

# Who Are to Be the Successors of European Jewry? The Restitution of German Jewish Communal and Cultural Property

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## Abstract

Who are to be the successors of European Jewry? This question faced Jewish leaders after the Holocaust, in terms both legal – inheriting heirless property – as well as spiritual – carrying forward Jewish culture. Looted Jewish property was never merely a matter of inheritance. Instead, disputes revolved around the future of Jewish life. While Jewish restitution organizations sought control of former communal property to use around the world, some German-Jewish émigrés and survivors in Germany sought to establish themselves as direct successors to former Jewish communities and institutions. Such debates set the stage and the stakes for mass archival transfer to Israel/Palestine in the 1950s. The fate of the German Jewish communal archives highlights the nature of postwar restitution debates as proxy for the issue of the continuation of Jewish culture and history, calling into question the nature of restitution itself. As opposed to policies of proportional allocation to meet the needs of radically diminished Jewish communities, wholesale transfer of archives reflected a belief in a radical rupture in German Jewish existence as well as Israel's position as successor to European Jewry. The fate of the archives, which broke with archival practices of provenance, concretized and validated the historical rupture represented by the Holocaust.

## Keywords

archives, communal property, Gemeinde problem, Jewish history, postwar Germany, restitution

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In April 1956, the Israeli archivist Daniel Cohen appealed to Friedrich Janz, a German diplomat and undersecretary of Konrad Adenauer, to support the transfer of former Jewish communities' historical archives to the Jewish Historical General Archives in Jerusalem (today the Central Archives for the History of the Jewish People).<sup>1</sup> 'Our archive has a task,' Cohen explained, 'to fulfill the historical-archival counterpart to the "ingathering of the exiles,"' referencing the vision, rooted in Biblical and Talmudic conceptions of the messianic age, of the return of Jews to the Holy Land, and the contemporary political language of mass immigration.<sup>2</sup> For Cohen and his colleagues, collecting archives was a component of a national revival. Zionist leaders had long envisaged bringing the Jewish people to its ancient homeland, and the Israeli archivists viewed the collection of archives as a parallel process. As a result, for the Israelis, gathering historical archives was about two types of return: the return of looted property, and the return to the homeland. But the matter was not so simple. The archives of the Jews of Worms, for instance, survived due to the German archivist Friedrich Illert, who stole the historic antiquities not from the Jews but from the Gestapo, and he intended to return them to a future Jewish community.<sup>3</sup> It was in this context that Illert complained of the Israelis' demands for the archives' 'return,' which he placed in quotes, to a country and institution from which they had never been stolen.<sup>4</sup>

The struggle over such archives was just one in a series of quarrels over looted Jewish communal and cultural property in the aftermath of the Second World War that illustrate the contentious multivalence of 'return.' Despite the language of restitution, these debates decentered – or even blatantly disregarded – inheritance and legal title. Indeed, much property was not 'returned' to original owners or to those claiming geographical or institutional continuity but instead to those purporting to continue the legacy of Jewish life. The postwar fate of looted Jewish property thus calls into question the common-sense meaning of restitution, a fundamental vision of justice – the return of stolen property and the righting of past wrongs both concrete and intangible – rooted in legal traditions ancient and diverse.<sup>5</sup> Whether 'an eye for an eye,' restitution in kind, financial indemnification,

1 The Jewish Historical General Archives (*Ha-'arkhivon ha-kelali le-toldot yisra'el*) was established in 1939 under the direction of Josef Meisl. In 1957, Daniel Cohen became its director, and in 1969 it was reconstituted as the 'Central Archives for the History of the Jewish People' (*Ha-'arkhivon ha-merkazi le-toldot ha-'am ha-yehudi*). See Central Archives for the History of the Jewish People, Jerusalem (CAHJP) P28/6/42.

2 D. Cohen to Dr F. Janz, 30 April 1956, Israel State Archives, Jerusalem (ISA) HZ-19-303.

3 See F. Illert, 'Das kleine Jerusalem: Älteste jüdische Gedenkstätten Deutschlands in Worms,' *Frankfurter Rundschau* (21 May 1949).

4 F. Illert to I. Kiefer, 29 August 1956, Stadtarchiv Worms (StadtAWo) Abt. 20, Nr. 68.

5 One can point to, at the very least, Hammurabi's code, Biblical and Talmudic law, Roman law, and common and civil law traditions. In examinations of the postwar return of Nazi loot, the concept of restitution is frequently limited to the return of stolen goods, not the full breadth and complexity of the modern legal definition of the term which is applied generally to cases of 'unjust enrichment' in the realms of torts, contracts, and increasingly in some jurisdictions to criminal cases where victims are awarded restitution under 'restorative justice.' On modern formulations in US and English law, see: American Law Institute, *Restatement of the Law of Restitution, Quasi Contracts, and Constructive Trusts* (St. Paul, MN 1937), R. Goff and G. Jones, *The Law of Restitution* (London 1966). Also S. Levmore,

or simply returning stolen property, a basic goal is summed up by the German term for reparations, ‘*Wiedergutmachung*,’ perhaps best understood literally as the process of ‘making good again.’ But restitution, like all forms of justice, has limits. With the mass murder of Europe’s Jews, the chain of Jewish life and civilization was seemingly broken. This article, then, is about restitution without ‘return.’ To whom would restitution be made, and what would it signify and accomplish?

This article argues that prolonged conflicts over restitution – in the case of the German Jewish archives, extending to the end of the 1950s – were tied to significant questions of successorship. The military governments in West Germany appointed the Jewish Restitution Successor Organization (JRSO) and Jewish Trust Corporation (JTC) to manage the restitution of looted Jewish property; when these restitution groups fought for and secured their position that German Jewish communities and institutions had no heirs, they became their legal successors, thereby denying claims by both Jews in postwar Germany and émigré groups to constitute a continuation of Jewish life in Germany prior to the Holocaust. The redistribution of the vast caches of stolen Jewish property from across Europe found in postwar Germany represented a means to shape a Jewish future in which the Jewish cultural legacy would be carried forward, but without direct ties to its past. Jewish communal and cultural property, and especially historical archives, stood in for the future of Jewish life: in a word, who would be the spiritual and cultural successors of not just German Jewry but European Jewish life as a whole.

The restitution of cultural and communal property may appear distinctive, and scholars have frequently treated their histories as such.<sup>6</sup> Community property often consisted of immovable property and local resources like synagogue buildings and cemeteries, whereas cultural property represented a broader Jewish culture. Their restitution, however, together reflected a broader debate over whether the Holocaust represented an irreversible break in Jewish history and culture.<sup>7</sup> Communal archives bring these matters into sharpest relief, representing a nexus

‘Explaining Restitution,’ *Virginia Law Review*, 71, 1 (1985), 65–124, and A. Kull, ‘Three Restatements of Restitution,’ *Washington and Less Law Review*, 68 (2011), 867–80.

6 This is especially notable in the common division of labor between studies of general restitution groups such as JRSO and JTC, efforts at the restitution of cultural property by Jewish Cultural Reconstruction, Inc., and reparations initiatives. Recent studies – such as those of Dana Herman, Elisabeth Gallas, and Ayaka Takei (see n. 21, 55), as well as standards such as R. Zweig, *German Reparations and the Jewish World: A History of the Claims Conference* (Boulder, CO 1987) – while excellent, fail to capture the full meaning of postwar restitution for this reason.

7 This issue was both debated in the immediate postwar environment as well as among contemporary scholars. Philipp Nielsen recounts the early debates over the nature of postwar communities (“‘I’ve Never Regretted Being a German Jew’”: Siegmund Weltlinger and the Re-establishment of the Jewish Community in Berlin,” *Leo Baeck Institute Year Book*, 54 [2009], 275–96), and Michael Brenner and Hagit Lavsky among many others have presented surveys of Jewish life in postwar Germany. See M. Brenner, D. Diner, et al. (eds), *Geschichte der Juden in Deutschland von 1945 bis zur Gegenwart* (Munich 2012), esp. 153–294; M. Brenner, *Nach dem Holocaust: Juden in Deutschland 1945–1950* (Munich 1995), H. Lavsky, *New Beginnings: Holocaust Survivors in Bergen-Belsen and the British Zone in Germany, 1945–1950* (Detroit, MI 2002), J.H. Geller, *Jews in Post-Holocaust Germany, 1945–1953* (Cambridge 2005), A. Grossmann, *Jews, Germans, and Allies: Close Encounters in Occupied Germany* (Princeton, NJ 2007), A. Kauders, *Unmögliche Heimat: Eine Deutsch-Jüdische Geschichte der Bundesrepublik* (Munich 2007).

between former communal and cultural property, both the product of communal life and a cultural good. An important but as yet unconsidered frame through which to consider the full significance of postwar restitution, the archives simultaneously represent a unique class of restitutable property and also an exemplary case whose fate seemed to concretize and validate the radical rupture of the Holocaust. Books, Torah scrolls, and other looted religious and cultural objects could be put to use in any Jewish community. Archives were similarly movable, but were uniquely tied to their points of origin following the archival principle of provenance. The relocation of archives might place them at the disposal of Jewish scholars but would wrench them from their historical context, fundamentally reframing the past documented therein. Additionally, the line between 'theft' and 'salvage' was a fine one indeed, making the restitution of archives particularly tricky.<sup>8</sup> Despite archives' distinctiveness, the debates over their restitution and their ultimate 'return' to the state of Israel foregrounded the common stakes of restitution at large by centering the fiction of successorship after the Holocaust. As we shall see, for those involved, removing the archives to Jerusalem reflected a symbolic transference of the legacy of German Jewry to the state of Israel. Gaining these archives helped establish Jerusalem as a center of Jewish historical scholarship and served as a marker of an irreparable break in Jewish life in Germany – with German Jewish life now physically relegated to the realm of the past.

For this reason, we begin by considering the fate of Jewish cultural property under the Nazis' regime of looting and plunder and that of archives in particular, and then turn to the wider context of postwar restitution and its significance for the question of legal and spiritual successorship, before finally returning to the fierce struggles for communal archives and their ultimate resolution. The emergence of groups like JRSO and JTC and the ensuing legal battles over communal and cultural property established broad restitution policies – that Jewish groups would manage the restitution of looted property and that pre-war Jewish communities were heirless, allowing for the redistribution of their property – with wide-ranging implications for the issue of successorship. Consequently, we address two cases of contested restitution that highlight how successorship in the legal and spiritual senses alike had little to do with the ties of survivors and émigrés to pre-war institutions: the so-called 'Gemeinde problem,'<sup>9</sup> a struggle over communal property between Jews in postwar Germany and the restitution groups, and the fate of cultural property such as the books formerly of the library of the *Lehranstalt für die Wissenschaft des Judentums*, the Berlin rabbinical seminary. Then we return to the issue of communal archives, which foreground the fundamental ties between restitution and the question of who might take on the cultural mantle of European Jewry.

8 Also see L. Leff, *The Archive Thief: The Man who Salvaged French Jewish History in the Wake of the Holocaust* (New York, NY 2015).

9 'So-called,' as it were, because it is a term used by the successor groups. For them, the *Gemeinden* (Jewish communities in postwar Germany) were a 'problem.' The communities' claims on communal property threatened a vision of the successor organizations' place as sole successors to pre-war Jewry.

As is well-known, the Nazi regime enacted cultural policies to suppress so-called ‘degenerate’ art, while hoarding the work of great masters.<sup>10</sup> Similarly, Nazi leaders sought to exterminate European Jewry but amassed vast collections of priceless historical manuscripts, archives, and cultural riches in the name of ‘racial research.’ Through studying the Jewish past, the Nazis hoped to produce a ‘scholarly’ affirmation of their backwards ideology and to shape public perception by placing Jewish culture and life behind the museum’s glass cabinets.<sup>11</sup> After *Kristallnacht*, the Gestapo ordered the confiscation of Jewish community archives.<sup>12</sup> Later, the notorious *Einsatzstab Reichsleiter Rosenberg* looted libraries across Europe.<sup>13</sup> As a result, the archives and libraries of the Jews of Europe met a fate analogous to that of European Jewry on the whole: Just as entire communities were destroyed and the survivors scattered, so too were archives lost and the remnants scattered across Europe. At the war’s end, many archives were again looted, this time by the advancing Soviet forces. Others found themselves under the control of the western Allies, mainly near Frankfurt, where the Americans administered a vast a cache of looted books and archives at the Offenbach Archival Depot.<sup>14</sup> Still more archives

10 The history of Nazi cultural policies and the recovery of art and other historic material has been well documented. Some of the most important accounts include L. Nicholas, *The Rape of Europa* (New York, NY 1994), J. Petropoulos, *Art as Politics in the Third Reich* (Chapel Hill, NC 1996), M.J. Kurtz, *America and the Return of Nazi Contraband: The Recovery of Europe’s Cultural Treasures* (Cambridge, MA 2006), esp. 1–43.

