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## Going Underground: Burial, Restitution, and Jewish Space in Postwar Germany<sup>1</sup>

*Jüdische Friedhöfe waren hinsichtlich ihrer Nutzung und ihrer räumlichen Ausdehnung in der NS-Zeit massiven Veränderungen unterworfen. Die Orte, an denen jüdische Trauer und Totenehrung stattfinden konnte, wurden radikal gestört. Dieser Artikel untersucht zunächst die Umbrüche, die den Friedhöfen im Deutschen Reich während der NS-Zeit widerfuhr. Er wendet sich dann einer Auseinandersetzung im Fulda der Nachkriegszeit zu, wo die JRSO, eine wichtige Organisation zur Rückerstattung jüdischen Vermögens, darum kämpfte, die Unversehrtheit des alten jüdischen Friedhofs der Stadt wiederherzustellen. Die Geschichte solcher Institutionen sowohl in der Nazi-Zeit als auch in den Jahrzehnten nach 1945 wirft die Frage auf, wie wir auf „jüdische Räume“ in Deutschland blicken, ihre Zerstörung und die Möglichkeit oder Unmöglichkeit ihrer Wiederherstellung.*

*The functions and boundaries of Jewish cemeteries underwent massive transformations in the Nazi era. The spaces in which Jewish mourning and honoring the dead could take place were radically disrupted. This article focuses first on the upheavals experienced by graveyards in the Reich under Nazi rule. It then turns to a postwar dispute in Fulda, where a major Jewish restitution organization, the JRSO, struggled to restore the integrity of the city's old Jewish cemetery. The history of such institutions both in the Nazi era and the decades following 1945 raise broad questions for how we think about the contours of "Jewish space" in Germany, its destruction and the possibility or impossibility of its repair.*

The ownership of old cemeteries has rarely in recent memory sparked impassioned international discussion. Yet a widely publicized dispute in Hamburg in the early 1990s did just that: local Greens and protestors affiliated with a Jerusalem-based Orthodox Jewish group attempted to block construction of a shopping center on the site of what was once a Jewish cemetery in the city. A rabbi from New York and one of the organizers of the protest, Hertz Frankel, told *New York Times* reporters, "Jewish law states clearly that a cemetery cannot ever be sold or used for any other purpose. It is a tenet of Orthodox belief that a person's spirit is disrupted when his body is disturbed. For us, a cemetery has greater holiness than a synagogue or even a Torah scroll."<sup>2</sup> Opened in 1663, the cemetery was used for approximately 4,000 burials until 1934. The property was apparently returned to the city's Jewish community after the war, but sold in 1950 to a real estate investor and then changed hands a few more times. Protestors such as Rabbi David Schmidt from

<sup>1</sup> The views expressed in this article are my own and do not necessarily reflect those of the U.S. Holocaust Memorial Museum. I thank Susanne Heim, Anna R. Igra, Alexandra Klei, Jürgen Matthäus, Annika Wienert, and Medaon's anonymous reviewers for critical comments on earlier versions of this essay. Translations of German text are my own.

<sup>2</sup> My emphasis, *New York Times* (May 2, 1992).

Jerusalem made clear, “For us, the cemetery is not just gravestones,” but local Jewish leaders in the city disagreed with the group, characterizing the protestors as interlopers.<sup>3</sup> The controversy was somewhat late in coming, yet no isolated incident. Acrimonious showdowns over “Jewish space” played out in towns throughout the Bundesrepublik after the war ended: who controlled that space and who could claim it legally, culturally, and morally? Jewish communities and advocacy groups for Jewish rights themselves adopted discordant positions on these questions. At times these differences even escalated into legal contests over ownership and use of land.

Violently destroyed or quietly neglected, a number of older, seemingly defunct cemeteries became one of the battlegrounds for competing claims about a Jewish presence in postwar Germany and the right to administer what had been prewar Jewish communal property. This article will focus on one protracted battle around an old Jewish burial ground in Fulda and its control in the first years after the war ended. Many details in this German case remain ambiguous, irretrievably buried. Yet it clearly exemplifies the difficulty of reaching a settlement that satisfied both Jewish religious precepts and more secular Jewish advocacy groups. Furthermore, the Fulda controversy, like the more recent Hamburg case, raises the underlying general question of how we might integrate burial space and the Jewish dead into a history of “space and the Holocaust.”<sup>4</sup> More than “ownership” of Jewish burial grounds was at stake.

