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THE BERNHEIM PETITION  
A LAST STAND OF GEGENWARTSARBEIT

By

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And approved by

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## ABSTRACT OF THE THESIS

The Bernheim Petition: A Last Stand of Gegenwartsarbeit

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In May 12, 1933, a petition in the name of Franz Bernheim was sent by the Zionist leadership to the League of Nations in an effort to defend the Jews of German Upper Silesia from Hitler's legal onslaught of their civil and social rights. Since the region was protected by the German-Polish Convention of 1922, the Council of the League of Nations accepted the petition as legitimate and ruled that the Nazi German government had to comply with its international obligations. In an attempt to halt further political damage, and only after a protracted discussion, it agreed to comply. The German-Polish Convention would expire on July 15, 1937, in which date all Nazi laws would apply to this region. In the interim, Nazi compliance was uneven at best. Given these results, the Zionist leaders chose to concentrate their efforts on the Zionist project in Mandate Palestine as a more viable goal to defend Jewish rights.

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This work is dedicated to my husband Bill who has never wavered to support my quest for knowledge: for all reasons and all seasons, thank you. To my children Eli, and the editor-in-charge Leora, who have enriched me with seven grandchildren, hoping that this work will continue lighting the path to Jewish identity and the love of the State of Israel for them and their own children.

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## Introduction

### Principal Players

Centralverein der deutschen Staatsbürger Jüdischen Glauben: CV.

Zionistische Vereinigung für Deutschland: ZVfD.

Zionist Executive Organization in London. ZO.

Team of the Bernheim Petition: Nathan Feinberg, Emil Margulies, Leo Motzkin, Jacob Robinson, and Franz Bernheim.

Activists in Upper Silesia: Arthur Kochmann, Eric Schlesinger, Georg Weissmann.

Representatives in the League of Nations: Pedro de Azcárrate, Seán Lester, Friederich von Keller, and Eamon de Valera.

Upper Silesia Mix Commission: President Felix Lutwig Calonder.

German Leadership in German Upper Silesia: Hans Kerr, Helmuth Brückner, Joseph Wagner.

### Glossary

#### Hebrew

*Aliyah*: Literally ascent. To emigrate to Israel - then Mandate Palestine.

*Hachshara*: agricultural preparation to immigrate to Mandate Palestine.

*Shtadlanut*: Intercession with the authorities.

*Eretz Israel*: The ancestral land of the Jews.

#### German

*Gegenwartsarbeit*: Present activities in the Zionist movement.

*Gemeinde*: community.

*Gewalt*: Violence.

*Massnahmen*: Measures or decrees.

*Palästinaarbeit*: Zionist activities tied to the forging of a Jewish state in Palestine.

*Sturmabteilung*: SA. Nazi storm troopers.

*Sicherheitsdienst*: SD. Nazi Security Department.

*Staatlosigkeit*: without a citizenship.

*Machtergreifung*: Seizure of power.

*Untermensch*: inferior human being.

In her classic book *The War against the Jews* Professor Lucy Dawidowicz asserted briefly that the Bernheim Petition was just a footnote when confronted with the larger history of Nazi antisemitism.<sup>1</sup> Yet, appraised from the 1933 Hitler's recent seizure of power, the Bernheim Petition rises from "just a footnote" to highlight a valiant effort on behalf of the Jewish community. The examination of the events—from its initial steps, through the process as it developed at the highest court in the world at the League of Nations, as well as its aftermath—vindicating the Bernheim Petition as an important turning point in the history of Zionism.

Jews in Germany acquired civil and political rights in July 1869 when the Prussian King Wilhelm I promulgated the North German Confederation's Constitution: twenty two German states recognized those rights. Soon thereafter Germany became a nation-state and those rights were also ratified in the Constitution of April 14, 1871. Finally, when on April twenty two of the same year Catholic Bavaria gave the requisite nod, all German Jews across the land were now officially free of disabilities that hampered their own participation and integration in society; hence, emancipated.<sup>2</sup>

German Jews gratefully and enthusiastically accepted the assimilatory preconditions of emancipation, or *bürgerliche verbesserung*, by educating themselves in universities. They became doctors, scientists, jurists, writers, artists, entrepreneurs in metal, chemical and electrical industries while also adopting wholeheartedly German culture and its societal values. But while Jews acculturated this did not necessarily mean

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<sup>1</sup> Lucy Dawidowicz, *the War against the Jews 1933-1935* (London: Penguin Book, 1987) 231.

<sup>2</sup> Reinhart Koselleck, "The Limits of Emancipation: A Conceptual Historical Sketch" in *The Practice of Conceptual History, timing History, Spacing Concepts* (Stanford California; Stanford University Press, 2002) 22. "We can speak of emancipation as the singular act of the state granting equal rights. The process designed to achieve equal rights is long and it entails adaptation, as well as habituation, or self-emancipation."



that society granted them all their constitutional rights. In practice, quite often administrations could easily undermine legal protections. For example, it was almost impossible for a Jew to become a full professor of humanities, or be a member of the officer's corps, even if highly qualified. Therefore, Monika Richarz argues that it is not enough to consider the legal status of a minority, since social practices have a decisive impact too. An adverse social dynamic would definitely undermine emancipation since that society refuses to accept the minority group in question; under such conditions the promises of acceptance in all parts of society would remain unfulfilled.<sup>3</sup>

Indeed, the framework for a backlash against the promises of emancipation was set when some segments of German society expected Jews would shed Judaism and convert to Christianity. Another segment, mostly middle class, frightened by the rapid social upward mobility that Jews achieved, also resisted.<sup>4</sup> Thus, economic factors also serve as obstacles against the emancipation of a minority. Among the inciters espousing these harmful views was the notorious Wilhelm Marr. He popularized the word *antisemitismus*- to substitute it for the term *Judenhaas*, or Jew hatred. This neologism meant to convey hatred beyond Christianity: Jews as an ethnic group more than on religious grounds.<sup>5</sup> To bring emancipation asunder Marr wrote a pamphlet titled *The Victory of Jewry over Germandom* charging Jews with ineradicable, stereotypical, faults such as “mendacity, ethical inferiority, instinctive hatred for non - Jews, an inability to do hard physical labor, and prone to conspiratorial agendas.”<sup>6</sup> Marr's vociferous message

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<sup>3</sup> Monika Richarz, “The History of the Jewish during the Nineteenth and Early Century” in the *Holocaust and the United Nations Outreach Programme*. (A reprint of a Seminar given in Berlin, 2008) 78.

<sup>4</sup> Monika Richarz, *History of the Jews*, p. 79.

<sup>5</sup> Hagit Lavsky, *Before the Catastrophe: The Distinctive Path of German Zionism* (Detroit: Wayne University Press, 1998) Second Edition. 13.

<sup>6</sup> Richard Levy, ed. “Wilhelm Marr” in *Antisemitism: A Historical Encyclopedia of Prejudice and Persecution* Vol. 2 (Santa Barbara California: ABC CLIO, 2005) 445-446.

was a turning point: political parties arose with the sole platform of overthrowing Jewish rights, framing it as a scientific solution to their “Jewish Question.” All these antisemitic parties, while having a diverse constituency, advocated similar measures: Jewish exclusion from government and the teaching professions, limits on immigration, and racially based censuses.<sup>7</sup>

In response to the rise of antisemitic attacks, Raphael Löwenfeld, a German journalist, published anonymously, a pamphlet entitled “*Protected Jews of Citizens*” (*Schutzjuden Oder Staatsbürger?*)<sup>8</sup> As the title indicates, Löwenfeld advised his fellow Jews against begging for state protection. While the Court Jews fulfilled this role in the past, now German Jews could and should demand direct respect for their hard earned constitutional rights.<sup>9</sup> As a result, the leadership launched an umbrella organization based on defense, or *abwherkampf*, as of March 26, 1893: The Central Association of German Citizens of Jewish Faith (*Centralverein Deutscher Staatsbürger Jüdischen Glaubens*), or CV. As the name indicates, their key focal message was: that they were indeed German citizens - albeit of another faith.

Undoubtedly, the establishment of the CV was not simply an act of self-defense against antisemitism; it also represented a very public admission that neither social integration nor legal equality had been truly achieved. While there was a measure of

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<sup>7</sup> See, Richard Levy, *The Downfall of the Anti-Semitic Political parties in Imperial Germany* (New Haven CT: Yale University Press, 1975).

<sup>8</sup> Klaus J. Hermann, “Political Response to the Balfour Declaration in Imperial Germany: German Judaism” in *Middle East Journal* Vol. 19. No. 3, 1965. 306. The anonymous article was published by Schweitzer & Mohr in 1893, 15, and 26.

<sup>9</sup> For a complete story of the functioning of the Court Jews see, Selma Stern, *The Court Jew* (New Jersey: Transaction Publishers, 1984). These Court Jews thanks to their position in the monarchical courts – apart from the duties that they had to the king, they also had the role of interceders for the Jewish community. Frequently they were the heads of their community. (In Hebrew *shtadlan* - plural *shtadlanim*.) By the time Löwenfeld mentioned them that type of lobbying was no longer acceptable, indeed it became a pejorative.

social tolerance, the latter was exceedingly superficial since privately many Germans displayed either contrary views, or were totally indifferent to the Jews' fate; hence their receptivity to the message of Political Antisemitism. Moreover, positions in academia or the military were not the only exclusionary practices since posts in the judiciary and diplomatic corps were also frustratingly off limits.

In time, the CV became the political voice of the majority of the German Community while also committed to the overall social welfare of its members. The latter were a majority in the middle and upper – middle classes, religiously liberal, who trusted CV's *abwehrkampf* or defense methods with which they hoped to safely navigate their further integration into German society. The CV's leadership aspiration was a commitment to self-defense via a rational civil discourse against antisemitism by fighting any such assault in the courts, which at that time for the most part dealt with Jewish issues in a sympathetic way.

The CV's elite urged its membership to strengthen the cultivation of German convictions by fostering *Deutschtum* or Germanism in its own constituency: it should be part of their daily life as a civic virtue.<sup>10</sup> The other task of the organization was to educate the German public through educational pamphlets meant to elucidate the meaning of Judaism and Jewish history. This literature tended to be apologetic in nature by stressing constantly the mutual values of both Judaism and Germandom that should foster integration. As *quid pro quo*, CV's members displayed open patriotism, and through their newspaper, the CV *Zeitung*, editorials and articles reinforced the twofold

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<sup>10</sup> Stephen M. Poppel, *Zionism in Germany, 1897-1933: The Shaping of a Jewish Identity* (Philadelphia: The Jewish Publication Society 1976) 63.

message: integration and loyalty to the Fatherland.<sup>11</sup> The CV grew first in Berlin dictating policy from there. It had branches in most of the German cities with a local Jewish community or *Gemeinde* - including a smaller number of Jews living in Upper Silesia. By 1918, the CV reported a total membership of 200, 000.<sup>12</sup>

However, among the younger generation of German Jews, especially university students, the perception was that the bourgeois aspirations of their parents were barren, and they chose instead the divergent path of Zionism. This minority group was inspired by Moses Hess' book *Rome and Jerusalem* published in 1862, officially organizing as the *Zionistische Vereinigung für Deutschland*, or ZVfD, in 1897, five years after the CV.<sup>13</sup> These younger Zionists' theoretical framework argued that authenticity meant emphasizing a new consciousness based on the Jews' own distinctive history, culture and values. Hence the need for a positive alternative: a return to a primary Jewish identity while working further to realize the hope of return to their ancestral home, and leave antisemitism behind permanently.<sup>14</sup> Like the CV, ZVfD published a newspaper called *Jüdische Rundschau*, or Jewish Review. It published educational articles on Judaism and its distinctive culture and values. Other articles emphasized Jewish history to convey the primacy of a return to the ancestral homeland, or in Hebrew *Eretz Israel*. By 1912, the Zionist Organization had about 8,400 members.<sup>15</sup> Like the CV they also had branches in the different *Gemeinde*.<sup>16</sup>

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<sup>11</sup> Gregor Hufenreuter, "Central Association of German Citizens of the Jewish Faith" in *Antisemitism* Vol. One. Edited and translated by Richard Levy, 111-112.

<sup>12</sup> Klaus J. Herrmann "Political Response to Balfour," 306.

<sup>13</sup> Klaus, J, Herrmann, 307-308.

<sup>14</sup> Richard Lichtheim, *Das Program des Zionism* (Berlin: Zionistische Vereinigung für Detuschland, 1911) 35.

<sup>15</sup> Klaus Herrmann, 307.

<sup>16</sup> Hagit Lavsky, *Before the Catastrophe*, 22.

Since their inception, both of these Jewish organizations in Germany expressed their ideological rivalry, and sometimes harsh dueling, via not only their respective periodicals but in conferences as well. Several generations of ZVfD and CV's members fought back and forth sharpening their ideology and neither of them gave up their stance. While the CV saw progress given their social mobility, the Zionists derisively argued back that such progress was ambiguous and unexciting.

Included in this latter group were young Orthodox Jews. For them it was a natural draw to fit into the Zionist camp since their formative experiences exposed them to these notions since childhood; thus, Zionism for them was an outgrowth of a deeply felt Judaism. Other young German Jews joining the Zionist camp - even when they had tenuous ties to Judaism - found object lessons which enhanced their sense of uniqueness and individuality; for them Zionism filled a deep personal need.<sup>17</sup> Since they were younger they even dared to make fun of the CV: "Could the name of the organization be changed to the more appropriate one: Was it not better to call them 'Germans of Jewish disbelief?'" If they were intentionally belligerent it was in an effort to gain adherents to their own cause.<sup>18</sup>

The CV leadership countered the Zionist arguments by saying that the figment of imagination laid in *their* camp, surely, the Zionists' dream would never come true after thousands of years in the Diaspora. Furthermore, if there was any utility to the Zionists' dream - if it became a real project - the goal should be to provide a secure homeland for the Eastern Jews, or *Ostjuden* - not them. As long as the Zionist group narrowed their

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<sup>17</sup> Sanford Ragins, *Jewish Responses to Antisemitism in Germany, 1870-1914* (Cincinnati, Ohio: Hebrew Union Press, 1980) 140.

<sup>18</sup> Stephen M. Popel, *Zionism in Germany*, 31.

goal to this objective only, the CV welcomed their efforts without interference.<sup>19</sup> Disparaging the Ostjuden was part and parcel of their upward definition as German Jews: they were suffused with German *Kultur* and the *Ostjuden* lacked it - therefore, the Ostjuden's presence, dress, language and habits were perceived as a hindrance to their own advance. Ultimately, the CV's leadership felt vulnerable precisely because Zionism expressed an open denial of their avowed emancipation principles and progress. Thus, neither camp could flatten the ideology of the other nor did they stop debating once Hitler came to power.

The CV liberals were correct up to a point: the ZVfD's aspiration to return to *Eretz Israel* was a utopia. The land was occupied by the Ottoman Empire, and as in any other Muslim country Jews were considered second class, or *Dhimmis*; in contrast they had rights in Germany. Nonetheless, the Zionists did not despair since their life had a daily focus and projected future. In time, Political Zionism grew as a movement with members all over the Jewish Diaspora; the leadership became transnational. To their surprise, the British gave the Zionists an intentional boost when in an attempt to win the Great War: they requested the support of German Jews and world Jewry. As quid pro quo the British issued the Balfour Declaration of 1917. The Zionist Executive moved from Berlin to London to make sure that the promise became a reality.<sup>20</sup>

Indeed, once the Allies proved to be victorious, and set free the Ottomans lands militarily, the newly formed League of Nations supported the British move to gain control of the area of *Eretz Israel* with a Mandate supervised by the League itself. The

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<sup>19</sup> Klaus J, Herrmann, "Political Response to the Balfour Declaration," 315.

<sup>20</sup> See Howard Grief "Pillars of Support underlying Jewish Legal Title (Sovereignty) in Palestine under International law," in *The Legal Foundation and Borders of the State of Israel under international Law* (Jerusalem: Mazo Publishers, 2008) 67.

British Mandate for Palestine would serve as a trustee until the Jews could govern themselves.<sup>21</sup> The British military control became civilian after the Allies' conferred in San Remo, Italy in 1920. It was there that the Balfour Declaration became integrated into this treaty. This conference reaffirmed Wilsonian notions of self-determination for all ethnic groups. In this manner the Balfour Declaration became part and parcel of international law.<sup>22</sup> Meanwhile, the smaller German Zionist branch, albeit weakened by the Executive office move to London, remained under the umbrella of now called Zionist Organization, or ZO. It continued dueling with the CV backed by the strength which the Balfour Declaration gave to their side of the debate.<sup>23</sup>

The CV also received a boost to their aspirations, when after the Great War, Germany transformed itself from an empire to a democratic Republic called Weimar. The German leaders assembled in this city to frame a constitution that would back up the republic. Since it was drafted, among others, by the leading Jewish Jurist Hugo Preuss the CV could boast it was drafted by "one of us." The constitutional changes were sweeping, respecting individual and social life as well as religious interests. They also reaffirmed all the civil and social rights that Jews had achieved to date, while annulling any other legal disability existing since the Imperial Reich. It seemed like the authentic realization of a

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<sup>21</sup> See, Susan Pedersen, *the Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015) 391. The 68 words of the Balfour Declaration were included in the Mandate. William Ormsby-Gore helped Lord Balfour to draft the declaration, and later on Ormsby-Gore and the future High Commissioner for Palestine, Herbert Samuel, helped to include that Declaration in the Mandate documents. The British Mandate would be supervised by the League of Nations.

<sup>22</sup> Howard Grief, "Pillars of Support" The next Treaty of Sèvres defined with more details the issues regarding the Mandate of Palestine and the issues of Jewish immigration that would assure the Jew's ability to form a self-governing body at a later date in Mandate Palestine. This treaty was not ratified because of the defeat of the Turkish Sultan when Kemal Ataturk took over. pp. 45-67.

<sup>23</sup> Jehuda Reinharz, "The Zionist Response to Antisemitism in the Weimar Republic" in *The Jewish Response to German Culture From the Enlightenment to the Second World War* Edited by Jehuda Reinharz and Walter Schatzberg (Tauber Institute of European History Brandeis University Press, 1985) 267.

political dream.<sup>24</sup> However, as Monika Richarz stressed, despite the backing of a solid legal framework sustaining emancipation, a backlash occurred with the birth of Nazism. Yet, even then the leadership of the CV felt robustly equipped to address these new antisemitic challenges armed with the Weimar Constitution.

The CV's leadership also advanced their arguments by pointing out how Jews in most of the surrounding European countries through the interwar period were mistreated. For example, the Ukrainians massacred at least 60, 000 Jews in a pogrom wave in 1920. The Austrians denied citizenship to Galician Jews threatening to expel them from Vienna to Poland. The Hungarians and the Polish governments instituted *numerus clausus* in the universities, the public employment and the free professions. Similarly, university students in Cluj Iasi, as well in Bucharest were beaten and prevented from entering the university.<sup>25</sup> In contrast, in Germany, they were out of harm's way; those feeling of security and well being were authentic. The Zionists definitely knew that this was true; they were safe but argued they were not at home, and it did not distract them from the project of a Jewish homeland.

