a third-generation Reform Jew.\textsuperscript{143} He attacked Dayan Dr Grunfeld, judge in an Orthodox rabbinical court, for calling Liberal Judaism ‘an alien creed’, a meaningless slogan using terms deployed by the Nazis who had killed many thousands of those professing that form of Judaism.\textsuperscript{144} He challenged his close friend, the solicitor Edward Iwi, for arguing that a Liberal Synagogue did not constitute a ‘synagogue in England of persons professing the Jewish faith’. He cited, as he did in many of his letters, a list of distinguished Jews of that persuasion in several countries. The issue was whether by the relevant English law of 1836 a Liberal synagogue could perform marriages; he provided a history lesson to show that Reform and Liberal forms of Judaism were known in England at that time.\textsuperscript{145} Several of his letters provoked responses or were part of a chain on a particular topic, as when he refuted the charge by Rabbi Dr Litvin that the German Protestant school of Higher Biblical Criticism in the nineteenth century had been

\textsuperscript{142} \textit{Deutsche Universitäts-Zeitung}, vol. 4, 23 Sept. \& 16 Dec. 1949. I owe these references to Prof. Hans-Christof Kraus, University of Passau.

\textsuperscript{143} \textit{JC}, 30 July 1948, p. 15.


\textsuperscript{145} \textit{JC}, 14 Mar. 1949, p. 18.
antisemitic and infected its Jewish counterpart, the *Wissenschaft des Judentums* (Science of Judaism).\textsuperscript{146}

Reform Judaism had deep divisions within its own ranks over Zionism. Few of the spiritual leaders of the movement or their congregations favoured the Zionist cause. The editor of its *Synagogue Review* and several contributors were strong opponents during and after the war. In its pages Ernst was among those recommending reconciliation between the two groups after the foundation of the State of Israel in 1948: it should be accepted as a possible new spiritual centre for Judaism.\textsuperscript{147}

Ernst favoured ‘inter-religious tolerance’ and quoted examples from earlier in the twentieth century when it had been more common for Orthodox authorities to tolerate other forms of the Jewish faith.\textsuperscript{148} He was himself on good terms with many Orthodox Jews, especially through involvement in the Society for Jewish Study, and participated in inter-faith activities at a time when that was not common. With a friend he attended the World Congress of Faiths conference at Guildford in Surrey in 1970.\textsuperscript{149} From 1950 until 1975 he devoted considerable time and energy to the Freemasons. He became Master of the University of London Lodge in 1960 and had also joined the Chancery Bar Lodge in 1958. *He valued the companionship of like-minded people, the opportunity to meet those of other faiths, and the charitable priorities of Freemasons.* The attraction of Freemasonry for many Jews is apparent in their main meeting place in London, the magnificent Freemasons’ Hall in Holborn (close to Lincoln’s Inn), with its many Jewish symbols from the Temple period.

Faith and Jewish ethical values had always been central to Ernst’s life, but they came to the fore during his last decades.

\textsuperscript{147} Details in H.J. Cohn, 185–8.
\textsuperscript{148} *JC*, 5 April 1963, p. 50.
\textsuperscript{149} Louis de Pinna to H.J. Cohn, 12 Jan. 1976, CFP.
Appreciation

The funeral on a gloomy January day at Hoop Lane Cemetery, Golders Green, within close sight of Alyth Synagogue, was well-attended. A young Orthodox man Ernst had befriended would not on religious grounds enter a Reform graveyard, but as a mark of respect stood in the pouring rain outside the cemetery walls during the service. Rita absented herself because he was being buried alongside Helen, his second wife. It was estimated at the time that 250 people attended the memorial service in the synagogue on 1 February 1976. Among the 112 attendees who signed the register (CFP) were not only family, friends, work colleagues and large numbers of Alyth members, but representatives from the Embassy of the German Federal Republic, King’s College London, the University of London Lodge, the Society of Conservative Lawyers, the Council of Legal Education, the World Congress of Faiths, and among Jewish institutions the World Jewish Congress, the Board of Deputies, Leo Baeck College, Friends of the Hebrew University of Jerusalem, and Belsize Square Synagogue. Professor Erich Schwinge made the trip especially from Germany. Professor Alex Chloros of King’s College gave a tribute summarizing Ernst’s achievements as academic and lawyer, Dr Stephen Roth his work for the World Jewish Congress (highlighting his refusal on grounds of conscience to take part in the prosecution of Nazi war criminals), and I spoke in a more personal capacity in terms which inform this appreciation.

