CROSSING HITLER

The Man Who Put the Nazis on the Witness Stand

BENJAMIN CARTER HETT

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For Corinna, another brave
idealist, with love

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The more we know, the more we think we have learned, the more hopeless it becomes to live and not to be responsible for everything. For everything, and especially for what goes on in the small circle around oneself. That is why it is so difficult to write about Hans Litten. . . . I must tell the Hans Litten story very briefly. . . . But I will tell it, because "he was a part of myself."

—Max Fürst, *Gefilte Fisch: Eine Jugend in Königsberg*, 1973

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CROSSING HITLER

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Prologue: Summoning Hitler

In the name of the private prosecutors I request the summoning of the following witnesses," began the document, a plain sheet of vellum paper, handwritten, the letters looping and even schoolboyish. The first of three witnesses named was "the party employee Adolf Hitler, Munich, 45 Briener Street ('The Brown House')." Calling Hitler a "party employee" was deliberately demeaning. Hitler himself preferred to be called a "writer," to enhance his independence and to distance himself from gritty partisan politics. Hitler was to supply evidence that "there is no serious ban on weapons" in the National Socialist Party; more important, that the Party had formed "roll commandos," essentially paramilitary units whose function was to seek out and attack or even kill political opponents. Finally, Hitler was to confirm that Berlin's "Storm 33," a unit of the Nazis' "Storm Sections" (*Sturmabteilungen*, or SA), was such a roll commando. The four defendants in this trial, the case against Konrad Hermann Stief et al., better known as the Eden Dance Palace trial, were members of Storm 33. At the bottom of the document was a signature: "Litten. Advocate." The letters of the last name looped much larger than the rest of the text, conveying determination, pride, and perhaps even arrogance. The request was dated April 17, 1931.[1]

That same tone breathes through a letter that this advocate wrote to his parents on May 7, 1931. "I am lying in bed at the moment with the grippe," he informed them, "which must without fail be cured within 24 hours, as tomorrow I will have the pleasure of cross-examining Herr Hitler personally in Moabit."[2]

In May 1931 Hitler was forty-two years old, the leader of the National Socialist German Workers' Party (NSDAP), which, in national elections held the previous September, had surged from a previous high of 2.6 percent to 18.3 percent of the popular vote and hence of the seats in Germany's Parliament. This was the largest gain any German political party had ever made from one election to the next. Hitler had gotten himself into this position largely through his rhetoric, his ability to move crowds with words. By 1931 millions were looking to Hitler, some with terror, some with eager anticipation, as the man who might soon cast aside Germany's shaky democracy and usher in a new kind of state, a "Third Reich."[3]

In May 1931 Hans Joachim Albert Litten had not yet reached his twenty-eighth birthday. Friends knew him to be shy, scholarly, and reserved. He had been practicing law in Berlin for all of two and a half years. Beyond a handful of youth movement activists and the small circle of lawyers and judges who frequented the criminal courts of Berlin's Moabit district, he was unknown. Yet he had summoned the most formidable public speaker of his age and was preparing to take him on in rhetorical battle.

Who was Hans Litten? Years later his closest friend, Max Fürst, remembered him as "more than a brother . . . 'a part of myself,' " but also as a fanatical warrior who fought with the desperation of "one who fights the last battle." Countess Marion Dönhoff, editor in chief of the weekly *Die Zeit* (*Time*), believed that Litten was "one of those righteous men for whose sake the Lord did not allow the city—the country, the nation—to be entirely ruined." Kurt Hiller, a friend from Berlin political circles and later a cellmate in a concentration camp, called him "a true Christian by nature, and also by conviction." Another fellow prisoner was more sardonic: "A definite genius, but not easy to live with."[4]

Photographs show a serious, bespectacled young man, already growing portly and inclined to a double chin, with thinning hair combed back from a widow's peak and worn unusually long for the time ("Only soldiers and slaves get their hair shorn," he liked to say). He was tall: his closest friends' small daughter remembered him as "the big man with glasses," and a youth movement friend described him as a "tall, pale young man." Beyond his height, the photos do not suggest

a man who would be striking or memorable. Yet people meeting Litten for the first time invariably gained a strong impression. Rudolf Olden, a distinguished lawyer and journalist, remembered the first time he saw Litten. It was in 1928 at a meeting of the League for Human Rights (*Liga für Menschenrechte*), a very modern kind of political lobby group that had grown out of a left-leaning association called New Fatherland founded during the First World War by Albert Einstein and the future mayor of West Berlin, Ernst Reuter. Litten asked a question during the discussion. "The speaker had a striking head, a smooth face, rimless glasses over round bright eyes. He wore his shirt open at the throat, and short pants, below which the knees were bare." Olden took the young man for a schoolboy. After the debate, one of Olden's friends, smiling, told him that the "boy" was in fact the *Assessor*, or newly qualified lawyer, Hans Litten. The next time Olden saw Litten was in a courtroom. Olden was struck by the contrast between the "childlike face" with the eyes that "gazed pure and clear through the glasses," and the calm expertise of the lawyer who refused to let anyone intimidate him.[5]

Max Fürst had a similar recollection of meeting Litten, then seventeen, at a party in their hometown of Königsberg, East Prussia: "Hans, wearing a blue, very bourgeois suit, was leaning on the piano, a circle had formed around him . . . the conversation was cultivated. I had the suspicion that it was something involving Nietzsche. In any case, I didn't understand a word." "A big boy with yet bigger glasses" was his description. But like many others, Fürst noticed that Litten's brown eyes shone through the glasses with "a sharp and penetrating effect." From "ten miles away" one could mark Hans Litten as an intellectual. But without the glasses, his eyes "were the eyes of a dreamer, which looked more inward than outward."[6]

In her later years his still-grieving mother would remind anyone who listened that "Hitler's first victims were Germans," and there were many reasons why, almost from the beginning, the Nazis condemned Litten to imprisonment in a concentration camp, hard labor, prolonged interrogations, beatings, and torture. To the Nazis Litten was half-Jewish, as he was the product of what Germans in the early twentieth century called a mixed marriage. In politics he stood far to the left. And he was a lawyer, a profession for which the Nazis had scant regard.

