



F. A. MANN

*Max Koot*

## Francis Alexander Mann 1907–1991

### I

FRANCIS MANN came to England as a refugee in 1933, having qualified as a German lawyer with a speciality in corporate law. Between that time and his death on 16 September 1991, fifty-eight years later, Mann became an international lawyer of world-wide renown, one of the most distinguished solicitors in London, and an academic lawyer whose influence on the development of the law was profound. Mann was one of the last survivors of those outstanding lawyers who were forced to flee Germany (and, later, Austria) after the advent of Hitler made the position of Jews, not only in their personal lives, but also in academic, professional and judicial life, intolerable.<sup>1</sup>

Mann was born in Frankenthal, a town in Southern Germany (not far from Mannheim) on 11 August 1907. His father had practised as a lawyer in Frankenthal from 1898, which, although a small town, was the legal centre of the Palatinate in Southern Germany. Francis Mann's great-grandfather was a founder of the bankers Mann and Loeb, which

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<sup>1</sup> There is an extraordinary (but incomplete) list in Strauss and Röder, *International Biographical Dictionary of Central European Emigrés 1933–1945* (1983), vol. III, p. 184. Names (in alphabetical order) include Edgar Bodenheimer, Ernst Cohn, Martin Domke, Albert Ehrenzweig, Wolfgang Friedmann, Otto Kahn-Freund, Hans Kelsen, Kurt Lipstein, Francis Mann, Albrecht Mendelssohn-Bartholdy, Arthur Nussbaum, Ernst Rabel, Max Rheinstein, Stefan Riesenfeld, Rudolf Schlesinger, Clive Schmitthoff, Fritz Schulz, Georg Schwarzenberger and Martin Wolff. See generally Vagts, *International Law in the Third Reich* (1990), 84 A.J.I.L., 661, who is under the mistaken impression that Mann was originally an international lawyer (at 679).

was sold by the then partners to a predecessor of the Deutsche Bank in 1913. Mann's maternal grandmother was a descendant of the prominent Rhineland families, Oppenheim and Cohen, one of whom was the Chief Rabbi of Bonn, Simcha Benjamin Cohen (1734–1816).

His early education was against the background of the enormous inflation in Germany, which had a profound influence on him. After he obtained his school certificate in 1926, Mann attended the universities of Geneva, Munich and (above all) Berlin, where he studied under Rabel, Lewald and Wolff. Following his examinations in 1930, he was accepted for a doctorate by Martin Wolff and became a faculty assistant in Berlin in 1930, when he worked mainly for Martin Wolff<sup>2</sup> and later for the famous Roman lawyer Schulz. It was in Berlin that he met his future wife, Eleonore Ehrlich, who became a faculty assistant in the Institute of Criminal Law and one of the first women to become a Doctor of Law in Germany.<sup>3</sup>

Mann's main interest at that time was in company law, and his thesis was on payment of shares in kind, which appeared in book form.<sup>4</sup> He was granted his doctorate in Berlin in 1931. His contemporaries included Edward Wahl (later Professor in Heidelberg and member of the Federal Parliament), Edgar Bodenheimer (who subsequently became Professor of Law at the University of California), and Rudolf Heinsheimer (later Uri Yadin, Deputy Attorney General of Israel and Professor of Law at the University of Jerusalem).

In 1933 he accepted an offer from a firm of lawyers in Munich to join them as a partner, and on the night of the Reichstag fire (28 February 1933) he took the night train to Munich to start work, but he was persuaded by his fiancée that immediate emigration was necessary. This was the time of arrest and blocking of assets, the organised boycott of Jewish businesses and assets, and the time when Jews were being dismissed from legal service. Arrangements were made for Mann

<sup>2</sup> Wolff came as a refugee to England, where he died in 1953. As Mann wrote, 'that his pedagogic mission was prematurely brought to an end in Germany and not brought to fresh life in England when he was compelled to seek refuge there . . . will for long remain a melancholy waste of genius', *Clunet* (1953), Pt. 4, p. V. When Wolff came to Oxford as a refugee he was never allowed to teach, but he took a great interest in Mann's academic work and, in particular, in his growing preoccupation with public international law. Mann particularly regretted that he was not entrusted with editing Wolff's outstanding book on *Private International Law* after Wolff's death.