Some two thousand or more Jewish cemeteries stood across Germany at the advent of the Nazi era. The functions and boundaries of these institutions and the rituals associated with them underwent massive transformations under the new regime. The spaces in which Jewish mourning and honoring the dead could take place were radically disrupted, as were the physical spaces in which the dead could “rest.” The upheavals experienced by Jewish graveyards in the Reich had a unique legal and institutional history, yet point to broader questions for how we think about the integrity and contours of Europe’s “Jewish space” in the face of Nazi occupation, rule, and violence, about the intersections of the living with the dead. In the aftermath, those that survived in some form became part of the puzzle of how to “restore” or maintain the integrity of Jewish cultural and religious space, space that was violently disrupted after 1933, but also faced new and different assaults in the postwar decades. Jewish space needs to be considered not only as a problem of the Holocaust but also of the postwar settlement involving survivors and Jewish communities and advocacy groups in every country across Europe.

## The Holocaust Era

Nazi rule and the war in particular brought sometimes drastic change to burial practices and lands across the Reich, not just in Fulda. Municipal cemeteries in general underwent wartime changes, forced to expand or create new burial sections as a result of

<sup>3</sup> Jewish Week, Inc. (May 22–28, 1992). For a detailed account of this complex conflict, see Lorenz, Ina/Berkemann, Jörg: Streitfall jüdischer Friedhof Ottensen. Wie lange dauert Ewigkeit: Chronik, Hamburg 1995, pp. 239ff.

<sup>4</sup> One could speak of the places of mass and improvised graves here as well, but this article will only focus on recognized German Jewish cemeteries. A Landau/Kirrweiler case (in the Rhineland-Palatinate) is described in brief in Winzer muss jüdischen Friedhof zurückgeben, in: Rheinpfalz [Zeitung] (July 10, 1980), and Der Winzer erhält den jüdischen Friedhof in Kirrweiler nicht, in: Frankfurter Rundschau (December 15, 1979).

the high death toll among forced laborers and bombing victims in cities across Germany. However, most victims of the Holocaust from Germany died elsewhere and were not buried in the country's traditional Jewish cemeteries. The deportations and mass killings in eastern Europe thus radically curtailed the older functions of these burial grounds and the choices that remained for marking Jewish death and mourning. The history of these institutions is nonetheless relevant for thinking about the fate of "Jewish space" within the Reich and across Europe during the Holocaust.

In a groundbreaking study two decades ago, historian Andreas Wirsching demonstrated that many Jewish cemeteries in Germany were long protected from a wholesale sell-off during the Nazi years by a range of legal protections for cemeteries in general.<sup>5</sup> Regional history projects and legal historians have gradually expanded this story with evidence that these spaces, their contours and the activities that played out in them, were indeed somewhat protected, yet anything but stable. First, the borders and physical structures of Jewish graveyards across Germany often literally disappeared or were taken elsewhere, particularly after the November pogrom. Iron cemetery fences and gates were torn down for resale by scrap dealers or to add to scrap metal collections during the war. Vandals knocked over or smashed gravestones, and their fragments were sometimes turned into construction material and reused throughout German towns and cities in building and road projects.<sup>6</sup> Opportunistic small-town officials also seized tombstones to pave their garden walls and patios.<sup>7</sup> In a number of German cities, gravestones were even carted off to serve as reinforcement walls for air raid shelters, or – as in Berlin – material for barricades and antitank barriers.<sup>8</sup>

Second, Jewish cemeteries in the Reich were "inhabited" and even "depopulated" in new ways where local populations breached their gates and walls. Technically, German criminal law deemed *Störung der Totenruhe*, disturbing the peace of the dead (§ 168 StGB), a punishable offence against religious observance that remained on the books uninterrupted through the Nazi period.<sup>9</sup> In some places, however, such rights – particularly of

<sup>5</sup> Wirsching, Andreas: Jüdische Friedhöfe in Deutschland 1933–1957, in: Vierteljahrshefte für Zeitgeschichte 50 (2002), 1, pp. 1–40. German Jewish cemeteries had been subject to outside authority and interference before, but "many a Jewish community defended its cemetery vehemently against the demands of modern urban planning." See Grotzmann, Andreas: Out of the Ghetto, Into the Middle Class: Changing Perspectives on Jewish Spaces, in: Lässig, Simone/Rürup, Miriam (eds.): Space and Spatiality in Modern German-Jewish History, New York 2017, pp. 140–59, here p. 155 and cf. p. 143.

<sup>6</sup> On the use of Jewish tombstones for construction materials in Germany and elsewhere in Europe, see Hermann, Heidrun: Zur Geschichte des alten jüdischen Friedhofs in Frankfurt am Main, in: Brocke, Michael/Kommission zur Erforschung der Geschichte der Frankfurter Juden (ed.): Der alte jüdische Friedhof zu Frankfurt am Main. Unbekannte Denkmäler und Inschriften, Sigmaringen 1996, pp. 18–27, here p. 26; Webber, Jonathan: A Jew, a Cemetery, and a Polish Village. A Tale of the Restoration of Memory, in: Lehrer, Erica/Meng, Michael (eds.): Jewish Space in Contemporary Poland, Bloomington 2014, pp. 238–63, here p. 249, and in the same volume, Kapralski, Sławomir: Amnesia, Nostalgia, and Reconstruction: Shifting Modes of Memory in Poland's Jewish Spaces, pp. 149–69, here pp. 157–58. See also Saltiel, Leon: Dehumanizing the Dead: The Destruction of Thessaloniki's Jewish Cemetery, in: Zalc, Claire/Bruttman, Tal (eds.): Microhistories of the Holocaust, New York 2017, pp. 68–84, here pp. 74–78.