11 A.E. Steinweis, *Studying the Jew: Scholarly Antisemitism in Nazi Germany* (Cambridge 2006); D. Rupnow, *Täter, Gedächtnis, Opfer: Das ‘Jüdische Zentralmuseum’ in Prag 1942–1945* (Vienna 2000).

12 R. Heydrich, ‘Massnahmen gegen Juden in der heutigen Nacht,’ 10 November 1938, published in Wolf-Arno Kropat, *Reichskristallnacht: Der Judenpogrom vom 7. bis November 1938—Urheber, Täter, Hintergründe: mit ausgewählten Dokumenten* (Wiesbaden, Germany 1997), 214–16, makes explicit reference to the seizure of Jewish archives. In January 1939, leaders of the Gestapo organized a systematic program to confiscate Jewish community archives; see ‘Niederschrift über die Besprechung über jüdische Archive,’ 27 January 1939, *Geheimes Staatsarchiv—Preußischer Kulturbesitz* I. HA, Rep. 178, Nr. 1152.

13 The ERR’s activities in wartime plunder, led by the National Socialist ideologue Alfred Rosenberg, have been the subject of tremendous study. Among many, see Petropoulos, *Art as Politics*, Nicholas, *Rape of Europa*, A. Heuss, *Kunst- und Kulturgutraub. Eine vergleichende Studie zur Besatzungspolitik der Nationalsozialisten in Frankreich und der Sowjetunion* (Heidelberg 2000), P. Grimsted, ‘From Nazi Plunder to Russian Restitution,’ in P. Grimsted, F. J. Hoogewoud, and E. Ketelaar (eds), *Returned from Russia: Nazi Archival Plunder in Western Europe and Recent Restitution Issues* (Builth Wells 2007), 65–80. These archival policies, notably, were not strictly limited to Jews. In 1870, 1914, and 1939 alike the Germans organized archival groups (‘Gruppe Archivwesen’) to seek out and ‘reclaim’ archives seized in earlier wars (specifically by Napoleon) and which represented historical German ethnic presence in eastern Europe. As such, the theft of Jewish archives fell under the rubric of both National Socialist racial policy as well as the reorganization of archives for the envisioned new order of German occupation. See A.M. Eckert, *The Struggle for the Files: The Western Allies and the Return of German Archives After the Second World War* (New York, NY 2012), and R. Kretzschmar, A. Eckert, H. Schmitt, et al. (eds), *Das deutsche Archivwesen und der Nationalsozialismus* (Essen 2007), 166–273. On German archival administration during the First World War, see E. Posner, ‘Public Records under Military Occupation,’ *American Historical Review*, 49, 2 (January 1944), 213–27; S. Lehr, *Ein fast vergessener Osteinsatz: Deutsche Archivare im Generalgouvernement und im Reichskommissariat Ukraine* (Düsseldorf 2007).

14 On ‘twice-looted archives,’ see P.K. Grimsted, ‘From Nazi Plunder to Russian Restitution,’ 1–134. For Offenbach, see E. Gallas, *‘Das Leichenhaus der Bücher’: Kulturrestitution und jüdisches Geschichtsdenken nach 1945* (Göttingen 2013), 27–76, A. Rothfeld, ‘Returning Looted European Library Collections: An Historical Analysis of the Offenbach Archival Depot, 1945–1948,’ *RBM: A Journal of Rare Books, Manuscripts, and Cultural Heritage*, 6, 1 (March 2005), 14–24, and also Col. S.J. Pomrenze, ‘The Restitution of Jewish Cultural Treasures after the Holocaust: The Offenbach Archival

remained squirreled away in municipal and state collections across Germany or in Nazi caches and holdouts.

Before the Second World War, the Jews of Europe possessed a rich archival heritage. The Jewish scholar Markus Brann (1849–1920) once lamented that Jews had been left with ‘no leisure to create well-ordered archives’ due to a history of repeated expulsions and migrations, and the absence of a state to foster such institutions.<sup>15</sup> To the contrary, Jews had long held documents of practical and political value like medieval privilegia, serving as charters of Jewish settlement and princely protection, and sacred texts stored in synagogues, most famously at the Cairo Genizah but also throughout Europe. Jewish communities also maintained *Pinkasim* or record-books of autonomous communal affairs.<sup>16</sup> Some prominent Jewish communities organized official archives, as did Vienna (1841) and Worms (1871), but Jews around Europe, and especially in Germany, only first systematically gathered archives beginning at the turn of the twentieth century.<sup>17</sup> Foremost was the *Gesamtarchiv der deutschen Juden*, the central archive of German Jewry established in Berlin in 1905 which would encompass the files of over 400 communities; similarly, the Jewish *Gemeindearchiv* of Breslau, founded in 1924, became a regional archive of the Jews of Silesia.<sup>18</sup> The new archiving spirit also spurred many to organize archives of their own, often in opposition to centralizing efforts, as did Moïse Ginsburger in Alsace-Lorraine.<sup>19</sup> Jewish institutions also maintained archives, including the *Alliance Israélite Universelle* in Paris, the Zionist Organization’s

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Depot’s Role in the Fulfillment of U.S. International and Moral Obligations (A First Hand Account),’ Association of Jewish Libraries, Rosaline and Myer Feinstein Lecture Series, 2002.

15 M. Brann, ‘Heinrich Graetz,’ *Monatsschrift für die Wissenschaft des Judentums*, 3rd ser., 25 (1917), 337.

16 On Jewish *Genizah* and *Pinkas* traditions, see N. Aloni, ‘Genizah *’etsel ha-yehudim*,’ *Sinai*, 79, 5–6 (1976), 193–210, M. Bet-Arié, ‘Genizot: Depositories of Consumed Books as Disposing Procedure in Jewish Society,’ *Scriptorium*, 50, 2 (1996), 407–14, and S. Dubnow (ed), *Pinkas ha-medinah: ’o, pinkas ya’ad ha-kehillot ha-rashiyot bi-medinat liṭa* (Berlin 1925), ix–xxix. On the Cairo Genizah in particular, see among others S. Reif, *A Jewish Archive in Old Cairo: The History of Cambridge University’s Genizah Collection* (Richmond 2000), A. Hoffman and P. Cole, *Sacred Trash: The Lost and Found World of the Cairo Geniza* (New York, NY 2011).

17 L.A. Frankl to *Vertreter der Israelitische Gemeinde*, 2 September 1841, CAHJP AW/1704; S. Rothschild, *Aus Vergangenheit und Gegenwart der israelitische Gemeinde Worms* (Frankfurt am Main 1905), 28.

18 The *Gesamtarchiv* has seen a smattering of research but lacks a systematic study of its origin, history, and legacy. Recent contributions include: P. Honigmann, ‘Die Akten des Exils. Betrachtungen zu den mehr als hundertjährigen Bemühungen um die Inventarisierung von Quellen zur Geschichte der Juden in Deutschland,’ *Der Archivar*, 54 (2001), 23–31; B. Welker, ‘Das Gesamtarchiv der deutschen Juden: Zentralisierungsbemühungen in einem föderalen Staat,’ in F.M. Bischoff, P. Honigmann (eds), *Jüdisches Archivwesen. Beiträge zum Kolloquium aus Anlass des 100. Jahrestags der Gründung des Gesamtarchivs der deutschen Juden* (Marburg 2007), 39–74. On the Breslau archive, see B. Brillling, ‘Das Archiv der Breslauer Jüdischen Gemeinde (Das schlesisch-jüdische Provinzial-Archiv). Seine Geschichte und seine Bestände,’ *Jahrbuch der Schlesischen Friedrich-Wilhelms-Universität zu Breslau*, 18 (1973), 258–284.

19 On Ginsburger’s *Société pour l’histoire des israélites d’Alsace et Lorraine*, see P. Honigmann, ‘Nichtstaatliches Schriftgut einer Grenzregion am Beispiel der Archivaliensammlung der Gesellschaft für die Geschichte der Israeliten in Elsass-Lothringen,’ *Archive im zusammenwachsenden Europa* (Siegburg 2000), 131–140. Also see VII. Sitzung des Kuratoriums für das Gesamtarchiv der Deutschen Juden, 6 November 1910, CAHJP P17/11.

Berlin archives, and the historical and ethnographic collections of YIVO, the Yiddish Scientific Institute in Vilnius.<sup>20</sup> Despite – or perhaps as a result of – the absence of a state to foster their archives, Jews held a diverse and dispersed documentary record of communal and organizational life, including much material often not associated with state archives like ethnographic collections and surveys.

As the Second World War came towards its conclusion, Jewish scholars organized restitution initiatives with the hope that archives might be reconstituted as part of the salvage of looted Jewish property at large. The ‘Committee on Restoration of Continental Jewish Museums, Libraries, and Archives,’ organized by the Cambridge scholar Cecil Roth in 1943, even referenced archives explicitly. The following year, the Columbia historian Salo Baron formed the ‘Commission for European Jewish Cultural Reconstruction’; it also initially focused on Jewish archives alongside libraries and museums.<sup>21</sup> And in 1945, scholars at the Hebrew University led by Judah Magnes, the university’s chancellor, and Gershom Scholem, the scholar of Jewish mysticism, organized the ‘*Otsrot ha-golah*’ (Treasures of the Diaspora) committee in the hope of gathering archives as well as books to Jerusalem.<sup>22</sup>

Although Magnes and Roth briefly considered the Italian Jewish communities’ archives in 1945, archives were not the primary focus of early restitution efforts.<sup>23</sup> The loot held at the Offenbach Archival Depot, despite its name, consisted mostly of books and other cultural and religious objects, with the notable exception of the archives of YIVO. Many communal archives were scattered, as were the Jewish archives of Königsberg (Kaliningrad), which ended up in Göttingen when the Germans fled westward in 1945, and the *Gesamtarchiv*, divided among a number of Nazi caches in Kyffhäuser, Schönebeck, and Merseburg; these files, in the Soviet zone, were for the time being outside the reach of restitution.<sup>24</sup> Despite Jewish

20 G. Weill, ‘*Jüdische Archive in Frankreich*,’ in F.M. Bischoff and P. Honigmann (eds), *Jüdisches Archivwesen*, 285–304, J.-C. Kuperminc, ‘*La reconstitution de la bibliothèque de l’Alliance israélite universelle, 1945–1955*,’ *Archives Juives*, 34, 1 (2001), 98–113; R. Jütte, *Die Emigration der deutschsprachigen ‘Wissenschaft des Judentums.’ Die Auswanderung Jüdischer Historiker nach Palästina 1933–1945* (Stuttgart 1991), 90–95; G. Herlitz, *Mein Weg nach Jerusalem. Erinnerungen eines zionistischen Beamten* (Jerusalem 1964), 106–117; C. Kuznitz, *YIVO and the Making of Modern Jewish Culture: Scholarship for the Yiddish Nation* (New York, NY 2014).

21 See ‘Tentative List of Jewish Cultural Treasures in Axis-Occupied Countries,’ supplement to *Jewish Social Studies*, 8, 1 (1946), 6. On the history of JCR, see D. Herman, ‘*Hashavat Avedah: A History of Jewish Cultural Reconstruction, Inc.*,’ unpublished PhD thesis, McGill University (2008); K. Rauschenbeger, ‘The Restitution of Jewish Cultural Objects and the Activities of Jewish Cultural Reconstruction Inc,’ *Leo Baeck Institute Year Book*, 53 (2008), 193–211; E. Gallas, ‘*Kulturelles Erbe und rechtliche Anerkennung. Die Jewish Cultural Reconstruction, Inc. nach dem Zweiten Weltkrieg*,’ *Jahrbuch für Antisemitismusforschung*, 22 (2013), 35–56; Gallas, ‘Locating the Jewish Future: The Restoration of Looted Cultural Property in Early Postwar Europe,’ *Naharaim*, 9, 1–2 (2015), 25–47.

