

Chapter 3: The Issue of Legal Successor

3.1. German-Jewish Survivors and the Constitution of the Communities

General Developments in Germany

German Jewry, which numbered 499,682 in June 1933,¹ was reduced to approximately 15,000 to 18,000 persons in May 1945.² Approximately 160,000 Jews fell victims to the persecution, while more than 300,000 persons saved their lives by emigration. About a half of the survivors, approximately 7,000 people, were in Berlin.³ This was a feeble, physically and mentally broken remnant of the prewar German Jewry. These surviving Jews were categorized roughly in four groups: 1) Those who came back from the ghettos, the forced-labor camps and the concentration camps, the majority of whom came back from the Theresienstadt ghetto. According to Lavsky, about 5,000 German Jews were liberated at Theresienstadt, and another 4,000 returned from other camps and ghettos outside of Germany.⁴ Among the 7,768 Jews registered in the Berlin community in the beginning of 1946, 1,874 were the returnees from the concentration camps.⁵

¹ *Die Juden in Deutschland 1933-1945: Leben Unter Nationalsozialistischer Herrschaft*, ed. Wolfgang Benz (Munich: C.H. Beck, 1993), p.733. Census as of June 1933.

² The number of the German Jewish survivors was difficult to determine for a variety of reasons. First of all, no reliable statistics were taken immediately after the war. Secondly, statistics often made no distinction between the German Jews and the displaced foreign Jews. German Jews were counted as "Jews" en gros. Thirdly, statistics often included the so-called "half-Jews" and converts as Jews. After twelve years of racial doctrine, the question as to who should be considered Jewish was not evident. After a while, membership in a Jewish community served as demarcation between Jews and non-Jews. Maör counts 15,000 German-Jewish survivors (Maör, op. cit., p.1). Burgauer counts 15,600 persons. See, Erica Burgauer, *Zwischen Erinnerung und Verdrängung: Juden in Deutschland nach 1945* (Hamburg: Rowohlt, 1993), p.356. Lavsky comes to the highest estimation of 27,000-29,000 survivors, not including those who were liberated in the camps in Germany. See, Hagit Lavsky, *New Beginnings: Holocaust Survivors in Bergen-Belsen and the British Zone in Germany 1945-1950* (Detroit: Wayne State University Press, 2002), p.29.

³ "Die Entwicklung der Jüdische Gemeinde Berlin," *Der Weg (DW)*, No.5, March 29, 1946. On April 1, 1945, there were 5,100 Jews in Berlin. With the return of concentration camp inmates, the number grew to 7,000 on November 1, the same year.

⁴ Lavsky, *New Beginnings*, p.29.

⁵ *DW*, "Die Entwicklung der Jüdischen Gemeinde Berlin," No.5, March 29, 1946.

2) Those who spent the war years in hiding, often under false identities. This group numbered approximately 3,500-4,000, which was about a quarter of the 12,000-15,000 Jews estimated to have gone into hiding in the Reich.⁶ Surviving in the underground was a phenomenon peculiar to big cities, where the anonymity of city life and the chaos created by the Allied bombings provided the conditions for survival. Only in Berlin this group numbered 1,405 persons.⁷

3) “*Nichtprivilegierte Sternträger*” (“non-privileged Yellow Star bearers”). These were the Jews in *Mischehen* (mixed marriages) with “Aryan” Christians. Their status was not “privileged,” principally because their children adhered to the Jewish faith. A couple, whose husband was Jewish and the wife Christian who had no children, was also included in this group. The Jews in non-privileged mix marriages were obliged to wear the star of David and reside in the houses for Jews (*Judenhäuser*). Concentrating the Jews in designated places was the first step for deportation. Starting from 1944, this category of Jews were deported too, mostly to the Theresienstadt. This explains why most of the Theresienstadt survivors belonged to this group.⁸

4) Those in the “privileged mixed marriages.” They were “privileged,” since their children were raised as Christians. The majority consisted of couples whose husbands were Christian and the wives Jewish. They were the most protected compared to the other categories of Jews, and this group was almost never deported.

According to Burgauer, those who fell into the last two categories amounted to approximately three quarters of the survivors.⁹ Since their wedlock protected them from

⁶ Avraham Seligmann, “An Illegal Way of Life in Nazi Germany,” in *LBIYB XXXVII* (1992), pp.341 and 359.

⁷ “Die Entwicklung der Jüdische Gemeinde Berlin,” *DW*, No.5, March 29, 1946.

⁸ Lavsky, *New Beginnings*, p.30. However, this fact suggests the double counting of the camp returnees and the Jews of this category.

⁹ Burgauer, *op. cit.*, p.356. She gives the number of all four categories as follows: 1) 463, 2) 1,416, 3)

deportation until a late phase of the war, they had a greater chance of coming back alive, even if deported. A record shows that of the 7,800 Jews registered with the Berlin community in the beginning of 1946, approximately 60 percent were married to non-Jews (2,300 were in “non-privileged mixed marriages,” and another 2,300 were in “privileged mixed marriages”).¹⁰ In other cities, the percentage of the mixed marriages was about the same level or even higher. According to statistics gathered in 1949, 75 percent of the community members in Düsseldorf, 70 percent in Hamburg, 60 percent in Hanover, and 55 percent in Cologne had Christian spouses.¹¹

Immediately after the liberation, these German-Jewish survivors in the cities started to organize themselves in the *Gemeinden* (communities). These communities were, by nature, ad-hoc self-help organizations compelled by the circumstances. First of all, there were many survivors who had been liberated from the concentration camps but could not go back home as they were without any means of transportation. While the Jews from West European countries left with the first transport which their governments organized, German Jews had to wait for months at the hospitals and the military camps where they were brought after the liberation. There were some transports organized by the local German authorities – notably the ones undertaken by Konrad Adenauer, then the mayor of Cologne – but they were the exceptions. To their great frustration and indignation, help from their brethren abroad came too slowly. Factually, it was the military authorities who delayed the entry of the Jewish voluntary agencies, such as the JDC and the Jewish Relief

1,791, 4) 4,147. However, this number must be treated with caution, since the number of the camp returnees and those in the non-privileged mixed marriage group seems to be too small.

¹⁰ JDC Berlin office quarterly report, March 1, 1946-June 1, 1946, p.11, ZfA, YIVO-DPG, Folder 1633.

¹¹ Office of Advisor on Jewish Affairs, “Conference on the Future of the Jews in Germany, Heidelberg, September 1, 1949,” p.11, ZfA. Also, Geis, op. cit., p.107.

Unit (JRU)¹² into Germany, for they were reluctant to let private organizations inside territories under military control. It was only toward the summer of 1945 when these foreign Jewish organizations were admitted to Germany and the relief activity commenced in full scale. In an article titled “We, German Jews” published in 1946 in the Jewish community newspaper in the British Zone, one reads:

After the liberation the German Jews were left to their fate. The Allies considered it their obvious duty to take their citizens out of the concentration camps and bring them home in the swiftest way. The German Jews had to go back home themselves. The only help given to them was the help brought by such Jews who were able to remain in hiding during the final years of the National Socialist regime.¹³

The hardships did not end upon returning to their home towns. There was a severe shortage in food, housing, clothing, medicine, fuel – in other words, the bare necessities for survival. It is true that the German citizens also suffered from destitution, however, it was obvious that priority in receiving food and other assistances should be given to the Jews. It would suffice to recall that the Jews had been denied the ration of meat, egg, and dairy products after 1942. With the starving rations of the immediate postwar days, they were the hardest hit. In principle, the German Jews as persecutees were entitled to equal treatment to that of the DPs of the United Nations nationals in accordance with the SHAEF instruction of April 1945,¹⁴ which made them eligible for the assistance of the United Nations Relief and Rehabilitation Administration (UNRRA)¹⁵ and higher food

¹² JRU: British relief organization funded by the CBF. Unlike the American JDC, which is a professional relief organization, the RJU consisted of volunteers. A number of German Jews who emigrated to the U.K. came to Germany after the war as JRU workers.

¹³ *Narben, Spuren, Zeugen: 15 Jahre Allgemeine Wochenzeitung der Juden in Deutschland*, ed. Ralph Giordano (Düsseldorf: Verlag Allgemeine Wochenzeitung der Juden in Deutschland, 1961), p.15.

¹⁴ Dinnerstein, op. cit., p.13.

¹⁵ UNRRA: Created in November 1943 by forty-four Allied governments to deal with the problems of refugees and their repatriation. It was liquidated on June 30, 1947, and its work was succeeded by the

rations. This should have made a considerable difference, since the DPs living in the camps received 2,000 to 2,500 calories of food per day, while that of the German population was set at 1,550 calories in 1945.¹⁶ In reality, however, such instructions were often ignored by the military in the field and no distinction was made between the Jewish and non-Jewish German citizens.¹⁷

The condition of the German Jews was worse in the British Zone, where they were treated as Germans by the British Military Government. They received the same food rations as the rest of the German population, although the local authorities occasionally gave out extra-rations for the victims of National Socialism.¹⁸ Even in the summer of 1946, the Jews in the British Zone were reportedly in “danger of starvation.”¹⁹ Philipp Auerbach, then the head of the association of the Jewish communities in the British Zone, appealed to the American Jewish Conference to immediately send food to Germany since the Jews there were living on a ration, which was “too little to live, but too much to die.”²⁰ Until the policy was changed in February 1946, German Jews were subjected to all the hardships and inconveniences which the vanquished nationals had to endure, including the policy of non-fraternization with the military personnel.²¹ It was not much of an exaggeration that they were “treated by the Military Administration as well as by UNRRA and the Red Cross like German Nazis,” as reported by a JDC worker.²²

International Refugee Organization (IRO).

¹⁶ Geis, op. cit., 53.

¹⁷ Dinnerstein, op. cit., p.13. Ex-enemy nationals were not eligible for the UNNRA assistance, but the racial, religious and political persecutees of ex-enemy nationalities were exempted from this restriction.

¹⁸ Ursula Büttner, *Not nach der Befreiung: Die Situation der deutschen Juden in der britischen Besatzungszone 1945 bis 1948* (Hamburg: Landeszentrale für politische Bildung, 1986), p.16.

¹⁹ “Deutsche Juden in der englischen Zone in Hungergefahr,” *AUFBAU*, August 16, 1946.

²⁰ Ibid.

²¹ Büttner, *Not nach der Befreiung*, p.16.

²² Yehuda Bauer, *Out of the Ashes: The Impact of American Jews on Post-Holocaust European Jewry* (Oxford: Pergamon Press, 1989), p.45. Cited from the JDC report in November 1945.

Many Jews had no roof over their heads. The lack of housing was not a particularly Jewish situation, for a quarter of the houses in the four Zones of Germany was totally destroyed or severely damaged (therefore no longer habitable) by the Allied bombings.²³ However, the Jewish situation was distinct in that the houses and apartments they had lived in before eviction or deportation were often inhabited by such Germans as those who had been bombed out or expelled from the Eastern provinces of the Reich. They were not even legally entitled to take back their belongings: the restitution laws to reclaim their ownership had to wait some more years. Therefore what happened in many places was that the Jews were obliged to pay rent for their own apartments. A JDC report from the year 1946 described the housing situation in Berlin during the first winter after the liberation:

The largest part of the Jewish community of Berlin had to spend the winter in insufficient rooms, such quarters being either damaged or only reconstructed for emergency-needs. There were either no windows in these rooms, or they were not rain-proof, or quite a number of persons had to be quartered in a very small room. In many cases there was also no possibility of heating these rooms...²⁴

The very basis of religious life was also lacking. Most of the synagogues lay in ruins. If they had not been vandalized during the 1938 November pogroms, then the Allied bombings had destroyed them. Most of the communities had no rabbi, no mohel²⁵ and no cantor. Military chaplains or rabbis from the DP camps conducted religious services for the German Jews. Other confiscated communal properties – old age homes, hospitals,

²³ Christoph Kleßmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955* (Bonn: Bundeszentrale für politische Bildung, 1982) p.52.

²⁴ Report on the situation of the Jewish community of Berlin and that of its members, ZfA, YIVOP-DPG, Folder 1628, Roll 116, 1946.

²⁵ A person who performs circumcision on Jewish males.

schools, burial grounds – now fell under the control of the occupation authorities, and temporary release had to be obtained from them.

The situation of the German Jews was made more difficult by the fact that the constituted communities overwhelmingly consisted of elderly people in poor states of health. In 1946, among the Jews of Berlin, the percentage of those who were over fifty years of age amounted to 48.1 percent, while those who were up to fifteen years of age consisted of only 5.4 percent.²⁶ In 1947, the average age of the Jews in the communities was allegedly fifty-five.²⁷ The Jews in mixed marriages – the most numerous group in the community – pushed up the average age. Given that German-Jewish marriages were forbidden by the so-called Nuremberg Laws in 1935, the younger people who had not yet reached “marrying age” at that time were not included in this group. Moreover, the younger people had been the first to emigrate from Germany under the Nazi regime. Last but not the least, children had had little chance of survival once deported.

The advanced age of the community members signified their low productivity. Many were unable to work or were forced into early retirement because of the damage to their health which was inflicted through persecution. For example, in 1946, 60 percent of Jews in Cologne were on welfare.²⁸ In 1949 at least 40 percent of the German Jewish population lived on relief subsidies or was dependent on charity.²⁹ Many lived on pension payments. Even though they might not have been deprived health wise, the years of deprivation made it impossible to come back to their prewar economic level without large-scale intervention by the state. Immediate restitution and compensation was

²⁶ Report on the situation of the Jewish community in Berlin and that of its members, 1946, ZfA, YIVO-DPG, Folder 1628, Roll 116.

²⁷ Maðr, op. cit., p.3.

²⁸ Maðr, op. cit., p.6.

²⁹ Institute of Jewish Affairs, Report vol. 11, No.1, “The German Jews Past and Present,” July 1949, CZA, C2, 713.

imperative alongside the public loans and the exemption of taxation for a certain amount of time, in order to reestablish their economic existence.³⁰ In such a situation, becoming a member of a Jewish community was a necessity for survival. Organizing a community was a means to establish representation toward the military administration as well as to the German authorities in order to alleviate their plight, and to receive food packages and other forms of relief from the foreign Jewish organizations. It was a community of a shared past, shared damages and interests. It was a *Schicksalsgemeinde*, a community of fate.

While the German Jews were struggling for their survival, the Jews outside Germany believed that the fall of the Nazi regime marked a definite end of German Jewry. They held that no Jewish community should be rebuilt in the “accursed land.” This view was also shared by the German Jews who had fled Nazi terror by emigration and who had by then become citizens of their adoptive countries. They recognized that the rich cultural and intellectual life of prewar German Jewry was no more, let alone the economic prosperity and the political leadership it possessed in the Jewish world. The spiritual leader of German Jewry Rabbi Leo Baeck said in 1947: “The history of Jews in Germany came to its end. It is impossible for them to return [to Germany]. The rift is too deep.”³¹ It was unimaginable for a Jew to live among people who might have killed his/her parents and siblings. They demanded that those who had survived must leave Germany as soon as possible. It was in such an atmosphere that the WJC conference in Montreux in July 1948 adopted the famous resolution “never again to settle on the bloodstained soil of Germany.”³² The constituted communities were considered as temporary institutions

³⁰ Resolution, Finanzausschuß der Interzonentagung in Tegernsee, December 8, 1946, Neue Synagoge Berlin-Centrum Judaicum, 5B1, 121.

³¹ Cited in: Geis, op. cit., p.416.

³² WJC, “Resolutions Adapted by the Second Plenary Assembly of the World Jewish Congress, June

aimed at the swift emigration and liquidation of the remnants of the communal life. If not by emigration, one said, German Jewish communities would see their natural end sooner or later due to the advancing age of the members. The communities were called *Liquidationsgemeinde* (community in the process of liquidation), not only by the Jews outside of Germany but also by the community member themselves. Hans Lamm, an emigrated German Jew who came back to his hometown Munich as the representative of the American Jewish Conference, wrote after attending a conference of the Jewish communities in the fall 1947:

Yet, the conference proved again ... that the era of German Jewry is definitively over. The noble tradition, which had been handed down in the Jewish communities from fathers to sons for centuries, cannot blow new life on German soil. Even if the renaissance of German Jewry might be possible, ... the question remains whether one shall dare this experiment at all. The life which prevailed in the Jewish communities before 1933, the spirit and the inner feeling of legitimacy – are all lacking today, even if the synagogues and schools, hospitals and old age homes are erected. Emigration and death would have necessarily brought to a definite close [of the Jewish life in Germany] within some years, although many do not want to admit it today.³³

On the other hand, it was also evident that not a small number of Jews would choose to remain in Germany for a variety of reasons. Some were too old and too sick to emigrate. They were left with little strength to start a new life. The others felt deeply indebted to their German spouses and families who stood beside them during the persecution. Some wished to stay, because they were bound to the German language and culture in both their personal and professional lives. For example, lawyers – a profession which was inseparably embedded in the German language and its legal concepts and which was very

27th-July 6th, 1948,” New York Public Library (NYPL).

³³ “Zonenkonferenz der jüdischen Gemeinden,” *Neue Welt*, No.3, beginning of November 1947.

much favored by German Jews – had little chance of adapting in the Common Law countries.

The communities of German Jewish survivors were joined by a small number of returnees from exile. Some returned from the European countries, among others from England, and the others came back as far as from South and North America. After the summer of 1947, approximately 2,500 Jews came back from Shanghai, where they had spent the war years in the Japanese-controlled semi-internment camps in the Hongkew district. While there were people who did return, there were also those who left. Concluding that there would be no future for Jews in Germany, many of the initial survivors left Germany in the following years. More than one hundred communities were constituted all over Germany by 1948, however, the majority of them were small communities with less than fifty members.³⁴

Jewish situation in the U.S. Zone

In Bavaria, the Jewish population which numbered around 46,000 in 1933 was reduced to 1,500 by October 1945.³⁵ 183 Jewish communities had existed there in 1933, while in 1949 fewer than ten remained (including Augsburg, Bamberg, Fürth, Munich, Nuremberg, Regensburg, Würzburg). The most important community in Bavaria was that of Munich, which constituted some one hundred people in July 1945, with Julius Spanier as its President.³⁶ This was another decimated remnant of a community which numbered 9,005 persons in 1933. The *Landesverband der Israelitischen Kultusgemeinden in Bayern* (Land Federation of the Jewish Religious Communities in Bavaria, hereafter Landesverband in

³⁴ Michael Brenner, *Nach dem Holocaust: Juden in Deutschland 1945-1950* (Munich: C.H. Beck, 1995), p.68.