<sup>7</sup> On such incidents, see Edith Raim's fascinating Nazi Crimes against Jews and German Post-War Justice. The West German Judicial System during Allied Occupation (1945–1949), Oldenbourg 2015, pp. 179–85, and Alemannia Judaica: Jüdische Friedhöfe in der Region, online at: [http://www.alemannia-judaica.de/juedische\\_friedhoeefe.htm](http://www.alemannia-judaica.de/juedische_friedhoeefe.htm) [August 30, 2020].

<sup>8</sup> Moorhouse, Roger: Berlin at War: Life and Death in Hitler's Capital, 1939–45, London 2010, p. 264.

<sup>9</sup> Strafgesetzbuch für das Deutsche Reich in der Fassung der Strafgesetznovellen vom 26. Mai und 24. November 1933, 5. Aufl., Mannheim 1934, p. 52; the core of the statute was carried into the postwar era: Kohlrausch, Eduard/Lange, Richard (eds.): Deutsches Strafgesetzbuch mit Nebengesetzen, 2. Aufl., Berlin 1949, p. 58. A more detailed discussion of this and related statutes appears in Stentenbach, Berthold: Der strafrechtliche Schutz der Leiche, Aachen 1995 (not available to me at this time).

the Jewish dead – were clearly ignored and never enforced. For instance, some Jewish graves were exhumed for craniological and skeletal study.<sup>10</sup> Public health concerns and residual cultural inhibitions may have constrained widespread disturbance of the Jewish dead. Still, a number of Jewish cemeteries became all-purpose burial grounds, places where officials disposed of a variety of the “racially undesirable” war dead. Private companies also used cemetery buildings as storage facilities for their wares. Cemetery interiors became ad hoc junkyards and dumping grounds for bombing raid rubble. Individuals appropriated pieces of cemetery land for garden allotments or enclosures for their farm animals. Across the Reich, some graveyards were converted to commercial use, while others became sites for forced labor and POW camps, even air raid shelters. At times they served as places of residence – places of safety – not only for Jews in hiding, but for Wehrmacht soldiers and civilians displaced by the air war and approaching front.

Finally, the number of prewar mourners entering Jewish cemeteries had already dropped off steeply because of emigration and flight. After war broke out and anti-Jewish measures escalated, these sites themselves became danger zones for the living: family and Jewish community members feared being picked up by the Gestapo during funerals or on visits to local gravesites.<sup>11</sup> Local Gestapo offices used the burial of cremation urns purportedly containing the ashes of Jews who had died in the main concentration camps to exercise surveillance over and intimidate Jewish family members still living at home.<sup>12</sup> Still, Jewish cemeteries were not wholly stripped of their former character and functions under Nazi rule. Jews remaining in the Reich continued in greatly reduced numbers to use their cemeteries as burial grounds and these, paradoxically, became one of the few places where religious observance and social interactions with Jewish friends could continue in some form during the Nazi period.<sup>13</sup>

### **Invisibility, Absence, and Jewish Space in Postwar Fulda**

What did protection or even restoration of Jewish space mean in the era following World War II? In Fulda, recurring disputes arose involving one of city’s two Jewish cemeteries, in this case the older one on the centrally located intersection of Rhabanusstraße (Rabanusstraße) and Sturmiusstraße. These conflicts show that the path to “restoration,” be it above or below ground, was anything but clear-cut. They were not about the Holocaust dead in any direct way. Still, the expropriation and massive decimation of Fulda’s Jewish population were obviously central to this postwar story. Just over 1,000 Jews lived in the city in 1933 (out of a population of nearly 28,000 mainly

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<sup>10</sup> On exhumations by the Reichsinstitut für Geschichte des neuen Deutschland, see Wirsching, *Jüdische Friedhöfe*, 2002, pp. 22–23. In at least one Viennese cemetery, for instance, the dead were removed for anthropological “research”; see Walzer, Tina: *Der jüdische Friedhof Währing in Wien. Historische Entwicklung, Zerstörungen der NS-Zeit, Status quo*, Wien 2011, pp. 63–71.

<sup>11</sup> Meyer, Beate: *A Fatal Balancing Act: The Dilemma of the Reich Association of Jews in Germany, 1939–1945*, New York 2013, pp. 166, 211n288.

