

**Technical Reproducibility on Trial:  
An Archaeology of Benjamin's "Artwork" Essay**

Peter Jelavich

[please do not cite without author's permission]

Walter Benjamin's "Artwork in the Age of its Technical Reproducibility," various versions of which were written between 1935 and 1939, is best known as a theory of film, as well as for its cryptic statements about the aestheticization of politics. But its title<sup>1</sup> alludes to its framing argument: namely, that the aura of art dissolves as mass-produced artworks become part of everyone's everyday life. In this essay, I hope to demonstrate that many aspects of that argument were prefigured in trials and political battles that took place in the last two decades of Germany's Imperial era. Although I surmise that Benjamin was familiar with at least some of the debates that I discuss, I do not intend to suggest that they directly influenced his theses in the "Artwork" essay (and I certainly do not wish to detract from the stunning originality of many of his propositions). That is why—despite the fact that I do not provide a Foucaultian analysis—I choose to call my essay an "archaeology" in Foucault's sense: rather than determining causal origins, I attempt to chart the evolution of a discursive field—or rather, just one of several discursive fields—within which Benjamin's questions could be posed and ideas formulated.

The argument at the beginning of Benjamin's "Artwork" essay may be summarized as follows: Although the reproduction of artworks dates back to antiquity (casting and stamping) and the middle ages (woodcuts), it increased greatly in volume

and significance over the course of the nineteenth century with the invention of lithography and photography. This led to “profoundest changes” in the nature and impact of art. Even the most perfect reproduction, Benjamin contended, lacks “the here and now of a work of art—its unique existence at the place where it is located,” in other words, its “authenticity.” Moreover, by being reproduced, a work of art begins to lose its “aura,” which Benjamin defines as “the unique appearance of a distance, however close it may be.” The sense of the auratic is closely tied to the sense of the sacred, both historically—since the phenomena we now call “art” originated as objects of cultic veneration—and emotionally. In subjective terms, there seems to be considerable overlap between Benjamin’s aura and Durkheim’s notion of the sacred: just as the latter is an experience of something being somehow different from the “everyday,” aura too evokes a particular sensation that an object, however close it may be (even cradled in our hands), has a special quality that distinguishes it from the mundane. The seeping away of art’s aura can be measured by the extent to which we lose that *frisson* and come to regard artworks as part of everyday life.<sup>2</sup>

It is technical reproduction that allows artworks to become part of the everyday. Just as cultic objects were usually kept in clearly-defined sacred spaces (ranging from temples to household niches), art objects came to be sequestered in *Kunstammern* and museums. Mass production, by contrast, greatly expands the opportunities for exposure and display (*Ausstellung*). Freed from its “parasitic” dependence on ritual, the mass-produced artwork can migrate freely in the world and “approach the recipient” (*dem Aufnehmenden entgegentzukommen*). Speaking of photography and phonography, Benjamin wrote: “The cathedral leaves its site to be received in the studio of a friend of

art; the choral work that was performed in a hall or in the open air can be heard in a room.”<sup>3</sup> By entering everyday spaces and becoming part of everyday life, such works lose their aura and turn mundane.

Benjamin proceeded to laud this development and to analyze how the impact and reception of mass-produced art differed fundamentally from that of all previous art-forms, and he highlighted the characteristics of film in particular. In this essay, I will not deal with the latter part of his argument, but rather concentrate on his assertions in the initial pages as outlined above. I contend that some forty years before Benjamin wrote his essay, there was an ongoing public discussion over the impact of technical reproduction on art. The fact that this issue was hotly debated among artists is well-known, especially regarding the question: can photography be art? What I would like to stress is that the artistry of reproductions became a more general public concern once it was involved in battles over censorship and obscenity: indeed, the matter was so fraught that it was fought out in courts and parliaments. In contrast to Benjamin’s rather phenomenological account of the sapping of aura, these legal and political debates highlighted other factors that were desanctifying art: namely, sex and money. Moreover, given the peculiarities of Germany’s political culture at the *fin de siècle*, a debate about the taintedness of sex and money invariably mutated, at the fringes, to an attack on a group whose supposed commercial greed degraded both sex and art: the Jews. An archaeology of Benjamin’s “artwork” essay thus uncovers causal factors which, for whatever reason, he did not incorporate into his argument—factors dealing with sexuality, commercialism, and anti-Semitism.

In the Imperial era, the medium that highlighted this debate most clearly was the *Kunstkarte*, the reproduction (through chromolithography and, after 1900, bromide photographic prints) of works of art in postcard-sized formats. These “art cards” were not always postcards: a product of the mid-nineteenth century, art cards antedated the postcard and they usually were not sent through the mail. The postcard itself—a blank, unillustrated card—was inaugurated in 1870 by the German postal service as a cheap way to send brief messages. Postcards immediately received a huge boost as the preferred means of communication from soldiers writing home during the Franco-Prussian war. Soon illustrations were added, and by the late 1890s it was possible to reproduce photographs cheaply and rapidly in postcard-sized format. The most popular motifs were cityscapes and landscapes, which the purchaser either would send to family and friends to proclaim “I was here!” or would keep as a “souvenir” of the trip.<sup>4</sup> Even the young Benjamin had a collection of such “*Ansichtskarten*,” as he tells us in his *Berlin Childhood around 1900*.<sup>5</sup>

*Kunstkarten* too mutated into postcards that could announce “I saw this painting!” or be kept as a memento of the viewing. Many artists and educators applauded the appearance of art cards in the last half of the nineteenth century, because they made images of art affordable for the lower classes. But there was one motif that soon became a source of controversy: the nude. Of course, painted or sculpted nudes—sometimes male, but overwhelmingly female—were staples of museums, annual salons, and other exhibitions that featured Great Master and more recent academic art. Generally, it was the wealthier and better educated classes that attended such venues, and it was exclusively the better-off classes that could afford to buy the originals or expensive

reproductions thereof. Chromolithography cheapened the cost of larger prints considerably, but it was the art card that had the potential for developing into a mass market. As increasingly inexpensive reproductions of artistic nudes were marketed, two issues in particular began to be debated: Should such works be allowed into the hands of individuals who supposedly lacked the aesthetic training to view them in a “disinterested” (i.e. non-sexual) manner? And should such works be displayed in public, such as in shop windows? The latter issue involved what Benjamin called the increasingly pervasive *Ausstellung* of technologically reproduced art.

Already in 1866, the Munich police—responding to an article entitled “Obscene Pictures in Shop Windows” that had appeared in the *Bayerischer Kurier*, a conservative Catholic newspaper—ordered a gallery owner to remove from his display a photographic reproduction of Palma Vecchio’s *Sleeping Venus* (from the Dresden Gallery). Apparently, the vendor immediately complied with the police request. Thirteen years later, a similar situation arose: in an article entitled “Pictures that cause Offense,” the conservative Catholic *Münchner Fremdenblatt* complained about stores that displayed in their windows photographic reproductions of nudes (or works incorporating nudes) by Rubens, van Dyck, and other Great Masters. While some owners promptly removed them at the request of the police, that response was challenged by the liberal *Augsburger Abendzeitung*. It noted that the police had recently ordered reproductions of Makart’s *Entry of Charles V into Antwerp* and Bouguereau’s *Birth of Venus* to be removed from windows, and the store owners had complied; but another gallery owner had refused to follow a police order to remove a copy of Titian’s *Sacred and Profane Love* from his display—a response that the liberal newspaper implicitly commended.<sup>6</sup>

