

# Who was Martin Domke? German Emigre: International Arbitrator, Friend of Walter Benjamin

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▶ **To cite this version:**

Jérôme Sgard. Who was Martin Domke? German Emigre: International Arbitrator, Friend of Walter Benjamin. The System of International Arbitration, Liber Amicorum Emmanuel Gaillard, In press. hal-04074142

**HAL Id: hal-04074142**

**https://sciencespo.hal.science/hal-04074142**

Submitted on 19 Apr 2023

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# Who was Martin Domke ?

## German Emigre, International Arbitrator, Friend of Walter Benjamin

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To be published in Ancel, Banifatemi, Racine, Wu (eds):
*The System of International Arbitration, Liber Amicorum Emmanuel Gaillard*

Today, the name of Martin Domke (1892-1980) remains known primarily for the prize for the 'best oralist' given every year at the Willem C. Vis Arbitration Moot.[1] You may thus see, probably on Youtube, how happy the young and promising arbitrator is to be associated to this old and presumably grand name. And he, or she, is definitely right: Domke was for years a Vice-President of the American Arbitration Association (AAA) in charge of research and international arbitration, also an adjunct Professor of Law at New York University, and the author of dozens of articles on arbitration and international private law. And, not least, he was one of the architects of the 1958 United Nations convention on arbitration.

Earlier generations of academics and practitioners also remember having spent hours in their university libraries, absorbing *Domke on Commercial Arbitration,* the first comprehensive textbook on the subject published in the United States, in 1964. Its last version came out as late as 2020, with posthumous additions and revisions (Domke 2020). So, beyond the prize, the name actually endures.

These first elements also underline the kinship with Emmanuel Gaillard. In Europe, or at least in France, the counterpart to *Domke*, as we know, was Fouchard's *L'Arbitrage commercial international* (1965), which main outgrowth, in 1996, was co-authored with Berthold Goldman and Gaillard. There is a signal here: even though the young Emmanuel *did not* meet the very old Martin, they both had their part in these first, long-term editorial projects, which very much mark the origins of today's enormous literature on international arbitration. Both were also professors, prolific authors, participants to countless conferences, leaders of learned societies, institutional entrepreneurs and of course, primarily, arbitrators and counsels. Eventually, both became dominant figures, or grand old men of the profession, with Domke perhaps the first ever in this sociological category.

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[1] Professor of Political Economy, Sciences-Po (Paris). Financial support from the Sciences-Po Scientific Advisory Board is gratefully acknowledged (???]. I warmly thanks for their help and advise my colleagues and friends Claire Andrieu, Dirk Braunstein, Viki Caron, Howard Eiland, Gilles Favarel, Julie Fette, Riva Kastoriano, Kenneth Ledford, Robert Paxton, Stephen Parker, Mikaël Schninazi, Martine Sgard, Pierre-Louis Six, Johannes Steizinger, Nadine Werner, Erdmut Wizisla.

If you ask however for a difference, it's fair to say that it is about legal theory. As many contributors to the present *Liber Amicorum* have underlined, Gaillard was an outstanding representative of the French theoretical tradition in this field, coming after Fouchard and Goldman, but also after Henry Motulsky or Jean Robert for instance. Domke did not belong here. The introduction to his *Commercial Arbitration* does not parallel Fouchard's almost contemporaneous, memorable first pages of l'*Arbitrage.* But the intellectual legacy was there: Theodor Sternberg (1878-1950), Domke's PhD adviser in Greifswald (Germany) was a card-carrying member of the *Freie Recht* school, which critics of classical legal thinking echoes, other things equal, the American Realists or François Geny (Herget and Wallace 1987, Bartels-Ishikawa, 1998, Schmidt 2016). [nbp on TS?]