<sup>3</sup> Her thesis was in criminal law: *Der Verrat von Betriebsgeheimnissen* (The Betrayal of Business Secrets), published by the Criminal Law Institute in 1930.

<sup>4</sup> *Die Sachgründung im Aktienrecht*, 1932.

to open an office in London in association with the partners in the Munich firm, who, it was planned, would move to Paris.

He was able to return to Berlin to take the final examination in early October 1933, and after Eleonore Ehrlich took her examination on 11 October 1933, they were married on 12 October 1933. They left Berlin the same day and arrived in London on 16 October 1933. Mann's father later ceased to practise after a judge had privately admitted to him that he would have to convict an innocent accused simply because he was a Jew.<sup>5</sup>

Mann's London office was established under the auspices of a firm of solicitors, an employee of which was related to a friend of one of the Munich lawyers. In this period Mann acted as a consultant and expert witness on German law. Meanwhile he enrolled at the London School of Economics and Political Science for the degree of Master of Laws, which he took in 1936. Among his contemporaries were Otto Kahn-Freund, Wolfgang Friedmann, Joseph Ungar, and Joseph Gold. Between 1936 and 1938 he worked on a book on the law of money, which he submitted as a thesis to the University of London, and was awarded the degree of Doctor of Laws. It was published in October 1938 by Oxford University Press as *The Legal Aspect of Money*. His first major article in English, on 'Proper Law and Illegality in Private International Law', was published in 1937.<sup>6</sup>

Mann and his wife were not subject to the notorious and absurd internment of German refugees at the outbreak of war, because the local police in Bookham, Surrey (where in the early part of the war they rented a cottage) simply refused to take them into custody.<sup>7</sup>

In 1946 Mann was asked to become a British delegate on the Inter-Allied Legal Committee, and he served in the British element of the Control Commission for Germany in Berlin, to which he went as a Lieutenant Colonel, and where he worked on the de-Nazification of German law. After his spell in Germany, Mann practised continuously as a solicitor. In April 1938 he had taken the first step towards becom-

<sup>5</sup> Richard Mann left Germany in 1938 and settled in Oxford. He died in 1953. His wife, Ida, had died in 1936.

<sup>6</sup> (1938) 18 B.Y.I.L. 97.

<sup>7</sup> In 1953 Eleonore Mann qualified as a solicitor, and in 1964 became a sole practitioner with an office in Portobello Road, West London, where she handled matrimonial and landlord and tenant cases for the less well-off. The practice was a precursor of, and an inspiration for, the later neighbourhood law centres. She possessed a combination of considerable intelligence and social conscience. She died in 1980.

ing an English solicitor by entering into articles of clerkship with Henry Hardman, the sole proprietor of Swann, Hardman & Co., with whom Mann had been associated since he came to England in 1933. He took the professional examinations in 1940 and 1941, but he could not (as the rules then stood) become a solicitor until he became a naturalised British subject. His naturalisation certificate in 1946 described Mann as 'a solicitors' managing clerk and German law counsellor', and later that year he was admitted to the roll of solicitors, and became a partner in the firm. In 1955 his partner Douglas Phillips was killed in a motor accident, and rather than carry on the practice himself, he accepted an approach by a firm of solicitors in the City of London, Herbert Smith & Co. (then consisting of nine partners and a staff of some sixty) to amalgamate, and the amalgamation took effect from 1 January 1958. He was a partner in the firm of Herbert Smith & Co. (later Herbert Smith) until 1983 and remained as an active consultant thereafter. Except for occasional illness, and holidays, he did not miss a day in the office until his death on 16 September 1991.

In 1945 he refused a Fellowship at University College, Oxford, which had been offered to him by Arthur Goodhart. In 1949 he applied for the Chair in International Law at the University of London. He was supported by Dr Geoffrey Cheshire, Sir Hersch Lauterpacht and Sir Valentine Holmes QC. The shortlist was Mann, Mr Mervyn Jones and Dr (later Professor) Clive Parry. The selection committee included Lord McNair, Sir Eric Beckett and Sir David Hughes-Parry, but no appointment was made and the chair was left vacant for ten years. Consequently, Mann never had an official academic position in England. But he was invited to give four series of courses at the Hague Academy of International Law,<sup>8</sup> and published five editions (one posthumous) of *The Legal Aspect of Money*, three collections of his articles (as *Studies in International Law*,<sup>9</sup> in 1973, *Beiträge zum internationalen Privatrecht*, in 1976, and *Further Studies in International Law*, in 1990), a collection of his case-notes (published after his death as *Notes and Comments on Cases in International Law, Commercial Law, and Arbitration*, in 1992), and a short (and brilliant) book on