The arguments between the two groups remained unchanged, and for the most part unabated during the entire Weimar period; both felt they had the truth on their side without a need to bend. The Zionists felt fortified by the Balfour Declaration, and the CV felt armed with the Weimar Constitution. The CV acted locally with no further national expectations as Jews. In contrast, ZVfD had a twofold aim: the project of *Palästinaarbeit* in Mandate Palestine, or *Zionut* in Hebrew ( **there** in Zion) supporting nationalist aims,

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<sup>24</sup> Peter Pulzer, *Jews and the German State: Political History of a Minority* (Detroit: Wayne State University Press, 2003) 344. Pulzer cites Peter Gay as the author of "One of us," when referring to Hugo Preuss.

<sup>25</sup> David Engel, "Jewish Diplomacy at a Crossroads," in *1929 Mapping the Jewish World* Edited by Hasia R. Diner and Gennady Estraiikh (New York: New York University Press, 2013) 32.



and the defense of the Diaspora's Jews - not only the Jews in Germany but all Jews wherever they happened to be - hence *Gegenwartsarbeit* ( present work **here**).

It was with *Gegenwartsarbeit* in mind (while never losing sight of their *Palästinaarbeit*) that the Zionist leadership made their presence felt at the 1919 Paris Conference. Jews of all persuasions and diverse Eastern European countries converged to press the world community for better legal constraints against the newly formed states in which they lived as a minority. Under the goodwill that reigned then, the League of Nations acknowledged the Jewish claims and enlarged them to protect any other such minority living in those new states. Furthermore, it took the responsibility to supervise those rights in what became known as the Minorities Protection System or MPS. As a result, Zionists leaders working with other groups from different countries, set up headquarters in Geneva, to monitor the application and progress of the MPS System in tandem with the ZO, precisely to scrutinize the above mentioned antisemitic excesses in those countries in the interwar period and advance the Zionists' project in any way possible.

It is important to note that the MPS system did not include the German Jews who strenuously insisted that they were not a minority in Germany at all. Yet, the German Jews, despite their constitutional protections, also suffered discrimination and open antisemitism during the Weimar Republic years. In addition, they faced the rise of Nazism: a movement similar to Marr and the Antisemitic Parties, which this time intended to halt once and for all any Jewish integration into German society. Nazism depicted Jews and Judaism as "alien and corrosive forces within the body politics." For its part, the CV leadership observed the Nazi threat as a continuation of prior waves of

antisemitism, which they had fought back, and based on their historic legal successes they argued that if they could not vanquish it, at least they would contain it, and continue to be German citizens.

In the intervening time, the above mentioned transnational Zionist Jewish leadership, after having further experience with the MPS application through ten years, reevaluated its results in 1929 and found them, wanting. At first, when this system was instituted all Jews had great expectations on its realistic implementation. For example, Louis Marshall (not a Zionist) considered it one of the greatest achievements of humankind when he stated: “[The MPS] is an important principle of international law - according to which any violation of the rights of a minority is an offense not only against the [offended] individuals but against the law which controls all the civilized nations of the earth.”<sup>26</sup>

Disappointed about their new downward assessment but not staying idle, the Zionist leadership then conferred with non-Zionists Jews and saw the need to speed up the Zionist project. In 1929, they founded a branch of the Jewish Agency for Palestine with headquarters in Geneva whose goal was to smooth the progress of immigration to the safer heaven of Mandate Palestine.<sup>27</sup>

The next year both the CV’s and the ZVfD confronted with great forebodings the serious fact that Nazism had gained strength, and threatened to win elections; thus by having a greater grip in the body politics, the Nazis would now have a direct impact on the Jewish community. One logical option for both Jewish organizations was to set aside their genuine theoretical differences and collaborate to cut short Hitler’s bid in 1930 -

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<sup>26</sup> Louis Marshall’s statement in David Engel, “Jewish Diplomacy at a Crossroads” 29. Originally in Charles Reznikoff, ed. *Louis Marshall Champion of Liberty: Selected Papers and Addresses* (Philadelphia: Jewish Publication Society, 1957) .544, 546.

<sup>27</sup> David Engle, ” Jewish Diplomacy” 34.

albeit begrudgingly. This marriage of convenience was not an easy task particularly for the Zionists since they functioned under the dictum of abstention from Germany's political scene; they truly had little experience dealing with it but willingly mobilized to talk with members of different Jew-friendly German parties. After the elections, both the ZVfD and the CV - (shocked that the Nazi Party won) - bitterly fought each other diming any further opportunity for close collaboration: CV blaming ZVfD for their clumsiness in politics, and the latter pointing out the CV's strategies as trite and futile.<sup>28</sup>

Hitler's electoral success occurred because the Weimar Republic was never supported by most sectors of society. It did not find support among the bureaucracy whose members were still very loyal to the monarchical system. The juridical sector did not respect it either. The armed forces stayed at a distance with the pretext of neutrality while constantly undermining it. The religious sector profoundly detested the constitutional separation of state and church. Most importantly, the lack of support was permeated by a revanchist impulse to regain the status and territories lost in the Great War. Under these circumstances the republican government could not implement the desired internal changes to implant a true democracy. Retrospectively, the Weimar Constitution while a progressive legal structure in theory, in practice was not so: it left a vacuum of power since the leadership was unable to restrain the hostility it generated. Hitler won that election by pushing forward two not so distinctive campaigns: anti-Communism and antisemitism.<sup>29</sup>

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<sup>28</sup> Jehuda Reinharz, "The Zionist Response to Antisemitism in the Weimar Republic," *The Jewish Response to German Culture*, Jehuda Reinharz and Walter Schatzberg, eds. (New England: University Press of New England, 1985) 279.

<sup>29</sup> Constatino Mortari, Walter Jellinek, and Ottmar Bühler, *La Constitución de Weimar: 11 de Agosto de 1919* (Madrid: Editorial Tecnos, 2010) 72.

In 1933, Hitler finally seized power and proceeded to apply his anti-Semitic campaign *ab initio* through legislation. The latter was due to Nazi judgment, which argued that “emotional antisemitism” such as pogroms, or *Gewalt*, did not produce the desirable outcomes; detrimental legislation, would be more practical.<sup>30</sup> As a result, German Jews were soon engulfed and attacked from every corner by a total negation of their hard earned constitutional rights. This vicious, predatory, assault stunned the Jewish world, but the Zionists were alert to the opportunities to continue *Gegenwartsarbeit*: they meant to save German Jews based on their experience in the League of Nations’ guarantee to protect minorities. They envisioned using the apt window of opportunity - granted ironically by the German leadership – in articles of protection embedded in the bilateral treaty between Germany and Poland of 1922.

The Germans had requested these detailed articles to keep Poland in check since there was a German minority on the Polish side of Upper Silesia. The treaty contained an article permitting a petition or redress in case either of the two states did not fulfill the binding articles of protection of any minority. The petition could be addressed at the local level through the Mixed Commission that had been set to keep peace on both sides of the Plebiscite, but the petition could also be sent directly when necessary to the Council of the League of Nations. Hence, the Zionist leadership’s formulation of what it became known as the “Bernheim Petition.”<sup>31</sup> The appeal to the League of Nations had still another, unstated, larger objective: if accepted at the League’s Council, it would perhaps prompt a discussion which hopefully would facilitate unraveling the Nazi assault on all the Jews in Nazi Germany.

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<sup>30</sup> Clemens Volnhals, “Gemlich Letter” in Richard Levy, *Antisemitism* Vol. One, 255-256.

<sup>31</sup> See, Julius Stone, *Regional Guarantees of Minorities Rights* (New York: The MacMillan Company, 1933).

However, and not surprisingly, the CV's leadership - even prior to the discussion of the Bernheim Petition at the League of Nations - protested strenuously that they did *not* want to be saved in this manner: their instincts were genuine and informed by an ideology that had served them well for sixty three years. The experience of survival under other antisemitic waves guided them, and Nazism was similar; surely, it could be extinguished in the same manner. On further thought, too, quite possibly they were not so keen on being saved by the Zionist leadership, which were their ideological antagonists. In addition, and very realistically so, such a show up in the eyes of the world, would, of course, humiliate the Nazi regime, and might invite worse retaliation than just the legislative measures they now endured. Why make their situation even more precarious? This reasoning also held true for the CV Jews residing in Upper Silesia: they also did not consider themselves to be a minority, and did not want a reprisal at the hand of the very vocal Nazi shock-troops called *Sturmabteilung*, or SA, residing there.

The internal debate between the CV and the ZVfD caught the transnational Zionist team working with the Bernheim Petition by surprise. Yet, the Zionist leadership was not deterred by those arguments since *Gegenwartsarbeit* merited their best efforts at the League of Nations. Disregarding all these protests - including those directly received in the Geneva office - the team went ahead with the formulation and delivery of the petition with the backing from the ZO in London. The Bernheim Petition was delivered on May 12, 1933, to the League of Nations. Retrospectively, we know that the Bernheim Petition, while victorious at the level of the League of Nations on local terms, was not amplified to cover all the Jews of Germany. Yet, it did provide a varied measure

of protection for those Jews settled in German Upper Silesia, until the Convention's termination date of July 15, 1937.

The uneven application of the Nazi government promises after the Bernheim Petition's official victory at the League of Nations proved to the Zionist leadership that they ultimately had no real power to save or defend the Jews in Europe as minorities in the long run. While no generation is granted the vision of the future, the leadership understood that the building of the homeland offered a better option to control Jewish destiny by achieving a majority *there* rather than "Jewish diplomacy without a state" in the Diaspora. Nazism indeed narrowed their options to a virtual standstill. The Bernheim Petition must therefore be perceived as a historical turn point which led to the Zionists' departure to Mandate Palestine to work on 'practical Zionism' leaving *Gegenwartsarbeit* behind.

Indeed, the main actors responsible for forging the Bernheim Petition, Georg Weissmann, Nathan Feinberg, and Emil Margulies, emigrated to Mandate Palestine in an attempt to focus primarily on the work of *Zionut*. Sadly, Dr. Leo Motzkin died in Paris and never reached the homeland.

#### Historiography:

The basic facts regarding the Bernheim Petition are available in the Archives of the League of Nations. Yet, few researchers have focused on this subject. Indeed, the Bernheim Petition has a scant historiography, and it is difficult to assign trends to the authors who have mentioned the Petition. Recurrent themes are the attempts to tie the Petition to the 1948 individual Human Rights, rescuing group rights, resistance to Nazism, or Jewish refugees escaping from Nazi Germany. "Jewish diplomacy" is also

explored based on the Petition. Finally, my own work emphasizes the importance of the Bernheim Petition for Zionism.

The Encyclopedia Judaica, as well as the Encyclopedia of the Holocaust cites briefly the basic events of the Bernheim Petition. It is also indexed in the Holocaust Chronicle, with the erroneous note that Franz Bernheim was incarcerated.<sup>32</sup>

Julius Stone wrote a valuable legal analysis of the regional guarantees developed in the 1922 German-Polish Convention for Upper Silesia. The Bernheim Petition is just cited in a footnote-without any further analysis. A possible explanation is that his book was published exactly in 1933, and perhaps he could not have had time to develop a theoretical understanding of the impact of the Petition.<sup>33</sup>

Karol Jonca, a Polish historian, author and professor of law and history in the University of Wroclaw, assumes the premise that the Bernheim Petition was part and parcel of other acts of non-Jewish German resistance against the Nazis. His work is included as a brief chapter titled “Jewish Resistance against the Nazi legislation in Silesia 1933-1937,” which is part of a larger work meant to honor Peter Hoffman who dedicated his life to find champions against Nazism.<sup>34</sup>

Christian Raitz von Frenzt, an Oxford University trained author, mention the Bernheim Petition in his book *A Lesson Forgotten*.<sup>35</sup> His work is an interesting review of the Minorities Protection System or MPS with the momentous collapse of the Soviet

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<sup>32</sup> Encyclopedia Judaica, “Bernheim Petition” Vol.4 (Jerusalem: Ketter Publishing House, 1972) 682. Edited by Israel Gutman, Encyclopedia of the Holocaust, “Bernheim Petition” Vol. 1. (New York: Macmillan Publishing Company, 1990) 306-207. Marilyn J. Jarran and John Roth, the Holocaust Chronicle” Franz Bernheim” (Lincolnwood Illinois: Legacy Publishing, 2002) 65.

<sup>33</sup> Julius Stone, *Regional Guarantees*, 35 n. 5.

<sup>34</sup> Karl Jonca, “Jewish Resistance against Nazi legislation in Silesia 1933-1937” In Francis Nicosia and Lawrence D. Stokes, eds. *Germans against Nazism: Non Conformity, Opposition, and Resistance in the Third Reich* (New York: Berg, 1990) 77-85.

<sup>35</sup> Christian Raitz von Frenzt, *A Lesson Forgotten: minorities protection under the League of Nations- the casw of the Germany minority in Poland 1920-1934* (New York: St. Martin Press, 1999) 162.

Union in mind. This remarkable historical event offered him a rare opportunity to revise the system used in the interwar period with the intent of reviving it for this new era. He focused on the German petitions to the League of Nations sent by the *Deutschbund* and *Der Deutscher Volkstum* both located in the Polish side of Upper Silesia. As part of his work he compared the German Petitions with the Jewish ones, and that is how he touched tangentially on the Bernheim Petition.

Prof. Carol Fink, a historian dedicated to the study of Human Rights and Jewish Rights in particular, mentioned the Bernheim Petition in her book titled *Defending the Right of Others* while analyzing the overall efforts of the Jewish leadership to defend all minorities.<sup>36</sup> Fink's brief comment about the Bernheim Petition as "*a peculiar document*" is of key importance for our understanding of it. The Petition was extensive and exquisite in details. Thus, she hints that this outline of claims could *not* have been written by Franz Bernheim himself.

Shulamit Eliash, A senior lecturer at the History Department at Bar Ilan University, Israel, added an interesting twist – worth mentioning and not discussed any place else – to the understanding of what went behind the scenes prior to the passage of the Bernheim Petition to the Council of the League of Nations.<sup>37</sup> As soon as it was received, the petition was assigned to Seán Lester, the permanent representative of the Irish Free State since 1929. As the *rappporteur* in charge of all the process related to it, he had a crucial role. They immediately enlisted the help of Nahum Sokolov, a Zionist, brilliant journalist, and with the reputation of a skilled mediator to persuade the Irish President, and Lester boss, Eamon de Valera, to add his efforts to make sure that the

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<sup>36</sup> Carol Fink, *Defending the Right of Others* 33In.225. *My emphasis.*

<sup>37</sup> Shulamit Eliash, *The Harp and the Shiled of David: Ireland, Zionism and the State of Israel* ( London: Routledge, 2007) 32-43.



Petition received a due hearing. The meeting occurred in Dublin, in the early days of May 1933, with Rabbi Isaac Halevi Herzog as an additional support. If anything, this meeting is by itself a wonderful example of intercession, which shows the continuity of the tradition practiced by Jews on their own behalf. Retrospectively, it was successful and Eliash asserts that gratitude is owed to de Valera's for his timely but discreet intervention.

Gregg Burgess, a Senior lecturer at the Deakin University in Australia, added to the literature on the Bernheim Petition by testing it as a case tied to the Human Rights Declaration in a short paper.<sup>38</sup> Burgess posits that there is an inbuilt dilemma within the structure of the League of Nations as an international institution: on the one hand, it had the obligation to respect the national sovereignty of each of its member states. On the other hand, it committed itself to care for the wellbeing of the inhabitants that dwelled within the latter. It was difficult to satisfy both aims because its primary goal was the promotion of peace. The League of Nations could not resolve this dilemma fairly because it was mindful of the rights of its members first and foremost; it follows that the welfare of the inhabitants of any of those states would come second, or not at all.

Dr. Dorothy V. Jones agrees with Burgess regarding the inherent dilemma posited between the respect of the member states and the rights of the inhabitants in those states. Indeed, the United Nations inherited the same balancing act, and is not succeeding in resolving it either. Yet, Dr. V. Jones is not discouraged arguing that each case, including the Bernheim Petition, is a step in the right direction even if it appears to be

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<sup>38</sup> Gregg Burgess, "Human Rights Dilemma: The Bernheim Petition, minority protection and the 1933 sessions of the League of Nations." 1-56. Private Communication via the author. Not in print.

elusive; hence her optimistic book title: *Toward a Just World*.<sup>39</sup> Dr. Jones praised Franz Bernheim “for his bravery, his foresight, his ability to confront Germany,” as it was a true fact that this petition was a solo effort when the fact was already known that this petition was a team achievement of “Zionist Jewish Diplomacy.” Like others before her, she comes to this conclusion by the sole review of the documents found in the archives of the League of Nations. Yes, the petition was signed by “one Franz Bernheim.” Yet, there is a larger story behind this unique effort.

This team effort is the subject of Philipp Graf’s work, which is still not translated into English.<sup>40</sup> His interest grew out of his dissertation on the subject in 2004. Four years later his excellent book expanded his work to cover many other aspects of “Jewish Diplomacy” Graf’s primary and secondary sources, in contrast to the above researchers, are extremely broad. In addition he is the first researcher using the treasure trove that exists in the Central Zionists Archives, which were used by me as well. He even traced the fate of Franz Bernheim in New York by interviewing his niece, and obtained a copy of his immigration papers to the US in 1934. The book has relevant photographs of the Zionists that worked to make the Bernheim Petition a success in the League of Nations. He also mentioned that there were no such sources to investigate in the British Foreign Office, or minimal at the Quay d’Orsay. He traced the document in Kattowicz regarding the compensation owed to Franz Bernheim in the Mixed Commission in 1935. Finally, he traced contemporary periodicals that mentioned Bernheim to wrap his analysis on the perception of the petition around the world.

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<sup>39</sup> Dorothy V. Jones, *Toward a Just World* (Chicago: Chicago University Press, 2014) xix- xxv.

<sup>40</sup> Philipp Graf, *Die Bernheim Petition 1933: Jüdische Politik in der Zwischenkriegszeit* Göttingen: Vanderhoeck & Ruprecht, 2008.

Graf considers the Bernheim Petition to be the paradigm of “Jewish Diplomacy”- which while crucial- it was not a unique event since it was part of the whole process of activities initiated in the Paris Peace Conference in of 1919. It is with this background that the Bernheim Petition should be understood.<sup>41</sup> At the outset Graf deemed Franz Berneheim a fictional tool, since what is more important in this process is the constellation of the individuals that made the Petition possible. Graf examines the work of the Comité des Délégations in great detail.

