

Negotiating Free Will: Hypnosis and Crime in Early Twentieth-Century Germany

In December 1894, the Upper Bavarian Jury Court debated the nature of free will. Ceslav Lubicz-Cynski, a Polish-born teacher, hypnotist, and magnetizer, stood accused of having unlawfully seduced Hedwig von Zedlitz, a “respectable” and “devout” Saxon baroness. According to the state prosecutor, Cynski had employed suggestion to bring about a state of abulia (*Willenlosigkeit*) in his victim. Lacking free will, Zedlitz could no longer resist the defendant’s advances. The court had to decide whether Cynski’s skill as a hypnotist was responsible for a sexual crime (*Verbrechen gegen die Sittlichkeit*) or whether Zedlitz had simply fallen for the man’s foreign good looks. The Cynski affair, as it would be sometimes called, was the first legal proceeding in Germany to adjudicate the power of hypnosis as a technique to suspend free will.¹

The history of free will has yet to be written. With few exceptions,² the literature on the subject is dominated by legal and philosophical works, most of which recount the ideas of prominent thinkers or discuss hypothetical questions far removed from specific historical contexts.³ The following paper seeks to redress the balance by tracing the debate on hypnosis

¹ Albert von Schrenck-Notzing, “Thatbestand. Nach vorliegenden Berichten bearbeitet von Dr. Freiherrn von Schrenck-Notzing“, in: *Der Prozeß Czynski. Thatbestand desselben und Gutachten über Willensbeschränkung durch hypnotisch-suggestiven Einfluß abgegeben vor dem oberbayerischen Schwurgericht zu München* (Stuttgart: Ferdinand Enke, 1895), pp. 1-44, here pp. 3-5. The Czynski case was commented on extensively in the United States, especially in connection with similar trials in Iowa and elsewhere. See Jean-Roch Laurence and Campell Perry, *Hypnosis, Will, and Memory. A Psycho-Legal History* (New York and London: The Guilford Press, 1988), p. 278.

² Mariana Valverde, *Diseases of the Will. Alcohol and the Dilemmas of Freedom* (Cambridge: Cambridge University Press, 2008); Roger Smith, *Free Will and the Human Sciences* (London: Pickering & Chatto, 2013).

³ See, for example, Ilham Dilman, *Free Will. An Historical and Philosophical Introduction* (London and New York: Routledge 1999); Gary Watson (ed.), *Free Will* (Oxford and New York: Oxford University Press, 2003); Robert Kane (ed.), *The Oxford Handbook of Free Will* (Oxford and New York: Oxford University Press, 2011); James A. Harris, *Of Liberty and Necessity. The Free Will Debate in Eighteenth-Century British Philosophy* (Oxford 2008); Michael Frede, *A Free Will. Origins of the Notion in Ancient Thought* (Berkeley, Los Angeles, and London: University of California Press, 2011); **Thomas Fuchs and Grit Schwarzkopf (eds.), *Verantwortlichkeit – nur eine Illusion?* (Heidelberg: Universitätsverlag Winter, 2010); Ernst-Joachim Lampe, Michael Pauen, and Gerhard Roth (eds.), *Willensfreiheit und rechtliche Ordnung* (Frankfurt am Main: Suhrkamp, 2008); Michael Pauen and Gerhard Roth, *Freiheit, Schuld und Verantwortung. Grundzüge einer naturalistischen Theorie der Willensfreiheit* (Frankfurt am Main: Suhrkamp, 2008).** For a philosophical account that incorporates history and fiction, see Peter Bieri, *Das Handwerk der Freiheit. Über die Entdeckung des eigenen Willens* (Munich: Hanser, 2001). **Hypnosis was not the only subject that raised**

from 1894, when the Upper Bavarian Court deliberated Czynski's culpability, to 1936, when the authorities considered a similar case in the Baden city of Heidelberg. Examining responses to hypnosis in this (and any other period) is tantamount to recording common understandings of autonomy and heteronomy, self-control and mind control, free will and automaticity.⁴ **The neurologists, psychiatrists, and jurists about to be examined put forward two distinct perspectives on the matter, both of which conformed with recognizable philosophical positions: one group warned that the hypnotic state threatened to undermine the self-control upon which middle-class identity rested; the other believed that men (and women) of a certain character would be able to withstand hypnosis on account of their free will. The popularity of the second judgement, it will be argued, owed much to the way in which it reassured middle-class sensibilities: those who had developed a morally sovereign personality would retain their free will, whereas those who had not done so would be helpless in the face of hypnotic suggestion.**

To this day, philosophers refer to hypnosis—alongside drug use, brain stimulation, and, archetypally, holding a gun to someone's head—as a means of removing the capacity for free will,⁵ although their allusions to hypnosis are usually based on older, very much disputed conceptions of the phenomenon.⁶ German observers in the early twentieth century were often

questions about the nature of free will. It would require a separate essay, however, to address the way in which experts discussed the relationship between, say, alcohol abuse and free will. As will become clearer in the following pages, the connection between middle-class values and the exercise of free will might be assumed to have influenced discourse on this matter as well.

⁴ See also Alison Winter, *Memory. Fragments of Modern History* (Chicago and London: Chicago University Press, 2012); Susan L. Carruthers, *Cold War Captives. Imprisonment, Escape, and Brainwashing* (Berkeley, Los Angeles, and London: University of California Press, 2009); Robert Genter, "'Hypnotizy' in the Cold War: The American Fascination with Hypnotism in the 1950s", in: *The Journal of American Culture* 29 (2006), pp. 154-169.

⁵ See Dilman, *Free Will*, p. 79; Alfred Mele, "Psychology and Free Will: A Commentary", in: John Baer, James C. Kaufman, and Roy F. Baumeister (eds.), *Are We Free? Psychology and Free Will* (New York: Oxford University Press, 2008), pp.325-346, here p. 327; Roderick M. Chisholm, „Human Freedom and the Self“, in: Watson, *Free Will*, pp. 26-37, here p. 27; Thomas Nagel, "Freedom", in: Watson, *Free Will*, pp. 229-256, here pp. 240-241; T. M. Scanlon, "The Significance of Choice", in Watson, *Free Will*, pp. 352-371, here pp. 355-356.

⁶ Daniel M. Wegner, *The Illusions of Conscious Will* (London and Cambridge, MA: MIT Press), p. 272; Kevin M. McConkey, "Generations and landscapes of hypnosis: questions we've asked, questions we should ask", in: Michael R. Nash and Amanda J. Barnier (eds.), *The Oxford Handbook of Hypnosis. Theory, Research, and Practice* (Oxford and New York: Oxford University Press, 2008), pp. 53-57, here p. 54; Burkhard Peter, "Therapeutisches Tertium und hypnotische Rituale", in: Dirk Revensdorf, Burkhard Peter (eds.), *Hypnose in*

beholden to such conceptions. Hypnosis was dangerous, they believed, precisely because it could surmount free will. Cunning hypnotists used suggestion to seduce innocent women or force hapless victims to commit crimes in a posthypnotic state. For others, by contrast, free will would invariably prevail, no matter how powerful the hypnotic suggestion. Given the nature of the question, with its wider moral and philosophical implications, the conflict caused divisions both within and without the professional fields of psychology, psychiatry, and law. Indeed, the discourse often centered on the perceived struggle, located within a particular “personality”, between an individual’s “character” or “soul” and the infiltration by a foreign or hostile force. While one group (henceforth called compatibilists) emphasized the resilience of the “moral inhibitions”, another group (henceforth called determinists) doubted that these were sufficient to withstand hypnosis.

As will be noted, the above terms relate to the current scholarship on free will, which tends to distinguish between determinists, indeterminists, and compatibilists. Determinists profess that “a complete statement of the laws of nature together with a complete description of the condition of the entire universe at any point in time logically entails a complete description of the condition of the entire universe at another point in time”.⁷ Put differently, determinists believe that every physical event is “*completely caused* by prior events together with the laws of nature”.⁸ Determinists rely heavily on natural science (Newtonian physics in the past, neuroscience more recently) as well as (social) psychology.⁹ Indeterminists dispute this view, either because they avow that nature works in a probabilistic rather than a deterministic fashion;¹⁰ or because they differentiate between reasons and causes;¹¹ or else because they

Psychotherapie, Psychosomatik und Medizin. Manual für die Praxis (Heidelberg: Springer Medizin Verlag, 2009), pp. 69-77; Burkhard Peter and Dirk Revenstorff, “Kontraindikationen, Bühnenshypnose und Willenlosigkeit”, in: idem., *Hypnose*, pp. 128-145, here p. 142.

⁷ Mele, “Psychology and Free Will”, p. 326.

⁸ Mark Balaguer, *Free Will* (Cambridge, MA and London: MIT Press, 2014), p. 12.

⁹ Mark Balaguer, *Free Will as an Open Scientific Problem* (Cambridge, MA: MIT Press, 2010); Alfred R. Mele, *Free. Why Science Hasn’t Disproved Free Will* (Oxford and New York: Oxford University Press, 2014).