These early examples already introduced the actors and the issues involved in a debate that snowballed in the 1890s. On the one hand, conservative religious publications and organizations (both Catholic and Protestant) would signal displeasure with the public display of erotic themes, even if they were by recognized master artists. But increasingly, gallery owners, artists, and the liberal press struck back. Eventually, gallerists' refusal to comply with police orders led to confiscations and subsequent court cases, some of which landed before Germany's highest court of appeal, the Reichsgericht in Leipzig. At issue was the interpretation of article 184 of the Penal Code that was adopted by the newly-unified German nation in 1872. That article stipulated: "Whoever sells, distributes, or otherwise disseminates obscene [*unzüchtige*] publications, illustrations, or plastic representations, or who exhibits or displays these in public places, shall be fined up to 300 marks or imprisoned up to six months." The problematic word was, of course, "*unzüchtig*."<sup>7</sup> An early ruling of the Reichsgericht defined it as a "work whose content grossly offends feelings of shame and morality in a sexual manner [*deren Inhalt das Scham- und Sittlichkeitsgefühl in geschlechtlicher Beziehung gröblich verletze*]."<sup>8</sup> That proved to be a definition that was far too narrow for conservatives, since it meant that only works depicting sexual acts or individuals in sexually provocative poses could be prosecuted; nudity in itself was not deemed obscene. In 1893, for example, the Reichsgericht heard an appeal from a case in Magdeburg concerning the sale of reproductions of female nudes by Michelangelo, Titian, Guido Reni, Palma Vecchio, Paolo Veronese and others. The high court rejected the assertion of the lower court that the "undressed female body" is in and of itself obscene: "The unclothed male or female body in itself has as little to do with decency or indecency [*Zucht oder Unzucht*] as does a

visual representation thereof... From time immemorial the visual arts have represented the naked human body on account of its sensuous beauty alone, or also acts of a sexual nature for their own sake. That the contemplation of such works does not automatically offend the prevailing laws of custom, morality and decency is proved by the obvious fact that such works are publicly displayed in state museums and other collections open to everyone. People everywhere are of the opinion that art is able to transfigure and to idealize [*zu durchgeistigen und zu verklären*] even these motifs to the extent that disinterested pleasure in the beautiful allows the natural aesthetic sense to push back salacious feelings. Here the degree of artistic perfection attained by the picture is alone decisive. And this artistic form must also be decisive for judging the reproductions.”<sup>9</sup>

This was not the first nor the last time that the Reichsgericht would provide a ringing endorsement of a rather simplistic aesthetic idealism. Central to this notion was the view that art—“true art”—had the power to transport its beholder into a realm of disinterested contemplation where more mundane feelings and passions would be suspended. Next to its ability “*zu durchgeistigen*” (literally: suffuse with Spirit), the main attribute of art, according to high court rulings, was the fact that it was the product of an individual vision. A ruling of 1882 defined the characteristics of “a work of art [*eines Werkes der Kunst*]” as “the formative activity of the original creator that serves aesthetic purposes [*die ästhetischem Zwecke dienende, formbildende Thätigkeit des Urheber*].”<sup>10</sup> A ruling of 1910 elaborated by defining visual art as “every individual spiritual [*geistige*] creation that is brought forth by the representational means of art through formative activity, and that is primarily intended for the stimulation of aesthetic feeling by visual contemplation.” The ruling stressed that “the characteristic of individual artistic creation

is on the one hand decisive and on the other hand sufficient for the concept of a work of visual art.”<sup>11</sup> The centrality of individual creation to the legal definition of art did not automatically exclude mass-produced works, but it allowed for art and mass production to be opposed in some judicial rulings.

Even the ruling of 1893 that affirmed the artistry of the human nude conceded that there were many grey areas between art and obscenity. In order to help adjudicate the distinction, it codified the notion (invented by legal scholars of the day) of “so-called *relative obscenity* [*des sog. relativ Unzüchtigen*; italics in original].” The high court noted two axes for that concept: the degree of artistic perfection of a work, and the context in which it was displayed. Regarding the former, the high court ruled that a copy of an artistically respectable nude could in principle be as artistic as the original: “If the copy essentially retains the character of the original, then there is no reason to consider it in any other way. If the copy has not been able to retain the original character of the original picture, if the focus of attention becomes the crudely sensuous appearance of the subject without a purifying artistic form, then only the subject itself and not the form of representation will be decisive for judgement.” The quality of the reproduction—the degree to which it matched the original—henceforth became decisive in future adjudications. Courts at all levels ascertained a number of factors that could distance a reproduction from the artistic original: a smaller format could obviate the skillful details of the original; black-and-white photographs could fail to capture the artistic use of color, leaving only the outer forms of a potentially crude subject matter; conversely, color reproductions could, through selective tinting, emphasize sexual attributes more than in

the original; likewise, sculptures could be photographed from such an angle, or with shadows falling in such a way, as to accentuate sexual parts.

The other axis of “relative obscenity” related to the context in which art was displayed: “the manner of display” can “impose an obscene [*obscönen*] character onto an artwork that was not originally judged ‘obscene’ [*unzüchtig*].” That is because “in innumerable cases moral opinions distinguish between things and acts that take place in the seclusion of a house or in a private indoor space and as such are permitted and harmless, and those that take place in public streets and thus appear immoral and shameless.”<sup>12</sup> Most overtly, that statement was referring to the obvious fact that, say, sexual acts between married couples in the privacy of their home were morally acceptable, while they would be arrested if they carried on excessively in the town square. But it pointed to the much more general principle, affirmed in numerous rulings, that there were greater strictures on acts with greater publicity (*Öffentlichkeit*). The more sequestered an act or an object, the less likely it was to be offensive. And one form of sequestration was the museum.

Potentially offensive art was more acceptable in a museum than in a shop window not only because it had a more selective public, but because the museal ambience radiated the concept of “art” and its concomitant aesthetic sphere. Echoing Benjamin’s notion of “aura,” numerous commentators—not just art critics, but also judges and politicians—spoke of museums as sites of *Weihe*: that is, as sacred or consecrated spaces.<sup>13</sup> In a treatise of 1909 on obscenity and art, the retired judge Johann Lazarus wrote: “A work or an environment can arouse certain sensations that prevent a feeling of offended shame, which otherwise would have arisen. Such is the particularly sacred

atmosphere [*gewisse weihevollle Stimmung*] that easily overcomes us in museums and old palaces and that constitutes a great part of their effect.”<sup>14</sup> Speaking to that same issue in that same year before the Prussian parliament, Prussian Interior Minister Friedrich von Moltke allowed that artistic nudes like the Venus de Medici or a Venus by Titian could evoke “ideal admiration [*idealer Bewunderung*]...at the sites consecrated to them [*an den ihnen geweihten Stellen*].”<sup>15</sup> And in a case to be discussed further below, in 1913 a Berlin court ruled that not only the paintings of nudes in the Kaiser Friedrich Museum, but also the postcard reproductions thereof sold in the museum shop lacked obscenity because of the “sacred atmosphere of the site [*Weihe des Ortes*].”<sup>16</sup> But shop windows on public thoroughfares, as commercial and (more) public spaces, lacked such *Weihe*, hence artworks and reproductions displayed in them had the potential to lose their auratic quality and thus be subject to confiscation.

The two axes of “relative obscenity” reflected debates which in turn resonated with two aspects of Benjamin’s “Artwork” essay. The potential of an image to lose its status as “art” by being mass-marketed paralleled Benjamin’s contention that art lost its aura through technical reproduction. Likewise, the desanctification of art as it moved from museums to public thoroughfares complimented his argument that the increased *Ausstellungswert* of an artwork also compromised its aura. Obviously, the two issues were related, since it was the greater availability of mass-produced art that allowed its exhibition to become ubiquitous. But in contrast to Benjamin’s argument of the 1930s, discussions of those issues during the Imperial era were firmly embedded in a debate about pornography.

