

# INTRODUCTION



ON 18 FEBRUARY 1993, THE weekly newspaper *Die Woche*, in its first issue, endorsed Ignatz Bubis (1927–1999), chairman of the *Zentralrat der Juden in Deutschland*, as Germany’s new Federal president. The CDU member of the Bundestag, Willy Wimmer (b. 1943) had already made this proposal at the start of the year. Bubis, who had been the head of Frankfurt am Main’s Jewish community since 1982, became chairman of the *Zentralrat* a year earlier. After the term of office of the very popular President Richard von Weizsäcker (1920–2015), the election of a successor was scheduled for May 1994.

In *Die Woche*, deputy editor-in-chief Hans-Ulrich Jörges (b. 1951) criticized the futile search for candidates, attributing it to a disoriented Bonn government led by Chancellor Helmut Kohl (1930–2017), which he believed lacked the necessary creative energy. Given the ongoing threats posed by nationalism and racism, including past incidents of xenophobic riots and assassination attempts, it was imperative to identify a candidate who did not have ties to the political establishment but emerged from within civil society. Bubis, Jörges asserted, represented an antithesis to the established political elite and was regarded as “the moral authority in Germany” due to his courageous stance against racially motivated acts of violence.<sup>1</sup> His election would also symbolize “that German Jews are Germans, and that Jews can attain any position in this country, just like Catholics and Protestants.”<sup>2</sup> Since Bubis enjoyed some popularity in the Republic at the time, the idea of his candidacy was obviously not unpopular. Many seemed

to have confidence in him as president; at least 53 percent of all Germans approved of him in a poll conducted by *Die Woche* during the week.

It is debatable as to how serious the newspaper was about its proposal. Undoubtedly, this was meant to attract publicity for its first issue. While Bubis was certainly a potential candidate for such an office who would also have had prospects of success, he did not hold any political office in the narrower sense, which would have been an advantage for a promising candidacy. Nevertheless, this episode points to a fundamental problem: What role does Jewish identity play when the chairman of the *Zentralrats der Juden in Deutschland* is considered for such an office? For *Die Woche*, it was clear: Bubis, as a German Jew, should become president of a majority non-Jewish state. But could his Jewish identity be a hindrance to his election? What assumptions can be made to view his candidacy as a problem of political representation?

Questions like these were by no means out of place. In the same issue, *Die Woche* also carried a poll, according to which 22 percent of Germans were convinced that Bubis had Israeli citizenship, while only 43 percent believed he had German citizenship.<sup>3</sup> Furthermore, it later published numerous letters to the editor on the subject, many of which were dismissive or openly antisemitic. Karl Scholz from Neumarkt/Upper Palatinate, for example, wrote derogatorily: “He will always remain a stranger among us, even if one still tells such extraordinary things about him that it makes your eyes well up.”<sup>4</sup> When Bubis had visited Rostock-Lichtenhagen a few months earlier, where there had been violent xenophobic riots, the chairman of the Rostock parliament’s home affairs committee, Karlheinz Schmidt, asked him: “Why are you here? You, Mr. Bubis, describe yourself as a German citizen of Jewish faith. But your homeland is Israel. Is that true? What do you think about the violence used by the Israelis against the Palestinians?”<sup>5</sup> It is safe to assume that Bubis’s candidacy, even if it had succeeded, would always have been considered illegitimate by some of his fellow citizens because he was Jewish.

*Die Woche* had explicitly rejected this form of exclusion with its proposal of a candidate. Jews were Germans and, as such,

eligible for the highest office of the German state. At the same time, the weekly newspaper had challenged this straightforward yet undeniably true assertion. Ultimately, it felt the need to provide a justification for its candidate suggestion, especially based on the distinctive role Bubis had assumed during the protests against the xenophobic attacks in the winter of 1992/93. In this regard, a Jewish candidate was not merely a fitting choice for political office; instead, his suitability derived from the specific message he, as a Jew, conveyed to the political sphere of the Federal Republic. No one would have considered choosing him as a Frankfurt city councilor or as a member of the Free Democratic Party (FDP), which Bubis was in both cases.