¹⁰ Balaguer, *Free Will*, pp. 19-20; Carol S. Dweck and Daniel C. Molden, “Self-Theories: The Construction of Free Will”, in: Baer, Kaufmann, Baumeister, *Are We Free?*, pp. 44-64, here: p. 57-58.

believe in alternative possibilities (i.e. to act differently from the way one did) and therefore in free will. In the latter case they also call themselves libertarians.¹² Compatibilists are situated somewhere in between, arguing that determinism and free will do not contradict each other. Compatibilists usually define determinism as being governed by our *own* preferences, personalities, or characters. Indeed, if we wish acts to be *our* acts, compatibilists insist, they have to be determined by *us*. As long as behavior is unconstrained (by physical force from outside, for example), these acts are free.¹³

At first sight it would be reasonable to associate those who disputed the impact of hypnosis on free will with libertarianism rather than compatibilism. After all, the moral law, as defined by the most important German libertarian, Immanuel Kant, was to be unaffected by outside circumstances (i.e. the phenomenal world).¹⁴ But as my discussion will show, the issue was more complex than such a conflation would suggest. For in highlighting the significance of “personality”, the “compatibilists” were undermining the libertarian notion of an unencumbered mind freely willing rectitude, righteousness, and justice. Instead, they posited “characters” that had been socialized to either embrace or resist the allures of hypnotism. “Character”, it followed, determined the way in which persons responded to hypnosis, allowing for the compatibility of free will and determinism.

¹¹ Robert Kane, *A Contemporary Introduction to Free Will* (Oxford and New York: Oxford University Press, 2005), p. 53-54.

¹² Geert Keil, *Willensfreiheit* (Berlin and Boston: Walter de Gruyter, 2013), pp. 97, 107; Georg Mohr, “Welche Freiheit braucht das Strafrecht?”, in: Ernst Joachim Lampe, Michael Pauen, and Gerhard Roth (eds.), *Willensfreiheit und rechtliche Ordnung* (Frankfurt am Main: Suhrkamp, 2008), pp. 72-96, here p. 72.

¹³ Kane, *Free Will*, pp. 19, 93; Michael Pauen, “Freiheit, Schuld und Strafe”, in: Lampe, Pauen, and Roth, *Willensfreiheit*, pp. 41-71, here pp. 50-51; Bieri, *Das Handwerk der Freiheit*, pp. 52-53; Thomas Fuchs, “Personale Freiheit. Ein libertarisches Freiheitskonzept auf der Grundlage verkörperter Subjektivität”, in: Thomas Fuchs and Grit Schwarzkopf (eds.), *Verantwortlichkeit – nur eine Illusion?* (Heidelberg: Universitätsverlag Winter, 2010), pp. 203-228, here p. 219.

¹⁴ German thinking on free will was heavily indebted to Immanuel Kant’s libertarian concepts of autonomy and *Gesinnung* (good will). According to the philosopher, laws of nature were imposed upon us from outside, whereas obeying the moral law was to be self-legislating and therefore not subject to the constraints of space and time. Good will, Kant had affirmed, was responsible for moral action and impervious to external influence. This concept of *Gesinnung* had had a huge impact on the country’s legal system, permitting the state to combine Kant with the Christian concept of the fall of man (*Sündenfall*) to classify felons as moral sinners. Even the worst of circumstances, including abject poverty, could not detract from the will to do good or evil. See Peter Becker, *Verderbnis und Entartung. Eine Geschichte der Kriminologie des 19. Jahrhunderts als Diskurs und Praxis* (Göttingen: Vandenhoeck & Rupprecht, 2000), pp. 44-49, 366-367.

It would be equally reasonable to identify those who accentuated the dangers of hypnosis with compatibilism rather than determinism. Here too, however, the matter was not quite as straightforward as it might first seem. To be sure, the type of determinism I am about to elucidate stressed the impact of hypnosis on free will in a manner reminiscent of how “classic” compatibilists such as David Hume stressed the importance of external constraints on human freedom. According to this view, freedom is “the *absence of constraints* preventing us from doing what we want”. The difference between Hume and the determinists we are about to encounter is not only that the former was solely concerned with external constraints on freedom like “physical restraint (being in jail or tied up), coercion or threats (holding a gun to someone’s head), or physical disabilities (such as paralysis)”, whereas the latter contemplated constraints internal to human wills (of a psychological or psychiatric kind, such as addictions, obsessions, or delusions).¹⁵ The main difference is that for the determinists hypnosis was not simply a constraint that undermined the full exercise of freedom through physical coercion or by seriously affecting rational behavior. Instead, it had the force to extinguish the personality as such, invariably causing a certain kind of behavior to take place.

Setting the Scene: Czynski in Munich

Debates on the possibility of committing crimes under the influence of (post-) hypnotic suggestion had been heated ever since the 1880s, not least because of Jules Liégeois’ interventions. Nancy’s public prosecutor believed that “any individual placed in a somnambulistic state will become in the hands of the experimenter a complete automaton,

¹⁵ Kane, *Free Will*, pp. 93-94; Scanlon, “The Significance of Choice”, pp. 355-356; Roderick M. Chisholm, “Human Freedom and the Self”, p. 27; Jonathan Glover, *Alien Landscapes. Interpreting Disordered Minds* (Cambridge, MA: 2014), pp. 263-264

both morally and physically”.¹⁶ He therefore disseminated information on the dangers of “suggestive crime”, warning women to avoid the gaze of unknown men in train compartments lest the “weaker sex” succumb to the powers of “fascination”. The French administrative lawyer also recommended that exceptionally suggestible women be “morally immunized” against hypnosis—whether he was aware of the irony that this “vaccination” was to be achieved through suggestion is another matter. Either way, the media coverage on trials related to “rape” as a result of “psychic slavery” and “sexual dependence” was extensive, not least in the Bavarian capital in late 1894.¹⁷

According to various press accounts of the trial, Baroness von Zedlitz had been suffering from severe head- and stomachaches when she responded to a newspaper ad by the “healer” Czynski. Zedlitz and Czynski became intimate during the course of the treatment. Czynski asked that their subsequent engagement be kept secret from either side’s relatives, ostensibly because he belonged to a princely Lithuanian family that would not appreciate such news. Eventually, Zedlitz’s brother and father got wind of the marriage. Czynski was arrested and put on trial for forcing his “wife” into a state of abulia (*Willenlosigkeit*). Lacking free will, the public prosecutor argued, Zedlitz had become the victim of sexual abuse.¹⁸

During the proceedings, the court sought to identify the methods by which Czynski had gained control over the baroness’s psyche. There was talk of magnetic passes, mediumism,

¹⁶ Quoted in Laurence and Perry, *Hypnosis, Will, and Memory*, p. 204. For similar debates in Europe, see, for example, Ruth Harris, *Murders and Madness. Medicine, Law, and Society in the Fin de Siècle* (Oxford: Oxford University Press, 1989); Daniel Pick, *Svengali’s Web. The Alien Enchanter in Modern Culture* (New Haven and London: Yale University Press, 2000); Clara Gallini, *La sonnambula meravigliosa. Magnetismo e ipnotismo nell'Ottocento italiano* (Rome: L’Asino d’oro edizioni, 2013); Gauld, *Hypnotism*, chapter 22.

¹⁷ Manfred Dierks, *Thomas Mann Geisterbaron. Leben und Werk des Freiherrn Albert von Schrenck-Notzing* (Gießen: Psycho-Sozial, 2012); Albert Moll, *Der Hypnotismus mit Einschluß der Psychotherapie und der Hauptmerkmale des Okkultismus* (Berlin: H. Kornfeld, 1924); Karl von Lilienthal, “Der Hypnotismus und das Strafrecht”, in: *Zeitschrift für die gesamte Strafrechtswissenschaft* 7 (1887), pp. 281-394, here pp. 346-347; August Forel, *Der Hypnotismus oder die Suggestion und die Psychotherapie. Ihre psychologische, parapsychologische und medizinische Bedeutung* (Stuttgart: Ferdinand Enke, 1911), pp. 269-270. The book was first published in 1889.

¹⁸ Schrenck-Notzing, “Thatbestand”, pp. 4-5. Schrenck-Notzing quoted from the *Augusburger Abendzeitung* and Munich’s *Neueste Nachrichten*.

somnambulism, and disease transfer. The defendant repeatedly denied having hypnotized the injured party. It further transpired that the latter had been interested in spiritism. Zedlitz made conflicting statements. While she claimed to have married Czynski “so as to save his soul”, her decision to tie the knot also gave rise to feelings of being under his “ever-growing influence” (which she also attributed to his strong love for her).¹⁹ In the end, the public prosecutor failed to convince the jury. Czynski was acquitted of committing a sexual crime (*Verbrechen gegen die Sittlichkeit*) and sentenced to three years in prison for falsifying documents and soliciting the unlawful assumption of a public office during the wedding ceremony.²⁰

The trial gave the expert witnesses the opportunity to address the nature of hypnosis. Their observations, which were later published in book form, provide a glimpse of what future debates would revolve around, namely the power of hypnosis over different types of people (i.e. hypnotizability or suggestibility) and the impact of hypnosis on morality (i.e. free will). Three of the four commentators were convinced that Czynski had hypnotized Zedlitz, although as we now know the jury refused to uphold their recommendations. None of the commentators were straightforward determinists or libertarians.