<sup>8</sup> *Money in Public International Law* (1959–I), 96 Recueil des Cours 1; *The Doctrine of Jurisdiction in International Law* (1964–I), 111 Recueil des Cours 1 (in *Studies in International Law*, p. 1); *Conflict of Laws and Public Law*, (1971–I), 132 Recueil des Cours 107; *The Doctrine of International Jurisdiction Revisited After Twenty Years* (1984–III), 186 Recueil des Cours 9 (in *Further Studies in International Law*, p. 1).

<sup>9</sup> Which was awarded the Certificate of Merit by the American Society of International Law.

*Foreign Affairs and English Courts* in 1986, and in 1960 he was appointed Honorary Professor at the University of Bonn, where he gave lectures and conducted seminars each summer on English law and international commercial law.<sup>10</sup>

In 1973 Mann was elected an Associate of the Institut de Droit International, of which he became a full member in 1979. In 1974 he was elected a Fellow of the British Academy.<sup>11</sup> In 1980 he was made CBE for services to international law. He was made an Honorary Member of the American Society of International Law (1980), and received honorary degrees from Kiel, Zurich, and Oxford, which awarded him the honorary degree of Doctor of Civil Law in 1989. In 1991 he became the first practising solicitor to be made an honorary Queen's Counsel and to be elected an honorary Bencher of Gray's Inn.

## II

It was not very long ago when few solicitors specialised in commercial litigation. The conduct of litigation was frequently left to managing clerks, often of great experience and common sense, who deferred to counsel's views on the law and on tactics. Even in more recent times, the conduct of litigation was rarely undertaken by partners in some leading firms. Mann became primarily a solicitor who specialised in litigation, particularly (but not exclusively) litigation with a foreign element. He was intrigued by the tactics of court work, the interplay between solicitors, counsel, witnesses and the Bench. In his early years he learned much about tactics from Sir Valentine Holmes QC,<sup>12</sup> who in turn described him as the best instructing solicitor in London. In later years he would seek out the best talent at the Bar for his cases, and many of those whom he found not only ultimately went to the Bench, but became distinguished appellate judges in the Court of Appeal and the House of Lords. One of those who did not was another

<sup>10</sup> In 1977 the Federal President conferred Great Cross of the Order of Merit (with Star in 1982), and a Festschrift on the occasion of his 70th birthday was published in 1977 in Germany under the title *International Law and Economic Order*.

<sup>11</sup> If the traitor Sir Anthony Blunt had not resigned in 1980, Mann would have resigned. He 'considered the Academy's failure to expel Blunt as one of the most discreditable incidents of recent academic history in Britain' (letter to *Encounter*, September 1981, p. 92).

<sup>12</sup> (1888–1956), one of the foremost advocates of his day.

great influence and associate, Sir John Foster QC,<sup>13</sup> who had a formidable legal brain and a great capacity to persuade a court, not by traditional advocacy (because he was a poor advocate by ordinary standards) but the force of his conviction for the case.

Mann was tenacious and persuasive in his manner, with the ability not only to see the essential points in a case, but to have it presented in the most attractive and compelling manner. His briefs to counsel were a detailed exposition of the facts and arguments, designed to persuade counsel instructed by him that his client's position was the right one and perhaps the only one. As Lord Wilberforce said after Mann's death, 'By contrast with the rather haphazard attitude of English barristers — forced on them by a divided profession, taking at first a general common sense view of a case and working out the details with feverish energy in the last days — in Francis' conviction each case had to be planned in full detail, fact and law, from the start, incessantly worked over, polished, checked and rechecked under his vigilant eye right up to the end. This, of course, meant a lot more work for all the team, but that was compensated — more than — by the growing conviction that the case could be won, would be won — and almost always was won'. Lord Wilberforce said that he learned from Mann that procedural strategy, if it was really understood and played with determination, was something that could win a case before it ever got to court.

As a solicitor Mann's rights of advocacy in England were very limited, and he was not in favour of fusion between the professions of barrister and solicitor,<sup>14</sup> but 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) he was a very effective advocate in the English manner.