³⁵ Juliane Wetzel, *Jüdisches Leben in München 1945-1952: Durchgangsstation oder Wiederaufbau?* (Ph.D thesis, University of Munich, 1987), p.1.

³⁶ Wetzel, op. cit., p.5.

Bavaria) was the umbrella organization of the Bavarian communities, and from its inception in January 1947 it was led by Philipp Auerbach, a powerful speaker of Jewish interests who headed the Wiedergutmachung office of the Bavarian government.³⁷ By the end of 1948 there were 6,982 members in the communities in Bavaria.³⁸

Approximately 75,000 Jews lived in Hesse before 1933. Of the previous 250 communities only three or four functioning communities remained.³⁹ Before the catastrophe, Frankfurt was the second largest community in the Reich after Berlin, with 26,158 Jews.⁴⁰ In 1946, the Frankfurt community numbered 600 to 700.⁴¹ In October 1947, there were 1,294 German Jews in Hesse, of which 650 were in Frankfurt, eighty in Eschwege, sixty-seven in Wiesbaden, sixty-four in Kassel, forty-one in Darmstadt, thirty-six in Fulda, and the rest were in the smaller communities or lived where there was no organized Jewish community.⁴² The communities formed the *Landesverband der Jüdischen Gemeinden in Hessen* (Land Federation of Jewish Communities in Hesse, hereafter Landesverband in Hesse) on June 3, 1948.⁴³ The Landesverband in Hesse was led by Ewald Allschoff, himself a leading member of the Frankfurt community (although

³⁷ Philipp Auerbach (1906-1952): born in Hamburg, an Auschwitz-survivor. Co-founder of the Jewish community in Düsseldorf. President of the Land Federation of the Jewish Religious Communities in the North Rhine Province. State Commissioner for the political, religious and racial persecutees in Bavaria since 1946. President of the Landesverband. He was brought to trial on charges of bribery and corruption while at the post of the director of the Wiedergutmachung office. After being found guilty, he committed suicide in jail on August 15, 1952. For a detailed biography of Auerbach, see Geis, op. cit., p.30; Elke Fröhlich, "Philipp Auerbach (1906-1952): "Generalanwalt für Wiedergutmachung," in *Geschichte und Kultur der Juden in Bayern : Lebensläufe*, ed. Manfred Treml and Wolf Weigand (Munich: Haus der Bayerische Geschichte, 1988), pp.315-324.

³⁸ Minutes of the Budget Advisory Committee meeting, December 20, 1948, CZA, S35, 83.

³⁹ Minutes of the Advisory Committee meeting, January 31, 1949, JDC-NY, 4266.

⁴⁰ Wolf-Arno Kropat, "Jüdische Gemeinde, Wiedergutmachung, Rechtsradikalismus und Antisemitismus nach 1945," in *Neunhundert Jahre Geschichte der Juden in Hessen*, ed. Kommission für die Geschichte der Juden in Hessen (Wiesbaden, 1983), p.448.

⁴¹ Alon Tauber, "Die Entstehung der Jüdischen Nachkriegsgemeinde 1945-1949," in *Wer ein Haus baut, will bleiben: 50 Jahre Jüdische Gemeinde Frankfurt am Main, Anfänge und Gegenwart*, ed. Georg Heuberger (Frankfurt a. M.: Societäts, 1999) p.100.

⁴² Kropat, op.cit., p.449.

⁴³ Ibid., p.460.

it later withdrew from the Landesverband).

Württemberg-Baden was a new Land created in September 1945 which combined the northern parts of the former Land Württemberg and Land Baden. Of about fifty communities in Württemberg, the one remaining was Stuttgart. It was established on July 10, 1945 as a consolidated community for the entire Württemberg area as the *Israelitische Kultusvereinigung Württemberg* (Jewish Religious Association of Württemberg). Benno Ostertag,⁴⁴ a lawyer and restitution expert, and Josef Warscher,⁴⁵ a survivor of Buchenwald, played a leading part in the Association. In Baden, three of the approximately forty prewar communities remained (Karlsruhe, Mannheim, and Heidelberg). The communities in Baden, including South Baden which became a part of the French Zone, formed the *Oberrat der Israeliten in Baden* (Supreme Council of Jews in Baden, hereafter Oberrat). The Oberrat was considered the re-establishment of the prewar Oberrat, which existed in the former Land Baden.

Bremen became a full-fledged Land with a government from January 1947, and thus the fourth Land in the American zone of occupation. It was an island of American jurisdiction surrounded by the British area of control. In the area which became Land Bremen, there had formerly been three Jewish communities: Bremen, Bremerhaven, and one encompassing the area of Aumund, Vegesack and Blumenthal.⁴⁶ A Jewish community was constituted in the city of Bremen.

⁴⁴ Benno Ostertag (1892-1957): President of the *Interessenvertretung der jüdischen Gemeinden und Kultusvereinigungen der drei westlichen Zonen Deutschlands* (Committee Representing the Interests of Jewish Communities and Religious Organizations in Three Western Zones of Germany).

⁴⁵ Josef Warscher (1908- 2001): born in Krosno in the Austro-Hungarian Empire, and grew up in Stuttgart. After five and a half years of incarceration in the concentration camp Buchenwald, Warscher came back to Stuttgart in May 1945. His oral history interview is to be found in the Brenner's *Nach dem Holocaust*, p.161-165.

⁴⁶ Katz to the JRSO headquarters, February 11, 1949, ZA, B.1/10, 651.

Approximately twenty-five communities were constituted in the entire U.S. Zone.⁴⁷ In April 1946 they formed the *Interessenvertretung der jüdischen Gemeinden und Kultusvereinigungen in der US Zone* (Committee Representing the Interests of the Jewish Communities and Religious Organizations in the U.S. Zone, hereafter *Interessenvertretung*) in April 1946. When the Federal Republic of Germany came into existence in May 1949, 2,890 German Jews lived in the U.S. Zone.⁴⁸

These constituted Jewish communities were, however, not homogeneously “German Jewish” from the outset. The U.S. Zone was the center of the Jewish DPs from the East European countries, mainly from Poland. While the majority of the Jewish DPs lived in the DP camps, there was a considerable number of Jews who lived in the cities and towns with the status of a DP. They lived in the houses and apartments provided by the military and by the UNRRA. In the latter half of 1945 there were already 68,469 Jewish DPs in the U.S. Zone, of which 27,776 lived outside of the DP camps and assembly centers.⁴⁹ They formed the DP communities which were separate from those of German Jews, and were organized in *Stadtkomitees* (city committees), which stood under the aegis of the Central Committee of the Liberated Jews in the U.S. Zone, the representative organ of the Jewish DPs in the U.S. Zone. The individual DPs received food packages and other assistances from the JDC via the Central Committee and the city committees. There were also Jewish DPs who were registered in the German Jewish communities, although their status was not necessarily equal with that of the German Jews. There was almost no Jewish community in the U.S. Zone which consisted exclusively of German Jews. They constituted a mixture of German and East European elements, although a portion of the latter would augment and eventually overwhelm the former in the course of time. At the

⁴⁷ Report No.1 of the JRSO, October 1, 1949, CAHJP, JRSO-NY, 340a.

⁴⁸ Geis, op. cit., p.46.

⁴⁹ Grossmann, op. cit., p.11.

end of May 1948, the number of Jewish DPs outside the camps was still at 20,000.⁵⁰

3.2. Continuity and Discontinuity

Like the other Jewish leaders in Germany at that time, the leaders of the Jewish communities in the U.S. Zone were concerned as to how to overcome the severe financial situation. Like many other Jewish leaders of the world, they considered utilizing the properties which had belonged to Jews before they had been wrongfully taken. The opinion was widely shared among the German Jewish survivors, that the private property of murdered Jews which became heirless should be used for general Jewish purposes, and that it should not be inherited by remote relatives, for such relatives were often German. Had it not been for Hitler, they would have never come into the inheritance of the assets. It was in such a spirit that the Interessenvertretung adapted a resolution in its meeting on December 21, 1947, to ask the Military Government to limit the inheritance of the property under the restitution law to the relatives of third degree (grandparents, uncles/aunts, nephews/nieces), since the law did not provide for such limitation.⁵¹ By limiting the inheritance to the close relatives, more properties become “heirless” and they could be utilized.

In this regard the community leaders advocated the creation of an international successor organization to receive the private heirless property, for they thought that any Jewish victim in need – wherever he lived – should benefit from the property left by his brethren. It was also because the creation of a successor in collective form was the only

⁵⁰ Ibid., p.17.

⁵¹ Resolution, December 23, 1947, CZA, C7, 1219/1. German Civil Code provides no limitation on inheritance. Relatives, however remote, can succeed the assets. Since it was not possible to present positive proof that there were no heirs at all, the majority of the JRSO claims were filed on the grounds that the properties were unclaimed.

way to evade the escheat, since the “absence of an heir” was an irreversible condition. Given the size and scope of the heirless property, the task to claim and retrieve it was obviously beyond the capacity of this tiny remnant. Yet, the German Jews nonetheless considered themselves the key players in this international endeavor due to their geographical merit in dealing with the German authority. They maintained that they could act as the trustee of the heirless assets located within Germany.⁵² For the surviving German Jews, to be involved in (or possibly to bring about) the process of restitution and compensation was one of their *raison d’être* in Germany, while living under the strong pressure to emigrate. They considered this the mission of those who were still in the land where the catastrophe had commenced.

The world Jewish leaders, on the other hand, did not even think of assigning the German Jewish communities an important role in the restitution matter. Restitution was a global Jewish concern to be dealt at the highest political level, and the Jews remaining in Germany – which they considered a *quantité négligeable* – had neither human resources nor political weight to negotiate with the high offices. They paid little attention to their “offer” to act as a trustee inside Germany. The world Jewish leaders on their part considered it their mission and obligation to demand justice, and believed in their authority and legitimacy to speak in the name of the Jews. They felt little obligation to consult with the Jews in Germany over the issue which vitally concerned the latter.

While the German Jews agreed that heirless private Jewish property be collectively administered by an organization more or less under foreign Jewish leadership, they were of different opinions as to the property of the Jewish communities and organizations.

⁵² Geis, *op. cit.*, pp.380-381. Philipp Auerbach for example proposed the creation of a central fund of heirless property with its headquarters in Paris or London, for which the organization of the Jewish communities perform the function of the agent in Germany. (Memorandum, *Über die Fragen der Wiedergutmachung*, 1946, CZA, C7, 1219/2.)

Contrary to the private property, heirs or successors could appear in the case of communal property, if the associations were re-established by some of the original members. Many of the German Jewish survivors and returnees viewed the postwar communities as the successors of the prewar ones by the simple fact of their existence on German soil and their functions in serving their members. Some even considered the postwar communities not only as the successors of the prewar ones, but also as their continuation. For them, the communities before and after the war were one and the same. The end of Jewish history on German soil, so concluded by the Jews outside of Germany, was not perceived of as such by these German Jews in the immediate postwar period. This self-perception of the German Jews is only comprehensible if one takes the wartime experiences of these survivors into consideration; the majority of them escaped deportation due to the protection of their Christian spouses, and thus survived the war in German cities. The fact that they had survived and that their lives went on after the liberation in the same localities seemed, in their opinion, to prove this continuity. Therefore, terms such as “re-establishment” or “reconstitution” of the communities were, for them, terminologically inappropriate. As Dr. Cahn of the Frankfurt community aptly stated: “The Jewish communities are not the legal successors, but they are still there.”⁵³ As such, they took it for granted that they receive the property which had belonged to the prewar communities.

The German Jews first demanded the return of property which had belonged to the *Reichsvereinigung der Juden in Deutschland* (National Association of Jews in Germany, hereafter Reichsvereinigung). Created in 1939 by the Tenth Decree to the Reich Citizenship Law, it was a compulsory organization of all “Jewish” individuals and

⁵³ Minutes, Sitzung der Interessenvertretung der jüdischen Gemeinden und Kultusvereinigungen, March 2, 1947, ZA, B.1/13, A.412.

institutions.⁵⁴ Placed under the direct supervision of the Gestapo, the Reichsvereinigung was transformed into a machinery of exploitation and persecution. It played an undeniable part in the process of pauperization of the Jews and their communities by acting as the channel through which confiscated properties and collected levies passed to the state and the Nazi organizations. All of the Jewish communities and organizations were gradually incorporated into the Reichsvereinigung by 1941. The seat of the organization was in Berlin, but its local offices in the cities controlled the *jüdische Kultusvereinigungen* (Jewish religious associations), as the incorporated Jewish communities came to be called.

Even before the creation of the Reichsvereinigung, accelerating emigration and voluntary migration of Jews to bigger cities had resulted in the dissolution of numerous smaller communities. The number of the Jewish communities in the Reich was reduced from 1,610 in January 1933 to 1,480 in July 1939.⁵⁵ In normal times, when a Jewish community was dissolved, i.e., when there were less than ten males over thirteen years of age, individual members were absorbed by the communities in the vicinity. The property of the dissolved community was placed under the control of the nearby communities or the Landesverbände. Rights and obligations appertaining to a certain community were theoretically succeeded by another. In a symbolic way, a dissolved Jewish community continued to exist as a part of a larger community. Under the Nazi regime, however, it was no ordinary dissolution but one that was forced upon them. It was not possible either to utilize the property of the dissolved communities for Jewish purposes.⁵⁶

⁵⁴ Zehnte Verordnung zum Reichsbürgergesetz vom 4. Juli 1939, in *Reichsgesetzblatt (RGBl)*, 1939, Teil 1, pp.1097-1099.

⁵⁵ Wolf Gruner, "Poverty and Persecution: The Reichsvereinigung, the Jewish Population, and Anti-Jewish Policy in the Nazi State, 1939-1945," in *Yad Vashem Studies XXVII* (1999), p.34.

⁵⁶ *German-Jewish History in Modern Times, vol. 4, Renewal and Destruction : 1918-1945*, ed. Michael A. Meyer and Michael Brenner (New York: Columbia University Press, 1998), p.347.

With the incorporation of the communities, their property formally came under the ownership of the Reichsvereinigung. This organization in its original form was dissolved on June 10, 1943 by order of the Gestapo, and its property was confiscated on August 3 and placed under the authority of the Reich Ministry of Finance. Following the war, the former property of the Reichsvereinigung was deemed Nazi-owned and blocked by the Allied governments.

In fact, the Reichsvereinigung offices in the cities continued to operate even after the official dissolution of the organization in 1943, thereafter being run by “half-Jews” or those who were in mixed marriages. The rump Reichsvereinigung – indeed referred to as the “new” Reichsvereinigung – was never completely dissolved. Even after the German surrender, some local Reichsvereinigung offices did exist, although their purpose became, purportedly, to help the surviving Jews. This resulted in a bizarre situation in the first months after the German capitulation, in which the Reichsvereinigung existed alongside the constituted communities of the survivors.

Understandably, the survivors did not acknowledge the authority of the rump Reichsvereinigung. Although the postwar communities denied any organizational, let alone political, continuity from the Reichsvereinigung, they felt the need to present themselves as the legal successors of this organization, since all the communal properties had passed to it.⁵⁷ Besides, despite the confiscation order by the state, often no changes were entered in land registry, so that the Reichsvereinigung remained the title holder of

⁵⁷ Such an opinion was expressed, for example, in a meeting of the Jewish communities in the U.S. Zone on March 31, 1946 in Stuttgart. (Hans Lamm to Col. Leslie W. Jefferson, Chief, Property Control Branch, April 10, 1946, CZA, C7, 1194-2; Hans Lamm to the American Jewish Conference, April 15, 1946, CZA, C7, 1194-2.) Factually, the Jewish Religious Association in Württemberg requested the Military Government to recognize it as the legal successor to the local Reichsvereinigung in August 1948. (Dr. Karl J. Arndt, Chief, Religious Affairs Branch OMGUS-WB, to OMGUS Education and Cultural Relations Division, September 3, 1948, IfZ, OMGUS, 5/342-1/43.) To the contrary, the remaining Reichsvereinigung office in Frankfurt before its final liquidation voluntarily turned over its bank account to the local Jewish community in January 1947. (Tauber, *op. cit.*, p.98.)

the many properties all over Germany. In order to gain the control of the properties, the postwar communities needed to establish their legal successorship from the prewar communities over the Reichsvereinigung to themselves.

Because it was considered a Nazi organization, the legal status of the Reichsvereinigung property was ambiguous. It contained a large amount of property of defunct communities, whose successorship had yet to be determined. Resurrection of such communities in the future was deemed very unlikely. Who then should receive the Reichsvereinigung property? Should they be given to the “successors” of the incorporated communities in terms of their aims and functions? Its restitution contained fundamental legal questions which had to be dealt under further legislation.