Yet, this point about doctoral studies and the *Freie Recht* thinking is certainly unknown to our up-and-coming young arbitrator, as most probably from all those who came across Domke's books and articles. Our big mystery begins here: beyond what was just said, we know next to nothing about his life, his personal interests and even his career before he arrived in the United States in 1941, aged almost 50. The archives of the US immigration services [?] confirm that Martin, his wife Lucie (1896-1963) and their son Georg (1921-1989) landed in New York on 9 July that year. But we know nearly as much on the boat that carried them than on this small stateless family [ref]. Forty years later, the obituaries published by the *New York Times*, the AAA or New York University are remarkable in the way they all celebrate Domke's science, his energy and authority. On the whole, they give the image of a classic, old-style German Professor, with all the distance that comes with the title and the huge scholarship. But little more was recollected.

To make things worst, most of his professional and family archives are missing and, by character or decision, Domke himself never said anything on himself that was later published, either on the autobiographic mode or by way of interview.[2] German sources, for sure, include important papers, correspondences and publications, as we'll see later. But this is certainly not enough to draw a comprehensive portrait of the man and his career before he reached New York: hence in Berlin until spring 1933, and then in his first exile, in Paris.

What remains of his personal papers was found in the Archives of the Red Army, in Moscow. To be sure Domke was never a Soviet soldier, and nothing suggests that he was an undercover Comintern operative: his politics are not known, but he did not seem to have had any Communist sympathy.[3] The history is darker. Like thousands of other refugees, the Domke family had left in 1940 their Parisian apartment in the very bourgeois neighborhood close to the Champs de Mars. Then, between late 1940 and spring 1941, the Vichy police or the Gestapo raided the apartments of all absent Jewish families in Paris, French and foreigners. Domke's rich collection of old books disappeared at that time, together with all his files: business affairs, correspondences, a personal diary, tax declarations, etc. But it is also well known that the Gestapo took to Berlin a large part of what had belonged to German refugees. And in turn, after May 1945, the Soviet moved truckloads of Nazi archives to Moscow. In particular, the papers stolen from dozens of Western scientists, artists and writers ended up in the so-called Moscow Special Archives (better known as the *Moskauer Sonderarchiv*), which existence was revealed only in 1990. This is, by far, the most credible hypothesis: the Domke papers passed from the hands of the Vichy police to those of the Gestapo and then the Red Army, which inadvertently made it possible for us to re-assemble the puzzle.[4] There is an evil connection between police states and good archives keeping.

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[2] The AAA destroyed its own archives sometimes in the 1980's, together with all the papers Domke may have left there. New York University does not have anything either. His only child, Georg, a long-standing history professor in a Vermont College, passed away without apparently leaving beyond any family archive.

[3] "In the *Saturday Evening Post*, I saw Russian pictures of military youth leagues of both sexes with the headline 'Prisoners of utopia'. Extremely apt." (Domke's diary, 16 April 1930).

[4] My renewed thanks to Pierre-Louis Six (ENS, Paris), formerly at the Centre d'Etudes Franco-Russes in Moscow, for having spent more than a few hours at the Red Army, making photos of these hundreds of pages.

The rest of this contribution builds on these archives and more generally on a systematic effort to collect, if not all, at least most of what remains of Martin Domke before he reached the US: letters, official files, publications, etc. Two lines then gradually emerge which run across this long-forgotten life, most often at some distance one from the other. One line tells a story of professional success, where exile was not just an experience of social up-rooting and alienation, but also one of successive reinventions. Domke entered foreign institutions, developed new skills, built networks and eventually became a global institutional entrepreneur. This long trajectory illustrates in a superior way how international commercial arbitration emerged from the margins of the 'legal field', where émigrés, Jews and legal amateurs are disproportionately represented (Sgard, 2016).

The second line reveals the man besides the ambitious lawyer: in the 1920s and in Paris, Martin Domke was not only an avid collector of old books; he was also close to some of the greatest German public intellectuals of those years, Walter Benjamin and Bertolt Brecht. He defended their legal rights, once they had left Germany, but also had an on-going literary conversation. Later, in 1940, Domke also played a central, if un-accounted role in the last weeks of Benjamin's life, as the sick, depressive philosopher desperately tried to leave occupied France, before committing suicide, on the Spanish border. Martin Domke then took to New York parts of his remaining manuscripts and saved them from probable destruction.

