



IRMTRUD  
WOJAK

# FRITZ BAUER

1903–1968

The prosecutor who  
found Eichmann and  
put Auschwitz on trial



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Translated by  
Adam Blauhut and  
Karen Margolis



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“He was the greatest ambassador the Federal Republic of Germany has ever had.”  
– Robert M. W. Kempner (1968)<sup>1</sup>

“A champion of law, justice, and humanity, whose true significance will only be fully appreciated in later times.”  
– Walter Fabian (1968)<sup>2</sup>

## Introduction

“Frankfurt’s residents have always been aware of all they owed their guests, and they thanked them with effusive praise” – these words are found in a 1994 essay collection devoted to the artists, writers, politicians, and scholars who have lived in the metropolis on the Main River. Theodor W. Adorno, born in 1903 – the same year as Fritz Bauer – was one of them.<sup>3</sup> The two men shared the same fate: they went into exile, returned to Germany, and spent the final years of their lives as “strangers in this city,” as the author Horst Krüger wrote in his obituary of his jurist friend.<sup>4</sup>

According to Krüger, Fritz Bauer had such a modest demeanor that one might not have guessed he was the highest-level public prosecutor in the German state of Hesse.<sup>5</sup> In the abovementioned essay collection *Die großen Frankfurter* (The Great Figures of Frankfurt), well-known authors describe the luminaries who brought honor to the city. However, not a single one mentions the most important champion of law in the postwar period, the Hessian attorney general from 1956 to 1968, even though almost all of these writers must have known and personally experienced this influential contemporary.

Ten years later, in 2004, a new edition of the book, meanwhile edited by Hilmar Hoffmann, appeared under the same title and now included Fritz Bauer among the “great figures of Frankfurt” ranging from “Charlemagne to Friedrich von Metzler.”<sup>6</sup> It is noted, though, that the attorney general did not receive an award from the city of Frankfurt either in his lifetime or after his premature death: no honorary citizenship, no plaque, no Goethe Prize. In 1968, journalists in Germany and abroad

praised Bauer in a variety of obituaries that recognized the place he had earned in the legal history of the Federal Republic of Germany, but only a few scholarly journals published words of remembrance or essays that explored his work.<sup>7</sup> They included *Tribüne: Zeitschrift zum Verständnis des Judentums*, in which Ilse Staff – a close friend of Bauer’s and the wife of Curt Staff, president of the Frankfurt Higher Regional Court (Landesgericht)<sup>8</sup> – honored him as a person and, in particular, a reformer of criminal law; and *Kritische Justiz*, which the Hessian attorney general had helped to found<sup>9</sup> and which became part of his legacy. The first issue featured an obituary by a Stuttgart friend, Richard Schmid (1899–1986), president of the Stuttgart Higher Regional Court. It was the speech that Schmid had delivered to a small circle of Bauer’s friends at the memorial service in the Frankfurter Hof. Schmid’s central message was that Bauer’s death was the greatest loss suffered by the German legal system in the postwar period.<sup>10</sup>

Despite the expectations raised by this tribute, the very thing happened that had been foreseen by Walter Fabian, a socialist writer and journalist who had returned to Germany from Switzerland in 1957: it would be many years before Fritz Bauer’s life’s work would once again be remembered.<sup>11</sup> This was true even in Lower Saxony, where, at a sensational trial in 1952, Bauer had charged Otto Ernst Remer, former commander of the Grossdeutschland guard battalion, with slandering the resistance; in the trial, Bauer brilliantly succeeded in rehabilitating the participants in the attempted coup against Hitler on July 20, 1944. Afterward the Office of the Federal President had considered a proposal to present Bauer with the Federal Cross of Merit “for his contribution to strengthening democratic thought,” but members of the Lower Saxon State Chancellery and the Hessian Justice Ministry had prevented it, hiding behind the excuse that “restrictions applied for civil servants.”<sup>12</sup>