22 On the ‘*Otsrot ha-golah*’ and the general efforts to gather looted books to Jerusalem, see D. Shidorski, *Gevilim nisrafim ve-’otiyot porhot: toldotehem shel ’osfe sefarim ve-sefiryot be-’erets yisra’el ve-nisyonot le-hatsalat šeridehem be-’eyropah le-’aḥar ha-sho’ah* (Jerusalem 2008), 237–54; Gallas, *Leichenhaus der Bücher*, esp. 188–217.

23 C. Roth to J. Magnes, 13 August 1945, CAHJP P3/2056.

24 On the fate of the Gesamtarchiv’s materials, see: *Din ve-heshbon shel prof’ Gershom Scholem ‘al shelihuto le-’eyropah (ba-kayits tsh”v) be-’eshet le-’otsrot ha-golah*, undated, CAHJP P3/2059, Central

scholars' interest in such archives and especially the *Gesamtarchiv*, these and other collections required more intensive work to unearth. And real estate and financial instruments proved more attractive for those interested in meeting the urgent material needs of Jews in postwar Europe. As a result, historical archives only reappeared on the restitution agenda in 1949, when Jewish Cultural Reconstruction (JCR), as JRSO's cultural arm, received Jewish archives stored in German state archives.

Around this time, Israeli archivists also began searching for restitutable archives. Jewish scholars in Jerusalem had long hoped to establish Palestine as a cultural center of world Jewry and the Hebrew University as a major research center.<sup>25</sup> When the Palestine Historical and Ethnographic Society (today the Historical Society of Israel) was founded in 1924, it hoped to create a 'national archive.'<sup>26</sup> In April 1939, Georg Herlitz – who had founded the *Archiv der Zionistischen Organisation* in Berlin in 1919 and orchestrated its transfer to Jerusalem in 1933 – convened a committee to form a 'central Jewish archive in Jerusalem,' leading to Josef Meisl's founding of the Jewish Historical General Archives (JHGA).<sup>27</sup> They hoped to 'salvage' the archives of the Jews of Europe and establish a Jewish 'national archive' of the Diaspora.<sup>28</sup> In 1949, a decade after the JHGA's founding, Meisl and Herlitz dispatched Alex Bein to Europe to survey and collect Jewish archives.<sup>29</sup> Before the Nazis' rise to power, from 1927 to 1933, Bein had served at the Prussian *Reichsarchiv*. After Bein was sacked due to the Nazis' '*Gesetz zur Wiederherstellung des Berufsbeamtentums*' of April 1933, he fled to Palestine, where he helped Herlitz re-establish the Zionist Archives, becoming his deputy and an active figure in the development of archives in Palestine at large; in 1956, Bein would become Israel's first state archivist.<sup>30</sup> And so in the fall of 1949, Bein

Zionist Archives, Jerusalem (CZA), L33/1882 (excerpt); J. Jacobson to E. Täubler, 12 Dec. 1945, Universitätsbibliothek Basel NL 76 E1; 'JCR, Confidential Report: Cultural Property in Berlin and the Soviet Zone (Field Report Nr. 6),' 8 Apr. 1949, CAHJP JRSO/NY/923a; J. Jacobson to S. Stern-Täubler, May 1949, Universitätsbibliothek Basel NL 120 D/10; S. Shunami, 'Report of a Mission to Berlin,' 21 June 1949, LBI DM 223 14/52. On Kyffhäuser, see H. Hertz to *Vorstand der Jüdischen Gemeinde zu Berlin*, 7 November 1949, Staatsarchiv (StA) Hamburg 622-1/120/914, and '*Herkunft und Zusammensetzung des Archivguts*,' 11 Aug. 1988, Bundesarchiv-Lichterfelde, DO4/1348.

25 D.N. Myers, *Re-Inventing the Jewish Past: European Jewish Intellectuals and the Zionist Return to History* (New York, NY 1995).

26 *Me'assef tsiyon*, 1 (1925), 128.

27 '*Protokol me-yeshivat ha-ve'idah ha-yozemet le-yassed 'arkhiyon yehudi merkazi be-yerushalayim*,' 14 April 1939, CZA L33/1201.

28 See B. Dinaburg to Y. Greenboim, 31 July 1944, CAHJP IHS/21a, and I. Arroyo, 'Raison d'être der "Central Archives for the History of the Jewish People" als virtuelles "Staatsarchiv" der Diaspora,' *Jüdisches Archivwesen*, 76–96.

29 A. Bein, '*Tazkir bi-dvar nesiy'ah le-huts la-'arets mi-ta'am ha-'arkhiyon ha-tsiyoni*,' 10 June 1949, J. Meisl to A. Bein, 8 Sept. 1949, CZA L33/1439; also see various reports in this file.

30 On Bein's career and biography, see A. Bein, '*Hier kannst Du nicht jeden grüßen*': *Erinnerungen und Betrachtungen* (New York, NY 1996), although this account only reaches the founding of the state of Israel, and R. Jütte, 93–5. In addition to his work at the Zionist Archives, Bein was active in the professional training of archivists (e.g. '*Kurs le-hakhsharat 'arkhiyona'im mada'iim*,' 13 October 1952, CZA A198/13) as well as in popular dissemination of archival knowledge as early as the 1930s (see A. Bein, '*Registraturah-'Arkhiyon-Historiyah*,' March 1937, CZA P64/148/2).



returned to Europe, where he reached out to Jewish groups and Germans alike – including his former colleagues at the German archives – in search of Jewish archives. That December, Bein declared that bringing archives to Jerusalem was a national imperative, comparing gathering archives to the ‘ingathering of the exiles.’<sup>31</sup> Over the next decade, Israeli archivists led by Bein found broad success: By 1952, the JHGA boasted of holding over 350 German and Austrian communal archives, five years later increasing to more than 800.<sup>32</sup> Following the finalizing of an agreement for the transfer to Jerusalem of the Jewish archives of Hamburg in 1959, Daniel Cohen – now the JHGA’s director – declared their project concluded, ‘at least as far as West Germany is concerned.’<sup>33</sup>

As Cohen reflected on the conclusion of a major stage in the JHGA’s collecting project, he recognized that their success had depended upon the critical assistance of restitution groups, the Israeli diplomatic missions in Cologne and Munich, and Jews in Europe who supported archival transfer. They received a number of valuable collections with the support of local Jewish leaders; Wilhelm Krell, leader of the Viennese Jewish community, orchestrated the transfer of their archives between 1951 and 1971, and Julius Meyer of Berlin worked with Otto Korfes, a coworker of Bein’s from his years at the *Reichsarchiv*, to remove portions of the *Gesamtarchiv* from the Soviet zone and send them to Jerusalem.<sup>34</sup> These examples, however, represented prominent exceptions; most archives in the Soviet zone were not available under any sort of restitution, and the JHGA received most of their German collections through the intervention of JRSO and JTC as legal successors to the destroyed Jewish communities. For instance, JRSO provided the JHGA with the pre-1870 archives of the Jewish communities in Bavaria. Other collections, as we shall see, were the subject of dispute. In particular, Friedrich Illert in Worms and Hans Hertz of Hamburg strongly opposed sending archives to Jerusalem. It was only after the restitution groups asserted their legal clout and the West German government applied pressure that the Worms archives arrived in Jerusalem in 1957 and a subset of the Hamburg files, primarily materials in Hebrew from before 1816, were transferred to Jerusalem following a 1959 agreement.

Mass archival transfer, then, resulted directly from general postwar restitution policies, primarily the American, British, and French military governments’

31 A. Bein, ‘*Din ye-heshbon me-nesiy’ati le-eyropah be-shlikhut ha-’arkhion ha-tsiyoni ha-merkazi*,’ 19 December 1949, CZA L33/1439.

32 ‘*Reshimah ‘ara’it shel ha-homer ha-te’udati she-nitkabel me-germaniyah be-’ikvot shelhuto shel d’r ‘a. bayn*,’ Nov. 1952, CZA L33/1882; A. Bein, ‘*Me’arekhet ha-’arkhionim ba-’arets ke-basis le-melkar*,’ 12 Mar. 1957, *Zentralarchiv zur Erforschung der Geschichte der Juden in Deutschland*, Heidelberg (ZA), B. 1/7, 241.

33 ‘The Transfer of the Hamburg and Königsberg Community Archives (Ten Years’ Project: The Ingathering of the Exiles of our Past Completed in Austria and Germany),’ 18 February 1960, ZA B. 1/7 241.

34 O. Korfes to A. Bein, 16 March 1950, J. Meyer to O. Korfes, 19 Sept. 1950, CZA L33/1882; A. Bein to *Israelitische Kultusgemeinde Wien*, 9 Sept. 1949, CZA L33/1439; *Vereinbarung zwischen der Israelitischen Kultusgemeinde Wien und der Hebräischen Universität in Jerusalem*, 25 May 1951, CZA L33/1315; A. Bein, ‘*Zikhron devarim, ‘arkhion ha-kehillah be-yinah*,’ 18 November 1956, CAHJP P28/6/37.

recognition of Jewish restitution agencies, their empowerment as the sole legal heirs to destroyed communities and their property, and these groups' determination of priorities for property redistribution. All of these directly arose from a widespread sense of radical historical discontinuity. The destruction of Jewish families, communities, and institutions fundamentally undermined the juridical basis for the restitution of looted property. Under normal conditions, matters of inheritance are handled with instruments such as a will, heirs, and successors, or in their absence the principles of escheat and that war booty be returned to its country of origin.<sup>35</sup> In the aftermath of unthinkable genocide, many Jewish leaders opposed the possibility that property might revert to Germany or be repatriated to eastern European countries under Soviet control. In early 1946, the Hebrew University's 'Otsrot ha-golah committee expressed their sense of 'elementary natural justice' that Jewish property not revert to the German state, citing both the Bible ('Hast thou killed and also taken possession?') and the German Civil Code, disallowing a killer from inheriting.<sup>36</sup> Later that year, Jewish Cultural Reconstruction argued that Jewish objects should not be returned to countries where few Jews remained.<sup>37</sup> These leaders also feared the 'unfair enrichment' of Jews in Europe.<sup>38</sup> On the basis of the 'trajic [sic] shrinkage and almost complete disappearance of German Jewry,' Seymour Pomrenze, director of the Offenbach Archival Depot, advocated that property should be reallocated, even if some legal successors could be identified.<sup>39</sup> Likewise, JCR argued that 'elemental justice' trumped the 'dry legal title' of any communities.<sup>40</sup> Somewhat more radically, the Jerusalem scholar Ben Zion Dinaburg proposed that even before the war, Jewish libraries and cultural property had not been the property of their communities but of the Jewish people as a whole.<sup>41</sup> JCR maintained similarly that Jewish cultural institutions did not serve their immediate communities alone, but all of world Jewry.<sup>42</sup> On this basis, these groups insisted that the matter of stolen property required legal innovation. They contended that individual Jews and their communities had neither been the sole owners or beneficiaries of Jewish culture, merely its custodians and stewards, and

35 On escheat, 'Notes: Origins and Development of Modern Escheat,' *Columbia Law Review*, 61, 7 (November 1961), 1319–40; also J.V. Orth, 'Escheat: Is the State the Last Heir?' *The Green Bag*, 13, 1 (second series, Autumn 2009), 73–84.

36 'Tazkir ha-ya'ada ha-mishpatit sh''ay ha-ya'adah le-hatsalat 'otsrot ha-golah,' 26 February 1946, National Library of Israel, Jerusalem (NLI), ARC 4° 793/212.1; the Biblical quote is from Kings I 21.19.

37 Memorandum Submitted by the Commission on European Jewish Cultural Reconstruction to Rabbi P.S. Bernstein, 17 May 1946, NLI ARC 4° 793/212.1.