A flood of tributes followed in letters of condolence and obituaries. The most moving and insightful came from his rabbi, Dow Marmur, some of whose words, probably given originally as a sermon, deserve quotation at length:

He was so proud, as he pointed from his sickbed—after he had lit the Hanucah candles—to the Jewish references in the Festschrift. For indeed he viewed the problems of law and justice with the intellectual acumen and the moral passion of a would-be Talmudist. As a lawyer he served

150 Schwinge, 192.
in a priestly profession; he was a distinguished exponent of the religious category of Tzedek [justice]. And his efforts to build bridges between Britain, Germany and the Jewish people reflected his religious commitment to reconciliation and peace.

There is so much to be said about his life, but nothing is more telling than the last six months and the growing certainty, not only for us but also for him, that the end was near. Again, in characteristic common-sense fashion he tried to make sure that practical things were looked after, but the dreamer and romantic that he also was tried so very hard to bring the many facets of his life, its various fragments, into a harmonious whole. He felt that he had succeeded and was contented.... As he himself said to me on his sickbed, echoing a theme of the High Holyday liturgy: ‘The quantity of life is in God’s hands; the quality of life is in man’s.’

In a paragraph of Rabbi Marmur’s draft (CFP) omitted from the final article, he wrote:

As a young man—so he frequently told me—he considered becoming a rabbi, but, although he had no doubt about his faith and his intellectual abilities, he feared—with characteristic humility—that he might lack sufficient toleration and compassion for his fellow-men. What the rabbinate lost, the legal profession gained.

Obituaries were published in the Times and Jewish Chronicle and longer and more personal ones by his friends in German publications, either legal journals or those of former Silesians in Germany and Israel. Roland Graveson, who had known him since they worked together in SHAEF over 30 years earlier, published an obituary in English in a German legal periodical for private and international law. Other obituaries were by German friends, some of whom he had known for even longer.

Dozens of moving and informative condolence letters from three continents survive (CFP). The German ambassador praised Ernst as not only the embassy’s adviser on legal matters for many years but someone who despite his bitter personal experiences
had worked actively for reconciliation between the German and Jewish peoples. Professor Addi Wasserstein of the Hebrew University of Jerusalem knew him well enough after just a few meetings to judge shrewdly:

... how extraordinary his combination of various qualities was: his strong intelligence, judgement and good sense, his moderation and tolerance, his kindliness and generosity; a lack of illusion that did not become cynicism; his idealism that did never cheapen itself into sentimentalism; and ... his modesty. He would speak to people ... about subjects in which he was an expert, without making them feel their ignorance, indeed giving them the feeling that he valued their opinion.

Perhaps a tribute that was paid to Ernst combining his interests in the law and the Jewish people was the one of which he would have most approved. The Friends of the Hebrew University group at Alyth synagogue launched an appeal which collected £2,000 (about £14,000 in today’s money) for a scholarship for law students at the university in Jerusalem. The scholarships ceased only in 2004 when no money was left in the fund.\textsuperscript{152}

\textit{Ernst’s policy was to make charitable donations during his lifetime rather than postpone them to his will}. Nevertheless, he did bequeath £600 (worth £4,200 now) to Alyth synagogue, which put it in 1976 towards the purchase of a large and beautiful Mizrachi-style Torah scroll of Yemenite origin, from which I was especially proud to read at my ‘second Barmitzvah’ at age 83 in 2019.

The legacy which Ernst left was not primarily a financial one. In any case the fruits of the last decades of his productive life were to some extent consumed by the large expenses of private medical care in his final year and the legal costs of probate which took several further years. His greater legacies were the memory of his humanity and his intellectual contributions which took

\textsuperscript{152} Information obtained from the dean of the Law Faculty by Professor Maurice Cohen, CFP, M. Cohen to H.J. Cohn, email, 12 Nov. 2012.
physical form in his writings and the voluminous library he had collected for some sixty years.

The books generally found good homes. He bequeathed his collection on German law, including some items still today not present in other research libraries in Britain, to King’s College, which has preserved them splendidly in its separate Special Collections Library. His exceptional collection of nineteenth-century authors writing in the Silesian German dialect (Karl von Holtei, Gerhart Hauptmann, Paul Keller and others) I gave to the University of Warwick Library. Those of his books on Judaism and Jewish history which I did not keep are now in the Oxford Centre for Hebrew and Jewish Studies and the Leo Baeck College London, all in the hope that they will there be best placed to find new readers.

As reflected in his library, Ernst was not a person with a narrow focus but part of the wave of central European immigrants in the 1930s with wide cultural interests who influenced British life for decades. His reach extended not just to Jewish thought, literature and history, but to general philosophy, German literature, and history. His historical interests encompassed not only the German history which already had a place in the wartime manual for the future occupying powers and in his subsequent publications. His study of Roman law, which was the foundation of all Continental legal systems, led to Roman history. The last book on this topic in which he read extensively with enjoyment was the seven-volume edition of Edward Gibbon’s *Decline and Fall of the Roman Empire* which was my gift for his seventieth birthday. He was fond of classical music, especially pieces involving large orchestras and resounding volume. Wagner was definitely his favourite, and it was Ernst who first introduced me to opera. He also enjoyed exploring the wonders of nature, especially mountains and lakes, for which he employed his expert map-reading skills acquired in the army and his love for the intricacies of railway timetables.

