

# THE CORRESPONDENCE OF FREDERICK ALEXANDER MANN (1907-1991)

**'Of all my learned friends, Mann is the most learned of all.'**<sup>1</sup>

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## ABSTRACT

Francis Mann, as he became known to the Anglophone world, was a German born and educated lawyer. He fled racial persecution in 1933 and settled in London, where he became one of the great lawyers of his time, equally versed and experienced in legal practice and legal scholarship. His book *The Legal Aspect of Money*, first published in 1938, opened an entire area for legal scholarship. His numerous publications in particular on public international law, conflict of laws, commercial law, procedural law and arbitration eclipse those of many full-time academic lawyers. As a solicitor and partner in the law firm Herbert Smith, he was instrumental in transforming a legal profession in England which traditionally had left litigation to its clerks and instructed barristers to become those experts in international litigation for which London solicitors have become famed.

The present article introduces the reader to the some 12,500 letters which Mann exchanged with numerous correspondents, which were kindly donated to the archives of the Humboldt-Universität zu Berlin by Anne Kriken Mann, his daughter-in-law, and Herbert Smith Freehills, between 2014 and 2016. While substantially more research will be needed in order to evaluate how these documents can change our understanding of how Mann influenced the development of the law, these documents show Mann as a prolific networker who was fully engaged and instrumental in the development of the law by the legislature, the courts, and legal scholarship, and as sought-after advisor of the UK, German, Belgian and US governments.

## I. INTRODUCTION

### *A. Personal and Professional Life*

Mann's personal and professional life is well documented, inter alia in a memoir written by Geoffrey Lewis,<sup>2</sup> which draws on close personal acquaintance and an unpublished autobiography. Born as Friedrich August Alexander Mann on 11 August 1907, he grew up as the only child of Richard Mann, a practising lawyer with a family background in banking, and his wife Ida, née Oppenheim. The Manns were an assimilated Jewish family who were well respected in their provincial home town of Frankenthal in Palatine. Fritz Mann, as he was then commonly called, studied law in Munich, Geneva and Berlin, where after graduation he would work as a so-called faculty assistant for the great comparative, commercial and conflicts lawyer, Professor Martin Wolff, who also supervised his doctoral thesis on the formation of a stock

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<sup>1</sup> A (Lord) Denning, *The Due Process of the Law* (OUP 1980), 4.

<sup>2</sup> G Lewis, *F.A. Mann. A Memoir* (Hart Publishing 2013). Lewis was, a younger colleague of Mann, a family friend, and executor of Mann's will. See also L Collins, 'F.A. Mann (1907-1991)', in: J Beatson and R Zimmermann (eds), *Jurists Uprooted. German-speaking Émigré Lawyers in Twentieth-century Britain* (OUP 2004), 381-440.

corporation through contributions in kind.<sup>3</sup>

Even before Hitler came to power in January 1933, Mann and Lore Ehrlich, a fellow (and historically only the second female) law faculty assistant at Berlin University,<sup>4</sup> decided to leave Germany for a joint future. After both had completed their professional qualifications, they married on 12 October 1933 and left Germany on the same day.<sup>5</sup> They made London their new home, where Mann had professional contacts with the law firm Swann, Hardmann & Co, which took him on as an articled clerk.<sup>6</sup> Nevertheless, they had to rely on financial support from their families until 1935 when legal work, initially mostly for the German refugee community and as an expert witness and consultant on German law,<sup>7</sup> began to provide sufficient income.<sup>8</sup> Fritz and Lore Mann's son David was born in 1935, their daughter Jessica in 1937. Fritz Mann enrolled for a LL.M. at the London School of Economics in 1935 with a view on an academic career, graduating in 1936.<sup>9</sup> Between 1936 and the end of 1937, he wrote 'The Legal Aspect of Money',<sup>10</sup> which was instantly accepted for publication (in 1938) by the Clarendon Press, and in 1939 as doctoral thesis by the LSE.

At heart a legal academic, who under other circumstances would have pursued an academic career,<sup>11</sup> and in legal practice more inclined towards the bar, Mann decided in 1938 for financial reasons to become a solicitor, taking his final examinations in 1941. Being admitted to the roll would have required British citizenship, for which Fritz and Lore Mann had qualified and applied in 1938.<sup>12</sup> With the outbreak of the Second World War in 1939, however, both became enemy aliens. Mann was persuaded to anglicize his first name to 'Francis' (with Lore opposing 'Fred' or 'Frederick'). Their third child, Nicola, was born in 1944. In 1946, both parents were eventually naturalized, and Mann changed his first names by deed poll to 'Frederick Alexander'.<sup>13</sup>

In 1946, the British Government called on Mann to become their delegate to the Inter-Allied Legal Committee of the Allied Control Council in Berlin.<sup>14</sup> This time from mid- until late 1946 is well documented in some sixty letters which Mann wrote to his wife

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<sup>3</sup> FA Mann, *Die Sachgründung im Aktienrecht* (Bensheimer 1932). On Wolff, see G Dannemann, 'Martin Wolff (1872-1953)', in: Beatson and Zimmermann (n 2) 381-440.

<sup>4</sup> A Lösch, *Der nackte Geist. Die Juristische Fakultät der Berliner Universität im Umbruch von 1933* (Mohr Siebeck 1999), 85. M. Röwekamp, *Juristinnen. Lexikon zu Leben und Werk* (Nomos 2005), 239-241. Her doctoral thesis was published as L Ehrlich, *Der Verrat von Betriebsgeheimnissen nach englischem und nordamerikanischen Recht* (W de Gruyter 1930).

<sup>5</sup> Lewis (n 2), 34.

<sup>6</sup> FA Mann, unpublished autobiography, 33.

<sup>7</sup> Collins (n 2), 384.

<sup>8</sup> Lewis (n 2), 39-43.

<sup>9</sup> All FA Mann, unpublished autobiography, 32-34, where, however, Mann erroneously states that his daughter Jessica was born in September 1936, actually 13 September 1937: <https://www.theguardian.com/books/2018/jul/23/jessica-mann-obituary>.<sup>10</sup>

Collins (n 2), 398.

<sup>11</sup> FA Mann, letter to S Duggan, 1 August 1933: 'I am a German lawyer of Jewish extraction. Owing to the recent evolution in Germany I have lost my position and all chances for my future career. [...] I had the intention and the possibility of becoming a professor, and I had already begun to write a book on the own stock of companies. Besides lecturing at a university I had intended to go to the bar, and probably I would have achieved both aims during the following winter. I am 26 years old.'

<sup>12</sup> FA Mann, unpublished autobiography, 34-37.

<sup>13</sup> Ibid, 38, 41, 46.

<sup>14</sup> Lewis (n 2), 66.

Lore during this time; more on this below.<sup>15</sup>

Having declined a fellowship at University College, Oxford, in 1945 because Mann felt that the remuneration could not support a family of five, he pinned great hopes on a Professorship in international law at the University of London for which he was shortlisted in 1949, but which remained vacant until 1959. 'At the time I learned that it was felt difficult not to appoint me, that one did not, however, wish to appoint a lawyer of foreign origin and that therefore one preferred.....not to make any appointment at all' is what Mann writes about his great disappointment.<sup>16</sup> However, the University of Bonn, where he taught regularly, made him an Honorary Professor in 1960, a position which he held until his death.<sup>17</sup> He was also awarded honorary doctorates by the Universities of Kiel (1978), Zürich (1983) and Oxford (1989).<sup>18</sup> He was invited four times to give the prestigious lectures at the Hague Academy of International Law in 1959, 1964, 1971 and 1984.<sup>19</sup>

His academic credentials, expertise in legal practice and in legislation were recognized in his appointment to the Lord Chancellor's Private International Law Committee in 1952, which also included Professor Geoffrey Cheshire, Gerald Fitzmaurice (later Sir Gerald, judge at the International Court of Justice), the later Law Lords Geoffrey Cross and Richard Wilberforce, and the later Lord Justice John Megaw. More will be said below on the work of this Committee. In 1952, Mann was also appointed Rapporteur of the Monetary Law Committee of the International Law Association, a position which he held until 1973.<sup>20</sup>

A tragic car accident which killed Douglas Philipps, partner in Mann's law firm, soon presented a silver lining. Herbert Smith, a large, well-reputed and one of the oldest law firms in London, offered to take him on as partner.<sup>21</sup> Mann agreed on the condition that Herbert Smith remove from their premises numerous glass cases which presented to their clients hunting and fishing trophies of the firm's founder.<sup>22</sup> This was symbolic for the change which Mann, together with fellow partner John Barker, would bring to this traditional law firm, where litigation had for long 'been looked upon as a sort of necessary evil'<sup>23</sup> which was mostly dealt with by articled clerks liaising with barristers.<sup>24</sup>

At Herbert Smith, Mann became the prototype of a modern solicitor who designs procedural tactics jointly with a barrister. He was instrumental in building up the reputation of Herbert Smith as one of the globally leading law firms in litigation.<sup>25</sup> Mann could draw upon his unique combination of experiences and skills: in legal scholarship as well as private practice, with an enormous width of knowledge in business law,

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<sup>15</sup> The originals of these letters remain with the Mann family; copies and typewritten transcripts were donated to the archives of the Humboldt-Universität zu Berlin. The earliest dated letter is from July, the latest from October 1946. FA Mann writes in his unpublished autobiography, p. 46, that he flew to Berlin 'in about April 1946'.