The communities’ claims on the all-inclusive Reichsvereinigung property and their self-definition as the legal successor of the prewar communities alarmed the foreign Jewish observer. In the eyes of many Jews outside of Germany, the “re-established” Jewish communities within Germany were too small to be considered successors of the prewar counterparts. Their membership was typically a tiny fraction of that of the original entities. Assuming that the Jewish existence in Germany would terminate in some years, the foreign Jews regarded the demands of the communities as exaggerated. A JDC report on the Berlin community from the year 1946 pointed out as follows:

In connection with the future prospects of the Gemeinde [communities] reference must also be made to the matter of ultimate disposition of property and wealth reclaimed by the Gemeinde. To date the Gemeinde has been seeking to reclaim all of the wealth and property which belonged to the former Gemeinde... Since there is included in these assets some of the finest Jewish literature and some of the finest cultural objects in all of Europe, a question must definitely arise as to the right of the present Gemeinde to claim these assets. Not only because of its pitifully small numerical strength but also

because of the “marginal Jewish” character of the Gemeinde, it may appear entirely advisable to withhold all of these assets, financial and cultural, from the Berlin Gemeinde and to turn them over to some larger, possibly world-wide Jewish organization.⁵⁸

The world Jewish leaders took it for granted that all the communal property would go to an international successor organization. When the creation of the International Jewish Reconstruction Commission (IJRC) was discussed by the WJC and the interested organizations, Germany was placed in the category of countries in which the IJRC would operate directly since it was held unnecessary to establish a national Jewish reconstruction commission. When the Jewish Restitution Commission (JRC) was born under the leadership of the Five Organizations in New York in May 1947, the German Jewish communities were even not represented. Nonetheless, cooperation from the local Jewish communities was indispensable and their membership in the successor organization was undisputed. At the same time, including them in the successor organization was assumed to prevent them from formulating separate demands and weakening the “united” Jewish position. For this reason, Meinhold Nussbaum, the Jewish Agency representative in Germany, was charged with the task of communicating with the German Jewish communities in order to coordinate their demands with those of foreign organizations. Nussbaum had several occasions to discuss the matter with the Jewish leaders in the U.S. Zone, and he came to an informal and unofficial understanding with Auerbach and Ostertag in the summer of 1946, that the communal property would revert to an international successor organization under certain conditions, such as, that the German Jewish communities be given proper representation in the organization, and that

⁵⁸ JDC Berlin Office, Quarterly report, March 1, 1946-June 1, 1946, ZfA, YIVO-DPG, Folder 1633, Roll 116.

the properties needed by the existent communities be put at their disposal.⁵⁹ This enabled the participation of the Interessenvertretung in the JRSO, and removed the reservation of Clay and the State Department in appointing the JRSO as the successor organization. Three persons from the Interessenvertretung were represented on the board of directors of the JRSO: Benno Ostertag from Württemberg-Baden, Curt Epstein⁶⁰ from Hesse, and Philipp Auerbach from Bavaria.⁶¹ Yet, the difference of opinions concerning the identity of the postwar communities remained unresolved, and soon after the JRSO commenced its work in August 1948, the discrepancies came to the fore.

3.3. The “Gemeinde Problem”

To clarify the legal position of the postwar communities, a brief examination of the decline of the Jewish associations and corporations in the Third Reich is necessary.

First, the law on the legal status of the Jewish communities of March 28, 1938 deprived them of their status as *Körperschaften des öffentlichen Rechts* (corporations of public law).⁶² The communities no longer held the same legal position as that of Christian churches, and they lost the accompanying rights and privileges, such as tax collection from congregation members. Even though they still maintained legal status as registered corporations (*eingetragene Vereine, e.V.*), the downgrading of Jewish religious corporations to the level of private associations marked the discontinuity of the communities in legal terms. The November Pogrom then devastated the Jewish

⁵⁹ Nussbaum to the JRSO headquarters, January 14, 1949, CZA, S35, 196.

⁶⁰ Curt Epstein (1898-1976): lawyer. From 1945 to 1950 State Commissioner for the Care of Jews in Hesse and Director of the Wiedergutmachung Division of the Ministry of Interior. Board member of the Landesverband in Hesse.

⁶¹ Minutes of the special meeting of the members of the JRSO, July 29, 1948, CZA, C7, 1328.

⁶² *Gesetz über die Rechtsverhältnisse der jüdischen Kultusvereinigungen*, in *RGBl*, 1938, Teil 1, p.338.

communities, and the following waves of emigration rendered the reorganization of Jewish life in Germany futile. On July 4, 1939, the Tenth Decree to the Reich Citizenship Law was issued, leading to the incorporation of all the communities into the Reichsvereinigung. The ensuing deportations of Jews factually put the Jewish self-administration to an end.

After the war, a series of laws were issued by the Allied Control Council as well as by the American Military Government to reintroduce the rule of law and restore the rightful ownership in Germany. The Control Council Law No. 1 (Repealing of Nazi Laws) as well as the Military Government Law No. 1 (Abrogation of Nazi Law) issued on September 20, 1945, declared the racially discriminatory laws null and void, such as the Law on the Protection of German Blood and German Honor and the Reich Citizenship Law of September 15, 1935, as well as those which furthered the Nazi militaristic doctrines.⁶³ The German Jewish communities thereby assumed that the Tenth Decree and its consequences had been retroactively annulled. They presumed that their legal status as the corporations of public law remained intact, or, that their former status was automatically regained because the communities were “reconstituted” and their boards newly elected. The Frankfurt Community, for example, declared itself a corporation of public law in its statute of 1948, yet it factually received that status only in 1949.⁶⁴ This was a good example of imagined continuity. Contrary to their assumption, the postwar communities and the Landesverbände were indeed newly incorporated: the Landesverband in Bavaria and its constituent communities were recognized as the corporations of public law by the

⁶³ “Sammlung der vom Alliierten Kontrollrat und der Amerikanischen Militärregierung erlassenen Proklamationen, Gesetze, Verordnungen, Befehle, Direktiven,” (1948), CZA, L47, 25.

⁶⁴ Satzungen der jüdischen Gemeinde Frankfrut a.M., July 1948, CAHJP, D197 (Willhelm Weinberg Papers), 3. Also, see, Tauber, *op. cit.*, p.99.

Bavarian government on August 11, 1947,⁶⁵ the Landesverband in Hesse on December 17 the same year.⁶⁶ The Oberrat in Baden, as well as the Jewish Religious Association of Württemberg also received the status.⁶⁷

Renewed incorporation implied a break in the continuity of these corporations, however, receiving this status was for them the equivalent of an official recognition of their standpoint to be the legal successors. Some even interpreted it as a certification of their alleged “identity” with the prewar communities.⁶⁸ The Bavarian communities, for instance, laid claim to the communal properties, stating, “On the basis of the recognition by the Bavarian Land government, the Jewish communities are not the newly established entities but the continuation of the former communities.”⁶⁹ There was in fact the example of the Bremen community which was declared identical with the prewar community based on the law of 1948, and it received all the communal property.⁷⁰ Therefore, viewing all the Jewish communities as dissolved, for them, amounted to accepting the effect of the Nazi decrees, which they resolutely refused.⁷¹ In their opinion, by taking refuge in Nazi legislations, the “JRSO thereby for the second time performed an [A]ryanization of Jewish property.”⁷²

Indeed, the competence of the JRSO as the successor organization was limited only to when the Jewish communities had been factually dissolved. Article 8 of the restitution

⁶⁵ Wetzel, op. cit., p.34.

⁶⁶ Kropat, op.cit., p.460. The Frankfurt community withdrew from the Landesverband later.

⁶⁷ Memorandum on the Issue between JRSO and the Jewish communities, February 21, 1949, CZA, S35, 196.

⁶⁸ The communities in Baden alleged that the Oberrat der Israeliten as well as the communities composing it were recognized as being identical with the prewar Oberrat and the communities.

⁶⁹ Landesverband to the Sacharbeiter für Wiedergutmachung, May 24, 1949, CAHJP, JRSO-NY.

⁷⁰ Kurt Wehle to Eli Rock, February 4, 1949, CAHJP, JRSO-NY, 598d. Unlike most of the Jewish communities which were registered as corporations of Public Law, the prewar Bremen community was a registered society (*eingetragener Verein*, e.V). See, also: Report No.2 of the JRSO, February 1949, JDC-NY, 4266.

⁷¹ See, for example, Minutes, Sitzung der Interessenvertretung der jüdischen Gemeinden und Kultusgemeinden in der amerikanischen Zone, January 23, 1949, ZA, B.1/13, A.410.

⁷² Memorandum by Katzenstein, August 11, 1952, CZA, L47, 228, VI.

law (Successorship of Dissolved Associations) provided as follows:

If a juridical person or unincorporated association was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution which would have appertained to such juridical person and unincorporated association had it not been dissolved, may be enforced by a successor organization to be appointed by Military Government.

Therefore, the German Jews argued that the JRSO was not even entitled to file claims on the communal property, for some communities never ceased to exist. In such a case, a successor as such would never come into question. Since the enactment of Law No. 59, the communities had been filing claims for the communal properties on their own, with the knowledge that their claims were duplicated by those of the JRSO. The Frankfurt community claimed all the communal properties excepting those of endowments. The Landesverband in Bavaria filed 531 claims on the immovable properties.⁷³ The JRSO, on the other hand, filed 2,730 claims on the properties of the Jewish communities before December 31, 1948, of which 1,368 were on the buildings, 540 on the cemeteries, and 822 on plots of land.⁷⁴

After the designation of the JRSO in June 1948, the Interessenvertretung held a meeting on September 19 to discuss the JRSO matter. The representatives of the communities made their position clear that each existing community should receive the entire communal properties, while the title of the properties which would not be needed for their actual needs could be transferred to the JRSO. They nonetheless agreed that

⁷³ Minutes, Sitzung der Interessenvertretung der jüdischen Gemeinden und Kultusgemeinden in der amerikanischen Zone, January 23, 1949, ZA, B.1/13, A.410.

⁷⁴ Minutes of the Advisory Committee meeting, January 31, 1949, JDC-NY, 4266.

those of no longer existing communities may go to the JRSO.⁷⁵

In anticipation of dissent arising from the German Jewish communities, the board of directors of the JRSO instead decided to create the Budget Advisory Committee (hereafter: Advisory Committee) consisting of the representatives of the Jewish Agency, the JDC, the Council of Jews from Germany and the Interessenvertretung of the U.S. Zone, each group with one vote respectively. Its function was to examine the budgets prepared by the communities and make recommendations on the disposition of the property to the board in New York.⁷⁶ The board in turn would make final decisions on the ultimate distribution of the property. As its name suggested, the Advisory Committee had no decision-making power but only an advisory function.

It did not take long for the community leaders to realize that neither the Advisory Committee nor the board could fully appreciate their problems. The first meeting of the Advisory Committee took place on December 20 and 21, 1948, from which a provisional agreement resulted: the JRSO would retain the title to all former communal property but the communities would receive the usufruct of properties essential for their needs. The usufruct would be entered in the land registry as long as the communities exist. (These conditions were to be called “Stuttgart formula.”) They would submit lists of needed properties to the Advisory Committee for consideration, if the boards of the community agreed to these terms.⁷⁷

The individual communities, however, did not accept this recommendation. Only the

⁷⁵ Memorandum, Verhandlungen über das Eigentum der jüdischen Gemeinden in der amerikanischen Zone, 1948, CZA, S35, 196; Ferenz to Joel Fisher, September 20, 1948, CAHJP, JRSO-NY, 598c.

⁷⁶ Minutes of the annual meeting of the board of directors, October 20, 1948, CAHJP, JRSO-NY, 340a. On the Advisory Committee, see, Ayaka Takei, “The ‘Gemeinde Problem’: The Jewish Restitution Successor Organization and the Postwar Jewish Communities in Germany, 1947-1953,” in *Holocaust and Genocide Studies*, vol.16, No.2, Fall 2002, pp.273-274.

⁷⁷ Minutes of the annual meeting of the board of directors, October 20, 1948, CAHJP, JRSO-NY, 340a.

community in Stuttgart submitted the list of properties. The representatives of the communities, having only one vote in the Advisory Committee, had little chance anyway of bringing a recommendation in their favor to the board of directors. In addition, the board always convened in New York, hence they could seldom attend the meetings. In the executive committee of the JRSO, which met more frequently than the board, the German Jewish communities were not represented. Indeed, two operating agents, the JDC and the Jewish Agency were the actual policy makers of the JRSO. The German Jewish communities came to regard their board membership as a mere formality. The *Interessenvertretung* adopted the following resolution on August 7, 1949:

The existing Jewish communities declare that they are identical with the old Jewish communities. The so-called “liquidation” or “self-liquidation” took place due to the abuse of the power of the state or under other [forms of] Nazi-pressure, is therefore deemed invalid. Factually, the communities have never ceased to exist. The regulations in Article 8 of Law No.59 cannot be applied to the existing communities.⁷⁸

As the communities insisted on the legitimacy of their succession, the confrontation – referred to as the “Gemeinde Problem” by the JRSO – began to escalate. The JRSO considered the attitude of the communities “irresponsible,”⁷⁹ as the properties of the once very affluent Jewish communities could serve the broader interests of the Jewish people. Although the communities withdrew the claims excepting the ones which they maintained essential for their needs, 115 pieces of properties remained doubly claimed by the JRSO and the communities.⁸⁰ After the first several meetings of the Advisory Committee, in which proposals and counter-proposals were made, it ceased to convene.

⁷⁸ Resolution, August 7, 1949, ZA, B.1/13, A.409.

⁷⁹ JRSO, *After Five Years 1948-1953* (Nuremberg: JRSO, 1953), p.12.

⁸⁰ Interim JRSO report, July 1, 1949, CZA, A370, 974; Report No. 3 of the JRSO, October 1, 1949, YIVO, 347.7, FAD 41-46, Box. 31.

Several factors can be attributed to the escalation of the community-JRSO confrontation. First of all, there were the acute material needs of the communities, which was a result of the deprivation of the previous years and of the demographic changes brought about by the persecution. With obligations to look after the old and sick with limited economic capabilities, the communities' work was concentrated in the field of welfare. They could not count on the income from the synagogue tax due to the feeble economic position of its members. From the end of the war, the German Jews had been dependant on the relief distributed by the JDC, which made them feel as if they were living on the handouts of their brethren abroad. Certainly, the communities received grants and subventions from the local German governments as advances from the future indemnification payments. Yet, they were forced into the situation of asking for German favor. Given the feeling they had toward the German officials – often the same people who had faithfully carried out the instructions from above under the Nazi regime – this was a situation which they could hardly come to terms with. With the anticipation that the JDC relief would end one day, it was felt necessary to secure sources of income and achieve financial independence as quickly as possible. For these reasons they desired to receive income-bearing immovables, which would supply them with regular rental revenues, and if necessary, could be sold to cover their debts.

Not to be degraded into becoming the recipient of alms, neither from the foreign Jews nor from the Germans – this was the leitmotif of many German Jewish leaders involved in the dispute, notably Benno Ostertag of Stuttgart. He was moved by his determination not to let the broken elderly people, who had already suffered enough, taste more humiliation by falling into line at the German welfare office. He believed that the German Jews had

“rights, and only rights” to demand the return of what had been stolen from them.⁸¹ He insisted on the ownership of the communities and opposed that the JRSO be entered into the land registry.⁸² He went so far as to demand all of the communal property in Württemberg, on the grounds that the Stuttgart community constituted consolidated community for the entire area. Financial independence would, it was believed, enable the communities to become materially and perhaps psychologically independent from the foreign Jewish organizations. In other words, to become able to take care of their needy members from their own sources was a matter of pride and self-esteem.

Secondly, the feeling was strongly present among the German Jews that they – although small in number but certainly a part of former German Jewry – deserved priority when liquidating the wealth they had created. In principle, the proceeds were allocated only to the Jewish Agency and to the JDC for many years, for they conducted activities on a worldwide basis, and, by far on the largest scale. The communities received only irregular grants from the restitution proceeds to cover the most immediate needs.⁸³ Although a part of the proceeds returned to the communities in the form of the JDC relief, the amount used for the communities was, in their opinion, far too small in comparison with the sum distributed outside of Germany. In fact, the JDC spent almost 85 percent of its German budget for Jewish refugees living in the DP camps and assembly centers, and slightly over 15 percent on the German Jews in the period 1945-1952.⁸⁴ When the general secretary of the *Zentralrat der Juden in Deutschland* (Central Council of Jews in

⁸¹ Minutes, Sitzung der Vertreter der jüdischen Vereinigungen, April 19, 1946, ZA, B.1/13, A.412. See also, An alle Länder-Regierungen Deutschlands!, May 9, 1946, ZA, B.1/13, A.412.

⁸² Minutes, Sitzung der Interessenvertretung, April 3, 1949, ZA, B.1/13, A.409; also, Sitzung der Interessenvertretung, August 7, 1949, ZA, B1/10, 432.

⁸³ By September 30, 1951 these grants amounted to DM 232,645.40. (DM statement on disposition of recovered property, enclosure to the annual report October 1950-October 1951, CAHJP, JRSO-NY, 464a.)

⁸⁴ Boris Sapir to Moses A. Leavitt on the JDC expenditures on behalf of German Jews, September 8, 1953, CZA, L47, 228-I.

Germany, hereafter Zentralrat) H. G. van Dam, stated that the heirless property should be used on behalf of German Jews in and out of Germany, because it was the property owned and created not by American, French or British Jews, but by German Jews⁸⁵ – he seemed to represent the feeling of the Jews living in the communities.

Thirdly, community leaders related their struggles for the property to their self-imposed task to maintain German-Jewish traditions,⁸⁶ although it was much disputed as to whether there be human resources left to undertake such an ambitious mission. The communal property that had been used for religious and cultural purposes, such as synagogues and cemeteries, possessed therefore symbolic value for them. As seen in chapter 2, religious and cultural objects which were movable, such as books, art, religious ornaments, etc., were reclaimed by the JCR and transferred to Jewish museums and universities abroad. The JRSO, on the other hand, dealt with the immovables, and in some instances, communal archives too.

Emotions attached to the religious property made its disposition a very sensitive issue.⁸⁷ In order not to breach the religious law and unnecessarily hurt the feelings of the German Jews, the JRSO consulted rabbinical authorities beforehand. It was concluded that synagogues may be sold if they were no longer in use for purposes of prayer and study,⁸⁸ and they were factually sold excepting those with historic value. There were cases in which the German acquirers used them for commercial purposes, which resulted

⁸⁵ “Das Erbe des deutschen Judentums,” *AW*, May 9, 1952.

⁸⁶ Jerome J. Jacobson to Eli Rock, August 8, 1949, CAHJP, JRSO-NY, 426a.

⁸⁷ On the disposition of the religious property, see, Ben Ephraim, “Der steile Weg zur Wiedergutmachung,” in *Die Juden in Deutschland, 1951/52 (5712)-1958/59 (5719): Ein Almanach*, ed. Heinz Ganther (Hamburg: Gala, 1959), pp.296-299.