But above all it was Hitler's personal fear and hatred that landed Litten in the concentration camps, and this fear and hatred stemmed from the handwritten summons of April 1931. For when Hitler appeared in court on May 8, Litten subjected him to a withering cross-examination, laying bare the violence at the heart of the Nazi movement. The Eden Dance Palace trial exposed Hitler to multiple dangers: criminal prosecution, the disintegration of his party, public exposure of the contradictions on which the Nazis' appeal was based. It was only through luck that Hitler survived with his political career intact.

The Litten who emerged in the 1930s was a fanatical warrior. In trial after trial, appeal after appeal, he waged a ferocious and single-minded legal battle against the Nazis, using all of the tools available to a lawyer—raising evidence, filing charges, speaking in and out of the courtroom—not only to expose the Nazis' programmatic violence but also to hold their leaders accountable for it. In the last years before Hitler's dictatorship Litten became one of the most prominent anti-Nazi activists, a frequent speaker at public meetings in Berlin, and a contributor to left-leaning periodicals such as *The World Stage* (*Die Weltbühne*) and the *Workers' Illustrated News* (*Arbeiter Illustrierte Zeitung*).

In the worst years of the Great Depression, which by some measures hit Germany harder than any other country, Litten fought the Nazis without thought for his financial or even personal security. The fuel on which he ran was a deep and burning conviction. At best, his law practice broke even. At other times, especially in his last year of freedom, he lost money. To take the cases he believed in, he subcontracted less urgent matters to other lawyers, often paying those lawyers more than the clients paid him. He was only ever a step ahead of creditors and the tax authorities.

Litten's resistance to the Nazis went on after the "seizure of power" of January 30, 1933. Although he was one of the first to be arrested after Hitler was made chancellor, Litten fought back even from the concentration camps. When camp guards beat incoming prisoners, he protested, and was nearly executed on the spot. When a Nazi officer demanded that he confess to sending "innocent" storm troopers to prison, Litten refused and was beaten. When camp prisoners were ordered to put on a ceremony celebrating some Nazi anniversary, Litten read a poem with the provocative title "Thoughts Are Free." When

Gestapo officers and storm troopers tortured him to reveal secrets about his clients, most of them Communist activists, Litten tried to take his own life to avoid betraying his clients' confidences. His captors revived him.

Throughout his five-year imprisonment, Litten was an unfailingly generous and loyal comrade to his fellow prisoners. He shared the food packages and the money his family sent him. A one-man university, he taught his friends, most of them working-class young men who had never had a chance at higher education, about literature and art. When Jewish prisoners at Dachau were locked in their barracks for weeks at a time—a punishment known as "isolation" because it kept them away from the "Aryan" prisoners, while imposing on them the most thoroughly communal existence—Litten kept them sane by reciting passages from the works of favorite authors, all stored in his photographic memory, and lecturing on a wide range of subjects. He worked at translating medieval German poetry into modern German, read Dante in Italian and Shakespeare in English, and mulled over a groundbreaking book on the poetry of Rainer Maria Rilke. His dedication to his fellow prisoners and his passion for the life of the mind were also forms of resistance, humane, stubborn, and unrewarded.

Prisoners who were with Litten and survived, like the clients on whose behalf he had fought, cherished his memory. That he was among "the noblest men I have ever met" was a typical assessment, often repeated. Some of his friends responded with a nobility of their own. In late 1933, Litten's friends Max and Margot Fürst risked their lives to organize Litten's escape from the Brandenburg concentration camp. Margot had just turned twenty-one.

Litten's life became enmeshed with the lives of the most important men in the Nazi regime. Hitler considered Litten's cross-examination so important that he brought his own stenographer with him to court. In later years Litten's imprisonment pushed Hitler repeatedly into the kind of position he most hated: having to make a public decision that might turn out to be unpopular. Litten's advocacy posed a threat to propaganda chief Joseph Goebbels and Nazi Germany's "second man," Hermann Göring. The ambassador and later foreign minister Joachim von Ribbentrop had to deal with influential lobbyists in Great Britain who campaigned for Litten's freedom. Litten's mother forced SS leader

Heinrich Himmler, as well as justice official and later senior judge Roland Freisler, Reich President Paul von Hindenburg, and Justice Minister Franz Gürtner, to respond again and again to her lobbying for his release. Rudolf Diels, who became the first chief of the Gestapo, proved to be the decisive link between Litten's activities before 1933 and his fate after Hitler came to power. Why these powerful men feared and hated Litten reveals a great deal about them and the nature of the Nazi regime.

Max Fürst called Litten's story a tragedy, and so it is. And like all tragedies it is also redemptive. But it is not a simple story. Litten was born in 1903 into the Germany of Kaiser Wilhelm II, reached adulthood in the turbulent years of the Weimar Republic, and died during Hitler's dictatorship. The wars and revolutions, and the recurring political, social, and economic chaos of those years, forced all Germans into repeated and wrenching decisions about public and private conduct: how to choose from among the welter of ideologies on offer in Germany's febrile politics, from all the blueprints for a new society or a return to a (supposedly) older and more virtuous one; and how to live in a society that increasingly forced the individual to choose between competing loyalties, between morality and expediency, even between morality and survival. Litten was passionately engaged in German politics from his student days on, and in the last years before the onset of Hitler's Reich he became as prominent as any political lawyer in the country. He faced every dilemma that could arise in a principled man's fight against unchecked power.