The fulcrum of Ernst’s life was the series of student riots which led to his emigration. This early persecution was the writing on the wall which enabled him, and indirectly many members of his family, to escape the far worse fate which befell other relatives and the six million. It brought about profound changes in the
orientation of his life. He switched within a short timespan from being a professor of law to primarily a legal practitioner, from working in a Roman law system to a common law one involving new basic studies, and from expressing himself in German to English, a language in which he had hitherto had no great facility. Emigration prompted him also to get married and establish a family. The life of emigrants amounted to more than just escaping, which could turn out to be relatively easy compared to the long process of establishing a new life. In this he, like many others, went further in making major contributions to the welfare of the country which gave him refuge. His trajectory allowed him, alongside Rabbi Werner van der Zyl, to bring to Alyth synagogue the traditions of German Reform Judaism to enrich those of English Reform which were not yet fully established. In his professional life he acquired a unique comparative understanding of English and Continental legal systems and practice which provided a gateway to his renewed participation in academic life and the opportunity to exercise wide public influence in both countries.

Ernst would not have achieved as much as he did, had he not been extremely hard-working and with an ambition to succeed. He was justifiably proud of his legal acumen and the quality of his scholarship. He worked rapidly and with intense concentration. *He could write an article in the course of a weekend.* He had a tremendous zest for life which triumphed over the many hardships he encountered. One of his oldest professional colleagues wrote, ‘... in good and bad times he never lacked courage’.\(^{153}\) It kept him going to dream of things which proved beyond his reach: becoming a rabbi in his youth, a professor in Berlin, a QC, an MP. However, had he succeeded in his ambition to become a lifelong fulltime professor in a distinguished university, whether in Germany or England, his scholarly output would undoubtedly have been greater than it was, but he would not have achieved that full symbiosis of legal practice with legal scholarship and successful proposals for law reform which was his hallmark.

\(^{153}\) G. Holland to H.J. Cohn, 6 Jan. 1976, CFP.
The rites and practices of religion interested him greatly, but they served only as a means to an end, namely that all decisions of weight, whether in his profession, public affairs or the family, should conform to the principles of personal conduct and humility laid down in Judaism. For that purpose, he would not merely search his own conscience carefully, but consulted rabbis and his library of religious books. That is the rare quality of a true believer.

The personal quality of my father which I most admired was his generous capacity for friendship. He was undoubtedly gregarious by nature. Close associates during his days as a student and lecturer in the 1920s and after remained loyal to him, and he to them, during the nightmare of the Nazi period, and later. Sometimes, as in the cases of Otto John and Erich Schwinge, revelations after Ernst’s death suggest that his loyalty may have been misplaced, but an element of doubt still persists about the evidence, which he in any case did not live to see. For over half of his adult life he lived as a single man; the companionship of university colleagues, comrades at Larkhill, the dozen members of chambers, the synagogue community, the Freemasons and more may have been some compensation for the solitary life, but it also continued during his marriages.

In his advancing years he forged bonds of common interest with those a generation, or even two, younger than him. For them, the generation gap simply disappeared in the presence of one so youthful in outlook, which was one reason why students were attracted to him as both a person and a teacher. He was a born educator and could not help but teach in all situations. Everything he learnt he was eager to pass on to the nearest audience, not as a form of exhibitionism—which was far from his unassuming nature—but as a means of sharing his own enthusiasms, of broadening the horizons of others. The last manifestation of this urge to communicate was his teaching of the rudiments of German to the faithful nurses at his final sickbed.

In the community of scholars he was loved as a man as much as he was respected for learning. Their affection was enhanced by his gift for good-humoured and lively conversation. He often forgot the name or the face, or both, of someone he had only met
casually, but he still treated all with charm and consideration. That overworked word charisma applies naturally to him, as long as it is divorced from any overtones of a dominating personality. For those who did not share his exceptional intellectual qualities, he made it not a burden but a privilege and a pleasure to be in his company.

Of course, no one is without their faults and foibles, whether hidden or apparent. Ernst would occasionally lose his temper, and he would not suffer fools gladly. He could be sharp, even harsh in argument, whether in a legal dispute or with those he considered misinformed religious bigots. As an expert on procedure in courts he would not tolerate deviation from constitutional process in the administration of the Association of Jewish Refugees, the World Jewish Congress, or the Society for Jewish Study.