Modern forms of cheap, mass-produced pornography—including obscene photographs—began to appear in the 1860s, but a veritable flood of them did not materialize until the 1890s. By the eve of the Great War, the German police were confiscating well over a million of such works every year. The vast majority of them were of a blatantly non-artistic variety: they were, in the words of a major anti-smut campaigner, “photographic images of living persons of both sexes in the most shameless positions imaginable.”<sup>17</sup> Such works were condemned across the entire political spectrum, from the Social Democratic left to the *völkisch* (racist-nationalist) right, but it was conservative Catholic and Protestant groups as well as *völkisch* organizations that complained most vociferously. They were concerned that such works might lead husbands to stray from their wives and workers to be less enthusiastic about their work; but particularly, they were worried about their impact on impressionable youths. Not only might such pictures encourage premarital sex, but just as ominously (and more pervasively), they would encourage masturbation, with the usual checklist of horrors to follow: weakness, deformity, mental debility, and sapping the strength (quite literally) of the nation’s youth that was needed to defend the Reich against its growing number of foreign enemies.<sup>18</sup>

Caught in the crossfire of such debates were nudes by Great Masters as well as contemporary artists, once they became available as cheap chromolithographs, photographs, and eventually *Kunstkarten* and postcards. As we have seen, protests in the 1860s and 1870s arose when they were publicly displayed in shop windows. But more fundamentally, anxious moralizers worried how such images could be employed in the privacy of the home. Those fears were dramatized as early as 1891 in an astounding

extended monologue (act 2, scene 3) of Frank Wedekind's *Spring Awakening*. In the lavatory of his home, Hänschen Rilow—an adolescent who evinces a cynical and insouciant sexuality throughout the play—masturbates over what is described as “a reproduction of the Venus of Palma Vecchio,” which he first saw “in the display window at Jonathan Schlesinger's.” Hänschen considers himself a veritable Bluebeard, since Venus is the seventh such woman that he has dispatched (by flushing the cards down the toilet after he is done). The others were Thumann's *Pysche*, Correggio's *Io*, a *Galathea* by Lossow, an *Amor* of Bouguereau, *Ada* of Jan van Beers, and Makart's “quivering, twitching *Leda*.” One reason for Hänschen's general insouciance and cynicism is that he knows he is not alone in his tastes: after all, he “abducted Ada from the secret drawer of Papa's desk” and he found Leda “coincidentally among my brother's notebooks.” But he knows that he must dispose of these women quickly because of the danger they pose to him: “You suck the marrow from my bones, you bend my spine, you rob the last gleam from my youthful eyes.” Were he to keep any picture for as long as three months, “it would eat away at my poor brain like butter in sunlight.” But Hänschen can easily take leave of each picture since he knows that there are others waiting for him, such as Bodenhausen's *Lurlei*, the *Abandoned Woman* by Linger, and Defregger's *Loni*.<sup>19</sup> This hilarious scene—which, needless to say, could not be performed in Wedekind's lifetime—provides a perfect summary of the fears of crusaders against art cards: it dramatizes what happens to cheap reproductions of potentially salacious images by Great Masters and current academic artists when they fall into the hands of adolescents. The fact that Palma Vecchio's *Venus* was one of the most frequently confiscated art cards,

and one that Hänschen first saw in a display window, indicate how accurately Wedekind reflected the moralizers' concerns.

While Benjamin wrote about photographs and records that brought cathedrals and choral works into connoisseurs' living rooms, moralists were concerned about reproductions of academic nudes that migrated to teenagers' lavatories. As far as we know, young Walter was no Hänschen Rilow. But in his *Berlin Childhood around 1900* (written coterminously with the "Artwork" essay), he recalled staring at the window display of a stationery store in the Krumme Strasse with its "offensive publications [*anstößigen Schriften*]"—"humorous postcards and brochures whose tangible obscenity [*faßlich dargestellte Unzucht*] cast a spell over me."<sup>20</sup>

\* \* \*

Perhaps even more surprising than Wedekind's audacity was the early date of his play: it was published in 1891. Indeed, it was only in that year that events began to unfold which culminated in a major political struggle over obscenity and the arts. The trial of a pimp named Heinze and his wife for the murder of a night watchman uncovered a criminal underworld in Berlin that shocked "polite" society all the way up to the Kaiser, who ordered new and vigorous legislation to fight criminality. Consequently, in the spring of 1892 a bill was presented to the Reichstag to increase penalties for violent crimes and to tighten the regulation of prostitution. But in committee, *völkisch* politicians like Adolf Stöcker and, more importantly, members of the (Catholic) Center Party added provisions to fight "immorality" more generally, by measures like raising the age of consent and banning advertisements for contraceptives. The final version went so far beyond the Reich government's wishes that it dropped its support and the bill was

shelved. A similar scenario played out in the spring of 1895: the Kaiser wanted a tough, anti-radical *Umsturzvorlage* (Subversion Bill), but the Center tacked on so many vague provisions about banning anti-Christian opinions that the final version of the bill was voted down. Then in 1897 the Center Party itself put forward its own version of the 1892 bill—by now dubbed the “Lex Heinze”—which would have stiffened laws against indecent stage performances, literature, and illustrations. By spring 1900, when the bill came up for debate and vote in the Reichstag, it proposed a law imposing up to six months’ imprisonment or a fine of up to six hundred marks for anyone who “offers or hands over for gain to a person under eighteen, or for purposes of trade or with the intention of offending feelings of modesty displays or posts up in a manner liable to cause annoyance, writings, pictures or representations which, without being obscene, grossly offend the sense of modesty and morality.” The purpose of the proposal was to get around the Reichsgericht’s narrow definition of “obscene” as “grossly offending feelings of shame and morality in a sexual manner,” by punishing more general assaults on “modesty and morality” as well.<sup>21</sup>

Whereas the proponents of the Lex Heinze at first claimed that they aimed to quash only smutty literature and dirty postcards, Germany’s artists rapidly grew alarmed at the implications of the bill, since they recognized that in the minds of conservative and Catholic politicians, the line between nudes on postcards and in “acceptable” art was very thin. First in Munich, then in Berlin and other cultural centers, writers and artists banded together to found and join the *Goethebund*, an association aimed at defending the arts from legislative assault (Goethe’s name was invoked as the epitome not only of German classicism, but also of secularism). In the visual arts, the movement was supported by

prominent practitioners of *Jugendstil* (art nouveau) like Franz Stuck, whose fleshy and sensuous images were an obvious object of attack, as well as paragons of academic art like Franz von Lenbach in Munich and Adolf von Menzel, Anton von Werner and Reinhold Begas in Berlin. When the words started to fly in the Reichstag, various Center politicians proudly admitted that the law would keep reproductions of the Venus de Milo out of display windows and modern plays (like those of the relatively benign Hermann Sudermann) off of stages. Anti-Semites like Max Liebermann von Sonnenberg—obviously no relative or “*Rassengenosse*” of the great impressionist painter Max Liebermann, who vocally opposed the Lex Heinze—piled on by accusing “the Jews” of orchestrating opposition to the bill: “it is proof of the power of the Jewish press that artists can be seduced into granting their glorious names to cover a show as inept as this protest movement. ... Who benefits from this hullabaloo? Who sells the dirty articles that are threatened by the law? It is that busy race, and members of that busy race make all of the noise in order to protect the dirty dealings of their racial comrades. I am sorry that serious men and important artists have let themselves be led by the nose by the Jews.”<sup>22</sup>

Social Democrats and left liberals led the fight against the Lex Heinze in the Reichstag in the spring of 1900. But as protests from establishment artists mounted, groups that had initially supported the legislation—such as the Reich government, the Bavarian government, and the National Liberals—began to balk. Nevertheless, had all members of the Reichstag been present to vote, the Lex Heinze would have passed with the combined forces of the Center, the Conservatives, the Anti-Semites, and some smaller parties allied with the Center. Yet a clear up-or-down vote on the bill was repeatedly blocked by obstructionist tactics, and eventually the Center had to settle for a very

watered-down version that criminalized the sale of writings or pictures “which, without being obscene, grossly injure feelings of shame” to youths under sixteen. Although the penalty for distributing, selling, or displaying outright “obscene” works was increased (up to a year in jail and/or a thousand mark fine), the expansion of the obscenity clause to include “gross injury to feelings of shame” was not applied to adults. Henceforth Germany’s Hänchen Rilows would no longer be able to go to Jonathan Schlesinger’s to buy their art cards; they would have to filch them from their fathers, who were still permitted to purchase such works.