Inevitably he did harm as well as good; there was no other way. The harm was not only to himself. His work exposed his close friends to mortal danger; it tore apart and ultimately destroyed his family. Some of his political choices were harmful as well. Litten was not, as some later tried to paint him, a defender of the democratic system of the Weimar Republic. He was a revolutionary. Sometimes, especially early in his career before the battle against the Nazis became his primary cause, his targets were Social Democrats, the only unapologetic defenders of democracy in the Weimar Republic. When Litten tried to prosecute Berlin Police Chief Karl Zörgiebel for the murder of demonstrators, or defended a libel case by arguing that the Social Demo-

cratic Defense Minister Gustav Noske was a "scoundrel and a villain," he helped to weaken the democratic state in the face of Hitler's challenge.

Litten knew the choices he faced. He chose his enemies and how and when to fight them. He chose the clients whose battles he would make his own. For the most part they were working-class young Berliners from Wedding, Charlottenburg, and Neukölln—the neighborhoods most ravaged by the economic and political crises of the 1930s. These were the areas where unemployment could exceed 50 percent and where, consequently, there was a large pool of the disaffected and dispossessed to swell the ranks of the Communist Party's fighting organizations, the Red Frontfighters' League and the Combat League Against Fascism.

Nothing forced Litten to become the champion of the downtrodden. His was a prominent and privileged background. His mother, Irmgard, came of a family that had long produced Lutheran pastors and high-minded university professors, among the most honored professions in Germany at that time. His father, Fritz, was a law professor who rose to be dean of the law faculty at the University of Königsberg and later rector of the university. The Litten house was a center of Königsberg society, and the Littens regularly played host to generals, barons, and counts. When Hans finished his legal education, his pedigree and intellect assured him the kinds of job offers law graduates usually dream of, from the most powerful private firms and the most prestigious ministerial offices. He could have pursued wealth, comfort, and professional respectability. Had he made these choices he might not have been subject to persecution by the Nazis, at least in the regime's earlier years, and since later Nazi laws defined him as a *Mischling*, or a person of mixed blood, he might even have survived the Third Reich while living in Germany. In the weeks between Hitler's ascent to the chancellorship of Germany and Litten's arrest, he could easily have left Germany for safety abroad. Friends and family warned him of the danger he was in and pleaded with him to go. He chose not to.

He chose to be Jewish as well. Because his mother was Lutheran and his father a convert, Litten was raised in the official German Evangelical Church. His two younger brothers never identified with the family's partly Jewish heritage. Hans did—extravagantly, defiantly. Max Fürst

wrote that Litten wanted to be Jewish in the same way that he wanted to fight for the workers of Wedding and Neukölln: he wanted to be on the side of the underdog. Eva Eichelbaum, another of Litten's friends from his Königsberg days who also later became a Berlin lawyer, made the same point when she remembered his decision to join a Jewish youth group.[7]

This book tells Hans Litten's story, focusing on his courtroom battles with Hitler and the National Socialist Party before 1933 and on his imprisonment in the years after 1933. But at every turn I look at Litten's life and his work in their broader context: the terrible predicament of German Jews in the early twentieth century, the rich stew of politics in the age of Weimar, the fascinating and doomed culture of Weimar Berlin, the nature of the criminal courts in which Litten worked, the growing dimensions of Hitler's terror, and life in the concentration camps of the 1930s. As a famous political prisoner Litten was the subject of several campaigns, public and private, for his freedom, and by the late 1930s his story had become entangled in the dilemmas of Anglo-German relations in the era of "appeasement." After the Second World War, Litten's memory became a sometimes bitter issue in the divided Germanies.

At the broadest level this book takes on two themes. The first involves the way criminal justice functioned in Weimar Germany and how the rule of law collapsed in the 1930s. Some historians argue that the horrors of justice under Hitler were simply a product of a long history of antidemocratic, antimodern, and anti-Semitic conduct and beliefs on the part of Germany's judges. Others posit that the beginning of Hitler's rule in 1933 marked a dramatic break with the legal culture of the preceding years. Neither version is correct. Hans Litten's trials between 1928 and 1933 show that the outcomes of particular trials did not, and could not, lie only in the hands of judges, however politically right-leaning those judges may have been. In Weimar Germany, the press, expert witnesses, the police, various levels of governments, political parties, interest groups, and certainly prosecutors and defense lawyers all had a powerful impact on what happened in the courtroom, often bringing randomness rather than consistent bias to judicial verdicts. Hitler's ascension in 1933 was merely one of a series of points in an arc of the rule of law in Germany. The slide into increasingly arbitrary rulings

by Germany's courts (and of authoritarian practices by Germany's police) had begun before 1933, following years of remarkable progress in Germany's legal system. On the other hand, the Nazis could not expunge all of the deeply ingrained habits of a legal system immediately upon taking power. Such habits lingered, often with bizarre incongruity, through the first years of Hitler's rule. As Hans Litten had been a central player in criminal law in the democratic Weimar Republic, so he became one of the first and most visible victims of Germany's slide into lawlessness as the 1930s progressed.

The second theme involves a meditation on the moral consequences of political action. The story of Hans Litten and the people who were close to him (especially his mother, his brothers, and the Fürsts) is, fundamentally, a morality tale: it centers around the question of how to act in the face of injustice.