⁸⁸ Although the sacredness of a synagogue remains even it is destroyed, it can be sold provided that no congregation would use it in the foreseeable future. Its use should be restricted to purposes which would not defile their sacredness. See, for example, Heinrich Guttman to the Interessenvertretung der jüdischen Gemeinden und Kultusvereinigungen, December 16, 1948, ZA, B.1/13. A410; On the problem of the disposal of Jewish community property used for religious purposes, February 13, 1949, CAHJP, JRSO-NY, 426a.

in anger on the part of the communities.⁸⁹

The same could be said for the cemeteries. In 1942 the Reichsvereinigung was ordered to offer the municipality the option of buying the Jewish cemeteries,⁹⁰ and consequently, gravestones were pulled out for industrial and commercial use, grounds were leveled, and buildings were erected over them. After the war, the JRSO received the cemeteries which had lain abandoned for years. It must not be forgotten that there were about 1,700 Jewish cemeteries which were no longer in use in the Western zones at the end of the war.⁹¹ In many places there were more cemeteries than the number of Jews. The JRSO left the cemeteries which were still in use to the care of the communities, and spent modest sums to make periodic inspections and make the most urgent repairs of the closed cemeteries. It was of course not possible to repair all the damaged gravestones and take perfect care of them. Moreover, the JRSO considered the maintenance of the cemeteries the duty of the German government, which was responsible for the situation in the first place.⁹² Nonetheless, the neglected condition of the cemeteries was a source of discontent, for which the communities held the JRSO accountable.⁹³ Unused parts of the cemeteries could be sold under certain conditions – for instance, the removal of human remains in order to release the ground for sale was not permitted.⁹⁴ Nevertheless, the sale of the cemeteries was considered scandalous, and it further aggravated the relations between the

⁸⁹ For example, the JRSO sold a former synagogue to a Catholic Church in the small Bavarian town of Reichenberg, which was considered undesirable. (Ferencz to Eli Rock, November 7, 1949, CAHJP, JRSO-NY, 426a.)

⁹⁰ Andreas Wirsching, “Jüdische Friedhöfe in Deutschland 1937-1957,” in *VfZ* 50 (2002), p.21.

⁹¹ JRSO, *The Report*, p.27.

⁹² On August 30, 1956, the Federal Government and the Länder agreed to provide the maintenance of the abandoned cemeteries. At this moment, the JRSO held title to approximately 340 unused cemeteries. They were, after the decision of the German governments, transferred to the local Landesverbände to be cared at the cost of the governments.

⁹³ Minutes of the annual meeting of the board of directors, October 20, 1949, CAHJP, JRSO-NY, 896a.

⁹⁴ Memorandum on the problem of the disposal of Jewish community property used for religious purposes, February 13, 1949, CAHJP, JRSO-NY, 426a.

two. Being a grave-keeper for those who were unable to visit and maintain the graves – a task which naturally fell upon the remaining Jews – they could not leave the cemeteries in deplorable conditions.

The communities did not dream of a renaissance of German Jewry with the restituted property. Yet, religious and cultural properties were synonymous with the long history of the communities. Receiving these properties meant succeeding the history of German Jewry, without which their *raison d'être* in postwar Germany would seem utterly questionable.

Lastly, and most importantly, the claims of the communities were a form of self-assertion toward the foreign Jewish organizations, which seemed to continue to anticipate their voluntary liquidation. Certainly, when the JRSO commenced its work, the future of the Jews in Germany was still precarious. Yet, the continued existence of a Jewish community was already undisputed at the beginning of 1950s, when the initial waves of emigration caused by the creation of Israel subsided. While the notion that all Jews should leave Germany was gradually abandoned as unrealistic by world Jewish leaders, the hardliners – especially those in Israel – insisted on the termination of the Jewish existence in Germany. On July 16, 1950, the Jewish Agency presented an ultimatum of emigration with the scheduled closure of its office in Munich on September 30.⁹⁵ This implied that the Jews remaining in Germany would thereafter be left to their own devices. With the official route of immigration denied to them by the state which claimed to be a home for all Jews, it was as if they were written off from the world Jewish community. The “Gemeinde problem,” at least for the Zionists, involved reviving Jewish life elsewhere by the inheritance of a community which had declined. Said a WJC

⁹⁵ “Dem Ende entgegen,” *AW*, August 4, 1950.

executive:

The WJC should do all in its power to get the remaining Jews out of Germany and to recover as much as possible of Jewish property in order to build up Jewish life abroad. Jews, who voluntarily decide to stay on in Germany, are putting themselves outside of organized world Jewry...⁹⁶

It was only natural that the German Jews developed the feeling that they were not treated equally, but indeed as “second class people.”⁹⁷ The Jews in Germany were not seen as full-fledged members of the international Jewish community until the mid-1950s. It took a decade for world Jewry to accept the fact that the communities would remain on German soil. The successor issue therefore symbolized for them the fight for the “right to exist” among the rest of world Jewry. They wanted a “guarantee” for their continuing existence,⁹⁸ and the possession of the communal property was its basis.

The JRSO on the other hand disputed the successorship of the communities for a number of objective reasons. First, the communities were so small in number that transferring to them the communal property that had originally served a much bigger population would be an unjust or even illogical enrichment. The JRSO had never denied the rights of the communities to exist, however, it feared that the transfer of property rights to communities that might soon disappear would mean losing Jewish assets to the German treasury.

Moreover, scarcely any continuity existed in terms of community membership. Because of the massive displacement of Jews under the Third Reich, postwar

⁹⁶ Minutes of the WJC executive meeting (American Branch), June 19, 1950, CZA, Z6, 323.

⁹⁷ M. Nussbaum to Elieser Kaplan, March 4, 1948, CZA, S35, 72.

⁹⁸ Interessenvertretung to the jüdische Gemeinde Frankfurt a.M., August 22, 1949, ZA, B.1/13, A.409.

communities were often “reconstituted” by Jews who had never been original members. In addition, by the time the communities were negotiating the partition of the communal property with the JRSO, the communities were no longer what they had been when the issue had arisen. The creation of the Jewish state in May 1948 and the amendment of U.S. immigration law in 1950 accelerated the immigration of the DPs which resulted in the closure of the majority of the DP camps designated for the Jews: there were only three camps operating in 1951.⁹⁹ Accordingly, the number of the DPs residing in the cities and towns declined. At the end of 1949, there were 27,535 Jewish DPs in the U.S. Zone, and its number further declined to 17,848 one year later.¹⁰⁰ The Central Committee in the U.S. Zone went into “voluntary liquidation” in 1950,¹⁰¹ and the city committees were also dissolved. The JDC scaled down its activity, and many foreign Jewish organizations, including the Jewish Agency, wound up their operation in Germany.

Contrary to the wishes of the international Jewish leadership that the Jews in Germany emigrate to the very last one, a considerable number of DPs opted for the life in the once abhorred “land of murderers.” Having lost the political and economic backing of the foreign Jewish organization, the remaining DPs had practically no choice but to associate themselves with the local German Jewish communities and come under their protection. More and more Jewish DPs joined the communities of German Jews. Although the old antagonism between the East European Jews (*Ostjuden*) and the German Jews (*Jeckes*) persisted in some localities, what resulted was the merging of the German Jewish communities and the DP communities, or the absorption of the DPs into the former.

The participation of the DPs changed the demographic traits of the postwar Jewish communities in Germany. Despite the communities’ “German Jewish” self-description, the

⁹⁹ Grossmann, op. cit., p.30.

¹⁰⁰ Proudfoot, op. cit., p.362.

¹⁰¹ Wetzel, op. cit., p.175.

East European Jews outnumbered the German Jews. According to Maør, the ratio of the DPs in the communities in Bavaria in March 1949 ran as high as 93.7 percent, in Hesse 73.8 percent, in Württemberg 81.6 percent, and in Baden 50.0 percent.¹⁰² These were the heterogeneous groups of Jews which fundamentally differed from prewar German Jewry.

Furthermore, the JRSO, as trustee of the heirless assets, was obligated to distribute restitution proceeds to the institutions that needed them most and to swiftly liquidate the Jewish assets left in Germany. The main recipients of the proceeds, the Jewish Agency and the JDC, were pressed for time and money. One of the first commodities the Jewish Agency purchased with allocations from the JRSO was prefabricated housing for Jewish refugees entering Israel, some of whom had been obliged to live in tents because of the housing shortage.¹⁰³ Likewise, the JDC was heavily burdened by the expanding areas of urgent need in the Middle East due to the Anti-Semitic violence in the Arab countries following the creation of the state of Israel. Because both organizations relied on funds raised by Jewish communities that had not been affected by Nazi aggression, the restitution proceeds provided a small but precious source of funds for Jewish welfare activities, although the amount was relatively small.¹⁰⁴ A considerable amount of reparations received by Israel and by the Claims Conference from the Federal Republic of Germany was based on the 1952 Luxembourg Agreements, which had to wait some more years. The organizations

¹⁰² Maør, *op.cit.*, p.19.

¹⁰³ JRSO, *After Five Years*, p.19.

¹⁰⁴ Apart from the restitution proceeds and the money raised by the Jewish communities of the world, the allocation from the IRO for the settlement of DPs as prescribed by Article 8 of the 1946 Paris Reparations Agreement represented another source of income for the Jewish Agency and the JDC. The JRSO proceeds were modest compared to the amount generated by the United Jewish Appeal (UJA) or by other fundraising entities. For example, in the year 1951-1952, the JRSO allocation constituted 2.5 percent of the Jewish Agency's annual income, while 39.2 percent came from the Keren Hayesod (including United Israel Appeal). Likewise, the funds raised by the UJA and by other campaigns amounted to 83.9 percent of the JDC's total income in 1951, while the JRSO proceeds made up only 2 percent. On the breakdown of JDC income, see Zweig, *German Reparations and the Jewish World*, pp. 87 and 120.

had to give “priority”¹⁰⁵ to certain Jewish groups based on their needs, and in this regard the Jews living in Germany were clearly not first in line.

Nonetheless, it was apparent that the JRSO was influenced by factors other than operational practicality. A strong anti-German feeling on the part of world Jewry was prominent in the background. Some members of the WJC discussed placing Germany under a ban as late as 1950.¹⁰⁶ The foreign Jewish organizations present in Germany thought that the communities lacked competent and reliable leadership.¹⁰⁷ Yet, it was probably not completely unrelated to the prejudice toward the survivors – that they might have survived by unscrupulous means – and to the unspoken belief that the best of European Jewry was forever lost.¹⁰⁸ As the high ratio of mixed marriages suggested, the German Jewish survivors were indeed a marginal group, and the JRSO was reluctant to leave a considerable amount of assets to groups whose children were likely to be lost from Judaism. A letter sent by Max Isenbergh,¹⁰⁹ Counsel of European Operations of the AJC in Paris, to the headquarters in New York sums up the JRSO’s perspective:

¹⁰⁵ JRSO, *Betrachtungen zum Rückerstattungsrecht* (Koblenz: Humanitas, 1951), p.80. Ferencz, when in writing to Karl Marx, the publisher of the German-Jewish newspaper, stated: “I can assure you that I have not seen any Jews in Germany today whose living conditions are worse than those for whom the prefabs were sent.” (Ferencz to Karl Marx, June 13, 1952, CAHJP, JRSO-NY, 426a.)

¹⁰⁶ Minutes of the meeting of the WJC executive, February 9, 1950, CZA, Z6, 322.

¹⁰⁷ On the foreign Jewish organizations’ attitudes toward the Jews in Germany and their leadership, see, for example, Yeshayahu A. Jelinek, “Die Politik der internationalen jüdischen Organisationen und der jüdischen Gemeinden in der Bundesrepublik Deutschland.” In *Schwieriges Erbe: Der Umgang mit Nationalsozialismus und Antisemitismus in Österreich, der DDR und der Bundesrepublik Deutschland*, ed. Werner Bergmann et.al. (Frankfurt am Main.: Campus, 1995), pp. 369-389; Ronald Webster, “American Relief and Jews in Germany, 1945-1960: Diverging Perspectives,” in *LBIYB XXXIII*, (1993), pp.293-321 ; Shlomo Shafir, “Der Jüdische Weltkongress und sein Verhältnis zu Nachkriegsdeutschland (1945-1967),” in *Menora: Jahrbuch für deutsch-jüdische Geschichte* (Munich: Piper, 1992), pp. 210-237.

¹⁰⁸ J.J. Jacobson, General Counsel of the JDC in Paris, during the negotiations with the communities commented: “Underlying, however, must be the clear realization on our part that we cannot expect people to have lived through and survived the [H]olocaust of the Nazi regime and concentration camps and to have emerged with all the best qualities. We must take humanity as we find it...”(J. J. Jacobson to Giora Josephthal and Moses Leavitt, October 16, 1953, JDC-J, Geneva IV, 9/1B, file 2.)

¹⁰⁹ Max Isenbergh was born in Albany, State of New York in 1913. He headed the European operation of the AJC in Paris 1948-1950. He was involved in the negotiations with the West European governments for the return of Jewish property seized during Nazi occupation.

“We in the Paris office had . . . come to the conclusion that regardless of the resolution of the narrow legalistic issue of the continuity of the communities as legal entities, it would be wrong in principle to permit all the community property to go to the surviving groups. In the first place, the communities are typically one or two percent of their former size. In the second place, they are in large part composed of Jews of mixed marriages or Jews who before the war were members of different communities. In the third place – and more important – the return of large amounts of community property to small groups might afford an encouragement to Jews to remain in Germany, a result which we are convinced is wrong.¹¹⁰

After the failure of the Advisory Committee, the only option left for the JRSO was direct negotiation with the communities in order to solve the “Gemeinde Problem.”

3.4. The Settlements

The Jewish groups involved in the issue of successorship – German and non-German ones alike – agreed that a solution should not be sought in German courts. Inner Jewish disagreement should be dealt with among the Jews, and if no compromise could be reached, it should be brought before a Jewish arbitration tribunal.¹¹¹ The essence of the successor organization was that the Jewish people as a whole should benefit from the property left by its brethren, regardless of nationality, political affiliation or religious orientation. If an inner Jewish strife could not be solved by the Jews themselves, the presenting of a global Jewish claim against Germany and the achieving of satisfactory results would prove only illusory. Ferencz wrote in 1949:

¹¹⁰ Max Isenberg to the Foreign Affairs Department, December 28, 1948, YIVO, 347.7, FAD 41-46, Box 31.

¹¹¹ See, for Example, minutes of the Jewish Agency-JRSO-JDC discussion on restitution and indemnification, November 11, 1949, CZA, A370, 974; Minutes of the JRSO executive committee meeting, May 15, 1950, AJA, WJC, C277.1.

Should the JRSO be unable to reach amicable agreement with another Jewish group presenting claims, an effort should be made to resolve the differences internally before a group of Jewish arbitrators. If this fails as well then the issues should be promptly presented to the American Board of Review for a binding advisory opinion. If we cannot achieve at least that much we will have seriously failed in a very important objective.¹¹²

The JRSO was a product of Jewish cooperation which was possible only after the greatest tragedy. If the ground consensus – that the entire Jewish people be the heir of the destroyed communities – would be disputed, then “Jewish solidarity” after the Holocaust was in name only.

Following lengthy negotiations, some communities began to sign individual agreements with the JRSO addressing the division of the communal properties. The first to sign such a settlement was the Jewish Religious Association in Württemberg in Stuttgart, as it was the only community which submitted the list of needed properties as requested by the Advisory Committee. On January 11, 1950, Ostertag with the power of attorney signed the agreement which provided that the community receive title to seven properties including the former old age home, three cemeteries, and the complex of the former community building and synagogue (which was destroyed in 1938) on the Hospitalstraße 34-38. The JRSO retained title to six other properties, whose usufruct was given to the community and which was entered into the land registry¹¹³ (see Appendix 4 and 5). By signing the agreement, however, Ostertag took the brunt of the criticism from

¹¹² Ferencz to Eli Rock, January 14, 1949, CAHJP, 598d.

¹¹³ Vergleich zwischen der JRSO und der Israelitischen Kultusvereinigung Württemberg, January 11, 1950, ZA, B.1/13, A.753. In 1952, a new community center with a synagogue, a school, a kindergarten, a community hall, and a ritual bath was erected on the Hospitalstraße 36. On the communal properties of the prewar Stuttgart community, see, *Erinnerung und Zeugnisse jüdischer Geschichte in Baden-Württemberg*, ed. Joachim Hahn (Stuttgart: Kommission für Geschichte Landeskunde und dem Innenministerium Baden-Württemberg, 1988), pp.526-537.

other community leaders who believed the settlement a bad precedent in the negotiations with the JRSO.¹¹⁴ Yet, a slightly revised settlement was signed on March 2, 1950, which became binding.¹¹⁵

Before 1953, ten communities had settled with the JRSO (Heidelberg, Karlsruhe, Jewish Religious Association Württemberg, Darmstadt, Mannheim, Regensburg, Wiesbaden, Bamberg, Fulda, Kassel).¹¹⁶ Until then, the communities received communal properties valued at DM 3.5 million, while the JRSO retained property worth approximately DM 5 million.¹¹⁷ The pace of settlements slowed down in 1953. While smaller communities which needed subvention from the JDC and other assistances from the foreign Jewish organizations settled relatively early, the bigger communities with more properties in number and value saw no urgent need to settle under terms which they considered unfavorable.

The Munich community, whose agreement had been drafted and approved by the general meeting of the community in August 1952, postponed signing it. It had been in a state of confusion caused by the arrest and suicide of Philipp Auerbach and the scandal concerning Rabbi Ohrenstein,¹¹⁸ which destabilized the leadership. It was finally signed on January 15, 1953 with very favorable terms for the community.¹¹⁹

¹¹⁴ See, for example, minutes, Vorstandssitzung, January 25, 1950, ZA, B.1/13, A.5; Minutes, Sitzung der Interessenvertretung der jüdischen Gemeinden, January 29, 1949, ZA, B.1/10, 432.

¹¹⁵ Abschrift eines Abkommens zwischen der JRSO und der Israelitischen Kultusvereinigung Württemberg, March 2, 1950, AJA, WJC, C276.

¹¹⁶ See, Annual report, October 1951-September 1952, CAHJP, JRSO-NY, 464a; Survey of JRSO agreements with the re-established communities, April 6, 1955, CAHJP, JRSO-NY, 616; Abschrift eines Abkommens zwischen der JRSO und der Israelitischen Kultusvereinigung Württemberg, March 2, 1950, AJA, WJC, C276; Vertrag zwischen der JRSO und der Israelitischen Kultusgemeinde Bamberg, April 7, 1952, CZA, L47, 414III. Schreiber presents a list of the communities which settled with the JRSO before August 1952. (Schreiber, *op. cit.*, p.179.) The list, however, which is originally based on the JRSO annual report 51/52, contains some inaccuracies.

¹¹⁷ Annual report, October 1951-September 1952, CAHJP, JRSO-NY, 464a.