The political constellation as well as the tactics that blocked passage of the Lex Heinze’s more extreme clauses were met with surprise in many quarters. The Social Democrats, perennially ostracized in parliament, were the de facto leaders of a temporary coalition that eventually included not only left liberals but also the staunchly anti-socialist National Liberals. Moreover, for the first time in its history, the Reichstag faced a minority that used obstructionist tactics to slow down or block a final vote from taking place (including walk-outs to make the Reichstag inquorate, or repeated demands for roll-call votes on minor issues). While constitutional lawyers spent the ensuing months discussing whether such tactics were valid, a more general question hung in the air: why was it a “minor” issue like protecting the arts, rather than something more “major”—say, the Naval Bill, or social insurance, or franchise reform—that provoked such extreme tactics and such an extraordinary coalition? Certainly, the massive public protests by prominent artists, writers, and intellectuals—which Rosa Luxemburg applauded as an “extra-parliamentary struggle” (“*außerparlamentarischem Kampfe*”)<sup>23</sup>—emboldened the politicians to move forcefully. Indeed, the whole affair highlighted the extent to which

Germans considered art a major public concern. The Catholics of the Center Party, the Protestants of the Conservative Party, and the Anti-Semites believed that issues of “morality” and “decency” should trump freedom of the arts. Social Democrats, left liberals, and eventually National Liberals, by contrast, believed that the arts were the line where assaults against personal freedom were to be defended. What is surprising is that it was the humble postcard that was the canary in the coal mine in this debate: an infringement on the right to show small-scale reproductions of artistic nudes could have portended more severe restrictions to come.

Just as the early confiscations of art cards had prompted Wedekind to script the satirical Hänschen Rilow scene in *Spring Awakening*, the Lex Heinze affair inspired Thomas Mann to write the short story *Gladius Dei* in the fall of 1901. The tale begins with the words “*München leuchtete*”—“Munich was radiant”—which in recent years has been amended to the present tense and used as a marketing slogan for the city (*München leuchtet*). But the tourist bureau of the Bavarian capital is evidently tone-deaf to the irony of the tale, which presented Munich’s fin-de-siècle culture in a series of willful and often disturbing clichés. After limning the city as a carefree place where bourgeois, bohemians, and students are devoted to the arts, the narrator introduces us to Hieronymus, a monk who, despite his youth, already bears the gaunt and grim visage of Girolamo (=Hieronymus) Savonarola. One day, while passing through the Odeonsplatz (dominated by the Feldherrnhalle, a copy of the Loggia dei Lanzi in Florence), he is attracted by a crowd assembled before “the wide windows and displays of the large art gallery, the vast beauty bazaar of M. Blüthenzweig. What a joyous splendor of goods on display! Reproductions of masterpieces from museums all over the world, enclosed in expensive,

refinely toned and ornamented frames with a taste of precious simplicity; copies of modern paintings, sensuous fantasies in which antiquity seemed to be reborn in a humorous and realistic manner; masterful castings of Renaissance sculptures; naked bronze bodies and fragile ornamental glass...” But most of the gawkers on the street ignore this cornucopia of copies and instead crowd around a large “expensive photograph in reddish-brown tones...a reproduction of the hit of the great international exhibition that year” that had been purchased by the Pinakothek: namely, a very modern Madonna of “ravishing femininity, exposed and beautiful.” With “large, sultry eyes” and “strangely smiling” half-opened lips, she holds the hips of a naked boy “who toys with her breast and casts his eyes with a clever sideways glance at the beholder.”<sup>24</sup>

While staring at the photograph, Hieronymus overhears two young men of his age, both university students, whose banter is full of indecent inanities like: “That little kid has a good life!” and “A woman to drive you crazy! She makes you doubt the dogma of the immaculate conception.” When one of the students asks the other if he has seen “the original,” a misunderstanding ensues: one speaks of the original painting, “whose colors make it even more aphrodisiac,” while the other speaks of the model, “the little cleaning girl” of the painter, who is “more innocent” than the figure in the painting, which has been “strongly stylized toward corruption.”<sup>25</sup> With such observations, Mann set the stage on which to play out his version of the Lex Heinze debate: in a central location in Munich—whose architecture was itself copied from that of the Renaissance—a Jewish-owned gallery touts reproductions (photographs, casts, etc.). Although their credentials as “art” are certified by being displayed in museums and international exhibitions, they are characterized by a pervasive and hardly disguised sensuality.

Moreover, amid all of these reproductions, it is no longer clear to what the word “original” might refer, since even the “original” painting is not a truthful replication of the “original” model.

Having set the stage, Mann let his little drama unfold. After fuming for three days over what he has witnessed, Hieronymus receives a divine calling to challenge Blüthenzweig. Mann’s description of the salesman is replete with anti-Semitic stereotypes of Jewish vendors: with his nose that “lies rather flat on his upper lip,” he sniffs out customers as they enter his store “as if to determine their ability to pay”; he constantly rubs his hands together when praising the virtues of a commodity to a client; and he bows obsequiously to his customers after they have made a purchase. When Hieronymus enters the store and tells Blüthenzweig that he wants to discuss the Madonna, the owner mistakes him for a potential customer and states its price (seventy marks) and praises it as being just like the original (*unveränderlich*), “a first-class reproduction.” But the monk calmly and politely states that he neither could afford to buy the painting nor would he want to: instead, he asks Blüthenzweig to remove the picture from his display window. The owner then asks if he is speaking in “an official capacity,” and when the monk replies that it is his conscience alone that sent him there, Blüthenzweig exclaims: “for us, your conscience is a...a completely irrelevant fixture!” While the rest of the staff laughs at him, Hieronymus launches into a monologue that escalates into a diatribe: he proclaims that art should not be sensuous beauty but a rather a “holy torch” and a “divine flame” to purge the world of its sins. Finally, he calls on Blüthenzweig to incinerate the photograph. The owner, appalled at the idea of “burning a seventy-mark-reproduction,” finally calls a packer from the storage rooms—himself a

caricature of a brawny, bestial, stupid Bavarian peasant—to throw the monk out of the store. On the street, Hieronymus imagines a flaming sword hovering over Munich, and he proclaims (citing the words of Savonarola): “Gladius dei super terram...Cito et velociter!”<sup>26</sup>

In his story, Mann limned the defenders of the Lex Heinze as its opponents portrayed them: as fanatical iconoclasts, immune to beauty and sensuality, who would destroy all art. Conversely, he presented the opponents of the Lex Heinze as its defenders portrayed them: as clients of money-hungry Jews who hawk reproductions of objects that claim to be art but are essentially upscale pornography.<sup>27</sup> Whereas almost all significant writers and artists of the day took a stance against the Lex Heinze, Mann kept his distance and seemed to wish a pox on both their houses. Such are the virtues of his much-vaunted irony. But beyond his questionable politics, Mann did manage to evoke Munich’s art-world as a universe of reproductions, where no stable “original” can be found to put an end to the regress of mirrors. And within this inauthentic world, the only figure who truly feels passionately about art is the one who wants to destroy it.

\* \* \*

The passage of a severely diluted Lex Heinze in 1900 failed to bring closure to these issues. In the ensuing years, artists and writers gradually let down their guards and the Goethebund fell into abeyance, but various Catholic, Protestant and rightwing groups kept up the pressure on politicians, local police officials, and the courts. In a pamphlet issued in 1903, Center Party politician Hermann Roeren, who had been the most outspoken proponent of the Lex Heinze in the Reichstag, contended that the moral degeneracy of youth was proceeding apace: he opined that “in the larger cities it would

be hard to find a boy under thirteen who is still uncorrupted” (i.e. who has not engaged in masturbation), and he cited the startling “fact” that twenty-five percent of all Germans suffering venereal disease were university students.<sup>28</sup> What was the cause of these symptoms of “unfettered passions”? “First and foremost the *outrageous spread of immoral publications and pictures and the impudence of the shameless displays in shop windows.*” And that, in turn, was a result of the ease and low cost of reproductive technologies: “It is sad that the precious advances of technology in photography, reproduction and copying have been placed in the hands of dirty business. It would not be wrong to conclude that the *much more general* spread of immorality in comparison with earlier times can be attributed above all to the incomparably easier and cheaper forms of reproduction and copying. ... The inundation of the whole country, both towns and villages, with salacious, immoral *postcards* is a modern sport, unknown in earlier times and certainly a main cause of the general spread of immorality.”<sup>29</sup>

Having lost the Lex Heinze battle, Roeren conceded that “after the events of 1900 there will for a long time be little hope for a more effective formulation of penal law.” That being the case, he said it was up to concerned individuals to find means under existing law “to halt the further spread of moral contamination.”<sup>30</sup> His pamphlet advertised the founding of the *Kölner Männerverein zur Bekämpfung der öffentlichen Unsittlichkeit* (Cologne Men’s League for Combating Public Immorality), whose explicitly stated goal was to employ self-help measures to prevent the public display and sale of obscene literature and pictures. Having espied offending pictures or texts, members of the league first would confront shop owners and encourage them to remove the works voluntarily; if that was unsuccessful, they would lodge complaints with the

police. In cases where the works were offensive but not legally obscene, the association would organize boycotts of non-compliant stores. Roeren claimed that the tactics were very effective in Cologne—“the offensive displays disappeared almost completely”—and he encouraged concerned citizens throughout Germany to found similar groups.<sup>31</sup>