Ultimately, on April 30, 1968, Fritz Bauer received a special honor – the city of Munich’s Ludwig Thoma Medal for Moral Courage, named after the popular Bavarian writer.<sup>13</sup> As one commentary noted, this was not an award that attracted much attention, was especially illustrious, or conferred much prestige.<sup>14</sup> But at least Bauer learned of the distinction – two months to the day after the conferral he was dead. The medal was presented to him by the mayor of Munich, Dr. Hans-Jochen Vogel.<sup>15</sup> And yet, not many years later, Bauer, who had served as attorney general in Braunschweig and Hesse and sparked important political debates during his lifetime, was largely forgotten in the world of politics and the



judiciary – and even in the Social Democratic Party, which he had joined as a young man just after the First World War.

At any rate, it was a Green Party delegate in the Stuttgart city council, Michael Kienzle, who first proposed naming a street after Fritz Bauer. The result of his efforts was the “Fritz-Bauer-Weg;” a matching sign was erected there on the one hundredth anniversary of Bauer’s birth. “A stepped pathway on Bopser Hill commemorates Fritz Bauer” ran the headline in the November 19, 2003, edition of the *Stuttgarter Zeitung*. The article underneath begins with the words: “His name remains little known, but Fritz Bauer made a major contribution to Germany’s transformation into a modern constitutional state.”

## A brief summary of Fritz Bauer’s life

Fritz Max Bauer was born in Stuttgart on July 16, 1903, the son of the Jewish merchant Ludwig Bauer and his wife, Ella. He studied law and political science in Heidelberg, Munich, and Tübingen and completed a doctorate in commercial law under Professor Karl Geiler in Heidelberg. He entered the civil service immediately afterward, serving first at the Lower District Court (Amtsgericht) and then at the District Court (Landgericht) in Stuttgart. The young jurist had received excellent grades and was well versed in both history and literature – he always had a Schiller or a Goethe quote ready, or, more frequently, a line from Heine or Tucholsky. A promising professional career lay ahead of him.

During his studies Bauer had been infected by the young democrats’ and revolutionaries’ spirit of optimism after the collapse of the German Empire at the end of the First World War. He had joined the Social Democratic Party of Germany (SPD), apparently inspired by his initial encounter with Kurt Schumacher, whose “rise in the exemplary liberal state” of Baden-Württemberg had begun in Stuttgart in 1920. At any rate, Schumacher clearly made a great impression on the young man. In the late 1920s, Bauer became the chairman of the Reichsbanner Schwarz-Rot-Gold (Reich Banner Black-Red-Gold) in Stuttgart, a republican defense organization that, although purportedly nonpartisan, was largely supported by the SPD. He fought at Schumacher’s side till the very end in an effort to save the Weimar Republic.

The Nazis' assumption of power ended Bauer's career as a young jurist. Doubly hated as a Social Democrat and a Jew, he was immediately imprisoned in a concentration camp. In April 1933, Bauer was dismissed from office under the Law for the Restoration of the Professional Civil Service, and in late 1935, he took refuge under what Bertolt Brecht referred to as the "Danish thatched roof," settling in Copenhagen. In October 1943, when the Nazis began implementing the Final Solution to the Jewish Question in Denmark, he fled to Sweden. He returned to Copenhagen in 1945 and then dared to return to Germany in 1949 after a long period of limbo. Bauer arrived in Braunschweig in Lower Saxony just a few weeks before the Federal Republic of Germany was founded and the West German constitution – the Basic Law – was adopted. He had wanted to return to his native Swabia, but all his efforts to do so had been in vain. He was first appointed director of the Braunschweig District Court and then, in 1950, attorney general at the Braunschweig Higher Regional Court. In 1956, Hessian Minister-President Georg August Zinn (SPD), who also served as justice minister in the state, named him attorney general in Frankfurt am Main. He worked in that office for twelve years until his unexpected death in 1968.