<sup>16</sup> FA Mann, unpublished autobiography, 55.

<sup>17</sup> HH Jakobs (ed.), *Gedenkreden auf Frederick Alexander Mann, Brigitte Knobbe-Keuk, Werner Flume* (Bonn University Press 2011) 27.

<sup>18</sup> Biography, *Recueil des Cours* 186 (1984) III, 15 (Kiel and Zürich). Ref Oxford : Collins (n 2), 386 (Oxford).

<sup>19</sup> Collins (n 2), 385, with further details in Fn 11.

<sup>20</sup> Biography, *Recueil des Cours* 186 (1984) III, 15.

<sup>21</sup> Tom Phillips, *A History of Herbert Smith* (Herbert Smith, 2007), 107.

<sup>22</sup> *Ibid*, 111.

<sup>23</sup> Letter by partner Rex Hare (1949), as quoted in Phillips (n 21), 101.

<sup>24</sup> Interview by the first author with Tom Phillips, 28 October 2014; Phillips (n 21), 101.

<sup>25</sup> Phillips (n 21), 101, 123.

public international law, private international law, procedural law, arbitration and comparative law, with his fluency in English, German, and French (plus some familiarity with Italian),<sup>26</sup> and his excellent contacts to academia, legal practice, business and politics in the UK, Germany, France, and Switzerland, and his other extensive private and institutional networks.<sup>27</sup> Lewis observed his extraordinary ability to transform a case with his methodological approach.<sup>28</sup> 'You had only to sketch the outline facts for him to seize on its essential features and imbued it with energy and infectious excitement.'<sup>29</sup> As Collins notes, Mann possessed considerable advocacy skills, which shone 'in those tribunals where he had the right of audience (especially in arbitrations such as the *Young Loan* case and in the International Court of Justice in the *Barcelona Traction* case) [where] he was a very effective advocate in the English manner'.<sup>30</sup>

Collins has traced the deep influence which Mann has exerted on English and international case law.<sup>31</sup> Famous cases in which he appeared include *Barcelona Traction* (representing Belgium, more on this case below),<sup>32</sup> *Belgium and others v Federal Republic of Germany* (Young Loan case, representing Germany, more on this case below),<sup>33</sup> *BP Exploration Company (Libya) Ltd v Libya* (representing BP),<sup>34</sup> *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* (International Tin Council case, more on this case below),<sup>35</sup> *Broome v Cassell & Co Ltd*,<sup>36</sup> *Carl Zeiss Stiftung v Rayner & Keeler Ltd.*; <sup>37</sup> *Buttes Gas and Oil v Hammer*.<sup>38</sup> Many developments in English case law can be linked to Mann, such as the abolition of the rule that an English court could not make an award in a foreign currency.<sup>39</sup> However, the 'most dramatic example of Mann's academic influence on the case law'<sup>40</sup> is the decision of the House of Lords in *Oppenheimer v Cattermole*, a tax case where the outcome appeared to hang on whether the revocation of German citizenship imposed in 1941 on all expatriate German citizen of Jewish descent was to be recognized by English courts.<sup>41</sup> The House of Lords had already completed deliberations and were set to allow the appeal when an article published by Mann changed their mind.<sup>42</sup> In this article, Mann pointed out that Art. 116 para (2) of the German Basic Law of 1949

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<sup>26</sup> FA Mann, letter to Andrea Giardina dated 4 July 1983.

<sup>27</sup> See below, II.D.

<sup>28</sup> Lewis (n 2) V.

<sup>29</sup> Ibid.

<sup>30</sup> Collins (n 2) 387.

<sup>31</sup> Collins (n 2).

<sup>32</sup> [1970] ICJ Reports 3.

<sup>33</sup> *Belgium and others v FR of Germany* (1980) 59 ILR 494; 19 ILM (1980), 1357.

<sup>34</sup> (1973.4) 53 ILR 297, 358, chk.

<sup>35</sup> *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418 (HL) (International Tin Council).

<sup>36</sup> [1972] AC 1027.

<sup>37</sup> [1967] 1 AC 853.

<sup>38</sup> [1982] AC 888. For a fuller description and analysis of cases in which Mann was involved, see Collins (n 2), 387-436.

<sup>39</sup> *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443, with references to the 3<sup>rd</sup> edn 1971 of *The Legal Aspect of Money*.

<sup>40</sup> Collins (n 2), 430, with a full account of this case, 430-436.

<sup>41</sup> *Oppenheimer v Cattermole (H.M. Inspector of Taxes)* [1976] AC 249.

<sup>42</sup> Ibid, 268 (Lord Cross); FA Mann, 'The Present Validity of Nazi Nationality Laws', 89 (1973) LQR, 194.

had revoked the 1941 legislation and allowed expatriates to have their German citizenship reinstated, but also that Oppenheimer would have lost any German citizenship held in 1948 when accepting British citizenship. As Lord Cross explained in his opinion, the House of Lords reopened argument on the strength of Mann's article and remitted the case back to the Commissioners for the Special Purposes of the Income Tax Act for further findings.<sup>43</sup>

The many honours which were bestowed on Mann include Commander of the British Empire (1980), the German Grand Cross of the Order of Merit (1977), with Star (1982), being the first solicitor to be made Queen's Counsel, and Honorary Bencher of Gray's Inn.<sup>44</sup> He received a Festschrift in his honour on his 70<sup>th</sup> birthday, on which more will be said below.

## *B. The Documents*

### *1. The Collection*

Only recently have some 12,500 documents come to light which can help to understand the full impact which Mann had on the development of the law. The majority, some 9,000, were passed on after Mann's death in 1991 to his son David, and after his death in 2012, to his widow, Anne Kriken Mann. When she was reading the manuscript of Lewis' memoir on a plane and placed this on the armrest during a pause, this caught the attention of the person in the adjacent seat, who happened to be Professor Horst Eidenmüller, then of Munich, now of Oxford University. In the ensuing conversation, Professor Eidenmüller advised her to contact Professor Reinhard Zimmermann, Director of the Max Planck Institute for comparative and international Private Law in Hamburg. When learning about the Mann correspondence, Professor Zimmermann suggested that Professor Wolfgang Ernst, then of Zurich, now of Oxford University, should inspect the boxes at the Mann family home in Basel.<sup>45</sup> Professor Ernst advised that these documents were most certainly worth keeping and contacted inter alia the first author of this article who, together with the then Dean of the Law Faculty of Humboldt University, Professor Christian Waldhoff, had no trouble convincing the then Registrar of the Humboldt University Archive, Dr Winfried Schultze, that the University Archive should provide a permanent home for the correspondence of its famous alumnus. Anne Kriken Mann helped further with generous donations to have the correspondence catalogued and digitized.

The first author of this article suspected that numerous additional documents would be held in the archives of Herbert Smith Freehills. With the helpful assistance of Lord Collins, some additional seven boxes could eventually be traced, which Herbert Smith Freehills kindly allowed the first author to inspect. With the further kind help of Adam Johnson, partner of Herbert Smith Freehills, and also of Geoffrey Lewis, some 3,000 additional documents (those of interest which were not subject to client confidentiality) were identified and kindly donated by Herbert Smith Freehills to the Archives of Humboldt University.

Further valuable help was offered by Mann's surviving two children, Jessica Thomas and Nicola Beauman. Jessica Thomas provided copies of some 60 more letters to close friends, and of the letters which Mann had written to his wife Lore from Berlin in

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<sup>43</sup> [1976] AC 268; see also Collins (n. 2) 434.

<sup>44</sup> L Collins 'In Memoriam Dr. F. A. Mann, QC, CBE, FBA', 1992 BYBIL xvi, xxi..

<sup>45</sup> AK Mann, W Ernst (personal communications).

1946.<sup>46</sup>

## 2. Correspondents

The vast majority of these documents are correspondence – letters written by Mann (nearly always in carbon copy), or addressed to him. They show Mann at the hub of several networks. Many correspondents are legal scholars. UK academic correspondents include Ian Brownlie, PB Carter, Geoffrey Cheshire, Roy Goode, Rosalyn Higgins (later President of the ICJ), Robert Y Jennings (also later President of the ICJ), FH Lawson, Sir Otto Kahn-Freund (a very close friend), Sir Eli Lauterpacht, Sir Hersch Lauterpacht, Kurt Lipstein, John Morris, Peter North and many others.