Yet, his colleagues and friends from the postwar years never heard or read anything about his life in Europe. Similarly, specialists of Benjamin and Brecht have regularly come across Domke's name in various correspondences, though he remains a distant silhouette on which mostly hearsay circulate. The coming pages try to bring back to light this forgotten *vie dans le siècle,* on the basis of piecemeal, scattered evidences. The inquiry thus presents a forensic dimension, and the narrative is biographic, hence idiosyncratic. But it also talks about the history of international arbitration, the sociology of exile and also some of the greatest German intellectuals of the twentieth century.

### *Life in Germany: a story of professional success and upward social mobility*

Martin Domke's father, Leopold (1855-1933), was born in Poznan, today in Poland, then part of the Reich and known as Posen. At some point, he moved to Berlin where he made his life as a merchant and married Metella (1862-1932), also Jewish, though from the Prussian province of Pomerania (Röder et al., 1963). A second son, Georg, was born to them in 1896, who died at a young age, in 1920. The same year, their remaining children, Martin, had married Lucie Löbinger (1896-1963), from a lawyers family, who seems to have been as well a remarkable person: a writer in her own right (under the name of Gabriele Eckehard), she published many novels and newspaper reports throughout her life and wrote a large study of German books during the baroque period (Eckehard, G. 1930 ). Her papers have been given to the Albany University Library [more?].

This clearly suggests that the collection of old books that was seized in Paris grew out of a shared interest of husband and wife. At least till 1940, Martin Domke was an avid collector, always on the hunt for rarities.[5] His main literary interest was for Georg Christoph Lichtenberg (1742-1799), a writer, philosopher and physicist of the late German Enlightment, who wrote *inter allia* thousands of aphorisms (which are reprinted till today). He his also remembered for his early interest in Jewish history, in particular in Spinoza, which may be why Domke re-published some of his books and letters under the flagship of the Soncino Society of the Friends of Jewish Books (Homeyer, 1963). He even reprinted some of these letters as a New Year's greeting present (Domke 1929).[6] But

[5] In a letter dated as late as August 1939, he trumpeted his recent acquisition of three 'rarissima'. (Haarmann and Hesse, eds. 2014, vol. 2, page???).

[6] Incidentally, one of these small books was printed by, and dedicated to Reinhold and Erich Scholem, elder brothers of Gershom Scholem, who would become one of the great Jewish historians of the century after he left to Palestine, in 1923 (Geller 2012, Sgard 2019). The interesting element here, is that while Gershom was a militant Sionist, his brothers were not. They even broke up on that burning issue. This may suggest that

Domke also wrote pieces in the Society's journal *Philobibion*, including on his own Lichtenberg collection (Domke 1931?).[7]

This is where we meet one of Domke's most famous friends, Walter Benjamin, who was then associated to the Frankfurt School: a group of (challenging) philosophers and social scientists which remain till today among the most impressive representatives of the great generation of interwar German intellectuals (Jay 1996, Wiggershaus, 1986/1993). Though he never held a formal position in their Institute for Social Research (but was financially supported by them) Benjamin is certainly today the most widely-read and the most intensely commented among them.

It has regularly been written that Domke had been the *Syndikus* of the Institute, though no proof has ever been offered.[8] There is no evidence either that he had any contact with its two dominant figures, Theodor Adorno (1903-1969) and Max Horkheimer (1895-197), before a few brief exchanges when they were all in the United States. On the other hand, it is well possible that the friendship between Benjamin and Domke dated from their university years, in Berlin: they were born the same year, in the same milieu of assimilated Jewish bourgeoisie and studied there between 1911 and 1914 (with interludes in Freiburg, in the case of Benjamin). Yet, again, nothing backs up the recurring indication that Domke was Benjamin's deputy in 1914, when he lead the local branch of the *Freie Studentenschaft*, the student association where liberal (and Jewish) students used to congregate (Reuter, 2007).[9]