If his narrative focuses in Upper Silesia it is because that was the origin of the pivotal instrument of international law that existed; in this way the struggle against Hitler became an important chapter of Jewish history. Graf’s book expands to study the World Jewish Congress (WJC) that was the continuation of the Comité under the direction of Nahum Goldman who was also personally involved in the Bernheim Petition process. Goldman’s accomplishments were a continuation of “Jewish Diplomacy.” Among his successes was that the Jews in the Saar-after a plebiscite approving its reunification to Nazi Germany-had a year to emigrate unmolested by the Nazis and with their possessions in 1936.<sup>42</sup>

Graf’s theoretical framework is based on the philosophy of Hannah Arendt, using her book *On the Origins of Totalitarianism*. Arendt wrote, among many other things, about the disconcerting impact of statelessness or *statelosigkeit* stating: “while being a refugee one becomes extremely aware of the very notion that to have rights is conditional on membership of an organized community.” Graf paraphrases Hamlet’s question: “to belong or not to belong” to assess the refugees issues. German Jews Under Nazism were

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<sup>41</sup> Graf, 29.

<sup>42</sup> Graf, 30.

“refugees” even when they still had not emigrated, and Arendt found herself in the same condition. Since Jewish people were then in the interwar period *the* ‘minority par excellence’ they were more vulnerable to suffer this type of indignity.<sup>43</sup>

Graf concludes rightly that the larger historical context must be taken into account: there was a lucky confluence of circumstances that helped the Bernheim Petition to become a paradigm of “Jewish Diplomacy”: the 1919 Paris Peace Conference that led to the formation of the Comité, their committed work throughout the interim period up to 1933. In this way they were exquisitely prepared to deal with this new challenge. Thus, no “conspiratorial powers of domination” led to their success; rather it was just plain hard work, a passion for justice, and a love for the Jewish people.

The work of this thesis would be similar to Graf in the sense of highlighting the work of the Zionists in “Jewish Diplomacy.” However, my emphasis is on the impact that this work had on the team that brought the Bernheim Petition to fruition and in the Zionist movement in general.

The limiting dates in this work are from 1896 to 1937. The opening salvo is the formation of the two organizations that shaped the larger debate of Jewish life in Germany and the Bernheim Petition itself. The closing date is the expiration of the 1922 German-Polish Convention on July 15, 1937, whereby Hitler destroyed any further hopes of Jewish life in Germany. The work consists of three chapters and concluding remarks.

The first chapter begins by presenting the features of the Geneva German-Polish Convention of 1922. It will explain the relevant articles that made the petition possible, as well as Germany’s irredentist agenda, and the CV and the ZVfD’s strategies to deal with the Nazis initial crisis. It will identify the actors behind the formulation of the Bernheim

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<sup>43</sup> Graf, 60.

Petition as a transnational group of Zionists focusing on *Gegenwartsarbeit*, or present work within the Zionist movement.

While chapter one deals with the precipitating factors behind the Bernheim Petition, the second chapter will be devoted to the work behind the scenes that produced it. It will include an examination of the vigorous debate in the League of Nations' Minorities Section, and the Zionist activities until the Bernheim Petition was approved.

The third, and final chapter, proceeds to the examination of the application of the Convention's guarantees after the League of Nations deemed the process to be a local implementation. While indeed the largest impact of the 1935 Nuremberg Laws, or *Nürnberger Gesetze*, were off limits in German Upper Silesia, and Nazi periodicals were prohibited as well, it was not an uneventful period until its expiration on July 15, 1937.

My work will analyze this stage, and the efforts made by the Upper Silesian Jewish leadership to reconstruct their communities, as well as the Nazi incidents of retaliation that happened from time to time. These Jewish communities faced plenty of obstacles since they were working against a very entrenched German bureaucracy that was mostly bent in supporting Nazism. The Zionists' task of *Palästinaarbeit* in Mandate though briefly alluded through out this work, is beyond the scope of this research.<sup>44</sup>

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<sup>44</sup> See, Hagit Lavsky, *Before the Catastrophe: The Distinctive path of German Zionism*, which deals with the project of practical Zionism in all its stages since its inception.

It is not an easy matter for a persecuted people without a country  
to compete against the might of such a major power.  
Nathan Feinberg<sup>45</sup>

## Chapter One

### The German Polish Convention and the Background of the Bernheim Petition.

The League of Nations accepted the framework of protection for Jews as proposed by the transnational Jewish leadership in Paris and then Geneva, and enlarged this notion to cover all minority groups in all countries that became nation-states after the dismemberment of five empires after the Great War. The notion of minorities' protection was a progressive humanitarian structure known as the Minorities Protection System, or MPS. It was under the aegis of the League but managed by each nation-state via ratification and domestic law. Thus, Poland signed the first such treaty as a precondition for recognition as a re-born republic. The Polish Treaty, in turn, became the model to draft the other states' treaties but with articles suitable for each state. The MPS System was neither a part of the Covenant, nor was it universalized to all other established older nation-states. The absence of universalization became a constant bone of contention for the states included in the MPS system but the Allies rationalized this inequality arguing that "only immature and fragile states were in need of supervision,"<sup>46</sup> as a consequence, entrenched inequalities persisted between the states, and the application of the MPS principles was retrospectively uneven at best.

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<sup>45</sup> Epiraph in Martin Gilbert, *the Holocaust* (New York: Holt Rinehart and Winston, 1985) 38. Nathan Feinberg, "Political activism against the Nazis" *Jewish Resistance proceedings in the Conference on Manifestations of Jewish Resistance during the Holocaust*. Jerusalem 7-11, 1968, 18.

<sup>46</sup> Jacob Robinson, Oscar Karbach. Max Laserson, Nehemia Robinson Marc Vishniac, *Were the Minorities Treaties A Failure?* (New York: Institute of Jewish Affairs of the American Jewish Congress, 1943)

The MPS' principles underscored that minorities should be respected, and not be excluded from any facet of the nation's social life and culture. This League of Nations' system was the first attempt to make the principle of national sovereignty more porous under international law with the ultimate objective to avoid another world war; minorities were understood to be the cause of tension between distinctive groups within the state. Yet, this attempt at permeability impinged on the sacred concept of national sovereignty. No wonder then that those countries under the MPS - Poland, Austria, Czechoslovakia, Yugoslavia, Bulgaria and Romania, Greece, Turkey and Iraq - strenuously protested in order to have their own right to manage their destiny without interference just as the rest of the states did; yet, those nations had no other choice but to accept this framework since recognition as a state and membership in the League hinged on submitting to this system.

The League of Nations, in its attempt to avoid war, tried the best possible solution in most instances to pacify quarreling states, and this is how Germany - as a defeated nation and not part of the MPS system - and Poland (which already had an MPS treaty) participated in a separate minority protection agreement. This bilateral treaty is known as the Geneva Convention of 1922. It covered agreements for the contested industrial area of Upper Silesia, which each claimed as territory belonging only to them.<sup>47</sup> The area was coveted by both nations because it was an important source of bituminous coal, zinc, lead, and iron. At first, the Allies decided that the complete area would be awarded to Poland to assist its economic revival but Germany firmly protested, and

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<sup>47</sup> See, Sara Wambaugh, "Upper Silesia" in *Plebiscites since the World War* Washington DC: Carnegie Endowment for International Peace, 1933. See, T. Hunt Tooley *National Identity and Weimar Germany Upper Silesia and the Eastern Border* (University of Nebraska Press, 1977) 140. T. Hunt Tooley, "German Political Violence and the Border Plebiscite in Upper Silesia 1919 - 1921" *Central European History* 21. (March 1988) 56- 98.

England supported that stance; as a result violence erupted from both sides to produce facts on the ground.

A Plebiscite, to give self-determination to both sides of the population was the next best option adopted by the League of Nations. It was peacefully conducted in March of 1921, but it caused a lot of controversy even before the votes were counted. While it is true that it was conducted in an orderly fashion since the people voted in their own commune, both sides did not abide by the voting results; violence erupted for a third time. After a period of pacification, both sides finally accepted the League's partition of Upper Silesia in the Plebiscite area, and signed the treaty, which was then ratified by both states.<sup>48</sup> As of June 20<sup>th</sup> 1922, Germany kept the part of Upper Silesia known as *Oberschlesien* – and ceded the eastern parts to Poland called *Górny Śląsk*.<sup>49</sup> Apart from the economic and other administrative measures, the Convention contained more exquisitely detailed articles of protection for minorities than the original MPS system since the Germans were particularly concerned about the possible mistreatment of the German minority settled in the Polish side, or East Upper Silesia.<sup>50</sup>

The German Polish Geneva Convention of 1922 included a unique, surprising, and original experiment of pacification, or “cooling off” period for 15 years: direct League of Nations’ supervision. A Mixed Commission with a president and a staff to address the concerns of the minorities resided on either side with offices on both sides of the divide: one office situated in the German *Regierungsbezirk* or *Provinz* Oppeln, and the

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<sup>48</sup> See, Julius Stone, *Regional Guarantees of Minority Rights: A study of Minority Procedure in Upper Silesia* New York, 1933.

<sup>49</sup> Norman F. G Pounds “The Upper Silesian Industrial Region” in *Slavic and East European Series* Bloomington Indiana: Indiana University Press, 1958. The total areal was of 4,160 square miles of which 1, 241 square miles were awarded to Poland, and 2, 918 square miles went to Germany.

<sup>50</sup> Anthony Alcock, *A History of the Protection of Regional Cultural Minorities in Europe* (McMillan Press London, 2002)58-59. The 1922 Geneva Convention had 95 articles dedicated to the protection of minorities and the redress of grievances.



other in the Polish administrative district, or *Wojewódzwo Śląsku* in Kattowitz (now in Polish Katowice).<sup>51</sup> The Mixed Commission was under the skilled direction of President Felix Lutwig Calonder with an able supportive staff including members of both nations.<sup>52</sup> The Commission was assisted by an Arbitral Tribune as the first point of contact when any complaints arose; the Arbitral Tribune reviewed the factors behind the issue, suggested a solution, and President Calonder decided its ultimate fate.

In contrast to the general MPS system, the 1922 Convention exclusively stipulated that any minority, either as individuals belonging to any such protected minority or as a group had a right to inform about infringements or threats to infringe the treaty by the state through two venues: The Mixed Commission in Upper Silesia or the League of Nations' Council. In case that the plaintiff's party was not satisfied with the results of arbitration at the level of the Mixed Commission, it could then directly address the Minorities Section of the Council of the League, in Geneva, which would review it, and possibly suggest an alternate solution. Two articles supported minorities' petitions: Article 147 stipulated that the aggrieved party could bypass the Mixed Commission, and appeal directly to the League's Council. Article 151 granted an "urgent" review if the situation was of critical importance.<sup>53</sup> Not all petitions were accepted by the Council, since each complaint received required a careful review. The procedure entailed assigning a *rapporteur* who would gather the necessary background information to come to a decision if the grievance merited to be adjudicated for further examination.<sup>54</sup> The

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<sup>51</sup> See, Georges Kaeckenbeeck, *The International Experiment in Upper Silesia: A Study on the Working of the Upper Silesian Settlement 1922-1937* (London, 1942)

<sup>52</sup> Felix Calonder was the former President of the Swiss Federation, and assisted, too, in the formulation of the Geneva Convention of 1922.

<sup>53</sup> Julius Stone, *Regional Guarantees*, 86.

<sup>54</sup> Julius Stone, *Regional Guarantees*, 21.

1922 Geneva Convention's stipulations of the right of petition became a key self-defense shield used by the Zionist leadership during the Nazi period.

The Nazis originated from the founding of National Socialist German Workers Party (NSDAP) by Adolf Hitler, which started functioning during the Weimar Republic. In Hitler's book *Mein Kampf*, or "My Struggle," written during his brief incarceration period in Landsberg, he deemed the Jews responsible for the decay, or *Verfall*, of Germany. Nazi nationalism, apart from absorbing the most classic antisemitic notions - including the hoax called *The Protocols of the Elders of Zion* - added another layer with Völkisch notions (populist-racist-nationalist) with the avowed conviction that there are "unequal races," and clearly a superior one with the Germans now called Aryans; thus, it was the Nazi responsibility to defend Aryan purity at all costs and recover Germany's former greatness.<sup>55</sup> The pursuit of pure Germaness, or *Deutschtum*, became Hitler's key political platform: since Jews lacked this *Abstammung* or Aryan origin, they were classified as an "inferior race" or *untermenschen* to be excluded of the *Gemeinschaft*, or community.

Given "the damage that Jews were inflicting upon Germany," asserted Hitler, eliminating them from the homeland was the best solution. While his removal program was still not delineated in scope, slogans such as: "*Deutschland erwache Juda Verrecke*" (Germany awake - Judah drop dead) were chanted by the SA brown-shirted shock-troops when they physically attacked Jews. Clearly, Nazi antisemitism transformed the simpler anti-Jewish narrative into a larger philosophical historical worldview attempting to solve

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<sup>55</sup> Leni Yahil, *The Holocaust: The Fate of European Jewry*. (Oxford: Oxford University Press, 1990) 51.

all social problems in Germany.<sup>56</sup> No regular self-defense, or *Abwehrkampf* methods in the courts as used by the CV, would have any impact in deterring this political tool based on racist antisemitism that became a deliberate national policy once Hitler achieved power as a Chancellor.

Hitler's seizure of power, or *Machtergreifung*, in Germany, became a reality on January 30, 1933.<sup>57</sup> The Nazi leader organized a boycott against Jewish products, and thereafter passed a series of laws, which in effect removed most German Jews from every department of political life, civil service, the professions, education, and the service sector.<sup>58</sup> In essence, the Nazi answer to their "Jewish Question" was simply understood as a very effective instrument to delegitimize all the steps of recognition achieved by Jews in Germany for the previous hundred years.<sup>59</sup> In the long run German Jewry was perceived by the Nazis as one monolithic entity with no distinctions made whether they were members of the CV, ZVfD, religious, assimilated, intermarried, or foreign Jews (*Ostjuden*); though each group was manipulated at will, the most vulnerable were the "*Ostjuden*" who were attacked first since many of them did not hold a German citizenship.<sup>60</sup> They were about 10% of the Jewish population living there, and about 40 % of them were born in Germany itself.<sup>61</sup>

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<sup>56</sup> Werner Mosse, "From 'Schutzjuden' to Deutsche Staatsbürger Jüdischen Glaubens: the bumpy road of Jewish Emancipation in Germany" in *Paths of Emancipation: Jews States and Citizenship* (New Jersey: Princeton University Press, 1995) 90.

<sup>57</sup> John S. Conway. "*Machetergreifung* or Due Process of History" in *Historical Journal* Vol. 7. 3, (1965) 399- 413. The advent to power of Hitler was not inevitable since there were many contingencies.

<sup>58</sup> Lord Russell of Liverpool, *The Scourge of the Swastika: a History of Nazi War crimes during World War II* (New York: Skyhorse Publishing, 2008).

<sup>59</sup> Robert Wistrich, *Hitler and the Holocaust* London: Phoenix Press, 2003, 53.

<sup>60</sup> Andreas Nachama, Julius Schoeps, Herman Simon, *Jews in Berlin* (Berlin: Henschel Verlag, 2002) 121. *Ostjuden* were the Jews living in Germany from Eastern Europe. They came from Galicia, Russia and Romania. As such there were not citizens of Germany.

<sup>61</sup> Edited by Jürgen Matthäus and Mark Roseman, *Jewish responses to Persecution, 1933-1938* (Lanham Maryland: Altamira Press, 2010) 425.

The CV had already analyzed the Nazi crisis in detail as early as Jan 26, 1933, but was still offering hope: perhaps it will not come to be. Yet, four days later, once the *Machtergreifung* became a reality the editorial tone became more diplomatic since it now had to weigh its words.<sup>62</sup> On the other hand, in the first weeks of Hitler's government the CV press (both *CV Zeitung* and the monthly journal *Der Morgen*) - while being acutely aware of Nazism's negative impact to their own community - continued to publish articles disputing Nazism's perceptions of them. For example, in the *CV Zeitung* of March 16, 1933, an anonymous writer wrote an article protesting: "Jews do not estrange themselves of their origins but they will oppose any attempt to be presented as foreigners in their homeland. Jews are a part of Germany." This author was stressing the liberal position that all Germans, including Jews, were part a pluralistic collective united by a common history, territory and culture.<sup>63</sup> Similarly, Rabbi Max Eschelbacher from Berlin, a jurist, and an expert on Jewish law, also discussed the dire situation at length in the CV's *Der Morgen* of February 1933. - entitled "*Der deutsche Jude un der deutsche staat.*" It is a dissent worth quoting at length:

We have been conducting the struggle for our rights in Weimar for fourteen years based on the Weimar Constitution [according to which] all Germans and the National Socialist are equal before the law. And Constitutions can change. If the upheavals in history will lead to the unbelievable, and if the Nazi goals will be realized, and if a new constitution determines that a Jew can no longer be a citizen—then we will no longer be able to rely on the constitution. In such case, however, we will not give up our rights but rather derive them from a deep eternal foundation. Our ancient Jewish past, and our history of almost two thousand years in Germany bear powerful witness to God's will, which we will finally lead our own struggle for full civil rights in Germany as German Jews on the basis of God's will.<sup>64</sup>

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<sup>62</sup> Jürgen Matthäus and Mark Roseman, *CV Zeitung* February 2<sup>nd</sup> 1933.

<sup>63</sup> Guy Miron, *The Waning of Emancipation: Jewish History Memory, and the Rise of Fascism in Germany, France and Hungary* (Detroit: Wayne State University Press, 2011) 30. Originally in *CV Zeitung* of March 16, 1933, with the title "Fremdstämmig?"

<sup>64</sup> Miron, 30. Originally in the *Der Morgen*, February 1933, 404-9.

Rabbi Eschelbacher hinted at the dark outcome of the Nazi crisis, and alluded even to the loss of constitutional backing, but still held his hopes on the respect for the law, and - similar to the anonymous author mentioned above - he insisted on the eternal belonging of Jews in Germany while invoking God on his side. In the ensuing month similar articles and editorials continued to appear in the *CV Zeitung* extolling German Jewish rights anchored on emancipation liberal ideals, and they never wavered. If the leadership exposed some qualms regarding the new reality, they also meant to quiet their members' anxieties about their common uncertain future.<sup>65</sup>

The Zionists, exquisitely aware of the dilemma in which they found themselves as German Jews, responded too. For example, Hugo Rosenthal, a Zionist educator, argued in the *Jüdische Rundschau* against the whole premise of integration:

“Jews should have rejected the very idea of assimilation as a precondition for [their] emancipation. They should have understood that their citizenship would have been more meaningful had they stressed their ethnic uniqueness [instead.] If German Jews are suffering now, it should be clear which the source of their current distress is.”<sup>66</sup>

Another anonymous writer, in the same newspaper, on May 9, 1933, used irony to explain the naiveté of such acceptance: “Jews misunderstood their welcome. They should have grasped that their being accepted, at the very best, was just akin to salt in the soup. In other words, there are limits of acceptance based on good taste and proportion; hence the current unwelcome that is so apparent with Nazism.”<sup>67</sup> It was understood without being so conspicuous, that these writers were stressing Zionist ideology as the best alternative to these traumatic events.

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<sup>65</sup> Miron, 32.

<sup>66</sup> Miron, 34. Originally in the *Jüdische Rundschau*, Hugo Rosenthal “Die deutsche Judenheit im neuen Deutschen Reich,” or “German Jewry in the New Reich.” Part, 1, May 26, 1933.

<sup>67</sup> Miron, 35.