The idea did indeed spread to other cities: for example, the *Münchener Männerverein zur Bekämpfung der öffentlichen Unsittlichkeit*, founded in the Bavarian capital in 1906, caused havoc with Munich’s avant-garde scene.<sup>32</sup> The morality campaigners constantly pressed charges in court, and judges at times seemed to rule in their favor. Their cause was abetted by some rulings of the Reichsgericht. Already in November 1899 it amended earlier rulings (from 1881 and 1883) that an obscene work was one “whose content grossly offends feelings of shame and morality in a sexual manner.” Now the high court struck the word “grossly” (*gröblich*) from its definition. It further stipulated that judgements were to be based on the sensibilities of the average adult, “the normal measure of the general sense of shame and morality regarding sexuality”—a “middle line” that the court did not specify further, since “no people and no age regards it as absolutely unchanging.”<sup>33</sup> Whereas dropping “*gröblich*” implied lowering the bar for obscenity convictions, the call to go with the times implied that standards could become more lenient—or more severe. The conservatives obviously hoped for the latter.

Indeed, over the first decade of the twentieth century, as nude art cards were put on trial repeatedly throughout Germany, regional courts and the Reichsgericht itself seemed to take a tougher stance on reproductions. In November 1904 the Reichsgericht overturned a Berlin court’s exoneration of a window display of postcards of nudes from

that year's Paris salon, including works depicting (in the words of the Reichsgericht) "naked women's bodies, on which occasionally the pubic parts [*Geschlechtsteile*] are visible." The lower court had conceded that "there can be artworks which, when displayed in a museum or an exhibition, are not injurious despite their sensuous subject matter, but *reproductions* thereof can be characterized as obscene." Yet in this case, the lower court had ruled that since they were "quite good copies" of artistic originals, they were not obscene. Here the high court ruled that the pertinent issue was not the "technical perfection" of reproductions, but rather the manner in which they had been displayed: "Here it is a case of the mass production of *postcards*, which are displayed in the windows of stores in Berlin and are sold for a low price to anyone. ... Under these conditions the court should have determined whether these same images, of which the original paintings might not have caused offense in the Paris salon, have acquired the character of obscene images in their present guise as *postcard pictures*, which are offered on the street for viewing and sale to every passer-by regardless of age, sex or education."<sup>34</sup> By 1911 the Reichsgericht had firmly bought into the sacred museum/profane shop-window dichotomy, and it harshly criticized "gallery nudes on postcards" in particular: "pictures, which in their original state need not be considered obscene because of their technical mastery or the fact that they are incorporated into a museum or a gallery of painting, can very well be considered obscene works if they appear as worthless copies [*wertlosen Nachbildungen*] or if they are offered indiscriminately to any and all members of the public for non-artistic purposes, especially the quenching of sexual lecherousness [*zur Befriedigung geschlechtlicher Lüsternheit*]."

The Reichsgericht proceeded to note that those conditions were especially characteristic of “postcard pictures [*Postkartenbilder*].”<sup>35</sup>

Those were, of course, precisely the types of rulings desired by the morality campaigners, who proceeded to sick the police after purveyors of nude art cards throughout Germany. In February 1900, at the height of the Lex Heinze debates, a member of the Prussian parliament reported to the police that the display window of a store in Berlin featured “indecent pictures” such as “the photograph of a painting: ‘Leda with the Swan,’ a highly shameless picture that injures moral sensibilities. The original of the picture—by, if I am not mistaken, Correggia [sic]—is however a well-known work of art. But since a photograph, as a purely mechanical reproduction [*als rein mechanische Reproduktion*], cannot lay claim to be a work of art,” the member of parliament lodged a formal complaint against the display. Ludwig von Windheim, Berlin’s police president (i.e. chief of police) and a man not known for liberal views, responded that he did not share the assumption that photographic reproductions could not be works of art; moreover, given current adjudication of the anti-obscenity law, an attempt to pursue the matter in court would be “futile” (*aussichtslos*).<sup>36</sup> But in 1913 a Berlin court upheld the confiscation of that very image, which depicted one of the highlights of Berlin’s Kaiser Friedrich Museum, from a display window. There the image—which “depicts Leda naked with legs spread open under a tree, while Jupiter in the shape of a swan gets ready to perform sexual intercourse with her”—could be viewed by “the street public, of which a great number do not know the artist and do not know that it is a work of art.” The Berlin court ruled, however, that the same postcard could continue to be sold at the Kaiser Friedrich Museum: “When the postcard is displayed in the museum, it is stripped

[*entkleidet*—surely an unfortunate word choice] of its obscene character and appears solely as an artwork, owing to the nature of the public there and the sacred atmosphere of the site [*Weihe des Ortes*].” Those who buy the card at the museum do so to have “a lasting remembrance of the enjoyment of art as a whole, and not for the purpose of letting the image affect them in a sensual manner.”<sup>37</sup> In other words, the Berlin court ruled that the aura of an original artwork in a museal setting extended as far as the postcards sold in the tchotchka shop at the exit, but no further.

Other postcards of Great Master nudes had mixed results in court. The confiscation of art cards of the *Venus* of Palma Vecchio, to whom Hänschen Rilow addressed his memorable monologue, was overturned in a Stuttgart court in 1908, but similar seizures were upheld in Cologne (1912) and Berlin (1913). Publicly displayed postcards of Giorgione’s *Sleeping Venus* (in the Dresden Gallery, like that of Palma Vecchio) were condemned by a Berlin court in 1905 but exonerated six years later; the same image was banned in Cologne in 1912.<sup>38</sup> For every panel of lower-court judges that deemed such works obscene, there were others who applauded their availability, like another Berlin court whose presiding judge stated in April 1914: “You have to be pleased that there are cheap reproductions available to the average person, since that way art can spread to the populace and not be reserved only for the millionaires who can buy expensive artworks. You can enjoy even a good reproduction of an artwork [*eine gute Reproduktion eines Kunstwerkes*] in the form of a postcard.”<sup>39</sup> But the increasing tendency of the Reichsgericht to permit the confiscation of “gallery nudes on postcards”—as attested by their ruling of 1911—seemed to be tipping the system against mass-marketed reproductions.

The issue boiled over into a major public scandal in the fall of 1913, when the Berlin police seized from a display window forty-three art cards, consisting of black-and-white photographs of sculptures such as Rodin's *Kiss*, *Three Graces* by Canova, a *Bather* by Wilhelm Lehmbruck, and Ernst Moritz Geyger's *Archer*. A court in Berlin not only upheld their confiscation but also ordered the destruction of the cards as well as the plates used to print them. In reaching their decision, the judges hinted that a case could be made that in the photographs, the angle of the shots and play of shadows on the sculptures "accentuated the parts and forms of the body that are characteristic of each sex," and that "in some of the pictures the posture of the bodies is particularly conducive to sexual stimulation." But the judges did not base their rulings on those rather subjective observations: rather, they baldly asserted that the public display and sale of nude images would have a deleterious effect on youths. "The photographic reproduction of artworks on postcards aims at a wide circulation, since postcards...are produced as mass commodities to be sold to everyone." By making such works available "to the public that does not understand art and especially to adolescents," it incites lecherousness (*Lüsterheit*) and hence falls under the concept of relative obscenity.<sup>40</sup> The logic of the Berlin judges implied—in direct contradiction to the Reichsgericht ruling of 1893—that every representation of a human nude shown to a general public was obscene.