38 The official U.S. Military Government policy, as explained by W. G. Daniels, chief of the German Property Section, in July 1950, was that due to the reduction of the Jewish population, it would be 'unfair enrichment' to turn over the properties of a large group to a small number of survivors. (W.G. Daniels, 5 July 1950, CAHJP JRSO/NY/602a.)

39 H. Lamm to American Jewish Conference, 15 April 1946, Leo Baeck Institute, New York City (LBI), American Federation of Jews from Central Europe (DM 223), 13/18.

40 J. Michael to General J. H. Hilldring, 5 June 1946, NLI ARC 4° 793/212.1.

41 'Ha-ya'ada le-hatsalat 'otsrot ha-golah,' 24 January 1946, NLI ARC 4° 1599/02 23.1.

42 Memorandum Submitted by the Commission on European Jewish Cultural Reconstruction to Rabbi P.S. Bernstein, 17 May 1946, NLI ARC 4° 793/212.1.

insisted that property should not simply be returned to survivors in Germany, instead calling for a trustee to represent the Jewish people as a whole.<sup>43</sup>

After considerable lobbying, military laws established frameworks for official agencies to manage heirless and communal property as successor organizations (*Nachfolgeorganisationen*). In the US zone, under Military Law 59 (10 November 1947) the Jewish Restitution Successor Organization (JRSO) was appointed with Salo Baron's Jewish Cultural Reconstruction as its cultural arm. The British promulgated a similarly-named Military Law 59 on 12 May 1949, but opposed a specifically *Jewish* Trust Corporation. Instead, British officials preferred that a single group handle all loot, paralleling their opposition to recognizing Jews as a distinct group of Displaced Persons. In the face of such opposition, British Jews only succeeded in forming the Jewish Trust Corporation in August 1950.<sup>44</sup> In the French zone, too, *Ordonnance* 120 of November 1947 (*relative à la restitution des biens ayant fait l'objet d'actes de spoliation*) avoided establishing a Jewish restitution agency, instead giving German *Länder* authority to heirless property through a 'common fund.' In March 1952, it was amended to sanction the JTC's '*Branche Française*.'<sup>45</sup> Consequently, these groups received official recognition as sole recipient of heirless property. But their claims to communal property – which would be the basis for the transfer of the archives – remained the subject of fierce debate.

These struggles surrounded JRSO's aggressive pursuit of a policy, later also adopted by JTC, to deprive Jewish communities in Germany of property they deemed unnecessary for a radically reduced Jewish population, who they fundamentally distrusted to carry forth the cultural legacy of German Jewry. In 1948, the World Jewish Congress resolved that 'the Jewish people never again... settle on the bloodstained soil of Germany.'<sup>46</sup> While not a 'ban,' as some scholars have inferred, it indicated the abhorrence of many Jews outside of Germany to the idea of continued Jewish life there.<sup>47</sup> As Jews in Germany consisted largely of Eastern European refugees and those in mixed marriages, with few youths, many believed

43 J. Michael to J.H. Hilldring, 26 August 1946, NLI ARC 4<sup>o</sup> 793/212.2; M. Lowenthal to Lt General L.D. Clay, 8 October 1946, CZA C7/1284/1.

44 See J. Lillteicher, *Raub, Recht und Restitution. Die Rückerstattung jüdischen Eigentums in der frühen Bundesrepublik* (Göttingen 2007), 357–98, A. Takei, 'The Jewish People as Heir: The Jewish Successor Organizations (JRSO, JTC, French Branch) and the Postwar Jewish Communities in Germany,' unpublished PhD thesis, Waseda University, Tokyo (2004) on the history of JRSO, and to some extent JTC (although Takei did not have access to the files of JTC held at CAHJP). On JTC, see C. Kapralik, *Reclaiming the Nazi Loot: The History of the Work of the Jewish Trust Corporation for Germany* (London 1962, 1971), and esp. 'Military Government Law No. 59, Regulation No. 7,' *Official Gazette of the Allied High Commission for Germany* (18 August 1950), No. 30, 531–532, also published in Kapralik, *Reclaiming the Nazi Loot*, 153–4.

45 *Ordonnance No. 120, Journal Officiel du Commandement en Chef Français en Allemagne (journal Officiel)*, 3, 119 (14 November 1947), 1219; the *Branche Française* was officially appointed with *Ordonnance* 177, 18 March 1952.

46 *Resolutions Adopted by the Second Plenary Assembly of the World Jewish Congress, Montreux, Switzerland, June 27th–July 6th, 1948* (London 1948), 7.

47 See D. Diner, 'Im Zeichen des Banns,' in M. Brenner (ed.), *Geschichte der Juden in Deutschland von 1945 bis zur Gegenwart* (Munich 2012), 15–66, esp. 21–22; E. Gallas, 'Locating the Jewish Future,' 37.

Jewish life in Germany would disappear in due course.<sup>48</sup> As a result, JRSO's policy was that communities be afforded funds, buildings, and cultural goods required for day-to-day needs, and no more.<sup>49</sup> Some German Jews agreed but were wary of outside interference. Benno Ostertag of Stuttgart was prepared to agree that the property of dissolved communities be transferred to JRSO, but until then, it should belong to the community, not be held in trust, as JRSO demanded.<sup>50</sup> The result was a November 1949 settlement with the Jews of Stuttgart – who signed with a 'heavy heart' – in which JRSO would provide financial support and essential property, even title to buildings. However, the community agreed to cede its property 'when' (not if) the Jewish population fell below a certain threshold, and further submitted to management by a control board together with JRSO representatives.<sup>51</sup>

Despite the widely-held belief that Jewish life in Germany was at its end, Jews there slowly reorganized communal life in a startling attempt at continuity. In the summer of 1945, Jews in Berlin reconstituted their community under the 1847 Prussian law that still formally governed Jewish communal bodies.<sup>52</sup> And in March 1946, German Jewish leaders formed the *Interessenvertretung der Jüdischen Gemeinden und Kultusvereinigungen* (Representation of the Interests of the Jewish Communities and Religious Associations); they hoped it would be recognized as successor to the *Reichsvereinigung der Juden in Deutschland* (Reich Association of the Jews in Germany), the body of Jewish communities forced upon the German Jews in July 1939. Somewhat surprisingly, neither the Nazis nor any Allied authority had ever dissolved the association, nor had the Nazis liquidated its property. If the *Interessenvertretung* was the *Reichsvereinigung's* legal successor, they could use its property to address urgent needs. In 1949, the *Interessenvertretung* again pressed for the continuity of Jewish life before and after the Holocaust, unanimously declaring that 'the currently existing Jewish communities... are identical with the former Jewish communities' and that they were the rightful owners of all former property.<sup>53</sup>

This assertion constituted the heart of the so-called 'Gemeinde problem.' Restitution groups in all three western zones of Germany argued that they should be sole successors of Jewish communities in Germany and receive their former property on the basis of the legal and historical distinctiveness between

48 See, for example, E. Rock to JRSO Executive Committee, 19 July 1949, LBI DM 223, 13/3, H.G. Van Dam, 'Memorandum: Trust Corporation and Communal Property,' Oct. 1949, CAHJP JTC/Lon/420a, which emphasized these issues. On the demographics of the Jews in postwar Germany, see H. Maor, 'Über den Wiederaufbau der Jüdischen Gemeinden in Deutschland seit 1945,' unpublished PhD thesis, Johannes-Gutenberg-Universität zu Mainz (1961), 51–87.

49 Jewish Restitution Successor Organization, 20 October 1948, LBI DM 223, 13/1.

50 *Sitzung des Interessenvertretung*, 3 April 1949, LBI DM 223, 13/18.

51 B. Ferencz to Dr Warscher and Dr Marx, 18 July 1949, *Israelitische Kultusvereinigung Württemberg* to JRSO, 18 November 1949, LBI DM 223, 13/2; J. J. Jacobson to M. W. Beckelman and J. J. Schwartz, 22 December 1949, CAHJP JRSO/NY/640a.

52 H. Lamm to American Jewish Conference, 15 April, 1946, LBI DM 223, 13/18. On the re-establishment of the Berlin Jewish community, see P. J. Nielsen, "'I've Never Regretted Being a German Jew.'"

53 Resolution, *Interessenvertretung der jüdischen Gemeinden und Kultusvereinigungen*, 27 August 1949, LBI DM 223, 13/2.

pre-war and postwar communities and institutions. They held that German Jewish communities had been formally dissolved by the Nazis, leaving no heirs and the new communities with no legal claim.<sup>54</sup> At the same time, German Jewish communities clamored for, and in some cases received, recognition as successors to pre-war communities: In February 1947, Bavaria recognized its Jews as such successors, leading to the restitution of some property to the Jews of Augsburg, and in early 1950 the German state of Rhineland-Palatinate (French zone) passed a law making Jews in Mainz successors for communities in its vicinity.<sup>55</sup> That same year, Jews in the British zone demanded similar recognition, posing a serious threat to the Jewish Trust Corporation. Max Schindler of JTC suggested that such claims represented a 'very dangerous precedent,' writing that it would be 'a paradox and offensive against all feelings of piety' to support the communities' views.<sup>56</sup> Similarly, Benjamin Ferencz, JRSO's director, called the Augsburg situation 'one of our most serious problems' because the community's lawyer argued that they should receive all former property, and a loss by JRSO would undermine their position as successor to other communities in Germany.<sup>57</sup> Consequently, the question of the future of Jews in Germany played out in struggles over control of communal property. The restitution groups brought to bear the full weight of legal minutiae as well as institutional and financial pressures to bring about their affirmation as sole legal successors to the destroyed Jewish communities, thereby denying Jews in postwar Germany resources and giving themselves the prerogative to reapply them elsewhere, thus realizing their belief that Jewish life in postwar Germany had no future, or at least no ties to its past.

JRSO's argument in the Augsburg case, presented to the Court of Restitution Appeals (CORA) in Nuremberg which adjudicated restitution matters according to US military government rules, hinged on whether Nazi laws had been repealed at the conclusion of the war 'ex nunc' (from now on) or 'ex tunc' (from the outset).<sup>58</sup> If 'ex tunc,' it was as if the laws had never gone into effect in the first place; if

54 Jewish Restitution Successor Organization, 20 October 1949, LBI DM 223, 13/1.

55 For an in depth discussion of the Augsburg case, see A. Takei, 'The "Gemeinde Problem": The Jewish Restitution Successor Organization and the Postwar Jewish Communities in Germany, 1947–1954,' *Holocaust and Genocide Studies*, 16, 2 (Fall 2002), 266–288. Also see United States Court of Restitution Appeals of the Allied High Commission for Germany, JRSO v. Israelitische Kultusgemeinde Augsburg, CAHJP JRSO/NY/602b, which quotes the 1947 ruling, and *Sitzung der jüdischen Gemeinden in der US-Zone*, 7 September 1947, LBI DM 223, 13/18, where German Jewish leaders demanded equality with the restitution organizations on this basis. On Mainz, see 'Landesgesetz über die jüdischen Kultusgemeinden in Rheinland-Pfalz vom 19. Januar 1950,' *Gesetz- und Verordnungsblatt der Landesregierung Rheinland-Pfalz, Teil I: Landesgesetze und Landesverordnungen*, 4, 2 (25 January 1950), 13. Notably, the law recognized the Jewish communities in Koblenz, Neuwied, Bad Kreuznach, Trier, and Mainz as public corporate bodies (*Körperschaften des öffentlichen Rechts*) and §4 par. 2 allocated to each of them the 'rights and obligations' of the communities in their regions.

56 M. Schindler to H. Reichmann, 22 November 1949, M. Schindler to H. Van Dam, 30 November 1949, CAHJP JTC/Lon/420a.

57 B. Ferencz to S. Kagan, 17 August 1953, CAHJP JRSO/NY/602a.

58 On CORA, see T. Kurtz, *Das Oberste Rückerstattungsgericht in Herford. Eine Untersuchung zu Vorgeschichte, Errichtung und Einrichtung eines internationalen Revisionsgerichts in Deutschland* (Berlin 2014), 39–53.