The Nazi regime, deaf to all these defiant statements, continued its consolidation of politics, society and commerce under one roof or *Gleichshaltung* to align the state and the party as one. With the subsequent partial burning of the *Reichstag's* or Parliamentary building, Hitler found the perfect excuse to declare that Germany was in imminent danger as part of his anti-Communist campaign.<sup>68</sup> The *Reichstag* was prorogued on March 23, 1933, and only called back on Hitler's command. Immediately after, the Nazi Government-using article 48 of the Weimar Constitution-suspended numerous civil rights. As Chancellor, Hitler proclaimed its own ability to make laws via the new Enabling Law, or *Ermächtigungsgesetz*. This decree literally allowed Chancellor Hitler to function as a full dictator with President Hindenburg's approval since he also accepted that Germany was "in dire need of protection," solely on the basis of the Reichstag's fire, which was presumed to be a Communist deed.<sup>69</sup>

Hitler's antisemitic onslaught continued in tandem with the anti-Communist campaign: restrictive laws were formulated and published in the *Reichsgesetzblatt* with sequential numbers. For example, # 34 forbid Aryan maids in Jewish homes, while # 37, 46, 48, dealt with denial of positions to Jews in the Civil Service sector, # 36, denied Jewish lawyers their profession in the courts, # 49, forbid the use of Jewish tax

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<sup>68</sup> The Weimar Constitution contained Article Number 48, which stated that in the case of imminent danger when security and order are disturbed or endangered [the leadership] may suspend for a while in whole or in part the fundamental rights provided in Articles 114,115,117, 118, 123, 124, 153. The Weimar Assembly confronted Communist riots and other disturbances to the peace in 1919, and to escape them met at Weimar; the Assembly saw this article as a preventive measure. Once those rights were suspended specific measures or *Maasnahme*, could be dictated by the government.

<sup>69</sup> Emily Rosenberg and Akira Iriye, *A World Connecting* (Boston: Harvard University Press and C.H. Verlag 2012) 244. Formally the Weimar Constitution stayed in place.

consultants, # 43, introduced *numerus clausus* for Jewish university students, and # 42 denied Jewish physicians access to Aryan patients.<sup>70</sup>

The application of these decrees was gradual, and done in a calculated manner to continue harassment but with the utmost care not to hurt Germany's economy all at once, or cause distress in society. For example, Hitler—despite activating law # 42—in practice shielded Jewish physicians more than lawyers since eleven percent of doctors were still working by mid-1933 and beyond. The German public would not have accepted the disrupting of ties with its Jewish physicians; thus Hitler strategically favored a waiting period to suspend their work.<sup>71</sup>

The same Nazi legislation that marginalized Jews in Germany proper was also applied to Jews on the German side of Upper Silesia. Indeed, their legal civil and social statuses were suddenly precarious. However, these Jewish inhabitants were in a better position to fight back Hitler's decrees: armed with the above mentioned articles 147 and 151 of 1922 Geneva Convention, the Zionist leadership dared to challenge Hitler's anti-Jewish decrees. They would argue their case all the way to Council of the League of Nations. The Petition was signed by an individual whose first name was Franz. He was dismissed with other Jews from his job solely because he was a Jew. Franz Bernheim would represent all Jews in Upper Silesia.

The League of Nations accepted the Bernheim Petition, discussed it, and deemed Hitler responsible for not applying the laws in the area of German Upper Silesia. Jews all over the world hailed the League's decision as a legal victory no different from the

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<sup>70</sup> Giuseppe Motta, *Less than Nations: Central European Minorities after the First World War* Vol. 2 (Cambridge: Cambridge Scholarship Publishing, 2013) 62.

<sup>71</sup> Saul Friedländer, *Nazi Germany and the Jews: Years of Persecution 1933-1939* Vol. 1. (New York: Harper Perennial, 1998) 38.

vindication of Alfred Dreyfus after the infamous Affair. Indeed, a journalist named Harry Salpeter wrote the following salvo immediately after the Bernheim decision in the League of Nations:

Power to Franz Bernheim! His positive in consequence as an individual does not invalidate [his being] a symbol. At the risk of appearing fantastic, I present the possibility that he may stand as the symbol of the Jewish side, of the whole story of Nazi persecution of 1933, and no longer I trust - just as Dreyfus was a symbol and occasion, victim and rallying point of the antisemitic wave in France several decades ago. There can be no doubt that of all petitions, appeals, resolutions, and protests parades against [this] terrorism in the legislative chambers of the world - the plea of a Jewish refugee has embarrassed the Hitler, Goebbels, Goring triumvirate - more than almost any other single protest efforts - with the possible exception of the anti-Hitler debate in the House of Lords. Bravo for Bernheim, and a couple lions and and RaHS! <sup>72</sup>

This immediate joyous exaltation, while understandable, needs nuance: first, the sole signature in the Petition is the basis for the inaccuracy of considering the framework of this process akin to the 1948 Declaration of Individual Human Rights. However, Thomas Buergenthal states: “individual human beings were then *not* deemed to have international rights as such - since the notion had not *yet* gained acceptance by the community of nations, nor it was contemplated seriously by those who drafted the minorities’ treaties.” <sup>73</sup> The Convention granted permission to individuals *but as members of a minority group* to request a review of the discriminatory situation. Second, it was not Franz Bernheim who formulated this petition: it was a collaborative effort of a transnational Zionist team; he just signed it.

The Petitioners behind the Bernheim Petition:

The small group of actors that adroitly worked framing the Bernheim Petition, daring to defy Germany was a dedicated group with an extensive record of intercession on behalf of the Jewish people. Jacob Robinson, Nathan Feinberg, Leo Motzkin, and

<sup>72</sup> Central Zionist Archives (CZA), Franz Bernheim’s file. A 306/54. Newspaper cut out. Undated.

<sup>73</sup> Thomas Buergenthal, *International Human Rights* (St. Paul Minnesota: West Publishing, 1995) 7. My emphasis.



Emil Margulies became acquainted in the 1919 committee at the Paris Peace Conference that formulated the MPS system. After the conference they continued working in the same project under the umbrella of the *Comité des Délégations Juives* and developed close personal ties, which in turn facilitated their efforts to formulate the petition and its subsequent success in 1933. It was at this early stage that Georg Weissmann from Upper Silesia joined them.

Little is known about George Weissmann's personal life. He was an Upper Silesian German Jew, a lawyer in Beuthen, and a local leader of the Union of Synagogues or *Synagongengemeinde Vereinigung* of Upper Silesia and a Zionist. He was present at the first meetings to assess the relevance of the 1922 German Polish Convention as a tool to combat Hitler's antisemitic laws via international law. There were meetings back and forth, and then the circle grew to include Leo Motzkin, Nathan Feinberg and Emil Margulies. It is thanks to Weissmann's recollections, written once settled in Mandate Palestine, that we learn about the initial steps of the elaboration of the Bernheim Petition, and the dire conditions in Upper Silesia.<sup>74</sup>

Jacob Robinson (1889-1977) was born in Serijai (pronounced Seray) – in Lithuania, then part of Russia – and graduated from law school at the University of Warsaw in 1914. He served in the Russian army and was incarcerated by the Germans during the Great War. He then returned to now independent Lithuania, and worked assiduously for the betterment of the Jewish community there. At first, he worked as a director of the Hebrew Gymnasium in Verbalis. Once he was accepted to the bar, he was elected to a seat in the Lithuanian Parliament holding the office of chair of the Jewish

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<sup>74</sup> Georg Weissmann, "Die Durchsetzung die Jüdischen Minderheitenrechts in Oberschlesien 1933 - 1937" Bulletin of the Leo Baeck Institute no.22, 1963. 157 ff.

faction. He also joined the Congress of European Nationalities representing with others leaders the Jewish minority. He recognized the immediate threat to German Jews with the emergence of the Nazism, and swiftly managed to organize a secret committee to ease their admission to Lithuania. As a Zionist and expert on international law he served as an important legal advisor behind the scenes of the team of the Bernheim petition.<sup>75</sup>

Dr. Leo Motzkin (1867-1933) was born in Brovari, near Kiev. Given the fact that there were few opportunities to study there, his parents sent him at the young age of fifteen to Germany not only to attend not just high school in Berlin, but to pursue his studies in a university. After finishing his high school studies, Leo Motzkin matriculated in the University of Berlin studying mathematics and sociology. Dr. Motzkin was an avid Zionist already present in the First Zionist Congress in Basel, and took an active part in the formulation of its platform. He participated in protection for the European Jewish minorities' delegation in the Paris Conference of 1919, and then became Chairman of the *Comité des Délégations Juives* with headquarters in Paris. Dr Motzkin also participated in the Congress of European Nationalities until 1933, when he and the other Jewish members - intensely dismayed by the indifference for the German Jews by other nationalities and the Congress' own leadership, resigned from the organization. When Hitler forged his antisemitic laws, the indefatigable Dr. Motzkin joined the team that formulated the Bernheim Petition.<sup>76</sup>

Prof. Nathan Feinberg (1895 - 1988) Zionist, lawyer, lecturer and author, was born in Kaunas, Lithuania, in 1895. He studied law at the universities of Berlin and Zurich and received his doctoral degree in 1918. He settled in Palestine as early as 1924

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<sup>75</sup> "Jacob Robinson" in Encyclopedia Judaica, Vol. 14.

<sup>76</sup> Frank Nesseman, Leo Motzkin (1867-1933) "Zionist Engagement and Minority Diplomacy" *Central and Eastern European Review* Vol. 1. 2007.

but continued to be active on the international academic scene. In 1928 he traveled to Switzerland to specialize further in international law. Dr. Feinberg received accreditation from the Institute International Sciences at Geneva University, and worked as a lecturer in this university until the end of 1933. He was a prolific author on aspects on minorities' rights and the Mandates system, as well as aspects of international law regarding the Zionist project in Palestine. His expertise on international law was extremely useful in the formulation of the Bernheim Petition after which he returned to Jerusalem. Dr Feinberg became a lecturer in international law and international relations in the Hebrew University. He later became there a cherished Dean.<sup>77</sup>

Emil Margulies (1877 - 1943) lawyer and Zionist leader, was born in Sosnowiec Poland. He studied in Vienna, Munich, Zurich and Berlin and returned to Vienna to complete his dissertation. He settled in Czechoslovakia, and worked to fortify the Zionist movement in this area. In 1925, Margulies attended the initial conference of "Organized National Groups of European States," held in Geneva, which then became the Congress of European Nationalities and joined them as a Jewish representative; through his own work in the Congress he became well known becoming a consultant for the League of Nations. Two years later, in 1928, he helped found the Czechoslovak Jewish Party of which he became President. He was consulted regarding the legal options of defending the Jews of Upper Silesia at the League via the 1922 German – Polish Convention and accepted the challenge. Once Franz Bernheim came to Prague, it was Dr Margulies who formulated the detailed content of the Bernheim Petition.<sup>78</sup>

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<sup>77</sup> "NathanFeinberg" Press release. law.huji.ac.il/segel.asp?staff\_id199&cat=2142 [accessed 5/12/2016]

<sup>78</sup> [http://margulies-chronicles.com/ag/\\_margulies/bio/margemil1877.php](http://margulies-chronicles.com/ag/_margulies/bio/margemil1877.php) [accessed 5/12/2016]

The epigraph at the beginning of this chapter underscores the invariable reality that Diaspora Jews confronted as minorities in the European countries: Jews were prone to be at the mercy of antisemitic states; thus, without a state of their own, were vulnerable, and lacked civil rights for centuries. The leadership - since Talmudic times - had used intercession with diverse rulers on behalf of their brethren. This was at first the task of benefactors, framed by a tradition deeply embedded in Jewish culture which stressed a sense of solidarity even across borders. After the Great War, intercession gradually gave way to more organized institutions (such as the Comité des Délégations Juives mentioned in this work) tied to the League of Nations. In this case, Jewish leadership used more sophisticated methods of pressure and mediation to ameliorate Jewry's quest for respect and equality as citizens in their respective European nation-states.<sup>79</sup>

Those efforts have been dubbed “Jewish Diplomacy” for lack of a better term.<sup>80</sup> Diplomacy is defined as the representation of a state by skilled individuals who negotiate with other states on its behalf. It is with this in mind that I prefer to use the word intercession with a nod to continuity – even when reaching the highest court of the land. As stated, the results of intercession were uneven since these “diplomats” did not have the backing of a home state that would argue for them; hence, their arguments could then be easily dismissed. The MPS system was one of the first successes of the new “Jewish diplomacy” in the interwar period. However, in retrospect, since the particular nation-

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<sup>79</sup> Mirjam Thulin, “Jewish Diplomacy and Welfare: Intersections and Transformations in the Early Modern and Modern Period” Leibniz Institute of European History (IEG) Mainz: Bjoern Siegel Institute of the History of German Jews (IGDJ) Hamburg. (H-Net, Clio-online and the author) 2016.[accessed 5/12/2016]

<sup>80</sup> The term “Jewish diplomacy” was first used by Zosa Zajkowski. See, “Notes on the Centenary of the Alliance Israelite Universelle,” *Jewish Social Studies* 22.no.3 (1960) 131-158.

states to which the MPS system was imposed continued to be resistant in accepting Jews in their midst, the outcomes varied. Yet, despite their disillusionment of the political scene the interwar leadership did not desist, and continued to toil and mediate on behalf of their brethren, as was the case with the Bernheim Petition.

The framers of the Bernheim Petition were lawyers, and some were well versed in international law. It was, therefore, understood that the main concern of the states in the League of Nations was respecting as inviolate the sovereignty of each country. On the other hand, the pursuit of justice was also part of the foundational aspirations of the League of Nations. The legal assumption that served those aspirations best was housed in the notion called *Pacta sunt servanda* which states that agreements were made in the first place in good faith, and therefore they must be kept. The 1922 Convention between Poland and Germany was exactly such a case. Unfortunately, it was a difficult argument to be sustained since sovereignty and justice prove to be antithetical to one another, and might jeopardize the fate of their best efforts once the petition reached its destination.

Nothing, I venture to say is more likely to disturb the peace of the world than the treatment which might be meted to minorities.  
Woodrow Wilson.<sup>81</sup>

## Chapter Two

### Development of the Bernheim Petition and the League of Nations

As explained in Chapter One, once in power, Hitler's assault on the Jews became intense. The elimination of Jewish rights was swift, surprising, and extremely punishing. All German Jews were gradually disenfranchised from Berlin to Breslau and beyond; the situation was deteriorating rapidly. It was time to act again and use all their resources to counteract this scourge. Leo Motzkin, Nathan Feinberg, and Emile Margulies lost no time to focus in Upper Silesia since it was the logical basis to discuss the Nazi attack on Jewish rights in the League of Nations thanks to the German Polish Convention of 1922.

Behind the scenes, in Upper Silesia were local Jews such a Judge Arthur Kochmann President of the Gleiwitz community (1864-1944) and George Weismann (1885-1963) a lawyer and Secretary of the Synagogue's Action Committee of Beuthen and Erich Schlesinger from Glewitz as the counsel of the group. One of the first meetings occurred in the safe haven across the border in the Polish capital of Katowice. The worsening situation of most Jewish employees, lawyers, notaries, judges and students was discussed: how without any prior notice, but clearly approved by Hans Kerrl the Prussian Commissioner of the area, the SA moved to violently interrupt the judges and lawyers' work, and escort them out; forcefully prohibiting them from entering the

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<sup>81</sup> Epigraph: President Woodrow Wilson on the Plenary Session of May 31<sup>st</sup>, 1919.

halls of Justice again. All the Jewish communities in the area were distraught since their livelihood and security were at stake.<sup>82</sup> Emil Margulies managed to attend one of these early meetings in Katowice, and offered suggestions too.<sup>83</sup>

Obviously, there was no way to fight Hitler directly to protect all Jews in the country since Germany - though admitted in the League of Nations since 1926 - was not a member of the Minorities Protection or MPS system. Jacob Robinson, in Kaunas, agreed with Weismann and Kochmann on the formulation of a petition based on the 1922 Upper Silesia Geneva Convention.<sup>84</sup>

Feinberg and Robinson confirmed that Weimar Germany was indeed the 15<sup>th</sup> signatory member of a unique minorities treaty supervised by the League of Nations, via a Mixed Commission and Arbitral Tribune in situ. By examining the Convention's protocol it became clear that the petitions' procedure was easy to follow but at the same time there was no way to talk directly about all the Jews in Germany. Yet, by examining the Covenant's Preamble and its articles it also became clear that the League had the means and the authority to open the discussion further.<sup>85</sup> Their stated aims would be narrow but their reach might be enlarged to cover the whole Nazi assault on Jews.

Fearful of too many cooks would spoil their strategy, their decision narrowed to the use of an individual petition. The last task was to find an inhabitant of Upper Silesia who could fulfill the requirements of both being a resident of the plebiscite area, and

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<sup>82</sup> Jonca, "Jewish Resistance". 8, 80.

<sup>83</sup> Erich Schelsinger memorandum. His 12 paper account is in the hands of Peter Fraenkel, a resident of Upper Silesia now living in London. Fraenkel's personal communication. See also, CZA, A 306/110 a memorandum written by Dr. George Weismann in Tel Aviv, 1955.

<sup>84</sup> Kaplan- Feureisen, Omry 2010. Robinson, Jacob, in YIVO Encyclopedia of Jews in Eastern Europe. See, [http://www.yivoencyclopedia.org/article.aspx/Robinson Jacob](http://www.yivoencyclopedia.org/article.aspx/Robinson%20Jacob). Accessed April 2, 2016.

<sup>85</sup> CZA, A 306/ 54. ( Hebrew) April 1<sup>st</sup>, 1933. See also, Sidney Goldstein, *The League of Nations and the Grounds for Action in Behalf of the Jews of Germany* (New York: Free Synagogue and the Jewish Institute of Religion, 1933) 5.

having a legitimate grievance; fortuitously, they found the appropriate individual in the refugee crowded help - office in Prague, and luckily, he had just left Gleiwitz after losing his job.

After Franz Bernheim's dismissal on April 1, 1933, in the Detusches Familien Kaufhaus, Ltd., Gleiwitz branch in Upper Silesia - usually called by its abbreviation DeFaKa - the thirty three years old Franz Bernheim left for Prague joining similar refugees. He reached the Women's International Zionist organization (WIZO) in charge of processing the refugees' asylum, offering them legal help, as well as dwelling accommodations. Emil Margulies was advised that they had found their man: an Upper Silesian individual who could be useful in their fight to protect all German Jews. Margulies, as president of the Czechoslovakian Jewish community, had already mobilized the Jews in the area to pledge solidarity with their German brethren by joining a planned boycott intended to stop Hitler's evil policies.<sup>86</sup>

Franz Bernheim was born in Salzburg, and obtained citizenship in Württemberg obtaining thus German nationality. He moved to Upper Silesia in the 1930s and got the job at the DeFaKA branch in Gleiwitz, which sold household items and clothes. Emil Margulies and Bernheim met, and the latter agreed to be part of the team against Hitler – albeit by just signing his name. It became Margulies' responsibility to draft the final content of the petition, in consultation with either Motzkin or Feinberg. Letters exist regarding these brief exchanges that for sure had to be done in secrecy: Margulies wrote to Feinberg: “A) Drafting the details based on Article 147 of part III of the Convention.