The large group of German correspondents includes inter alios Ernst von Caemmerer, Claus-Wilhelm Canaris, Helmut Coing, Karl Doehring, Ulrich Drobnig, Werner Flume, Axel Flessner, Jochen A Frowein, Hugo J Hahn, Andreas Heldrich, Dieter Heinrich, Bernd von Hoffmann, Horst H Jakobs, Erik Jayme, Gerhard Kegel, Hein Kötz, Wolfram Müller-Freienfels, Peter Schlosser, and Christian Tomuschat.

Mann's extensive contacts to Swiss academia are represented i.a. by Max Gutzwiller, Anton Heini, Frédéric-Edouard Klein, Pierre Lalive, Alfred von Overbeck and Frank Vischer.

French correspondents include Henri Batiffol, Paul Lagarde and Pierre Mayer. Other European academic correspondents are Ignaz Seidl-Hohenveldern (Austria) and François Rigaux (Belgium).

Mann exchanged letters with many US academic lawyers such as Edgar Bodenheimer, Martin Domke, E Allan Farnsworth, Philip C Jessup, Andreas F Lowenfeld, Kurt Nadelmann, Stefan Riesenfeld, Ernst Stiefel and Arthur T van Mehren. Other well-known international correspondents include Antonio Boggiano (Argentina), James Crawford and John Fleming (both Australia).

Mann also corresponded with some well-known academics who were not lawyers, including Sir (later Lord) Ralf Dahrendorf, Ernst Fraenkel and nobel laureate Friedrich Hayek ('an old friend and client').<sup>47</sup>

Mann had extensive written contacts with senior judges – including 14 (some future) Law Lords, namely Ackner, Bingham, Collins, Cross, Denning, Diplock, Hoffmann, Keith, Mackay, Mustill, Roskill, Scarman, Sumption and Wilberforce. Other senior judges amongst the Mann correspondents include Lord Justice Michael Kerr, Pierre Pescatore (ECJ), Sir Gerald Fitzmaurice (ICJ and ECtHR), Roger Errera (Conseiller d'État, France), William Gummow (later justice at the High Court of Australia), and, as mentioned above, the later ICJ presidents Rosalyn Higgins and Robert Y Jennings. Correspondents well-known in the banking world include Hermann Josef Abs (a client) and Georges R. Delaume, who also worked in arbitration.

From his correspondence with barristers, three stand out, namely Sir Eli Lauterpacht (mentioned above in his other capacity as scholar), John Foster and Mark Littman.

Mann exchanged letters with a number of Jewish émigrés. Next to above-named legal scholars, these include Lord Weidenfeld and the Tannhauser family (close family friends and well-known benefactors of the arts). Furthermore, there is a substantial amount of correspondence with Mann's doctoral students at the University of Bonn, most of whom went on to hold senior positions in business, government, academia, or

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<sup>46</sup> Jessica Thomas, a well-known crime novelist and broadcaster who published as Jessica Mann, died on 10 July 2018. For an obituary, see <https://www.theguardian.com/books/2018/jul/23/jessica-mann-obituary>.

<sup>47</sup> FA Mann, unpublished autobiography, 194.

private practice.<sup>48</sup>

While the earliest letter is from 1931,<sup>49</sup> and some other documents from the 1930s through the 1960s have survived, most of the correspondence dates between 1973 and his death in September 1991. Other earlier correspondence includes the letters Mann sent to his wife Lore from Berlin in 1946. Numerically, top correspondents are Professor Hugo J Hahn (over 400 letters), Sir Eli Lauterpacht (some 150), and Professor Ian Brownlie (some 100).

### 3- Other Documents

Besides correspondence, the donation includes drafts of publications by Mann, and a number of personal documents, as well as documents which Mann received as a member of the Lord Chancellor's Private International Law Committee (1952-1962, committee dissolved in 1964).

#### C. Process of Reading

The *Deutsche Forschungsgemeinschaft* kindly provided a grant which allowed the first author to take a research leave during summer term 2017, and which also covered the salaries of the second and third authors as student assistants. This allowed the authors collectively to read and take notes of the entire correspondence of Mann which is now held by the archives of Humboldt University. The following will provide an overview of the main areas in which new insights can be gained, most of which will warrant further research.

## II. THE CORRESPONDENCE

### A. Judging and Case Law

#### 1. Judicial Dialogue

Mann exchanged letters with numerous senior judges.<sup>50</sup> Some of these provide highly interesting insights into the legal process and the functioning of the judiciary. While Mann felt restricted in commenting publicly on cases in which he was involved,<sup>51</sup> this restriction weighed even more heavily on his judicial correspondents. Their correspondence with Mann often reveals what convention would have prevented them from stating more openly. Two examples should suffice.

The first is Mann's correspondence with Lord Roskill, who reacted to severe criticism which Mann had levied on the senior judiciary in an article published in the *Civil Justice Quarterly* in 1983.<sup>52</sup> Mann was particularly critical to any change of the existing set-up, as the introduction of written skeleton arguments before the hearing, the introduction of two judge panels at the Court of Appeal for some cases, and a trend towards single judgments rather than separate opinions by each judge. Mann was also still reeling over the 1966 Practice Directive in which the House of Lords had

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<sup>48</sup> Below, II.C.3.

<sup>49</sup> Professor Geiler, letter to R Mann 7 September 1931, advising that his son should contact a certain publisher.

<sup>50</sup> See above, I.B.

<sup>51</sup> The correspondence contains frequent expressions of this self-imposed restriction, e.g. in a letter to T Potter dated 27 May 1981: 'it is one of my firm principles not to write about cases with which I have been concerned. There may be exceptions to this rule...' For one such exception, see FA Mann, 'The Protection of Shareholders' Interests in the Light of the Barcelona Traction case', 67 *American Journal of International Law* (1973) 259 – 274.

<sup>52</sup> FA Mann, 'Reflection on English Civil Justice and the Rule of Law' (1983) 2 *C.J.Q.* 320-336.

announced that they would in the future be prepared to overrule their own judgments.

As Lord Roskill states:

'this is not one of your good articles. If I had retired, I would be tempted to reply publicly and more roughly. As it is, I must limit the expression of my sorrow to a personal letter which, though sorrowful, gladly and affectionately acknowledges what I have learned from you in the past in so many fields.'<sup>53</sup>

He defends in particular the single judgment: 'First, it stops the over-clever trying to find conflicts between the speeches, and then trying to choose that view which subjectively appeals most.' And:

'I have never yet written a single speech which has not been vastly improved by the comments and criticisms of my colleagues ... It is quite extraordinary how often one writes a sentence which one believes to be pellucidly lucid only to find that to someone else it is ambiguous in the extreme.'<sup>54</sup>

Lord Roskill furthermore states 'I fully appreciate that academic lawyers may not share this view. But it is not our job to provide cannon-fodder for the legal quarterlies.' He takes exception at Mann's insinuation that judges do not read the papers before a hearing, and also that judges cling on to views which they provisionally may form during reading written submissions. (On the question of single, individual, concurrent and dissenting judgments, there is also a highly anecdotal letter which Lord Simon wrote to Mann, marked 'confidential'.<sup>55</sup>)

Pierre Pescatore, judge at the European Court of Justice, is another senior member of the judiciary who wrote to Mann what he could not state in public, also commenting on an article written by Mann:<sup>56</sup>

'As a member of the Court, I have to refrain from giving any official explanations, but since you have put forward your capacity as an Associate member of the Institut de droit international may I, in a spirit of confraternity, submit to you some personal reflections.'<sup>57</sup>

Again, this involves a judge who responds to what he feels are unjustified criticisms:

'As to your conclusions, I must confess that they have somewhat shocked me as coming from one who devotes his activity to the defence and deployment of the law. In fact, they amount to call to "civil disobedience" and, in your postscript to a call to the Executive against the Judiciary.'<sup>58</sup>

With a view towards the binding nature of ECJ judgments and the primacy of EEC law, Pescatore expresses his surprise that UK lawyers apparently failed to grasp on the UK's accession to the EEC that the 'working of a customs union or a common market is a legal 'genus' for itself' and that '[E]ntering a system of economic integration means something quite different from passing just another international convention.'

Mann responds with a lengthy letter in which he explains why he believes that the ECJ with its doctrine of *effet utile* goes well beyond acknowledged boundaries of treaty interpretation.

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<sup>53</sup> Letter dated 28 November 1983. I am grateful to Julian Roskill for the kind permission to quote at length from this letter.

<sup>54</sup> Ibid.

<sup>55</sup> Lord Simon, letter to FA Mann, 7 February 1984, referring i.a. to *Schaefer v Schumann* [1972] AC 572 (PC); *Lang v Lang* [1955] AC 402 (PC), *NZ Shipping v Satterthwaite* [1975] AC 154 (PC).