Yet even in his legal work, and notably in other spheres, his watchwords were conciliation and reconciliation. One obituarist commented that Ernst was ready to make allowances for some German professors who had readily accommodated to their new Nazi masters. In 1954 he told me not to worry that one of my lecturers at Cologne had been a Nazi, quoting a Talmudic saying that it is permitted to eat the good parts of a rotten fruit. In his last weeks he repeatedly said that he regarded as the best thing that he had ever done in public life was to go back to Germany after the war and address law students. In university after university he faced halls crammed with war veterans. Scarcely a man among them had not lost an arm or a leg or an eye. Their bodies scarred by war, they wanted desperately to know whether they had also lost their souls. My father’s presence, and his words, reassured them that they had not been cut off from the fellowship of mankind, and especially not by a Jew.

He also aimed to build bridges within the Jewish community, between Zionists and non-Zionists, and Orthodox and Progressive Jews. Notwithstanding his forthright criticism of some fundamentalists, he remained on excellent terms with several

154 Niedermeier.
155 E.J. Cohn to H.J. Cohn, 11 May 1954, CFP.
Orthodox rabbis and lay people. The search for common principles and ethical standards extended to Christians and adherents of other religions among the Freemasons and in the World Council of Faiths.

Harmony can be a will-o’-the-wisp, but my father pursued it energetically, both in the wider world and within the family. When disagreements arose, he was the first to seek to repair the breach, and to try repeatedly if he at first failed. He gave advice to those who were receptive, but did not turn away if it was not followed. Both in the family and beyond, he was willing to give both financial and moral support to those in need of it, not least to me. He was the best friend I ever had.

May his memory be for a blessing.
Appendix 1


Student in the Times of Hardship

(109) My Breslau student years coincided with the years of the most severe deprivation, in both the spiritual and the material sense. Most manifest was naturally the economic misery after World War I. In those years a large proportion of students suffered from hunger. Eastern Germany suffered from this misery more than the West. I spent my first semester in Leipzig. My return to Breslau for the winter semester was not voluntary; it was no longer possible to bear the costs of another semester away from my parents’ house. Terrifying was the impression of Breslau deprivation which overcame the returnee. The Leipzig student, as they said, ‘economized’. Most Silesian students were already placed under such severe restraints that this phrase was not appropriate. More than one was not in a position to buy even a single book. For some even the purchase of pen and paper was a problem. The majority were saved from starvation by the student canteen. For some this opportunity understandably provided the main attraction of studying. These were the years in which loss of savings and unemployment created hopelessness at every level of society, the consequences of which finally led to the catastrophe of 1933….

(119) I had a great advantage over others in as much as, instead of living in a modest student room, I had comfortable quarters in my parents’ house, where I could find loving guidance and support; my freedom of movement was never limited and my friends always found themselves without question welcome. This circumstance, together with the economic recovery, led me to begin gradually to build up my own library of law books….

(120) I have always had a reluctance to throw away books which have served their purpose, although hopelessly antiquated and
long replaced for serious use by their successors. All the more familiar and standing peacefully in their appointed place in my house in a London suburb are those works saved from the claws of the pursuer which had accompanied me on my way from the days as a Breslau student.... What was not consumed in the years of the locust was the memory of the early pleasures of learning, thinking and researching.
Nazi Students Greet Jewish Professor with Tear Gas and Giant Firecrackers

DRIVEN OUT BY THE POLICE

Latter Use Clubs to Disperse Mob in Streets, Arresting Twenty — Situation at a Deadlock

Special Cable to the New York Times.

BRESLAU, Jan. 24.- Giant firecrackers, tear gas bombs and bombs that emit choking fumes — plus a noisy interpolation of National Socialist marching songs and "Deutschland über Alles" — greeted Professor Ernst Cohn this morning when he resumed his law courses at the university of Breslau after several weeks' interruption.

While he was safe from personal molestation in the law seminary as a result of special precaution, the bedlam in the corridors adjoining the classroom continued unabated, with yells of "Throw Cohn out!" punctuating the demonstration sponsored by the Nationalist and Nazi students.

Professor Cohn succeeded in finishing one lecture in the morning and another during the noon hour, but the university authorities frankly confess that the situation has now reached an impasse that apparently cannot be solved, since the university is not authorized to dismiss the professor and the Prussian Ministry of Education refuses to recall him.
Police Drive Students Off.

Police reinforcements called in by Professor Carl Brockelmann, the rector of the university, during the morning lecture, finally stilled the hubbub and drove the students away from Professor Cohn’s classroom. When they found that they were being pursued by the police, a number of students found refuge in the classroom of another law professor who is suspected of Nationalist leanings, and he indignantly broke off his own lecture when the police invaded his classroom to remove the rioters.