Fritz Bauer's life and philosophy were shaped by the deep political and social convulsions of the late nineteenth century and the first half of the twentieth century. He was also influenced by his Jewish heritage and the emancipatory spirit that had prevailed in his grandparents' home in Tübingen. This was the native city of his mother, with whom Bauer had a close relationship throughout his life. His youth coincided with the First World War. By the time the November Revolution had broken out in 1918/19, he had found his political home. Bauer wanted to become a jurist "guided by a sense of freedom." From the mid-1920s on, he was actively involved in defending the constitutional state and building a free, democratic order. In the years of the Weimar Republic, he became a radical democratic socialist and political actor who fought to realize human rights. Even after the Second World War – after persecution, imprisonment in a concentration camp, and twelve difficult years in exile – this did not change. It is revealing that Bauer chose the title "Im Kampf um des Menschen Rechte" (In the Struggle for Human Rights) for the only essay in which he shared a few details about his personal life.<sup>16</sup>

This was the agenda with which he returned to Germany, hoping to contribute to the country's new start and the Germans' urgently needed "intellectual revo-

lution.”<sup>17</sup> He considered it essential to study the roots of the fascists’ and Nazis’ actions. In his eyes, this meant a process of “self-cleansing.” He believed Germans needed to “hold a day of judgment” over themselves. The former concentration camp inmate and exile did not want to exempt himself from this exercise. Establishing a democratic and social judiciary, reforming political criminal law, and initiating court proceedings against the perpetrators of violent Nazi crimes became his life’s work. At a time when no one wanted to hear about the past and the term *Schlussstrich* (“closure”) was used with increasing frequency, he was an unwelcome admonisher who made few friends with his views.

## A radical humanist and outsider

In the Adenauer era, Fritz Bauer held up a mirror to West German society, which was in the midst of its postwar *Wirtschaftswunder*, or economic miracle, and showed Germans an image they did not want to see.<sup>18</sup> After all, who wanted to seriously engage with the views of the returnees or the former resistance fighters – or, even worse, with those of the Nazi regime’s millions of victims? Who wanted to pause, if only for a moment, to consider what Joseph Wulf (1912–1974), a Jewish Auschwitz survivor, had written in Hebrew and kept on the wall above his desk throughout his life: “Remember the six million!!!”<sup>19</sup> The members of Fritz Bauer’s own profession did not want to hear, see, or learn anything about this past. In many cases, the examination of the past which he demanded provoked massive opposition from postwar Germans because it caused feelings of guilt, not least by those who had actively participated under the Nazi regime.

Against this backdrop, it is understandable why there was no official political commemoration or state honors for Bauer. Ever since the Hessian attorney general’s death, his memory has been kept alive by the Humanist Union, which was founded in 1961 as the first civil rights organization in the Federal Republic of Germany. Bauer provided an important impetus for its establishment. He joined the organization in November 1961 and was appointed to its board in 1963.<sup>20</sup> Its founding manifesto, written by the author Gerhard Szczesny, voices opposition to and criticizes the restorative tendencies in the German state and society, especially those working against an investigation of the Nazi past.<sup>21</sup> Fears of a de-democrati-

zation are expressed, even worries that Germans were already living in a religiously based state.<sup>22</sup> In one of his first articles in *Vorgänge*, the Humanist Union's journal, Bauer observed: "Under the Basic Law, no one worldview has a monopoly."<sup>23</sup>

The Humanist Union established the Fritz Bauer Prize just after his death. On the anniversary of his birth, it is presented to figures who have "endeavored to promote justice and humanity through legislation, the administration of justice, and the penal system."<sup>24</sup> The recipients include influential, well-known, democratically minded, and above all outspoken jurists, journalists, writers, and politicians such as Gustav Heinemann, Heinrich Hannover, Gerald Grünwald, Ruth Leuze, Ossip Flechtheim, Eckart Spoo, Liselotte Funcke, and later also Günter Grass and Regine Hildebrandt.<sup>25</sup>