<sup>56</sup> FA Mann, 'Industrial Property and the E.E.C. Treaty', (1975) 24 ICLQ 31-43.

<sup>57</sup> P Pescatore, letter to FA Mann dated 25 March 1975.

<sup>58</sup> Ibid.



'The economic integration of which you speak is neither unqualified nor unlimited and exists only in the sense and to the extent which the Treaty defines. The decisions we are talking about far exceed the limits so defined.'<sup>59</sup>

In further correspondence stretching over four years, Mann and Pescatore discuss various articles written by Mann, as well as ECJ judgments in which Pescatore was involved. The last two letters deal with the relationship between international treaties concluded by the British Crown and enacting legislation passed by the UK Parliament which can be changed any time, a relationship which Pescatore sees as fraught, struggling to understand 'how an ambiguity of this magnitude can be dragged on for centuries without anyone ever having questioned it.'<sup>60</sup> To which Mann replies:

'In my view, the fundamental cause of what you rightly describe as a highly unsatisfactory state of affairs is the wholly untenable British view of the so-called sovereignty of Parliament which allegedly precludes any self-limiting provision or procedures. Therefore, any treaty including the E.E.C. treaty which does become part of English law can allegedly be altered at any time by a simple majority of Parliament. Indeed, Parliament is alleged to have the power to destroy itself. I regard all this as complete nonsense, and one day, I would like to write at some length about it [...]'<sup>61</sup>

Mann, although generally very conservative on any established procedure or rule of English law, is thus shown as a vocal critic of the cornerstone of UK constitutional law, the supremacy of parliament. This is characteristic for Mann's distaste for grand principles which do not work satisfactorily in practice.

## 2. Arbitration

Mann's correspondence on arbitration matters reflects the width of his professional expertise. In his own words:

'My activity as arbitrator includes all matters of international business law, in particular when dealing with contracts with states. I conduct negotiations in German and English and I am able to at least fully read and understand French, even though I cannot speak it fluently.'<sup>62</sup>

As Collins notes, Mann was 'never part of the inner group of international arbitration practitioners, partly because he had no inclination to devote all of his practice to that area, and partly because he had no wish to participate in the endless round of international conferences on international arbitration'.<sup>63</sup> In spite of his own contributions to arbitration, Mann remained critical of its shortfalls. . In his own words, and ending with a typical aphorism:

'Surely the importance of international arbitration is growing but it is an illusion to claim the special expertise of the arbitrators, the speed of the process, elimination of uncertainties and the low procedural costs. Arbitrators often do not have any expertise in the field at all, arbitration proceedings often take a lot longer than ordinary proceedings [...] Questions of jurisdictions arise frequently and cause delays, the procedural costs are usually a lot higher than in a civil process. Anyone who contradicts is either a propagandist or someone who does not know the practice at all.'<sup>64</sup>

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<sup>59</sup> FA Mann, letter to P Pescatore, 9 April 1975.

<sup>60</sup> P Pescatore, letter to FA Mann, 22 December 1978.

<sup>61</sup> FA Mann, letter to P Pescatore, 23 January 1979.

<sup>62</sup> FA Mann, letter to Industrie- und Handelskammer (IHK) Düsseldorf, 22 August 1983.

<sup>63</sup> Collins (n 2) 428.

<sup>64</sup> FA Mann, letter to WC Fuchs, 21 September 1981.

Many conversations with correspondence centre around his argument in *lex facit arbitrum*<sup>65</sup>: his belief that any and every arbitration has to be grounded in the legal system where the arbitration is seated, that is the *lex fori*. It is only within this *lex* of this *forum*, that a choice of law is based on. His critique of the global movement to liberate alternative dispute resolution remain valid in the light of contemporary discourse on the subject:

'Wilful misinterpretation of law is not as rare as you seem to believe. Contracts that have been expressly made subject to English law are being decided in a manner which is clearly contrary to English law, but allegedly comply with what the arbitrators call common sense; arbitrators aiming at this result apply English law in a wrong way.'<sup>66</sup>

In a letter to Professor Martin Domke he even calls for regulation on arbitration:

'[...] there should be a rule to the effect that any arbitrator is under a duty to disclose at the beginning of the arbitration any contract, direct or indirect, and however remote, which he may have had at any time with either party ... or any party connected with. ... Furthermore, I would suggest that, in the event of no such disclosure having been made and any connection which ought to have been disclosed coming to light, the arbitrator may be disqualified by the other arbitrators, rather than by the Court.'<sup>67</sup>

Mann's own work in arbitration had a particular focus on Switzerland as venue. This is reflected in his correspondence with several Swiss lawyers who also worked in arbitration such as Professor Anton Heini, Edouard-Frédéric Klein, Beat Kleiner and Claude Reymond, discussing recent decisions and their effects on arbitration in Switzerland. Nevertheless, Mann strongly supported efforts to make London the arbitration capital of the world:

'The Arbitration Act of 1979, with the preparation of which I was intimately concerned, has the prime objective of creating London the centre of international arbitration. As you know, this was achieved by abolishing the right to a Case Stated and restricting the right to appeal. The consequence seems to be, according to my observations, that international arbitrations are slowly moving to London and are being conducted by American, German, Swiss, French and other lawyers.'<sup>68</sup>

### 3. Mann's Cases

The correspondence sheds further light on some of the most important cases in which Mann was involved. Several of these have been identified above;<sup>69</sup> three in particular are represented prominently in his correspondence: the *Barcelona Traction*, *Young Loan* and the *Tin Council* cases. Mann represented the winning side in the *Young Loan* case, but the two others, which were lost by the side which he represented, appear to have gripped him even more. His correspondence concerning *Barcelona Traction*, which remains one of the key cases of public international law, is particularly instructive for learning more about Mann. Apparently, nothing has been written so far on Mann's involvement in the *Tin Council* case, probably because neither his name nor his firm's name appears in the judgment, as his formal role was limited to advising one of the

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<sup>65</sup> FA Mann, 'Lex Facit Arbitrum' in P Sanders (eds), *International Arbitration – Liber Amicorum for Martin Domke* (Martinus Nijhoff 1967) 157, Collins (n 2) 428.

<sup>66</sup> FA Mann, letter to AH Hermann, 19 December 1985.

<sup>67</sup> FA Mann, letter to M Domke, 21 April 1969.

<sup>68</sup> FA Mann, letter to G Pointon, 15 September 1981.

<sup>69</sup> At I.A.

claimants.<sup>70</sup> What makes his correspondence in the *Young Loan* case particularly interesting is that it discusses, post-judgment, Mann's litigation strategy in a personal set-up between Mann and two of his students,<sup>71</sup> namely Hahn (who appeared as Mann's co-counsel), and Kewenig, who appeared for the opponents. Kewenig 'regards [Mann] as one of his great role models and, if [he] may dare to say so, a fatherly friend'<sup>72</sup>; an extension to the 1967 notion that Mann was '[his] mentor'.<sup>73</sup>

In *Barcelona Traction*<sup>74</sup> the ICJ denied Belgium *locus standi* for the interests of a Canadian company which was predominantly owned in Belgium and operating in Spain, and which was effectively expropriated in Spain under Franco. For Mann, this was [truly] the most important and most difficult case there ever was'.<sup>75</sup> Mann had acted on behalf of the Belgian government and thought the judgment to be thoroughly wrong – once calling it 'an absolutely monstrous case'.<sup>76</sup> His indignation was so enormous he eventually published an article about it,<sup>77</sup> thereby making a notable exception to one of his fundamental principles: 'I was professionally engaged in the case, and it is one of my firm principles not to write about cases with which I have been concerned'.<sup>78</sup>

This was not an easy step for him as he was convinced one could not be sufficiently objective when writing about own cases. He discussed this matter with Eli Lauterpacht and reached the conclusion that this case was exceptional and the publication of his thoughts on it was indispensable.<sup>79</sup> His article was highly appreciated by some of his contacts, including Professor Gerhard Kegel. Mann's continued frustration about *Barcelona Traction* is reflected in many letters which have survived, and also in his unpublished autobiography, where he devotes more than three pages to the case and concludes:

'No layman can appreciate the bitterness of the pill which a lawyer has to swallow if the plainest possible injustice, committed with unsurpassed effrontery and legalised by the bribed judiciary of a fascist regime, is perpetuated by an institution which calls itself a Court and professes to be helpless or unwilling to undo a wrong.'<sup>80</sup>

In the *Young Loan* case,<sup>81</sup> Mann represented the Federal Republic of Germany before the *Arbitral Tribunal for the Agreement on German External Debts*. The five plaintiff governments argued that a clause in the Agreement called for the recalculation of debt after a revaluation of the *Deutschmark*. Mann effectively won the case for Germany on what may first have appeared as argument on a minor point of the law, which would easily have been missed by an only Anglophone lawyer, namely the methodology of interpretation of the agreement across its several official languages. The claim was dismissed, and Germany spared from a massive increase in its post-

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<sup>70</sup> Lord Collins, personal communication.