¹¹⁸ Aron Ohrenstein (1909-1986): Rabbi of the Munich community 1945-1955, Rabbi for Land Bavaria 1947-1955. He was accused of embezzling the Wiedergutmachung payments.

¹¹⁹ Abkommen zwischen der JRSO und der Israelitischen Kultusgemeinde München, January 15,

The negotiations with the Frankfurt community were thorny. It firmly held to the position that it be considered identical with the previous community. Very strong opposition came from, inter alia, the lawyer Joseph Klibansky. In addition, the city of Frankfurt as well as the Military Government in Hesse had given some of the important communal properties such as the Westend-Synagogue, the Philanthropin and the former hospital at the Gagernstraße 34/36 back to the community for its administration, despite the uncertain legal position of the community.¹²⁰ The community wished to retain the properties which had already been returned to them, for the rental revenue from the Philanthropin constituted an important source of income for the community. Another point in dispute was the division of the indemnification for the damage on communal property as provided in the Federal Indemnification Law (*Bundesergänzungsgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung*, hereafter BEG) of 1953.¹²¹ The foreign Jewish organizations made considerable efforts in bringing the community to sign the agreement, even indirectly threatening it with the possible termination of the JDC welfare grants.¹²² On April 14, 1954, the agreement was signed.¹²³

All the communities in the U.S. Zone excepting Fürth, Nuremberg and Augsburg had settled with the JRSO by October 1954, before the legal status of the postwar communities was definitively cleared by a court decision. The terms of the agreements

1953, CZA, A47, 414III.

¹²⁰ Tauber, op. cit., pp.102-104. See also the article by Frolinde Balsler, "Frankfurter Stadtpolitik gegenüber Juden 1945-1956: Brüche und Kontinuitäten," in the same volume by Heuberger.

¹²¹ Bundesergänzungsgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung, in *BGBI*, 1953, Teil 1, pp.1387-1409.

¹²² Proposed letter, Samuel L. Haber to Allschoff, n.d., JDC-J, Geneva IV, 9/1A, file 3; Haber to Allschoff, June 24, 1952, ZA, 1/13, 1697. The words of the draft letter were much harsher than that which was actually sent. See, also, Samuel Haber to Ferencz, August 19, 1953, CAHJP, JRSO-NY, 614a.

¹²³ Abkommen zwischen der JRSO und der Jüdische Gemeinde Frankfurt am Main, April 14, 1954, CAHJP, JRSO-NY, 614a.

differed from one to the other reflecting the size, composition, and economic situation of the communities (see Appendix 4). In principle, the communities received the properties necessary for communal life and became the titleholder, although they were not entitled to mortgage or sell them without the consent of the JRSO. For certain properties, the communities were given only the usufruct and the JRSO remained the proprietor, or vice versa, but the title could revert to the other party after a certain number of years. In some cases the communities were given the properties at their free disposal in order to cover their needs with their proceeds. Some communities also received the property of foundations and organizations, on which the communities did not possess a legitimate claim. As for the religious and cultural property that were not in use, such as books and religious objects, they were transferred to the JCR for distribution to Jewish museums and universities. Community archives up to the year 1870 were transferred to the national archives in Jerusalem (today's Central Archives for the History of Jewish People).¹²⁴

In the agreements it was often provided that the purpose for which the ceded properties had been used should be preserved; this ruled out their commercial use. When they were no longer used for their original purpose, they should be turned over to the JRSO. Each agreement – without exception – contained an article which stipulated that in the case of the dissolution of the community, i.e., there be less than ten adult males to conduct prayers, the properties would be transferred to the JRSO. If discord would arise between the JRSO and the communities, it would be decided at an arbitration panel composed of three arbiters, one named by the JRSO, one by the community, and the third arbiter would be Rabbi Leo Baeck. The agreements were often amended and later replaced when new claims arose based on the new legislation by the German government,

¹²⁴ It was so stipulated in the agreements with Würzburg, Munich, Frankfurt, Nuremberg and Augsburg.

among others, the claims for indemnification for the damage of communal property.

3.5. The Augsburg Case

Disputes over legal successorship culminated in a lawsuit brought by the JRSO against the Augsburg community, and in a subsequent ruling by the Court of Restitution Appeals (CORA), the highest court in restitution matters in the U.S. Zone under the jurisdiction of the Allied High Commission.¹²⁵ This decisive ruling established a strong precedent in the question of the legal successor, which would be referred to not only in the restitution cases but also later in the indemnification for the damage to the communal property. For a comprehensive picture, the details of the case must be scrutinized.¹²⁶

The Augsburg community boasted a long history believed to go back to the Roman period and numbered more than 1,100 Jews before the Second World War. During the course of persecution, the Augsburg community was incorporated into the Reichsvereinigung on May 27, 1941. Latest by May 1943, all Jews in Augsburg excepting those who were in mixed marriages were deported. After the war, approximately thirty-five German Jewish survivors, mainly elderly people in mixed marriages, “re-established” the community.¹²⁷ Among them, about a dozen or so were former residents of Augsburg. The community was in charge of the entire area of Swabia, where

¹²⁵ CORA was established by Regulation No.7 issued on December 28, 1949. It succeeded the Board of Review. American judges were designated by the Judicial Council of the United States Courts of the Allied High Commission for Germany.

¹²⁶ The author requested permission from the Augsburg community in writing in June 2000 to conduct research in its postwar archives, for it seemed unfair to write about this polemical case based solely on the records of the JRSO. Yet, the author’s request remained unanswered, and this chapter as well as the author’s article which has been already published in the *Holocaust and Genocide Studies* were written without the documents of the community.

¹²⁷ CORA, Opinion No. 442, JRSO vs. Israelitische Kultusgemeinde Augsburg and Deutsches Reich, October 29, 1954, LBI-NY, AR 5890, 11.

approximately forty German Jews resided outside the city of Augsburg. Another fifty Jews of Polish origin resided in Augsburg, but they were not admitted into the community of German Jews.¹²⁸

Following the promulgation of Law No. 59, the Landesverband of the Bavarian communities filed claims in December 1948 for the restitution of communal properties in Augsburg. Among them were two groups of properties, which would later become the issue of dispute: the first group consisted of a synagogue and appurtenant buildings (Halderstraße 6, 8 and 8a), and the second, a cemetery which included a mortuary chapel (Haunstetterstraße 64).¹²⁹ The JRSO also filed claims for the same properties in November 1948.

This was one of the many restitution cases in which the Land Ministry of Finance appeared as the restitutor. Since January 1943 the Reichvereinigung had been registered as the owner of the above mentioned properties, which were confiscated and placed under the administration of the Reich Ministry of Finance. When the German Reich, a (former) Land, the National Socialist Party or its affiliated organizations were the restitutors, the Land Ministry of Finance was the party concerned as their legal successor.¹³⁰ Through negotiations at the restitution agency, where amicable settlements were generally encouraged, the Bavarian Ministry of Finance on one hand and the Landesverband and the Augsburg community on the other reached a settlement on October 13, 1950, without the participation of the JRSO. It was agreed that Land Bavaria would restitute the properties *in natura* to the community,¹³¹ and accordingly, the community was re-registered in the land ledger as their rightful owner.

¹²⁸ Ferenz to Kagan, August 20, 1953, CAHJP, JRSO-NY, 602a.

¹²⁹ Niederschrift der Wiedergutmachungsbehörde, October 13, 1950, CAHJP, JRSO-NY, 602a.

¹³⁰ Law No. 59, Art. 61.

¹³¹ Niederschrift der Wiedergutmachungsbehörde, October 13, 1950, CAHJP, JRSO-NY, 602a.

The JRSO learned of the settlement only when the Augsburg community approached the JRSO for the release of indemnification money in order to repair the synagogue in question. In the letter from the lawyer and the president of the Bavarian Landesverband Siegfried Neuland,¹³² who was acting with the power of attorney for the community and the Landesverband, it was bluntly stated: “The Augsburg Jewish Community is according to the land registry already the owner of the synagogue, as it has never lost the property.”¹³³ Surprised by the letter, Ernest Katzenstein,¹³⁴ Director of the Plans and Operation Board of the JRSO, wrote back declaring that the settlement recorded without the JRSO was null and void.¹³⁵ Moreover, negotiations without the JRSO took place as a result of the false statement made by the former head of the Landesverband Philipp Auerbach in 1949, which maintained that the Landesverband and the JRSO agreed that the existing communities were to retain all the former communal property.¹³⁶ As already seen, there was no such overall agreement between the JRSO and the communities regarding the communal property.

With the objection of the JRSO, the case was then transferred to the restitution chamber in Augsburg, which was the court of the first instance and a part of the German court system. On February 9, 1953, the chamber rendered a partial decision that the JRSO was not entitled to the restitution within the meaning of Law No. 59, Article 8, sustaining the view that the postwar community was “restored as the former corporation of public

¹³² Siegfried Neuland (1919-1969): born in Bayreuth, lawyer. From 1952 the president of the Munich community.

¹³³ Katzenstein to Kagan, January 21, 1952, CAHJP, JRSO-NY, 602a.

¹³⁴ Ernest Katzenstein took up the position of the director of the JRSO as well as the representative of the Claims Conference in Germany after Ferencz' departure to the United States in 1956.

¹³⁵ Katzenstein to Neuland, January 18, 1952, CAHJP, JRSO-NY, 602a.

¹³⁶ Landesverband to the Sacharbeiter für Wiedergutmachung, May 24, 1949, CAHJP, JRSO-NY, 602a. Also, Katzenstein to the JRSO regional office Munich, January 21, 1952, CAHJP, JRSO-NY, 602a.

law.”¹³⁷ This interpretation was based on a circular of the Bavarian Ministry for Education and Culture of February 7, 1947, which stated that no re-incorporation of the community was needed, since the prewar community had never ceased to exist. Therefore, concluded the restitution chamber, the incorporation into the Reichsvereinigung on May 27, 1941 did not result in the final collapse of the Augsburg community.

This decision presented a fundamental problem for the JRSO as it called the rights of the JRSO into question on the grounds that the present Augsburg community was identical with the old one. The JRSO lodged an immediate complaint with the *Oberlandesgericht* (Appellate Court) in Munich, pointing out that virtually no continuity was maintained in terms of community membership before and after the war. The majority of the German Jewish survivors had never been Augsburg residents prior to the war. Therefore it would be “nonsense” to transfer the assets to those who were “accidentally” living in Augsburg.¹³⁸ The JRSO further argued that the incorporation into the Reichsvereinigung signified the virtual end of the community. Hence, it was not conceivably possible that the community be revived as the original entity.

On June 29, 1953, the Appellate Court dismissed the appeal of the JRSO, stating that the “dissolution” of a Jewish community within the meaning of Article 8 indicated a complete cessation of existence, a state in which no restoration of the community was possible.¹³⁹ According to this logic, although the community in dispute had certainly declined in the Third Reich, it had never completely dissolved, and thus, a successor as such, could never come into question.

The ruling caused a great stir within the Jewish circles. It was even proposed in the

¹³⁷ Sofortige Beschwerde an das Oberlandesgericht, March 18, 1953, LBI-NY, AR 5890, 10.

¹³⁸ Sofortige Beschwerde an das Oberlandesgericht, March 18, 1953, LBI-NY, AR 5890, 10.

¹³⁹ CORA, Opinion No. 442, JRSO vs. Israelitische Kultusgemeinde Augsburg and Deutsches Reich, October 29, 1954, LBI-NY, AR 5890, 11.

JRSO executive committee to adopt a resolution to condemn the Augsburg community.¹⁴⁰

It had been the policy of the JRSO as well as the wish of the communities not to bring internal Jewish conflicts to the German courts, and to try to settle the problem through direct talks. With the aftermath of the Holocaust still very tangible in every aspect of Jewish life, it was intolerable for many Jewish observers, in and outside of Germany, for the Jews to fight against each other before the German public.

However, the Augsburg community insisted on its legitimacy of succession with the often repeated argument that the dissolution of the community never took place. The community portrayed itself as a tiny, powerless presence in the face of the massive international Jewish organization, and went so far as to refer to the actions of the JRSO as “robbery.”¹⁴¹ This was, indeed, not merely a legal dispute but a conflict which reflected the problematics inherent in the postwar Jewish life in Germany, namely the conflicts between the German Jews and the East European DPs. In Augsburg, the DPs were refused membership in the community until mid 1953 because the German Jews feared that they would be outnumbered and lose its control of the administration. Even when they were allowed to join, they were not given rights equal with the German Jews.¹⁴² The DPs in Bavaria were generally known to take a similar position with the international Jewish organizations regarding the restitution of heirless property, for they believed that there was no future for Jewish life in Germany.¹⁴³ They advocated the transfer of the

¹⁴⁰ Minutes of the JRSO executive committee meeting, November 20, 1953, CAHJP, JRSO-NY, 349a.

¹⁴¹ Israelitische Kultusgemeinde Augsburg to Georg Spiro, November 5, 1953, CAHJP, JRSO-NY, 602a. Also, Israelitische Kultusgemeinde Augsburg to S. Einstein, November 5, 1953, CAHJP, JRSO-NY, 602a.

¹⁴² Aktionkomitee zur Vorbereitung demokratischer Wahlen in der Israelitischen Kultusgemeinde Augsburg to Landesverband der Israelitischen Kultusgemeinden in Bayern, January 15, 1954, CZA, L47, 228 VI; Aktionkomitee zur Vorbereitung demokratischer Wahlen in der Israelitischen Kultusgemeinde Augsburg to Landesverband der Israelitischen Kultusgemeinden in Bayern, January 28, 1954, CZA, L47, 228 VI. See, also, Brenner, op. cit., pp.71 and 133.

¹⁴³ The Yiddish newspaper which appeared in Munich had been very critical of the German Jewish communities for their attempts to make Germany their home again. It attacked the attitude of the

communal properties to the new centers of Jewish life, excepting those which were needed for daily use in Germany. This was in line with the JRSO policy. The German Jews feared therefore that the interests and standpoints of the German Jews would no longer be protected, if the former DPs became the majority in the community.¹⁴⁴ They linked their fights for the property with maintaining the German Jewish legacy, which contained a double meaning of safeguarding them from the foreign and East European takeover.

The irony of the whole dispute was that the Augsburg community on one hand accused the JRSO of giving legal effect to Hitler's extermination decree by trying to dissolve the community retroactively.¹⁴⁵ On the other hand, the JRSO asserted that denying what had happened historically was an act of deception. It deemed the decision of the Bavarian Ministry for Education and Culture "a most laudable attempt to wish away what happened."¹⁴⁶ When repeated attempts to settle out of court with the community were made in vain, the JRSO was obliged to bring the issue to CORA.

It was extremely important for the JRSO to win this case. If the community's continuity and legal successorship were established, not only would the JRSO lose its legitimacy to make claims on behalf of all persecuted Jews, the entire JRSO operation would be jeopardized. There loomed the possibility of similar suits by other communities, including those that had already agreed upon settlements. Because one of the conditions

Augsburg community vis-à-vis the JRSO as scandalous (the article was indeed written by a German Jew Ernest Landau). The community took Landau to court for defamation, and he was ordered by the Munich local court to refrain from propagating that the community was led by irresponsible and ignorant people and that their attitude regarding the communal assets was scandalous. ("Macht Schulss mit dem Augsburger Gemeinde-Skandal!" in *Neue Jiddische Zeitung*, September 9, 1953, LB-NY, AR 5890-10; Israelitische Kultusgemeinde Augsburg gegen Ernest Landau, February 12, 1954, CAHJP, JRSO-NY, 602a.

¹⁴⁴ Israelitische Kultusgemeinde Augsburg to S. Einstein, November 5, 1953, CAHJP, JRSO-NY, 602a.

¹⁴⁵ Ferencz to Kagan, August 17, 1953, CAHJP, JRSO-NY, 602a.

¹⁴⁶ Petition for review, August 19, 1953, CAHJP, JRSO-NY, 602a.

of the recognition of the JRSO was that there be no successors to the Jewish communal property other than the JRSO, this case was also understood as an attempt to undermine the successor organization's existence. The very concept that the Jewish people as a whole should be the heir to the destroyed communities was challenged.

Moreover, a defeat of the international JRSO to one local Jewish community would affect the standing of the JRSO in the soon-to-be-sovereign Germany. Since the German government had already been trying to encroach upon the authority of the Allies in restitution in one way or the other,¹⁴⁷ it was believed that such a defeat would accelerate the tendency of the German courts to render judgment favorable to the local groups. CORA had in many crucial cases reversed the decisions of the German courts in favor of the JRSO, which made the German public regard it as the symbol of remaining Allied occupation. CORA also had to show its consistency in safeguarding the rights of the JRSO as prescribed by the Allies.

On February 16, 1954, CORA held the first hearing of the case. The Augsburg community was represented by two attorneys, Siegfried Neuland of Munich and Josef Klibansky of Frankfurt, both more or less known to be opponents of the JRSO. Ferencz opened the case by expressing his regret at the fact that he had stood on the same spot to prosecute the murderers in the *Einsatzgruppen* trial and now had his as adversary the survivors of a Jewish community.¹⁴⁸ It was indeed the same courthouse where the Nuremberg International Military Tribunal as well as the successive Military Tribunals were held.¹⁴⁹

¹⁴⁷ See, Jürgen Lillteicher, "Die Rückerstattung in Westdeutschland: Ein Kapitel deutscher Vergangenheitspolitik?" in *Nach der Verfolgung: Wiedergutmachung nationalsozialistischen Unrechts in Deutschland?*, ed. Hans Günter Hockerts and Christiane Kuller, (Göttingen: Wallstein, 2003), pp.61-77.

¹⁴⁸ Ferencz to Kagan, February 19, 1954, CAHJP, JRSO-NY, 602a.

¹⁴⁹ Robert Weltsch, renowned Zionist and journalist, wrote his impressions of the hearing in *MB*: "It

Notwithstanding the emotions involved in this case, CORA was solely concerned with the legal problems. It could not judge the problems of allocation or inner Jewish disputes. The principle question revolved around the interpretation of the Tenth Decree to the Reich Citizenship Law of July 1939 and its consequences, namely, whether “incorporation” (*Eingliederung*) of the Augsburg community into the Reichsvereinigung in 1941 meant “dissolution” (*Auflösung*) and consequently liquidation. If the dissolution did in fact take place, then the JRSO was unquestionably the sole successor based on Article 8 of Law No. 59. A critical point in question therefore concerned the identity of the postwar community, namely, whether they maintained a continuation of the prewar community, or indeed constituted a new entity created after the war.