On some level, no historian looking back across the gulf of many decades can hope to answer the question "Why did they do what they did?" The answer lies in the innermost thoughts of people long dead. Hans Litten's niece Patricia Litten, reflecting on her own family's history, put it well: "The terrible thing is that we can all only speculate about history; we have fragments that are, so to speak, verifiable, and then there are a great many dark spots where one must speculate, instinctively."[8]

The task is made yet more difficult by the contradictions of Hans Litten himself. The man who so passionately took up the Judaism his father had rejected also felt a strong attachment to the cult of the Virgin Mary. The man whose deepest political and religious commitments were communal was also an eccentric individualist who liked to say that two people would be one too many for his political party. The man who described himself as a revolutionary socialist, and who was capable of the most strident and impassioned political rhetoric, was shy and awkward and, to cap it all, could be deeply upset by the slightest change in his private life. The man who was beset by many fears and phobias—including crossing streets—was also capable of extraordinary physical courage.

And yet many of Patricia Litten's "fragments" remain, and part of this book seeks to explore and to answer the question of why Hans Litten and his friends chose the battles they fought and the sacrifices

they made. The answers lie in a mixture of religious faith, political conviction, Prussian duty, even family loyalty and conflicts. Some parts of this mixture arose out of problems and conditions specific to Germany in the early twentieth century. But some are as timeless as Shakespeare's meditations on the uses of power that lie at the heart of *Henry IV* and *Henry V* or the family jealousies of *King Lear*. These works were among Litten's own favorites.

At the beginning of the twenty-first century, Hans Litten, long neglected, is once again having a moment. Since the 1980s the German Association of Democratic Lawyers and the European Association of Lawyers for Democracy and World Human Rights have given a prize for human rights advocacy in his name; the 2006 winner was an American, Michael Ratner, president of the Center for Constitutional Rights. Since 2001 the German Bar Association has had its head office in Berlin in a building called the Hans Litten House, which stands on Hans Litten Street. Articles about Litten appear with some frequency in German professional legal journals. Why Litten should become the patron saint of German and, increasingly, world lawyers is an important question. But it is not the main reason I wanted to tell his story. The reason lies in the power of that story's moral qualities and in its mixture of historical importance and Shakespearian timelessness. Litten's was a very twentieth-century life, in the causes that animated him and the fate that befell him. Partly Jewish, partly Christian, deeply in love with his native Prussia and a committed internationalist, a political radical with his own quirky brand of cultural conservatism, erudite and philistine, arrogant and wracked by insecurities—few people could embody their country more than Hans Litten embodied twentieth-century Germany. At the same time, the moral quandaries that Litten and his friends faced, perhaps even the political crisis into which they were thrown, have all the enduring power of tragedy.

Hans Litten himself wrote about the "double edge of the deed," the impossibility of taking righteous action without doing harm. His life and his work forced him and others, repeatedly and with ever-increasing severity, to confront the question of how much to risk when morality becomes a life-or-death matter. The redemptive side of this story lies in the frequency with which he and his friends and family chose the dangerous answers over the safe ones.

PART I

The Whole Person

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The Litten Court

Connoisseurs of irony can find much to ponder in the stories of Hans Litten's childhood.

His godfather was Franz von Liszt, celebrated professor of criminal law in Berlin, a younger cousin of the pianist and composer. Liszt was famous for his ideas on prison reform. He abandoned the classic liberal belief in fixed and finite sentences for criminals, believing that those who would always be a danger to society should be locked up indefinitely. This was the man who held the future concentration camp prisoner in his arms during the baptism.[1]

By his own account, Litten thought "very intensively about death" from the age of five. To comfort him, his mother would tell him that when the time came, if he were very good, he could ask God if, instead of dying, he might take a journey, far away, perhaps to Egypt. The words sank in: Litten could recall them nearly thirty years later—as Hitler's prisoner.[2]

Hans Litten was born in the town of Halle on the River Saale, on June 19, 1903. His father, Fritz Julius Litten, was a thirty-year-old junior lawyer; five days after the birth of his first son Fritz gave his inaugural lecture as a member of the law faculty at the University of Halle. Five years later Fritz Litten followed "the call," as German academics say, to a position as a full professor at the University of Königsberg, which for him meant a return to his family's East Prussian homeland.[3]

The story of the Litten family was typical of the rising German Jewish middle class of the late nineteenth century. Consciousness of that rise, and constant fear of its reversal, shaped how Fritz Litten lived his life. Having finally made it in the Kaiser's Germany, Fritz shared a credo with many German Jews of his generation: *Nur keine Rückfälle*—"Just no relapses." Successful German Jewish families knew that they were only several generations removed from a time in which Jews were mostly poor, their movements legally restricted and subject to the kind of indignity reflected in the log of an eighteenth-century Berlin

gatekeeper: "Today there passed six oxen, seven swine, and a Jew." Fritz's father, Joseph Litten, was a businessman who dealt successfully in grain and wood, later founding a bank. Joseph was also, as a plaque at the synagogue recorded, chairman of the lay council of the Königsberg Jewish community. Fritz studied law in Leipzig, Freiburg, and Königsberg, earning his doctorate in 1895. He went on to do military service as a one-year officer trainee, typical for well-off young men in Imperial Germany. To enter the officer corps, however, Fritz had to convert to the official Evangelical Church. Conversion, which in pre-Nazi Germany made most, if not all, things possible for Jews, also opened the door to the academic career of which he dreamed.[4]

Fritz Litten's personal success, his strict adherence to the commandment "Just no relapses," and the anxiety of the social climber who wished his origins to be forgotten determined the lordly manner in which he carried himself. He built a large house, which became known as "the Litten Court." When the hyperinflation of 1923 wiped out his wealth (by November of that year the German Mark had fallen from a prewar value of just over 4 to the U.S. dollar to 4.42 trillion to the dollar) Fritz was undeterred. He told his wife, "I have no intention of changing our style of living; I shall simply earn more." And he did, through writing for the press and working from time to time as an arbitrator and as counsel to the German state railways. Hans Litten and his two younger brothers, Heinz Wolfgang, born in 1905, and Karl Reinhardt, known as Rainer, born in 1909, grew up in comfort and privilege.[5]