<sup>71</sup> See above, II.C.3.

<sup>72</sup> WA Kewenig, letter to FA Mann 23 November 1988.

<sup>73</sup> WA Kewenig, letter to FA Mann 08 August 1967.

<sup>74</sup> *Barcelona Traction, Light and Power Company, Limited*, Judgment, I.C.J. Reports 1970, 3.

<sup>75</sup> FA Mann, letter to M Domke 15 May 1969.

<sup>76</sup> FA Mann, letter to K Nadelmann 25 February 1970.

<sup>77</sup> FA Mann, *The Protection of Shareholders' Interests in the Light of the Barcelona Traction case*, *American Journal of International Law* 67 (1973) 259.

<sup>78</sup> FA Mann, letter to T Potter 27 May 1981.

<sup>79</sup> FA Mann, letter to E Lauterpacht 4 May 1971.

<sup>80</sup> FA Mann, unpublished autobiography, 167.

<sup>81</sup> *The Kingdom of Belgium, The French Republic, The Swiss Confederation, The United Kingdom and the United States of America v. The Federal Republic of Germany*; 19 ILM (1980), 1357; ILR 59, 495.

WWI debts.

Hans-Dietrich Genscher – the Federal Republic of Germany’s Foreign Minister at the time – thanked Mann in 1980 for the ‘great contribution that [he] had in the positive outcome of the case [...]’ especially for his ‘oral pleading that left a lasting impression with all parties involved’.<sup>82</sup> There can be little doubt that the *Young* case resulted in Mann’s promotion from the German Grand Cross of the Order of Merit (1977) to the Grand Cross with Star (1982).<sup>83</sup>

In their post-case correspondence, Mann writes to Kewenig:

For Mann ‘[...] learning never stops, but in this case, I have to admit, this experience affected me deeply.’<sup>84</sup> Kewenig responds by urging Mann to write about the case.<sup>85</sup>

The *Tin Council* case concerned jurisdiction of English courts in the case of an insolvency of an organisation for the control of tin prices founded by international treaty with headquarters in London, and the liability of member states for outstanding debts. The House of Lords held that the international treaty created no rights under English law, that a UK Order in Council had created the Tin Council as legal personality under English law, and that member states were not liable for debts of the Tin Council.<sup>86</sup>

For Mann, who otherwise was very supportive of a strict separation between public international law and domestic law, the result was devastating; a ‘legal scandal’<sup>87</sup>, ‘truly monstrous’<sup>88</sup>. He felt that the House of Lords had failed to provide the proper response to the ‘fraudulent trading by the International Tin Council’<sup>89</sup> In this case, he was particularly critical of the some of the judges. In correspondence with Eli Lauterpacht, he called Lord Templeman’s judgment ‘a diatribe rather than a speech worthy of the House of Lords and at best can be ignored’<sup>90</sup>, generally speaking ‘[the] Lords were determined to reach a particular result, and therefore simply ignored those argument which they found difficult to deal with’.<sup>91</sup>

## B. Legislation

While Mann’s influence on case law and legal scholarship are well known, the correspondence reveals less known aspects of his involvement in legislation. Two examples will be presented below, namely his involvement in the de-nazification of German law and his work on the Lord Chancellor’s Private International Law Committee.<sup>92</sup> Further projects referenced in the documents are the Foreign Corporations Bill, the US Sherman Act, the Rome I Regulation, the Arbitration Act of 1979,<sup>93</sup> and the Swiss Private International Law Reform.

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<sup>82</sup> HD Genscher, letter to FA Mann 14 July 1980.

<sup>83</sup> See above, I.A.

<sup>84</sup> FA Mann, letter to Kewenig 27.05.1980.

<sup>85</sup> WA Kewenig, letter to FA Mann 05 June 1980.

<sup>86</sup> *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418,.

<sup>87</sup> ‘Justizskandal’, FA Mann, letter to HJ Hahn, 18 January 1990.

<sup>88</sup> FA Mann, letter to E Lauterpacht 1 November 1990.

<sup>89</sup> Letter to von Hoffmann J, 01 May 1991

<sup>90</sup> FA Mann, letter to Lauterpacht 4 April 1990

<sup>91</sup> Ibid.

<sup>92</sup> Lewis (n 2), 65-83, describing Mann’s time in Berlin in 1946, includes references to his work on the Inter-Allied Legal Committee of the Allied Control Council. Mann’s contributions to the development of UK Private International Law through his work for the Private International Law Committee have not yet been evaluated.

<sup>93</sup> On arbitration, see also above, II.A.2.

## 1. De-nazification of German Law

In 1946, Mann agreed to serve as the UK delegate to the Inter-Allied Legal Committee of the Allied Control Council in Berlin. He was made a member of the Control Commission for Germany/British Element (CCG/BE) in the Legal Committee and given the rank of Lieutenant Colonel of the British Armed Forces. His main task was to assist with the de-nazification of German criminal law. This time from mid- until late 1946 is well documented in some sixty letters which Mann wrote to his wife Lore. They depict the many frustrations and slow (if any) progress of the work of the Inter-Allied Legal Committee. More interestingly, they give a fascinating contemporary witness account well beyond the dealings of the Allied Control Council, of everyday life in Berlin, UK bureaucracy, de-nazification in general, and also the Nuremberg Trials, which Mann visited during this time, and which impressed him deeply by their 'truly judicial atmosphere'.<sup>94</sup>

The letters include (mostly unflattering) descriptions of his fellow CCG/BE committee members, lamenting that there is 'no comradeship in work, intrigue, cliques, scheming dominate, and the whole thing is rotten, as probably the whole of CCG.'<sup>95</sup> He oscillates between pride in his own work ('I believe that I am very successful in my Committee work and, particularly, as a Chairman')<sup>96</sup> and despair about the lack of progress:

'To-day it was a complete waste of time, exclusively due to the French and Soviet who were not prepared nor understood the legal problem. I am asking myself whether I could have done anything to get on, but must comfort myself with the Americans' assurance that it was impossible. Although I enjoy being in the Chair, the absurdity of the whole thing is more than I can bear. Probably all Committees, even in England, work like that, except that the language difficulty creates additional trouble here.'<sup>97</sup>

Mann laments 'the complete failure of de-nazification in the British sector'<sup>98</sup>, that no one owns up to having been a Nazi, and that even those beyond suspicion downplay Nazi penetration of German society.<sup>99</sup>

'Last night I went to see Walter Schmidt and wife. They are nice people and almost the first to told me that the Nazis are alive and kicking and preparing their new Dolchstoß Agenda. I never doubted it. They also said that anti-Semitism was still the same.'<sup>100</sup>

Mann describes the dire conditions of everyday life for ordinary Berliners, rationing, black market trade, the re-establishment of performing arts and academia, but also the slave-like treatment of a German domestic working for US staff,<sup>101</sup> and the misery of German refugees.<sup>102</sup>

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<sup>94</sup> FA Mann, letter to L Mann, dated 'Tuesday night', written on 20 August 1946 according to handwritten note by Jessica Mann. 'I had the very good fortune of being in Court when Goering again gave evidence. It was most interesting and there is no doubt that he is a personality of great force and demonic evil [...]

<sup>95</sup> FA Mann, letter to L Mann, dated 'Thursday evening'.

<sup>96</sup> Ibid.

<sup>97</sup> FA Mann, letter to L Mann dated 'Thursday afternoon (6:30pm)'.

<sup>98</sup> FA Mann, letter to L Mann dated 7-8-1946.

<sup>99</sup> FA Mann, letter to L Mann, dated 'Sunday evening', referring to Professor Eduard Kohlrausch, supervisor of Lore Ehrlich's doctoral thesis, and his wife: 'They did say, however, that there were so very few Nazis!'

<sup>100</sup> FA Mann, letter to L Mann dated '3-8-1946'. *Dolchstoß*, stab-in-the-back, refers to the myth that the German army did not lose World War I on the battlefield but was betrayed by the republican overthrow of the monarchy in 1918, a myth that is frequently associated with anti-Semitic sentiment.

<sup>101</sup> FA Mann, letter to L Mann, dated '9-8-1946'

<sup>102</sup> FA Mann, letter to L Mann, dated '11-9-1946', written from Marburg. 'We must continuously think of the

He observes that ‘the English are completely aloof and [far?] from the Germans. It is India all over again’.<sup>103</sup>

## 2. *Private International Law Committee and the Law of Domicile*

By letter of 21 July 1952, Mann was invited to join a new Standing Committee on Private International Law at the request of the Lord Chancellor, Viscount Simonds, to deal with ‘international conferences on this subject which are held at The Hague and elsewhere’. Mann served on this Committee until it was eventually dissolved in 1964.<sup>104</sup> During this time the Committee advised on numerous Private International Law initiatives, including the Hague Convention on the Law Applicable to the Sale of Goods (1955), on the Recognition of the Legal Personality of Foreign Companies, Association and Institutions (1956), the Conflict of Laws Relating to the Form of Testamentary Dispositions (1961), and the draft ICC Convention on the Recognition and Enforcement of Arbitral Awards (1953).