'ex nunc,' as was accepted, the laws were considered to have been legal under the Nazi regime but not afterwards.<sup>59</sup> Thus, JRSO argued, the Nazis' July 1939 establishment of the *Reichsvereinigung* and the forcible incorporation of Jewish communities into this organization resulted in their permanent dissolution. 'Our abhorrence of the deeds,' they explained, 'cannot blind us to the recognition of the facts' that the former communities had ceased to exist and the repeal of Nazi laws in June 1945 did not undo their dissolution.<sup>60</sup> As Ferencz recognized, JRSO's argument was not 'a pleasant one' because the community claimed that they were giving legal standing to Nazi laws and jurisprudence, that 'we are trying to do by law what Himmler could not do in fact. . . to destroy the old Jewish communities.'<sup>61</sup> Nevertheless, CORA sided with JRSO, affirming its position as legal successor to the Jewish communities.<sup>62</sup>

In the US zone, JRSO's argument for communal legal distinctiveness depended upon the continued force of Nazi legal actions; in the British zone, the Jewish Trust Corporation's case rested upon the inverse. Jewish communities argued that under British military law, they could establish themselves as continuations of pre-war bodies.<sup>63</sup> A September 1947 ordinance allowed *Vereine* (associations) to re-establish themselves if they had at least three members remaining.<sup>64</sup> However, no Jewish communities except in Bremen and Detmold had been '*Vereine*' before 1938, when the Nazis transformed the Jewish communities into '*Vereine*.' According to the JTC's legal advisors, since the Nazis had transformed the communities into '*Vereine*' (with the two exceptions), they were not eligible to reorganize as a continuous legal entity.<sup>65</sup> When British and German Jewish leaders convened in February 1950 to negotiate the allocation of Jewish property, the German Jews ultimately agreed to join the JTC under a dual threat: if a settlement were not reached, a Universal Trust Corporation not controlled by the Jewish community would take over the property, and if communities were recognized

59 On the status and postwar repeal of Nazi laws, see M. Stolleis, *The Law Under the Swastika* (Chicago, IL 1998), 1–22, 167–184, and K. Loewenstein, 'Law and the Legislative Process in Occupied Germany: I,' *The Yale Law Journal*, 57, 5 (March 1948), 724–60, esp. 730–5. As Loewenstein noted, the lack of an official German text of the Control Council laws proved problematic, as it left open to interpretation whether Nazi laws were 'repealed' (*aufgehoben*) or 'revoked' (*widerrufen*); under the principles of German civil law, laws repealed (*aufheben*) would be considered null *ex nunc* (from now on), while those revoked (*widerrufen*) would be *ex tunc*, or from the outset (Loewenstein, 742, n. 64).

60 'Petition for Review,' 19 August 1953, CAHJP JRSO/NY/602a.

61 B. Ferencz to S. Kagan, 17 August 1953, CAHJP JRSO/NY/602a.

62 E. Katzenstein, 1 November 1954, CAHJP JRSO/NY/602b.

63 Memorandum of the Jewish Communities of Germany Regarding the Trust Corporations Provided by Law 59, 7 December 1949, CAHJP JRSO/NY/640a.

64 '*Verordnung zur Wiederherstellung aufgelöster Vereine*,' *Verordnungsblatt für die Britische Zone*, 18 (18 September 1947), 125–6.

65 'Remarks on the "*Memorandum der Jüdischen Gemeinden über die Treuhand-Gesellschaften gemäss Gesetz Nr. 59*"', 9 December 1949, CAHJP JTC/Lon/579a.

as legal successors, they would inherit both former property and also debts and obligations such as pensions. Renouncing succession resolved such intractable problems.<sup>66</sup>

In the end, the resolution of the ‘*Gemeinde* problem’ rested upon the legal force of the restitution organizations’ recognition as heirs of pre-war German Jewry, upheld by restitution courts, codified in agreements that it would be better for a single successor organization to represent all the Jews, alongside a number of practicalities. In the resulting agreements, communities received only what restitution groups believed was necessary, with the provision that property not be sold and that communities accept a degree of outside control. As a result, Jews in Germany became the custodians, not owners, of pre-war property, realizing Ben Zion Dinaburg’s self-fulfilling prophecy that Jews are but temporary custodians of Jewish life, carrying it from one generation to the next.

These struggles over communal property demonstrate the stakes of determining the legal successors of German Jewry. Official recognition of JRSO and JTC as the sole heirs of destroyed communities resulted from – and ratified – the then-prevailing view that whatever future Jews had in Germany, their storied legacy would be carried forth elsewhere. Alongside the questions surrounding communal property, fierce debates over cultural treasures further illustrate the ties between restitution and successorship, and the policy provisions which thereby served to sever the historic bonds between postwar Jewish life and that which came before. In one telling example, the scholar Eugen Täubler dreamed of continuing German Jewish culture in the United States of America by establishing a memorial library or research center on the basis of books formerly of the *Lehranstalt für die Wissenschaft des Judentums*, the rabbinic seminary founded in Berlin in 1872 as the ‘*Hochschule für die Wissenschaft des Judentums*.’<sup>67</sup> Before the war, Täubler directed the *Gesamtarchiv der deutschen Juden* and the *Akademie für die Wissenschaft des Judentums* in Berlin, and taught at the *Lehranstalt* from 1910 to 1919 before leaving for teaching positions in Zurich and Heidelberg; he returned to the *Lehranstalt* in 1938.<sup>68</sup> In 1941, Täubler fled to a post at Hebrew Union College (HUC), the Reform rabbinic seminary in Cincinnati.<sup>69</sup> Beginning in 1945,

66 S. Kagan to C. Kapralik, 15 May 1950, CAHJP JTC/Lon/579a. This argument followed from a 1949 proposal by JRSO leaders to deal with the German Jewish communities’ claims by pointing out that they would receive not only property but also financial obligations. See JRSO Executive Committee Meeting, 22 September 1949, H. Müller to H. Reichmann, 23 September 1949, LBI DM 223, 13/2.

67 I generally use the term *Lehranstalt* to avoid confusion, but many use the terms *Hochschule* and *Lehranstalt* interchangeably for this institution. Even though the seminary was only allowed to use the title ‘*Hochschule*’ for 26 of its 70 years of existence, the forced use of ‘*Lehranstalt*’ was due to antisemitic education policies. See R. Fuchs, ‘The “*Hochschule für die Wissenschaft des Judentums*” in the Period of Nazi Rule,’ *Leo Baeck Institute Year Book*, 12 (1967), 3–31, esp. 3–7.

68 See D.N. Myers, ‘Eugen Täubler: The Personification of “Judaism as Tragic Existence”’, *Leo Baeck Institute Year Book*, 39 (1994), 131–50; Myers, ‘The Fall and Rise of Jewish Historicism: The Evolution of the Akademie für die Wissenschaft des Judentums (1919–1934),’ *Hebrew Union College Annual*, 63 (1992), 107–44.

69 On Täubler’s path to the United States of America, see E. Täubler to J. Morgenstern, 21 June 1940, Morgenstern to Täubler, 10 July 1940, Universitätsbibliothek Basel NL 76 E1.

he lobbied for the *Lehranstalt* library's reconstitution, first at Columbia University and later at HUC.<sup>70</sup> There, he hoped to carry on the legacy of the Berlin rabbinic seminary. However, the general policy of Jewish Cultural Reconstruction was to divide up books and other objects, not transfer them in bulk. In 1949, JCR decided that Hebrew University should receive first priority for books it did not already hold, and remaining objects should be divided along the general principle that 40 per cent go to the newly-established Jewish state, 40 per cent to the United States of America, and 20 per cent elsewhere, and a similar allocation was provided for art objects, with priority to the Bezalel art museum in Jerusalem.<sup>71</sup> When Täubler found out that JCR was splitting apart the former *Lehranstalt* library, he responded violently. Although the Nazis had destroyed the seminary, he believed it could live on. Between 1935 and 1942, Hebrew Union College president Julian Morgenstern secured exit visas for 11 leading German Jewish scholars, including five *Lehranstalt* alumni, in an attempt to create what was once called a 'Jewish College in Exile.'<sup>72</sup> Täubler argued that HUC 'should be the real successor of the *Lehranstalt in flesh and spirit*,' hoping to reestablish the *Lehranstalt* in the USA on the basis of these émigré scholars and their former library, which he maintained did not need dividing.<sup>73</sup> At this time, the memorial library project stalled on the insistence of Salo Baron, the leader of JCR, that 'no new library should be established with distributed material.'<sup>74</sup> These views reflected the argument of the Hebrew University scholar Gershom Scholem that cultural resources should only be provided to institutions that had existed before the war.<sup>75</sup> Scholem feared that any successor to the *Lehranstalt* would be 'of a too transitory character,' mirroring the broader consideration of the German Jewish communities.<sup>76</sup> In the end, Täubler's dream of a 'memorial library' was eventually realized – but in 1955, two years after his death, as the Leo Baeck Institute in New York City, and not as a direct successor

70 E. Täubler to N. Stein, 27 January 1945, Universitätsbibliothek Basel NL 76 E4; E. Täubler to L. Baeck, 11 September 1946, Universitätsbibliothek Basel NL 76 E1

71 On Bezalel, see JCR Resolution, 14 March 1949, LBI DM 223, 13/3; for books, see Minutes of the Annual Meeting of the JCR Board of Directors, 17 October 1949, CAHJP JRSO/NY/923b.

72 These alumni included: Max Wiener, Franz Rosenthal, Alexander Guttmann, Eugen Täubler, and Abraham Joshua Heschel (who received ordination there). Morgenstern also attempted to gain visas for a number of other figures associated with the *Lehranstalt*, like Arthur Spanier, but failed. See M. Meyer, 'The Refugee Scholars Project of the Hebrew Union College,' in M. Meyer (ed), *Judaism within Modernity: Essays on Jewish History and Religion* (Detroit, MI 2001), 345–61; E.K. Kaplan, 'Coming to America: Abraham Joshua Heschel, 1940–1941,' *Modern Judaism*, 27, 2 (May 2007), 129–45. While HUC was one of a series of institutions to help bring refugee scholars to US shores, the College had seen Germany as a field for recruitment long before the rise of Nazism. HUC had a history of bringing German scholars to the USA, notably Moses Buttenweiser and Gotthard Deutsch.

73 Emphasis in original. E. Täubler to H. Müller, 27 April 1949, Universitätsbibliothek Basel NL 76 E4.

74 Minutes of Special Meeting of the Board of Directors, 12 April 1950, LBI DM 223, 14/52.

75 M. Gruenewald to H. Müller, 6 May 1949, G. Scholem to S. Baron, 31 May 1949, LBI DM 223 17/17.

76 H. Müller to L. Baeck, 12 May 1949, Memorial Library Proposal Letter, no date, G. Scholem to S. Baron, 31 May 1949, LBI DM 223, 17/17.



to a pre-war German Jewish institution.<sup>77</sup> Consequently, this case further demonstrates the restitution priorities at work and their basis on the denial of successorship claims: Those who maintained that they were successors to German Jewry, whether they remained in the same location or hoped to re-establish an institution in a new locale, were refused the possibility of carrying forward the German Jewish past through laying claim to being legal and spiritual heirs to pre-war Jewry.

The conflicts over looted communal property and Täubler's envisioned memorial library illustrate the bonds between communal and cultural property and questions of legal and spiritual successorship. The fate of the German Jewish communities' historical archives reified the issue, fusing the question of the nature of postwar German Jewish communities with the allocation of cultural property. As we have seen, the ultimate disposition of these archives, which mostly were sent to Jerusalem, depended upon the broad restitution principles as they emerged in cases like those discussed above. But the seemingly late appearance of the archives within the field of restitution does not indicate that archives were a secondary aspect of restitution, a coda to earlier debates or the mere application of prior precedents. Instead, the archives' contentiousness indicates the continued contestation of questions of successorship, representing an exceptional case that proves the rule about the stakes of postwar restitution.