Toward noon, when Professor Cohn delivered his second lecture, there were fresh outbreaks, but this time they were confined to the streets surrounding the university and were augmented by Nationalist sympathizers outside university circles. The police dispersed the crowds by using their batons freely.

About twenty arrests were made, a Nazi storm trooper had to be taken to a hospital and a number of students had their registration cards confiscated.

At the end of the day the situation is virtually what it was before Christmas when Professor Cohn was compelled to suspend his courses. The Nationalist and Nazi students continue defiantly obdurate and insist the professor must go, and since he cannot be dismissed they have come forward with the proposal that some special arrangement be given to him that would remove him from contact with the student body.

Nothing but his name appears to have singled out Professor Cohn as the target of this anti-Semitic animosity, which, it is asserted here, is being inspired by political circles outside Breslau.
Professor Cohn to go

Professor Ernst Cohn, the retention of whose position at Breslau university was regarded by German Jewry as a kind of test case to indicate whether a Jew has any right in present day Germany to hold a professorial position, has to go, as a result of the new situation created by Hitler’s chancellorship. The Rector, Professor Carl Brockelmann, who only a few days ago declared that he and the entire Senate and Professorial Board would stand behind Professor Cohn, and would on no account allow Nazi student terrorism to dictate to them who would be a professor at the University, has now written to Professor Cohn that he is unable any longer to guarantee the safety of those students who attend his lectures. He has withdrawn the police who were stationed in the University building to prevent Nazi disorder, and cancelled all other measures which had been taken to assure Professor Cohn’s position. The Nazi students have threatened that all students who attend Professor Cohn’s lectures will be thrown out of the windows. Professor Cohn has in consequence posted a notice on the University noticeboard announcing that he has suspended his lectures for the time being. He has at the same time lodged a complaint with the Ministry of Education.
Appendix 3


(149–51) I have on purpose refrained in this paper from referring to any actual happenings during the present war. No one who has followed with some attention the development of the present war can doubt that both this war and the seven years period of its preparation by Nazi Germany have been richer in systematic and cold-blooded deeds of brutality than any former war. If the world would permit the perpetrators of such crimes to remain in peace comforting itself perhaps with the cheap consolation that the ruling gang has found its just reward, that would mean nothing but leaving hundreds of the most dangerous criminals at large. It would mean that human society would lack that most elementary of all instincts, the instinct of self-preservation. When the day will come to establish peace, the memory of those who have been slain and the complaints of those whose lives and bodies have been ruined will demand justice from the conscience of the world. If such justice should fail to be forthcoming, the demand will give way to a desire for vengeance. To prevent that the most dangerous and cruel criminals escape and their victims be driven to despair is a task for the solution of which international lawyers are responsible.

I can well understand that many of us view that task with the gravest misgivings. It is not pleasant to go once again through the tales of horror, blood and tears which belong to what will then be the past. It is especially unpleasant for those who have not been directly hit by that spirit of evil whose trail of destruction will be the subject of the enquiries. It is too human to give way to the desire for burying these unpleasant memories. The thought of the unfortunate victims and what must be their feelings should therefore be uppermost in the minds of those who are called upon to decide on this question.

But there is also another aspect of this problem which deserves attention and which shows the importance of a solution of this problem as a constructive contribution to a better world. It is one
of the greatest drawbacks that the rules of international law are nearly always confined to governing the relations between states. Individuals may experience the final consequences of these rules, but their immediate working is too often no concern of theirs. In this way the rules of international law are excluded from entering into the conscience of the man in the street. But it is impossible to build up a legal system which does not find its basis in the moral conscience of those individual human beings which are to be ruled by it. A just solution of the problem of war crimes, a solution which consists neither in bloody vengeance nor in cheap condonation, would make both the actual power and force of international law being felt as a reality in the thousands of individuals who have suffered from the failure of international society to prevent the reawakening of instincts of bestiality which had long been believed to be dead. In this way it might be one of the corner-stones of a new and better international community. It might thus give the lie to the pessimistic but realistic voices of those who now in despair of a better future see in international law nothing but a propaganda stunt whose main function it is to excite human passions and to provide convenient pretexts for war, violence and brutality.
Appendix 4