On October 29, 1954, CORA disapproved of and set aside the previous two judgments. CORA concluded that the “incorporation” into the Reichsvereinigung without exception resulted in the loss of the legal capacity of the corporations, and meant nothing less than the factual dissolution of the communities.¹⁵⁰ It pointed out that under the Tenth Implementation Decree of 1939 the Reich Minister of the Interior may dissolve the Jewish associations, or may order their incorporation into the Reichsvereinigung. The difference was dependent on the financial position of the associations; if they had been heavily in debt, they were dissolved.¹⁵¹ In fact, however, there were only twenty-three cases of “dissolution” among the close to 3,000 incorporated associations. Whether it was a dissolution or an incorporation which was ordered, the result was the same, since the

was a strange feeling, in the same room, where we were the witnesses of the big Nuremberg War Criminals Trials eight years ago, as Göring, Hess, Ribbentrop, Rosenberg, Streicher and [their] fellows sat on the dock, to see now this inner Jewish epilogue of the Nazi-era.” (“Kampf um jüdisches Gemeinde-Vermögen,” *MB*, March 12, 1954.)

¹⁵⁰ CORA, Opinion No. 442, JRSO vs. Israelitische Kultusgemeinde Augsburg and Deutsches Reich, October 29, 1954, LBI-NY, AR 5890, 11. English and German texts of all CORA judgments were published in *United States Court of Restitution Appeal of the Allied High Commission for Germany, “Reports,”* vol. I-V (1951-1955). On the Augsburg judgment, see vol. V, pp.120-148.

¹⁵¹ Gutachten betreffend die Minna-James-Heinemann-Stiftung, March 1951, BA, Z36, I-52.

Reichsvereinigung was used “as a method of securing Jewish property and assets in order to finance the elimination of the Jews.”¹⁵² It added that its nature as a Nazi organization had been established in the previous CORA judgments.¹⁵³ Moreover, the Reich Minister of Justice himself stated in 1942 that the incorporation of a Jewish community or association meant the “complete relinquishment of its former independence.”¹⁵⁴ CORA further drew attention to a decision of the Board of Review in the British Zone, where the court dismissed a similar claim of the reconstituted Jewish community of Rheda on the grounds of it not being identical with the original community.¹⁵⁵

Although the CORA judgment was based on a legal examination of historical facts, the political connotation of the ruling could hardly be ignored. CORA passed the judgment by declaring at the start:

Restitution in the form provided by the present legislation is a departure from previous principles of civil law. It is an unprecedented remedy necessitated by the commission of unprecedented wrongs. The authority that enacted the legislation, and saw fit to make sweeping exceptions from the usual measures of legal redress, was equally competent to restrict the restitution of property in cases, such as we have before us, to successor organizations approved by it, in order to accomplish the greatest good for the greatest number of victims.¹⁵⁶

¹⁵² CORA, Opinion No. 442, JRSO vs. Israelitische Kultusgemeinde Augsburg and Deutsches Reich, October 29, 1954, LBI-NY, AR 5890, 11.

¹⁵³ These were the cases of the JRSO Manheim vs. Scholl and the JRSO Munich vs. Mies in 1952. (CORA, Opinion No. 217, JRSO Manheim vs. Heinrich Scholl and Gemeinde Hainstadt, May 23, 1952, CZA, L47, 29-3; CORA, Opinion No. 440, JRSO Munich vs. Maria Mies and Deutsches Reich, June 24, 1952, CZA, L47, 29-3.)

¹⁵⁴ The justice minister published an official interpretation of the Tenth Implementation Decree in January 1942, because a question had arisen as to whether the Jewish communities should be deleted from the registry of associations (*Vereinsregister*) as a consequence of the incorporation. CORA cited from *Deutsche Justiz*, 1942, p. 85.

¹⁵⁵ On this case, see chapter 5.

¹⁵⁶ CORA, Opinion No. 442, JRSO vs. Israelitische Kultusgemeinde Augsburg and Deutsches Reich, October 29, 1954, LB-NY, AR 5890, 11.

The court considered “a measure of justice and equity” to preserve the property for all surviving victims of Nazi persecution rather than to hand it over to a few survivors in particular localities.¹⁵⁷ With this statement, CORA reinforced the significance of the successor organization and the spirit behind its purpose and actions.

The CORA decision constituted the turning point of the entire controversy. There was no longer any room left to argue and dispute both the question of successorship and the identity of the postwar communities as newly constituted entities. The implication of this ruling was applicable to other communities as well, and it subsequently accelerated the settlements of the pending negotiations with the communities. The Nuremberg community settled with the JRSO on February 6, 1955.¹⁵⁸ The Augsburg community also reached an agreement on March 14, 1955. The properties, which the community had bitterly fought for, were indeed transferred to the community from the JRSO.¹⁵⁹ The last remaining community to settle with the JRSO – Fürth – finally signed on July 2, 1955.¹⁶⁰

As to whether continuity existed in organized Jewish life in Germany before and after the war, CORA provided an answer, at least from a legal point of view. Nevertheless, this was a discontinuity established by the Allied jurisdiction, and the question as to what extent it affected the personal views of the Jews in the communities, remains to be answered.¹⁶¹ Understanding of the past and the present, and the significance one gives to them, can be, after all, only personal.

¹⁵⁷ Ibid.

¹⁵⁸ Abkommen zwischen der JRSO und der Israelitischen Kultusgemeinde Nürnberg, February 6, 1955, CZA, L47, 414-III.

¹⁵⁹ Vereinbarung zwischen der JRSO und der Israelitischen Kultusgemeinde Augsburg, March 14, 1955, CAHJP, JRSO-NY, 602b.

¹⁶⁰ Abkommen zwischen der JRSO und der Israelitischen Kultusgemeinde Fürth, July 2, 1955, CZA, L47, 414-III.

¹⁶¹ The conflict with the JRSO seemed to have forged a symbolic memory of postwar days when the Jews in Germany struggled to establish themselves again in Germany. David Schuster, the president of the Würzburg community from 1958 to 1996, gives his accounts on the relations with the JRSO in an interview, stating that the Augsburg decision was, in his opinion, an error. See, Brenner, *op.cit.*, p.176.

3. 6. Competing Claims

It was not only the German Jewish communities which thought of the heirless Jewish property as a source of relief and reconstruction. It was of considerable interest for many other Jewish groups (and non-Jewish groups) to be recognized as the legal successors of the Nazi victims and their associations. The JRSO emerged, from all of these disputes, as the de facto and de jure successor to all the heirless and unclaimed Jewish property and that of dissolved communities.

1) The Central Committee of the Liberated Jews in the U.S. Zone

The Central Committee of the Liberated Jews in the U.S. Zone appointed itself in its statute of 1946 as the legal successor of the former Jewish communities, associations and foundations which had existed in the area of the U.S. Zone before the war. It claimed the properties of the Reichsvereinigung as well as those of Jews who died without leaving heirs.¹⁶² The Central Committee as the representative of the East European DPs who temporarily resided in the U.S. Zone, evidently maintained no legal, historical, or organizational relations with the Reichsvereinigung, let alone to the prewar German Jewish communities. The statute further stipulated that with the liquidation of the Central Committee, its property was to be transferred to the Jewish Agency, i.e., to Palestine, the destination of most of the DPs.¹⁶³ The monopolizing claim of the Central Committee alarmed not only the German Jewish communities, but also the U.S. Military Government as undemocratic. The Central Committee eventually dropped the claim in order to be

¹⁶² Koenigseder and Wetzel, op. cit., p.90.

¹⁶³ Geis, op. cit., p.385.

officially recognized as the representative of the Jewish DPs in the Zone, which was done on September 7, 1946.

2) The Polish Red Cross

The heirless Jewish property which the JRSO was authorized to claim included not only that of German Jewish individuals and institutions, but also that of foreign Jews. Regardless of the nationality of the victims, if they were persecuted because they were deemed “Jewish” in the meaning described in Regulation No.3 of the appointment of the JRSO, it was the sole claimant. As is known, Imperial Germany had attracted many Jews from Eastern Europe, who had come to Germany to study and work. Many of them had lived in the Reich for more than one generation and had acquired German citizenship. There were approximately 99,000 Jews of foreign nationality in Germany in 1933, a considerable part of which consisted of Jews from Poland.¹⁶⁴ The naturalization of Jews which had taken place during the Weimar Republic was revoked in July 1933.¹⁶⁵ Furthermore, by the order of September 17, 1940, the property of the former Polish citizens was confiscated.¹⁶⁶ Of those foreign Jews who were deported, few came back.

In December 1948, the Polish government applied for the appointment of the Polish Red Cross as the successor organization to the properties of Polish nationals who had resided in Germany and who had died without any heir pursuant to Article 10 of Law No. 59. The application was denied by the Military Government.¹⁶⁷ Nevertheless, an individual by the name of Dr. Henryk Gielb was appointed by the Polish court as the

¹⁶⁴ *Die Juden in Deutschland 1933-1945*, p.733.

¹⁶⁵ Gesetz über Widerruf von Einbürgerungen und die Aberkennung der deutschen Staatsangehörigkeit, in *RGBl*, .

¹⁶⁶ Verordnung über die Behandlung von Vermögen der Angehörigen des ehemaligen polinischen Staates, in *RGBl*, Teil I, 1940, p.1270.

¹⁶⁷ Frank J. Miller to the Department of Army, 1949, IfZ, OMGUS, 3/89-1/6; Request for Military Entry Permit for US Zone (Polish Restitution), August 11, 1949, NACP, RG466/250/84/23/7.

curator in absentia, and the 145 claims were filed in the U.S. Zone under his name for the protection of the interests of the former Polish nationals under the restitution law.¹⁶⁸ These claims specified the Polish Red Cross as the successor organization. Therefore, a situation arose in which the same properties were claimed both by the JRSO and the Polish Red Cross.

This move on the part of the Polish government was eventually denied on the grounds that these were the kind of claims which should be solved under the terms of a peace treaty.¹⁶⁹ It was argued that they factually represented the external restitution, not the internal restitution. Yet, one must bear in mind that under Article 10 of the restitution law “[n]either the State nor any of its subdivisions nor a political self-governing body will be appointed as successor organization.”¹⁷⁰ This included, not only the German states, but also Poland and the state of Israel.

3) Frankfurt Orthodox Community

Claims came from a Jewish community outside Germany, which was constituted by some of the original members of the Frankfurt Orthodox community – this was the case of K’hal Adath Jeshurun in New York City.

In Imperial Germany, Jews were registered in so-called *Einheitsgemeinde* (unified communities), a form of official representation vis-à-vis the state, where the different religious streams came under one roof. However, the Orthodox elements were dissatisfied that the official communities, which were composed mostly of Reform Jews, did not comply with their religious feelings. The law of 1876 made it possible to secede from the

¹⁶⁸ Bayerisches Landesamt für Vermögensverwaltung und Wiedergutmachung to the HICOG Internal Restitution Supervision Branch, May 22, 1950, NACP, RG466/250/84/23/7.

¹⁶⁹ Justizministerium to the Staatsministerium der Justiz der Länder, , September 8, 1949, NACP, RG466/250/84/23/7.

¹⁷⁰ Law No. 59, Art. 10.

official communities in order to form one of their own. In Frankfurt, the Orthodox community which had been originally established by Samson Raphael Hirsh in the mid nineteenth century now obtained official status under the name *Synagogengemeinde Israelitische Religionsgesellschaft* (hereafter Religionsgesellschaft),¹⁷¹ which existed parallel to the Reform community of Frankfurt, the *Israelitische Gemeinde*. In the Nazi era the Orthodox community was forced to amalgamate with the Reform congregation to form a single community, the *Jüdische Gemeinde*, thus named by the Nazis. This too was incorporated into the Reichsvereinigung in 1939. Twenty-five members of the former Frankfurt Orthodox community who immigrated to the United States formed a congregation named K'hal Adath Jeshurun in New York City in 1939 in the spirit of continuing the tradition of the Religionsgesellschaft, under the guidance of rabbi Joseph Breuer, grandson of Samson Raphael Hirsh and the former principal of the Rabbinical school, the *Hirsh Real Schule* in Frankfurt.¹⁷² This community filed claims on the communal properties of the Religionsgesellschaft as its legal successor.¹⁷³

The claims of K'hal Adath Jeshurun brought about a three-faced conflict with the JRSO and the Frankfurt Jewish community. To make matters more complicated, the postwar Jewish community filed claims for the entirety of the communal properties in Frankfurt, including those which had belonged to the Religionsgesellschaft – that is, the community presented itself as the successor of the Nazi-created *Jüdische Gemeinde*, not as the

¹⁷¹ On the Frankfurt Orthodox community, see, for example, Mordechai Breuer, *Modernity with Tradition: The Social History of Orthodox Jewry in Imperial Germany* (New York: Columbia University Press, 1992); Matthias Mordenstern, *Von Frankfurt nach Jerusalem: Isaac Breuer und die Geschichte des "Austrittstreits" in der deutsch-jüdische Orthodoxie* (Tübingen: Mohr, 1995).

¹⁷² K'hal Adath Jeshurun to the Claims Conference, December 15, 1961, CAHJP, JRSO-NY, 349c. On K'hal Adath Jeshurun, see the oral history interview of Jacob Breuer, the son of Joseph Breuer, in *Jewish Immigration of the Nazi Period in the U.S.A*, vol. 5, ed. Herbert A. Strauss (New York: K.G. Saur, 1986), pp.253-259.

¹⁷³ Memorandum on the claims of Congregation K'hal Adath Jeshurun, February 21, 1951, JDC-NY, 4262; Statement by Dr. Salmon Goldsmith, January 6, 1954, CAHJP, JRSO-NY, 330b.

successor of the Reform community Israelitische Gemeinde. The claim of the New York community was contested not only by the JRSO, but also by the postwar Frankfurt community, which, paradoxically, based its total claim on the “dissolution” of the Orthodox community at the moment of amalgamation with the Reform community in 1939¹⁷⁴ – an argument which the community never accepted vis-à-vis the JRSO.

The deadlock created by the triangular claims was broken when K’hal Adath Jeshurun withdrew its claims on the properties of the Religionsgesellschaft in January 1954, “as to open the way for the restitution” to the JRSO.¹⁷⁵ It recognized that “no irreconcilable interests” existed between them, for it would be the duty of the JRSO, to devote the properties to the fulfillment of the ideals for which the Religionsgesellschaft was created. It did not forget to request that the recovered properties be placed into a separate fund to be administered by a committee, which would be composed of an equal number of persons from K’hal Adath Jeshurun and the JRSO.¹⁷⁶ Part of the fund was to be used for the Orthodox purposes.

The withdrawal of the claims from New York prepared the ground for the settlement of the Frankfurt community with the JRSO. Paragraph twelve of the April 14, 1954 agreement between the JRSO and the Frankfurt community proclaimed that by signing it, the complex of the JRSO-Jewish community-K’hal Adath Jeshurun would be definitively settled, and that no outstanding claims exist.¹⁷⁷ The former properties of the Religionsgesellschaft – the cemetery on Rat Beiler street and the former school at Röderbergweg 29 – were given to the community (see Appendix 5). The two parties further acknowledged that the JRSO would be the sole successor of the rest of the

¹⁷⁴ Tauber, op. cit., pp.99-100.

¹⁷⁵ Statement by Dr. Salmon Goldsmith, January 6, 1954, CAHJP, JRSO-NY, 330b.

¹⁷⁶ Ibid.

¹⁷⁷ Abkommen Zwischen der JRSO und der Jüdischen Gemeinde Frankfurt am Main, April 14, 1954, CAHJP, JRSO-NY, 614a.

properties, regardless they had formerly belonged to the Reform Israelitische Gemeinde or the Orthodox Religionsgesellschaft.¹⁷⁸

4) B'nai B'rith

Another challenge to the right of the JRSO came from the Order of B'nai B'rith, a Jewish fraternal organization which had been established in New York in 1843. The first lodge outside the United States was founded in Germany in 1882, under the name the *Deutsche Reichsloge des Unabhängigen Ordens B'nai B'rith*, the Lodge of the German Empire. Germany constituted District Eight of the B'nai B'rith world organization, which was composed of numerous lodges in different countries. In 1925, at the peak of the membership, there were 107 Lodges with 15,278 members in Germany.¹⁷⁹ From 1927 onward, Leo Baeck was the president of the Grand Lodge in Berlin. In 1930, there were about 105 lodges in 84 cities and towns in Germany.¹⁸⁰ On April 19, 1937, the Grand Lodge in Berlin and the existing individual lodges were dissolved, and their assets seized by an ordinance issued by the Gestapo on April 10, 1937.¹⁸¹

The order of B'nai B'rith had a pyramid-shaped structure. The individual lodges were placed under the auspices of the District Grand Lodge in Berlin, and the latter were subordinated to the Supreme Lodge in Washington DC.¹⁸² Theoretically, all German lodges, as well as any other lodge in the world, were subordinated to the Supreme Lodge in Washington. It could be argued, therefore, that when a lodge was dissolved, its property

¹⁷⁸ Ibid., paragraph six of the agreement.

¹⁷⁹ Karin Voelker, "The B'nai B'rith Order (U.O.B.B.) in the Third Reich," in *LBIYB XXXII* (1987), p.271.

¹⁸⁰ Memorandum zur Rückerstattung des entzogenen Vermögen des Unabhängigen Ordens B'nai B'rith, 1958, USHMM, RG.12.003.08*10.

¹⁸¹ Voelker, op. cit., p.291. For the Gestapo order, see, Auflösung des "Unabhängigten Ordens Bne Briss," n.d., USHMM, RG.12.003, 08*10; Geheime Staatspolizei Staatspolizeileitstelle, Mueller to Leo Baeck, April 19, 1937, USHMM, RG.12.003, 08*10.