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<sup>86</sup> Rebekah Klein-Pejšjová, *Mapping Jewish Loyalties in interwar Slovakia* (Bloomington, Indiana: Indiana University Press, 2015) 134.



B) We have obtained support from America.”<sup>87</sup> Then, in a shorter note by Margulies: I am happy to inform you that Nahum Goldman will soon be in Geneva to check on the petition.”<sup>88</sup> The cooperation of Nahum Goldman is an example that a wide net behind the scenes worked on behalf of the Bernheim Petition.

A similar example is that of the ZO in London, which was also apprised of the task to protect the German Jews. Margulies, as it was customary, kept the Zionist Executive abreast of all the steps taken regarding the petition. In his report to ZO he succinctly pleaded from them a mobilization of public opinion, the wider the better, from all Jewish communities; otherwise, Margulies claimed, his own work would not succeed. Margulies succinctly just wrote “A petition must be organized but the initiative must extend to all Jews! They must not remain silent, and wait for others to act on their behalf.”<sup>89</sup> Hitler is a mighty foe.

The procedure of petitions had been fixed by the League’s Council in 1923. It had five stipulations:

It must be tied to specific treaties.

It could not call for severance from the state in which that minority belonged.

It could not contain anonymous sources.

It could not use violent language.

It must contain a well developed reasoning with recent data.<sup>90</sup>

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<sup>87</sup> CZA, A 306/72. ( German) April, 1933.

<sup>88</sup> CZA, A 306/71. ( German) April, 1933.

<sup>89</sup> The Nizkor Project: Shofar FTP Archive files. See, <http://www.nizkor.org/ftp.cgi/places/ftp.py?places//Czechoslovakia/Czech,001> [accessed 7/22/2007]

<sup>90</sup> Antony Alcock, *A History of Protection*, 52-53.

The Bernheim Petition:

Margulies' draft, conscious of the required stipulations, delineated the issues virtually line by line while forcefully asserting the rights of the Jews in Upper Silesia. The petition - divided in six detailed sections - is worth examining in detail because it demonstrates without a doubt that Bernheim could not have been the author of such a complicated document.

**Section I:** drawing on the articles themselves that promised full equality for all persons without distinction of birth, nationality language, race or religion, as exemplified by Articles 66 ,67, 75, 80, and 83.

**Section II:** all laws restricting Jewish activities in the Aryan sectors- including Jewish students' quotas- were enumerated, as was Hans Kerrl's decree word by word, when on April 1<sup>st</sup>, 1933, he decreed to deprive Jewish notaries of their jobs:

Maintenance of public order and security will be exposed to serious danger if Germans are still liable to be served with legal documents which have been certified by Jewish notaries. I accordingly asked that Jewish notaries in their own interest refrain until further notice from exercising their calling....

**Section III:** argues the [Nazi] law-now in existence-contravenes Part III of the Geneva Convention. In addition, it argues that in some cases discrimination was eagerly imposed even prior to the promulgation of the antisemitic laws: when Jewish attorneys were precluded from representing their clients in courts.

**Section IV:** deals with the April 1<sup>st</sup>, 1933 public boycott of Jewish businesses, lawyers doctors, etc., which was ordered and organized by an office under the authority of the German Chancellor. It was carried by storm-troops and picked formations also under the direct order of the German Chancellor - as supreme leader. It observes that the public authorities failed to provide the Jewish subjects of Germany with the protection to

which they are entitled by the law. When these actions were applied to Upper Silesia they constituted an infringement of the provisions stated in Part II of the Convention.

**Section V:** Whereas Germany has agreed to the stipulation of the articles in the Geneva Convention in so far as they affect persons belonging to racial, religious and linguistic minorities, it entailed obligations of international concerns that shall be placed under the guarantee of the League of Nations and shall not be modified without the assent of the majority of the Council of the League of Nations.

The undersigned, Franz Bernheim, born on September 15, 1899, in Salzburg, Austria, a citizen of Württemberg, and a German National of Jewish, hence of non-Aryan descent, previously residing in Gleiwitz, Schiller Strasse 66, German Upper Silesia.

At present temporarily staying in Prague, Czechoslovakia; employed from September 30, 1930 to April 30, 1931, by the Deutsches Familien –Kaufhaus, G.m.b. H., Gleiwitz branch, and then discharged for the reason that all Jewish employees have been dismissed; passport No.180/128/30, issued by the Berlin Charlottenburg police office on February 28, 1930, and thus legitimized under as a member of the minority in accordance with Part II of the Geneva Convention of May 15, 1922.

The undersigned hereby submits this petition to the Council of the League of Nations, signed with his own hand, and requesting the Council to take such directions as it may deem proper in order to declare null and void for Upper Silesia the laws, decrees, and administrative measures in contradiction to the aforementioned fundamental principles and insure that they have no further validity; to give instructions that the

situation guaranteed by the convention shall be restored, and that Jews injured by these measures shall be reinstated in their rights and shall be given compensation.

**Section VI:** The undersigned, Franz Bernheim, further requests the Secretariat of the League of Nations to treat this petition as urgent. The reason for this request is that, the above quoted laws and decrees demonstrate the principle of inequality to German nationals of non-Aryan and Jewish descent, is being pursued systematically in all spheres of private and public life so that already an enormous number of Jewish lives have been ruined, and if the present tendencies prevailing in Germany continue to hold sway, in a very short time, every Jew in Germany will have suffered permanent injury so that any restoration or reparation will become impossible and thousand and ten thousands will have completely lost their livelihood.

(Signed) Franz Bernheim,  
Prague May, 12, 1933.

Franz Bernheim willingly signed the document as drafted.<sup>91</sup> The signature was verified that same day by Viktor Ludwig, Notary.<sup>92</sup> The text was circumscribed to the issues of Upper Silesia, yet the last paragraph unmistakably underscored that they were pleading to thwart Hitler's designs against all the Jews across Germany.

### Support for the Bernheim Petition

Margulies sought to impress the League's members of the enormous public support behind the Bernheim Petition. The petition arrived in the League of Nations

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<sup>91</sup> Abraham J. Edelheit, "Jewish Responses To The Nazi Threat, 1933-1939: An Evaluation" *Jewish Political Studies Review* Vol. 6:1-2 (Spring 1994) 139. Quoted from Ha'aretz 18 of May, 1933, 1.

<sup>92</sup> CZA, A 306/54. May 12, 1933. A copy of the notarization is in the archives. See, Bernheim Petition attachments: a list of the decrees by the German Government (it doesn't say Nazi). Attached too, there is a declaration of DEFAKA Gleiwitz branch dated March, 30<sup>th</sup>, 1933.

attached with plenty of supporting signatures. The latter were obtained by Margulies himself in a meeting of the Bratislava Jewish community, which was expressly called to assess the dire situation of German Jewry. As speakers, Julius Reiz and Emil Margulies tried to rally the crowd: Reiz, speaking in Slovak, expressed pessimism about the news coming in from Germany; surely, they do not correspond to the reality. [It is worse!] The Nazis are bent into an “organized [attempt] for the destruction of the Jews of Germany.” Margulies spoke ardently about the need for activism, and deliberately denounced “the position prevalent in certain Jewish circles that [argues] Jews should patiently reserve judgment.” *Not so*, Jewry must understand the situation of the Jews in Germany pessimistically because Germany’s struggle against Jewry is [already] merciless, ruthless, and it will be carried through.”

At the end of the speeches, the three hundred attendees unanimously accepted to support with their signature the Bernheim Petition. Afterwards the program’s participants sang the Hatikvah, the Jewish national anthem in Hebrew, and calmly departed.<sup>93</sup> Margulies also attached to the Petition letters from other Jewish organizations equally concerned about the situation of their brethren in Germany - including the American Jewish Congress.<sup>94</sup>

While all this flurry of activity was going on outside of Germany, by and large there was no apparent panic among the great majority of German Jews. Indeed, Ludwig Holländer wrote in the *CV Zeitung* soon after the *Machtergreifung*: “In general today

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<sup>93</sup> Klein Pejšová, *Mapping Jewish Loyalties*, 134-135. My emphasis.

<sup>94</sup> Nizkor Project, .2.

more than ever we must wait calmly.”<sup>95</sup> Clearly, this was the very sentiment, which Emile Margulies passionately decried in Bratislava.

The Bernheim Petition was sent to The Hague with two other petitions at the same time: one signed by Leo Motzkin as president of the Comité, and the other signed by Jewish senators of the *Kolo* in the Polish *Sejm*.<sup>96</sup> Both petitions restated the same grievances: the Nazis’ disenfranchisement of the Jewish - German community, their objections to it, and an insistent appeal for a rectification from the League of Nations.<sup>97</sup>

### The Bernheim Petition at the League of Nations

All documents were duly received on May 22, 1933, in the Council. The date was surprising by itself: it was coincidentally 11 years and a week after the Geneva’s Convention signed on May 15, 1922. As mentioned, Mr. Sean Lester was in charge of all the proceedings. Mr. Pablo de Azcárrate, the Spanish diplomat, and chief of the Minorities Section, concurred with Lester on the receivability of all three petitions but assigned priority only to Bernheim honoring his request to evaluate it as “urgent.”<sup>98</sup> The petition’s was put on the Council’s agenda for the seventy-third session. Respecting traditional procedure, a copy of the petition was handed to the German representative in

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<sup>95</sup> Saul Friedländer, *Nazi Germany and the Jews* Abridged, Edited Orna Kenan. (New York: Harper Collins, 2009) 4.

<sup>96</sup> CZA, A 306/54. May 11, 1933. While the three petitions were accepted it seems clear that the other two- signed by people not directly tied to Upper Silesia, were filed with Bernheim but apparently no further discussion exists about them.

<sup>97</sup> CZA, A 306/54. The petition of the *Kolo* is 2 pages – May 11, 1933- in French. It was signed by this group: Osaia Thon, Isaac Gruenbaum, Henri Rosmary, DR. Fischel Rotenstreich, Dr. George Rosenblatt, and Dr. Emil Sommerstein; all in Warsaw. The Motzkin Petition is six pages long, dated May 16, 1933. It was also signed by Emil Margulies, The American Jewish Committee, the Rabbis of Kaunas, Lithuania, the Jewish community in Vienna, and numerous individual signatures also attached - in French.

<sup>98</sup> CZA, A 306/54. Pedro Azcárrate’s observations on the three petitions. ( French) May 26, 1933.

Geneva Mr. Friederich von Keller who, without further reflection voiced his objections at once to not allow any further discussion.<sup>99</sup>

As soon as the news spread that the Bernheim Petition was sent, it provoked turmoil in the Jewish community In Germany. Indeed, the next day on May 23, 1933, Nathan Feinberg's received the following message telephone call: "The Jewish representatives in Germany object to the sending to the petition in the League."<sup>100</sup> Feinberg just jotted down this cryptic objection without further ado. Without too much guessing it is clear that the warning came from the CV's leadership. The CV was clearly objecting on the usual grounds already discussed above: that they were not a minority, certainly not Ostjuden; surely, the unspoken fear of Nazi retaliation was also implied. At any rate, the Zionist team dismissed this call since they felt compelled to continue with *Gegenwartsarbeit* and in reality by then the petition was out of their hands.

Similar protests were directly received at the League of Nations from a variety of German Jewish groups that vigorously objected to the Bernheim Petition. For example, two days later, on May 25, a telegram from the National Union of German Jews, a fringe Right-wing group headed by Max Neumann, arrived in Geneva. It had a similar demand that the petition should not go any further - since "the Jews of Upper Silesia are not a national minority, and hence cannot have the right of appeal as outlined under the section of the 1922 Polish-German Convention."<sup>101</sup>

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<sup>99</sup> CZA, A 306/ 54. (German) May 26, 1933. See also, Sidney Goldstein, *The League of Nations*, 19. The "urgent" provision was already a precedent included in the Treaty covering the Åland Islands.

<sup>100</sup> CZA, A 306/54 ( German). May 23, 1933. The telephone called was received at 9 pm- the annotation on this call is in German. It is anyone's guess if this phone call was made by either the Jews of Germany proper, or the Jews of Upper Silesia. Both were equally scared of Nazi retaliation and they did not want to be designated as a minority.

<sup>101</sup> Jewish Telegraphic Agency, "Upper Silesian Jews not a National Minority says German-Jewish Body, "May 26, 1933. See, <http://www.jta.org/1933/05/26/archive/upper-silesian-jews-not-national-minority-say-jewish> body [accessed 4/05/2016] In addition Max Naumann formed the *Verband Nationaledesutscher*

Meanwhile, the Union of Jewish Soldiers of the First World War, *Reichsbund jüdischer Frontsoldaten* (RJF) - the third largest organization of German Jews, lead by Dr Leo Lowenstein - also reacted on the exclusive grounds of loyalty to the Fatherland. While they didn't send any missive to Geneva, a letter was sent to Hitler himself with a copy of their memorial book. The latter contained the names of the 12, 000 Jewish soldiers who lost their lives in the First World War; that memorial book was an incontrovertible fact meant to affirm their loyalty.<sup>102</sup>

Not surprisingly, the arrival of the Bernheim Petition in the League soon reached all the news media. For example, in the US, the *New Republic's* editorial on May 26, 1933, declared:

The calling to account of Germany before the League of Nations 'the only bar of public opinion which the world has,' on her treatment of the Jews is an excellent thing. And there is just a faint chance that if Hitler is forced to cease the persecution of the Jews in German Silesia, and that territory becomes [then] a Hebrew sanctuary in Germany; the government may [also] seize the opportunity to relax somewhat its oppression against Jews elsewhere in the Reich.<sup>103</sup>

Similarly, *Newsweek Magazine* of May 27, 1933, had a headline: "Anti-Semitic Explosive Item on League's Agenda"<sup>104</sup> The banner in *The New York Times's* front page story on May 21<sup>st</sup> 1933 said: "Treaty Rights Invoked: Upper Silesian Refugee Petition as Voiding German Laws"; with a next day's lead stating: "See Reich Retreat of Silesian Jews."<sup>105</sup> The mood was one of gleeful anticipation as to how the League would handle

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*Juden* (VNJ) affirming their allegiance to Germany since 1921. His views were similar to the Conservatives and monarchists. His platform demanded total Jewish assimilation to German society, expulsion of the Eastern Jews and strict opposition to Zionism.

<sup>102</sup> Saul Friedländer, 4. See also, Greg Caplan "Wicked sons, German heroes: Jewish soldiers and Veterans: Memories of WWI" Ph. D. Dissertation. Georgetown University, 2002. President Hindenburg acknowledged the Jewish soldiers' request of respect, while the Nazis ignored it.

<sup>103</sup> See. <http://www.jta.org/1933/05/26/archive/nazis-before-worlds-bar-of-public-opinion-new-republic-declares> [accessed 4/20/2016]

<sup>104</sup> *Newsweek Magazine*, May 27, 1933, 16.

<sup>105</sup> *The New York Times* May 21<sup>st</sup>, and May 22, 1933.



Hitler's assault on the legal emancipation of Jews: would the League dare to touch the sacrosanct issue of national sovereignty?

Indeed, a minority petition to the League was always a source of contention exactly based on the national sovereignty imperative. The dilemma presented itself in every debate since on the one hand, the state members were eager to protect any such intervention. On the other hand, members of the minorities and their allies, trusted the League of Nations as a supreme guarantor of justice, or alternatively, as a means of establishing a dialogue between the parties involved in the dispute.<sup>106</sup>

The Bernheim Petition brought to the fore the predicament again in an acute way since the following weeks were fraught with bitter controversies. However, these disputes were not new. Paul Joseph Mantoux, the first Director of the Political Section of the League of Nations, had elucidated that same issue in 1926, as follows:

“The League is not a supernatural being hovering in space. It consists of members - each of whom *is* tied to a sovereign state. Therefore, the actors of the Council cannot meet if not summoned except by the initiative of the members of the League.”<sup>107</sup>

His remarks vividly point out that each member had certain political loyalties to respect – the members were not neutral experts though the intent was there too; the League was formed first and foremost to uphold world peace but it hoped to be sensitive to minorities via the novel instrument of petitions. If anything it was President Woodrow Wilson, who twelve years before, in 1919, in the Plenary Session in the Paris

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<sup>106</sup> Jane Cowan, “Who is Afraid of Violent language: Honour, sovereignty and claims-making in the League of Nations” *Anthropological Theory* Vol. 3 (3), 2003, 273.

<sup>107</sup> Paul Mantoux, “On Procedure of the Council of the League of Nations” *Journal of the British Institute of International Affairs* 5, 1, 1926.

convincingly stressed that peace heavily hinged on these minorities issues, and should not be neglected or war would erupt again.<sup>108</sup>

The original Director of the Minorities' Section, Eric Colban, was a Norwegian diplomat. He was intent in putting President Wilson's caveat into practice. He directed his staff to examine a petition according to a precise protocol for acceptance, as not to upset the states involved in a particular dispute; the Secretary General would have the last word. Any given petition might generate 10-15 pages of handwritten and typewritten commentaries - shifting between French and English depending on each representative's ease with either language.<sup>109</sup> Some of the sessions were deemed to be private, while others were made public; given this balancing act, delays were bound to occur when objections were raised as a mean to satisfy all of the members in the League of Nations. In addition, members rotated, and they might not be the same people hearing the entire petition or making the final vote. This setup was an obvious attempt to please everybody.

The inevitable delays were not lost on Nathan Feinberg, who noticed with apprehension the first of such instance in his report of May 26, 1933: "von Keller's reasoning to declare the petition null and void is extremely weak, but I trust that the examining Jurists will be on our side." Feinberg, anxiously concerned, also noted the shift of perspective with the rotations of the Council's members: "If the session would not have been delayed, and made 10 days ago as we expected, we would have another outcome." Feinberg's certainty on this shift was based on the predictable alliance between the representatives of Germany and Italy; their alliance might be *the* ruin the

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<sup>108</sup> Thomas Smejkal, "The Protection in Practice: The Minorities Section of the League of Nations Secretariat 1919-1934." Columbia University Commons 2010 See, <http://hdl.handle.net/10022/AC:P:8812> [accessed 5/15/2016]

<sup>109</sup> Cowan, "Who is Afraid of violent Language," 275.

petition process. Feinberg added: “ .... this will have dire consequences [for the Jews in Germany] since the *Journal des Nations* already exposed new and dismaying conditions in Germany.<sup>110</sup> Sadly, delays were sustained again in the two following weeks due to von Keller’s invariable objections.

Feinberg’s apprehension was shared by journalists and Jews alike attending the public sessions of this debate. Juliette Pary, a journalist reporting on the proceedings exquisitely captured the scenario in a poignant essay:

While leisurely enjoying the May weather and scenery of Lake Geneva, where one can notice the swans and birds enjoying themselves. Lake Geneva, on Avenue Wilson, is full of people of all continents. Such a scene represents one of the highest levels of civilization. The Jews living here have the privilege of enjoying their stroll, especially on Saturdays: they are affectionately known as “the rabbis.”