<sup>12</sup> Lambertz, Jan: *The Urn and the Swastika: Recording Death in the Nazi Concentration Camp System*, in: *German History* 38 (2020), 1, pp. 77–95, here pp. 86–91.

<sup>13</sup> Victor Klemperer’s diary entries for 1942 indicate as much; see *I Will Bear Witness: A Diary of the Nazi Years, 1942–1945*, New York, 1999.

Catholic residents).<sup>14</sup> The number had fallen to around 38 in 1950, almost none of them members of the prewar Jewish community.<sup>15</sup> The dispute centered on the legality of selling parcels of the old cemetery property and its subsequent use, as well as the ramifications of such transactions. Not only town and Jewish community officials became parties in the dispute, but at various points also federal officials, top representatives of the Jewish Restitution Successor Organization (JRSO) in the Bundesrepublik, the Landesverband of Jewish Communities in Hesse, and Leo Baeck, the prominent German Jewish Reform rabbi and community leader who survived Theresienstadt and had moved to London after the war.<sup>16</sup>

The last burial at the Fulda site was probably in 1903, after which it was officially closed around 1906. Two women may have been buried there in the 1920s, but their graves were reportedly later removed to another cemetery with the assistance of a rabbi and Jewish community members (the women's status as community members was evidently in question). Plans emerged in the mid-1930s to convert the space into an area for public use. The cemetery attendant (*Friedhofsaufseher*) confirmed in September 1951 that graves were exhumed and transferred to the new Jewish cemetery in the Edeltzeller Strasse back in January 1938; he had been present, along with community members and a rabbi, and the work was carried out in a reverent or respectful way (*pietätvoller Weise*).<sup>17</sup> Regional police authorities permitted conversion of the older site to public use in January 1941 after the city's public health department confirmed that no concerns remained about using the cemetery, since no burials had taken place during the required statutory waiting period (*Ruhefrist*) and bodies were no longer buried there.<sup>18</sup>

In the period that followed, the site ceased to be recognizable as a graveyard and was used as land for gardening and crops during the remainder of the Nazi era (although it may have suffered some bomb damage). Attempts by the city to cordon it off after the war with a wire fence (for unclear reasons) proved futile, since local residents constantly trampled it down, using the site both as a shortcut across town and playground for children. A local resident also claimed that both soldiers and civilians were using the space as a nocturnal open-air "bordello."<sup>19</sup> Ernst Katzenstein, a regional JRSO official,

<sup>14</sup> See Rademacher, Michael: Deutsche Verwaltungsgeschichte von der Reichseinigung 1871 bis zur Wiedervereinigung 1990, online at: <http://www.verwaltungsgeschichte.de/fulda.html> [August 23, 2020].

<sup>15</sup> Paul Horn and Naftali H. Sonn published a memorial book, *Geschichte der Juden in Fulda. Ein Gedenkbuch*, Tel Aviv 1969, that included deportation lists, and for more recent documentation, see Renner, Gerhard/Schulz, Joachim/Zibuschka, Rudolf (eds.): "Werden in Kürze anderweit untergebracht". *Das Schicksal der Fuldaer Juden im Nationalsozialismus*, Fulda 1990.

<sup>16</sup> Limited by current travel restrictions, I base my account of these disputes on JRSO correspondence and related records held by the U.S. Holocaust Memorial Museum Archives (hereafter USHMMA), RG-12.008, and an extended interview conducted with Benjamin B. Ferencz by Joan Ringelheim of the USHMM, on August 26, 1994 and October 21, 1994: USHMMA, RG-50.030\*0269.

<sup>17</sup> USHMMA, RG-12.008.02, folder 3, sworn statement, September 13, 1951, Ludwig Gensler. Fulda's Jewish cemetery on Edeltzellerstrasse was evidently the one visited by former Jewish residents and their family members during a large 1987 commemorative event. See Miller, Judith: *One, by One, by One: Facing the Holocaust*, New York 1990, pp. 13–14.

<sup>18</sup> USHMMA, RG-12.008.02, folder 2, transcript of certificate, September 4, 1951, gez. Gellings (office of the Oberbürgermeister).