Professor William Preyer, editor of James Braid’s works in German translation,²¹ was the most outspoken determinist in the group. A well-known expert on child psychology, the former professor of psychiatry at the University of Jena conjured up the image of Czynski as a master hypnotist who managed to “fascinate” Zedlitz through his “dark eyes” and “manner of speaking”.²² Still, Preyer described the baroness as an “emotional person” (*Gefühlsmensch*) lacking will and intellect (*Verstand*). In fact, due to her substandard power of volition and

¹⁹ Ibid., pp. 9, 15, 16.

²⁰ Ibid., p. 44.

²¹ James Braid coined the term hypnotism and challenged the fluidist position whereby a universal fluid or medium brought about a hypnotic state. He also laid claim to the invention of induction through eye fixation. See Judith Pintar and Steven Jay Lynn, *Hypnosis. A Brief History* (Chichester: Wiley-Blackwell, 2008), pp. 43-46; Alan Gauld, *A History of Hypnotism* (Cambridge: Cambridge University Press, 1992), pp. 279-288.

²² W. Preyer, “Aerztliches Gutachten”, in: *Der Prozeß Czynski*, pp. 90-102, here pp. 94, 95.

poor judgement, he felt compelled to call her “somewhat inferior” (*etwas minderwertig*).²³ In other words, as much as hypnosis was a powerful means to paralyze the will, it seemed to work better with some persons than others.

Hubert von Grashey, former professor of psychiatry in Würzburg and Bavaria’s senior medical officer (*Obermedicinalrat*), offered a similarly deterministic account of the events. Yet he too qualified his stance by referring to the limitations of hypnosis, admitting, for example, that increasing the number of hypnotic sessions (called *Dressur* or memory training elsewhere) increased the likelihood of suggestibility.²⁴ Likewise, he repeatedly appealed to the accumulated experience (*Erfahrungsschatz*) of each person. Under normal circumstances (i.e. in a waking state), this know-how would produce “counter perceptions” (*Gegenvorstellungen*) capable of withstanding immoral propositions.²⁵ Nevertheless, Grashey made no bones about the general power of hypnosis, regardless of its relative depth or one’s *Erfahrungsschatz* in the waking state. During trance, when the hypnotist assumed absolute control over the hypnotisand, “counter-perceptions” no longer succeeded. Indeed, all it took was a “single word” or “single gaze” for a medium to fall asleep. In the case of Baroness von Zedlitz, Czynski had evidently used certain terms (of an occult nature) and certain objects (primarily amulets) to induce hypnotic states, which, in turn, necessitated his “victim” to fall in love with him. In short, everything Zedlitz had purportedly done “out of love” was in reality the result of the diminution of her will.²⁶

Ludwig Hirt, a former student of Jean-Martin Charcot’s in Paris and professor of neurology in Breslau,²⁷ questioned these interpretations of the Czynski case. Hirt explained that hypnosis was a technique that had to be studied carefully and developed over time. While he agreed

²³ Ibid., pp. 98, 99.

²⁴ Professor Dr Grashey (Obermedicinalrath), “Aerztliches Gutachten”, in: *Der Prozeß Cynski*, pp. 45-58, here p. 47.

²⁵ Ibid., pp. 47-48.

²⁶ Ibid., pp. 48, 52, 53, 57.

²⁷ Alma Kreuter, *Deutschsprachige Neurologen und Psychiater. Ein biographisch-bibliographisches Lexikon von den Vorläufern bis zur Mitte des 20. Jahrhunderts* (Munich: K. G. Sauer, 1996), p. 578.

with Grashey that repeated drill (*Dressur*) improved the chances of success, he insisted that only deep trance ensured a genuine susceptibility to suggestion.²⁸ Despite his training in the French capital, Hirt did not embrace the Charcotian standpoint that hypnosis worked predominantly with (hysterical) women, a stance that Preyer's and Grashey's gendered language implied. Rather, he adopted the approach connected with Bernheim, Charcot's main rival. According to the founder of the School of Nancy, docile and compliant persons such as soldiers and servants were particularly vulnerable to suggestion.²⁹ Hirt was convinced that individuals who had learned "not to think" and to "obey orders" were easier to hypnotize than most people. Since woman seldom served in the army, for example, they were less likely to respond to suggestion.³⁰ The fact that many women served their husbands or worked as domestics in other households presumably did not count as the sort of submissiveness Hirt had in mind.

Even so, conflicting theories on suggestibility were not his primary concern. The Breslau psychiatrist told the court that love, pure and simple, accounted for the relationship between Czynski and Zedlitz. The middle-aged baroness, inexperienced with men, had merely capitulated to the "Mephistophelian" charms of the Polish marriage swindler, Hirt asserted. Had she been 14 and not 39 years of age, Czynski would now be sent to jail. But to reason that the affair revealed something criminal or pathological meant that any behavior intended to "make a girl and a woman (*Weib*) more generally fall in love" would soon become illegal. The state Zedlitz had found herself in reminded Hirt of Gretchen's lament at the spinning wheel from Goethe's *Faust*—and not some devious plot to deny Zedlitz her free will with the assistance of hypnotic procedures: "My poor, poor head/ Is all a-craze,/ And my poor wits/ All

²⁸ Professor Hirt (Breslau), "Aerztliches Gutachten", in: *Der Prozeß Czynski*, pp. 59-66, here p. 61. In this respect he agreed with Liébeault and Bernheim (against Liégeois) that very few persons could pure automata in the hands of a hypnotist. See Laurence and Perry, *Hypnosis, Will, and Memory*, p. 203.

²⁹ Hippolyte Bernheim, *Die Hypnose und ihre Heilwirkung* (Leipzig and Vienna: Franz Deuticke, 1888), p. 121.

³⁰ Hirt, "Aerztliches Gutachten", p. 61.

in a maze.” And: “To see him only/ At the window I stay,/To meet him only/From home I stray.”³¹

The physician, psychotherapist, and parapsychologist Albert von Schrenck-Notzing was certainly the most prominent specialist to comment on the case. The co-founder of the Munich Psychological Society in 1886, Schrenck was not only one of Germany’s best-known medical hypnotists, but also a socialite who invited the city’s *Honoratioren* to psychic experiments that doubled as fashionable soirées. Upon discovering his skills as a hypnotist, Schrenck had come to believe that he was capable of “curing” homosexuality and “undoing” the effects of suggestion through counter-suggestion.³² His expert opinion during the trial betrayed both a belief in the immense potential of hypnosis and the resolve to sustain a common morality. Unlike the other experts, however, he spelled out these contradictory elements in his expert opinion to the court.

On the one hand, Schrenck acknowledged the power of suggestion. Like Grashey, he spoke of the way in which hypnotic *Dressur* could weaken and ultimately overcome “ethical feelings” (*sittliches Gefühl*), not least in connection with the “drives”, where it proved especially effective in surmounting “the resistance against sexual temptations”.³³ Von Zedlitz had therefore been “artificially (through hypnosis, the aftermath of hypnosis, and suggestion in a waking state) prevented from exercising her otherwise highly developed moral counter conceptions (*Gegenvorstellungen*)”.³⁴ On the other, he relativized the extent to which suggestions of a “disagreeable” (*unsympathisch*) and “immoral” nature might hold sway over human beings, insisting that a person’s entire upbringing—and, in the case of the baroness,

³¹ *Ibid.*, pp. 62, 64. The quote is from page 64.

³² Corinna Treitel, *A Science for the Soul. Occultism and the Genesis of the German Modern* (Baltimore and London: Johns Hopkins University Press, 2004), pp. 43-45; Manfred Dierks, *Thomas Mann Geisterbaron. Leben und Werk des Freiherrn Albert von Schrenck-Notzing* (Gießen: Psycho-Sozial Verlag, 2012), pp. 80-81; Timon L. Kuff, *Okkulte Ästhetik. Wunschfiguren des Unbewussten im Werk von Albert von Schrenck-Notzing* (Gießen: Psychosozial-Verlag 2011), p. 101; Heather Wolfram, “Parapsychology on the Couch: The Psychology of Occult Belief in Germany, C. 1870-1939”, in: *Journal of the History of the Behavioral Sciences* 42 (2006), pp. 237-260, here p. 247.

³³ Schrenck-Notzing, “Aerztliches Gutachten”, in: *Der Prozeß Czynski*, pp. 67-90, here p. 72.

³⁴ *Ibid.*, p. 87.

decades of “cultivated ethical counter conceptions of normal individuality”—could not be so easily uprooted.³⁵ As a result, a struggle would ensue, the outcome of which depended on the “strength of the counter forces in comparison with the psychological force of the immoral intervention”.³⁶ Schrenck-Notzing found it difficult to take sides. Although he sympathized with the determinists’ appreciation of hypnotic power, he wished to establish a much of stronger role for what Grashey had called *Erfahrungsschatz* and what later commentators would call the “moral inhibitions”. It was for this reason that he invoked an imaginary battle within the psyche, setting two formidable adversaries against each other and envisaging “free will” as the exercise of a steadfastness grounded in ethical values accrued over a lifetime. Schrenck-Notzing’s battle metaphor pointed to future compatibilist arguments regarding free will and hypnosis. Grashey and Preyer, on the other hand, were determinists in the face of what they perceived to be the psychological constraints imposed on the “victims” of hypnosis. Once in place, these constraints functioned like a natural law, resembling the automaticity that current determinists associate with the workings of the unconscious.³⁷ There was no room for libertarianism in these debates, however. Even specialists less perturbed by hypnotic power, such as Hirt, distinguished between simple “fascination” and “serious” deep trance.