Yet, after May 1933, this scenery in the Lake and the perfume of the acacias can not be enjoyed as much with the same sense of peace on Shabbat. All those faces reflect the same preoccupation, and the question in most lips is: “What will be the fate of the German Jews?”

This magnificent spectacle is spoiled further once anyone notices the ominous Nazi flag with its Swastika, which is seen openly displayed in front of the German office situated in the same avenue not far from the League of Nations – a place of such countless hopes. One asks what is the purpose of the good will, and the eloquent speeches that are heard in the sessions, when for God’s sake there is so much silence as hundred of thousands innocent people are being condemned legally to a slow death a few hours away from here!

The German refugees here remember their own efforts to achieve Germany’s acceptance as a member of the League; then they hear the German delegates denying any such ill-treatment as exaggerations of an accurate reality. Working in the halls of justice the German delegation is trying to hush the debate on Bernheim; while most of the Jewish leaders- directed by Mr. Motzkin - aided by Mr. Feinberg and other important Jewish personalities- continue working to counteract this position. The delays are being carved out based on legal paragraphs - anything is grabbed to obtain a postponement.

For how long will the League ignore their conscience? The anxiety that all feel is fuelled by the constant announcements: “It will be discussed today, Friday. Then no, not today, perhaps on Saturday! Yet, on Saturday, there were new objections again blasted by the German delegate.

In the public area in the auditorium of the League in the entrance row there is an elderly Jewish man with a white beard, who after taking away his hat he discreetly dons a black kippah. Once he hears the dreaded announcement of another objection, he slides back in his seat. He is here every session, and he usually occupies the same seat day after day. While ministers and Presidents rotate in the halls, this elderly man is persistently here in an attempt to demand justice for his people.<sup>111</sup>

In the interim, the Council’s first task was a question of procedure: they had to probe the legitimacy of Article 147 of the Geneva Convention. The query was researched

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<sup>110</sup> CZA, A 306/54. Nathan Feinberg, First page. ( Yiddish) May 26,1933.

<sup>111</sup> CZA, A 306/54. Juliette Pary “Echoes of Geneva,” in *La Terre Retrouvee* Vol.10 (French) Undated.

by eminent jurists Max Huber, M. Pedroso, and M. Bourquin. They certified in writing that the petition was legitimate: “Article 147 lays down the Council as competent to pronounce on all individual or collective petitions relating the provision of Part III of the Convention and directly addressed to it by member of minorities.” With this in mind, and to von Keller’s chagrin, Seán Lester proceeded to assign a session to discuss the petition’s issues.<sup>112</sup>

Back in Germany, the Foreign Office was cognizant of the prior quiet warning issued by President Felix Calonder, as early as April 1933 (which was also dutifully sent to the League’s Secretary Eric Drummond) of his intent and responsibility to enforce the Jewish protections as stipulated on the 1922 Convention. Baron Konstantin von Neurath, the Foreign Office’s chief, after having received Calonder’s message, understood the international repercussions of such a warning. In addition, he was keenly aware that his government, through his office, had orchestrated similar protection and propaganda behind the scenes for the German minority in the Polish side of Upper Silesia. He knew that his office supported them economically as a means to keep them living in the area with ulterior revisionist goals; certainly, it was not a very good time to uncover all these exploits. In an inter-office memo he warned his staff to watch out since: “The Poles in particular have a great interest in leveling the charge of non-compliance with international obligations.”<sup>113</sup> The strategy at the League had to change, and with this in mind von Neurath gave precise new instruction to von Keller as to what to say next.

This change of policy was immediately apparent when Mr. von Keller switched to a more placating tone on the fourth meeting discussing Bernheim, on May 26, 1933:

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<sup>112</sup> CZA, A 306/54. (French) June 2<sup>nd</sup>, 1933,

<sup>113</sup> Brendar Karsch.” A ‘Jewish Nature Preserve,’ ” 136.

“It is obvious that international Conventions concluded by Germany cannot be affected by internal German legislation. Undoubtedly, these errors were decisions made at the local level. The personnel there are acting under a mistaken interpretation of the laws.”

With this swift announcement, Mr. von Keller achieved his goal. With one stroke he narrowed the discussion to just deal with Upper Silesia: “the bureaucrats over there were incompetent” while managing to sidetrack at the same time the Council’s attention away from Hitler, and the frightful mistreatment of the Jews in Germany itself.

Mr. Lester took this nuanced reversal with aplomb, and noted that in accordance to precedence a time must be given to assess von Keller’s new statement; hence a new delay. However, it is interesting to note that without further ado, the Council then reviewed other items on their agenda: the disputes between the UK and Persia regarding Anglo - Persian Oil Company concessions, the financial situation in Austria, and as luck would have it, there was also a new petition from the *Völkbund* from Polish Upper Silesia to be reviewed that same day. <sup>114</sup>

Mr. Lester then frustratingly announced that the report was not ready for Friday, but he hoped to be in a position to proceed on Monday morning; yet, that meeting didn’t happen either! <sup>115</sup> Apprehension enveloped every member of the Jewish team again: will the Bernheim Petition ever come to fruition? Nathan Feinberg noted with sarcasm von Keller’s latest maneuver:

*“Nothing to do with Germany, of course!”  
Evidently, this statement is meant to strangle the larger debate and cheapen Jewish lives in tandem... Who knows if we will succeed? Today is Friday, what will the meeting of tomorrow bring?”* <sup>116</sup>

It was not until Tuesday May 30th, when Mr. Lester finally summarized for the whole Council the full details of the Bernheim Petition:

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<sup>114</sup> CZA, A/306/54. May 26, 1933.

<sup>115</sup> CZA, A 306/54. May 27. 1933.

<sup>116</sup> CZA, A 306/54. Feinberg’s second page. (Yiddish) My emphasis. May 26. 1933.

“The petition does not mention any actual cases, but refers to the boycott of stores, people and professions, as well as students. The mere perusal of the laws and administrative orders that are mentioned in the petition, do indicate that the [domestic] stipulations have been applied in the territory of Upper Silesia, and are in contravention to a number of clauses to the third part of the Upper Silesia Geneva Convention.”

However, Mr. Lester continued:

“We now have the last statement from the German representative, which most plainly and categorically argues as follow:  
 ‘that internal legislation can in no case affect the fulfillment of its international obligations.’  
 This statement, I think, may be taken to mean that the German Government is resolved to see that the provisions of the third part of the Geneva Convention will be observed in Upper Silesia.  
 Indeed, the German representative added that these provisions should be considered as ‘errors due to the misconstruction of the internal laws by subordinate authorities.’  
 Then, clearly, there are the two steps to pursue:  
 the laws of the Convention shall be upheld, and persons belonging to the minority who have lost their employment shall be reinstated without delay.  
 I propose that the Council takes notice of the declarations made by the German Government - in the conviction that they will do everything necessary to ensure [that] the application of the Geneva Convention regarding the protection of minorities shall be fully respected.  
 Finally, the German Government has to deal with the damage that may have been sustained [by Mr. Bernheim and others] in consequence of the application of these [domestic] laws and orders in Upper Silesia.”

Mr. von Keller slickly replied: “On behalf of my Government, I am in no position to accept the report.” Subsequently, in a last attempt to stifle the whole discussion Mr. von Keller argued: “Surely, the German Government is aware of its international obligations but my Government also objects to Bernheim himself as a petitioner. Is he the right petitioner?”

His latest objection was meant to put Franz Bernheim in the worst light again.

Mr. von Keller questioned his legitimacy. Surely, continued Mr. von Keller:

“Franz Bernheim had only resided for just a few years in Gleiwitz. He has not roots there, and no relatives to speak off, and no education in Upper Silesia; he is not a legitimate Upper Silesian. Furthermore, the 1922 Convention states that the address of the petitioner should be in Upper Silesia, and he is now living in Prague: thus, not “domiciled” as indicated. Finally, the petitioner is not a doctor, a lawyer, a notary, or a judge - any of the professions that are mentioned in the petition itself - he doesn’t represent them either. Indisputably, Mr. Bernheim doesn’t fit

any criteria for continuing with this discussion.”<sup>117</sup>

Seán Lester treated this old objection as if it was freshly minted, and seriously granted time anew so that the same group of three eminent jurists who determined the validity of Article 147, could confirm or deny the strength of this latest delaying query. It was duly approved by the Council, and the Jurists went to work.

In the interim, each member of the Council continued the debate - to von Keller's chagrin and fear - with a widening scope which covered the Jews of Germany proper. Every member spoke, but two speeches contain the most germane remarks, allowing us to understand the final way in which the Bernheim Petition was disposed off:

Mr. Paul Boncour, the representative of France, eloquently traced: “the respect that France had for Jews since their emancipation by the French Assembly- a stance that France maintains up to today.” Then facing Mr. von Keller he remarked:

It is also valid to argue - and the representative of Germany would not disagree with me, that the protection of minorities carries weight for all members since in the Peace Treaty in 1919, when even Germany emphasized the same issue.

Count Raczyński, the representative of Poland, spoke for a long time. An excerpt of his remarks is relevant:

While it is true that formally the Council is only dealing with the issues of Upper Silesia, it is also imperative that all members make a pressing appeal to the German Government on moral grounds to ensure equal treatment for all the Jews in Germany. This is based on the declarations made by the German delegation in Paris on May, 29, 1919, on the equality of States. Surely, a minimum of guarantees must be in place independently of the unforeseen effects of changes in public life.<sup>118</sup>

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<sup>117</sup> CZA, A 306/54. May 30, 1933.

<sup>118</sup> CZA, A 306/54. Mr. Boncour's intervention is also in writing in a three page note with his signature - (French) and Count Raczyński are part of the same discussion. May 30. 1933.

Mr. von Keller, barely controlling his own fury to these comments, retorted:

The comments of the members indicate that the discussion could be widened to a larger field than those required by this particular case. I have no intention of reviewing each of the members' remarks, but the breath of them can't be for further discussion; the latter *must be limited*, and in no way exceed the Council's competence.

For this same reason I do not wish to argue whether Germany's Jews fit the definition of a minority or not.

What is relevant is that Germany has already made a declaration regarding this specific case, which is clear without a doubt about its meaning. Finally, regarding Mr. Bernheim as a petitioner, there is no requirement for the Council to make a further examination in view of the statements of my Government in this matter. Under those circumstances, I abstain from voting on the *rapporteur's* proposal.<sup>119</sup>

While this discussion ensued, the Comité's president Leo Motzkin, in a last ditch to make a difference in favor of the Petition spoke in the meeting of the Minorities Commission of the League on June 4<sup>th</sup>, 1933. His words conveyed consternation and alarm:

It is universally known that the majority of German Jews consider themselves 'nearly unconditionally German.'

I never thought of a situation in which Germany's Jews were to be turned into a national minority against their own will, and without being able to rely on any corresponding minority rights.<sup>120</sup>

It is not clear if his speech carried the conversation further or had any impact. Mr. Motzkin hoped it did, and returned to Paris.<sup>121</sup>

Finally, on the Seventh Meeting, on Tuesday June 6<sup>th</sup>, 1933, the Council held a public meeting with the Mexican delegate, M. Castillo Najera, presiding. Mr. Lester reminded the Council's members that they had already received the favorable Jurists' determination on Bernheim's legal right to petition, dated June 1<sup>st</sup> 1933, which said:

<sup>119</sup> CZA, A 306/54. My emphasis. May 30, 1933.

<sup>120</sup> Frank Nesseemann, "Leo Motzkin: Zionist engagement and minority Diplomacy" 21. His source is CZA, A 126/ 622. 4-8. June 4<sup>th</sup>, 1933.

<sup>121</sup> See, N. Melnik's article in *Die Yiddishe Shtime* of June 30<sup>th</sup> 1933. "Leo Motzkin's indefatigable work on behalf of the Jews of German Upper Silesia, the dignity of Jews in the Diaspora, and Zionism, was honored with a ceremony in the Continental Hotel in Paris."



If the facts regarding the identity of Mr. Bernheim are as stated in the petition - and they have not been contested - the undersigned conclude that Monsieur Bernheim being of Non-Aryan origin belongs to one of these minorities. There is not provision in Part III of the Convention to justify the conclusion that a German petitioner must have been domiciled in the plebiscite area for a certain minimum time, or have connection with it of a specific nature such as origin or family ties or possess nationality of the State of Prussia. The fact that at the time of presenting the petition, the petitioner was not in fact in the plebiscite area, this does not deprive him of the right conferred upon him by Article 147, at all events in the circumstances of the case as revealed by the petition, and referred to above.<sup>122</sup>

Inevitable, there was another strenuous interruption from Mr. von Keller:

“With all due respect to those Jurists, I object because they have dismissed the observations made on this issue. Surely, the Jurists deserve respect for their tradition of impartiality with which they work. Yet, for the stated reason, I will refrain from voting on their report. My Government has already observed that it would respect its international commitments, and any errors made by subordinates would be corrected. Therefore, the discussion at this point has absolutely no further purpose.” Mr. Keller ended up with a dire warning: *“Finally, too, the members of the Council must realize that if they accept this report they are adopting a principle that would be then applied to all petitions against whomsoever they might be brought.”*<sup>123</sup>

Mr. von Keller’s negative vote on the Jurists’ determination, and his subsequent tirade, had the clear intent of conveying that while his Government acceded to the ‘indisputable international provisions,’ it perceived the whole process at the League of Nations as no more than a charade. Undoubtedly, his warning “to be wiser, and also veto the petition,” meant to jolt the Council’s members to be weary of any similar petition befalling them in the future; thus, enjoining them to reject the Bernheim Petition now to protect themselves.

Mr. Lester allowed this disingenuous interpretation without altering his demeanor. He just prudently thanked Mr. von Keller for his remarks, saying that it allowed him to make “a minor modification” to his final report:

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<sup>122</sup> CZA, A 306/54. (French) June 6, 1933.

<sup>123</sup> CZA, A 306/54. My emphasis. June 6, 1933.

My first report indicated the situation of the Jews in Upper Silesia, is in contravention to the 1922 Geneva Convention. Thanks to the German Government's statements all those laws harming the Jewish populations would be outlawed. I propose that the Council takes note of the declarations made by the German Government's representative of 'errors made to be corrected.'

I propose also that the members of the Council take note that these persons who belong to the minority who have lost their employment, or found themselves unable to practice their trade or profession in consequence of the application of these laws will be reinstated in their normal position without delay. The Council will no doubt share my conviction that the German Government will do everything necessary to ensure that all the provisions of the Geneva Convention regarding the protection of minorities shall be fully respected.

Following precedence, I request, as the Council's *rappporteur*, to be kept informed of further of the developments in this case.

The final item in the agenda is to resolve is the case of the petitioner. I

I would remind the Council that these cases must be investigated under local procedure.

I would, therefore, put forward that the Council makes a request to the German Government to make sure that the petitioner's case is submitted to that procedure forthwith. Given the progress made in t his issue by the Council, it will *not be called again to consider the question* in any form given the assurances of the German representative that it will definitely carry out it is international obligations.”

Concluding his report, and facing Mr. von Keller, Lester regretted the latter's incapacity to agree on the report's findings.<sup>124</sup>

Without a doubt, “the minor modification” in the Lester's final report was to grant Mr. Keller's stipulation to deal with Mr. Bernheim *just* at the lower level of arbitration instead of imposing the penalty at the level of the Council. Mr. Keller's insistence of arbitration at the local level, meant not only to downgrade the proceedings at the League but establish, too, a precedent that the German Government would never tolerate any additional humiliation in the League of Nations. Undoubtedly, Mr. Lester's comment that the League would **not** be called to examine this type of issue again must have been met with enormous relief by both the members of the Council and von Keller himself: the issue of national sovereignty was indeed safe.

As Nathan Feinberg had already suspected in his report, the Italian delegate, M. Biancheri sided with Mr. Von Keller's and finally stating “given the fact that the discussion has perhaps exceeded the Council's competence, I decline to vote for the

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<sup>124</sup> CZA, A 306/54. My emphasis. June 6, 1933.

petition.” Interestingly, the Polish delegate was next in abstaining but with a curious quarrel: “the objection of my Government is due to the different interpretations related to Article 147.”<sup>125</sup>

On June 7<sup>th</sup> 1933, when the Bernheim Petition was winding up at the League of Nations, the foreign correspondent and Rhodes scholar Clarence K. Streit, reported in the *New York Times*: “Nazi Regime Yields on Jews in Silesia; Will Modify Laws: allows League Council to make Binding Report that Reich Recently Rejected ”<sup>126</sup>

For a quieting effect, Mr. von Keller, sent a subsequent official letter dated September 30, 1933, to Seán Lester. The letter’s emphasized the annulment of the antisemitic laws:

As of June 21<sup>st</sup> all Ministries in the Reich, the chief administration of the Railways company, the Board of Directors, as well as the Prime Minister of Prussia have been advised that the Laws of April 7<sup>th</sup>, 1933 **are not** to be applied to members of the Upper Silesian minority in so far as they are in contravention to the Geneva Convention. All the aforesaid central authorities have been advised to conform with these instructions by issuing special ordinances to their respective subordinate authorities. In order that these local authorities carry out the orders the German Government has taken appropriate measures in full compliance against economic and other discrimination against the Jewish population in full compliance with the Council’s June 6<sup>th</sup>, 1933. All authorities have been advised to let notaries work, and the Union of National Socialists Jurists have been given the order to abstain in Upper Silesia to abstain from taking measures against the non Aryan lawyers and judges.

In regard to publicity I should like to note that what I affirmed on May 26<sup>th</sup> has been published in all German newspapers. Therefore, now everybody is cognizant of the provisions for

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<sup>125</sup> CZA, A 306/ 54. June 6, 1933.

<sup>126</sup> *The New York Times*, Wednesday, June 7, 1933.

Upper Silesia. I might further mention that in the case of Mr. Bernheim this has been submitted to local procedure.

I need not say further that the German Government will now continue to devote full attention to this matter. Trust me!

Yours sincerely, <sup>127</sup>

Von Keller's signature below

At a later date, after following juridical local procedure in the office of President Calonder, by questioning again all evidence in Katowice, Franz Bernheim was awarded 1,600 Marks, (not paid immediately) and the Mixed Commission became the responsible agency for enforcing the provisions that the Jews of Upper Silesia could now return to their former jobs and stability. <sup>128</sup>

Meanwhile, the news on Bernheim fueled the debate that the CV and ZVfD carried in Germany. For example, the CV *Zeitung* of June 1<sup>st</sup> 1933 published a protest. This excerpt is titled "Between heaven and Earth," and written by the executive officer Alfred Wiener:

.... The great majority of German Jews remain firmly rooted in the soil of its German homeland, despite everything. There may be some who have been shaken in their feeling for the German Fatherland by the weight of recent events. They will overcome the shock if they do not overcome it- then the roots which bound them to the German mother earth were never sufficiently strong. But according to the ruling of the laws and regulation directed against us only the "Aryans" now

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<sup>127</sup> CZA, A 306/54. ( German) September 30, 1933.