After he qualified as a solicitor, Mann built up a substantial practice. He was not a narrow specialist in the modern style, and he was able and willing to advise on almost any aspect of private law for any type of client. But many of his clients were foreign, and it was certainly the cases with an international element that most inspired him. The requirements of client confidentiality preclude reference to anything

<sup>13</sup> (1904–82). He was also a Fellow of All Souls, MP for Northwich (1945–74), and a junior Minister at the Commonwealth Relations Office (1951–4). He had considerable personal charm, and his social contacts were such that he was able to recommend Mann as solicitor to potential clients.

<sup>14</sup> He had been originally: see (1977) 93 L.Q.R. 367.

which is not reflected in reported cases, but from the law reports alone it is possible to see that he acted for governments (Belgium and Germany), for major corporations (British Petroleum, the Carl Zeiss Foundation, Firestone Rubber, Occidental Petroleum, Cassell & Co. Ltd., Hoffmann-La Roche) and for some very celebrated and colourful individuals, including Nubar Gulbenkian, Somerset Maugham, Baron Thyssen, and Armand Hammer.

Mann handled many leading cases in the field of private international law, but he was also one of the very few practising solicitors to have wide experience of cases involving public international law, or that ill-defined area on the borderland of public and private international law. In the late 1960s he was invited to join the Belgian team in the *Barcelona Traction* case between Belgium and Spain in the International Court of Justice. That notorious case involved the spoliation by Spain of a Canadian company which was owned by Belgian interests. Mann's responsibility was for the written and oral arguments on the alleged excess of bankruptcy jurisdiction exercised by the Spanish courts, and on the exercise (in alleged abuse of right) of exchange control regulations by the Spanish authorities. In the event, the International Court decided that the claim by Belgium was not admissible because of the Canadian nationality of the company. *BP Exploration Company (Libya) Ltd. v. Libya*, in which he was part of the team acting for BP, was the first of the modern cases on the effect of the 'internationalisation' of concession agreements. He was responsible for the structure of BP's Memorial, and the details of the Memorial were very much influenced by his work.

### III

Mann started work on what became known as *The Legal Aspect of Money* in 1936 and it was completed at the end of 1937. Mann did not write about the origins of his interest in the subject-matter of the book. He was the grandson of a banker, and grew up during the great inflation in Germany. Frankenthal was near the frontier and in the French zone of occupation until 1931, and both US dollars and French francs circulated there. Because of the inflation and subsequent stabilisation there was a corpus of experience and case law on monetary problems. But when the dominions established their own currencies and sterling left the gold standard, legal problems arose in England



for which there was no English precedent, but much experience in other countries.

On 15 December 1937 he wrote to Oxford University Press to ask whether the Press would be prepared to publish the book. In his letter he said that the book aimed at giving a comprehensive and systematic treatment of legal problems of money in general and of foreign money obligations in particular, and was built up on a broad comparative basis. He added that he intended to submit it as a LL D thesis to the University of London. The degree was conferred, and later in 1938 the first edition was published by Oxford University Press.

What was especially notable about the book was that it endeavoured to deal with all questions in the area which had been raised or answered in the cases decided by English courts; that it dealt only with those problems which had been, or might reasonably be expected to be, of practical importance from the point of view of English law; yet, at the same time the book contained more comparative material than had ever before, or probably since, been included in a book devoted to the discussion of English law. It became, and remained, the leading work on the law of money, not only in English, but in the world.<sup>15</sup>

Not only was the book of great quality in its scholarship, it was also a work of considerable practical utility. Its frequent citation in the law reports is, of course, only the tip of the practical iceberg. A number of questions treated by the book were the subject of close argument in the courts. From the first edition, Mann was a strong critic of the traditional rule in England that, for procedural reasons, an English court could only give judgment in sterling, and the relevant date for conversion from a foreign currency into sterling was the date of the breach. The culmination of these factors led to grave injustice when the value of sterling fell after the due date for payment of a sum in foreign currency. Mann had been the solicitor in the leading case in the House of Lords in *Re United Railways of Havana and Regla Warehouses*,<sup>16</sup> when the House of Lords confirmed the traditional English rule. He was also a vigorous dissenter in the Lord Chancellor's Private International Law Committee, a majority of which had concluded that the United Kingdom should not accept a draft Convention, the effect

<sup>15</sup> A second edition was published in 1953, a third in 1971, a fourth in 1982, and the fifth edition was published in 1992, a few months after Mann's death.