<sup>19</sup> *Ibid.*, folder 3, letter, October 5, 1953, Dr. Loebenstein (JRSO Mannheim) to E. Katzenstein (JRSO headquarters Nürnberg). Elsewhere, more recognizable Jewish cemeteries were subject to renewed assaults by vandals. See 171 Jewish Cemeteries Desecrated in Germany Since 1948, Govt. Reports (December 20, 1957), archive of the Jewish Telegraphic Agency, online at: <http://www.jta.org/1957/12/20/archive/171-jewish-cemeteries-desecrated-in-germany-since-1948-govt-reports> [October 29, 2020].

approached Leo Baeck in London for counsel in October 1951 while its sale or reuse was being negotiated. He informed the rabbi, “Today it consists of a devastated empty area on which mostly weeds grow, which in its current state is disgraceful [*unwürdig*] [...] A restoration of the cemetery to its original condition is impossible: the location of the former graves can no longer be recognized today.”<sup>20</sup>

In the early 1950s, questions about the sale of this Fulda cemetery land and its use for construction projects landed on the desk of Jewish Restitution Successor Organization officials.<sup>21</sup> Twelve Jewish organizations united to form the JRSO in 1947 to lay claim to and manage “heirless property” that had belonged to deceased Jewish individuals and destroyed Jewish communities and institutions in what was then the U.S. Occupation Zone of Germany.<sup>22</sup> With headquarters in Nuremberg, the JRSO’s first director general was a young American lawyer, Benjamin B. Ferencz, who had been chief prosecutor in the Einsatzgruppen trial held in that city.<sup>23</sup> The JRSO came into frequent conflict with the small Jewish communities that had been established in Germany after the war (and were attempting to assert legal continuity with prewar communities); in a number of instances they filed claims for the same properties under U.S. Military Government’s Military Government (M.G.) Law #59 on the Restitution of Identifiable Property.<sup>24</sup> Some of these communities reached an arrangement with the JRSO whereby they received the title to certain properties, but still needed JRSO permission to sell them.

A protracted argument broke out in Fulda over whether part of the old Jewish cemetery’s land could be sold to the city and built upon, and for what purposes. The case proved memorable enough that Benjamin Ferencz still recalled many details forty years later. The city of Fulda had proposed buying at least a portion of the old cemetery in 1950 or 1951 from the local Jewish community, and both the JRSO’s regional office and headquarters in the BRD became involved. JRSO officials pronounced that the sale (observing certain conditions) could only proceed with rabbinical approval (in this case Leo Baeck).<sup>25</sup> Baeck in essence found the sale unobjectionable, provided that certain conditions were met:

It is a principle of Jewish religious law that the resting places of the dead belong to them in perpetuity. Only the part of the cemetery in which graves are located is to be regarded as the resting place of the dead. Accordingly, the part which can be

<sup>20</sup> USHMMA, RG-12.008.02, folder 3, letter, October 12, 1951, E. Katzenstein to Leo Baeck. Katzenstein was a German-born jurist who emigrated to Palestine in the 1930s and began working for the JRSO in 1949, succeeding Ferencz as head of the organization in 1952 and becoming head of the Jewish Claims Conference in Germany in 1956.

<sup>21</sup> For a detailed account of its work, see Takei, Ayakai: The “Gemeinde Problem”: The Jewish Restitution Successor Organization and the Postwar Jewish Communities in Germany, 1947–1954, in: *Holocaust and Genocide Studies* 16 (2002), 2, pp. 266–88.

<sup>22</sup> A Jewish Trust Corporation was set up for similar purposes in the British occupation zone and later, an autonomous operation in the French zone, the Jewish Trust Corporation-French Branch.

<sup>23</sup> Ferencz had first compiled evidence in Europe for a new War Crimes Unit attached to the U.S. Army as the war in Europe drew to a close, later doing the same for the International Military Tribunal at Nuremberg. Apart from his work for the JRSO, he took part in negotiations for the Federal Indemnification Law (BEG or *Bundesentschädigungsgesetz*) in the early 1950s on behalf of Jewish groups.

<sup>24</sup> On the massive legal complications that ensued around property restitution, see, e.g., Kagan, Saul/Weismann, Ernest H. (eds.): *Report on the Operations of The Jewish Restitution Successor Organization, 1947–1972*, New York 1972, pp. 6ff. See also Lillteicher, Jürgen: *Raub, Recht und Restitution. Die Rückerstattung jüdischen Eigentums in der frühen Bundesrepublik*, Göttingen 2007, esp. pp. 357ff.

<sup>25</sup> USHMMA, RG-12.008.02, folder 3, letter, October 12, 1951, E. Katzenstein to Leo Baeck.

ascertained not to contain graves can be assigned to building purposes without further ado, particularly if the obligation to uphold the character of the neighborhood in which the cemetery is located is respected.<sup>26</sup>

Jonathan Webber, an anthropologist researching largely decimated Jewish cemeteries in contemporary southern Poland, has explained some of the religious reasoning behind Baeck's argument. In classical Jewish law, he writes:

Cemeteries are not regarded as such only when they are fenced off and contain within them ranks of tombstones. On the contrary, a cemetery is considered a consecrated, eternal resting place for those who are buried there, a place that must be maintained out of respect for the dead. A Jewish cemetery, in other words, always remains a Jewish cemetery. Even if it is completely abandoned and devastated, even if human beings can see nothing there, God remembers...<sup>27</sup>

Empty graves complicated a ruling on the Fulda case, but perhaps Baeck remained skeptical that the transfer of the dead from the site was actually complete. After the rabbi had made his judgment call, the Fulda sale proceeded in the spring of 1952, the city agreeing to build only on the rear section of the property, where no graves had been. A park would be constructed on the rest of the site and a memorial stone to Fulda's Jews would be erected. Should bones be discovered during excavations, the rabbinate in Frankfurt would be called upon to transfer them to the new Jewish cemetery according to religious regulations. But all was not well.