A particularly interesting example for Mann’s work on this committee relates to a failed attempt to reform the English domicile law via adoption of the Hague Convention Relating to the Settlement of Conflicts Between the Law of Nationality and the Law of Domicile (1955). While demonstrating Mann’s skills as shaper of legislation and networker, this small case study also demonstrates the interplay between government and parliament, between case law and statute, pitfalls of the legislative process in the UK, and the influence of lobbying. The correspondence sheds new light on what an article published in the ICLQ in 1959 referred to as ‘a curious example of the side winds that may affect the course of English legislation’.<sup>105</sup>

Advice on the then draft Hague Convention was on the initial tasks list of the Private International Law Committee. The Convention was to reduce frictions between the applicable laws in various fields where the common law would apply the law of domicile of a certain person, where continental jurisdictions would apply the law of this person’s citizenship. In the Hague Convention draft, there was a trade-off: while domicile would take precedence over nationality in any clash under Art. 1, domicile was to be redefined as the place of habitual residence in Art. 5. Reformers such as Professor Geoffrey Cheshire saw this as a wonderful opportunity to overcome the ‘sentimental and patriotic views of the early 19<sup>th</sup> century when Englishmen adventured abroad in search of a fortune, but always intended to return some day’.<sup>106</sup>

However, Mann, who was asked to write a draft bill together with Geoffrey Cross, took a much more pragmatic and also traditional approach, which essentially codified existing English case law and only removed the disturbing effects of the so-called domicile of origin (the father’s domicile at the time of birth, which could thus be a country in which the bearer of this domicile had never set a foot).<sup>107</sup> The Mann-Cross draft would also keep the common law rule that a married woman takes the domicile of her husband, which was capable of causing problems notably in divorce cases. After

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miserly the Germans have done to people in the East, Jews etc – in order not to be overwhelmed by sympathy. But two wrongs don’t make one right.’

<sup>103</sup> FA Mann, letter to L Mann, dated ‘Friday evening’.

<sup>104</sup> Collins (n 2), 401.

<sup>105</sup> M Mann, ‘The Domicile Bills’, 8 ICLQ (1959), 457-464, 457. It is interesting to note that this well-researched article makes no mention of Mann, who had been contributing outside of the public gaze.

<sup>106</sup> Statement by G Cheshire in preparation of the Second Committee Meeting on 18 February 1953.

<sup>107</sup> FA Mann, letter to DW Dobson, 13 July 1953.

much debate, the process stalled, and when it was resumed in 1957, the view gained upper hand in the Committee that Art. 5 of the Hague Convention should not be enacted (thus removing the essential trade-off).<sup>108</sup> As the Committee's secretary would later write in a confidential letter to Mann: 'It seems to me, and the Foreign Office agree with me, that it might be better to bring our law into a satisfactory state without paying too much attention to what foreign countries do.'<sup>109</sup> When the Committee in 1957 eventually recommended the adoption of the Hague Convention (without its Art. 5), Mann recorded dissent.<sup>110</sup>

By that time, the new Lord Chancellor, Viscount Kilmuir, decided to proceed to legislation. The Committee discusses at its 20<sup>th</sup> meeting a confidential 'Domicile and Choice of Law Bill', drafted by 'Mr. Henry Rowe of Parliamentary Counsel', dated 28 November 1957. Under this bill, there is no longer a domicile of birth. Married women have the domicile of their husband, children the domicile of the person who is entitled to custody. The draft bill provides that having a home in a country creates the presumption of intending to live there permanently, thus proposing a compromise between traditional common law notions of a domicile based on intention and the fact based approach based on where a person lives as favoured by the Hague Convention. Exceptions are provided for diplomatic staff and other service 'in the judicial or civil or the naval, military or air force service of another country' or of an International Organisation. But no such exception is envisaged for businesspeople, who could see the bill as a major threat to their very profitable 'non-domicile' tax status: 'non-doms' who work full-time in the UK are subjected to income tax only on their UK income as long as they do not intend to live in the UK permanently, allowing for tax-free incomes from assets which they hold in tax havens.

Anticipating such objections particularly from the US business community in the UK, Mann writes to fellow émigré lawyer Hans J. Frank to enquire about how foreign business people are treated in the US.<sup>111</sup> Frank replies promptly with details of the US legislation, which subjects everybody living and working in the US to income tax on all their earnings regardless of whether they want to live in the US permanently.<sup>112</sup>

At this stage, however, the Bill was already in Parliament. It appears that the Lord Chancellor was unable to secure governmental status for this Bill, with the effect that it is eventually introduced as a Private Member Bill in the House of Lords.<sup>113</sup> There, Lord Hawke objected to the new rule in the House of Lords on the ground that it could subject Commonwealth citizen living in the UK to tax on their entire income.<sup>114</sup> To the irritation of Mann, Lord Denning also requested an express abolition of the traditional rule that a married woman takes the domicile of her husband.<sup>115</sup> Mann, while sympathetic on principle, objected on grounds of practicality:

'You can allow the wife to have a separate domicile, but then you must lay down in terms whose domicile prevails in case of a conflict, and if you say that the husband's domicile should prevail, this is from a practical point of view the same solution as that provided by

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<sup>108</sup> Minutes of the 6th meeting of 18 November 1953.

<sup>109</sup> JM Cartwright-Sharp, letter to FA Mann, 3 October 1957.

<sup>110</sup> Minutes of the 19th meeting.

<sup>111</sup> FA Mann, letter to HJ Frank 23 July 1958.

<sup>112</sup> HJ Frank, letter to FA Mann 25 July 1958.

<sup>113</sup> Hansard Vol. 209 No. 808 (Lord Meston).

<sup>114</sup> Hansard Vol. 211 No. 99 – 24 July 1958, underlined in FA Mann's copy on file.

<sup>115</sup> Hansard Vol. 209 No. 815, 12 June 1958.

the present rule. What in my view cannot be done is to leave the question of priority entirely in the air.’<sup>116</sup>

He also passed on to the Secretary of the PIL Committee and to Lord Denning the information on US tax law provided by Frank, and added that it would be open to any Commonwealth citizen to refute the presumption of intention to reside permanently in the UK.

But the Bill had already become too controversial to proceed, and no time was set in the House of Commons for discussion before the end of the parliamentary session. A fresh attempt, with a much watered down bill, was made in 1959. The presumption was taken away.

The debate of the then very controversial bill was fuelled by various letters written to *The Times*: in support of the bill by Professor Cheshire, and by Secretary-General MH van Hoogstraaten and Professor Offerhaus for the Hague Conference; critical on tax issue but otherwise supportive Professor Schmitthoff.<sup>117</sup> But the fate of the bill was sealed when the American Chamber of Commerce in London, in a memorandum to the Lord Chancellor, threatened withdrawal of business from the UK.<sup>118</sup> On 16 April, the sponsors of the Bill took the unusual step of announcing in *The Times* that they were dropping the bill.<sup>119</sup> On the same day, Mann wrote to Geoffrey Cheshire:

‘Now that the Domicile campaign is over, I feel at liberty to speak and I am wondering whether I should perhaps write an article for one of the Law Reviews, reviewing this effort from its inception to its inglorious finish.’<sup>120</sup>

However, this article was never written, and Mann’s role as key mover in this failed legislative reform process remained unknown until today.

### C. *Academia and Scholarly Writing*

#### 1. *General Observations*

In spite of working full-time as solicitor, Mann’s academic output exceeded, both qualitatively and quantitatively, that of many full-time legal scholars. Lord Denning went as far as stating that ‘Mann ... has contributed more than anyone to the development of the science of law in our time.’<sup>121</sup>

Yet Mann’s relationship with academia was not without difficulties. He would regularly refer to publications he encountered as *wertlos* – worthless.<sup>122</sup> In a letter to Professor Pierre Lalive, he complains that ‘all academic institutions of any kind in England’ have ‘consistently ignored me for many years’.<sup>123</sup> By contrast, being a respected honorary professor at the University of Bonn, Mann apparently felt considerably better integrated

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<sup>116</sup> FA Mann, letter to JM Cartwright-Sharp, 6 August 1958, with copy to Lord Denning by letter of 2 February 1959. Denning replies by letter of 3 February 1959: ‘Dear Doctor Mann, Thank you very much for your letter and for so kindly putting me wise about everything.’

<sup>117</sup> G Cheshire, *The Times*, 2 March 1959 9; MH Hoogstraaten and J Offerhaus, *The Times*, 31 March 1959, 3; C Schmitthoff, *The Times*, 2 April 1959, 11.