Compatibilism, Determinism, and Hypnotic Crime

These debates intensified in the late Wilhelmine Empire and even more so in the Weimar Republic. At a time when an “occult fever” was supposedly engulfing German society,³⁸ the

³⁵ *Ibid.*, pp. 68-69.

³⁶ *Ibid.*

³⁷ John F. Kihlstrom, “The Automaticity Juggernaut—or, Are We Automats After All?”, in: Baer, Kaufman, Baumeister, *Are We Free* pp. 155-180.

³⁸ E. Trömmel, *Hypnotismus und Suggestion* (Leipzig and Berlin: B. G. Teubner, 1922), p. 1; Barbara Wolf-Braun, “ ‘Was jeder Schäferknecht macht, ist eines Arztes unwürdig’. Die Geschichte der Hypnose im wilhelminischen Kaiserreich und in der Weimarer Republik (1888-1932)”, in: *Hypnose und Kognition* 17 (2000), 135-152. For the postwar revival of the occult, see also Jay Winter, *Sites of Memory, Sites of Mourning. The Great War in European cultural history* (Cambridge: Cambridge University Press, 1995).

relationship between hypnosis and crime consumed the nation in two separate areas: in the first, state authorities and the police began to resort to unorthodox methods (so-called “criminal telepathy”) by employing clairvoyants in the fight against crime. Many of these men and women with “paranormal” abilities relied on hypnosis to bring about their telepathic states.³⁹ In the second, a number of high-profile court cases involved claims about hypnotic influence, the most famous of which centred on the sexual exploitation of a chambermaid by a writer and hypnotist.⁴⁰

Much of this discourse turned on the question of free will and, more specifically, on the likelihood of hypnosis doing away with free will altogether. Before I outline the differences between compatibilists and determinists, mention must be made of a smaller group that neither espoused the optimism characteristic of the compatibilists nor the pessimism common to most determinists. Schrenck-Notzing belonged to this group. His battle metaphor drew heavily on Auguste Forel’s *Der Hypnotismus*, whose language he employed liberally. Schrenck, Forel, and the Bavarian magistrate Alois Heberle, amongst others, displayed a sense of uncertainty as to the power of hypnosis.⁴¹ Forel, Switzerland’s most famous psychiatrist and one the leading scholars in the field, wrote about an “intense struggle between the urge (*Drang*) of the suggestion on the one hand and the aesthetic or moral

³⁹ Heather Wolfram, “Crime, Clairvoyance and the Weimar Police”, in: *Journal of Contemporary History* 44 (2009), pp. 581-601; Uwe Schellinger, “Trancemedien und Verbrechensaufklärung. Die ‘Kriminaltelepathie’ in der Weimarer Republik”, in: Marcus Hahn and Erhard Schüttpelz (eds.), *Trancemedien und Neue Medien um 1900. Ein anderer Blick auf die Moderne* (Bielefeld: transcript, 2009), pp. 311-339; idem., “Kriminaltelepatie”, in: Gerhard Mayer, Michael Schetzsche, Ina Schmied-Knittel, and Dieter Vaitl (eds.), *An den Grenzen der Erkenntnis. Handbuch der wissenschaftlichen Anomalistik* (Stuttgart: Schattauer, 2015), pp. 215-227.

⁴⁰ Andreas-Holger Maehle, “The powers of suggestion: Albert Moll and the debate on hypnosis”, in: *History of Psychiatry* 25 (2014), pp. 3-19; Reginald Klan, *Der Mißbrauch der Hypnose. Zur historischen Diskussion um die forensische Bedeutung der Hypnose und ihre möglichen strafrechtlichen Implikationen, nebst einem Falle aus der gerichtsmedizinischen Praxis* (Mainz: Dissertation, 1981).

⁴¹ For other members of this “group”, see Hellmut Ivers, *Die Hypnose im Deutschen Strafrecht* (Reihe: Kriminalistische Abhandlungen der Universität Leipzig) (Leipzig: Ernst Wiegand 1927), pp. 26, 67; Max Kauffmann, *Suggestion und Hypnose. Vorlesungen für Mediziner, Psychologen und Juristen* (Berlin: Julius Springer, 1920), pp. 5, 30, 59-60, 117; Paul Engelen, *Suggestion und Hypnose* (Munich: Verlag der Ärztlichen Rundschau Otto Gmelin, 1922), pp. 24-25, 38, 40. It is not always clear whether the discussion referred to hypnosis as a procedure (induction and suggestion) or hypnosis as a product (alteration in perception, involuntariness). For these differences see Barnier and Nash, “Introduction: a roadmap for explanation, a working definition”, in: idem., *Oxford Handbook*, pp. 1-18, and John F. Kihlstrom, “The domain of hypnosis, revisited”, in: Barnier and Nash, *Oxford Handbook*, pp. 21-52.

counter-perceptions of normal individuality, that is, the inherited and the acquired brain dynamics (*Hirndynamismen*) on the other”. Whoever had a less developed conscience than the rest of the population was bound to find it easier to abide by “criminal suggestion”.⁴² At the same time, Forel mentioned somnambulists who were highly hypnotizable and who were unable to resist any form of hypnotic suggestion. Some of these persons, he added, were “pretty decent characters” (*recht ordentliche Charaktere*).⁴³

Heberle, a lawyer from the south German city of Passau, was similarly undecided. A critic of Cesare Lombroso’s deterministic theory of degeneration (which threatened to erode moral responsibility and free will),⁴⁴ Heberle resorted to the familiar trope of a battle waged between two equally mighty contenders, the suggestion to sleep emanating from without and the autosuggestion not to sleep emanating from within.⁴⁵ Like Forel and Schrenck-Notzing, he insisted that the degree to which a criminal would succeed with his hypnotic suggestions would depend on the moral character of the potential medium. The more drill (*Dressur*) was involved, the likelier the surrender to the evildoer.⁴⁶ All three commentators were therefore ambivalent about the abuse of hypnosis in a criminal setting. As much as they held on to the notion that moral standards could *underwrite* free will, they simultaneously feared that hypnosis could *undermine* these moral standards and, by implication, free will. Forel conducted oft-quoted experiments to prove this point.⁴⁷ Such ambivalence, however, was much less common after the First World War, whether in the Weimar Republic or the Third Reich.

⁴² Forel, *Der Hypnotismus*, p. 274.

⁴³ *Ibid.*, p. 277.

⁴⁴ M. A. Heberle, *Hypnose und Suggestion im deutschen Strafrecht. Eine Studie* (Munich: J. Schweitzer, 1893), p. 13. On Lombroso, see Daniel Pick, *Faces of Degeneration. A European Disorder, c. 1848-c. 1918* (Cambridge: Cambridge University Press, 1989); David G. Horn, *The Criminal Body. Lombroso and the Anatomy of Deviance* (London: Routledge, 2003); Peter Strasser, *Verbrechermenschen. Zur kriminalwissenschaftlichen Erzeugung des Bösen* (Frankfurt am Main and New York: Campus, 2005).

⁴⁵ Heberle, *Hypnose und Suggestion*, p. 17.

⁴⁶ *Ibid.*, pp. 31, 33.

⁴⁷ Forel, *Hypnotismus*, pp. 275-276.

The compatibilists focused on the authority of the inhibitions (*Hemmungen*) and counter-perceptions (*Gegenvorstellungen*), both of which, they believed, comprised the average middle class “character” as a kind of “overall matrix or frame of personal being”.⁴⁸ Before they could do so, however, they often felt obliged to dismiss the pervasive concern that hypnosis was responsible for all kinds of illicit acts.⁴⁹ Since the Czynksi affair of the mid-1890s, sexual assaults on ill-fated women had been the most talked-about “hypnotic crime”, possibly because few if any other cases had come to light that would have “documented” further offenses at the hands of master hypnotists.⁵⁰ But now, at a time when films such as *Das Cabinet des Dr. Caligari* or *Mabuse, der Spieler* captivated (and, as some critics warned, mesmerized) cinema-goers,⁵¹ there was an urgent need to dispel the “misunderstanding” that hypnosis wielded colossal power.

So compatibilists maintained that “hypnosis” was used as a pretext to explain events that could otherwise not be accounted for;⁵² that, more concretely, it figured as an excuse for compulsive sexual acts (*Triebhandlungen*) that were embarrassing to admit, either because they seemed to disclose a depraved mind or because they could not be imagined to exist in the persons one loved;⁵³ and, finally, that when women or their husbands complained that they or their wives had been hypnotized, they often mistook hypnosis for sexual dependence

⁴⁸ Jerrold Seigel, *Modernity and Bourgeois Life. Society, Politics, and Culture in England, France, and Germany since 1750* (Cambridge: Cambridge University Press, 2012), p. 344.

⁴⁹ This scepticism vis-à-vis the determinists has been analysed in Anthony D. Kauders, “Verführung, Hingabe, Auftrag: Hypnose und Verbrechen nach dem Ersten Weltkrieg”, in: *Hypnose. Zeitschrift für Hypnose und Hypnotherapie*, Vol. 10 (2015), pp. 63-80.