This ruling was met with consternation, and eventually was overturned by the Reichsgericht. But in the interim it provoked a heated and very public debate among artists, the Prussian Ministry of Justice, the Prussian Ministry of Culture, and members of the Reichstag and the Prussian parliament. Particularly embarrassing to the police and the court was the fact that Geyger's *Archer* had been purchased by the Kaiser himself and

placed in the park at Sanssouci for the edification of the German public. Since Wilhelm was outspokenly conservative in his aesthetic tastes as well as notoriously prudish (in his public pronouncements, if not at *Herrenabende* with his intimates), it seemed particularly absurd to suggest (as the seizure inadvertently did) that the Kaiser patronized works that were both immoral and inartistic (from a traditionalist standpoint). Only slightly less embarrassing was the fact that some of the other photographs depicted sculptural groups that were openly displayed in the middle of big cities: Bruno's *Washing Woman* in front of the Märkisches Museum and Bauke's *Conqueror of Barbarians* outside the National Gallery in Berlin, Baerwald's *Shipwrecked* in the central market of Schwerin, Lepke's *Woman Drawing a Bow* in the main street of Koburg, the *Bathing Woman* along the Elbe in Dresden, and the *Woman Throwing Rings* in a central square of Leipzig. As a liberal member of the Reichstag who recited this list remarked, "these statues stand at sites that are open to everyone, including children, and up to now no one has protested against them."<sup>41</sup> So why should small-scale postcards of them be banned from display windows?

The controversy over the forty-three art cards explicitly addressed the two aspects of "relative obscenity" that were pertinent to Benjamin's later theses: namely, the devaluing of art both through mechanical reproduction and its widespread public display. In this case, no one questioned that the original sculptures were works of art: it was the value of copies that was at issue. As in the Lex Heinze debate, prominent artists (even conservative and traditionalist ones) believed that their creative freedom would ultimately stand or fall with the right to distribute photographic reproductions of their works, including postcards. That stance was stated most bluntly in a "resolution concerning the confiscation of postcards" that was sent to Max Beseler, the Prussian Minister of Justice,

in January 1914 by the Allgemeine Kunst-Genossenschaft, an umbrella organization of artists with branches in all major and middling cities of Germany. The resolution stated that its members “fear that the confiscation of postcards is only the beginning of a movement against the nude and against art in general, and that a successful attempt to confiscate postcards will lead to the banning of other means of reproduction, such as color prints, proofs etc. and that eventually it will not even stop at destroying the original work itself.” Regarding youths, the missive asserted that young people should be accustomed to viewing the undressed human form from an early age; it is precisely the excessive concealment of the human form that makes it alluring and thus incites lecherousness (*Lüstertheit*). The resolution ended with the statement: “The art community raises an emphatic protest against the insult which it suffered from the verdict, and demands a change in the application of the law, whose purpose can hardly be to destroy genuine works of art in the name of a false and unnatural morality.”<sup>42</sup>

Similar sentiments were voiced by a much more elite organization, the Royal Academy of Art in Berlin. It lodged a protest with the Prussian Minister of Culture on 7 January 1914. It began by noting that it was “strange that the court and the prosecutor distinguish between different forms of reproduction of a work of art. Postcards are confiscated; but the larger reproductions of the very same works can still be displayed in shop windows. ... What difference is there between the fact that one person can enjoy the sight of a supposedly immoral artwork in a large and clear reproduction that shows all of the details, while another buys the same work in a small imperfect postcard reproduction?” The protesters asked the same rhetorical question regarding the relationship between the original and the postcard, citing Geyger’s *Archer* in particular:

“If this work of art, whose quality is guaranteed by its all-highest purchaser, is in and of itself pure and free of any speculation in base sensuality, then can a small reproduction on a postcard really be considered ‘obscene’ by the law? It seems to us that this is an inexplicable contradiction, a complete nonsense [*ein völliger Nonsens*].” Like the Allgemeine Kunst-Genossenschaft, the Royal Academy feared a domino effect if the ruling were to be upheld: “The consequence of these confiscations would logically be the closing of museums and the covering of public sculptures.”<sup>43</sup>

The Verein Berliner Künstler piled on ten days later with their own protest letter to the Prussian Minister of Culture: “A reproduction is nothing other than a true depiction and copy of an artwork itself. And that is willy-nilly supposed to turn a non-obscene artwork into an obscene one? It is supposed to be marked by obscenity, when the original itself is pure? It is supposed to have an effect directly contrary to that of the original? That can hardly be the case.” The missive argued that even though the postcards themselves were not immoral, they could be given an immoral gloss precisely by the fact of their being confiscated: “If such reproductions are banned, the populace [*Volk*] will consequently *search* for obscenity in all artworks that depict naked bodies. And once it has been established that people *search* for obscenity in a work that depicts a naked body, eventually that artwork itself will be deemed obscene and have to be banned.”<sup>44</sup> Here too, the artists argued that the logical conclusion would be the suppression of the original artwork.

The protests of all three organizations stressed an unbroken continuity between the original artwork and its various forms of reproduction: they contended that the artistry of the original could be transferred to its successive manifestations, right down to the

postcard. Conversely, if the lowly postcard was deemed obscene, its presumed obscenity could infect appreciation of the other forms of reproduction, right up to the original. But this concept of a two-way street was challenged by opponents of nude postcards (however artistic the originals might be), who argued that reproduction could indeed destroy the artistry of art. One particularly forceful argument was written by Karl Storck, the editor of *Der Türmer*, a conservative cultural journal. He contended that the contemporary age suffered from “a *vastly excessive overestimation of reproduction* [*maßlosen Ueberschätzung der Reproduktion*—italics in original] and we have long since succumbed to the danger of losing the ability to truly feel our way into an original work of art. ... Everyone who has anything to do with reproductions knows that endless trouble and care is needed to salvage even a portion of the personal qualities of an artwork into the reproduction. Let’s take as an example these color reproductions of masterpieces of painting. Hundreds of them are placed together on a single sheet and then produced as a mass printing in a machine-like manner. Nothing, absolutely nothing is salvaged from the original artwork, except for the basic motif and the crudest aspects of the artistic design.” Storck did not deny that reproductions might in principle be useful to students of art, “but today’s mass marketing, this reproduction-industry, is on the contrary *hostile to art*.” He proceeded to assert that the real reason that artists defended postcards was the fact that they earned considerably from their sale—often more than from the sale of the original work.<sup>45</sup>

Having tarred artists with the charge of acting in financial self-interest, Storck added further arguments about why “you should not assert that one is opposing *art* when one is attacking a *reproduction*.” In the process, he anticipated two important aspects of

Benjamin's "Artwork" essay. First, he asserted that "one of the most decisive conditions that influence a work of art is its *siting* [*Standort*]." But while Benjamin argued that by moving from cultic sites and museums into the everyday world, artworks acquired greater familiarity and utility, Storck asserted that that by entering the everyday world, art became subjected to the dictates of "popular morality" (*Volkssittlichkeit*)—a proposition to which even the ancient Greeks subscribed, according to the conservative editor.

Benjamin and Storck clearly had two contrary opinions of the nature of the *Volk*: whereas Benjamin regarded the populace as progressive, eager to adapt new technologies to its own democratic aspirations, Storck imagined the people as a bastion of profound moral conservatism, which had the desire and the right to impress its ethical values on all compatriots.

Storck's second assertion came much closer to Benjamin's argumentation: "It would undermine the value most inherent in an artwork to contend that a reproduction could have *the same artistic impact* as the original, especially a machine-made reproduction. That is also absolutely *excluded* even if the technology of reproduction is the most perfect imaginable, and if the work appears in the same size and the same technique as the original. One can audaciously assert that artworks for which that is not the case, i.e. which have the same impact as superficially exact reproductions as in their original form, have no value as expressions of artistic personality. Whoever contests that simply denies the *value of original art* and can only attribute a curiosity-value to an original work of art, based on the fact that it happens to come from the hands of an artist." In their different—but not too different—ways, Storck and Benjamin agreed that in a fundamental sense, art was no longer the same once technical reproduction became

prevalent. But they parted company regarding the import of that development: whereas Benjamin applauded the dissipation of “aura” concomitant with the loss of authenticity, Storck regarded it as the end of any and all “value” that art could possibly have.