The first winner of the award was Helga Einsele (1910–2005), a committed advocate of a humane penal system and head of the Hessian prison and detention center for women in the Frankfurt district of Preungesheim.<sup>26</sup> Einsele, both a practitioner and a scholar, directed the facility for almost thirty years (1947–1975) and had close ties to Fritz Bauer, whose office was in charge of the Hessian penal system at the time. After the end of the Second World War, Gustav Radbruch, former Reich justice minister, had recommended her as a suitable candidate for senior-level service in the penal system. As a member of the Penal System Commission of the Federal Justice Ministry, she worked for decades to modernize the system and even do away with the term *Strafvollzug* (literally: implementation of punishment), which in her view placed too much emphasis on traditional criminal law based on individual guilt and atonement.

Einsele was presented with the Fritz Bauer Prize by Dr. Walter Fabian, the Humanist Union's chairman, on July 16, 1969. The ceremony took place in the women's prison in Frankfurt and was attended by many guests of honor and also by inmates. The two speakers paying tribute to her achievements were Professor Horst Schüler-Springorum, who taught criminal law in Göttingen, and Professor Armand Mergen (1919–1999), the co-founder of the German Criminological Society (to which Bauer had belonged) and, until 1985, a professor of criminology and criminal law at the University of Mainz.<sup>27</sup>

The decision to hold the award ceremony in a detention center caused a sensation and led to a heated debate on both the conditions in the prison and the prisoners' needs.<sup>28</sup> This would surely have suited Fritz Bauer, whose

name was thus remembered and more strongly linked to the creation of a new body of modern criminal law and a more humane penal system. Bauer had devoted himself with great energy to educating and re-socializing prisoners, often providing probationary services himself.<sup>29</sup> In 1957, he had founded the association “Die Freizeit” (Free Time), whose name was expanded after his death to include “Gefangenenbildungswerk Dr. Fritz Bauer” (Dr. Fritz Bauer Prisoner Education Center). The organization worked to re-socialize the inmates of Hesse’s prisons and made a valuable contribution to vocational and cultural education in the individual facilities, as Helga Einsele reported. His busy schedule permitting, Fritz Bauer regularly attended the theatrical performances funded by the group.<sup>30</sup>

Concerning Bauer’s views on legal philosophy and criminal policy, Ernst Müller-Meiningen Jr., a jurist and editor of the *Süddeutsche Zeitung*, wrote that Bauer – although a “prosecutor by profession” – played a role in the process of criminal law reform mainly as a compassionate, understanding human being.<sup>31</sup> Ilse Staff noted that Bauer’s goals require not only solidarity with fellow human beings, but also socially and politically adaptive societies.<sup>32</sup> Bauer viewed criminal law as “social defense” – on a theoretical level, he embraced the “*défense sociale nouvelle*.” He fought to abolish punishment based on the idea of retaliation and atonement. Such ideas were near revolutionary in the 1950s and 1960s.

It must have been all the more disappointing for him not to have been permitted to participate directly in drafting the new criminal code as a member of the Grand Criminal Law Commission established by the federal justice minister in 1954. However, as the long-time chairman of the Subcommittee on Criminal Law Reform, which supported the Legal Policy Committee of the SPD’s executive group, Bauer nevertheless made an important contribution to the debate. According to Bauer, before undertaking a major reform of criminal law – which was at the heart of all his efforts – it was essential to “overhaul the most important aspect of the liberal order – political criminal law.”<sup>33</sup> The fact that a commission was finally set up to reform the penal system was also attributable to his admonishments<sup>34</sup> – as was the model of a socio-therapeutic facility included in the Alternative Draft Criminal Code that was released in 1966 and recommended by the federal government’s Penal System Commission.<sup>35</sup> Furthermore, the standardized objectives in the 1976 Penal System Act were in

line with Fritz Bauer's ideas: the offender's re-socialization as a main priority alongside the protection of the general public.<sup>36</sup>