⁵⁰ As was mentioned time and again, the recorded instances of hypnotic crime were few and far between and those that ended up in court always involved sexual crimes. See, for example, Moll, *Hypnotismus*, p. 498. Willy Vorkastner, “Die forensische (strafrechtliche) Bedeutung der Hypnose”, in: *Archiv für Psychiatrie und Nervenkrankheiten* 73 (1925), pp. 461-481, here p. 468.

⁵¹ Stefan Andriopoulos, *Possessed. Hypnotic Crimes, Corporate Fiction, and the Invention of Cinema* (Chicago and London: The University of Chicago Press, 2008); Andreas Killen, “Weimar Cinema between Hypnosis and Enlightenment”, in: Michael Laffan and Max Weiss (eds.), *Facing Fear. The History of an Emotion in Global Perspective* (Princeton and Oxford: Princeton University Press, 2012), pp. 91-113.

⁵² Vorkastner, “Bedeutung der Hypnose”, pp. 465-466.

⁵³ Hans Bürger-Prinz, “Verbrechen in Hypnose? Fragen und Anmerkungen zu dem Buch von Ludwig Mayer”, in: *Monatsschrift für Kriminalbiologie und Strafrechtsreform* (1938), pp. 194-198.

(*Hörigkeit*), infatuation, or fascination.⁵⁴ In short, whenever Germans blamed hypnosis for these and other ills, they were giving in to what later historians would call “hypnotizzy”, rather than experiencing actual hypnotic suggestion.⁵⁵

Whatever the power of hypnosis, the “personality” or “character” of the average German usually sufficed to counteract suggestions that disagreed with the moral code of the individual in question. What is more, this personality was the very *reason* for being able to exercise free will in the first place. If the character did not conform to the standards of bourgeois probity, however, then the hypnotist could do his (it was always a male) malevolent work. None the less, he could do so not because of the hypnotic suggestion itself, but because of the existence of an inferior character. Put differently, just as free will vis-à-vis hypnosis was present in the case of morally upright mediums, so too was the absence of free will already in place in the case of morally corrupt mediums. Compatibilists assumed that, at one point in time, characters had been formed and could no longer be altered. But the dispute among philosophers as to the free will that went into *forming* these characters did not perturb them. Whether free actions were always implicated during the process of becoming who one was did not matter.⁵⁶ On the contrary, when confronted with the subject of hypnotic power, the compatibilists assumed that being good was *synonymous* with free will, as the ethical person could decide between accepting the criminal suggestion or not, whereas the unethical person did not enjoy this choice at all. In other words, the unethical person, however much he may have had the opportunity to make certain choices *in the past*, was now a helpless automaton insofar as he acted upon a foreign will.

⁵⁴ Johannes Kirchhoff, “Ein forensischer Beitrag zum Problem von Suggestion und Hörigkeit, in: *Zeitschrift für die gesamte Neurologie und Psychiatrie*” 178 (1944), pp. 13-51, here p. 48. See also Hans W. Gruhle, “Die Verwendung der Hypnose und die Mitwirkung von Medien in der Rechtspflege”, in: *Zeitschrift für die gesamte Neurologie und Psychiatrie* 82 (1923), pp. 82-92, here p. 82.

⁵⁵ On “hypnotizzy”, see Alison Winter, *Memory. Fragments of Modern History* (Chicago and London: Chicago University Press, 2012), p. 103; Robert Genter, “ ‘Hypnotizzy’ in the Cold War: The American Fascination with Hypnotism in the 1950s”, in: *The Journal of American Culture* 29 (2006), pp. 154-169.

⁵⁶ On this see Kane, *Free Will*, pp. 121-122, 128; Gustav Aschaffenburg, *Das Verbrechen und seine Bekämpfung* (Heidelberg: Carl Winter’s Universitätsbuchhandlung 1906), p. 211.

This perspective anticipated Harry Frankfurt's distinction between first-order and second-order desires. Frankfurt discriminated between someone having the intention to perform a given action but then doing something different despite her erstwhile intention. In this instance she decided as a result of a second-order desire or a volition of the second-order. For the American philosopher, having such volitions was the equivalent of being a person. Creatures lacking such desires he called wantons. As he put it, the "essential characteristic of a wanton is that he does not care about his will. His desires move him to do things, without its being true of him either that he wants to be moved by those desires or that he prefers to be moved by other desires." So the difference between a person and a wanton is that where the person is moved to act either by a will she wants or by a will she does not want, the wanton does not reflect on the whether his will is the will he wishes to act upon.⁵⁷

The group that championed a Frankfurt-like approach in the post-war period included lawyers, doctors, hypnotists, and psychiatrists. More importantly, their writings appeared before and after 1933, indicating that National Socialism in power did little to alter fundamental positions on the matter. Let me begin with the writer and lay hypnotist Paul Friede, for whom the "core of the soul" was "unswayable" (*unbeeinflussbar*).⁵⁸ Writing in the early 1920s, Friede explained that suggestions during hypnosis resembled the "extraction" of ideas, perceptions, and thoughts that already existed in the unconscious. It followed that hypnotists and psychotherapists relied on the "essence of this unconscious", whose contents they could bring to light, but never manipulate or overcome.⁵⁹ What would happen to the drives, impulses, and appetites uncovered during hypnosis depended solely on the patient. Since most ethical human beings could call upon a host of "inhibitions" (*Hemmungen*) to rein in their drives, there was no danger in succumbing to the malicious intent of real or imagined

⁵⁷ Harry Frankfurt, "Freedom of the Will and the Concept of a Person", in: Watson, *Free Will*, pp. 322-336, here pp. 325, 327-328, 330. For a similar approach based on the concept of self-regulation, see Roy F. Baumeister, "Free Will, Consciousness, and Cultural Animals", in: Baer, Kaufmann, Baumeister, *Are We Free?*, pp. 65-85, here p. 71.

⁵⁸ Paul Friede, *Hypnose und Verbrechen* (Kempten: Gesellschaft für Bildungs- und Lebensreform, 1924), p. 38.

⁵⁹ *Ibid.*, p. 19.

criminal masterminds. Suggestions would only be accepted, the author noted, if they corresponded to the innermost contents of the medium's "soul" (*Seeleninhalt*).⁶⁰ Friede was convinced that every "normal person endowed with moral inhibitions" would refuse to carry out any act that he or she found unjust.⁶¹

It appears that Friede was the only figure to locate the "moral inhibitions" in the unconscious, although his conception of the unconscious derived not from Freud, but from Max Dessoir's *Doppel-Ich*, where hypnosis and the unconscious are analogous and where the latter is hardly associated with morality.⁶² Most like-minded scholars did not attempt to discriminate between components of the psyche, being primarily interested in publicizing the significance of free will irrespective of where it might be situated.⁶³

Writing at about the same time as Friede, the well-known Freiburg neurologist and psychiatrist Adolf A. Friedländer averred that hypnosis did not threaten a person's "character", "fundamental ethical foundations" (*sittliche Grundbegriffe*), or "world view" (*Weltanschauung*).⁶⁴ This statement applied to the morally steadfast and morally degraded alike. As was common during this time, Friedländer appealed to a tradition reaching back at least to Hippolyte Taine's *The Origins of Contemporary France* and Gustave Le Bon's *The Crowd*, where the unconscious was not mentioned in name but existed in the "wild forces of nature" released during the events of the French Revolution and the Paris Commune. The discharge of these wild forces, Le Bon had warned time and again, often depended on the

⁶⁰ Ibid., p. 28.

⁶¹ Ibid., p. 21.

⁶² Ibid., p. 19; Max Dessoir, *Das Doppel-Ich* (Leipzig: Ernst Günthers Verlag, 1890), p. 29. For a contemporary critique of Dessoir, see Leopold Loewenfeld, *Hypnotismus und Medizin. Grundriss der Lehre von der Hypnose und der Suggestion mit besonderer Berücksichtigung der ärztlichen Praxis* (Munich and Wiesbaden: J. F. Bergmann, 1922), p. 85. Another commentator, the jurist Walter Weniggensen, tried to distinguish between a conscious that could resist hypnosis and an unconscious that could not, but admitted that it may be possible for "counter perceptions" to "enter" the unconscious", in such cases precluding sexual crimes. Walter Weniggensen, *Strafbare Handlungen unter hypnotischem Einfluß und ihre Aufklärung* (Cologne: Max Welzel, 1935), pp. 37-39.

⁶³ See, for example, Kauffmann, *Suggestion und Hypnose*, pp. 30-31; Hans W. Gruhle, "Die Verwendung der Hypnose und die Mitwirkung von Medien in der Rechtspflege", in: *Zeitschrift für die gesamte Neurologie und Psychiatrie* 82 (1923), pp. 82-92, here p. 84.