The debate over the forty-three postcards even reached the Prussian parliament and the Reichstag. The protests lodged by artists were echoed by interpellations in the Prussian parliament, where the Prussian Minister of Justice was forced to take a stance. In internal correspondence, Beseler conceded to the Prussian Minister of Culture that the Berlin court’s ruling to destroy the postcards was probably unconstitutional.<sup>46</sup> But in front of the Prussian parliamentarians, he defended in principle the assault against nude art cards. He told a parliamentary commission that at a recent large art exhibition, nudes comprised only seven percent of the works displayed, but fully ninety-seven percent of the postcards of works from that show produced by a commercial manufacturer were nudes, almost all of them female.<sup>47</sup> Speaking before the full Prussian parliament, Beseler stated that he had nothing against selling artistic postcards per se, but he objected to the choice of motifs, the manner of display, and the sheer massification of images “when a whole row of nudes is displayed in stationery stores.” He reported that when an official asked a salesman why there were so many academic nudes and so few other artworks among the postcards, he was told: “well, I don’t earn anything from the other stuff [*ja, bei den anderen Sachen verdiene ich nichts*].” Beseler understandably concluded: “We have to look at things from a practical standpoint and tell ourselves: when these pictures are distributed in that manner, then it arouses very different feelings and passions than pure aesthetic pleasure.”<sup>48</sup> Predictably, his opinions were challenged by Social Democrats and left liberals (sessions of 5 and 10 February 1914), and the debate over the

confiscation of the forty-three postcards was echoed in the Reichstag as well (sessions of 17 and 18 February).

By the time that those debates were taking place, the Reichsgericht had already overturned the verdict of the lower court, which contended that every public display of nudity must be deemed obscene. The Reichsgericht noted how that view was contradicted by its previous rulings, and it made the obvious point—since it applied to many of the sculptures at issue—that “plastic works depicting uncovered human forms often are encountered in the public spaces of our big cities, and the general public is not offended by the fact that they can be viewed by youths and uneducated people, for whom nakedness is perhaps simply vulgar.” The high court contended that the latter attitude could not be decisive, otherwise “the placement of such plastic works in the open air and every use of them in gardens and on buildings would have to cease. That would be intolerable. [*Das wäre unerträglich.*]”<sup>49</sup> Like the artists, the high court feared that excessive prudery could spell the end of the public display of art. It therefore sent the case for retrial to another court in Berlin (i.e. one different from the court that had adjudicated the original case). There even the public prosecutor now pleaded for exoneration, and the postcards were vindicated.

Barely had that case been settled when an even greater battle began to brew in the Reichstag, where Catholic and conservative delegates—tired of pussyfooting by the courts—agitated for the passage of a so-called “display-window law” (*Schaufenstergestez*). Whereas those groups had learned from the Lex Heinze debacle that it would be difficult to amend the obscenity clause of the Penal Code, they now believed that they might accomplish much of what they wanted by adding the following

article to the Commercial Code: “Writings, pictures or plastic representations cannot be displayed in shop windows, within salesrooms or in public spaces if the manner of presentation causes offense by morally endangering youths.” The proposed punishment was a short jail term or fines up to three hundred marks.<sup>50</sup> In response to that legislative initiative, artists mobilized once again, and the Goethebund, which had been moribund for many years, sprang into action. At the Goethebund meeting in Berlin on 29 March 1914, the display-window law was branded as a new Lex Heinze. Ludwig Fulda, a famous author, claimed that it would open the door to a “high tide of denunciations” by moralistic busybodies. To counter those who claimed that art preserved its sanctity only within the walls of museums, Walter Bloem, the General Secretary of the Goethebund, contended that “the display window has become a cultural factor, a museum of the poor.”<sup>51</sup> Three days later Max Liebermann published a statement in a legal journal that replayed a major argument from the days of the Lex Heinze debate: by implying that nudity was immoral, the proposed law would foster “bad instincts.” Instead, children should become accustomed to seeing the naked human form, so that their “healthy instincts will not perceive anything lewd in the Venus de Milo. If someone’s perverse nature makes him physically excited by looking at her, then he’s not capable of any further corruption. Laws should not be made to protect the small minority prone to illness, but rather they should protect the pleasure in art and literature enjoyed by the thousand-fold greater mass of people with healthy instincts.”<sup>52</sup> The debate became moot, however, as war broke out before the law came to full debate in the Reichstag, and the proposal was shelved.

\* \* \*

After 1918, postcards depicting nudes by Great Masters and contemporary academic artists were the least of the worries of politicians, policemen, judges, and morality campaigners. When art did attract enough attention to be put on trial, it was people like George Grosz and Otto Dix that landed in the docks—artists in whose works the supposed *Lüsterheit* of academic nudes was superseded by a much more aggressive and grotesque sexuality. To be sure, morality campaigners continued to worry about the impact of prurient literature and pictures on adolescent minds and bodies, and in 1926 they finally achieved their goal when the Reichstag passed the “Schmutz-und-Schund Gesetz” (Smut and Trash Law). Thereafter, the government kept an “index” of publications which—even though they were not legally “obscene”—could not be openly displayed or advertised owing to their supposed propensity to corrupt youths.<sup>53</sup> That law was used rather sparingly in the last years of the Weimar Republic, mainly to harass soft-core pornography as well as gay and lesbian publications. It was resurrected with a vengeance in Adenauer’s Germany, when it became the major vehicle of censorship<sup>54</sup>—and, indeed, it continues to be so to this very day. In the debates over these later challenges to free expression, the specific issue of art and its technical reproduction became less pronounced and eventually disappeared entirely. Art still enjoys special protection under German law, but originality, authenticity, and *Ausstellungswert* are no longer at issue—perhaps because the predictions of Benjamin on the one hand, and of Storck and similar aesthetic conservatives on the other, came true: mass-produced art has indeed lost its aura, and the aesthetic idealism that informed the Imperial courtrooms died with it.

There had been, of course, one last, massive, horrific gasp of aesthetic idealism under the Third Reich. But Benjamin could challenge it only in exile, since Hitler's regime shattered the type of public debate, open political conflict, and judicial evolution characteristic of the Imperial era. Indeed, it was the "liberalism" of that former age, its *Öffentlichkeit* that allowed so many citizens to debate and to challenge the degree to which art itself could be *öffentlich*, that generated many of the elements of Benjamin's later thought. By the 1930s, however, he and his world faced concerns vastly different from those of the earlier age, and it was hardly surprising that he aimed his sights at fascist film and overlooked the postcards of his Berlin childhood.

<sup>1</sup> The title has been translated as “The Work of Art in the Age of Mechanical Reproduction,” in *Illuminations* (New York: Schocken, 1968), 217-251; and “The Work of Art in the Age of Its Technological Reproducibility,” in *Selected Writings* (Cambridge: Harvard University Press, 2003), 4: 251-283.

<sup>2</sup> Walter Benjamin, “Das Kunstwerk im Zeitalter seiner technischen Reproduzierbarkeit,” *Gesammelte Schriften* (Frankfurt am Main: Suhrkamp, 1974), I/2: 474-475, 479.

<sup>3</sup> Benjamin, “Kunstwerk,” 477.

<sup>4</sup> See Karin Walter, “Die Ansichtskarte als Massenmedium,” in Kaspar Maase and Wolfgang Kaschuba, eds., *Schund und Schönheit: Populäre Kultur um 1900* (Köln: Böhlau Verlag, 2001), 46-61.

<sup>5</sup> Walter Benjamin, “Berliner Kindheit um Neunzehnhundert,” in *Gesammelte Schriften* IV/1: 254.

<sup>6</sup> Ludwig Leiss, *Kunst im Konflikt: Kunst und Künstler im Widerstreit mit der “Obrigkeit”* (Berlin: Walter de Gruyter, 1971), 246-247. Leiss recounts a number of “Kunstkartenprozesse” on 245-267.

<sup>7</sup> In this essay, I normally translate “*unzüchtig*” as “obscene,” though sometimes I use “indecent” instead, depending on the context.

<sup>8</sup> Ruling of 16 February 1881 in *Entscheidungen des Reichsgerichts in Strafsachen* [hereafter: RGSt] 4: 87-91 (89); reaffirmed on 19 February 1883 in RGSt 8: 128-132 (130). I follow the standard convention for this source by citing the pages of the entire ruling, followed by the cited pages in parentheses.

<sup>9</sup> Ruling of 9 November 1893 in RGSt 24: 365-369 (365, 367-368).