Professionally Fritz went from triumph to triumph. In 1912 he was named dean of the Königsberg law faculty. After the First World War he was appointed rector, equivalent to president, of the university. His politics were nationalist-conservative, another expression of "Just no relapses." "I was trained in the outlook of a Prussian officer and state official," he later wrote. He spoke proudly of his four years of service "in the field" during the First World War, for which he was awarded the Iron Cross First as well as Second Class, and retained the title of "Captain of the Militia (ret)." Shortly after the Battle of Tannenberg, at which the short-winded Russian advance into East Prussia was halted in 1914, Fritz Litten arranged an honorary doctorate for that battle's nominal commander, the "savior of East Prussia," Field Marshall Paul

von Hindenburg. (Later, when Hindenburg was president of Germany, his path would intersect with the Littens' in a very different way). Fritz proudly called himself "educator of princes," as he had taught the grandsons of Germany's last emperor. He once told Max Fürst that he would gladly become a legal advisor to the Vatican, for then he would attain the rank of cardinal and the Swiss Guards would have to salute him with their daggers. "He said that in jest," said Max, "but he was serious about social climbing." Fritz was friendly with a circle of prominent conservative figures, among them the man who would become Hitler's first army minister, General Werner von Blomberg, and the future leader of the Nazified German Christian Church, Pastor Ludwig Müller. His wife later concluded—with a tone of barely concealed disgust, testifying to the tensions that would wreck the family in later years—"There was no denying the fact that my husband was a prominent figure. . . . [He] was often called in jest the 'uncrowned king of East Prussia.' Those who value such things would say that his was a brilliant career." Kurt Sabatzky, Königsberg representative of the largest German Jewish organization, the Central Union of German Citizens of the Jewish Faith, recalled that the Litten home was one of the centers of Königsberg society. Sabatzky could not help adding, however, that Fritz's stance in "Jewish matters" was "questionable": "He was a renegade, and loved to insist on the Christian character of his house."[6]

From time to time in the late 1920s and early 1930s, when elite members of East Prussian society gathered at the Litten Court, a guest would offer condescending sympathy to Frau Irmgard Litten about the "machinations" of her "misguided" son, the Berlin lawyer. They misjudged her. "There would be a nervous silence as the small, gentle woman began to argue that laws and regulations must not be employed just for the benefit of the ruling classes, but for ordinary people as well; that was what her son represented, and she was proud of it." Fritz Litten would try to change the subject.[7]

Irmgard Litten, born Irmgard Wüst in Halle in 1879, liked to say that hers was an old Swabian aristocratic family that had gone from producing marauding knights (*Raubritter*) to producing pastors and university professors. "The great majority of my forbears," she wrote, "were pastors; all, from the beginning of the seventeenth century and earlier, were Swabians; and most of them were fearless soldiers of

God." The difference between her family and her husband's was starkly apparent. Irmgard's father, Albert Wüst, was a professor of engineering at the University of Halle. A specialist in agricultural machinery, he was said to be easygoing in manner and progressive in his politics, especially regarding the rights and social position of workers. Her mother, Wilhelmine, was known in the family as an expert on art. The father's open-minded politics and the mother's passion for art, as well as the sense of entitlement of an established family, decisively shaped their daughter and, through her, the three Litten boys.[8]

Irmgard Wüst and Fritz Litten were married in September 1900. They had met at the University of Halle in 1898, where Irmgard, who chafed under the myriad restrictions on a young woman's life, dared to attend lectures. Her knowledge of art history was such that in a different age she might have become a scholar. Her independence and interest in politics might have led her into public life. The Königsberg chapter of the German People's Party once invited her to give a lecture on women in politics. She began with a long appreciation of Rosa Luxemburg, the revolutionary socialist leader who was murdered in the upheavals of 1919. When the chairman of the meeting objected, Irmgard asked if one could possibly deny that Luxemburg was the most important woman in German political history. The People's Party did not invite Irmgard to give any more speeches.[9]

Hans Litten's personality emerged early. First there was his astonishing memory: as a four-year-old he could recite long passages from the Grimms and restate conversations in their entirety, often enough an embarrassment for the parents. He composed poems, too, faithfully transcribed by his indulgent mother. He was an "early developer," far ahead of his fellow students, always able to do his schoolwork without the slightest effort. The youthful promise was abundantly fulfilled: the adult demonstrated an intellectual power that stunned all who met him. He seemed able to hold in his memory everything he had ever read, and he could recite hour on hour the works of favorite authors, such as Rainer Maria Rilke. He read Shakespeare in English, Dante in Italian, and Cervantes in Spanish. He studied Hebrew, Sanskrit, and the music of the Middle East.[10]

The young Hans also revealed a passionate religious feeling. Irmgard told of how her sons were thrilled to hear stories of "the Christ

Child who came to earth in order to bring peace to the world." They built a toy crib with the Holy Family, the three kings, and the shepherds and their flocks. "Little Hans wanted as many animals as possible. 'Why are there no *wild* animals?' he asked. 'Because they would kill and eat the others.' 'But not in the presence of the Christ child,' he said. 'He came to bring peace!' " And Hans was an instinctive democrat. According to Irmgard, the family's cook often complained that the young master was too friendly with the street sweeper and addressed beggars as "sir"—a deference he never showed to aristocratic guests at the Litten Court. He took promises seriously. "If anyone had frivolously made him a promise that could only with difficulty be kept, Hans would never leave his side, constantly repeating, with a look of reproach: 'But you promised; you must do it!' " Irmgard's recollections, written after Hans's death, are certainly tinged with sentimentality and with a didactic point. But the Hans Litten they convey—emotionally drawn to the underdog, believing passionately in promises and reproachful of those who would not keep them, utterly serious about the laws of God and man—foreshadows the adult Litten who cross-examined Adolf Hitler and suffered in Hitler's camps.[11]