In 1931, however, the two of them had clearly known each other for quite a time when Domke proposed to Benjamin to come to his home twice a week and work (against a pay) on a *bibliographie raisonnée* of his Lichtenberg collection. Domke had started this project on his own in the years before and had even entered negotiations with a Münich-based publisher, before concluding that substantial more work was needed. Benjamin was quite enthusiastic with the whole endeavor [private collection].[10] And although the project was not completed, 150 cards have been preserved, which remain so far un-published but can be consulted at the University of Giessen.[11] They might well be the main remaining trace of Domke's greatest intellectual interest, outside the law.

He was indeed a practicing commercial lawyer and, if anything, a most successful one. After the usual curriculum of law students he passed a first state exam, apparently in 1915, and became a *Referendar*. This was to be followed by four years of unpaid practical legal training in different courts, in private practice or in the government administrations. He volunteered to the army in August 1914 and returned to civil life only in November 1918, after having most of the war years

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while Domke remained faithful to his Jewishness, he was not set against anti-Sionists. But neither did he leave any sign of a strong religious commitment. In 1933 he declared himself to Nazi authorities as "having been a member of the Jewish religious community". His obituary, in the *New York Times*, does not mention any religious ceremony.

[7] Martin Domke's reading spanned well beyond Lichtenberg: among others, his diary include references Roth, Schnitzler, Zweig, Thomas Mann, Hesse, Goethe, Kraus, George Sand, Nietzsche, Dos Passos, Montherland or Malraux.

[8] The archivist of the Institute, Dirk Braunstein, confirms that he never came upon the name of Domke and strongly doubt he had any connection with it in its early years, before 1933 (email from 29 March 2022).

[9] In their acclaimed biography of Benjamin, Eiland and Jennings (2014) confirm, by way of email, that they did not come across his name. Erdmut Wizisla and Johannes [¿¿¿] , who worked on the young Benjamin and the *Studentendschaft*, confirm the point.

[10] In a letter dated 3 october 1931 to Gershom Scholem (see above), Benjamin wrote, in his usual enigmatic style, that "the catalog will be a marvel to be shown publicly among Jews, like a synagogue made out of straws ». (Benjamin, 1998, p. 55). This is also at about this time that Benjamin wrote a very positive revies of Lucie Domke's recent book on German books during the Baroque Age (Domke 1930)

[11] See Universitätsbibliothek Giessen (2012) and Reuter (2007).

on the Eastern front and in Warsaw, in the German military administration.[12] After a second exam he became a *Gerichtassessor* (1920) in Berlin, or associate judge, although, as many others, he decided not to stay in the judiciary and to work, first, as legal adviser to a real-estate developer, Union-Bauges.[13] In 1923, he became a *Rechtsanwalt* (or private lawyer) and a public Notary, as was then often the case. He opened a practice in 1925, together with his father- and brother-in-law, Max and Rüdolf Löbinger, and (somewhat later) in association with a colleague, Walter Loewe.[14]

His dominant interest for commercial law was clear since his university years: his thesis, defended in 1915 and published in 1922, dealt with the sale of commercial businesses, or mergers and acquisitions in today's language. As interesting as the object was the comparative approach, which point towards his future shift towards international commercial law: the book is replete with references to the rules applied across all Europe {check]. Many of the professional papers which ended up in Moscow relate to cases with a strong international dimension (with Poland, the United States or Austria); another one concerned the insurance company Allianz. Later publications include two small studies on capital gain taxes (1929 a&b), and another one on the dissolution of real estate firms (1933). But these clearly belong to professional literature, much more than to the academic one.