The rightful assumption of political office in a society is evidently closely linked to the prevailing notions about that society and the individuals vying for representation within it. Who is part of the collective that seeks a president, a head of government, a foreign minister, etc., and who is excluded from it? This is not a question that concerns “only” Jews in today’s Germany. Can a Turkish-, Vietnamese-, Polish-, or Lebanese-German be elected to political office? Today’s parliamentarians with such a background frequently face accusations in letters from constituents, which do not come exclusively from right-wing extremists. In them, it is asserted that such individuals are incapable of representing the community due to their heritage and, consequently, should not engage in political activities.<sup>6</sup> Despite this, they run for offices, often successfully. But will these politicians be promoted primarily because of their aptitude and political acumen, or “merely” because they appear fitting for the position as representatives of their respective cultural background? Is it an effort to underscore the society’s image as one that values tolerance and cosmopolitanism?

Formally, there are no impediments to such an election within the bounds of the existing constitution and electoral regulations. As long as the individual in question holds German citizenship, the right to vote, and, in the case of the Federal President, is a minimum of forty years old, they are eligible for the position. However, the legitimacy of holding

office and representing a political entity is not solely a legal matter; it is also a highly contested political issue. In the public sphere, there is an ongoing negotiation of subtle and sometimes not-so-subtle attributions regarding who has the right to political representation. Who is allowed to legitimately represent the common good of a society and who is not? In the best-case scenario, individuals may find themselves in a situation where they can only advocate for their political rights as members of a particular group or minority. At the same time, this demand for rights can sometimes be met with skepticism because it might be perceived as prioritizing the interests of a minority rather than the collective good; or, put another way: what would Germany's political culture have to be like in order for a Jew to run for office without any justification other than that he/she is qualified for the office?

The political legitimacy of holding office is at the same time a historical question. The proposal to elect Bubis as federal president was undeniably influenced by the recent past, particularly the horrific events of the National Socialist regime, which involved the exclusion, persecution, forced emigration, deportation, and ultimately, the murder of German and European Jews. Bubis embodied this story in a special way, having lost his family in the Holocaust and survived himself in the ghetto.

Many German Jews were uncomfortable with the idea of a Jewish president because of this history; indeed, their memory on this issue went back even further. Bubis referred to Walther Rathenau (1867–1922), who had been assassinated while serving as foreign minister of the Weimar Republic. It was not surprising, therefore, that he rejected the endorsement of *Die Woche*: “I don't believe that the Federal Republic of Germany is ready for such a decision, namely that a Jew, who is still considered a foreigner by the majority of the population, should become Federal President.”<sup>7</sup>

This book is about the political and legal history of German Jews. What political role did German Jews play in the various German political regimes since the late eighteenth century? How did they become an equal part of the political system and how did they attempt to influence policy? Compared to other

groups in society, were there specific courses of action and strategies that Jews pursued in the political system? And finally, who opposed their involvement in the political process, and how did the Jews respond to these challenges?

This book could have different titles: “Political and Legal History and the German Jews,” “Political and Legal History of German Jews,” “German-Jewish Political and Legal History.” Each title suggests different perspectives on the place of Jews in modern German political and legal history. Were the Jews the objects of a political history, which provided, first and foremost, the political and legal framework within which the Jews lived? Did Jews contribute to this broader political and legal history by influencing the political process, either through their role as voters or as active politicians? Or was there such a thing as a separate Jewish politics and law in Germany, i.e., the representation of political and legal interests by Jews for Jews? Was Jewish politics any different than non-Jewish politics?

All three perspectives are legitimate: there indeed exists a political and legal history in which Jews appear primarily as objects, for example in the discussions about their legal and political equality since the nineteenth century, but also—in a radical form—in the exclusionary policies of the Nazi regime. At the same time, one can describe a history of the politicization of German Jews, through which they became part of the political process and began to participate in it as more or less equal actors. Finally, as a specific case within this variant, the third perspective comes into play: occasionally, Jews engaged in politics as Jews and for Jews, as exemplified by German Zionism.