Irmgard believed that her Wüst inheritance had decisively shaped her eldest son. It was she who brought to the Litten family the virtually religious faith in the importance of art and learning so characteristic of middle-class Germans at the beginning of the twentieth century. In his memoir of his own upper-middle-class Prussian Jewish family, the historian Fritz Stern stressed the importance of *Bildung*, or education and cultivation, to this kind of German, noting, "It was assumed that this cultural heritage, or patrimony, molded one's code of behavior, the values one professed and tried to live by. . . . *Wissenschaft* [scholarship] had a moral character, implying a total seriousness. For many, *Bildung* and *Wissenschaft* became twin deities." Hans Litten, even in his most radical moments—perhaps especially then—was entirely a product of this high-minded milieu. Perhaps one is never more a product of one's environment than when one rebels against it.[12]

Irmgard Litten wrote that one of her clerical ancestors "was so pugnacious, so extreme in his demands upon the righteousness of his flock, that the authorities, regarding him as impossible, sent him to Russia, to preach to the Germans on the Volga, where he built up a

flourishing community." The young Hans, she added, "often reminded me of this ancestor, both in appearance and in character." While her family had long supplied high clerics to the kingdom of Württemberg, there were among them "adherents of eccentric sectarian ideas of early Christianity," who found themselves in conflicts of conscience with the official Church. Irmgard was convinced that her own intellectual independence and high-mindedness had strongly affected Hans and his two younger brothers. "I taught them that material interests must never be allowed to control one's actions; that one must be faithful to one's own convictions with fanatical obstinacy; that a compromise was never possible." She added that she had never realized what a lifelong handicap such an attitude would be.[13]

But from his earliest days Hans Litten was very far from being simply the "Franciscan type" that his legal colleague Rudolf Olden called him. Litten was an East Prussian patriot, his patriotism compelled, he said, "by the stronger logic of the landscape." Here, too, Litten embodied the refractory character of his homeland. An old stereotype of Prussia, confirmed for many by two world wars, is of a land of militarism and humorless, unblinking discipline. Elements of the stereotype have a basis in the historical record. But there has always been another side to the story. In the seventeenth and eighteenth centuries Prussia was a land of religious toleration, ruled by kings with a pragmatically enlightened approach to immigration. In the nineteenth century Prussia's universities led the world. In the Weimar Republic Prussia became, in the words of the historian Dietrich Orlow, the "unlikely rock of democracy." Its capital, Berlin, was a left-leaning city; Litten's hometown of Königsberg was a center of enlightened political and philosophical currents. The philosopher Hannah Arendt, a Königsberg friend of Litten's and Max Fürst's, once told the historian Joachim Fest, "In my manner of thinking and making judgments, I am still really from Königsberg." The same was true of Litten.[14]

Irmgard Litten remembered that at the beginning of the First World War, the eleven-year-old Hans was "as enthusiastic and militaristic as any other German boy," a claim borne out by the notebooks preserved with Litten's papers in the German Federal Archives. One is emblazoned "World War 1914: A People in Arms against a World in Arms." It is filled with patriotic doggerel bearing such titles as

"Hindenburg, the Liberator of East Prussia" and "The Hero's Death of the *Emden*" (a battle cruiser lost early in the war). Other notebooks contain poems, such as "England, England *unter alles*." Perhaps these prepubescent scribblings were merely compulsory school exercises, the kind imposed on children in all countries in all wars. But Irmgard kept them.[15]

Apart from showing a precocious grasp of international politics, these notebooks point to the character of the adult Litten in other ways. Max Fürst remembered Litten's great capacity for hatred: "I said that his burning hate was his German side." This may also have been a quality Litten inherited or learned from his strong-minded mother. Years after she had fled Germany, Irmgard wrote passionately of her hatred for Hitler's Reich. On one occasion in 1933, as she waited in the corridor outside the office of a secret police officer, an SA man sauntered past. "The look I gave him must have mirrored my thoughts very clearly, because a man . . . whispered to me: 'When one has such hate-filled eyes, it's better to keep them closed.' "[16]

In 1915 Fritz Litten took up a commission as a captain of the reserves and went to the front. Irmgard, left to look after the three boys, also took care of wounded soldiers. As the war dragged on, a gulf opened up between the patriarch and the son he had once called "the crown prince." A wartime photograph tells the story: a uniformed Fritz poses with a paternal arm around his eldest son; Hans, his face grave, tries to wriggle away, his shoulder dropped so as not to touch his father. Fritz Litten would later attribute what he considered his son's waywardness to his own wartime absence during Hans's "most important years of development": "I was . . . without influence on his upbringing, and so I lost control of him." Irmgard agreed, if with a different accent: "It was perhaps a misfortune for [my three sons] that during the years of the war—since my husband was at the front all the time—the education of the children was left entirely to me." If at first the war had allowed Hans to demonstrate not only his patriotism but his seriousness about following rules—the minister of food supply told Irmgard that Hans was "the only German who unconditionally obeys my regulations"—after the second year of the war he began to notice the injustices and inequalities in German society which the war exposed. "I did not bridle my tongue," said Irmgard, "and I believe what he

heard and saw at this time gave him the first impetus to his socialistic and pacifist attitude."[17]

