The Jewish leftist lawyer Ernst Fraenkel was one of twentieth-century Germany's great intellectuals. During the Weimar Republic, he was a shrewd constitutional theorist for the Social Democrats, and in post–World War II Germany, he was a respected political scientist who worked to secure West Germany's new democracy. This book homes in on the most dramatic years of Fraenkel's life, when he worked within Nazi Germany actively resisting the regime, both publicly and secretly. As a lawyer, he represented political defendants in court. As a dissident, he worked in the underground. As an intellectual, he wrote his most famous work, The Dual State – a classic account of Nazi law and politics. This first detailed account of Fraenkel's career in Nazi Germany opens up a new view on anti-Nazi resistance – its nature, possibilities, and limits. With grit, daring, and imagination, Fraenkel fought for freedom against an increasingly repressive regime.

Douglas G. Morris is both a legal historian and a criminal defense attorney for indigent clients in New York City. He has published widely on twentieth-century German legal history and was a recipient of the 1998 Thurgood Marshall Award from the Association of the Bar of the City of New York for serving "as pro bono counsel to a human being under a sentence of death."
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LEGAL SABOTAGE

Ernst Fraenkel in Hitler’s Germany

DOUGLAS G. MORRIS

Federal Defenders of New York
To my grandchildren Sam and Sara
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PLATES

Photo 1  The young Ernst Fraenkel, probably when he was a student in the early 1920s.

Photo 2  Hanna Fraenkel, an unidentified man, and Ernst Fraenkel in 1937, probably in Lugano, Switzerland.

Photo 3  Hanna and Ernst Fraenkel in New York in 1942.

Photo 4  Ernst Fraenkel, probably after World War II.
ACKNOWLEDGMENTS

As I draw my work on this book to a close, I look back fondly on the many people who have helped. With generosity, they have provided thoughtful critiques; and with kindness, they have shown genuine friendship. I feel humbled by their assistance and wish to express my sincerest thanks.

Volker Berghahn stands out as the one person who read the manuscript in full – twice. Need I say more? Among the best of historians, for years he has shown me the generosity of a philanthropist, the kindness of a Mr. Rogers, and the incisive analysis of a high-priced lawyer.

One reward for studying Ernst Fraenkel has been befriending a lead editor of his collected works, Hubertus Buchstein. For those seeking animated conversations about Fraenkel, he is your man. After having read my manuscript in full, Hubertus wrote comments that offered crucial information, important cautions, and enlightening suggestions. In both conversation and written feedback, he has the winning gift of combining passion, imagination, and enthusiastic encouragement.

I have a warm spot for Jon Bush, whom I first met in elementary school and I remember as a twelve-year-old excitedly recounting highlights from William Shirer’s tome *The Rise and Fall of the Third Reich*. Having built on that foundation, Jon has brought to bear his unending insights on legal history in reading portions of my manuscript. One example might give a sense of his helpfulness: when I emailed him a short question, he responded with a five-page answer.

Jon’s emails met their match only in David Kettler’s. Whenever I received one, I immediately printed it out for careful study since it would always prove informative, provocative, and challenging. In personal conversations, he gave me tutorials on the trade union background of Fraenkel and his cohort. I repeat here the thanks that I have already expressed to him personally – by email.

Many others have given their time, thoughts, and feedback, and for me they make up an honor roll: David Abraham, Steven Aschheim, Brandon Bloch, Renate Bridenthal, Iris Freyer-Nachum, Amy Hackett, Benjamin xii
Hett, Jack Jacobs, Tillmann Krach, Jan Lambertz, Kenneth Ledford, Frank Mecklenburg, Jane-Anne Murray, Devin Pendas, Warren Rosenblum, and Noah Strote. For her amazingly careful and thoughtful read for errors in the manuscript, I am deeply indebted to Louisa McMurray.

Early on, I benefited from the astute responses of participants in seminars devoted to my project at the University of Miami School of Law; the Summer Research Workshop for Scholars at the Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum, Washington, DC; and the Human Rights Seminar at Columbia University. Since then, I have learned from probing audience questions at talks that I have given related to parts of the book, whether at academic conferences or at events sponsored by bar associations, Jewish organizations, universities, law schools, or courts. And two anonymous reviewers selflessly devoted their time to read my work and prepare illuminating comments. I thank them wholeheartedly.