<sup>128</sup> Jan Herman Burgers, 456, cited Georges Kaackenbeeck, *The International Experiment of Upper Silesia* (London: Oxford University Press, 1942) 266. It states that there were 47 complaints which were processed by the Mixed Commission- including Bernheim. Some Jews were reinstated and others compensated. However, Gregg Burgess. 46, n. 57, asserts that since Kaackenbeeck did not furnish specific dates for these other cases, thus, it is very difficult to tie them to the Bernheim Petition resolution.

belong to the German people. What are we, then? Before the Law we are non-Germans with equal rights; to ourselves we are Germans with full rights. We reject it, to be a folk or nation a minority, perhaps like the Germans in Poland or the Poles in Germany, because we cannot deceive our own innermost [feelings] We wished to be subject as Germans with equal rights to the new government and **not to some other creation whether it is called the League of Nations, or anything else. As far as we are concerned that also closes the question of Geneva which at present occupies Jewish people everywhere.** Thus we are suspended between heaven and earth. We have to have courage to get back to earth, in the eyes of State and Law too....<sup>129</sup>

Obviously, the message of the CV was directed both to the Jewish leaders in Geneva, and more nuanced to the German government itself. Not wanting to be defined as a minority corresponded to their emancipation experience since 1871, which they perceived as progressively better. In addition, there was no occurring precedent in Germany for Hitler's utopia tied to the issuing of sinister laws and type of violence; they had suffered antisemitic incidents in the past, surely they thought, this will be one of the same "short-lived waves," and they will endure forward.

The Bernheim Petition was incidentally discussed in the League again, on the subsequent session of October 3, 1933. Mr. von Keller introduced to the Council's members the Nazi concept governing the "New Germany" based on the model notion of *Volkstum*: 'national identity defined in terms of race.' Sharp criticism ensued from various representatives among them Mr. Henri Bérenger, the then delegate of France. He immediately challenged Mr. von Keller's account: "How could this racist concept be

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<sup>129</sup> CV Zeitung, June 1<sup>st</sup>, 1933. in Yad Vashem, *Documents of the Holocaust* Edited by Yitzhak Arad, Yisrael Gutman and Abraham Margalio. (Anti-Defamation League, and Ktav Publishing House, Jerusalem, 1981) 50. My emphasis.

reconciled with the earlier international commitment, as responded by his own government to the Bernheim Petition? Had not Germany assented to fulfill it? ”

Mr. Von Keller adamantly refused to make any further comment regarding the Bernheim Petition: “I must make a vigorous protest against this roundabout way to open a discussion about German Law.” Wrapping up the conversation he strenuously asserted: “the Jewish problem in Germany is a *sui generis* question that falls outside the scope of the minorities clauses, and for which *a* solution will be found.”<sup>130</sup> In other words, none of your business!

The successful passage of the Bernheim Petition in the League of Nations was fraught with the obvious tension between the member states. Representatives spoke stressing their own interests. It was not a given that the petition would succeed as it did. It was due to Mr. Lester’s adroit diplomatic skills that carried the petition to fruition while the Zionists team had no choice but to wait aside and let the process to go forward since they had no membership in the League of Nations then. If the rogue Nazi state accepted the final verdict in 1933, it was based on the precarious notion that it still cared to respect international relationships. Sadly, this triumph did not cover all the aims set by the Zionist team: to protect all the Jews living in Germany. Yet, there was a sense of relief, albeit in a narrower sense. The passage of the Bernheim Petition was indeed a victory on its own right that has its own place in the history of the Jews and Zionism. Relief gave way to anxiety when fighting for the facto resolution of what Germany promised to fulfill: the in situ restoration of the rights of Jews in Upper Silesia, which is the subject covered in the next chapter.

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<sup>130</sup> Dwork, Flight from the Reich, .81-82. My emphasis.

“Antisemitism of reason would deprive  
Jews by legal means of the privileges  
have obtained”

Adolph Hitler  
September 16,

1919.<sup>131</sup>

## Chapter Three

### De Jure and de Facto: June 1933 - July 1937 Nazi Policy in the Aftermath of the Bernheim Petition.

As the Bernheim petition passed, Goebbels on September 1933 visited Geneva and skipped the General Assembly of the League of Nations on Hitler’s orders. Instead he gave a speech to invited journalists in a hotel defending Germany’s policies: “All what has been said regarding this individual is none of your business. A man is a master of his castle, and thereby how Germany treats socialists, pacifists and our Jews, are nobody’s business but its own.”<sup>132</sup>

There is no difference between Goebbels’ statement and von Keller’s prior announcement at the League’s Council. Goebbels was a devout Nazi while von Keller was a long term diplomat with experience in different posts as ambassador. How could these two individuals with a dissimilar background concur regarding Nazi policy? If both statements do converge it is because Hitler chose to leave the Weimar bureaucracy intact. For the most part these seasoned loyal bureaucrats accepted some of the premises of

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<sup>131</sup> The epigraph is an excerpt of a longer letter of Adolph Hitler written to Adolf Gemlich who inquired about the treatment of the Jews to Hitler’s boss Karl Mayr. Hitler composed this letter on his request. He compared “emotional antisemitism” of the pogroms with the “rational antisemitism” he preferred to apply “to eradicate Jews from Germany.”

<sup>132</sup> Quote found in Allain Pelet, on *Select Proceeding of the European Society of International Law* Crawford and Nowen editors. Hart Publisher, 2012, **Vol.** 3, p.82. The original quote in German is in Goebbels’ own *Signale der Neuen Zeit*, (Munich Zentraverlage der NSDAP, 1934).

Nazism, albeit not being Nazis themselves. The Nazis' triumphant message vastly resonated with their main interests: restoring Germany's pride after the disgrace of defeat in the First World War, and the attractive vision of a 'law and order,' regime, which they perceived as lacking during the Weimar period. What's more, when Hitler touted those legal means of persecution as "rational" and precluding violence, many of the German bureaucrats approved since they shared similar notions: the blaming of all Jews as *the* alleged source of their dishonor and shame; surely, the reprisals could be done without physical violence. In addition, these bureaucrats had to be careful to keep their own positions because within the April 1933 "Restoration of Civil Service" there was a coded message specially directed to these loyal civil servants: Hitler would not tolerate dissent.<sup>133</sup>

The dedicated German bureaucracy stationed in Upper Silesia also dutifully followed Hitler's lead. After the Bernheim success at the League of Nations all local clerks, judges, educators, and relevant personnel that were responsible for dismantling the preceding antisemitic laws did not rescind them. Indeed, despite Von Keller's assurances given at the League the repeal of those discriminatory laws was calculatingly slow. "Resolved locally" meant that President Felix Calonder would work out the issues. However, the Mixed Commission had exceedingly limited powers: while it could urge compensation and reinstatement of jobs, it was decidedly ineffective to press compliance from the German administration.<sup>134</sup> In fact, the Silesian *Oberpräsident*, or Higher

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<sup>133</sup> Christopher Browning, "The German Bureaucracy and the Holocaust" Simon Wiesenthal Center Museum of Tolerance Online: [motlc.wiesenthal.com/site/pp.asp?cc=gvKVLcMVLuG&b=394845#2](http://motlc.wiesenthal.com/site/pp.asp?cc=gvKVLcMVLuG&b=394845#2). [accessed 5/05/2016]

<sup>134</sup> Pedro de Azcárate, *League of Nations and National Minorities* (Concord: Runford Press, 1945) 140-146. Azcarrate evaluated the functioning of both the League and The Mixed Commission. He admired Mr. Calonder for his integrity and exceptional work but retrospectively he perceived the system he imposed to solve the disputes as "rigid without flexibility and elasticity that was necessary to deal with such contention



President, Helmuth Brückner did not yield one inch toward lifting the antisemitic discriminatory laws for a long time despite the lodged complaints; even Franz Bernheim, already in New York, did not received his compensation of 1,600 RM, until December of 1935.<sup>135</sup>

In addition, there was an immediate spiteful reaction from German newspapers particularly the official Nazi newspaper *Völkischer Beobachter* on June 6, 1933, which contained a short article with the sardonic headline “A Kosher Day in Geneva.” It characterized the sessions of the League of Nations as “conducted in an atmosphere of hatred, hypocrisy, and prejudice toward Germany;”<sup>136</sup> far from the truth since Mr. von Keller was given plenty of leeway to respond and delay.

Such was the atmosphere of malice, that the postponement of restoration was not surprising at all. For example, a Jurists organization passed a resolution, as early as July 1933, stating that while they saw no option but to comply with the League of Nations they would do so officially but surely not behind closed doors:

“Be aware that the organization “has the duty to collect all the names of any “German” citizen who chose to be represented by Jewish lawyers. No exceptions would be allowed under any circumstances since Germans must recognize their duties and loyalty to the German *Volk*, or people.”<sup>137</sup>

Obviously, the circular’s overt message was that any collaboration would be considered treason to the fatherland; the majority of members had to comply with the

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neighbors.” Azcárate had to get involved many times to sooth either the Poles or Germans after an “opinion” was handed down by the Mixed Commission’s President.

<sup>135</sup> Philip Graff, *Die Bernheim Petition 1933*, 187. Bernheim immigrated to the US as soon as possible, given the fear of Nazi threats. He had family in New York.

<sup>136</sup> CZA, A 306/54. June 6, 1933. The same theme also appeared a few days earlier in the Prager Tagblatt. May 30, 1933.

<sup>137</sup> CZA, A 306/54. (French) July 1933.

directive or else. If Jewish lawyers could have their jobs back absent of German clients, there was no way to support themselves and their families.

The ominous situation lingered unchanged since there similar restrictions forbid Germans in other professions to hire Jews; time was of essence for the Zionist team. A flurry of correspondence and meetings ensued between Robinson, Margulies, Feinberg, and Motzkin.<sup>138</sup> It was decided that a meeting with Mr. Lester would be valuable. They did so after reaching a three months impasse. However, the meeting of September 27<sup>th</sup>, 1933, yielded no results. At first, Mr. Lester denied that there was *any* lack of German compliance but when confronted with the facts, he gently replied conceding that: “the situation is not easily resolved.”<sup>139</sup> The *rapporteur* candidly hinted that he, despite goodwill, was hindered by deference to procedure regardless of the impact on Jews. In other words, he could do nothing else than what he already did during the debate of the Bernheim Petition at the League of Nations.

Obviously, while truthful this answer was unhelpful, so Mr. Feinberg dared to go higher and requested an urgent meeting with the Minorities’ Section Director, Mr. Pedro de Azcárrate. Mr. Azcárrate kindly met with Feinberg and confirmed Lester’s inability to dislodge the Nazi gridlock, while admitting that *he* could not do *any* better. He added a warning: “Any new additional petitions to the League might not result in a similar victory as achieved with Bernheim.”<sup>140</sup> In this response there is an interesting argument as to why the Bernheim Petition was successful: it was just *that* particular constellation of nation-states’ representatives at the League which led to success, and there was no guarantee that the situation could be replicated. In other words, the Zionist team should

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<sup>138</sup> CZA, A 306/71. (German) See also, A 306/7 (Hebrew.) September 1933.

<sup>139</sup> CZA, A 306/109. (German) September 27, 1933

<sup>140</sup> CZA, A 306/109. (German) October, 1933.

consider that the triumph was just a lucky draw; while logical Mr. Azcárate's response was not a solution either to the dire issues facing the team.

Afterward, the Zionist team anxiously pondered “*Was waiter?*” What is next when confronted with such apathy? Worse still, their efforts suffered a blow with the death of the untiring Leo Motzkin in Paris, on November 1933; he would be sorely missed. Emil Margulies had mentioned to Feinberg that Nahum Goldman would join them in Geneva to discuss the Bernheim Petition and he did. It was Goldman who took over from Leo Motzkin as chairman of the Comité.<sup>141</sup>

While the Zionist team conferred, Nazi racial restructuring of Germany-including Upper Silesia - continued unabated whilst disregarding the Convention's regulations. Indeed, we now know, Hitler had already planned a future *Gesamtschlesien* or “Pan - Silesia,” which would absorb both Upper and Lower Silesia as one integrated *Gau*, or district, using Breslau as the capital instead of Oppeln.<sup>142</sup> This plan surely will be put in effect after the expiration of the 1922 German Polish Convention.

While there were no new official antisemitic laws imposed in the interim period until the awaited expiration date, the reasoning behind this hateful legislation sustained the delays. A case in point was the brazenly worded admonition printed in the official Upper Silesian Nazi newspaper “*Deutsche Ostfront:*”

The Jewish people are a creation of the Devil. They are criminals and assassins and because of that they must be exterminated from the Earth. While the international legislation will be respected, any Aryan citizen, including Nazi Party members opting to hire a Jewish doctor, or notary, and anyone else who dares to buy merchandise in a store whose owner is not a German, those individuals will be cited and registered in a designated form.<sup>143</sup>

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<sup>141</sup> CZA, A 306/71. (German) October 6, 1933.

<sup>12</sup> Springer, 143.

<sup>143</sup> CZA, A 306/54. *Journal des Nations*. October 1933.

This paragraph was printed verbatim in the League of Nations' "*Journal Des Nations*." Thus, the League's Council was acutely aware that not only the antisemitic laws were not being dismantled but there were efforts to subvert the promises that von Keller had already solemnly given to them - even in writing. Indeed, in a subsequent meeting on October 1933, the Spanish *rapporteur* read the above illicit warning, and promptly denounced the "*Deutsche Ostfront*" by adding disdainfully: "If Mr. Von Keller would like to rationalize that the German Government is *not* responsible for the content of this newspaper, we must advise him that the publisher of this admonishment is the head of the Government of Upper Silesia."

The Spanish *rapporteur* continued by reading an article from *The Manchester Guardian*, which established that "the Nazi directives had just the same impact on thousands of other type of Jewish workers [ not only the professional class]; they had also lost their jobs too with a variety of excuses; their losses were not mentioned in the [Bernheim] petition." Finally, the Spanish *rapporteur* read the *Guardian*'s conclusion:

"The Jews in the cities of Upper Silesia such as Beuthen, Strelitz, Hindenburg, and beyond *have lost their ability to make a living*. No Jew was willing to talk to this reporter and give any detailed testimony. These Jews do fear retaliation despite the actual guarantees given by the 1922 Geneva Convention."<sup>144</sup>

The *rapporteur*'s valid indignation while recorded in the minutes did not yield any practical results at the local level. However, it would have been interesting to know if Mr. von Keller responded to the Spanish *rapporteur*'s reprimand. Yet, given his penchant for blindly supporting the Nazi government he would have refuted that report too. Five months passed without any amends; some Jews did not wait any further and opted to emigrate as soon as possible.

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<sup>144</sup> CZA, A 306/54. (French) October, 1933. My emphasis.

Yet, George Weissmann in his retrospective memorandum stated that the situation in Upper Silesia gave a turn for the better in 1934.<sup>145</sup>

The real key to that new calm in that year must take into account the larger turn of events happening in Germany: Hitler achieved consolidating his power: he purged Nazi Party SA rivals, and he launched a bold series of initiatives - both internal and foreign policy - based on longstanding revanchist objectives.<sup>146</sup> Among those initiatives - as early as January 26, 1934 - was the surprising ten years Non - Aggression Pact signed with Poland. This pact was a calculated political - economic shift benefitting the two governments, but it had for Germany a further vital aim obviously tied to the Bernheim Petition: their vigilant protection of the German minority in Poland.<sup>147</sup> Finally, by law Hitler declared himself *Führer* and *Reichkanzler* “in case of Hindenburg’s death,” which occurred somewhat later on August 4, 1934. Hitler became the uncontested sole power in Germany; to seal his dictatorship Hitler imposed a fealty oath, or *Reichswehreid*, to the *Führer*.

There is an absence of research regarding the true impact of Nazi policies regarding the interim years from June 6, 1933 to July 15 1937. In the historiography many researchers assume that all articles of the Convention were respected following the passage of the Bernheim Petition. Yet, Brendan Karsh’s pioneer study demonstrates that

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<sup>145</sup> CZA, A 306/110. Weissmann mentioned President Calonder’s continuous help to ameliorate the situation. September, 7<sup>th</sup>, 1955.

<sup>146</sup> Peter Stachura, *Poland 1918-1945* Routledge Publishing House, 2004, p. 80. Those revanchist objectives were based on the notion that the lost territories were “bleeding frontiers.” Gustav Stresseman had described them that way in his diary. The quote can be found in Gustav Stresseman’s *Diary, Letters and Papers* Vol. II, ed. E Sutton, McMillan, 1937, 503.

<sup>147</sup> Feigue Cieplinski “Poles and Jews: The Quest for Self-Determination 1919-1934” See the article in <https://www.binghamton.edu/history/resources/journalofhistory/poles-and-jews.html>. [accessed 5/3/2016] 5/3/2016] Once it was signed, Hitler told von Neurath that the signed paper was as good as a roll of toilet paper. See also W. W. Kulski, *Germany and Poland: from War to Peaceful Relations* (Syracuse N.Y: Syracuse University Press) 24.

the outcome was ambiguous.<sup>148</sup> On the positive side, the Jewish community regained its moral, social and economic status despite the protracted way in which the reconstruction was put into existence.

The individuals in Upper Silesian Jewish communities walked now with the heads high. For these “stateless Jews,” the winning in the highest tribunal in the world was indeed an inconceivable feat. The awareness that Germany ultimately still cared for its international status was exploited to their utmost advantage.<sup>149</sup>

The local leadership of all communities *Synagogengemeindenverband*, or Union, under Georg Weissmann and Justizrat Arthur Kochmann a tireless older activist, reorganized their own communities in terms of better security. Indeed, self-protection Jewish groups were formed that transcended ideological boundaries to stave and denounce any violence. Their vigilance paid off and they achieved thwarting most if not all antisemitic attacks. The leadership collaborated with President Calonder’s for redress, pointing out any violations of the 1922 German Polish Convention. Indeed, the communities sent many complaints regarding breaches of the Convention to the Mixed Commission. Mr. Calonder in turn made his presence felt by visiting the area several times, and tried to solve the myriad of complaints.

The Jewish leadership was not shy either in asking from the local Nazi government economic reimbursement: they requested any past due subsidies to their

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<sup>148</sup> Brendan Karsch, “A Jewish nature Preserve”: League of Nation Minority Protections in Nazi Upper Silesia, 1933-1937” *Conference Group for Central European History of the American Historical Association*, 2013.

<sup>149</sup> Karsh, 139.

communities, as well as for any retroactive payments owed, stopped because of the antisemitic laws; astonishingly the German leadership complied.<sup>150</sup>

It took a year and a month of hard work for *Oberpräsident* Brückner to finally concede defeat with a terse announcement on August 1934:

I hereby announce that all laws and decrees enacted after April 1, 1933, and in the future, insofar as they contain exceptional measures of persons of non-Aryan descent, are invalid in the Upper Silesian plebiscite zone.<sup>151</sup>

Thus, when Joseph Wagner succeeded Brückner at the end of the same year, the annulment regulation remained valid. Joseph Wagner, like his predecessor, also cared for Germany's international standing and guarded it zealously. In contrast to Germany proper, the compulsory park's yellow benches assigned solely to Jews, as well as the degrading "Nuremberg Laws" of September 15, 1935 - denying citizenship, and the subsequent ordinance prohibiting any social, sexual or social relationships between Jews and Aryans - never touched the area of the Convention at all. This is why Karsh deemed the area "A Jewish Nature Preserve." While Jews in Germany suffered not only the Nuremberg Laws but all kind of other indignities as well, the Jews in Upper Silesia were spared the worst.