The hardest things to recover from the past are the unspoken assumptions. To grasp the full resonance of what Fritz meant about his absence during Hans's "most important years of development," or of Hans's independent views on the war, we have to recapture those pre-1914 central European assumptions governing the relations of parents and children. Here again Fritz Stern provides a clue: in the early twentieth century, parental guidance among the middle class of central Europe was "an expression of a secular-rational world in which the responsibility for moral education fell on the parents." Parental certainty mirrored "the prevailing sense of a world in order." In his moving evocation of the lost world of prewar Vienna, Stefan Zweig recalled the overwhelming social and cultural power age conferred, such that it was practically a scandal when the thirty-eight-year-old Gustav Mahler was named director of the Vienna Court Opera. Young professionals strove to grow their beards and move ponderously for fear that otherwise they would look too young and "unreliable."[18]

Fritz came home from the lost war in December 1918 embittered and even more authoritarian in his inclinations. He found his eldest son in no mood to pursue a legal career, wishing instead to devote himself to the study of literature or art history. Fritz had based his life on "Just no relapses." Now his eldest son *was* the relapse. And so it went, step by painful, downward step. If the father had suppressed his Jewish heritage for the sake of his ambitions, the eldest son would make a point of going to synagogue on the Sabbath with hat and prayer book. For his *Abitur*, the high school certificate for those planning to attend university, he would study Hebrew as his special subject; he would delve into Jewish mysticism and seek out friends from Königsberg's Hassidic community. Later, when Hans's professional activity brought the attention of the right-wing press down on his father, Hans would mock Fritz's reticence, as in this typically scathing letter: "That you are a Jew was an open secret in Königsberg—the *People's News* was in the habit under certain circumstances of registering the fact that the name of your father stands on the table of honor at the Synagogue, and as early as 1919 a democratically-minded leader from the anti-Semitic [German] People's Party had congratulated the party on its tolerance

for letting a Jew appear as a speaker." When students debated whether to hang a portrait of Field Marshall von Hindenburg in the Royal Wilhelm Gymnasium, Litten's intervention almost got him expelled: "I was always in favor of hanging him." Only Fritz Litten's influence kept Hans in school. The chagrin of the social-climbing father, who had arranged Hindenburg's honorary degree, can easily be imagined.[19]

Fritz Litten had no time for the arts. "Talk to my wife about art," he would tell guests at the Litten Court, "she doesn't understand anything else." He had no respect for the intellectual abilities of his two younger sons and did not care what they did for a living. As far as he was concerned, they could devote themselves to "breadless art," and they did. Heinz studied law but wrote a doctoral dissertation on "The Modification of a Theatrical Work through Performance" and went on to become a theater director. Rainer, strikingly handsome and, as Max Fürst wrote, "the least complicated and the most able at life" of the Litten boys, was on the verge of becoming a major star of the German stage and screen when the Nazi takeover wrecked his career.[20]

With Hans it was different. On him rested Fritz's hopes of founding a dynasty of distinguished jurists. Fritz Stern writes of "the effectiveness of the patriarchal model" and "the comfort of following in one's father's footsteps or of having one's footsteps followed." This was a social norm among the German middle classes, and Fritz Litten, "in his enthusiasm for his own profession," as Irmgard wrote, was determined that Hans would study law. But there was also a pressing practical consideration. Although Fritz eventually recovered from his financial losses in the hyperinflation of the early 1920s, he felt that the family could not afford to have its eldest son take up a low-paying career in the humanities. Hans, however, did not show the slightest interest in the law. He voiced his contempt for legal study in his diary: "When the ox in paradise got bored, he invented jurisprudence." To protest the paternal demands, Hans sought a job at the Königsberg docks. Fritz eventually compromised as far as permitting Hans to study art history alongside law.

Hans enrolled at the University of Königsberg in the summer semester of 1921, where he avenged himself by attending his father's lectures and engaging him in debates, much to the delight of the other students. The feud with his father did not prevent him from becoming

a brilliant law student. Upon graduating in 1924, he served his required apprenticeship as a judicial clerk, or *Referendar*, in and around Königsberg. Aided by his intellect and photographic memory, he passed his two state bar exams with impressive grades and was officially enrolled as a lawyer at Berlin's Court of Appeal, the *Kammergericht*, in the autumn of 1928. Perhaps the father-son feud sharpened Hans's skills as a courtroom advocate. As the German defense lawyer and historian of the bar Gerhard Jungfer has written, conflict with the father can sharpen "love for intellectual battle, love of argument, the culture of argument. Argument limits power, clarifies the fronts, compels clear positions, develops the intelligence, courage, and creativity"—altogether, as Jungfer puts it, "good conditions for becoming a defense lawyer."[21]

Fritz Litten's regret at forcing Hans to study law grew in steady increments. When Hans began defending Communists and other leftist activists in Berlin, Fritz demanded that he change his last name to protect the family honor. Hans agreed, but the Prussian Justice Ministry did not. The father's regrets would only grow as his eldest son's fame coincided with the approach of Hitler's Reich.[22]

The Black Mob

Every Sunday," wrote Max Fürst, "early in the morning, one could see small groups of young people at the train stations, each group in their particular clothing, often with a small flag of their own choosing, assembling to go out into the open country." These young people were the Weimar Republic's reincarnations of the pre–First World War *Wandervögel*, or "Migratory Birds," Germany's proto-hippie youth movement. "We hiked in the woods near Berlin; we swam in the moonlight in the lakes; we read Martin Buber and Bellamy's *Utopia*; we discussed Socialism and Zionism and Marxism and Freudianism; we disagreed with and we loved each other," recalled Gisela Peiper, one of Litten's friends from the time. Wolfgang Roth, a young Berliner who moved in the same circles, recalled it more sardonically:

"Long hair, shining [*leuchtende*] eyes and a lot of sentimental romance, everything old-German—whatever that was, or was supposed to be—campfires and songs with the guitar, and having a 'connection' with a girl—holding hands in roadside ditches, worshiping the moon and catching a lung infection."[23]