When Jewish Cultural Reconstruction turned its attention in 1949 to the first major cache of historical archives in the US zone, those of the Bavarian Jewish communities, its initial impulse, as with books, was to divvy them up. JCR first discussed dividing original archives more or less equitably; if the Israelis succeeded in gaining the *Gesamtarchiv der deutschen Juden*, then Bavarian archives should be sent to New York. But the group's leaders felt that archives presented a totally different class of cultural property to which the same rules could not apply.<sup>78</sup> JCR's decision on Hebrew University's priority for books was based on the possibility of multiple copies; if the National Library in Jerusalem already had a particular book, the looted copy would be sent elsewhere, providing equity between Jewish institutions.<sup>79</sup> Archives clearly could not follow the same policy. They could perhaps be duplicated and distributed to various locales, as suggested by Salo Baron and Hannah Arendt, then JCR's executive secretary, but the originals were unique.<sup>80</sup>

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77 On the memorial library project and the founding of LBI, see C. Hoffmann (ed.), *Preserving the Legacy of German Jewry: A History of the Leo Baeck Institute, 1955–2005* (Tübingen 2005), 1–58; R. Nattermann, *Deutsch-jüdische Geschichtsschreibung nach der Shoah: Die Gründungs- und Frühgeschichte des Leo Baeck Institute* (Essen 2004); Nattermann, 'A Struggle for the Preservation of a German-Jewish Legacy. The Foundation of the Leo Baeck Institute in New York,' *European Judaism*, 45, 2 (Autumn 2012), 90–102.

78 Minutes of Special Meeting of the Advisory Committee, 27 March 1950, NLI ARC 288/310; H. Arendt to G. Scholem, 13 April 1950, NLI ARC 4° 793/288/109.

79 Minutes of a Special Meeting of the Board of Directors, 11 January 1949, LBI DM 223, 17/17; 'Conditions to obtain material from the JCR,' 1949, NLI ARC 4° 793/288/267.

80 E. Rock to B. Ferencz, 12 April 1949, CAHJP JRSO/NY/923a. Arendt also attempted to get microfilms of the Worms archives, which were deposited in the American Jewish Archives in Cincinnati: H. Arendt to F. Illert, 27 September 1950, Arendt to Illert, 12 February 1951, StadtAWO Abt. 20, Nr. 72.

And as opposed to former communal property, largely immovable, and other cultural objects like books and Torah scrolls which could be put to use nearly anywhere, archives represented a specialized good requiring archival and historical expertise. Furthermore, the destruction of the communities that originated these archives called into question their practical value; documents such as medieval privilegia and charters had long ceased to regulate Jewish communal life, and now even more recent records no longer governed the day-to-day life of Jews and their communities. JCR's policy, later followed by JTC in the British zone and the JTC's '*Branche Française*,' was that archives would be most useful in a single centralized location – either in the United States of America or Jerusalem – in contrast to their broader policy of allocating books to a variety of institutions on a basis of equity.<sup>81</sup>

As a result, JCR moved towards centralization. In November 1950, I. Edward Kiev of HUC suggested that the American Jewish Archives in Cincinnati receive restitutable archives; in December of that year the JCR's Sub-Committee on Archival Material approved that solution.<sup>82</sup> But two weeks later, the Board of Directors decided to send historical archives to Jerusalem instead. Although they recognized that HUC had the right to certain materials, they felt that the archives would be better put to use in Jerusalem as 'future generations of scholars are much more likely to gather around the Hebrew University than the United States.' As a result, archives would be sent to Jerusalem on the condition that 'microfilm copies of the more important documents' be available to scholars in Cincinnati.<sup>83</sup> In the British Zone, the JTC went through a similar process, when in November 1951 its Advisory Council on Jewish Cultural and Religious Objects agreed that material should go to Jerusalem.<sup>84</sup>

Such decisions about the archives mirrored agreements about communal property, whereby Jewish communities in Germany would receive what they 'required' for day-to-day use. As JTC noted in 1952, their decision was that communities should retain 'such documents... still needed by them,' primarily from recent years.<sup>85</sup> In almost all cases, the dividing line between 'historical' archives and those useful for contemporary purposes (primarily to administer reparations and restitution) was 1870; anything prior was to be sent to Jerusalem and the rest

81 E. Rock to B. Ferencz, 12 April 1949, CAHJP JRSO/NY/923a. Arendt also attempted to get microfilms of the Worms archives, which were deposited in the American Jewish Archives in Cincinnati: H. Arendt to F. Illert, 27 September 1950, Arendt to Illert, 12 February 1951, StadtAWo Abt. 20, Nr. 72.

82 Minutes of Special Meeting of the Board of Directors, 9 October 1950, Memorandum to the Members of the Board of Directors, 28 November 1950, NLI ARC 4° 793/288/328; Motion Passed by Sub-Committee on Archival Material, 6 December 1950, NLI ARC 4° 793/288/216.

83 Minutes of Special Meeting of the Board of Directors, 21 December 1950, CAHJP JRSO/NY/923c; Arendt wrote to Scholem that it was '*strongly requested*,' H. Arendt to G. Scholem, 27 December 1950, NLI ARC 4° 793/288/218.

84 Minutes of the First Meeting of the Advisory Council on Jewish Cultural and Religious Objects, in the British Zone of Germany, 14 November 1951, CAHJP JTC/Lon/575; *Rundschreiben Nr. 143, Auszug aus dem Protokoll der Executive der JTC*, 20 November 1952, ZA B. 1/7 232.

85 JTC, Second Annual Report from 1 October 1951 to 30 September 1952, CAHJP JTC/Lon/282.

remained in Germany, as specified in an exemplary agreement with the Jews of Lippe in 1955.<sup>86</sup> A further agreement with the Jews in Bavaria articulated that all files older than 1870 not used on a regular basis (they even used the term *täglich*) should be sent to Jerusalem.<sup>87</sup> Leaving archives after 1870 (like other property, on the basis of usufruct), it was believed, was necessary for reparations but not much more.<sup>88</sup>

Hannah Arendt claimed that JCR's decision to send archives to Jerusalem was 'nearly unanimous,' but not all felt it was productive.<sup>89</sup> The resulting archives policy, like the communal property settlements it followed, held great significance for the issues at stake within restitution as a whole. Holding communal archives marked, quite literally, ownership of the past and served as a signpost of historical continuity. The transfer of archives, as the product of administrative activity, concretized the Holocaust's finality by removing the possibility of historical and administrative continuity. The uniqueness of archives and their relationship to the institutional bodies which originated them meant that the question of what to do with them – leave them dispersed with postwar German Jewish communities, create a central archive in Germany, send them to an institution abroad – was even more closely tied up with the matter of the passage of German Jewry into the realm of history and the question of whether Jewish life in postwar Germany had anything to do with its past. It was for this reason that shortly after JCR's December 1950 decision on the archives that Jacob Rader Marcus, director of the American Jewish Archives, wrote angrily that sending archives in their entirety to Jerusalem 'evidences a lack of confidence in the spiritual future of the Jews in the diaspora [sic].'<sup>90</sup>

What is more, some prominent German figures fought to keep 'their' Jewish archives. Two of the most notable were Friedrich Illert in Worms and Hans Hertz of Hamburg. Illert, Worms' municipal archivist, had saved the Jewish community's files during the war by stealing them from the Gestapo and hiding them in the city's archives, and wanted the archives to remain for what he hoped would be a future Jewish community in the city.<sup>91</sup> Together with Isidor Kiefer, the former chair of the Worms Jewish community who settled in New York City in 1934, Illert argued that the material should remain in Worms.<sup>92</sup> In Hamburg, Hertz became increasingly

86 B. Simonsohn to JTC, 3 March 1955, C. Kapralik to E. Goldschmidt, 9 March 1955, CAHJP JTC/Lon/576b. Also see 'Summary, Agreement Between Munich Gemeinde and JRSO,' 3 October 1952, LBI DM 223, 16/37.

87 E. Katzenstein to S. Kagan, 23 December 1953, CAHJP P28/6/37.

88 A. Bein to H. Lamm, 11 April 1957, CZA L33/1268.

89 H. Arendt to J. R. Marcus, 28 December 1950, American Jewish Archives, Cincinnati (AJA) MS-210 5/7. Also see 'Minutes of Special Meeting of the Board of Directors,' 21 December 1950, NLI 4° 793/288, which specifies that all voted for the transfer of the archives with the exception of Leo Baeck and Henriette Buchman, who abstained.

90 J.R. Marcus to H. Arendt, 5 January 1951, AJA MS-210 5/7.

91 F. Illert, 'Bericht über die jüdischen Altertümer in Worms,' 21 February 1949, StadtAWo Abt. 20, Nr. 72; F. Illert to Verlag Dr P. Herzog, 31 August 1955, StadtAWo Abt. 20, Nr. 11.

92 In particular, Kiefer and Illert worked to collect statements from former Worms Jews supporting their view that the archives should remain in Worms. See for example I. Kiefer, 18 July 1955, I. Kiefer to F. Illert, 11 October 1955, StadtAWo Abt. 20, Nr. 11.

interested in the Jewish archives, deposited in the city's archives in 1938, during the war.<sup>93</sup> In 1953, alongside historian Fritz Fischer and other local intellectuals, Hertz organized a research project on the history of the Jews in Hamburg.<sup>94</sup> Like Illert, Hertz found an émigré ally. Erich M. Warburg, scion of the Jewish banking family, had fled to New York City in 1938, and after the war became Hertz's greatest supporter, financing the research project and staunchly opposing the removal of the archives.<sup>95</sup> Hertz and Warburg hoped that these materials would remain, at least for the duration of the research project – if not beyond.

Illert's claim to protecting the archives was perhaps self-serving, bolstering his claim to opposition to National Socialism.<sup>96</sup> Nevertheless, Illert sincerely saw the Jews of Worms as a crucial element of the city's historical identity. For Illert, the longtime Jewish presence in Worms – one of the earliest in central Europe – paralleled Worms' status among the most ancient European cities.<sup>97</sup> He believed Jews would return to the 'little Jerusalem of the West,' as he dubbed Worms, and that the city should hold the files in trust for a future Jewish community.<sup>98</sup> A new Jewish presence in Worms, he hoped, would signify the city's revitalization; the Jews' renewed presence would be a marker of the storied past of a city which, as Illert put, had become merely a 'city of industry' rather than Charlemagne's capital.<sup>99</sup> The archives, then, weighed so heavily for Illert because the files of the past reflected the possibility of communal rebirth. In Hamburg, too, the fight for the archives was intensely personal. Hertz was not himself Jewish, but he had a Jewish great-grandparent.<sup>100</sup> Hertz and other city representatives made a case, similar to Illert's, that the Jews of Hamburg and their archives were closely tied to local concerns. They argued that the Jewish community had deposited its files at the *Staatsarchiv* in 1938 voluntarily, so the archive was not 'looted' property.<sup>101</sup>

93 J. Sielemann, 'Die personenkundliche Abteilung des Staatsarchivs Hamburg im NS-Staat und in der Nachkriegszeit,' in R. Hering and D. Schenk (eds), *Wie mächtig sind Archive? Perspektive der Archivwissenschaft* (Hamburg 2013), 141–59.

94 H. Hertz to Vorstand der Jüdischen Gemeinde in Hamburg, 13 September 1949, StA Hamburg 622-1/120/914; *Niederschrift über die Gründung der Arbeitsgemeinschaft für die Geschichte der Juden in Hamburg*, 31 July 1953, StA Hamburg 622-1/120/917; H. Hertz, 'Memorandum betr. die Geschichte der Juden in Hamburg,' 15 August 1953, StA Hamburg III 215-1/4/2.

95 See, among others, *Niederschrift über die Gründung der Arbeitsgemeinschaft für die Geschichte der Juden in Hamburg*, 31 July 1953, StA Hamburg 622-1/120/917; H. Hertz, E. Warburg to Dr K. Sieveking, 1 Feb. 1955, E. Warburg to M. Brauer, 17 July 1959, StA Hamburg III 215-1/4/2.

96 N. Roemer, *German City, Jewish Memory: The Story of Worms* (Waltham, MA 2010), 151–2; G. Bönnen, 'Beschlagnahmt, geborgen, ausgeliefert. Zum Schicksal des Wormser jüdischen Gemeindearchivs 1938–1957,' in R. Kretzschmar (ed.), *Das deutsche Archivwesen und der Nationalsozialismus* (Essen 2007), 101–15.

97 On Illert's discussion of Worms' antiquity, see F. Illert, 'Worms: Deutschlands älteste Stadt,' StadtAWo Abt. 170/16, Nr. 38; Illert, *Worms. Im wechselnden Spiel der Jahrtausende* (Worms 1958).