⁶⁴ A. A. Friedländer, "Hypnose und Rechtspflege. Ein volkshygienisches Mahnwort über die Gefahren der Hypnose", in: *Zeitschrift für die gesamte Neurologie und Psychiatrie* 83 (1923), pp. 325-383, here p. 366.

skills of dubious figures.⁶⁵ In a similar vein, Friedländer believed that it did not require hypnosis for the masses to be “inflamed”, approximating as they did the emotional level of an immature child. Accordingly, whoever mastered the “art of mass psychology” would be able “do with the masses as he saw fit”.⁶⁶

Other doctors and psychiatrists agreed.⁶⁷ But this position was not confined to hypnotists or the medical profession. The criminal defence lawyer Werner Lucas sounded very much like Friede when he asserted somewhat categorically that hypnotizing someone against her “express will” was “out of the question”.⁶⁸ Referring to the soul (*Seelenleben*) rather than specific sections of the mind, he reiterated the argument that “character, custom, education, and under certain circumstances religious considerations (*Rücksichten*)” could produce moral inhibitions (*Hemmungen*).⁶⁹ He juxtaposed persons with recourse to such inhibitions against “hysterical and morally feeble persons lacking character” (*characterschwach*), who were inclined to commit crimes anyway—that is, with or without hypnosis.⁷⁰ Although he admitted that repeated suggestions (*Dressur*) and cunning lies could overcome even moral inhibitions associated with “shame” (in women), Lucas clearly believed that these were exceptions that proved the rule.

⁶⁵ Jaap van Ginneken, *Crowds, Psychology, and Politics, 1871-1899* (Cambridge: Cambridge University Press, 1992), pp. 42-43; Gustave Le Bon, *Psychologie der Massen* (Stuttgart: Alfred Kröner 1911).

⁶⁶ Friedländer, “Hypnose”, p. 366.

⁶⁷ Engelen, *Suggestion und Hypnose*, p. 14; Loewenfeld, *Hypnotismus und Medizin*, p. 128; Semi Meyer, *Traum, Hypnose und Geheimwissenschaften* (Stuttgart: Ferdinand Enke, 1922), p. 45; Karl John, “Zum Problem ‘Hypnose und Verbrechen’”, in: *Deutsche Zeitschrift für die gesamte gerichtliche Medizin* 9 (1926), pp. 603-617, especially pp. 616-17; Hans Jess, *Verbrechen in Hypnose und posthypnotische Suggestion* (Richard Mayr, 1936). Jess quoted from John, see page 13; Heinrich Többen, “Über verbrecherische Ausnutzung suggestiver Fähigkeiten”, in: *Monatsschrift für Kriminalpsychologie und Strafrechtsreform* 12, pp. 331-341; idem., Hypnose, in: F. Neuseiter (ed.), *Handwörterbuch der gerichtlichen Medizin und naturwissenschaftlichen Kriminalistik* (Berlin: Springer, 1940), pp. 375-377; Fritz Knigge, “Aberglaube und Verbrechen (Zugleich ein Beitrag zur Frage der psychischen Induktion)”, in: *Zeitschrift für die gesamte Neurologie und Psychiatrie* 166 (1939), pp. 271-286.

⁶⁸ Werner Lucas, *Der Hypnotismus in seinen Beziehungen zum deutschen Strafrecht und Strafprozess* (Ferdinand Dümmlers Verlag Berlin und Bonn 1930), p. 20.

⁶⁹ *Ibid.*, p. 8.

⁷⁰ *Ibid.*, p. 72. See also Loewenfeld, *Hypnotismus und Medizin*, p. 127; Max Verworn, *Die Mechanik des Geisteslebens* (Leipzig and Berlin: B. G. Teubner, 1919), p. 99; Paul Schilder, *Über das Wesen der Hypnose* (Berlin: Julius: Springer, 1922), p. 18.

Like many other compatibilists, the Berlin lawyer Hellmut Ivers did not deny the extent to which hypnosis was able to produce “natural” and “unnatural” perceptions that could, in turn, lead to delusional behavior on the part of the hypnotisand.⁷¹ Agreeing with Lucas on the importance of “character”, he spelled out in even greater detail the differences between those who were at risk and those who had little to fear from hypnosis. The former group comprised people with “reduced intellectual independent-mindedness”.⁷² The lower the level of education and the less developed the “ethical qualities” attached to higher forms of education, the more difficult it would be to resist hypnosis.⁷³ It followed that the latter group was, if not immune to the allures of hypnosis, at least morally responsible to persevere in the face of the temptation. In fact, just as it would be near-impossible to induce a “normal” person to commit murder, so a patriotic man would never commit treason. Suggestion might prompt a “well-behaved” woman to ignore the pain of a needle or to believe that a non-existent bunch of flowers smelled beautifully, but it could not cause her to undress in front of an audience.⁷⁴ As a jurist, Ivers was not only concerned with delimiting the power of hypnosis, but equally interested in reminding “normal” Germans that it was imperative to withstand particular suggestions. The ethical foundations common to most educated people, in other words, had to be activated in certain situations, as it was simply not enough to rely on a good upbringing only.⁷⁵ Even so, this upbringing distinguished the average middle class person from her morally depraved counterparts, because she was moved to act either by a will she wanted or by a will she did not want.

The determinists did not describe the victims of hypnotic suggestion as wantons who were incapable of making decisions based on moral reflection. Rather, they argued that hypnosis

⁷¹ Hellmut Ivers, *Die Hypnose im Deutschen Strafrecht* (Leipzig: Ernst Wiegand, 1927), pp. 18-21.

⁷² *Ibid.*, p. 24.

⁷³ *Ibid.*, pp. 53, 67.

⁷⁴ *Ibid.*, pp. 26, 67.

⁷⁵ *Ibid.*, p. 67.

was similar to a force of nature whose laws could not be changed. Some determinists held on to the hope that inhibitions in the unconscious might be tapped to uphold morality, but their general approach revealed a much more pessimistic outlook. Fritz Paas, whose legal dissertation on the subject appeared in 1933, was one of many who highlighted the risks of criminal activities in a state of post-hypnotic suggestion.⁷⁶ He rejected the view that experiments which had apparently confirmed the efficacy of hypnosis to provoke such acts were methodologically flawed on the grounds that the respective medium knew very well that he or she was “performing” within an artificial setting. Yet his objection to this serious caveat, voiced repeatedly throughout the twentieth century,⁷⁷ was not particularly instructive, as he merely reminded his readers that in one such experiment the medium had dressed up all in red with chamois horns attached to his forehead.⁷⁸ Paas stood firm in his belief that the victims of hypnosis were in a state of unconsciousness, unaware of what they were doing, and therefore non compos mentis (*unzurechnungsfähig*).⁷⁹ More importantly, although he suggested that certain people, such as soldiers, children, and servants,⁸⁰ were more easily hypnotized than others, he did not stipulate that the rest of society remained unaffected by attempts to surmount their free will.⁸¹ On the contrary, the notion that “character” determined hypnotizability would have undermined his larger claim that hypnosis was a serious threat to society.

⁷⁶ For similar accounts, see See Kauders, “Verführung”.

⁷⁷ Theodor Friedrichs, *Zur Psychologie der Hypnose und der Suggestion. Mit einem Vorwort von Arthur Kronfeld* (Stuttgart: Julius Püttmann, 1922), pp. 10-11; Heinz Hammerschlag, *Hypnose und Verbrechen. Ein Beitrag zur Phänomenologie der Suggestion und der Hypnose* (München/Basel: Ernst Reinhardt 1954), p. 96. Accounts of the standard social psychological view that hypnotisands are well aware of the situation in which they are expected to be hypnotized can be found in: Irving Kirsch, “Response expectancy theory and application: A decennial review”, in: *Applied & Preventive Psychology* 6 (1997), pp. 69-79; Theodore Sarbin, “Dialogical Components in Theory-Building: Contributions of Hilgard, Orne and Spanos”, in: *Contemporary Hypnosis* 19 (2002), pp. 190-197; Steven Jay Lynn and Sean O’Hagen, S., “The Sociocognitive and Conditioning and Inhibition Theories of Hypnosis”, in: *Contemporary Hypnosis* 26 (2009), pp. 121-125; Steven Jay Lynn and Joseph P. Green, “The Sociocognitive and Dissociation Theories of Hypnosis. Towards a Rapprochement”, in: *International Journal of Clinical and Experimental Hypnosis* 59 (2011), pp. 277-293.

⁷⁸ Fritz Wilhelm Gustav Paas, *Strafbare Handlungen Hypnotisierter* (Dissertation, University of Erlangen, 1933), pp. 21, 23.

⁷⁹ Paas, *Strafbare Handlungen*, 31.

⁸⁰ Paas appropriated a view made prominent by Hippolyte Bernheim, *Die Suggestion und ihre Heilwirkung* (Leipzig and Vienna: Franz Deuticke, 1889), pp. 121-122.

⁸¹ Paas, *Strafbare Handlungen*, p. 22.