<sup>118</sup> [Complete reference, In PIL file].

<sup>119</sup> Lord Meston and H Lucas-Tooth, *The Times*, 16 April 1959, 13.

<sup>120</sup> FA Mann, letter to G Cheshire, 16 April 1959.

<sup>121</sup> Lord Denning, letter to the senior partner of Herbert Smith on occasion of the firm’s centenary celebrations (1980), as quoted by Lewis (n 2), 156.

<sup>122</sup> E.g. FA Mann, letter to HJ Hahn, 8 September 1980.

<sup>123</sup> FA Mann, letter to P Lalive, 15 September 1971.



into German academia and academic discourse. Lacking an academic institutional environment in the UK, and with only temporary visits to Bonn to make up, Mann used his correspondence with numerous legal scholars and academic lawyers for academic discussions in general, and for requesting comments on drafts of his scholarly work in particular. The correspondence includes thousands of letters exchanged with numerous academic lawyers.<sup>124</sup> And while many letters deal with technical details of e.g. forthcoming visits or meetings, a substantial number discusses legal issues, often in very candid language. For example, while the correspondence with Lalive offers evidence of a warm relationship, Mann criticizes Lalive with the words: 'your adherence to legal anarchy and to the heresies propagated by Goldman are a matter of great regret'.<sup>125</sup> Their encounters in academic writings would continue throughout Mann's life, with correspondents irregularly even writing to him inquiring about their strife: '[as] most people, I have been rather shocked by Pierre Lalive's prose who abandons scientific discussion for polemic.'<sup>126</sup> Yet on 19 December 1990 Mann accepted Christian Dominicé's invitation to contribute to a Festschrift for Lalive<sup>127</sup> which would appear in 1993; Mann's death in 1991 ultimately prevented him from contributing.<sup>128</sup>

More research will be required for a full evaluation of this correspondence with many of the best known academic lawyers of this time, concerning many important developments in legal scholarship, and often thoughts which Mann intended to express later in writing without actually publishing them.

## 2. *The Legal Aspect of Money*

Mann's 'The Legal Aspect of Money' is rightly considered his *magnum opus*. It thus goes without saying that it is therefore not surprising that the topics of money, currency and exchange in all their legal facets permeate his correspondence just as they did his scholarly and practical work. There are furthermore many letters specifically about 'The Legal Aspect of Money', in particular testing arguments and seeking views on matters to be addressed in the next edition, and reactions expressed in notes of thanks from the very substantial number of persons to whom the author gave complimentary copies of the latest edition. Evaluating the impact of this correspondence on the development of the law of money is well beyond the scope of this article, but would certainly be worth a study in its own. As a glimpse, the following quotation that may characterise best Mann's view – and his voice – on money, is in one of the last letters written to Professor Hahn:

'It is the task of lawyers to straighten out the conditions and consequences of a standard currency [...] non-lawyers can only waffle about such matters.'<sup>129</sup>

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<sup>124</sup> See above, I.B.

<sup>125</sup> FA Mann, letter to P Lalive, 4 July 1977.

<sup>126</sup> A von Overbeck, letter to FA Mann, 20 March 1989.

<sup>127</sup> C Domicié (ed), *Etudes de droit international en l'honneur de Pierre Lalive* (Helbing & Lichtenhahn 1993).  
FA Mann, letter to C Dominicé, 19 December 1990.

<sup>128</sup> FA Mann, letter to C Dominicé, 19 December 1990. C Domicié (ed), *Etudes de droit international en l'honneur de Pierre Lalive* (Helbing & Lichtenhahn 1993).

<sup>129</sup> FA Mann, letter to HJ Hahn, 25 April 1991: '[Es ist] Aufgabe des Juristen, Voraussetzungen und Konsequenzen einer einheitlichen Währung klarzustellen [...] Nichtjuristen können über diese Dinge nur quatschen.'

### 3. *The Making of a Festschrift*

Mann's contribution to legal scholarship was celebrated with a Festschrift in his honour on the occasion of his 70<sup>th</sup> birthday in 1977.<sup>130</sup> Convention has it, in the UK as in Germany, that the honoured person should be surprised, at least not be involved in any way with the production of the Festschrift. Convention also has it that the editors should respect all preferences of the person they honour, in particular by ensuring that no one gets overlooked whom the honoured person would expect to contribute, and that no one is involved with whom the honoured person has an all too difficult relationship. Reconciling these conflicting conventions is a dilemma which Festschrift editors will regularly face. But regardless of which convention wins in the end, discretion is key to the editors' ultimate success.

Mann's correspondence thus provides a rare insight into the production process of a Festschrift. It shows that one way of preventing a Festschrift from becoming an embarrassment for either editors or the honoured person is to pay lip service to the first convention, and to focus on meeting the second in full. So when Professor Hugo J Hahn ventilates the possibility of a Festschrift four years before the due date, the addressee is Mann. And Mann replies as one would expect: he would naturally be deeply honoured, but he should not be involved in this at all. But he also includes the warning that 'Festschriften are generally a laughable matter'.<sup>131</sup>

This marks the beginning of a constant flow of letters between Hahn and Mann, with the latter taking more and more control of his own Festschrift, while insisting throughout that he should not be involved in this fashion at all. It is Mann who comes up with the names for co-editors.<sup>132</sup> It is Mann who decides who should and who should not contribute.<sup>133</sup> It is also Mann who decides that the Festschrift should be trilingual, with contributions in English, German and French.<sup>134</sup> And it is also Mann who comes up with the title for the Festschrift: '*Internationales Recht und Wirtschaftsordnung / International Law and Economic Order*'.<sup>135</sup>

At any rate, the outcome is not laughable at all, but an impressive, much cited, lengthy volume with academic contributions by the likes of Ian Brownlie, Ernst von Caemmerer, Lawrence Collins, Ulrich Drobnig, Rosalyn Higgins, Gerhard Kegel, Werner Flume, Max Gutzwiller, Jochen Frowein, Hugo J Hahn, Robert Jennings, Otto Kahn-Freund, Eli Lauterpacht, John Morris, Kenneth Simmonds, Christian Tomuschat, Frank Vischer and Konrad Zweigert, just to mention some of the many illustrious contributors.

### 4. *Mann's Students*

Mann supervised doctoral dissertations at the University of Bonn, and he also advised many other young academics. Correspondence with some twenty persons has survived who understand themselves, in a German academic sense, as *Schüler* of

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<sup>130</sup> W Flume et al. (eds), *Internationales Recht und Wirtschaftsordnung: Festschrift für F.A. Mann zum 70. Geburtstag am 11. August 1977* (CH Beck 1977).

<sup>131</sup> FA Mann, letter to HJ Hahn 3 July 1973 ('*Festschriften sind regelmäßig Lächerlichkeiten*').

<sup>132</sup> FA Mann, letter to HJ Hahn 11 February 1975. Mann suggests Werner Flume, Kenneth Simmonds and Robert Jennings, of which the first two are listed as co-editors, with the addition of Gerhard Kegel. Jennings is a contributor to the volume.

<sup>133</sup> FA Mann, letter to HJ Hahn 29 September 1975.

<sup>134</sup> FA Mann, letter to HJ Hahn 10 December 1976.

<sup>135</sup> FA Mann, letter to HJ Hahn 7 July 1976.

Mann. Three of them had highly successful academic careers. Professor Wilhelm Kewenig (1934-1993) was Professor of Public International Law at the University of Kiel, where he served as Vice-Chancellor from 1974-1975, presided the influential German Council of Science and Humanities (*Wissenschaftsrat*) between 1976 and 1979, and Secretary of State for Universities for the State of Berlin from 1981-1986. Professor Karl Meessen (1939-2015), whose doctoral thesis was co-supervised by Mann, held chairs in Public International Law at the Universities of Bonn, Cologne, Augsburg (where he was President from 1979-1983) and Jena. Professor Wolfgang Schön (\* 1961), who in Bonn worked as Mann's student assistant,<sup>136</sup> held chairs in Commercial Law in Bielefeld and Bonn, and is since 2002 Director of the Max Planck Institute for Tax and Finance Law in Munich.<sup>137</sup>

Many of Mann's doctoral student pursued successful careers in private practice, or government. These include – among others – Detlef Frenz<sup>138</sup> and Florika Fink-Hooijer<sup>139</sup> who is now Director-General for Interpretation at the European Commission. Another Mann student who worked for the European Commission was Christian Fischer-Dieskau, who first pursued a career at the German Home Office and with the liberal party FDP.<sup>140</sup> One of Mann's students, Wolfgang Christian Fuchs, pursued a successful career at the German Home Office.<sup>141</sup>

#### D. Institutional Networks

Mann was also extremely well connected through institutional networks, and this is amply reflected in his correspondence. The earliest memberships were probably most efficient in this respect. It was presumably his 'Legal Aspect of Money' which gained him membership of the International Law Association's Monetary Committee (MOCOMILA), where he served as Rapporteur between 1952 and 1973. Mention has been made of Mann serving on the Lord Chancellor's Private International Law Committee between 1952 and 1964.<sup>142</sup> His long-term close involvement with the British Institute of International and Comparative Law ('an institution with which I am closely connected'<sup>143</sup>) is likely to predate his appointment as honorary treasurer in 1956;<sup>144</sup> he served in various functions until his death in 1991. A real door-opener to a circle of internationally renowned lawyers was his appointment to the Institut de Droit

<sup>136</sup> Personal communication by W Schön.