(251) ... our analytical text-books on civil procedure, both here and abroad, are inclined to leave us under the impression that legal aid for the poor is a minor problem of technical law which is rightly stored away in a corner of the text-books on civil procedure. In our submission it is a question of fundamental character. Our law makes access to the Courts dependent upon the payment of fees and renders assistance by skilled lawyers in many cases indispensable. Under such a legal system the question of legal aid to those who cannot pay must not be allowed to play a Cinderella part. Its solution decides nothing less than the extent to which the State in which that system is in force is willing to grant legal protection to its subjects. Where there is no legal protection, there is in effect no law. In so far as citizens are precluded from access to the Courts, the rules of the law which they would like to invoke are for them as good as non-existent. The question whether legal aid should be granted in a few exceptional cases and as a matter of charity only or whether it should be claimed as a matter of right by anybody who is financially unable to secure it himself, goes therefore to the foundations of the law. If we keep in mind this fundamental character of our problem we can only look with surprise upon the way in which it has been solved in modern English law. There is an astounding contrast between the fact that the law is State-created and State-administered on the one hand and the fact that the State has divested itself of all powers with regard to the granting of legal aid on the other hand. Since 1926 the Law Society's Poor Persons' Committee alone decide about the grant of legal aid. There is no appeal against their findings. All grants depend on the number of volunteers from the two branches of the profession prepared to render assistance free of charge. If no volunteers are forthcoming, no aid can be granted....
The present study has been written at a time when its author was actively engaged in the work of legal aid for poor soldiers under the Army Legal Advice scheme. His work could not but convince him of the necessity of far-reaching improvements and extensions of the facilities existing under our present law.

Legal aid is a service which the modern State owes to its citizens as a matter of principle. It is part of that protection of the citizen's individuality which, in our modern conception of the relation between the citizen and the State, can be claimed by those citizens who are too weak to protect themselves. Just as the modern State tries to protect the poorer classes against the common dangers of life, such as unemployment, disease, old age, social oppression, etc., so it should protect them when legal difficulties arise. Indeed, the case for such protection is stronger than the case for any other form of protection. The State is not responsible for the outbreak of epidemics, for old age or economic crises. But the State is responsible for the law. That law again is made for the protection of all citizens, poor and rich alike. It is therefore the duty of the State to make its machinery work alike for the rich and the poor.

We summarize generally the procedure as it would be if the bulk of the suggestions made in this study were considered acceptable and reform on these lines were carried through. The poor man who has got to face legal difficulties of any character would if he is looking for mere advice go in the first instance to his nearest municipal legal advice bureau. If mere advice is sufficient to settle the difficulty, this could then and there be settled. If correspondence is required, the bureau would advise him, draft his letters for him or would, in appropriate cases, conduct the correspondence for him. If litigation is necessary the bureau would prepare an application to the Court for the grant of legal aid. The Master would then decide whether legal aid is to be granted. In the county courts the Registrar would decide both about the application for legal aid and about the question whether the plaintiff is to be assisted by a solicitor or not. The Master in every case and the Registrar in those cases in which he
allows representation of the poor applicant by a solicitor would then forward a short résumé of the case to the Law Society whose Poor Persons' Committee would nominate a solicitor. As soon as this had been done the municipal advice bureau would turn over its entire file to the solicitor who would conduct the case in his own name and responsibility. The solicitor would brief counsel where required. He would be allowed to choose any counsel from the list of those who had declared their willingness to conduct poor persons' cases. Solicitor's and counsel's fees would be payable, if they could not be recovered from the other side, at the end of the proceedings. They would be taxed in the ordinary way, but under a special schedule.

The poor applicant would, however, not be restricted to applying through the municipal legal advice bureau to obtain aid in litigation. He could approach any solicitor who may be willing to act for him. This solicitor would have to give mere advice free of charge or against such payment as the poor person could offer him, but if litigation were necessary he could expect to be appointed as poor person's solicitor if the Court did not have special reasons why he should not be appointed. This scheme, it is submitted, has the advantage of leaving space for individual charity while it affords organized assistance in cases in which the burden is too heavy to be carried by charity. It secures a satisfactory social service without compromising that indispensable bulwark of democracy: the liberty and independence of the legal profession.
Appendix 5


(168–9) Many camps are in places in which no Poor Man's Lawyer Centre is available and a good many are situated in localities where no firm of solicitors is practicing. Journeys to nearby places in which either a Poor Man's Lawyer Centre or a firm of solicitors or at least a Citizens' Advice Bureau can be found are only rarely compatible with the exigencies of the service. Bureaus as well as solicitors' offices will not always be open at those hours at which the serving man may find it possible to attend.... [M]any problems have become much more difficult to solve simply as a result of the absence of the men from their homes: what could be settled by a short personal interview with a landlord or former employer or tradesman must now be treated by way of correspondence which not everybody is capable of conducting. And last but not least, the enforced separation of husbands and wives has increased the number of matrimonial disputes of all kinds to such an extent that even the full peacetime strength of legal aid and legal advice organizations would have found it no easy job to cope with them.