Just over a year later, the JRSO concluded angrily that the city had violated the terms of the contract on several counts: the new customs house had not been built on the designated portion of the site and the JRSO had not been notified about altered plans. The city also admitted to setting aside far less land for the park than promised. And after workmen found some unidentified bones where they were digging, they did not immediately inform the rabbinate. It became evident that at the time the contract was signed, the type and extent of the building plans were already fixed. To make matters worse, JRSO officials also suspected Fulda Jewish community officials of acting in bad faith.<sup>28</sup>

Ferencz became involved in the Fulda case full force during a trip to New York, when he received "a very dramatic telegram" about these latest developments.<sup>29</sup> He remembered rushing back from his trip to find that the building was already four stories high, with one portion making an incursion into a section that had contained graves. Ferencz concluded that a flagrant breach of contract had occurred and demanded that the building be torn down. "Having recently prosecuted SS leaders who had murdered over a million Jews, I was in no mood to tolerate the desecration of Jewish graves," he recalled.<sup>30</sup> Leaders of the city's new Jewish community implored Ferencz to desist, arguing that their lives would be

<sup>26</sup> Ibid., Leo Baeck, Gutachten, October 18, 1951, quoted in *ibid.*, folder 3, letter, October 9, 1953, E. Katzenstein (JRSO headquarters Nürnberg), to Dr. Loebenstein (JRSO Mannheim) (cc to Ferencz, Kagan, Dallob, and Mrs. Koechler).

<sup>27</sup> Webber, *A Jew, a Cemetery*, 2014, pp. 239–40. On surveys of the Polish cemeteries remaining after the war, see pp. 259–60, n1 and n3. Cf. Grotzmann, *Out of the Ghetto*, 2017, p. 143.

<sup>28</sup> Ibid., folder 3, letter, October 9, 1953, E. Katzenstein (JRSO headquarters Nürnberg), to Dr. Loebenstein (JRSO Mannheim) (cc to Ferencz, Kagan, Dallob, and Mrs. Koechler); transcript copy of letter, October 14, 1953, Dr. Zwi Harry Levy (Landesrabbiner von Hessen, Frankfurt), to E. Katzenstein.

<sup>29</sup> USHMMMA, RG-50.030\*0269, interview transcript, p. 87.

made unbearable in the town if he forced the city to remove the expensive building. Heated discussions ensued, even occasioning a meeting in Bonn with officials from the Federal Ministry of Finance, the Oberfinanzdirektion Frankfurt, and the city of Fulda.<sup>31</sup> The solution that eventually proved acceptable to the JRSO's religious advisors was the installation of a one-room prayer house at the bottom of the new building, resting on cemetery land.<sup>32</sup> Ferencz explained:

If you can't raze the building you have to build the prayer house under the building so that the building rests on top of the prayer house, and there is nothing that says you can't build a building on top of a prayer house. Only you can't build it on the cemetery. [...] So what we did... In the corner of the customs house in the city of Fulda, there is a small room which is a prayer house built in accordance with specifications laid down in Israel, with inscriptions on the wall in Hebrew with stained glass windows and candelabra. [...] It is the world's most unknown and unused, smallest synagogue that ever existed.<sup>33</sup>

Some ambiguity and ire in the Fulda case apparently persisted. In 1973 plans for construction on the original cemetery site again landed on the desk of officials representing collective Jewish claims, "a revival of the old problems."<sup>34</sup> Former JRSO official Ernst Katzenstein, now heading the German office of the Conference on Jewish Material Claims Against Germany, dug in his heels and fended off a prospective purchaser, citing not only Jewish law, but the bad faith exhibited by the city twenty years earlier.<sup>35</sup>

The Fulda dispute of the early 1950s had resulted in a somewhat awkward compromise, at the same time laying bare a constellation of barely reconcilable competing interests, both abstract and concrete. The JRSO and its advisors had sought to impose some measure of religious oversight and a certain set of restitution principles on behalf of Jewish survivors. These ended up in open conflict with a number of local interests, including those of the small postwar Jewish community, which wanted to sell the property (most likely in pursuit of some financial security). Not until October 29, 1954, did the JRSO gain definitive succession rights to prewar German Jewish community property through an Augsburg case decided in the Court of Restitution Appeals (CORA), the highest court

<sup>30</sup> Ferencz, Benjamin B.: Seeking Redress for Hitler's Victims (1948–1956), in: Verrijn Stuart, Heikelina/Simons, Marlise (eds.): *The Prosecutor and the Judge. Benjamin Ferencz and Antonio Cassese: Interview and Writings*, Amsterdam 2009, pp. 123–27, here p. 125.