Domke's rapid success in the wake of the 1923 economic stabilization and the ensuing boom is confirmed by his tax declarations. His taxable income increased from a bit more than 10,000 Reichmark in 1925, to a yearly average of more than 50,000 Reichsmark from 1928 to 1932 included. This represents about 200,000 euros, in 2020 value, but much more in relative purchasing power.[15] By 1936, he had two German life-insurance contracts for 150,000 Reichsmark, hence ca 675.000 dollars, and he also had bank accounts in Switzerland. Before they left Berlin, the Domke family lived on Friedrichstrasse n° 207, near the top of the real estate market in Central Berlin. Martin Domke's diary, or *Tagebuch*, during those years also includes entries dated from nice places like Salzburg, Sankt-Moritz, Partenkirchen, Bornholm, Bolzano, Paris, London, Ibiza, Antibe or Menton.[16] All the money was not spent on old books, apparently.

Casual notes in his diary attest to Domke' proudness regarding his achievement: "… if I follow the considerable successes that I have had up to now in probably all aspects of social life, it really sometimes seems to me that I have been given more than I have planned and intentionally achieved." (*Tagebuch,* August 1934). The "very rapid success of my professional career is based much less on a purely technical outstanding performance, which is only average apart from a little special knowledge, but rather on qualities that I have, that I communicate, radiate, with which I catch opponents, partners (…); quick perception, wisdom, trust, security, etc." (*Tagebuch,* 16 April 1930). Or, again, "superiority through excellent craftsmanship; the amazement through mastery of

[12] [files submitted to the US Customs in 1940-1941]. A piece of German military archive says that a grenadier named Martin Domke was "lightly wounded" in January 1915, near Elbing, now in Northern Poland. See: http://des.genealogy.net/search/show/1170601

[13] I warmly thank Kenneth Ledford for these key elements on the early career of German lawyers, at that time.

[14] Their office was located on Bendlerstrasse, 30, where Domke worked till 1933 (see *Jüdisches Adressbuch für Gross-Berlin,* 1925 and 1931 editions). This street does not exist anymore but was located to the south of *Tiergarten,* close to where the *Gemäldegalerie* was rebuilt, postwar. The Löbinger family left to Tel-Aviv in the late 1930s; Max passed away in November 1940 and Rüdolf apparently started a textile business at about that time.

[15] Conversion rates from the Deutsche Bundesbank.

[16] This 177 hand-written diary, which covers the years 1930 to 1936, is not a systematic journal that would reflect Domke's life, his projects or his reactions to outside events. Politics and exile are hardly mentioned, though twenty-one references are made to conversations with Benjamin. Beyond, it's primarily a private, rather introspective notebook, of uneven interest.

form, of professional mysticism. This must always be revealed." (*Tagebuch*, sometimes between March and July 1932).

Martin Domke's success story is a superior example of Jewish assimilation and upward social mobility under the Weimar Republic. Since the 1870s, the legal profession had attracted a lot of young, well-educated heirs to middle-class, urban Jewish families, first in the private sector and later in the judiciary, most clearly after 1918. In 1933, 23% of German lawyers were Jews, a proportion that reached 60% in Berlin, following the *Juristischen Wochenschrift* (quoted by Reifner, 1986). The same year, 11 of the 25 members of the Council of the German Bar Association were also Jewish (id). [monographies]. Beyond the raw anti-Semitic ideology of the Nazi regime, this strong presence of Jews in the legal professions was certainly a factor in the very early attacks they were subjected to, already in 1933.

### *April-July 1933*

Very soon, after the Reichstag fire, on 27 February 1933, first measures were taken against Jews employed in public administrations and in the legal professions in a broad sense, hence judges, prosecutors, private lawyers (Rechtanwalt) and notaries. A boycott was called already by April 1, followed on April 7 by the first law to 'restore the civil service', i.e. to cleanse administrations from Jews and left-wing sympathizers; a specific law targeted judges and lawyers. All civil servant thus had to prove that they had no Jewish grand-parents, the practical criteria being here religion. Those deemed non-Aryans would be put in early retirement or, in the case lawyers and notaries, they would lose the right to exercise their profession and their legal practice would be closed. Three exceptions were added in favor of those who were already practicing before 1914 (hence above ca. 45), those who had lost their father or a brother during the World War, and those who were themselves on the front. And they still had to prove, e.g. with letters of support, they had never been affiliated to any Communist organization.