This situation could only be remedied from within the Armed Forces themselves. Both those who needed help and those who were capable of offering it, are members of the Armed Forces. It was therefore the most obvious course that the Armed Forces themselves should undertake to set up the organization which made it possible for the two to meet so that the assistance could be rendered and received. This is what has actually been done, as far as the Army and the Royal Air Force are concerned.... The basis of the scheme for which the War Office in common with the Lord Chancellor is responsible, is the voluntary and unpaid work of the serving members of the profession. The serving lawyer renders his service to his fellow-soldier on the ground of their common membership in the same fighting force. He receives no
compensation from the Army or from the client, nor will his work have any influence on his military status or chances of promotion. But this strictly voluntary and unpaid help is organized and supplemented by an official organization consisting of other serving members of the Forces who devote their full working time to this task and can insofar be considered as paid legal aid workers – although of course their military status is exactly the same as that of any other soldier of the same rank. The scheme is therefore ultimately not of a charitable character. The individual soldier does not receive charity by receiving legal aid. He is being granted a right to receive this assistance as long as the scheme is in being…. Ideologically the scheme must be considered as the socialization of legal aid, made effective—curious as this may sound—by the private initiative of the socially minded members of the profession….

(178) … [L]arge masses of the population have through the functioning of the Army scheme become accustomed to a legal aid service which to this extent and in so convenient a form did not exist in peace time and will, if no preparations are made, not exist after the war has come to an end. Is it too much to hope that the political parties which have so far without exception only taken a very minor interest in this problem may be roused into activity by the expectation that discontent will arise if facilities are lacking which the men in the Forces have become used to consider as perfectly natural and usual? Or will the lesson be forgotten and will what is granted now generously and by way of right again be restricted and be treated as a mere matter of charity? War will only in rare cases generate anything good. This war seems to be an exception: it has given birth to a new spirit in this country, a spirit which many are inclined to consider as a complete renaissance. In its way this spirit, if it survives, must be totalitarian too: it will not leave little corners and niches in which the conceptions of a bygone age can linger on. The legal aid worker may therefore be forgiven for nourishing the fond hope that a lasting and substantial improvement of the conditions in his field of work will be one of the immediate results of the new
ways of thinking which the unforgettable experience of the war will produce.
Appendix 6


ORTHODOX AND LIBERAL

Comments on “An Alien Creed”

From Dr. E. J. Cohn

Sir, I feel that you are to be congratulated on your wise and fair-minded leader—“Orthodox and Liberal”. No doubt it will have impressed many of your readers more strongly in favour of the case for traditional Judaism—which need not necessarily be Orthodox Judaism—than what you rightly describe as “Fulminations against Progressive Judaism”.

One particularly deplorable excess of zeal is that of Dayan Dr. Grunfeld, who has thought fit to speak of Liberal Judaism as an “alien creed”. If the report in your issue of last week is correct, “Alien” has been a word that has been constantly used against us Jews by our bitterest enemies—nowhere with more disastrous effect than in the country from which the learned Dayan himself, like the present writer, has come to seek refuge in Britain.

It is a severe shock to see that the very same propaganda slogan, which was, and is, so nefariously used against us by our most deadly foes, is now allowed to enter the field of Jewish theological discussion. That it is nothing but a totally meaningless propaganda slogan will be clear to anybody who cares to give the matter one minute’s thought.

Liberal Judaism—not to speak of the wider movement of Progressive Judaism—has had among its leaders men like Judah Magnes, Kaufmann Kohler, Israel Abrahams. Isaac M. Wise—to mention only a few of those who are no longer with us. Would that all Jews—whether Orthodox or not—were courageous like Stephen Wise, learned like Leo Baeck, and saintly men like Claude Montefiore, all of whom were leaders of Liberal and Progressive Judaism.
Tens of thousands of Jewish martyrs, who went to their death in the extermination camps of Auschwitz and Bergen Belsen, were Liberal or Progressive Jews. How can one so brutally belittle the most sacred convictions of those who received in the supreme moment of their life, strength and solace in the only form of Judaism in which they could honestly believe? May one not hope that the learned Dayan himself in a quieter mood, such as befits his high judicial office, should regret the manner in which he has slandered the faith of so many Jewish martyrs and of some of the most outstanding Jews of modern times?