As Ernst Müller-Meiningen Jr. wrote in 1968, in terms of his fight against punishment and his support of psychiatric detention, the Hessian attorney general could definitely be labeled a radical and an outsider, even a heretic. While it had long become clear that future German criminal law would have predominantly conservative underpinnings, Müller-Meiningen still hoped that Bauer's fundamental humanitarian idea would continue to have an impact, at least in its essence. Twenty-five years later, Ilse Staff found that many of Bauer's observations and concerns had lost none of their relevancy.<sup>37</sup> In fact, the function of criminal law is seen a bit differently today. The offender's re-socialization, a priority for Bauer, is once again receding into the background in favor of the general protection of the populace; or is described as a corrections goal of equal importance.<sup>38</sup>

Fritz Bauer was a jurist who did not shy from taking a stand on current political issues in his position as a civil servant. His interventions often stirred public debate and occasionally resulted in criminal complaints being filed against him. This occurred, for example, when the East German state publishing house, as part of its propaganda campaign against former Nazis in the West German civil service, exhibited its *Braunbuch* (Brown Book) at the 1967 Frankfurt Book Fair. In response, the right-wing conservative Deutschland-Stiftung (Germany Foundation) brought a suit against Fritz Bauer for "collusion," accusing him and his public prosecutor's office of not taking action under criminal law to confiscate the book. However, Bauer was able to defuse the charge on the grounds that such actions would have been incompatible with Hesse's press law.<sup>39</sup>

These conflicts left their mark on Bauer and led to greater professional and private isolation. Writers of anonymous letters branded him an informer and a troublemaker. Many of the threatening messages, whose numbers grew, had the following tone: "Dear Attorney General! The worst scoundrel in the whole country is and remains the informer. What's going on in the Congo? Who's persecuting the murderers there?"<sup>40</sup> Sometimes Bauer received anonymous phone calls, even at home, and sometimes abusive anonymous letters, evidently a response

to his investigations of Adolf Heinz Beckerle, the former Hessian SA-Obergruppenführer and, for a time, Frankfurt police chief. “The lower district court,” one reads, “delivers very fair judgments, but this terrorist prosecutor [does not allow] any justice! ... If Jews died in Germany or Poland during the war, it was because of Allied bombing raids, etc.”<sup>41</sup>

After years of hard work and hostilities, Fritz Bauer, it seemed, was a lonely man. Jürgen Seifert (1928–2005) wondered at the time why Bauer was such a lone wolf – “like most of the survivors of the democratic workers’ movement.”<sup>42</sup> Seifert had been expelled from the SPD himself in 1961 because of his membership in the Socialist German Students’ Association (SDS) and received explicit support from Bauer when publishing his critical analysis of plans for Germany’s controversial Emergency Laws. The president of the German Criminological Society put it more drastically: “When death struck, Fritz Bauer was completely alone.”<sup>43</sup> At best, people smiled at Bauer’s liberal understanding of democracy and postulate of human solidarity. But such ideas, which could not exist without respect for individual freedom and equality, caused others to renew their fearful demands for authoritarian structures and a powerful state. This was possibly a result of the constraints under the Nazi regime and the years of being indoctrinated with the idea of a *Volksgemeinschaft* – a “people’s community” that waged war against the enemy at home and abroad.

In the view of Karl-Hermann Flach from the *Frankfurter Rundschau*, though, the questions that Fritz Bauer posed to Germans had great validity: Would they really always remain immune to a “strong man” who would “create order” and enforce the “national interest” at the expense of a few “obsolete civil liberties”? Was the stereotype of the “passive follower” as extinct as its truly tragic contemporary, the person who took part only to “prevent something worse from happening”?<sup>44</sup> These were the urgent questions that could wake Germans from their slumber. However, very few people felt that an engagement with the past – let alone with their own participation in the Nazis’ unjust system – could help chart a path to the future. In his role as an admonisher who wanted to revolutionize German thought and actions, Fritz Bauer was an outsider – and in many ways remains one today.