The first and third perspectives have been very important for historiography for a long time. From the perspective of general political and legal history—regardless of how one interprets “general” in this context—Jews were of limited interest as political actors, given their relatively small numbers in the German-speaking world, which hindered their ability to exert influence on broader political and legal developments. They did, however, become the subject of political and legal decision-making processes at various points in German polit-

ical and legal history—whether as a minority seeking equal treatment, as targets of antisemitic exclusion, or as victims of political persecution.

Zionist-oriented historiography, on the other hand, has been particularly interested in the emergence of genuinely Jewish politics. This interest extends to the rise of Zionism as a national movement that aimed to establish political and legal decision-making processes within the control of Jews, either in their own state or through autonomous structures. From this perspective, the notion of Jews as an equal and integrated component of a non-Jewish political and legal system, as embraced by national-conservative, liberal, and socialist-oriented German Jews, could be seen as a betrayal of the Jewish cause.

This book will primarily focus on the second perspective: how did German Jews engage in political activities? How and when were they politicized in the first place? What attitudes did they develop about the legal issues affecting them? How did they endeavor to influence and contribute to the realms of law and politics within society? Who was involved, in what context, and for what purpose? To date, few works have actually addressed these issues.<sup>8</sup>

In this book, all three perspectives on German-Jewish political and legal history will nevertheless play crucial roles, as they were often interwoven in historical reality. As an illustration, consider the case of Ludwig Bamberger (1823–1899), a prominent national-liberal member of the Reichstag who, in 1880, opposed the emerging antisemitic movement in his essay *Deutschthum und Judenthum*. In doing so, he made a serious effort to comprehensively examine the dynamics between Jews and non-Jews. In hindsight, it is not entirely clear whether his statements were those of a liberal politician, a liberal Jew, or a Jew for the sake of other Jews. Or all of these options at the same time.

This book also encompasses modern legal history as it pertains to Jews. Among other things, it explains the complex process of emancipation through which Jews became legally equal to other citizens in the course of the nineteenth century. In the chapter on National Socialism, the reverse process will

describe the systematic legal discrimination against German Jews. Another aspect of the legal history that will be discussed is the (criminal) legal prosecution of antisemitism and hostility towards Jews. In a constitutional state, which includes the German Empire, the Weimar Republic, and the Federal Republic of Germany (but not the Nazi regime and the German Democratic Republic), a person cannot be condemned simply for holding negative beliefs about a particular group of people, such as Jews. As was the case in the German Empire, the Weimar Republic, and the Federal Republic of Germany, legal proceedings can only be initiated after an attack (verbal or physical) against Jews has occurred. In the case of a purely verbal attack, there must also be a violation of public peace, religious sentiment, individual honor, or human dignity.

Since their introduction in the early days of the German Empire, the key legal provisions have been: §130 of the Criminal Code (formerly “incitement to class hatred,” now “incitement to hatred”), §166 of the Criminal Code (formerly “religious insult,” now “blasphemy paragraph”), and §185 of the Criminal Code (“insult”). In legal practice, it was not always easy to successfully prosecute verbal attacks against Jews. Antisemites, for example, could easily escape prosecution for a violation of §166 in the German Empire by claiming that they had attacked not the Jewish religion, but rather the Jewish race. Gathering evidence for the other paragraphs could also be quite complex. Nonetheless, Jewish organizations filed lawsuits repeatedly, and some of them were quite successful, as will be shown in the following discussion.

First, some definitional issues need to be addressed. For starters, who is a Jew in this book? Many of the acculturated Jews who became active in German politics rarely, if ever, identified themselves as Jews. Some were baptized or had already been baptized by their parents in childhood. Others, and their number was on the rise, insisted on their Jewish identity and defended it explicitly. Still others were married to non-Jewish partners. All these manifestations seem to make a straightforward definition impossible.