As a researcher, I am as excited about sitting down in archives as others might be in touring an ancient city, and I am as thrilled about receiving an archival document in the mail as others might be on winning free concert tickets. I mention that point to emphasize the depth of my gratitude to the staffs of archives that I visited or wrote to: the August Bebel Institut, Berlin; Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung, Bonn; Archiv des Zentrums für Antisemitismusforschung, Berlin; Bundesarchiv, Berlin; Bundesarchiv Koblenz; Bundesamt für zentrale Dienste und offener Vermögensfragen, Finanzamt Berlin Moabit-West; Brandenburgisches Landeshauptarchiv; Freie Universität, Archiv, Berlin; Geheimes Staatsarchiv Preussischer Kulturbesitz, Berlin; Hauptstaatsarchiv Düsseldorf; Landesarchiv Berlin; Landesamt für Bürger- und Ordnungsangelegenheiten, Abteilung I, Entschädigungsbehörde, Berlin; the Leo Baeck Institute Archives, New York; the New York Public Library, Manuscripts and Archives Division; Universitätsbibliothek Heidelberg; US Citizenship and Immigration Services, National Records Center, US Department of Homeland Security, Lee’s Summit, Missouri; and the US Holocaust Memorial Museum, Washington, DC. I am especially thankful to the New York Public Library, which gave me the opportunity to research and write in its Allen Room and Wertheim Study – oases of quiet in a noisy city.

Earlier versions of some portions of the book were published elsewhere: (1) “Discrimination, Degradation, Defiance: Jewish Lawyers in Nazi Germany,” in Alan Steinweis and Robert D. Rachlin, eds., The Law in Nazi Germany: Ideology, Opportunism, and the Perversion of Justice

Near the end of writing, I had the good fortune of meeting David Dyzenhaus. In hearing him speak about his own work, I was impressed by his combination of scholarly acumen and gentle demeanor. For his taking interest in my work, I have been moved by his combination of good will and genuine magnanimity. I owe him a large debt of gratitude as the person largely responsible for bringing this book to Cambridge University Press.

I follow a well-trodden but worthy acknowledgments tradition in closing with thanks to my family – my children Joshua and Ruth, my son-in-law Ira, and my mother Frances. Their love, affection, and support sustains me. More than anyone, I thank my wife, Marion Kaplan. As a historian, she has often talked with me about Fraenkel, always with insight. As my best friend, she has made sure that we have lived full, balanced, and socially conscious lives. For her support, companionship, and love, I am one lucky person.

I have never discussed this book with our two young grandchildren, Sam and Sara – founts of spontaneity, enthusiasm, and delight. I dedicate the book to them in the hope that, if and when they need one, they will have another model for resistance.
ABBREVIATIONS

DHP Deutsche Hochschule für Politik (German Academy for Politics)
GS Gesammelte Schriften (Collected Works)
GStAn Generalstaatsanwalt (prosecutor at the regional court)
IML Institut für Marxismus und Leninismus (Institute for Marxism and Leninism)
INS Immigration and Naturalization Service
ISK Der Internationale Sozialistische Kampfbund (International Socialist Combat League)
ITS International Tracing Service, USHMM
JM Justice Minister or Justice Ministry
KG Kammergericht (Prussian High Court)
KPO Kommunistische Partei Deutschlands – Opposition (Communist Party Germany – Opposition)
LG Landgericht or Landesgericht (district court)
NL Nachlass (a scholar’s estate for academic preservation of manuscripts, correspondence, notes, etc.)
ObRA Oberreichsanwalt (chief or senior federal prosecutor)
OLG Oberlandesgericht (higher regional court, court of appeals)
OSS Office of Strategic Services
PA Personalakte (personal file)
Ran Reichsanwalt (federal prosecutor)
RAG Reichsarbeitsgericht (federal Labor Court)
RG Reichsggericht (federal Supreme Court)
RGBL Reichsgesetzblatt (federal Legal Gazette)
RJM Reichsjustizministerium (federal Ministry of Justice)
RM Reichsmark (German Mark, the currency in Germany from 1924 to 1948)
SAJ Sozialistische Arbeiterjugend (Young Socialist Workers)
SAP Sozialistische Arbeiterpartei (Socialist Workers Party)
SPD Sozialistische Partei Deutschlands (German Social Democratic Party)
UDS Der Urdoppelstaat (by Ernst Fraenkel)
VGH Volksgerichtshof (the People’s Court)