<sup>10</sup> Ruling of 5 June 1882 in RGSt 6: 343-346 (344).

<sup>11</sup> Ruling of 4 April 1910 in RGSt 43: 329-332 (330, 331).

<sup>12</sup> RGSt 24: 365-369 (368).

<sup>13</sup> Note other uses of the word in German: *weihen* = to consecrate (a church, a priest, etc.); *Weihnacht* = “Holy Night” = Christmas.

<sup>14</sup> Johann Lazarus, *Das Unzüchtige und die Kunst. Eine juristische Studie für Juristen und Nichtjuristen* (Berlin: J. Guttentag, 1909), 61.

- 
- <sup>15</sup> *Stenographische Berichte über die Verhandlungen des Preußischen Hauses der Abgeordneten*, 13 January 1909, 951.
- <sup>16</sup> Cited in Leiss, *Kunst im Konflikt*, 259.
- <sup>17</sup> Hermann Roeren, *Die öffentliche Unsittlichkeit und ihre Bekämpfung* (Köln: J.P. Bachem, n.d. [1903]), 12.
- <sup>18</sup> For a comprehensive survey of the spread of pornography and the political, legal, and cultural responses, see Gary Stark, "Pornography, Society, and the Law in Imperial Germany," *Central European History* 14 (1981): 200-229.
- <sup>19</sup> Frank Wedekind, "Frühlings Erwachen" (1891 version), in *Werke: Kritische Studienausgabe* (Darmstadt: Häusser-media, 2000), 285-287. I have discussed *Spring Awakening* more generally in Peter Jelavich, "Wedekind's *Spring Awakening*: The Path to Expressionist Drama," in Stephen Bronner and Douglas Kellner, eds., *Passion and Rebellion: The Expressionist Heritage* (New York: Universe Books, 1983), 129-150; and Peter Jelavich, *Munich and Theatrical Modernism: Politics, Playwriting, and Performance, 1890-1914* (Cambridge: Harvard University Press, 1985), 74-99.
- <sup>20</sup> Benjamin, "Berliner Kindheit," 297.
- <sup>21</sup> On the Lex Heinze, see R.J.V. Lenman, "Art, Society, and the Law in Wilhelmine Germany: the Lex Heinze," *Oxford German Studies* 8 (1973): 86-113; Peter Mast, *Künstlerische und wissenschaftliche Freiheit im Deutschen Reich 1890-1901* (Munich: Schäuble Verlag, 1980), 139-190; and Wolfgang Hütt, *Hintergrund: Mit den Unzüchtigkeits- und Gotteslästerungsparagrafen des Strafgesetzbuches gegen Kunst und Künstler 1900-1933* (Berlin: Henschelverlag, 1990), 9-25, 81-103. On the murder trial of Anna and Hermann Heinze, see Benjamin Carter Hett, *Death in the Tiergarten: Murder and Criminal Justice in the Kaiser's Berlin* (Cambridge: Harvard University Press, 2004), 55-103.
- <sup>22</sup> *Stenographische Berichte über die Verhandlungen des deutschen Reichstags*, 6 February 1900, 4735-4736.
- <sup>23</sup> Rosa Luxemburg, "Die Bilanz der Obstruktion," *Die Neue Zeit* 18/2 (1899-1900): 280.
- <sup>24</sup> Thomas Mann, "Gladius Dei," in *Frühe Erzählungen 1893-1912* (Frankfurt am Main: Fischer Verlag, 2004), I: 222, 224, 228.
- <sup>25</sup> Mann, "Gladius Dei," 229.

---

<sup>26</sup> Mann, “Gladius Dei,” 232-235, 239, 242.

<sup>27</sup> Here I will refrain from entering the debate about whether Mann himself was anti-Semitic in the prewar years (though I believe that he was).

<sup>28</sup> Roeren, *Die öffentliche Unsittlichkeit*, 4, 5.

<sup>29</sup> Roeren, *Die öffentliche Unsittlichkeit*, 11, 13 (italics in original).

<sup>30</sup> Roeren, *Die öffentliche Unsittlichkeit*, 23.

<sup>31</sup> Roeren, *Die öffentliche Unsittlichkeit*, 25-27.

<sup>32</sup> Jelavich, *Munich and Theatrical Modernism*, 237-246, 251.

<sup>33</sup> Ruling of 24 November 1899 in RGSt 32: 418-421 (420).

<sup>34</sup> Ruling of 22 November 1904 in RGSt 37: 315-317 (316, 317) (italics in original).

<sup>35</sup> Reichsgericht ruling of 7 February 1911, reprinted in *Juristische Wochenschrift* 40 (1911): 501.

Since that ruling was not believed to have set any new judicial precedents or provide any new clarification of legal terms, it was not included in RGSt. That applies to all rulings that I cite from sources other than RGSt.

<sup>36</sup> Felix Hauptmann to Polizei-Präsidium Berlin, 22 February 1900, and Polizei-Präsident Windheim to Hauptmann, 25 February 1900, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 234-235.

<sup>37</sup> Cited in Leiss, *Kunst im Konflikt*, 259.

<sup>38</sup> See the cases listed in Leiss, *Kunst in Konflikt*, 250-265.

<sup>39</sup> Cited in “Kunst unter Anklage,” *Tägliche Rundschau*, 22 April 1914. At issue was a rug salesman in Wilmersdorf who placed in his display window a reproduction of Fenner-Behmer’s *Meißner Porzellan*, which portrayed a topless young woman drinking her morning coffee.

<sup>40</sup> Ruling of 12. Strafkammer, Landgericht I Berlin on 18 September 1913, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 298-302.

<sup>41</sup> Bruno Ablaß, in *Stenographische Berichte über die Verhandlungen des deutschen Reichstags*, 17 February 1914, 7401.

- 
- <sup>42</sup> Allgemeine Kunst-Genossenschaft, "Resolution, betreffend die Beschlagnahme von Postkarten," January 1914, send to Justizminister Beseler, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 283-286.
- <sup>43</sup> Kgl. Akademie der Künste Berlin to Minister der Geistlichen und Unterrichts-Angelegenheiten, 7 January 1914, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 287-293.
- <sup>44</sup> Verein Berliner Künstler to Minister für die geistlichen, Medizinal- und Unterrichts-Angelegenheiten, 17 January 1914, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 279-282.
- <sup>45</sup> Karl Storck, "Kunst und Staatsgewalt," in *Neue Preußische Zeitung* (a.k.a. *Kreuz-Zeitung*), 8 May 1914; it was reprinted from *Der Türmer*, which Storck edited.
- <sup>46</sup> Justizminister Beseler an den Minister der geistlichen und Unterrichtsangelegenheiten, 6 March 1914, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 356-357r.
- <sup>47</sup> Beseler's statements were cited before the full parliament by von dem Hagen, in *Stenographische Berichte über die Verhandlungen des Preußischen Hauses der Abgeordneten*, 4 February 1914, 1410-1411.
- <sup>48</sup> *Stenographische Berichte über die Verhandlungen des Preußischen Hauses der Abgeordneten*, 5 February 1914, 1465-1466.
- <sup>49</sup> Ruling of Reichsgericht on 10 February 1914, in Geheimes Staatsarchiv Berlin, I Ha Rep 76 Ve Sekt. 1 Abt. 1 Nr. 36 Bd. 1, f. 383-384.
- <sup>50</sup> See Dr. Lindenau, "Das Schaufenstergesetz," *Deutsche Juristen-Zeitung*, v. 19, n. 7 (1 April 1914), 472-475.
- <sup>51</sup> "Postkartenkundgebung des Goethebundes," *Tägliche Rundschau*, 30 March 1914.
- <sup>52</sup> Max Liebermann, "Das Schaufenstergesetz," *Deutsche Juristen-Zeitung*, v. 19, n. 7 (1 April 1914), 475-476.
- <sup>53</sup> See Wolfgang Petersen, *Zensur in der Weimarer Republik* (Stuttgart: Metzler, 1995), 56-67.
- <sup>54</sup> See Stephan Buchloh, "Pervers, jugendgefährdend, staatsfeindlich." *Zensur in der Ära Adenauer als Spiegel des gesellschaftlichen Klimas* (Frankfurt: Campus Verlag, 2002), 81-140.