<sup>31</sup> USHMMA, RG-12.008.02, folder 4, letter, November 27, 1953, E. Katzenstein to B.B. Ferencz and Saul Kagan (JRSO New York).

<sup>32</sup> At some point Ferencz had set up a small rabbinical council to provide guidelines on dealing with restituted Jewish cemeteries. He recalled that the council impressed upon him that "once a Jewish cemetery, always a Jewish cemetery. [...] But if there is an area where there are no bodies, then it may be fenced off and it can be sold, provided it's not sold for a profane purpose." Furthermore, "Jewish law requires the cemetery to be maintained forever." USHMMA, RG-50.030\*0269, interview transcript, pp. 86, 89. Cf. Ferencz, *Seeking Redress*, 2009, p. 124.

<sup>33</sup> *Ibid.*, p. 88; he confirmed some ten years later that it was still there, albeit never used. I was unable to confirm the current status of the room.

<sup>34</sup> USHMMA, RG-12.008.02, folder 4, letter, June 8, 1973, E. Katzenstein (Conference on Jewish Material Claims Against Germany/Office for Germany, Bonn) to B.B. Ferencz (New Rochelle, New York) (cc Mr. [Saul] Kagan and Dr. [Ernest H.] Weismann).

<sup>35</sup> *Ibid.*, folder 4, letter, June 8, 1973, E. Katzenstein to Rechtsanwalt Joseph Schmitt.



for restitution matters in the U.S. Zone under the Allied High Commission in Germany. Benjamin Ferencz represented the restitution organization's claim in these proceedings.<sup>36</sup>

It took even longer to secure adequate BRD government funding for the upkeep of the remaining Jewish cemeteries in Germany. Because in Ferencz's words "Jewish law requires the cemetery to be maintained forever," he and his colleagues also negotiated for long-term public funding of maintenance costs for German Jewish cemeteries.<sup>37</sup> While the Allied Military Government had ordered their restoration, these efforts had fallen short. The federal government agreed to set aside additional funds in 1952 and 1953 for their maintenance, but the problem of permanent care remained unresolved.<sup>38</sup> Local Jewish communities remained responsible for the upkeep of cemeteries in active use.<sup>39</sup> Ultimately, however, the West German federal and state governments signed a protocol agreement in 1956 with three Jewish successor organizations, the Jewish state federations (*Landesverbände*), and the Zentralrat der Juden in Deutschland to provide permanent care for abandoned Jewish cemeteries in the country. Whether this transfer of responsibility to the state altered the "Jewishness" of these sites in any way remains an open question.<sup>40</sup>

## Conclusion: Securing the Peace of the Dead

Curious about her family history, a friend of mine in Berlin visited a town in Baden-Württemberg a few years ago. The local government had recently paid for restoration work in the local Jewish cemetery where her grandparents and great-grandparents, long-time residents, were buried. A tour guide told her that a stonemason had not only stabilized gravestones, but also "fixed" the broken columns on some of the graves, making them whole again. His zeal and cultural misapprehension are somewhat comic, for the broken column was a widespread decorative motif in the late nineteenth and early twentieth centuries in graveyards, a symbol of a life prematurely cut short by death. And yet it is difficult to fault the spirit of this overzealous mason, for Germany is populated with cemeteries and other sites that pose the puzzle of how to "restore" or maintain the integrity of "Jewish space."

As Andreas Grotzmann has pointed out, cemeteries had long lent cohesion to Jewish communities: "Being buried with one's ancestors remained of lasting importance to German Jews into the modern period."<sup>41</sup> Much of that continuity or sense of belonging was arguably broken all across Germany. Fulda's Rhabanusstraße cemetery had been shuttered even before World War I, like many others. Bluntly put, its dead were ousted and settled elsewhere by the mid-1930s (albeit under religious supervision). These were not Fulda Jews who had died through Nazi violence, but the Holocaust had left the

<sup>36</sup> For an excellent detailed history of this decision, see Takei, "The 'Gemeinde Problem,'" 2002, pp. 267–79. The JRSO in fact used some reclaimed communal property to support postwar Jewish communities in West Germany, while a large proportion also went to helping survivors resettle elsewhere. Kagan/Weismann (eds.), Report, pp. 21–22.

<sup>37</sup> USHMMA, RG-50.030\*0269, interview transcript, p. 89.