<sup>16</sup> [1961] A. C. 1007.

of which would be to reverse the English rule. Subsequently the Council of Europe took up the question, at the suggestion of Mann, and although the British Government refused to participate, Mann was appointed as a special consultant. The Council of Europe produced a draft Convention in 1967 on foreign money liabilities under which, in the event of proceedings, a creditor could demand payment in the relevant foreign currency or the equivalent in the currency of the forum at the rate of exchange at the date of actual payment. Although in 1981 the Law Commission recommended that the United Kingdom should not become a party to the Convention, Mann's views had been accepted in the Court of Appeal, by then under the leadership of Lord Denning MR, and they were subsequently accepted by the House of Lords in *Miliangos v. George Frank (Textiles) Ltd.*<sup>17</sup> in a judgment in which the House of Lords (as had the Court of Appeal) relied specifically on Mann's book.

His views were not always accepted. At Bretton Woods it was agreed (Article VIII (2)(b) of the Articles of Agreement of the International Monetary Fund) that 'exchange contracts' which involved the currency of any member and which were contrary to the exchange control regulations of that member would be unenforceable in the territories of any other member. Mann put forward the view that 'exchange contracts' meant contracts 'which in any way affect a country's exchange resources', and would therefore include not only contracts for the exchange of one currency against another, but also contracts creating a debt in favour of a non-resident or providing for the transfer of securities from a resident to a non-resident and so forth. The contrary view was that exchange contracts were contracts which had as their immediate object 'exchange'. Courts in other countries had come to conflicting conclusions on this important issue. Mann's view was adopted (without attribution) by Lord Denning in *Sharif v. Azad*,<sup>18</sup> but after fuller argument Lord Denning changed his mind and affirmed the decision of Kerr J. that the narrower view of 'exchange contracts' adopted by other writers was preferable to the view of Mann: *Wilson, Smithett & Cope Ltd. v. Terruzzi*.<sup>19</sup>

A detailed account of the influence of Mann's other writing on the development of the law in England and in international tribunals will

<sup>17</sup> [1976] A. C. 443.

<sup>18</sup> [1967] 1 Q. B. 605.

<sup>19</sup> [1976] Q. B. 683.

appear elsewhere,<sup>20</sup> but undoubtedly the most striking example of his influence was the decision in *Oppenheimer v. Cattermole*.<sup>21</sup> In this case a German-Jewish refugee contended that he was exempt from United Kingdom tax because he was both a German national and a British subject, and accordingly exempted under the Double Taxation Treaty between the United Kingdom and the Federal Republic of Germany. The Revenue argued that he had lost his German nationality because of the Nazi decree depriving German Jews living abroad of their nationality. The English Court of Appeal decided that, however odious the Nazi decree was, it was a decree relating to nationality which had to be recognised as effective to deprive the taxpayer of German nationality, with the effect that he had to pay United Kingdom tax and was not exempt under the Treaty.

In late March 1973 the House of Lords heard argument on an appeal from the decision of the Court of Appeal, and there is reason to believe that its members had resolved to reverse the decision of the Court of Appeal on the ground that the Nazi decree was not entitled to recognition because it was contrary to public policy. In the April 1973 issue of the *Law Quarterly Review* Mann (who had been unaware of the appeal) published an article entitled 'The Present Validity of Nazi Nationality Laws', in which he pointed out that by German law the taxpayer had undoubtedly lost his German nationality not later than the date of his naturalisation in 1948 because of a German decree of 1913, the effect of which was to deprive the taxpayer of his German nationality if he acquired a foreign nationality. Consequently the validity of the Nazi decree was not in issue.

As a result of the article the House of Lords recalled the parties for further argument and the matter was remitted to the Special Commissioners for reconsideration. Further argument in the House of Lords then took place almost a year later in November 1974, and on 5 February 1975 the House of Lords affirmed the result of the decision of the Court of Appeal, but on entirely different grounds. Lord Hailsham referred to Mann's article and said that it 'led, directly or indirectly, to the remission of the case to the Commissioners', and Lord Cross said: '... before we reported our views to the house we became aware from an article by Dr. F. A. Mann on "The Present Validity of Nazi Nationality Laws" in the *Law Quarterly Review*, vol.