Karsh explains that on the other hand, Upper Silesia's was also deemed to be a "Jewish nature preserve," by the German side for a complete set of different reasons: the

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<sup>150</sup> Karsh, 128, 139, 144.

<sup>151</sup> Karsh, 127. Karsh, Apparently, Brückner yielded to make this declaration without prior approval from the Nazi government in Berlin. In a missive to Wilhelm Frick Brückner apologized for his initiative: "just to prevent any damage to Germany's international standing."

local Nazi regime appeared gentle in contrast to the rest of Germany. This by itself outraged some loyal Nazis; how could these Jews roam there free? In addition, given the hiatus of a few years of protection, Hitler could at leisure decide which proven measures merited to be applied later in the Upper Silesian area.<sup>152</sup> Respecting officially the interim international agreement would cost the Nazi regime nothing at all in the long run.

Karsh examined the positive aspects of the reconstruction after Bernheim and pointed out how Jews fought back. Yet, it is also worth remembering that prior to the passage of the Bernheim Petition Jews suffered periodic harm at the hands of the SA, who dressed in their brown uniforms, provoked incidents with impunity and tacit encouragement from the authorities. Once the laws were made null and void, the antisemitic sentiments, which were part and parcel of those attacks, remained. Indeed, the incidents just lessened in frequency with President Calonder noting them as violations. In addition, although the sale of Julius Streicher's newspaper *Der Stürmer* with its provocative antisemitic slogan "Jews are our misfortune" was indeed banned, there were no means interdicting private copies, which were then shared, provoking further incitement against the Jews living in the area.

One such incident happened in Gleiwitz, when local SA, resenting the *Der Stürmer* ban, plastered photocopies of it all over the area in 1935. When the posters appeared in the door of the local synagogue, within a few minutes a group of policemen came and tore down those posters. In response, one of the SA troopers defied Wagner's prohibition against publicity and photographed the policemen doing their job. Another policeman, trying to mollify the SA trooper, said with alacrity: "Unfortunately the Jews

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<sup>152</sup> Karsh, 142 – 143.



in Upper Silesia have a special privilege. The Jews merely wait for such incidents to spread news internationally.” Joseph Wagner demanded the photographer involved in the Gleiwitz incident should be punished.<sup>153</sup> Needless to say, the policeman’s response to the SA trooper betrayed his true sentiments: while he conveyed the fact that he had to obey Wagner, it was also pretty obvious that he approved the SA’s bigotry since he stressed “Jewish privilege.”

While the ignominy suffered by Jews in Upper Silesia was not as stark as across Germany since it was a cordoned area, those communities were unquestionably dancing between the flames. In just two and half years they might find themselves joining the future of their brethren absent of a further safety net on their behalf. Indeed, the best legal minds attempted to plea with the League for a renewal of the 1922 Convention.<sup>154</sup> Yet, the League was silent since neither Germany nor Poland was disposed to entertain anew any such arrangement; notwithstanding the Non – Aggression pact the relationship between the two countries had already turned sour. Finally, the League itself, under the unsound leadership of Joseph Louis Avenol, also failed the test: Avenol assumed his position a month after the legitimacy of the Bernheim’s grievances was approved, and guided the League into a different political course from the one followed by than Eric Drummond.<sup>155</sup>

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<sup>153</sup> Karsh, 150.

<sup>154</sup> CZA, A 306/54. (German) Professor Paul Guggenheim, a renowned professor of law in Geneva, a pacifist and senior member of the newly formed Jewish Congress lead by Nahum Goldman, He responded to an inquiry from the Jewish leadership on the validity of an extension urging that the League heeds Nahum Goldman’s request for an extension to the 1922 Geneva Convention. His reasoned response also takes into consideration many other legal authorities to support his own thinking. See also, CZA, A 306/54. Prof J. H. Verzijl, Professor of International law at Utrecht University who also reaffirmed the validity of the Convention, and thus, the validity of an extension. All these documents are undated.

<sup>155</sup> See, James C. Barros, *Betrayal from Within: Joseph Avenol: Secretary General of the League of Nations-1933-1940* (New Haven: Yale University Press, 1969).

Under these circumstances there was no way to obtain such legal extension at that point. Matters turned to the worse after Adolf Eichmann, of the Security Division or SD, arrived in nearby Breslau on May 10, 1937. He arrived that early to gather a list of all the Jewish lawyers, doctors, artists, and leaders who would be removed from their positions, as of July 15, 1937.<sup>156</sup> Indeed, the *Völkischer Beobachter* gleefully announced that irrevocable date: “unprotected Jews in the area would now be prey.”<sup>157</sup> Once the rigor of Nazi law was imposed, the destiny of all Jewish Upper Silesian communities became indistinguishable from the rest of the Jews in Germany; all offices under Nazi guidelines closely replicated the antisemitic measures in the Upper Silesian area, and *Der Stürmer*, now legal again, instigated once more terror and oppression.<sup>158</sup>

Evidently, since the Convention’s expiration, both Upper and Lower Silesian Jews, like the rest of Germany, could no longer avail themselves of kosher meat anywhere - causing duress to Orthodox Jews, and their families.<sup>159</sup> Assault upon injury occurred when *Der Stürmer*, already available since April 1937, a whole issue was dedicated to publicize the classical hoax of “ritual murder” conflated with the kosher meat ritual.<sup>160</sup> That issue became freely available in Upper Silesia as of July of that year.

In July 1937, the situation deteriorated almost immediately when “Aryanization” of property was pursued with vengeance. While the prior aggression was mostly a bloodless process of constant vexation, the lightning speed of physical violence that ensued was unquestionably due to this simple fact: Hitler, SA operatives, policemen,

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<sup>156</sup> Weissmann memorandum in Sept 7<sup>th</sup>, 1955, says two weeks prior to expiration the situation was not the same anymore. See, Peter Longerich *Holocaust: The Nazi Persecution and Murder of the Jews*. (Oxford: Oxford University Press, 2010) 68-69.

<sup>157</sup> Karsh, 157.

<sup>158</sup> Karsh, 158.

<sup>31</sup> Abraham Ascher, *A Community under Siege* (Stanford California: Stanford University Press, 2007) 23.

<sup>160</sup> Robin Judd, *Contested Rituals Circumcision, Kosher Butchering and Jewish Political life in Germany 1843-1933* (Ithaca: Cornell University Press, 2007) 244.

and the German bureaucrats, achieved their objectives without scruples, with specious racial notions, irredentism, cruelty, duplicity, chicanery, and sheer dishonesty. Nothing stopped them now.

It is fitting to finish this chapter with the interview given by Emil Margulies in Czechoslovakia in the aftermath. Margulies, in despair, expatiated about the Jewish situation at large, and it is worth quoting his words in full:

Through the Balfour Declaration and through the Protection of Minorities [treaties] Jews have fought to establish respect for themselves in civilized countries in Europe. However, the German regime's attempts to do to otherwise have awakened in the Jewish people a protest all over the world while also addressing the highest world court to attempt a redress of Jewish rights in Germany. Obviously, German behavior is against the stable principles that civilized nation-states in the society of nations must respect.

What is happening in Germany is a sadistic, brutal, assault again weak minorities but certainly not the first against the Jewish people. With the behavior of the National-Socialists one vital notion has lost its vigor: that the Jewish situation and the Jewish question would be solved through the process of assimilation. Theodore Herzl built a movement to achieve that Jews live and progress under normal circumstances.

The Jewish people today are a minority in every place, and as such those circumstances are difficult to achieve. The Zionist program is an answer to the barbarity of such a regime like Hitler's: the Jewish people living in Palestine. The Diasporic condition will be solved after the ending of the British Mandate. The protection of the Jews can be achieved *there* unlike anything that exists in the European countries. Thousands of Jews there will then not be in danger.<sup>161</sup>

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<sup>161</sup> CZA, A 299/8. (German). 1938 still in Czechoslovakia and prior to his Aliyah. My emphasis.

Margulies lucid appraisal conveyed the deplorable message that as long as Jews continued to live as minorities in the countries in which they dwelt, they had an uphill battle to win when antisemitic governments arose. Political Zionism emerged to reverse this anomalous situation.

As discussed throughout this work the Zionist leadership that made the Bernheim Petition a shield of protection as part of their *Gegenwartsarbeit*, was at the same time attempting the project of *Palästinaarbeit*. The inadequate, frustrating, outcomes of the former made Margulies assert that the main focus should be on practical Zionism as a means to obtain sovereignty in the future for the Jewish people: when the Jewish people would have a nation-state, a Jewish government, and its own army - that would be the best guarantee of Jewish rights for Jews.

Finally, it is worth noting that Franz Bernheim, the Jew who dared to shame Germany in the League of Nations, lost his citizenship.<sup>162</sup> Hitler would by no means forget the humiliation suffered at the League of Nations that bears his name.

Obviously, implementing the restoration of Jewish group rights in Upper Silesia was not going to be easy since Hitler did not truly care despite, or perhaps in spite, of his need to comply; it took almost a year to void all the antisemitic laws and the Jews to recover their jobs. Once the prior status quo was implemented Jews in Upper Silesia had a measure of freedom, which allowed them to reorganize and defend themselves against any breach of the law through the small window of opportunity offered by the 1922 Agreement. Sadly, the protections did not extend to all Jews in Germany, and the Zionist

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<sup>162</sup> The Southern Israelite, "Man without Country: Fate of Bernheim." August 20<sup>th</sup> 1937.

team understood the limits of Gegenwartarbeit turning the complete efforts to try to provide a homeland for the Jewish people as outlined by Margulies above.

Justice like all elevated ideals demands love,  
the capacity to treat the affairs of others with  
the same gravity as one's own affairs.

Max Huber <sup>163</sup>

## Concluding Remarks

After the First World War the hopes for a better, peaceful, world hinged on the interweaving of three converging events that helped the Jewish condition: the creation of the League of Nations and its guarantee to take care of minorities, the formulation of the Weimar Constitution and its enlargement of civil rights for all citizens including Jews, and the British promise of national restoration in Mandate Palestine. The Nazi seizure power of Nazism warped the course of these events.

Shortly after Adolf Hitler appointment as chancellor of the German Reich in January 1933, Shulamit Volkov's father wrote a poignant letter to his wife who already was in Mandate Palestine. His moving words convey the German Jews' state of mind.

What ties do you still have here? How strong are they? What can you still hope to get here and much you can hope for? Is there really no possibility at all for a Jew to take part in this? Or if it is not possible now when might it be so? Is there a chance that you could wait out this period of transition? Should you? ..... And what exactly are we giving up here? What could you expect to find outside? Where do you belong? How would you establish yourself elsewhere and where? What are you actually looking for? What is really important to you? Where do your basic values lie, what are your talents, your aims your ideals?<sup>164</sup>

It is this set of soul searching questions that lies behind the behavior of the German Jews in this period. My work examined the Bernheim Petition trying exactly to

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<sup>163</sup> Epigraph: Max Huber was one of the Jurists in determining the validity of the Bernheim Petition. He was president of the Permanent Court of Justice at the League of Nations. In Nathan Feinberg, *On An Arab Jurist's Approach to Zionism and the State of Israel* (Jerusalem: Magnes Press, 1971) 133.

<sup>164</sup> Jürgen Matthäus and Mark Roseman, *Jewish Responses*, xiii.

gauge how these emancipated Jews reacted through the prism of the debates held for a long period between the Jews in the liberal CV camp and the ZVfD Zionist base in Germany. When the transnational team, not part of the ZVfD but an arm of ZO and the Comité, formulated the petition the inner debates lodged themselves directly into the team working at the League of Nations in their own last ditch attempt to protect all German Jews.

The call received by Nathan Feinberg on the eve of the discussion at the League of Nations, is the surprising key of the debate: CV's adamant demand to the team to withdraw any such attempt at rescue even when the acknowledged goal was to liberate *them* under the premise that emancipation had been irrevocably rescinded. Yet, after examining the debate it should be clear why that specific call was really not a shock. The CV's genuine argument hinged on the insight that they did not want to be perceived as a minority - then more than ever since they had full civil rights backed by the Weimar Constitution, which they thought Hitler would respect. In addition, of course, the fear of retaliation might have been foremost in their minds. Quite possibly, the hope lingered, too, that the Nazi government would not last long. Indeed, they had witnessed a series of Weimar Cabinets that rose and fell.

Yet, it is important to note that if anything the negation of Germany Jews' as a minority included the German Jewish Zionist perception of themselves. This is clearly proven in a speech by its irrepressible leader, Kurt Blumenfeld, given in 1932, and later reprinted in the *Jüdische Rundschau*:

We do not demand minority rights. That possibility was flatly rejected back in our 15<sup>th</sup> Convention in Berlin in 1918. That concept depends on the number of Jews from every country. In

Germany the conditions for national minority rights are non-existent. The most we can ask is cultural autonomy because [it is in the same page] as when we ask Jews to cherish their own heritage.<sup>165</sup>

This declaration should not be seen as unexpected either since the members of these two organizations were a product of the privileges that emancipation offered them both as Jews. Indeed, the German Zionists were as highly educated as those of the CV. The contentious debate was not only centered on ideologies, it was also tinged with confrontational issues due to generational shifts in both camps. Where the Zionists differed was in their perception of being an integral part of the larger society in Germany; their focal point of departure was to remove German politics. Instead, the focus was on Jewish education that would prepare them to follow practical Zionism by settling in Mandate Palestine, or *Aliyah*; the latter was a more radicalized stance because to a large extent most Zionists were quite content in Germany's soil until Hitler came to power. The German Zionists' voice is absent from the work of the transnational team formulating the Bernheim petition for two reasons: first, it should be obvious that this work was done in secrecy far away from Germany, and few knew about this project. Second, ZVfD's stance to refrain from any work which involved them in politics prevented them to do so, not even in secret.

The Zionist team working on the Bernheim Petition represented an astonishing attempt to win the war against Hitler's regime using the rule of law. If the team used minority arguments as a weapon their work was in the tradition of intercession - this time based on the 1922 German Polish Convention of Upper Silesia. Realistically speaking, this was the best tool whereby they could at least hold Hitler partially responsible for the

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<sup>165</sup> Hagit Lavsky, *Before the Catastrophe*, 231.



international obligations to Jewish citizens of Germany. They also hoped fervently that the League's members would agree, and then enlarge the discussion to not only narrowly protect the Jews of Upper Silesia but all German Jews who should be treated according to civilized norms. Several representatives indeed chastised Mr. von Keller's defense of racist ideology but without any further impact on the destiny of the Jews in Germany.

The team's success hinged on the work of the League of Nations, an organization of international caliber in which they had rightfully set their hopes. However, as discussed in this work, the League's members were invariably tied to the countries they represented and often could not rise above this plane. The Council was made up of shifting alliances, networks and institutions in which a host of actors entered and exited and sought to exploit its strengths as well as weaknesses.<sup>166</sup>

In the Bernheim Petition case, the Council acted based on higher standards the League of Nations had set for itself regarding minorities, and did concur with the clear premises of the Petition. It rightfully determined that Nazi Germany had indeed obligations to respect the protocol until the expiration of those clauses to take place on July 15, 1937.

If anything, the exhilaration felt by all Jews all over the world soon dissipated precisely because the League fastened the situation to be just solved at the local level. This decision underscored once again how sturdy the sway of the notion of sovereignty was. It was due to the latter that Mr. Pedro de Azcárate, the President of the Minorities Sections, did not approve Mr. Feinberg's suggestion of a new petition to rectify the delays in compliance.

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<sup>166</sup> Susan Pedersen, *The Guardians: The League of Nation and the Crisis of Empire* (Oxford: Oxford University Press, 2015). 5.

A rather unexplored question in most of the historiography is: did the Jews in the German area of Upper Silesia benefit from the passage of the Bernheim Petition? The answer must be nuanced: it depends on what section of the community we are exploring. For example, for Orthodox Jews, who respected Jewish law and traditions, the fact that kosher meat was still permitted solely in this area was indeed valuable. Other protective measures benefitted the whole community and bolstered their morale. For still others, the hiatus was an opportunity to leave Upper Silesia since they had full use of passports, which German Jews elsewhere lacked; many of them found unusual safe havens or reached Mandate Palestine.

In the interim period, those who stayed until 1937 were able to increase a measure of protection within the perimeter of their communities. However, a more complete history of the reconstruction of the Upper Silesian Jewish Communities after the passage of the Bernheim Petition is awaiting more in depth research. A note of caution was signaled by Stephen Poppel: the scarcity of documentation is in great measure due to the Gestapo's confiscation of the files belonging to the Jewish communities in 1938, and quite possibly their destruction. Poppel states that even in the treasure trove found in the Zionist archives represents an incomplete record.<sup>167</sup>

The uneven application of Germany's international obligation at the local level was a relief and a disappointment all at once. Given that the team's work did not come to fruition as they expected, their departure to Mandate Palestine must be considered a historical turning point: they made *Aliyah*. On the one hand, they understood the narrow limits of the help they could give their brethren in the Diaspora. On the other hand, their labors in Mandate Palestine were no longer work of intercession or *Gegenwartsarbeit*,

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<sup>167</sup> Stephen M. Poppel, *Zionism in Germany*, xvi.

but practical Zionism; their firm belief was that this was the only way in which Jews could truly serve the Jewish people: working further to directly control their own destiny with a nation state that obviously would then be sovereign and able to bestow rights to the Jewish citizens within it - never to be rescinded.

The work of *Gegenwertarbeit* in the Diaspora passed to the shoulders of Nachum Goldman when the Comité expanded to become the World Jewish Congress (WJC) in 1936. This Congress became an umbrella organization for all kind of Jews of different ideologies. Nahum Goldman called it “an address for the Jewish people.”<sup>168</sup>

It is also important to mention the impact of Nathan Feinberg who assiduously worked with the team members of the Bernheim Petition. During the Mandate he continued to work as a professor of international law, and as an advocate for the rights of the Jewish people to be sovereign in what later became the State of Israel with an extensive number of books and papers elucidating Jewish rights. Emil Margulies followed suit once Czechoslovakia was invaded, and George Weissmann also reached *Eretz Israel*.

Historians work with certain parameters that limit speculations about the future, thus my work does not touch the catastrophe that befell the Jewish people under Nazism. Of course, it is only with hindsight that one can argue that the Zionists side of the debate was correct when the State of Israel finally emerged at midnight on May 15, 1948. For them theory, and praxis became one, and a continuation of their work to protect the Jewish people. Finally, honoring Leo Motzkin’s work, his body was reinterred in the State of Israel.

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<sup>168</sup> Leon Kobowitzki. *Unity in dispersion; A History of the World Jewish Congress* (World Jewish Congress, 1948) 33.

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