98 'Bericht über den gegenwärtigen Umfang den Zustand und die geschichtliche Lage der jüdischen Altertümer in Worms,' 4 February 1953, StadtAWo Abt. 170/16, Nr. 4; F. Illert to Landesregierung von Rheinland-Pfalz, 27 October 1955, StadtAWo Abt. 20, Nr. 69.

99 Illert, *Worms. Im wechselnden Spiel der Jahrtausende*, 66. On Illert, see Roemer, *German City, Jewish Memory*, 151–3.

100 D. Cohen, 'Du"ḥ 'al nesi'y'ati le-'eyropah ba-ḳayits u-ba-stay 1954,' 20 January 1955, CZA L33/1275.

101 Dr Reusch to Staatsarchiv Hamburg, 20 August 1951, StA Hamburg 622-1/120/915.

Hertz also wanted the original sources to remain so that they could continue his research project, and Kurt Sieveking, the city's mayor, argued that the Jewish community had strong historic and legal ties (as a *Körperschaft des öffentlichen Rechts*, or juridical person, it was even a legal creation of the city) and thus could not be removed from the city.<sup>102</sup> Hertz and Sieveking proposed instead that the Israelis required only a 'representative' group of documents, not the entire collection.<sup>103</sup>

In both cases, Israeli archivists relentlessly pursued these archives. Alex Bein vehemently disputed that 'representative' documents were sufficient, and also insisted that they receive originals, not microfilms.<sup>104</sup> They claimed that few in Worms and Hamburg could read Hebrew documents, in contrast to a multitude of Hebrew University scholars and students who would use the materials.<sup>105</sup> The Israelis also put forward a series of sentimental arguments: Bein and Cohen repeatedly turned to the idea of the archives as a memorial to the destroyed communities which could thereby find 'continued life' (*Fortleben*) in Israel/Palestine, and argued that Germany had lost its moral right to serve as a trustee for Jewish property: 'At all events,' Bein explained, 'we should try not to leave German Community Archives in non-Jewish hands in Germany, not even as a deposit or trust.'<sup>106</sup> Moreover, they presented their own group of former Hamburg Jews living in Israel who supported their claims, as well as Jews in Hamburg who supported, albeit waveringly, archival transfer to Jerusalem.<sup>107</sup> Alex Bein and Daniel Cohen also leaned upon their own status as former German Jews. Cohen himself grew up in Hamburg, having fled to Palestine in 1935, giving himself a personal stake in the matter. Finally, they depended upon the authority of the Jewish Trust Corporation (for Hamburg) and its *Branche Française* (for Worms) as legal successors. Thus, the matter of contention with these archives was the exact question of successorship we saw previously: Whether restitution groups could claim such property as sole successors to Jewish communities, and the place of émigrés and survivors as legitimate holders of the pre-war legacy. Eugen Täubler's assertion of successorship of the Berlin *Lehranstalt* was refuted, in essence, by JRSO's denial of the seminary's former books. But when Daniel Cohen suggested in 1956 that the Jewish

102 H. Hertz, 'Memorandum betr. die Geschichte der Juden in Hamburg,' 15 August 1953, StA Hamburg III 215-1/4/2; A. Bein, 'Du"ḥ 'al sīḥatī 'im rosh ha-'ir hamburg,' 16 June 1954, CAHJP P28/6/37.

103 Dr Sieveking to E. Warburg, H. Hertz, 10 February 1955, StA Hamburg II 215-1/4/2.

104 A. Bein to Dr R. Lachs, 16 December 1957; A. Bein, 'Du"ḥ 'al sīḥatī 'im ro'sh ha-'ir hamburg,' 16 June 1954, CAHJP P28/6/37; Senatssyndicus Harder, 'Bericht betr. Vergleich wegen der im Staatsarchiv befindlichen Archive der jüdischen Gemeinden,' 12 June 1957, StA Hamburg III 215-1/4/2.

105 See, among others: A. Bein to E. F. Bloch, 28 May 1954, CZA L33/1448, D. Cohen to M. Uveeler, 16 Aug. 1955, CZA L33/1311, D. Cohen to a.D.W. Landahl, 23 Oct. 1955, CZA L33/1289.

106 A. Bein to *Israelitische Kultusgemeinde Wien*, 9 Dec. 1949, CZA L33/1439; A. Bein to Dr Bellée, 12 April 1951, CAHJP P28/6/37; A. Bein to E. F. Bloch, 28 May 1954, CZA L33/1277; D. Cohen to a.D.W. Landahl, 23 Oct. 1955, CZA L33/1298; A. Bein, 'Kavīm le-sīḥah 'im ro'sh 'iriyat hamburg,' 19 Jan. 1958, CAHJP P28/6/39; the quote is from A. Bein to C. Kapralik, 17 Aug. 1954, CZA L33/1447.

107 'Tagung ehemaliger Schüler der Talmud-Tora-Real-Schule und Oberrealschule in Hamburg,' 6 December 1953, ZA B. 1/7 241; Jüdische Gemeinde in Hamburg to Dr K. Sieveking, 3 February 1955, CZA L33/1270.

Historical General Archives in Jerusalem could lay claim to the legacy of the *Gesamtarchiv der deutschen Juden*, this status was effectively affirmed by their receipt of German Jewish archives.<sup>108</sup>

Ultimately, the fate of both the Worms and Hamburg archives was decided by the restitution courts and pressure from Konrad Adenauer's government, forcing amicable agreements and the files' transfer to Jerusalem.<sup>109</sup> Although the municipality of Worms initially found some success in arguing its case as trustee for the former Jewish community, an October 1953 ruling affirmed the JTC's *Branche Française* as legal successor to the Worms community and the proper owner of the archives. When Worms appealed the decision in 1955 on the basis of a law protecting cultural treasures from leaving the country, Adenauer's office pressured the city to concede in the interest of diplomatic friendliness with Israel. Janz, Adenauer's deputy, convened negotiations in Bonn in August 1956 leading to the final transfer agreement of 2 October 1956.<sup>110</sup> In Hamburg, the JTC feared that the city's case would be supported by the courts, and settled with Hamburg for the transfer of a portion of the archives from before 1816. However, they quickly backtracked when the Israelis demanded the archive in its entirety; the repeated delay of ratifying the agreement alongside fears of public disagreement, a coordinated tourism offensive – whereby German officials were brought to Israel – and aggressive negotiations led to the city giving up most of the historical archives.<sup>111</sup>

The 'return' of historical archives to a new land highlights the cultural politics at stake and their ties to postwar successorship. The JHGA gained these archives due to the restitution groups' official status as the destroyed Jewish communities' legal successors; the Jerusalem archivists also seized upon restitution as a means to claim the legacy of German Jewry. Their rhetoric of the 'return' of archives, which they argued would give destroyed communities a 'continued life,' found its highest expression in Alex Bein's formulation of the project as the 'ingathering of the exiles (*kibbutz galuyot*) of the past.' This motto, first used by Bein in 1949, made reference to the messianic language of the Jewish liturgy and to the state of Israel's program of mass immigration, enshrined in its proclamation of independence which stated it to be 'open to Jewish immigration and the ingathering of the exiles.'<sup>112</sup> Bein thus situated the archives initiative within a project of national

108 D. Cohen, 'Jewish Records from Germany in the Jewish Historical General Archives in Jerusalem,' *Leo Baeck Institute Year Book*, 1 (1956), 331–45, particularly 338.

109 'Akten-Notiz über die Verhandlungen mit der Israel-Mission,' 27 August 1956, StadtAWo Abt. 6, Nr. 2167, which shows the influence of Friedrich Janz, a member of Adenauer's office.

110 Weber to Dr K. H. Schmitt, 15 November 1955, 30 November 1955, StadtAWo Abt. 6, Nr. 2167; Dr Frowein, 'Vermerk betr. Wormser jüdische Altertümer,' 21 November 1955, *Politisches Archiv des Auswärtigen Amtes*, Berlin, B10 1670.

111 'Öffentliche Sitzung in der Rückerstattungssache, Wiedergutmachungskammer Hamburg,' 14 May 1957, ZA B. 1/7 241; Extract from Minutes of the Meeting of the Executive Committee of the Jewish Trust Corporation, 30 May 1957, A. Bein, 'Du"h 'al reshit ha-mu"m be-hamburg,' 29 November 1957, CAHJP P28/6/38.

112 See A. Bein, 'Din ve-heshbon me-nesiy'ati le-'eyropah be-shlikhut ha-'arkhiyon ha-tsiyoni ha-merkazi,' 19 December 1949, CZA L33/1439. Israel's Proclamation of Independence used the language of '*kibbutz galuyot*' in its Hebrew version (as published in *Davar*, May 16, 1948, 1, 4), while the English

revival and the 'return' of Jewish people to their homeland. As he suggested in 1949, creating a Jewish state was just the beginning; the goal was the 'complete ingathering of the exiles,' and presumably with it the complete gathering of the archives.<sup>113</sup> Bein also claimed that gathering archives was necessary as a corrective to what he perceived as an overemphasis in Israel on archaeology and Biblical history.<sup>114</sup> 'Ingathering the exiles of the past,' then, would help establish a sense of historical continuity between the Jewish state and Jewish life in the Diaspora instead of 'jumping over' this period as part of what has been called the Zionist 'return to history.'<sup>115</sup> Consequently, Bein deftly co-opted a reigning political slogan together with the practical implications of mass immigration – from May 1948 through 1951, nearly 700,000 Jews arrived in Israel, more than doubling its Jewish population – for the rising status of the state of Israel within the postwar Jewish world.<sup>116</sup> That a Jewish community did not arise in Worms as Illert hoped, it seemed, presented proof of the weakness of his position in contrast to the Israeli project of constructing a Jewish state and society.<sup>117</sup>

What is more, this concept retained religious resonance, despite its secularization via Zionist frameworks that privileged human agency over God's active eschatological role.<sup>118</sup> Gershom Scholem's notion of the 'apocalyptic thorn' of Hebrew, by which concepts like the 'ingathering of the exiles' cannot be fully divested of their profound religious meaning, is particularly apt here.<sup>119</sup> The 'ingathering of the exiles' in its radicalized form of total migration – distant from the Prophetic vision of gathering a 'righteous remnant' – represented a possibility of the end of the period of dispersion in Jewish history and the Diaspora's supersession by the land of Israel.<sup>120</sup> And if the establishment of a Jewish state in

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translation stated that 'the State of Israel will be open to the immigration of Jews from all countries of their dispersion' (*Palestine Post*, 16 May 1948, 1–2).

113 'Herzl Week: Need for Renewed Zionist Activity,' 4 November 1949, CZA L33/1449.

114 A. Bein, M. Heymann, 'Records of Jewish Past Coming to Israel,' 1959, CZA P64/148/1/4; A. Bein to G. Meir, 12 August 1970. CZA L33/1803.

115 See A. Raz-Krakovitz, 'Exile, History, and the Nationalization of Jewish Memory: Some Reflections on the Zionist Notion of History and Return,' *Journal of Levantine Studies*, 3, 2 (Winter 2013), 37–70.

116 A. Bein, 'Kibbutz Galujoth auch für jüdische Archive,' *Allgemeine Wochenzeitung der Juden in Deutschland*, 20 October 1950, 8; Bein, 'Kibbutz galuyot le-ginze ha-'umah,' *Beterem* 8, 4–5 (April–May 1950), 87–90. On immigration figures and the impact of mass immigration on Israeli society, M. Sicron, 'The Role of the Immigration Wave of 1948–1954 in the Population and Labour Force of Israel,' *Proceedings of the World Congress of Jewish Studies*, 5 (1969), 345–63; see D. Hacohen, 'Mass Immigration and the Israeli Political System, 1948–1953,' *Studies in Zionism*, 8, 1 (1987), 99–114; and Central Bureau of Statistics, *Statistical Abstract of Israel* (Jerusalem 1999), table 5.1. It is important to note that this data includes 'immigrants and potential immigrants,' and so may partially inflate the number as it does not include those who were eligible to immigrate due to their Jewish religion but did not remain in the state of Israel.