Like Paas, the physician Wilhelm Bergmann argued that certain traits or dispositions facilitated hypnotizability. People “too lazy to think” (*denkfaule*), including soldiers and servants, were much more prone to accept suggestions than others.⁸² Again, however, this supposed proclivity did not preclude the impact of hypnosis on the rest of society. Bergmann explained that a skilled hypnotist could outmanoeuvre any moral compunctions the medium might have. He brought up the possibility of making an odious deed appear to be completely ordinary. Asking an honest man to steal a pocketknife, for example, had no chance of succeeding, but convincing the same person that the knife on someone else’s desk was her own did enable the potentially evil hypnotist to carry out his devious plans.⁸³ This argument relied heavily on experiments carried out by August Forel.⁸⁴

Once under the influence of hypnosis, a person’s free will no longer functioned properly. According to Bergmann, this abdication of independence was a result of the single-mindedness that came with hypnotic suggestion. Normally, in a waking state, emotions, senses, and thoughts of all kinds existed side by side. In a trance state, by contrast, the focus was on one thing only, to the detriment of “counter perceptions” that would usually prevent the passive acceptance of certain “implanted” desires or appetites.⁸⁵ Hypnotic suggestion, Bergmann contended, was tantamount to reducing or cancelling associative thought processes, leading to the “uncritical acceptance” of specific ideas.⁸⁶

The neurologist Erich Kindborg agreed. Writing in Germany’s preeminent journal of psychiatry, he maintained that the success or failure of post-hypnotic crime depended entirely on the technique at someone’s disposal. An adept hypnotist could easily suggest that adultery was in someone’s best interest, for instance. Relying on the good works of the so-called moral

⁸² Wilhelm Bergmann, “Hypnose und Willensfreiheit im Lichte der neueren Forschung”, in: *Frankfurter Zeitgemäße Broschüren* 31 (1922), pp. 1-28, here pp. 10-12.

⁸³ Bergmann, “Hypnose”, p. 21.

⁸⁴ Forel, *Der Hypnotismus*, pp. 275-277. See also Leo Hirschlaff, *Hypnotismus und Suggestivtherapie für Ärzte und Studierende* (Leipzig: Johann Ambrosius Barth, 1928), pp. 76-77.

⁸⁵ Bergmann, “Hypnose”, pp. 17-18.

⁸⁶ *Ibid.*, p. 9.

inhibitions, the psychiatrist warned, was rather careless, all the more so since, like dreams, the hypnotic state consisted of perceptions wholly unrelated to each other—the implication being that the nastier perceptions could not be held in check by the more benign ones.⁸⁷ Kindborg also referred to Forel’s experiments. The latter’s observations, although made under laboratory conditions, indicated that an “unconscious awareness” of the artificial nature of the setting (and thus the inconsequential nature of one’s actions during these experiments) was no guarantee that serious crimes could not be committed in a (post)hypnotic state.⁸⁸

The dispute between compatibilists and determinists continued unabated after Hitler came to power. Despite widespread fears in the 1920s and 30s that hypnosis was about to transform radically common perceptions about human volition, academic discourse did not follow suit. The parallel with the situation in late nineteenth-century France and Germany is instructive. During this period too there were calls to severely curtail the use of hypnosis and confine its practice to trained physicians only.⁸⁹ Yet as the Czynski Trial demonstrated, the experts could not agree on the extent to which hypnosis did indeed pose an imminent threat to free will. While popular imagery shifted with the times—from vulnerable women in train compartments to vulnerable publics in the grip of advanced technology controlled by evil masterminds—, the debate amongst neurologists, psychiatrists, and jurists did not change significantly. This is also true for the Heidelberg Trial of 1936, when for the first time a German court ruled that hypnosis had altered the character of a person and led her to commit

⁸⁷ Erich Kindborg, “Die Verwendung der Hypnose in der Rechtspflege”, in: *Zeitschrift für die gesamte Neurologie und Psychiatrie* 88 (1924), pp. 233-240.

⁸⁸ *Ibid.*, 240.

⁸⁹ Jens-Uwe Teichler, “Der Charlatan strebt nicht nach Wahrheit, er verlangt nur nach Geld”. *Zur Auseinandersetzung zwischen naturwissenschaftlicher Medizin und Laienmedizin im deutschen Kaiserreich am Beispiel von Hypnotismus und Heilmagnetismus* (Stuttgart: Franz Steiner, 2002); Nils Freytag, *Aberglauben im 19. Jahrhundert. Preußen und seine Rheinprovinz zwischen Tradition und Moderne (1815-1918)* (Berlin: Duncker & Humblot, 2003), pp. 266-67; Barbara Wolf-Braun, “Parapsychologische und psychiatrische Konstruktionen des Mediumismus um 1900”, in: Marcus Hahn, Erhard Schüttpelz (eds.), *Trancemedien und Neue Medien um 1900. Ein anderer Blick auf die Moderne* (Bielefeld: transcript, 2009), pp. 145-170, here pp. 148-149.

a series of crimes. As much as the outcome of the trial differed from the one in Munich, it failed to convince the compatibilist faction that hypnosis could suppress free will altogether.

No Turning Point: Heidelberg

The circumstances of the case were reminiscent of nineteenth-century tales. Alice E., seventeen years of age and unmarried, met Franz Xaver Walter on a train ride to her future parents-in-law in 1927. When Ms. E. mentioned she was suffering from a stomachache, Walter claimed to be able to heal her with the help of homeopathy and naturopathy. Upon departing the train at the next station, he invited her for a cup of coffee. In the course of their exchange, Walter suddenly held her hand, which, she later remarked, made her feel incapable of exercising her free will. In subsequent weeks and months, Alice was asked to meet him in Karlsruhe or Heidelberg, where he ostensibly treated her, although she could not recall any therapy sessions. In subsequent years, Alice paid Walter 3000 marks in fees; began sexual relations with Walter as well as several other men, including his “accomplice” Karl Hermann Bodner; attempted several times to murder her husband, whom she had married in 1929; and tried to commit suicide. Her husband eventually contacted the police in the late summer of 1934. Some two years later, Walter and Bodner were tried and found guilty of having sexually abused Alice E. in a state of abulia as well as having instigated crimes their victim failed to carry out successfully.⁹⁰ They received jail sentences of ten and four years respectively.

⁹⁰ Burkhard Peter, “Ist Hypnose hinreichend ein Verbrechen zu begehen? Die Kontroverse zwischen Mayer und Bürger-Prinz über den Heidelberger Hypnoseprozess 1936. Ein frühes Beispiel des Diskurses über den Bewusstseinszustand von Hypnotisierten”, in: *Hypnose* 10 (2015), pp. 7-26, here pp. 7, 9; Ludwig Mayer, *Das Verbrechen in der Hypnose und seine Aufklärungsmethoden* (Munich and Berlin: J. F. Lehmanns, 1937), pp. 94, 98, 106-7, 114-116, 188

The case relied almost exclusively on the expertise provided by Ludwig Mayer. The Heidelberg neurologist had already published a standard text on hypnosis in 1934.⁹¹ He subsequently produced two films on the subject for the Reich Office for Educational Films (*Reichsstelle für den Unterrichtsfilm*), one of which anticipated his central argument during the proceedings in 1937, namely that crime in a state of hypnosis was possible.⁹² Mayer produced an account of the trial that reiterated this point in some detail.

Some of the key claims put forward in this work recall earlier pronouncements on the subject. Mayer's conception of the unconscious derived from Dessoir's distinction between an *Ober-* and an *Unterbewusstsein*, where the latter figured as a disconnected entity that led "a life of its own".⁹³ Dichotomizing the two permitted Mayer to contemplate split personalities with distinct sensibilities.⁹⁴ In the case of Alice E., Mayer believed to have identified two "wholly separate wills (*Willensgebiete*), two memories, [and] two levels of consciousness" that existed "side by side simultaneously". She would therefore behave in one way in her conscious state and in another way in her unconscious state.⁹⁵ Mayer agreed with Paas, Bergmann, and Kindborg that, while a person's specific character indeed facilitated hypnotizability,⁹⁶ "character" in and of itself was not sufficient to impede hypnotic suggestion. If suggestions were chosen in such a way as to conceal true intentions (recall Bergmann's example of the pocket knife and Kindborg's reference to adultery), then forcing people to commit crimes in a post-hypnotic state could not be ruled out, especially if they were subjected to "deep somnambulism" during which they were no longer capable of resorting to residual inhibitions.⁹⁷

⁹¹ Ludwig Mayer, *Die Technik der Hypnose* (Munich: J. F. Lehmanns, 1934).

⁹² Ludwig Mayer, "Zur forensischen Bedeutung der Hypnose", in: *Hypnose* 10 (2015), pp. 27-43.

⁹³ Mayer, *Verbrechen*, p. 10.

⁹⁴ *Ibid.*, pp. 10, 35.

⁹⁵ *Ibid.*, pp. 37, 208-209.

⁹⁶ *Ibid.*, pp. 67, 197.

⁹⁷ *Ibid.*, pp. 53, 67.

It might be assumed that Mayer's influence over the proceedings in Heidelberg and his role in the production of two educational films for a National Socialist state agency marked a break with the past. Yet most academic reactions suggest otherwise. Aside from Albert Hellwig, a well-known jurist and anti-occultist from Berlin, the majority of commentators doubted Mayer's version of events. Hellwig repeated Mayer's narrative according to which Alice E. was the first case to prove empirically (and not merely theoretically or experimentally) that hypnotic drill (*Dressur*) could suspend free will and induce a special post-hypnotic state, allowing the hypnotist to instigate criminal behavior in otherwise morally impeccable people.⁹⁸ But even Hellwig has some reservations. Echoing Friede's compatibilist viewpoint, he wrote that the hypnotist could induce actions that were incompatible with someone's "conscious personality", but never crimes that were irreconcilable with the "unconscious personality".⁹⁹

Hans Bürger-Prinz, professor of psychiatry in Hamburg and Mayer's most prominent critic, questioned much of what the Heidelberg neurologist believed to be incontrovertible evidence. Some of his counter arguments were hardly new. First, hypnosis was a "popular excuse for sexual acts (*Triebhandlungen*)" that people found inexplicable or troubling. Invoking "hypnosis" was thus a relief for men whose fiancées had been involved with other partners. Alice E., Bürger-Prinz explained, had behaved in a similar fashion: in order to appear innocent, unblemished, and irreproachable, she conveniently referred to hypnosis as the only possible reason for her sexual relationships and attempted murders.¹⁰⁰ Second, even if her story proved to be true, there was no indication to suggest that Alice had not in fact agreed with the procedures used "against" her, since hypnosis could not succeed without the

⁹⁸ Ibid., p. 53; Albert Hellwig, "Hypnose und Verbrechen. Lehren des Heidelberger Falles", in: *Deutsche Justiz* 99 (1937), pp. 1986-1989, here p. 1986.