<sup>20</sup> See (1993) 64 B.Y.I.L. 55.

<sup>21</sup> [1976] A. C. 249.

89, p. 194, that the findings of the commissioners as to the relevant German law were almost certainly based on inadequate material. We therefore put the appeal back into the list for further argument and, as a result of the discussion which then ensued, it became clear — and was accepted by Counsel on both sides — that the case ought to be sent back to the commissioners for further findings as to the relevant German law.<sup>22</sup>

#### IV

It is no accident that Mann's period of greatest influence in England coincides with the pre-eminence of Lord Denning among English judges. Mann first met Lord Denning in the early years of the war, when he consulted him on behalf of a client at a time when Denning was at the Bar. Denning, he thought, set the law moving, and made innumerable suggestions for changes and improvements; although his sense of justice frequently ran away and overcame legal restraints, his method of reasoning, his intellectual and moral process was always fascinating and challenging and his English style invariably superb. Most would agree with Mann's assessment of Lord Denning. Although it is probably too early to assess the significance of Lord Denning's impact on English law, it is certain that his leadership of the Court of Appeal changed the legal atmosphere in England not only by his emphasis on the merits of the case, but also by his openness towards academic contributions and his internationalism. Both combined to make him a strong admirer of Mann, of whom he said: 'Of all my learned friends, Francis Mann is the most learned of all'.<sup>23</sup>

The variety of Mann's work is such that it is not easy to discern a single thread of philosophy which runs through it. He was a lawyer with total devotion to the abstract idea of the law, and a distaste for its manipulation. His strong belief in the primacy of international law pervades his work on the relationship between public international law and private international law. In some senses a positivist and a realist, his experience in Germany also ensured that he believed in fundamental laws, which were 'not only inalienable, but, by virtue of

<sup>22</sup> At pp. 263, 268.

<sup>23</sup> Denning, *The Due Process of Law* (1980), p. 4.

their authority, character and content, also exist independently,<sup>24</sup> and he advocated strongly that the European Convention on Human Rights should be incorporated into English law.<sup>25</sup> He was ruthless in his exposure of slack intellectual effort, whether he was criticising a speech in the House of Lords or a book in one of the hundreds of incisive reviews which he published. As Judge Stephen Schwebel (of the International Court of Justice) put it 'A book review by Mann — even one of hundreds — was no exercise in bland summary. Mann's lucid English prose was as piercing as his mind. He was mordant; he took it as the duty of a critic to criticise'.<sup>26</sup> Hoffmann J. (as he then was) said in *The Guardian* obituary, 'a member of the House of Lords confessed to me that he felt nervous at seeing him listening to argument in the Committee Room. He could foresee that any shortcomings in his judgment would be remorselessly exposed in the next number of the Law Quarterly Review.'<sup>27</sup> If a judicial decision rejected his academic views, he would continue to pursue its author or authors, even if his own firm had been on the winning side.<sup>28</sup>

Like his friend Sir Hersch Lauterpacht, he deprecated the efforts of so-called scholars who merely collect material, rather than analyse it. His attitude to academic writing was encapsulated in an unpublished memoir in this way:

Nothing should ever be published except where the author has something new to say and can say it in such simple and clear language that all readers can understand it. Occasionally, it is true, articles of a descriptive nature or articles summarising the existing law serve a useful purpose and are therefore worthy of publication. But such work should, as a rule, be done by beginners; it is the type of work with which an academic reputation may be started, but hardly established or maintained.

He sometimes complained of his state of intellectual isolation. He owed a great debt to Sir Hersh Lauterpacht, whom he first met in 1943: 'He was the kindest of men, the warmest of friends, greatest of idealists and, at the same time, the sharpest of lawyers. And he had an

<sup>24</sup> *The Doctrine of Jus Cogens in International Law* (1973), in *Further Studies in International Law*, p. 84.

<sup>25</sup> *Britain's Bill of Rights* (1978) 94 L.Q.R. 512, in *Further Studies in International Law*, p. 103.

<sup>26</sup> (1992) 86 A.J.I.L. 102 at 103.

<sup>27</sup> *The Guardian*, 20 September 1991.