E. J. COHN, Ph.D., 5 New Square, Lincoln’s Inn, W.C.2.
Appendix 7


*AJR Information*, Feb. 1957

LAW BROUGHT TO LIFE: “A Day in Court” by E. Schaefer

In previous years, this journal used to carry a recurrent feature “Law and Life”. A recent publication by Professor E. Cohn provides an opportunity to resume this tradition again. Its very merit is that it succeeds in bringing law to life. Similar to Cohn’s Manual of German Law, his new book–based on a lecture delivered before outstanding German jurists–is of fascinating interest for ex-German lawyers working in this country. Its subject is English court procedure, so vastly different from what goes on in German courts. Every lawyer knows that text-books on court procedure (as compared to those on substantive law) somehow never give the feel of reality. No lawyer could ever learn his “Zivilprozessrecht” [law of civil procedure] or “Strafprozessrecht” [law of criminal procedure] from books. It was only when he became a “Referendar” [attorney] that he got a grip on it by practice. Professor Cohn, in his new book, has again proved his mastership as a teacher. He describes, or rather enacts, the proceedings from the start of a case to its culmination on the day of trial, the “Gerichtstag” or Day in Court. The “Gerichtstag” is the centre of gravity in English court procedure, the trial by a judge who has not prepared himself by studying the files and who hardly knows more about the case than the names of the litigants. The whole case is built up and developed orally. For the German lawyer, this is a thing unheard of, and as the discussion following Cohn’s lecture shows, nearly unthinkable. The German procedure with its mockery of the principle of oral procedure (Muendlichkeitsprinzip) is quite as unthinkable for the English lawyer. Other features typical of English procedure and discussed by Professor Cohn are, of course, cross-examination and the examination of litigants in the witness-box under oath. How English court procedure has come about, and why and how
it works, is shown by Professor Cohn with a wealth of detail.... The significance of the book ..., the aspect which makes it unique, is its way of presentation, of “putting it across”. Terms such as these are usually applied to dramatists and actors. Well, what Cohn has achieved might indeed be called dramatisation. If law as such is not static, procedure certainly is not. It is action, and the reader of Cohn’s book has the feeling of following that action on the stage of the court. On the other hand, Cohn’s presentation is far from popular journalism. If it is vivid and even gripping, it is profound and scholarly at the same time. The very method of presentation is the outstanding feature of the book. The reasons why Cohn has chosen this new method is explained in an introductory chapter. Cohn shows that law of procedure requires special handling by its very nature: presentation in the shape of an “Erlebnisbericht” [report on an experience] – otherwise it cannot be made to live but remains as dry as dust.
Appendix 8


(27–28) While the legal system as such can ... be said to have made normal progress under the Weimar Republic, a crisis developed in the administration of justice. A spirit of strong hostility to the state and its leading representatives became noticeable in the activities of many, if not most, courts of law. Judges of extreme monarchist and anti-democratic tendencies had not been removed from the bench in 1918 because of the importance which was attached—even during a period of ideological change of fundamental character—to the rule that no judge should be removed by administrative action from his judicial position. The new Republic, it was insisted, should live under the rule of law and should not start its life by encroaching on the independence of the judges. It was hoped that the latter would respond to the new régime by loyally co-operating with the republican authorities. This hope was bitterly disappointed. Far from appreciating the attitude of the republican governments many members of the judiciary thought it their duty to use their positions as a springboard from which to offer resistance to, and finally assist in destroying, the new liberal democratic regime. This tendency on the part of the courts became noticeable almost immediately after the revolution of 1918. This was followed by widespread unrest sponsored by both left-wing and right-wing extremists. A series of political murders was committed during this period, the overwhelming majority of which, however, was caused by right-wing extremists who were responsible for 354 assassinations, while only twenty-two could be laid at the door of the Communists. The courts, however, sentenced ten persons to death for the left-wing murders and not a single one for the assassinations committed by the right-wing groups. The average punishment meted out to nationalists accused in connection with a political murder charge was four months’ imprisonment. No less than 2,200 persons were convicted in connection with the formation of a Communist republic in Bavaria in 1919, which
collapsed after a very brief period. On the other hand, when in 1920 a national revolt (so-called Kapp-Putsch) took place, in the course of which the Reich Government was compelled to leave Berlin and which involved the entire Reich north of the Main and implicated many high-ranking army officers, only one single person, the former head of the Berlin police, was convicted and sentenced.... The courts, in fact, aided and abetted the process of erosion of democracy in Germany....

Conditions like these led to what was called the “crisis of democracy in the judiciary”. Large sections of the population – by no means only those with strong political views – became convinced that the judiciary was motivated by a strongly nationalist and reactionary tendency.... The Reichstag either took no action or proceeded on a course that was bound to fail.... William Shirer is, no doubt, right in saying that the German judiciary is guilty of having “written the blackest page in the life of the German republic”....

A particularly deplorable part was played in this development by the Reichsgericht [imperial court] itself.... The court, whose work in non-political matters had fully retained its high traditional standing, thus assisted decisively in opening the floodgates for the national socialist revolution of 1933.
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None of those named above should be held responsible, by themselves or anyone else, for any flaws, mistakes and omissions, for all of which I am the guilty party.