In 1919 the Central Union of German Citizens of the Jewish Faith had formed a Königsberg chapter of a youth group called the Comrades. The point of the Comrades was to keep young German Jews away from the Zionist youth movement; the Central Union described this task officially as preparing its members "for the difficult tasks in Germany." The Central Union had been founded in 1893 and developed into the largest Jewish organization in Germany. Its name made a political point: "We are not German Jews," it proclaimed. "We are German citizens of the Jewish faith." The initial Comrades meeting at the Königsberg Jewish Youth Home was packed, and branches of the group soon appeared in other towns in the region. In the spring of 1920, representatives of such Jewish youth groups from all over Germany met in Berlin and laid the groundwork for the Bund, the national organization with which German Jewish youth groups of all kinds would soon be affiliated.[24]

But soon after its formation, the Königsberg chapter of the Comrades was hijacked by the young Max Fürst—who was in the process of breaking with the expectations of his middle-class family by apprenticing as a furniture maker and embracing revolutionary socialist politics—along with his sister Edith and several others of like mind. Under these new leaders the group slipped the reins of the Central Union and became politically radicalized. Hans Litten was now a frequent guest at the Comrades' "home evenings." "With [Litten's] strong intellect and his great knowledge," remembered Erwin Lichtenstein, one of the founding Comrades, "he won ever more influence in the group and, without belonging to the group, developed into one of the most important Comrades." Fürst and Litten together would remake the organization in their own mold.[25]

The existence of a distinct Jewish German youth movement was a product of the precarious place of young Jews in the Weimar era. However much some of the ideals of the German youth movement were shared across confessions, the foggy romanticism of the non-Jewish

"Migratory Birds" could easily slide into nationalism, from whence it was but a half step into anti-Semitism. Max wrote that young Jews "did not fit in any of the German hiking associations" (revealingly, even in the 1970s, he accepted as self-evident that "German" and "Jewish" were mutually exclusive terms). Furthermore, he and his friends found that they had little in common with the Socialist working-class youth. He found the Central Union's "endless emphasis on the 'German' " embarrassing, yet he was not religious, and certainly not a Zionist. As we shall see, Litten was troubled by the same existential uncertainties. Perhaps it was the special position of Königsberg as a border town, a German island in a Polish and Lithuanian sea, that inspired the Königsberg Comrades to resist the imposition of rigid religious or ethnic qualifications for membership. What became known as the "Königsberg line" on German Jewish identity within the movement ran: "We are Jewish because of our heritage, and we speak German." ("And that not always correctly," was Litten's sardonic addition.) The Comrades meant this underplaying of their German side as a barb against the Central Union, to whose supporters it also seemed "monstrous" not to acknowledge and draw upon one's Jewish heritage. Postmodernists before their time, they opposed any definition that would have excluded stateless and Polish Jews who might wish to join them. For Hans Litten the definitional question was personal: as the son of a Gentile mother he himself was arguably not Jewish, a point other youth movement activists sometimes made against him.[26]

Someone from a very different place and generation, when encountering descriptions of what the Comrades actually did with their time, would likely be astonished to find that this was an autonomous *protest* movement rather than a worthy, adult-sanctioned, extracurricular activity. The members of the Comrades were another example of rebels indelibly stamped by their culture. These young people were early twentieth-century, middle-class, central European Jews, who believed fervently in the formative qualities of art and science. Max Fürst described the Königsberg Comrades' activities in the group's newspaper in November 1923: "In the most recent evenings we have discussed the individual areas of struggle," including "alcohol, nicotine"—which they were *against*—"vegetarianism, clothing, nudism, dance." Still to come were "the woman question, profession, settlements." Then there

was the "history course," in which the members were to learn history "as it was," and not in the propagandized form in which German schools delivered it. Subgroups concerned themselves with studying the Talmud or the writings of Walter Rathenau, the German Jewish foreign minister who was murdered by right-wing extremists in 1922. For a special treat, mostly on Friday evenings, there were literary readings: the works of Martin Buber or Else Laske-Schüler. "These are our parties," said the eighteen-year-old Max. In his memoirs he waxed rhapsodic over the excitement of these earnest discussions: "We called it a 'discussion fit for a king' when we succeeded . . . in jumping out of our own skins, in letting ourselves be carried away by the opposing argument. . . . It was intoxicating for us, stronger than any narcotic." Of course, there were also the hikes: weekend outings around Königsberg, longer expeditions to the Kurish Spit, the long sandbar connecting the East Prussian and Lithuanian coasts.[27]

The Bund, the all-German federation of Jewish youth groups, was always an uneasy alliance. The dominant faction was known as the "Ring." The Ring's answer to the conundrum of German Jewry was to assimilate as closely as possible with German nationalism; like the non-Jewish German youth movement, the outlook of the Ring was influenced by the mystical nationalism of the poet Stefan George and his circle. The Ring emphasized self-discipline, education, and clean living: the "Boy Scout" virtues, as Fürst dismissively called them. Set against the Ring was the Circle, more intellectual and more self-consciously Jewish in its concerns. After Hitler came to power, a successor group to the Circle devoted itself to the development of a kibbutz in Palestine, which, as the Kibbutz Hasorea, sill exists.[28]

The third group, which Hans Litten and Max Fürst founded in 1925, evolved out of the Königsberg chapter of the Comrades. Its name, the "Black Mob," came from a song about a revolutionary troop of the German Peasants' War of 1525. This war—part of the turmoil following Luther's Reformation and, as Max wrote, "one of the few revolutions which arose out of German soil"—offered these young radicals an appealing mixture of romance and revolutionary example.

Hans and Max were mutually complementary leading figures. Max, handsome, easygoing, charismatic, always armed with his guitar, dubbed by many parents "the pied piper of Hamlyn," was the practical