¹⁸² Allgemeine Gesetze für die Logen des VIII Districts, n.d., USHMM, RG12.003.08*10.

was transferred to the District Grand Lodge, and when the latter no longer existed, to the Supreme Lodge. This was, however, not a rule anchored in the statutes of the lodges, but rather an understanding shared by the lodges. The actual dissolution of a lodge required an application in writing, which had to be seconded by more than half of the lodge members. The statutes of some of the lodges stipulated that their property be transferred to local Jewish communities.¹⁸³ Factually, a formal dissolution of this kind never took place within District Eight. There were some lodges which had disbanded in the territories which were lost from the German Reich as a result of losing the war (1914-18), but this was not the case here. Likewise, the dissolution forced upon the lodges by Gestapo order was in no way a dissolution in light of the statute. Therefore, the Washington Supreme Lodge was not registered in any of the land ledgers as the rightful owner of the lodge property in Germany.

No B'nai B'rith lodges were reconstituted immediately after the war. When the restitution law was promulgated in the U.S. Zone of Germany, the Supreme Lodge in Washington filed claims on behalf of the German lodges and contemplated seeking designation as the successor organization. The nature of the B'nai B'rith claim and the danger of such a motion were quickly perceived by the American Jewish leaders. They all agreed that there should be only one Jewish successor organization. One successor organization representing the interests of the entire Jewish victims – this was the condition of the designation of the JRSO by the Military Government. Creating another successor organization to serve the specific interests of a group would destroy the consensus on Jewish representation which had been built up following long and arduous work over a period of years. Most importantly, the claims of the Supreme Lodge would

¹⁸³ Ibid. For example, the Nehemia Nobel Lodge in Hamburg and the Carl Friedrich Loge in Karlsruhe had such provisions in their statute.

impair the position of the JRSO vis-à-vis the communities.¹⁸⁴ “If this hole is made, and B’nai B’rith got their way, the whole structure would crumble, because there are others, probably more legitimate claims, who will come forth and make similar requests,” commented the Jewish Agency representative in the United States.¹⁸⁵ Ferencz was more to the point when he stated: “I think it would be extremely unwise for the JRSO to agree to any other Jewish groups whatsoever being recognized as a successor organization for any purpose. To do so would destroy the entire justification for our existence...”¹⁸⁶

The B’nai B’rith claim was the subject of discussion at the JRSO’s executive committee meeting on December 24, 1948. A resolution was passed that the JRSO would not waive its position as the sole successor organization.¹⁸⁷ The firm stance of the executive committee was aimed more to preserve Jewish unity and the united front vis-à-vis German and American authorities in the efforts to recover the property, than to object to the right of B’nai B’rith on a legal or moral basis. Discord and confusion among the Jewish groups could easily be exploited by the opponents of the restitution. It was indeed the feeling of the executive committee that the properties of B’nai B’rith should be returned to the organization. Whether the properties would be vested in a special fund managed by the representatives of B’nai B’rith and the JRSO, or a part of the proceeds be released for the activity of B’nai B’rith – these were the technical questions to be dealt after the successful recovery of the properties.

The situation was rendered more complicated with the alleged commitment the Washington Lodge claimed to have obtained from Edward M. M. Warburg of the JDC. Upon the repeated demands of the Washington Lodge, Warburg, then the vice-president of

¹⁸⁴ Eli Rock to Moses A. Leavitt, December 21, 1948, CZA, A370, 264.

¹⁸⁵ Maurice M. Boukstein to Israel Goldstein, December 23, 1948, CZA, A370, 264.

¹⁸⁶ Ferencz to Eli Rock, January 14, 1949, CAHJP, JRSO-NY, 598d.

¹⁸⁷ Maurice M. Boukstein to Israel Goldstein, December 27, 1948, CZA, A370, 264.

the JRSO, wrote to B'nai B'rith in March 1949 stating that the JRSO filed the claims on the properties of the lodges to secure the rights on restitution, and that it would indeed be willing to "assist B'nai B'rith in establishing its legal ownership and thereby secure the return of such property."¹⁸⁸ Understanding this as a recognition of its legitimacy as the legal successor, the Washington Lodge proceeded with their restitution claims. Yet, B'nai B'rith was soon compelled to reconsider its policy of pursuing the claims as the successor to the dissolved lodges. In August 1949 the Restitution Agency in Regensburg dismissed its claim for the property of the Amburg Lodge as unsubstantiated since the Supreme Lodge was never the owner of the property. In February 1950 the same Restitution Agency dismissed another B'nai B'rith claim.¹⁸⁹ In August 1950, A Würzburg court denied the B'nai B'rith claim.¹⁹⁰ The prospects of the Washington Lodge of recovering property seemed rather dim.

A strategic decision was made on October 1950 for B'nai B'rith and JRSO when both representatives met and agreed in principle that the JRSO become, so to say, an agent for B'nai B'rith in Germany to pursue the claims. The JRSO acknowledged the claims of the Supreme Lodge as the rightful owner of all the property held by the lodges in Germany. As the agent of the B'nai B'rith, the JRSO was to deliver all the recovered property and proceeds to the Supreme Lodge as soon as the necessary legal transactions be made. This was agreed upon in writing and signed on March 30, 1951.¹⁹¹ Importantly, B'nai B'rith promised to use the recovered assets for the relief, rehabilitation and the resettlement of the Jewish victims of Nazi persecution, with the predominant part of the assets being used

¹⁸⁸ Edward M.M. Warburg to B'nai B'rith, March 3, 1949, USHMM, RG.12.003.08*09.

¹⁸⁹ Incoming cable from Nürnberg, Ferencz, 1950, CZA, S35, 83.

¹⁹⁰ Liability of the Federal Republic of Germany for confiscated B'nai B'rith assets, n.d., BA, B126, 68491.

¹⁹¹ Agreement between the JRSO and the Supreme Lodge of B'nai B'rith, March 30, 1951, USHMM, RG12.003, 06*09. As the agent in the field, the JRSO charged B'nai B'rith with the actual expenses incurred in handling the cases.

in Israel.¹⁹² Following this agreement, B'nai B'rith waived its claim from the JRSO.¹⁹³ The German courts accepted the JRSO to act for B'nai B'rith as the entitled party.¹⁹⁴

By the terms of agreement, B'nai B'rith acted de facto as the second successor organization in the U.S. Zone, as long as the realization of the B'nai B'rith properties were concerned. In the end both served the same purpose. By internal arrangement with the Supreme Lodge, the claims of the JRSO as the sole successor organization to the heirless Jewish property were not infringed upon. Net recoveries from the B'nai B'rith properties in the U.S. Zone amounted to DM 450,000.¹⁹⁵

5) The Council of Jews from Germany

The claims of the former German Jews gathered under the roof of the Council for the Protection of Rights and Interests of Jews from Germany (Council of Jews from Germany) were not exactly legal in nature.¹⁹⁶ They were “moral claims” as they often stated. As already seen in chapter one, the Council of Jews was one of the advocates for the establishment of an international successor organization, and it shared the idea that the Jewish people as a whole be the successor of the heirless property. Yet, the emigrated German Jews took it for granted that they would play a pivotal role in any endeavor to recover the heirless Jewish assets in Germany, for the obvious reason that it formerly belonged to them. Therefore, the Council proposed a successor organization either composed of four parties, namely, the Council of Jews, the representatives of the postwar

¹⁹² Ibid.

¹⁹³ Arrangement between the director of JRSO and the counsel for Supreme Lodge of B'nai B'rith, April 24, 1951, USHMM, RG 12.003.08*09.

¹⁹⁴ Liability of the Federal Republic of Germany for confiscated B'nai B'rith assets, n.d., BA, B126, 68491.

¹⁹⁵ JRSO, *Report*, p.26.

¹⁹⁶ On the JRSO-Council confrontation, see the study of Yeshayahu A. Jelinek, “Leo Baeck, Nahum Goldmann and the Money from Germany,” in *Studies in Contemporary Jewry vol. 5* (1989), pp.236-241.

Jewish communities in Germany, the Jewish Agency and the JDC, or an organization composed of many Jewish organizations, but in which these four groups would exert great influence.¹⁹⁷ However, the JRSO came into existence in neither form – the two operating agencies, the Jewish Agency and the JDC, possessed substantial power in the general decision making. Yet, the Council was represented on the board of directors as well as in the executive committee of the JRSO. It also had a seat in the Budget Advisory Committee to discuss the division of the communal property in light of the budgetary needs of the existing communities, although it ceased to function before yielding any concrete results.

According to the German Jewish sentiments, their demands were legally and morally justifiable. Rudolf Callmann, who was the president of the American Federation of Jews from Central Europe – the American member of the Council of the Jews – wrote as follows:

I am not only convinced that our claim against the JRSO is legally justified but that also nobody can deny us the moral right to claim part of the money that formerly belonged to that very community or people of whom we were a part.¹⁹⁸

However, the Council felt that it was not taken seriously on the board of directors by the American Jews who ran the organization. Numerically, the German Jews were in the minority on the board. In the name of the general Jewish representation of the JRSO, the German Jews were grouped together with the “American, British, South African, French and possibly all other groups,” which they believed to have no right to administer the property of deceased German Jews, as a certain G.L. (presumed to be Georg Landauer)

¹⁹⁷ See, for example, Draft of an indemnification law for Germany by the Council, n.d., YV, M56, R.38, 204/283.

¹⁹⁸ Rudolf Callmann to George Landauer, November 21, 1951, LBI-NY, AR 5890, 9.

wrote in the *Mitteilugnsbaltt* issued by the Irgun Olej Merkas Europa, the Israeli branch of the Council.¹⁹⁹

The Council felt increasingly frustrated, and feared that they would be kept out of the decision making process concerning the allocation of the proceeds. They thought that they should be given serious consideration when liquidating the wealth which they and their forbearers had created. Already in May 1949 – at the time when the restitution proceeds from the JRSO operation were not yet available – the president of the Council Leo Baeck wrote to the board of directors of the JRSO asking for 20 percent of the net proceeds earmarked for the Council, in order to alleviate the plight of the German Jewish immigrants.²⁰⁰ Factually, the German Jews scattered around the world were facing a grave social problem inherent in emigration. Elderly Jews were unable to re-establish their economic lives in their new countries. For those who had professions which were inseparably tied to the German language and culture – for instance that of a lawyer – it was impossible to continue their old job. There was also a great need of building old-age homes. Yet, Leo Baeck was answered by Monroe Goldwater of the JDC, then the chairman of the executive committee of the JRSO, that such a proposal was still premature.²⁰¹

After the first attempt to secure a certain portion of the proceeds, the Council had to repeatedly appeal to the executive committee in order to be heard. In one letter to the executive committee, Leo Baeck wrote that when the Jewish leaders had been considering establishing a Jewish organization to retrieve the heirless assets in Germany around 1946/47, it had been possible to set up a successor organization “composed of representatives of the German Jews in and outside of Germany,” since it was these Jews

¹⁹⁹ “Die Beerbung der deutenen Juden,” *MB*, April 4, 1947.

²⁰⁰ Leo Baeck to the board of directors , JRSO, May 27, 1949, LBI-NY, AR 5890, 9.

²⁰¹ Monroe Goldwater to Leo Baeck, June 30, 1949, LBI-NY, AR 5890, 9.

and their ancestors who had built the property. The Council, however, “did not press for a solution on these lines.” Since the German Jews during the Hitler period received such generous help from the brethren abroad, the Council “thought it an historical duty of gratitude to see [it] returned.”²⁰² In short, it was a gesture of solidarity, that the Council accepted being merely one of the members of the JRSO and sharing the realization of their creation with other Jewish groups. Furthermore, the Council reminded the executives of the JRSO that the Jews from Germany did not approach the Bonn government with special requests for themselves, although the latter would have had attentive ears for its former citizens, and subordinated their own rights and interests to those of world Jewry.²⁰³

The request of the Council to receive a certain portion of the proceeds for the exclusive assistance of the German Jewish refugees was contested, among others, by the JDC.²⁰⁴ The JDC, as the relief organization in the field, acted according to the principle of priority. It was a time of great need: Jews were fleeing Anti-Semitic violence in Arab countries following the creation of the state of Israel, and the political unrest in East European countries destabilized the life of Jews. In a JRSO executive committee meeting at the end of 1950, Moses Leavitt of the JDC rejected the Council’s claim by saying as follows: “[T]oday, when every dollar is vitally needed to save Jews – in North Africa, in Asia, in

²⁰² Leo Baeck to the executive committee, September 20, 1951, LBI-NY, AR 5890, 9. See, also, W. Breslauer to Josephthal, Treasurer of the Jewish Agency, August 14, 1952, LBI-NY, AR 5890, 10.

²⁰³ Statement on the request of the Council, November 30, 1953, CZA, A376, 128.

²⁰⁴ According to Joachim Prinz, the former rabbi of Berlin and the president of the American Jewish Congress, the strongest opposition came from Moses Leavitt, the vice chairman of the JDC. (Joachim Prinz to Hans Reichmann, February 20, 1952, LBI-NY, AR 5890, 9.) Ferencz in an interview by the author suggested the existence of personal antagonism between the so-called “Ostjuden” (East European Jews) and the “Jeckes” (German Jews) at the high level of the JRSO. Many of the American Jewish leaders were of East European origin, and some were recent immigrants to the United States. (Interview of Benjamin B. Ferencz in Florida, by the author, March 8, 2003.)

Poland, in Roumania, etc., – how can there be any thought of any other priority?”²⁰⁵ According to the judgment of the executive committee, the German Jewish refugees neither faced life threatening danger, nor were they the most destitute. Furthermore, recognizing the claims of the Council would not only violate the equality of all member organizations in the JRSO, but would also jeopardize the struggle led by the world Jewish leaders to eliminate any *Landsmannschaften* in favor of a united world Jewry.²⁰⁶ Leo Baeck admitted that the Jews in Israel should be given first propriety, and the German Jews nonetheless be given the second priority.²⁰⁷ Following more than four years of unsuccessful efforts, Baeck declared the withdrawal of the Council from the JRSO on March 12, 1954.²⁰⁸

Alarmed by the impact that the inner Jewish dissension might have on the non-Jewish world – especially in its relations with the German Federal Government – the JRSO tried to bring the Council again to the table. As an official of the Council pointed out, after the withdrawal of the Council, the JRSO was no longer representative of the “entire group or class” of people who were persecuted.²⁰⁹ Discussions were held in Paris on November 2, 1954, which lasted from six o’clock in the evening until three o’clock the next morning, the Council and the JRSO reached an agreement.²¹⁰ It was decided that the former receive 11 percent of the funds accrued to the JRSO. By signing the agreement, the

²⁰⁵ Minutes of the executive committee meeting, December 14, 1950, CAHJP, JRSO-NY, 349a.

²⁰⁶ Manfred George to Leo Baeck, April 23, 1954, LBI-NY, AR 5890, 10. Also quoted in Jelinek, “Leo Baeck, Nahum Goldmann and the Money from Germany,” p.238.

²⁰⁷ Minutes of the JRSO executive committee meeting, October 29, 1951, CAHJP, JRSO-NY, 349a.

²⁰⁸ Leo Baeck to the JRSO, March 12, 1954, LBI-NY, AR 5890, 10. An article in *AJR Information* of April 1954, “German Jewry’s Rights Ignored,” presents the reasons for Council’s withdrawal.

²⁰⁹ W. Breslauer to Ferencz, June 10, 1954, AJA, WJC, C278, 6.

²¹⁰ Council of Jews from Germany, *Die Arbeit des Council of Jews from Germany auf dem Gebiet der Wiedergutmachung: Bericht erstattet im Auftrag des Council von Dr. W. Breslauer und Dr. F. Goldschmidt* (Düsseldorf-Benarh: Kalima, 1966), p.36.

Council again became a member organization of the JRSO.²¹¹

3.7. The Zentralrat and the Creation of the Communal Funds

With the defeat of the Augsburg community before CORA, the issues of successorship seemed to be resolved excepting one – the claims of the central representation of the Jews in Germany, the *Zentralrat der Juden in Deutschland* (Central Council of Jews in Germany, hereafter Zentralrat).

The Zentralrat was established in Frankfurt on July 19, 1950 as the umbrella organization of the Jewish communities and the Landesverbände (including those in East Germany).²¹² After the majority of the Jewish DPs had left Germany and those remaining were on their way to being absorbed into the German Jewish communities, the need arose to create a central organization to represent the Jews who made Germany more or less their home. This was on the eve of the revision of the Occupation Statute, which was believed to grant Germany near sovereignty and thus fundamentally change the relations between the Jewish communities and the German government. With the engagement of the foreign Jewish organizations in Jewish life in Germany becoming less visible, the creation of a proper political representation was imperative. Hendrik Georg van Dam,²¹³ a Berlin-born lawyer, was elected as General Secretary of the Zentralrat in October 1950, who was without doubt the best person to lead the Jewish community whose work was heavily focused on the legal and political problems of the Wiedergutmachung.

²¹¹ Agreement between the Council of Jews and the JRSO, November 3, 1954, LBI-NY, AR 5890, 11.

²¹² Zentralrat der Juden in Deutschland, *10 Jahre Zenrralrat der Juden in Deutschland* (Düsseldorf, November 1960), p.5.

²¹³ Hendrik Georg van Dam (1906-1973): lawyer. He fled to Switzerland after 1933, then to the Netherlands, and arrived in England in 1940. He came back to Germany in 1946 as the legal advisor of the JRU (1947-1950). General Secretary of the *Zentralrat* until to his death in 1973.

On the issue of the legal successorship, the Zentralrat was expected to act as an intermediary between the successor organization and the communities. It participated in the negotiations on the division of the communal property, and persuaded (or, in some cases, probably dissuaded) the communities to settle with the JRSO. Yet, it should come as no surprise that the Zentralrat, as the speaker of the Jews in Germany, leaned more towards the side of the communities than to the JRSO. Van Dam's frustration was that the communities seemed to be excluded from the decision-making process of the JRSO. He often pointed out, the Jewish communities in other European countries such as Greece, Austria, and the Netherlands received the communal property regardless of their decimation,²¹⁴ while in Germany, a considerable part of it went to the international Jewish organizations. In his view the conflicts between the JRSO and the communities were very little concerned with the legal successorship, but rather with the JRSO's duty as the trustee (which he considered neglected). He maintained, therefore, that some of the JRSO agreements with the communities required a revision.²¹⁵

Discord between the Zentralrat and the JRSO became public when van Dam published an article entitled "The Inheritance of German Jewry" in the German-Jewish newspaper *Allgemeine Wochenzeitung der Juden in Deutschland* on May 9, 1952, in which he claimed that the all agreements being made on the restituted property without the involvement of the German Jews inside and outside of Germany represented an "act of usurpation."²¹⁶ Criticizing the JRSO in the German Jewish press – which was read by

²¹⁴ Tätigkeitsbericht des Generalsekretärs des Zentralrat für die Berichtsperiode Dezember 1955 bis Dezember 1956, ZA, B.1/15, 88.