⁹⁹ Hellwig, "Hypnose", p. 1988.

¹⁰⁰ Hans Bürger-Prinz, "Verbrechen in Hypnose? Fragen und Anmerkungen zu dem Buch von Ludwig Mayer", in: *Monatsschrift für Kriminalbiologie und Strafrechtsreform* 29 (1938), pp. 194-198, here pp. 194-195. Bürger-Prinz relied on Vorkastner, whom he cited approvingly.

corporation of the hypnotisand.¹⁰¹ As a compatibilist, Bürger-Prinz assumed that Ms. E's character had predisposed her towards accepting Walter's instructions. This interpretation prefigured later social psychological research that would emphasize patients' expectations (i.e. understanding of task demands) in given hypnotic contexts.¹⁰² Third, Bürger-Prinz wondered why, if Walter had hypnotized his "victim" so successfully, Alice's many attempts at killing her husband or taking her own life invariably failed.¹⁰³ Although the Hamburg psychiatrist did not elaborate, this point reinforced his earlier compatibilist argument inasmuch as Alice *not* having committed murder or suicide, despite extensive hypnotic *Dressur*, testified to the resilience of her "virtuous" character. Fritz Knigge, director of psychiatry at Hamburg-Langenhorn, supported his colleague, as did the Charité's Johannes Kirchhoff. Where Knigge insisted that "criminal suggestions" would hardly succeed without a hypnotisand's "criminal proclivities",¹⁰⁴ Kirchhoff reminded his readers that the Heidelberg case was a good example of "sexual dependence (*Hörigkeit*)", a possibility that Mayer had refused to mention in his account of Alice E.¹⁰⁵ This final piece, published in 1944, put to a close the discussion of free will and hypnosis from the Kaiserreich to the Nazi years.

Conclusion

Several reasons have been advanced to explain compatibilism's appeal to philosophers. **Perhaps the most important one refers to the fact that compatibilism offers a combination of determinism** (in the shape of personal preferences or traits) and freedom (especially from physical coercion). This coalescence, **the argument goes**, allows for both

¹⁰¹ Bürger-Prinz, "Verbrechen", p. 197.

¹⁰² See footnote 76.

¹⁰³ *Ibid.*, p. 196.

¹⁰⁴ Knigge, "Aberglaube und Verbrechen", p. 284. See also Johannes Haupt, "Eine experimentelle Untersuchung zur Frage der kriminellen hypnotischen Beeinflussbarkeit", in: *Zeitschrift für die gesamte Neurologie und Psychiatrie* 159 (1937), pp. 767-777, here p. 768.

¹⁰⁵ Johannes Kirchhoff, "Ein forensischer Beitrag zum Problem von Suggestion und Hörigkeit", in: *Zeitschrift für die gesamte Neurologie und Psychiatrie*, Vol. 178 (1944), pp. 13-51, here p. 48.

the human need to acknowledge causation and the human need to administer justice.¹⁰⁶ **If, by contrast, characters and motives did not determine behaviour, it would be impossible to hold human beings responsible for their actions.**¹⁰⁷

The German discourse on hypnosis and crime in the early twentieth century seldom involved philosophical reflection, but we can still detect an overall preference for compatibilist-like answers to the question of whether hypnosis could suspend free will. This preference was most evident in the writings of a group of neurologists, psychiatrists, and jurists who sought to preserve the notion of choice in the “contest” with the hypnotic “challenge”. Members of this group associated choice with “good” character and “good” character with the ability to decide to act according to a will freely chosen. “Bad” characters, on the other hand, had no recourse to this decision-making process. Unlike their exemplary counterparts, they had been determined in such a way as to *always* will crime, the potential effect of hypnosis notwithstanding. Even determinists for whom hypnosis resembled a force of nature whose power could not be resisted admitted that character could indeed play a role in regard to hypnotizability. Soldiers and servants, some determinists believed, were more suggestible than the rest of the population, although the rest of the population remained very much at risk from hypnosis. This qualification paid homage to the strength of the compatibilist view.

From an abstract, philosophical perspective, the concept of free will is crucial for underwriting responsibility. In the context of early twentieth-century Germany, negotiating free will was not only a philosophical question, but also an issue that touched on the very self-understanding of middle-class Germans. **Both compatibilists and determinists demonstrated the way in which bourgeois norms affected their responses to hypnosis. Determinists warned that the hypnotic state, as an event outside human control,**

¹⁰⁶ Bieri, *Handwerk*, p. 22.

¹⁰⁷ Kane, *Free Will*, p. 18.

threatened to undermine the self-control upon which middle-class identity rested.¹⁰⁸ In claiming that servants, soldiers and women were more prone to hypnotizability, determinists also relied on the familiar middle-class trope that identified “impassioned” women and the “lower orders” with the inability to exercise the necessary restraint associated with bourgeois composure.¹⁰⁹

Compatibilists were more optimistic. By establishing a connection between the continued exercise of free will and middle class values, the compatibilist faction believed to vindicate the preeminence of morality and the rule of law in the face of the hypnotic “danger”. If hypnosis simply confirmed the moral degradation of certain people—whoever succumbed to hypnosis did so on account of a personality that had never developed the capacity for free will—, then the threat posed by hypnosis could be confined to outliers whose characters were flawed from the outset. Like Harry Frankfurt’s wantons, these persons lacked an interest in their wills because they had never cultivated a sense of being beyond first-order desires. Responses to hypnosis, according to this reading, simply confirmed the extent to which free will depended on character. The character in question, however, was that of middle-class men whose impregnability in the face of the hypnotic challenge owed to their bourgeois training, above all the development of a “morally sovereign subjecthood”.¹¹⁰

Despite the transformations of German society in the early twentieth century, including the upheavals of 1918/19 that would do away with the “bourgeois” nineteenth century,

¹⁰⁸ On the importance of emotional self-control for conceptions of *bürgerlich* identity, see Andreas Reckwitz, *Das hybride Subjekt. Eine Theorie der Subjektkulturen von der bürgerlichen Moderne zur Postmoderne* (Weilerwist: Velbrück Wissenschaft, 2006), and Manfred Hettling and Stefan-Ludwig Hoffmann, “Der bürgerliche Wertehimmel. Zum Problem individueller Lebensführung im 19. Jahrhundert,” in: *Geschichte und Gesellschaft*, Vol. 23 (1997), pp. 333-359.

¹⁰⁹ Kauders, “Verführung”; Van Ginneken, *Crowds, Psychology, and Politics*, pp. 42-43. Heather Wolfram, *The Stepchildren of Science. Psychical Research and Parapsychology in Germany, c. 1870-1939* (Amsterdam and New York: Rodopi, 2009), p. 51. Barbara Wolf-Braun, “Parapsychologische und psychiatrische Konstruktionen des Mediumismus um 1900”, in: Marcus Hahn and Erhard Schüttpeitz (eds.), *Trancemedien und Neue Medien um 1900. Ein anderer Blick auf die Moderne* (Bielefeld: transcript 2009), pp. 145-170, here p. 166.

¹¹⁰ Reckwitz, *Das hybride Subjekt*, p. 97.

the discussion on free will illustrates the tenacity of certain principles amongst middle-class elites. As much as the social model attached to *Bürgerlichkeit* had vanished and as much as the “staid” politics of moderation and compromise were being called into question,¹¹¹ central aspects of the so-called “bourgeois value system” (*Wertehimmel*, literally value heaven) persisted, especially the belief in the independent and self-regulated individual.¹¹² As this essay has tried to show, negotiating free will in this period was also an attempt to reassure oneself that, no matter what the political persuasion and no matter what the political circumstances, free will belonged to those whose character had been formed in harmony with the very conditions that made free will possible.

¹¹¹ See, for example, Thomas Mergel, “Führer, Volksgemeinschaft und Maschine. Politische Erwartungsstrukturen in der Weimarer Republik und dem Nationalsozialismus 1918-1936”, in: Wolfgang Hartwig (ed.), *Politische Kulturgeschichte der Zwischenkriegszeit 1918-1939* (Göttingen: Vandenhoeck & Rupprecht, 2005), pp. 91-127.

¹¹² Manfred Hettling and Stefan-Ludwig Hoffmann, Der bürgerliche Wertehimmel. Zum Problem individueller Lebensführung im 19. Jahrhundert, in: *Geschichte und Gesellschaft* 23, pp. 333-359, here pp. 358-359.