<sup>137</sup> 'Curriculum Vitae Prof. Dr. Wolfgang Schön' <  
[https://www.leopoldina.org/fileadmin/redaktion/Mitglieder/CV\\_Schoen\\_Wolfgang\\_D.pdf](https://www.leopoldina.org/fileadmin/redaktion/Mitglieder/CV_Schoen_Wolfgang_D.pdf)>.

<sup>138</sup> Dr. Detlef Frenz, LL.M. (UC Berkeley) <<https://www.heuking.de/de/anwaelte/dr-detlef-frenz-llm-uc-berkeley.html>>

<sup>139</sup> <  
<http://europa.eu/whoiswho/public/index.cfm?fuseaction=idea.hierarchy&nodeID=3396423&personID=459962&lang=en>>

<sup>140</sup> Fischer-Dieskau received praise for his experience with international organisations, see <  
<https://www.zeit.de/1971/01/report-aus-bonn>>.

<sup>141</sup> 'Curriculum Vitae Dr. Wolfgang-Christian Fuchs' <<https://www.ispsw.com/dr-wolfgang-christian-fuchs/>>

<sup>142</sup> See II.B.2.

<sup>143</sup> FA Mann, letter to Baron HH Thyssen-Bornemisza 22 July 1985.

<sup>144</sup> N Marsh, *British Institute of International and Comparative Law: a brief history (1895-1958)* (1998), 5, available at [https://www.biicl.org/documents/12\\_a\\_brief\\_history\\_of\\_biicl.pdf](https://www.biicl.org/documents/12_a_brief_history_of_biicl.pdf).

International, first as Associate Member in 1973, then as Full Member in 1979.<sup>145</sup> Other notable memberships include his Fellowship of the British Academy in 1974<sup>146</sup> ('This is how you get old.'<sup>147</sup>), and his Honorary Membership of the American Society of International Law in 1980.<sup>148</sup> He was moreover an active member of the Athenaeum Club<sup>149</sup> Mann also took pride in his appointment as Honorary Bencher of Gray's Inn in the last year of his life.<sup>150</sup>

That Mann used these networks efficiently is demonstrated by the anecdotal evidence of Judge Pescatore being able to communicate extra-judicially with Mann about cases in which Pescatore was involved.<sup>151</sup> Much more thorough research would be required for a fuller evaluation of the role which Mann played in international legal networks, and how this may have had an influence on the development of law. The Mann correspondence, together with archival materials from the institutions in question, could thus provide a significant contribution to historical network research.<sup>152</sup>

### *E. Politics*

As a litigator, Mann was involved in a number of politically sensitive cases, such as the *Young Loan* case.<sup>153</sup> Sometimes his advice was sought in such cases even where litigation was not on the cards, as when US embassy staff were being held hostage in Iran after the 1979 revolution.<sup>154</sup> Although he never aspired to any political office, Mann was a very political person in the sense that he would openly show his conservative and market liberal views. He was a fervent supporter of Margaret Thatcher and detested any form of socialism.<sup>155</sup> He thought that the European Court of Human Rights 'destroys great English cultural assets'; while it might be useful for countries which were new to democracy, judges from such countries should not criticise 'an ancient democracy like the English one'.<sup>156</sup> As shown in the correspondence with Pescatore, he was highly critical of the European Community as a supranational institution capable of making its own law.<sup>157</sup>

Mann had nothing but disdain for all kinds of dictatorships. He refused to travel to the German Democratic Republic, but also to Spain while the country was ruled by Franco, arguing that he saw "no difference between left-fascism or right-fascism".<sup>158</sup> He was

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<sup>145</sup> Institut de Droit International, *Annuaire*, Vol 55 (1973), XXII ; *Yearbook* 1979, Part II, 217.

<sup>146</sup> G Lewis, Mann, Frederick Alexander, *Oxford Dictionary of National Biography* (online ed.) <<https://doi.org/10.1093/ref:odnb/49887>>. *IDI Annuaire* Vol 55 (1973) 812. The YB 1977 XXXIII first mentions Mann as FBA while forgetting the title in the 1975 issue.

<sup>147</sup> FA Mann, letter to HJ Hahn 25 July 1973.

<sup>148</sup> See <https://www.asil.org/sites/default/files/ASIL%20Honorary%20Awards.pdf>.

<sup>149</sup> FA Mann, letter to P Baker 13 May 1985.

<sup>150</sup> Lewis, p. 386.

<sup>151</sup> See above, II.A.

<sup>152</sup> For a short introduction, see C Rollinger, M Düring, R Gramsch-Stehfest, M Stark, 'Editors' Introduction', *J of Historical Network Research* (2017), i

<sup>153</sup> See below, II.A.2.

<sup>154</sup> April Glaspie (then First Secretary, at the US Embassy in London), letter to FA Mann, 20 November 1979.

<sup>155</sup> FA Mann, letter to G Wetter, 1 April 1980: 'I hear, however, the most terrible stories about medical services in Sweden, and I would therefore hope that you are in good hands and will perhaps in due course consult a specialist in a country which has not been infected by Socialism.'

<sup>156</sup> FA Mann, letter to J Frowein, 26 September 1979.

<sup>157</sup> Above, II.A.1.

<sup>158</sup> FA Mann, letter to HJ Hahn 14 July 1976.

also highly critical of Israel, in particular after the massacres at Sabra and Shatila by Shiite militias on the ground that these were tolerated by the Israeli Army.<sup>159</sup>

At the same time, his 'intellectual honesty'<sup>160</sup> prevented politics from interfering with his professionalism and sense of justice. While he refused to contribute to the same *Festschrift* as Professor Karl Larenz, a highly renowned German civil lawyer, on the ground that Larenz had been supportive of the Nazis,<sup>161</sup> he nevertheless 'personally thinks that [Rudolf Heß] should be pardoned [after 35 years in prison]'<sup>162</sup>.

Rudolf Heß was the former Deputy Leader of the Nazi party who had been given a life sentence at the Nuremberg Trials in 1946. Mann was asked in 1980 whether he would be willing to represent Heß in an appeal against his ongoing detention or to recommend a suitable law firm in the UK.<sup>163</sup> Mann replies that 'for reasons that should be obvious I cannot be occupied with the case professionally nor make professional arrangements on his behalf.'<sup>164</sup> However, he never answered the request that he should return the copy of the constitutional complaint which had been lodged at the German Federal Constitutional Court.<sup>165</sup> So this document is now also held in the archives of Humboldt University.

### III. CONCLUSIONS

Mann's correspondence provides fascinating insights behind the scenes on how judges and legislators make law, and how legal practitioners and academics shape this development. Mann's testimony as contemporary witness also enriches our understanding of his time, including the reconstruction of post-war Germany, German émigré lawyers in the UK, legal practice and academia notably in the UK, Germany, Switzerland and the US. Much more is to be discovered. While all of the some 12,500 letters were inspected, time and space constraints allowed only a few deeper probes.<sup>166</sup>

Many of the legal issues to which Mann contributed so much remain on the agenda: the relationship between public international law and domestic law, states as litigants and the application of foreign public law, investment protection and arbitration, the legal aspects of money, just to name a few prominent examples. Historians should also be interested in the Mann correspondence as part of a growing field of historical network studies.<sup>167</sup>

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<sup>159</sup> FA Mann, letter to H Frank 21 October 1982: 'As to Israel, elementary morality and fairness requires one to disassociate oneself completely from a country which has embarked upon aggression and brutalities of the worst kind.'

<sup>160</sup> Tomuschat in HH Jacobs (ed) (n 17), 42.

<sup>161</sup> FA Mann, letter to HH Jacobs, 12 July 1976.

<sup>162</sup> FA Mann, letter to HJ Hahn, 14 April 1980.

<sup>163</sup> HJ Hahn, letter to FA Mann, 28 March 1980.

<sup>164</sup> FA Mann, letter to HJ Hahn 14.04.1980.

<sup>165</sup> The court would subsequently reject the constitutional complaint made on behalf of Rudolf Heß in BVerfG 16.12.1980, BVerfGE 55, 349; German full text of the decision: <<http://www.servat.unibe.ch/dfr/bv055349.html>>.

<sup>166</sup> See above, II.B.2 and II.C.3.

<sup>167</sup> See above, II.D.