<sup>38</sup> Jewish Restitution Successor Organization, *After Five Years: 1948–1953, Nuremberg 1953*, pp. 26–27.

<sup>39</sup> Kagan/Weismann (eds.), Report, pp. 27–28; Ferencz, *Seeking Redress*, 2009, pp. 126–27.

<sup>40</sup> The *Landesverbände* in fact retained ownership of closed cemeteries and were expected to appoint representatives for their oversight.

<sup>41</sup> Grotzmann, *Out of the Ghetto*, 2017, p. 150 and cf. p. 155. Cf. Amanik, Allan: *Dust to Dust: A History of Jewish Death and Burial in New York*, New York 2019, on the shift to family plots.

cemetery open to redefinition in the postwar era. These early disputes in Fulda raise the question not only of whether the land remained Jewish space but also, what kind of Jewish space? In the total or near total absence of former Jewish residents, what would “restoring” the land have meant, and for whom would it have been done, which Jews?

Histories of the spatial turn in Holocaust studies – exemplified by the recent work of Tim Cole and others – have argued persuasively that we should examine the haptic experiences and mental maps of Jews living under siege, forced into ever more unsafe, segregated, and constricted living quarters and settings during Nazi rule.<sup>42</sup> The long-term *postwar* effects of the Holocaust on landscapes in Europe, including what had been “Jewish space,” have as yet received less attention. My brief account of this case can serve as one of many entry points into thinking about “post-Holocaust” space and spatiality. Who controlled, owned, and made decisions about Jewish sites in the years after 1945? These histories deserve closer scrutiny.

A related question must be, how complete was the obliteration of familiar social space under Nazi rule? What was left and what was worth reclaiming from the perspective of diverse survivors? Could postwar governments and Jewish advocates undo the “geographical work” of the Holocaust, restore and “unpollute” landscapes in Europe, undo any of the damage – visible and invisible – in countless places? The task was seemingly impossible. In the absence of bodies and traditional funeral rites, many Jewish cemeteries in Europe nonetheless became the repository of symbolic (unidentifiable) ashes and earth from Auschwitz and other camps in the first decades after World War II. This was done even in contravention of both the spirit and letter of Jewish law, although some prewar Jewish cemeteries in Germany controversially did accommodate urn burials.<sup>43</sup> Many Jewish families found it more important to “reunite” their Holocaust dead symbolically with other family members than adhere to religious precepts. In the Jüdischer Friedhof Hamburg Ohlsdorf, for instance, cemetery administrators reconfigured space near the entrance to include a memorial space for ashes from Auschwitz and a memorial wall for Jewish victims of the Nazi regime. Some families chose instead to “bring back” relatives who perished in Auschwitz and other Nazi camps by adding their names to gravestones elsewhere on the grounds.<sup>44</sup>

A further conceptual question presented by the Fulda story is whether the dead themselves have a place in the new histories of “Jewish space.” Some Jews continued to occupy local space in Germany (buried in cemeteries), but most remained “missing persons,” absent in all but memory. In Fulda, the known dead of an earlier era had been dislodged from the old cemetery without actually going “missing.” The JRSO, an institution created in response to the Holocaust, found itself in the odd position of having to claim and secure Jewish patrimony that had long ceased to be identifiably “Jewish” to most residents of the city, the old cemetery on Rhabanusstraße. Restitution organization

<sup>42</sup> See, e.g., Cole, Tim: *Holocaust Landscapes*, London 2016.

<sup>43</sup> Cf. Dreyfus, Jean-Marc: *The Transfer of Ashes after the Holocaust in Europe, 1945–60*, in: *Human Remains and Violence* 1 (2015), 2, pp. 21–35, here pp. 23, 28–29.

<sup>44</sup> E.g., a joint grave for Israel Emil Nachum, 1869 (5629) – 1939 (5700) and Frieda Nachum, geb. Nachum, “geb. 16. Aug. 1873, umgekommen 1944 im K.Z. Auschwitz,” and one for Friederike Marcus, geb. Markus, 1880–1941 (5640–5701) and Siegfried Markus, geb. 1880 (5540), “umgek. im KZ.”

officials here were de facto working to secure the peace of the dead in a place in which they would never reside again.

The JRSO – which had a mandate to serve Jews both inside and outside of Germany, respect religious tradition, and exact respect for “Jewish space” from German town and government officials – struggled to reconcile religious principles with political pressures and other secular considerations in this city. More generally, this virtually insurmountable challenge points to the trans-European question of which principles of property restitution ultimately could prevail and did prevail. Who was served and at what cost? What had happened under National Socialism could not be reversed. In many ways my Fulda story suggests the impossibility of restoration. It also underlines the difficulty of defining post-Holocaust “Jewish space” and reconciling clashing Jewish perspectives on what was needed to prevent a complete erasure of Jews from the city’s history.

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