²¹⁵ Minutes of the meeting on the Gemeinde problems, October 21, 1953, CAHJP, JRSO-NY, 426a.

²¹⁶ "Das Erbe des deutschen Judentums," AW, May 9, 1952. In the background of the van Dam article, there was the conflict between the JRSO and the Council of Jews from Germany. Contrary to what many foreign Jewish leaders tended to believe, there was in fact not so much cooperation and coordination among the Jews inside and outside Germany regarding their position toward the JRSO, excepting an occasional exchange of opinions. The emigrated German Jews maintained a certain

German politicians conscious of the domestic and international Jewish voices – was considered most undesirable in connection with the ongoing German-Jewish reparations negotiations at Wassenaar. Actions which could suggest inner Jewish disagreement would have immediate repercussions among the German negotiators. The article was denounced as an attempt to disrupt Jewish unity.²¹⁷

With the Luxembourg Agreements signed in September 1952, the West German government was bound by Protocol 1 of the Agreements to enact a federal indemnification law which would be no less favorable than the U.S. indemnification law (U.S. *Entschädigungsgesetz*) issued in the U.S. Zone in August 1949.²¹⁸ The U.S. indemnification law contained the articles which concerned the indemnification of property damages caused by persecution and discrimination, especially that done during the November Pogrom of 1938. Under Article 17, the successor organization appointed by the Military Government was entitled to such claims.²¹⁹ Accordingly, the JRSO's right to the indemnification payment on the communal property was anchored in the settlements with some of the communities.²²⁰ Article 10 of the U.S. indemnification law, on the other hand, related to the indemnification of property which was not strictly communal – for example, property of Jewish foundations and associations. This was organizational property which should be distinguished from the property of the communities. The law provided that indemnification should be claimed by such organizations whose

distance from the seemingly exaggerated demands of the group of Jews remaining in Germany.

²¹⁷ See, for example, Ferencz to van Dam, May 16, 1952, CAHJP, JRSO-NY, 426a; Samuel L. Haber to van Dam, June 3, 1952, JDC-NY, 375.

²¹⁸ The U.S. indemnification law was issued in Bavaria on August 12, in Bremen on August 16, in Hesse on August 10, and in Württemberg-Baden on August 16.

²¹⁹ Gesetz zur Wiedergutmachung nationalsozialistischen Unrechts, printed in *Bundesentschädigungsgesetze: Kommentar*, ed. Georg Belssin, Hans-Georg Ehrig and Hans Wilden (Munich and Berlin: C.H. Beck, 1957), p.1180.

²²⁰ On the partition of the indemnification claims with the communities which settled before October 1952, see, Annual report, October 1951-September 1952, CAHJP, JRSO-NY, 464a.

composition, aims and functions were deemed similar to those of the former.

When the question arose as to incorporating the provision of the U.S. indemnification law into a proposed federal law, the Zentralrat and the communities argued that not the JRSO but the communities were the proper claimants to the indemnification payments in their obligations and capacities to look after the well-being of the Jews.²²¹ After the Augsburg judgment building the claims as the legal successor (*Rechtsnachfolger*) offered little prospects, which necessitated a new definition of the functional successor (*Zwecksnachfolger*) – those who succeeded the purpose and functions of the former communities and organizations.²²² They maintained that the claims on the organizational property were such that the successor organization could not conceivably claim, since it was in fact a trustee and conducted no welfare projects, and that the communities should be supported as the only groups entitled when the federal law would be enacted.²²³

In reality, some organizational properties had been already included in the JRSO settlements with the communities on the grounds that they would serve the members of the local communities. For the JRSO, it did not make a fundamental difference which side – the JRSO or the communities – would lodge claims for indemnification, because the entire proceeds, irrespective of whether they were from restitution or indemnification, would be divided in an equitable manner to serve the same goal of aiding the Jewish victims. Therefore, it was maintained that the party which had the stronger legal position should appear as the claimant.

The Federal Indemnification Law (BEG) was issued in September 1953. Article 19 referred to the rights of the successor organizations for the compensation for the damage

²²¹ J.J. Jacobson to Samuel Haber, February 4, 1953, JDC-J, Geneva IV, 9/1A, file 3; Minutes of the JRSO executive committee meeting, March 26, 1953, JDC-NY, 4269.

²²² Zentralrat to the Mitglieder des Wiedergutmachungsausschusses des Bundestags, April 30, 1956, ZA, B.1/15, 334.

²²³ Ferenz to Kagan, February 13, 1953, CAHJP, JRSO-NY, 426a.

inflicted on synagogues and other Jewish communal properties. Its Article 11 was the equivalent of Article 10 of the U.S. indemnification law, which related to the organizational property. From van Dam's standpoint, those entitled to the indemnification of the organizational properties were the Zentralrat and the *Zentralwohlfahrtsstelle der Juden in Deutschland e.V.* (Central Welfare Agency for Jews in Germany, hereafter Central Welfare Agency),²²⁴ a welfare organization established by the Zentralrat in August 1951.²²⁵ As is known, Berlin had been the seat of numerous Jewish national organizations before the catastrophe. In a letter to the director of the indemnification office in Berlin, van Dam presented his view that it was the Zentralrat who took over the functions of the dissolved organizations in safeguarding their economic and social rights and interests, and in promoting religious and cultural life. In this regard, he continued, the Zentralrat must indirectly be the successor of the eight organizations which sat in Berlin before 1945, including the most important political representations such as the *Reichsvertretung der Juden in Deutschland* (National Representation of Jews in Germany) and the *Centralverein deutscher Staatsbürger Jüdischen Glaubens* (Central Association of German Citizens of the Jewish Faith).²²⁶ Likewise, van Dam asserted that the Central Welfare Agency must be the legal successor to the numerous Jewish welfare

²²⁴ On the Central Welfare Agency, see ZEDAKA, *Jüdische Sozialarbeit im Wandel der Zeit: 75 Jahre Zentralwohlfahrtsstelle der Juden in Deutschland 1917-1992*, ed. Georg Heuberger (Frankfurt am Main: Jüdisches Museum, 1992).

²²⁵ For example, see, ZWST to the JRSO, September 3, 1953, CAHJP, JRSO-NY, 426a; Van Dam and B. Simonsohn to the JRSO, September 25, 1953, JRSO-NY, CAHJP, 426a.

²²⁶ Van Dam to the Entschädigungsamt Berlin, Dr. Eichholtz, September 24, 1954, ZA, B.1/15, 251. Aside from the the *Reichsvertretung* and the *Centralverein*, van Dam claimed that the Zentralrat must be the successor to the following political organizations and religious institutions: the *Preussischer Landesverband Jüdischer Gemeinden* (Prussian Federation of Jewish Communities), the *Deutsch-Israelitischer Gemeindebund* (German-Jewish Communities Alliance), the *Reichsbund jüdischer Frontsoldaten* (National Union of Jewish War Veterans), the *Lehranstalt für die Wissenschaft des Judentums* (Teaching Institution for the Scholarly Study of Judaism), the *Rabbinerseminar* (Rabbinical Seminary), and the *Gesellschaft zur Förderung der Wissenschaft des Judentums* (Society for the Promotion of the Scholarly Study of Judaism).

organizations that had existed.²²⁷ As its name suggested, the Central Welfare Agency was viewed as the re-establishment of, or, at least the successor of, the *Zentralwohlfahrtsstelle der deutschen Juden* (Central Welfare Agency for German Jews), which had been created in 1917 and dissolved under the Nazi rule.²²⁸ Therefore, the Central Welfare Agency should be entitled not only to the indemnification, but also to the restitution of the organizational property. Established only in 1951, however, the Central Welfare Agency could not have claimed any property under Law No. 59, whose filing limit had expired long ago. The “re-established” Central Welfare Agency maintained, however, that the claims filed by the JRSO for the properties of the organizations which had been affiliated with the prewar Central Welfare Agency were done on behalf of the true claimant, namely, the postwar Central Welfare Agency. Similar to the cases of individual claimants who had failed to file before December 31, 1948, but who could expect equity payment from the JRSO on the assumption that their claims were filed by the JRSO on their behalf, the Central Welfare Agency should receive the property. In a letter addressed to the JRSO, the Central Welfare Agency declared itself as the true claimant of the organizational assets, and even held the JRSO and its operating agencies responsible for the damage it had sustained or would sustain from the transfer or liquidation of the assets.²²⁹

Factually, the Zentralrat and the Central Welfare Agency had not received any of the restituted property from the JRSO. Their demands were considered of such a kind that they should be met through the payments by the Claims Conference, which they actually

²²⁷ Ibid.

²²⁸ The *Deutsch-Israelitischer Gemeinde-Bund*, the B'nai B'rith, and the *jüdischer Frauenbund* (Jewish Women's Federation) initially established the *Zentralwohlfahrtsstelle der deutschen Juden* in 1917. Many other Jewish organizations, including the *Zionistische Organization in Detuschland* (Zionist Organization in Germany), later affiliated themselves with it.

²²⁹ B. Simonsohn to the JRSO, September 25, 1953, CAHJP, JRSO-NY, 426b. It was sent together with the letter of van Dam to the JRSO which indicated that the claims of the Central Welfare Agency was officially supported by the Zentralrat.

received.²³⁰ Yet, it was also true that the situation of the Jews in Germany had fundamentally changed from the immediate postwar days, when nobody thought that the Jewish community would consolidate on German soil.²³¹ As van Dam declared in 1955, the “ideological debate on the acceptability and possibility of continued existence of Jewish communities in Germany belong[ed] to the past.”²³² There were no more talks of the “communities in liquidation,” to the contrary, the Jewish population was growing. Children were born to DP parents, presenting tasks which the aging communities did not really foresee – Jewish education and youth projects. In May 1954, for the first time since the fall of National Socialism, a conference was held at Bad Nauheim to discuss the ways to invigorate Jewish cultural life and education.²³³ In addition, the waves of Anti-Semitic purges in 1952/53 in the Eastern European countries brought about the flight of Jews in East Germany to the West, whose welfare fell on the shoulders of the West German Jewish communities.²³⁴ Furthermore, with the commencement of the German Wiedergutmachung with the 1953 BEG, the number of the returnees from abroad increased (which would increase further after the revision of the BEG in 1956 which provided the immediate payment of DM 6,000 to aid the re-integration of German Jewish

²³⁰ On the distribution of the Claims Conference money, see, Claims Conference, *Five Years Later: Activities of the Conference on Jewish Material Claims Against Germany, 1954-1958* (New York, the Conference, 1959).

²³¹ Protokoll über die Besprechung zur Vorbereitung eines Abkommens zwischen den Nachfolge-Organisationen und den jüdischen Gemeinden Westdeutschlands, September 16, 1954, JDC-J, Geneva IV, 9/1A, file 1.

²³² Summarischer Tätigkeitsbericht des Generalsekretärs für die Zeit vom 1. Juli 1954 bis 30. Nov. 1955, ZA, B.1/15, 334.

²³³ Institute of Jewish Affairs of the World Jewish Congress, *European Jewry Ten Years After the War: an Account of the Development and Present Status of the Decimated Jewish Communities of Europe* (New York: the Institute, 1956), p.137.

²³⁴ The Slansky Trial in Czechoslovakia at the end of 1952 and the so-called “Doctors’ Plot” in Moscow in the beginning of 1953 created an atmosphere of political persecution. Approximately 400 Jews fled to West Germany only in January 1953. On the flight of Jews from East Germany 1952/53, see, Mario Kessler, *Die SED und die Juden zwischen Repression und Toleranz: Politische Entwicklungen bis 1967* (Berlin: Akademie, 1995), p.101; Ulrike Offenber, “*Seid Vorsichtig Gegen die Machthaber*”: *Die Jüdische Gemeinden in der SBZ und der DDR 1945 bis 1990* (Berlin: Aufbau, 1998) pp.84-90.

returnees.). The German Jewish community, a decade after the war, was, nonetheless, not yet standing on sound economic footing.

With the new claims from the Zentralrat and the Central Welfare Agency, the JRSO felt compelled to deal with the entire complex of the restitution and indemnification issues with the communities and the central organizations in an overall agreement. Talks to settle the entirety of the claims began in 1954. The possible solution was to establish a trust fund with a part of the indemnification money, from which the communities and their central organizations could draw for necessary social and cultural works. This could be a form of security for the communities in times of need. Yet, there were voices among foreign Jews to oppose a capital fund because it implied reserves for the Jews in Germany, while “the rest of the Jews in the world ... had to live from hand to mouth.”²³⁵

On June 7, 1955 in London draft agreements were prepared together by van Dam, representing the Jewish communities and their institutions in Germany and Jerome J. Jacobson, General Counsel of the JDC in Paris, representing the foreign Jewish organizations. According to the draft agreement, the JRSO was to pay DM 1 million to the proposed fund and 50 percent of the value from indemnification claims arising out of damages to synagogues and former communal property.²³⁶ It was subjected to the approval and the ratification of the German Jewish groups and the board of directors of the JRSO.

Before the agreement was ratified, however, another difficulty surfaced with the projected revision of the BEG. While considerably improving the rights of individual persecutees, the draft law contained a serious infringement of the rights of the successor

²³⁵ Minutes of a meeting on the Gemeinde problems, October 21, 1953, CAHJP, JRSO-NY, 426a.

²³⁶ Agreement between the JRSO and the Arbeitsgemeinschaft der jüdischen Gemeinden der US Zone and the Zentralrat, June 7, 1955, CAHJP, JRSO-NY, 426c.

organizations. It was to introduce the limit of DM 75,000 per object as the ceiling of the indemnification payment, although the 1953 BEG provided that no limit would be set to the claims of the successor organizations.²³⁷ If the synagogues were burnt down during the 1938 pogrom, DM 75,000 would not even suffice to erect new ones. The JRSO as well as the Jewish communities protested the projected amendment,²³⁸ and at the last moment a provision was inserted freeing the persecuted religious associations from this limit. In other words, the Jewish communities as persecutees could exceed this limit if judged necessary. The exceeding amount was called the *Überhang* (overhang), for which the communities could file claims in their own behalf.²³⁹ The revised BEG was issued in June 1956, in effect from October 1, 1953, being considerably disadvantageous to the successor organization. In addition to the treatment of the *Überhang*, other claims arose which needed to be divided between the JRSO and the communities,²⁴⁰ which again postponed the signing of the overall agreement.

It was not until December 16, 1959, that the JRSO board of directors approved the agreement which had been already ratified by the communities and the Zentralrat, finally settling all the outstanding claims between the JRSO and the Jewish groups in Germany.²⁴¹ It reads as follows:

²³⁷ BEG (1953), Art. 24 (2).

²³⁸ Van Dam to Bundesminister der Finanzen, Fritz Schäffer, October 6, 1955, ZA, B.1/15, 334; JRSO Annual report November 1, 1954-November 1, 1955, CZA, Z6, 991; Herbert Schönfeldt, the Claims Conference, to the Ministerialdirektor Bernhard Wolff, Bundesministerium der Finanzen, March 9, 1956, JDC-J, Geneva IV, 9/B, file 9.

²³⁹ BEG (1956), Art. 148 (3).

²⁴⁰ The JRSO together with the British and French successor organizations concluded with a bulk settlement with the Federal Government for the monetary claims against the Reich (such as confiscated securities, insurance policies and bank accounts) in 1956 for the payment of DM 75 million. Part of this amount also needed to be divided with the communities.

²⁴¹ Kagan to van Dam, January 31, 1960, CAHJP, JRSO-NY, 882. *The Report* of the JRSO mentions that the agreement was reached in December 1957 (p.23), however, this seems to be a mistake and the correct date should read 1959.

This agreement represents a full and total settlement with respect to the assets, rights and claims of the JRSO and accordingly the Landesverbände and the Zentralrat each agrees for itself and its members that there are no further claims of any nature or kind whatsoever on the part of either of them or any Community or communal organization of the former U.S. Zone in respect of any property or interests of the JRSO anywhere.²⁴²

In principle, indemnification claims followed the restitution claims, that is, the party which received the properties filed for the indemnification. They were in fact both flexible and practical enough to divide the claims to the party which had the stronger position to pursue the claims. The agreement provided that the JRSO would pay 50 percent of the indemnification payments from the Länder into the trust fund (if this did not amount to DM 4 million, the JRSO would pay an additional DM 1 million). Half a million Marks from the DM 75 million bulk settlement with the Federal Government for the monetary claims against the Reich would be also paid into the fund.²⁴³ It was explicitly stated that agreements already completed by the JRSO with the communities would remain in full force and would not be impaired. On the other hand, any recoveries which the communities would obtain by virtue of the Überhang would not be affected by the agreement (see Appendix 6). Two trust funds were eventually created in 1963: the Communal Fund for Hesse, Württemberg-Hohenzollern and Baden (*Jüdische Gemeindefonds Hessen, Württemberg und Hohenzollern, Baden e.V.*), and the Communal Fund for Bavaria (*Jüdische Gemeindefonds Bayern e.V.*)²⁴⁴

²⁴² Agreement between the JRSO and the Landesverbände Bavaria, Hesse, Württemberg-Hohenzollern, the Supreme Council of Baden and the Zentralrat der Juden in Deutschland (translation of the original German text), CZAHP, JRSO-NY, 340b.

²⁴³ Ibid. The share of the communities was reduced by the payments which had been actually made by the JRSO. From its inception until September 1956, the JRSO paid the communities a total of DM 1,366,163. (JRSO cumulative statement of receipts and disbursements from inception, August 1, 1947 to September 30, 1956, CZA, Z6, 1594.)

²⁴⁴ See, Weismann, p.789.

The agreement signified the epilogue of the long dispute, which more or less dominated the landscape of postwar Jewish life in Germany. Its most important aspect was that the communities obtained a source which guaranteed their existence, which had been the focal point of their struggle. It enabled them to plan social and cultural work for a long span, which had not really been possible until then. On a practical level, the creation of the funds signified the complete transfer of the responsibility for Jewish welfare to the hands of the Jews in Germany themselves. In a symbolic way, it represented the end of the tutelage by the foreign Jewish organizations. It was a late departure for a community toward independence, whose mere existence was disputed only a decade before.