117 Rechtsamt Worms, 5 August 1954, StadtAWo Abt. 6, Nr. 2167.

118 See R. Kimelman, 'The Daily 'Amidah and the Rhetoric of Redemption,' *Jewish Quarterly Review*, 79, 2–3 (October 1988–January 1989), 165–97; D. Ohana, *Modernism and Zionism* (New York, NY 2012), 80–121.

119 W. Cutter, 'Ghostly Hebrew, Ghostly Speech: Scholem to Rosenzweig, 1926,' *Prooftexts*, 10, 3 (September 1990), 413–33.

120 Cf. Isa. 10.20–23, Jer. 23.3, Ezek. 6.8, to give only a few examples of this Prophetic theme.

the wake of the Holocaust and the subsequent gathering of survivors seemed to bring to mind Ezekiel's prophecy of the resurrection of the dead, the reanimation of the 'dry bones' of Israel found clear parallels, too, with archives.<sup>121</sup> Bein's claim that gathering archives would give life to destroyed Jewish communities simultaneously called out to the possibility of the Jewish state carrying forward their historical legacy and also extended the prospect of immigration beyond those physically able to settle in Israel/Palestine: the gathering of these 'dry bones' of the past enabled the symbolic transference of those Jews who could not themselves immigrate to Israel, whether murdered by the Nazis or long dead, entombed in archival sources.

It is also impossible to fully divorce the project of 'ingathering the exiles of the past' from nation- and state-building. Archives have long been closely tied to state power, from *trésors des chartes* to modern-day bureaucracy, and as tools for the cultivation of national historical narratives.<sup>122</sup> Fundamentally, the Israelis' archive project was part of this tradition. The formation of a 'national archive' in Jerusalem – a term used by Israelis, Germans, and restitution leaders alike to describe the Jewish Historical General Archives – served both nationalist and statist aims.<sup>123</sup> Archive collecting was a way for Israel to project its newfound sovereign status, both by practicing an activity associated with statehood, and as a means to develop outward ties, particularly with West Germany, where Bein's status as a former German state archivist carried weight. Bein essentially played the role of a low-level diplomat, negotiating with archivists and other German officials, leading him to be dubbed the Israelis' 'foreign minister' of archives.<sup>124</sup> What is more, the Israelis situated archival restitution within the trappings of state. For instance, the archives of Worms arrived via diplomatic mail and Bein organized an official ceremony at Israel's State Archives, not the Jewish Historical General Archives where they were destined to be stored.<sup>125</sup> Pursuing restitutable archives was also a means for Israel to perform its self-professed identity as a Jewish state and make claims to be a successor to European Jewry. As Bein explained when he addressed the first meeting of the Union of Israeli Archivists in 1957, gathering archives to Jerusalem depended upon 'the principle that the

121 Ezek. 37.1–14.

122 See, among others, R.-H. Bautier, 'La phase cruciale de l'histoire des archives: la constitution des dépôts d'archives et la naissance de l'archivistique (XVI<sup>e</sup>–début du XIX<sup>e</sup> siècle),' *Archivum*, 18 (1968), 129–49; R.H. Brown, B. Davis-Brown, 'The Making of Memory: The Politics of Archives, Libraries and Museums in the Construction of National Consciousness,' *History of the Human Sciences*, 11, 17 (1998), 17–32; S. Berger, 'The Role of National Archives in Constructing National Master Narratives in Europe,' *Archival Science*, 13, 1 (2013), 1–22.

123 'Summary, Agreement Between Munich Gemeinde and JRSO,' 3 October 1952, LBI DM 223, 16/37; M. Weinberg to A. Bein, 14 June 1954, CZA L33/1277; 'Vereinbarung zwischen JRSO und der Israelitische Kultusgemeinde Augsburg,' 14 March 1955, CAHJP JRSO/NY/602b; A. Bein to Dr Grieser, 19 Dec. 1956, CZA L33/1268; D. Cohen to G. Weill, 11 Dec. 1957, CZA L33/1307, among others.

124 The title was used to describe Bein by Yisrael Klausner, introducing A. Bein, 'Hartsa'ah du'h 'al nesiy'ati', 1957, CZA P64/20/I.

125 F. Shinnar to Jerusalem Office, 8 April 1957, CZA L33/1272; A. Bein, 23 October 1957, CAHJP P28/6/38; 'Ceremony of the Transfer of the Worms Antiquities,' 29 October 1957, CZA L33/1272.



successor of the communities destroyed in the Holocaust is the state of Israel, and within the state of Israel – the Jewish Historical General Archives.<sup>126</sup>

The fate of the looted Jewish archives is full of ironies. The archives' restitution to a country from which they did not originate broke with longstanding rules of archival practice, in particular the principle of provenance or *respect des fonds*. This doctrine, stipulating that archival files should remain in their original order and location to preserve their historical context, was fundamentally violated by the gathering of Jewish archives to Jerusalem.<sup>127</sup> In Hamburg, the archivist Erich von Lehe insisted that the Jewish community archive represented 'a whole, not to be divided' (*ein Ganzes, nicht aufzuteilen*), in line with a common understanding of this principle that files should not be divided or otherwise removed from their context.<sup>128</sup> Meanwhile, the Israelis presented a different archival philosophy when they claimed that the files of dispersed Jewish communities should be gathered together on the basis of their pertinence to one another and their interest to Jewish scholars in Jerusalem. The Israelis did not deny that by removing archives from their local contexts, they were perhaps transgressing the commonly-accepted principle of provenance. Nevertheless, they argued that these rules were not hard and fast: In 1957, Alex Bein discussed a postwar German policy regarding the restitution of archives from Königsberg, which they did not intend to return to Russia.<sup>129</sup> 'This is an interesting theory that they have developed,' remarked Bein, that 'this archive is a fragment of the work of people and thus if the people are not in that same place... also the archive does not need to remain there.'<sup>130</sup> The Germans' proposal was particularly convenient for the Israelis because it made the Jewish archives of Königsberg available for transfer to Israel instead of repatriation to Russia; this theory of archival provenance, allowing for archives to be removed if their creators were no longer there, also justified the general extraction of Jewish communal archives from Europe. The Israelis' preference for pertinence over provenance was profoundly utilitarian, as they brought it to bear to promote their scholarly and nationalist aspirations. For instance, Daniel Cohen explained in 1969 that the technicalities of provenance and the importance of archives' historical context were outweighed by the advantages of centralization, which allowed for the simultaneous study of the archives of Jewish history from across Europe. But even more, Cohen argued that the documents represented the 'legacy of the Jewish

126 A. Bein, 'Me'arekhet ha-'arkhiyonim ba-'arets ke-basis le-mehkar,' 12 March 1957, ZA B. 1/7, 241.

127 On the history of provenance, see E. Posner, 'Max Lehmann and the Genesis of the Principle of Provenance,' in *Archives and the Public Interest* (Chicago, IL 2006), 36–44; M. Duchein, 'The History of European Archives and the Development of the Archival Profession in Europe,' *The American Archivist*, 55, 1 (1992), 14–25; S. Sweeney, 'The Ambiguous Origins of the Archival Principle of "Provenance"', *Libraries & The Cultural Record*, 43, 2 (2008), 193–213, among others.

128 E. von Lehe, 'Aktenvermerk, betr. Anspruch auf Archiv der Jüdischen Gemeinde,' 11 Feb. 1955, StA Hamburg III 215-1/4/2, Bd. I.

129 See A. von Brandt, 'Schicksalsfragen deutscher Archive,' *Der Archivar*, 1 (1947–48), 133–40.

130 A. Bein, 'Hartsa'ah du"ḥ 'al nesiy'ati,' 1957, CZA P64/20/I.

nation' and thus that they belonged in Jerusalem, together, not scattered across Europe.<sup>131</sup>

Taken from the perspective of modern archival practice, the issue of provenance presents important implications for questions of successorship. Despite the seeming universality of the provenance principle, leading archival practitioners put forth conflicting ideas about the permissibility and significance of archival transfer. In 1898, the 'Dutch Manual' of Müller, Feith, and Fruin codified the notion of archival provenance, but even they explained that there were certain circumstances under which splitting up or moving a collection was permissible: in the case of the annexation of territory, or the dissolution or division of an institution. 'When an administrative body is abolished and its rights or functions pass to another,' they wrote, 'the archival collection, which is a reflection of those functions or rights, goes with it. It has always been so.'<sup>132</sup> The British archivist Hilary Jenkinson, in his *Manual of Archival Administration* (1922), opposed the dismantling of archives such as the Habsburg *Haus-, Hof- und Staatsarchiv* to supply the post-First World War successor state archives. But he did support the transfer of archive collections tied to the transfer of administrative functions to new bodies.<sup>133</sup> From this perspective, the transfer of the historical archives from destroyed Jewish communities in Europe to new groups that carried on their 'rights or functions' was not only permissible but also advocated from the Israelis' perspective that the Jewish state served as successor to European Jewry. But from another perspective, the corollary of this rule is that the group which takes on the archival collection also takes on the functions or rights of the dissolved group. And by this logic, the Israelis, by taking the archives of dissolved communities, made an important symbolic statement about the role of the state of Israel as the successor of European Jewry.

Even though restitution leaders admitted that archives represented a special case, their history speaks to the broader issues and stakes of the debates over looted property. The 'return' of historical archives to Israel, like the outcomes of restitution more generally, reflected the beliefs of Jewish leaders in the immediate postwar years about who might carry forward the historical legacy of European Jewry. The redistribution of communal and cultural property was based upon the belief that German Jewish life was at its end, and the archives' fate forcefully symbolized this sense of breaking with the past. Placing these collections in a historical archive concretized pre-Holocaust German Jewry's status as the past, and removing 'unnecessary' historical archives from Germany represented the extraction of the written record that provides a measure of continuity across the generations. Nevertheless, as this article has sought to demonstrate, the restitution of Jewish communal and cultural property in the postwar era was hotly debated, and

131 D. Cohen, 'The Gathering of Jewish Records to Israel,' AJA MS-687 18/20.

132 S. Müller, J.A. Feith, R. Fruin, *Handleiding voor het Ordenen en Beschrijven van Archiven* (1898), §5; S. Müller, J.A. Feith, R. Fruin, *Manual for the Arrangement and Description of Archives*, trans. Arthur H. Leavitt (Chicago, IL 2003), 23.

133 Hilary Jenkinson, *A Manual of Archive Administration* (Oxford 1922), 33–39 (pt. 2, §2), 86 (n. 2).

the outcome of the successor question was malleable. It is for this reason that these questions remain of great import over a half-century later: In the wake of the Holocaust, it might have been impossible to believe that Jews would again put down roots in central Europe or that Germany could become a center of Jewish studies scholarship. The fact that Jews in Germany established the *Zentralarchiv zur Erforschung der Geschichte der Juden in Deutschland* in Heidelberg in 1987 as a kind of ‘successor’ to the *Gesamtarchiv*, and that the Jews of Vienna requested in 2011 that their archives be returned from Jerusalem, is an indication that they – just as the Israelis did in pursuing archives in the 1950s – seek to reclaim their history.<sup>134</sup> The Israeli Supreme Court’s 2015 denial of the Viennese petition rested partly on the notion that these archives constituted ‘national cultural property’ whose ‘proper home’ was Israel; clearly, archives remain a signifier for all involved of the importance of history in tying together the legacy of the past with the possibilities of the future.<sup>135</sup>

### Biographical Note

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134 On the Heidelberg *Zentralarchiv*, see P. Honigmann, ‘Das Heidelberger Zentralarchiv zur Erforschung der Geschichte der Juden in Deutschland,’ *Menorah*, 12 (2001), 345–70, esp. 347; and also *Zentralarchiv zur Erforschung der Geschichte der Juden in Deutschland*, available at: <http://www.uni-heidelberg.de/institute/sonst/aj/> (accessed 15 February 2016), which notes: ‘In its conception it (the *Zentralarchiv*) continues the *Gesamtarchiv der deutschen Juden*.’

135 See the decisions of the Israeli Supreme Court, ‘*Ba-bet ha-mishpat ha-elyon be-shabato ke-bet mishpat le-ir'urim 'ezrahiim*’ (3 June 2015), available at: <http://elyon1.court.gov.il/files/12/660/093/z10/12093660.z10.htm> (accessed 15 February 2016).