This is all the more true since Jews themselves employed various definitions of Jewish identity during the period under

study. Some assumed a Jewish religion or denomination, others a Jewish nation, tribe, or people, and still others, though more rarely, a Jewish race. In general, they did not see why these identity labels should preclude their full participation and involvement in the German state and politics, despite the assertions of antisemites. In many cases, it is not possible in the context of this book to delve into individual biographies to clarify what Jewish identity meant to various persons or how it influenced their political positions. Nonetheless, it is noted when an individual was baptized, sometimes with the added note “of Jewish origin.” Whether this information sheds light on their political actions, and if so, to what extent, is often not straightforward to determine—and this holds true for all Jews.

Another question concerns the concept of politics used in this book. A narrower definition would focus on the power dynamics within a political system (government, parliament, parties, public, etc.). Certainly, it is crucial to elucidate the specific roles played by Jews—and sometimes even individuals of Jewish ancestry—within the political system. What positions did they hold within governments, parliaments, political parties, or the broader political arena?

Another concept of the political, on the other hand, encompasses all social forms of negotiation with which people try to collectively organize their lives. From this perspective, propagated by the recent cultural history of the political, among others, political issues are negotiated even in the private sphere, such as gender politics in the organization of child rearing or household management. This perspective has gained significance in historiography, primarily because it can be demonstrated—as will be emphasized in this book—that historical actors sometimes grounded their actions in this more comprehensive understanding of the political.

In the specific case of Judaism, this raises the question of whether the organization of Jewish communities is a question of religious history or (also) of the political history of the Jews. This aspect also needs to be explored, especially due to the politicization of “internal Jewish” community matters, particularly in the twentieth century. It therefore appears essential to incorporate this dimension into political history.

The political and legal history of the Jews by no means begins with modernity. An important element of “pre-modern” political views in the Jewish Diaspora was the principle of *dina de-malchuta dina* (Aramaic for “the law of the [gentile] kingdom is the law [for the Jews]”). With this rule, the Talmud establishes the relationship between the non-Jewish sovereign and the Jewish community. For a long time, this meant de facto recognition of the financial sovereignty of the non-Jewish state, which was thus granted the right to levy taxes on Jews. In contrast, the latter were generally granted a significant degree of autonomy in all intra-Jewish communal affairs.

In practice, state law was often interpreted broadly, as long as such an interpretation did not conflict with Jewish law, or *halacha* (Hebrew for “the way to behave”), which observant Jews must follow daily. This approach was aimed at preserving communal autonomy and ensuring that there was no discrimination against Jews. In some respects, Jews could even derive from this principle a form of right of resistance when the gentile state or ruler unjustly accused them of transgressions or imposed unjust taxes. It has therefore been spoken of as a “dualistic political doctrine” (Sorkin 1987); recognition of the state with the simultaneous (potential) right to resist it. However, the actual power dynamics and the frequently small Jewish population within communities often made it impractical to apply this concept.

## Notes

1. Hans-Ulrich Jördes, “Für Deutschland streiten,” in *Die Woche*, 25 February 1993, 5.
2. *Die Woche*, 5.
3. Jürgen Schreiber, “Der Mann der Stunde,” in *Die Woche*, 18 Februar 1993, 3.
4. “Im deutschen Irrenhaus ist nichts unmöglich,” *Die Woche*, 4 March 1993, 38.
5. Ignatz Bubis, “Zur Normalisierung gehört, Juden als Deutsche anzusehen,” *Frankfurter Allgemeine Sonntagszeitung*, 8 November 1992, 4.

6. Cf. for example the report Roland Preuss, “Der Hass der braven Bürger,” in *Süddeutsche Zeitung*, 29/30 June 2013, 8.
7. “Kandidieren Sie, Herr Bubis?,” in *Die Woche*, 25 Februar 1993, 6.
8. Toury, *Die politischen Orientierungen*; Hamburger, *Juden im öffentlichen Leben*; Pulzer, *Jews and the German State*.