<sup>28</sup> See, e.g. his criticism of the decision of the House of Lords in *Williams & Humbert Ltd. v. W & H Trade Marks (Jersey) Ltd.* [1986] A. C. 368, which he described as having 'an almost sinister effect' (*Notes and Comments*, p. 220).

uncanny ability to stimulate, suggest and provoke.' It was due to Sir Hersch Lauterpacht that Mann had become interested in public international law. Apart from Sir Hersh Lauterpacht, there was only one friend (Sir Otto Kahn-Freund) with whom he regularly corresponded. But the academic interests and attitudes of Mann and Kahn-Freund diverged. Mann had the greatest admiration for Kahn-Freund's intellectual stature, his great knowledge. But deep seated divergence on politics, and differences in the approach to law (such as Kahn-Freund's contempt for 'mere' law and Mann's contempt for 'socio-legal' theory and practices) grew, although that did not interfere with their intimate personal relationship. He regarded Kahn-Freund as one of those who carried a very large share of the responsibility for the reactionary power of the trades unions which had undermined England's strength.

What is perhaps most remarkable about Mann's practical influence is that it was achieved in a legal system whose bar (and consequently, whose judges) showed (although the position has now somewhat changed) little respect for legal scholarship, and even less respect for authority originating outside England.<sup>29</sup> What is equally remarkable about his academic achievement is that he was, in his own words, 'an author who had to spend most of his life outside the intellectual testing ground which academic institutions provide . . .'<sup>30</sup>

Mann's eminence as a practising lawyer and his eminence as an academic lawyer were not contradictory. They were complementary in the sense that practical experience and expertise gave Mann ideas for his writing, and that Mann's great knowledge of the law in England and abroad was a rich source for the development of new lines of enquiry and argument in his cases. Where in the more difficult and unusual cases the law is unclear or undeveloped, an original line of thinking or an original presentation of argument may be decisive. Sometimes, it is true, Mann became so convinced by the merits of his case that he regarded it as a personal insult if the Court of Appeal or the House of Lords decided against his position: 'a monstrous decision', or 'absolutely monstrous' he would say with his characteristic emphasis and accent.

Mann utterly lacked pomposity, and deplored it in others. He was

<sup>29</sup> In one reported judgment, whose citation is unnecessary, a Lord Justice (later a distinguished Lord of Appeal) refers to the classic work of Professor Williston on the law of contract as 'a United States text-book written by a Mr. Williston'.

<sup>30</sup> *Studies in International Law*, p. vii.

capable of great charm and persuasiveness, and like many of his generation he had deep and genuine appreciation of music (he had once thought of a career as a professional musician) and literature. If he was sometimes dismissive of others (the descriptions ‘a complete fool’ or ‘a fraud’ could be applied by him to scholars of international renown), he was always open to colleagues (especially the younger ones) to discuss cases (‘tell me the news’, he would say to partners who would wander into his room) and he revelled in legal gossip.

Like many assimilated German Jews, he was not comfortable with traditional Judaism, and he had mixed feelings about Israel. His attitude to Germany was highly ambivalent. He thought that the integration of Europe under a unified Germany was dangerous. He taught at German universities after the war because, he thought, people in his position had a considerable responsibility towards Germany. Young Germans had never met a Jew, and Hitler’s errors and crimes had to be shown up by the living example. Collective guilt did not mean that everyone was equally guilty. It meant that the vast, almost total, majority had supported the regime and was responsible for its crimes, but it did not exclude support to be given to that tiny minority which was entitled to hold its head high or to those who were too young to have been infected. It was for that reason that he tried to assist in rebuilding a sound intellectual standard in Germany. But later he questioned whether his work in post-war Germany helped to recreate the new picture of the German Jew in Germany’s mind. A new generation had grown in Germany and did not know what had happened. They did not want to know. The single tragedy personally experienced was more telling than a figure too stupendous to be appreciated.

The obituary in the *Daily Telegraph*<sup>31</sup> quoted Mann’s dislike of the idea that spare time should be devoted to games or outdoor activities, such as gardening, ‘which can much better be done by a gardener’. His own conclusion was ‘if you organise your life intelligently, there is nothing you cannot achieve — lack of time usually is an excuse rather than a reality’.

LAWRENCE COLLINS  
*Fellow of the Academy*

<sup>31</sup> 2 October 1991.

*Note.* This piece draws on contributions by this author to volumes 63 (1992) and 64 (1993) of the *British Year Book of International Law* and on unpublished work of Dr F. A. Mann.