In the case of Prussia, submission had to be submitted before May 8 and were processed by inspectors from the local courts, who could ask for more information, or more evidences, as they proceeded. But they could investigate the cases on their own, if they had doubts regarding political affiliations, which most probably meant asking the police, or the Nazi party organizations. The process was therefore administrative and did not imply a criminal dimension, hence a possible conviction. There were no hearings, all pieces being submitted in written form, and the decision were not motivated. A second examination of the file could be asked, leading to a (non-justified), final decision.

Quite clearly, Martin Domke fought hard to preserve his professional rights:[17] he sent a succession of letters, documents and declarations of support and concluded his main application form, on April [KKK], with a sentence saying: "I am attached to the measures taken by the national government and I approve, in particular, the decision of April 6." It soon appeared that having joined the army as a volunteer already on 10 August 1914 was not enough. Neither did his three medals weigh much. As with many others in his position, the problem was one of legal definition: in late 1914, he had been moved to troop transport, then to ambulances, and probably later to the administration of these military corps. But to qualify as a veteran, he had to show that he had been actually taken part to a battle or siege, hence that he had been exposed to enemy fire. So he sent excerpts from military archives, statements backing up his medals and personal letters of support, including by his former superiors, etc. But to no avail. On 6 July he was expelled from the Berlin Bar as from his tenure as a public notary. He asked a second reading, but with no success. A little more than four month after the Reichstag fire, he was out.

There is no ground, on the basis of his own file, to argue that Domke was personally targeted, even though his sheer professional success may have attracted attention. And he was handling big money

[17] The whole file of his expulsion from the Berlin Bar was included in the *Moskauer Sonderarchiv*.

cases. [Outcomes] The (un-answered) question is why he left the country almost immediately: there is even a June 25 entry in his diary, where he is in Paris. At that early hour, those who left the country were primarily left-wing political militants, or politically-engaged artists or writers. An increasing number of Jewish lawyers emigrated from 1933 on, but many also stayed. Domke's own associate, Walter Loewe, left as late as in 1938.[18] Professional rights, the bar on emigration and internment converged only after 1939, when the whole process was transferred to the Gestapo.

A clear distinction should also be made between those who left Germany incognito, often with Nazi thugs in their steps, and those who openly left the country, like Domke: while the former generally recovered little from what they left beyond, the latter could take their books, for instance, and also their financial wealth, provided they paid a substantial tax, the *Reichsfluchtsteuer* (20% in early 1934, raising to 81% in 1936 and 96% in 1939).

### *Exile in Paris: Brecht and debts.*

The Domke family did not suffer material hardship in exile, thanks probably to their existing wealth more than to actual professional income.[19] But exile in Paris was certainly hard. A year after his arrival, Martin conceded in his diary that: "I have to persuade myself not to despair here. The shock that the German situation has given me must be overcome. (…) And I have to face the future with my own forces, not mourn the past, and certainly not want to continue living in the past." (Diary, Paris 14 august 1934). "The stirrup will probably be held for the rider when he is standing in the yard. But the horse will not be taken out of the stable for him."(ibid).

He did not join the Paris bar, which was definitely not welcoming to foreigners (Fette 2012, chap 4). But, like many other German lawyers in France, he worked as a legal advisor to local lawyers and, for one year or two, he contributed to some German cases, together with Loewe, who was still in Berlin. At least as important, he invested intellectually in international private law, a move that clearly foreshadowed his next (and third) career, in New York, as an international arbitrator. He saw this field "as a starting point, even as a playing field for almost every later activity."[20] Sovereign debt in particular attracted him: "Interesting, partly not yet cleared up everywhere, wide-ranging." He also saw here a promising field for future legal activity, especially when "combined with international tax law, because this allows for more convergence points with the so-called capitalist circles" (ibid).

During all those years, the big issue on this count was how to deal with the consequences of the collapse of the gold exchange standard. After the pound sterling was floated in 1931, followed by the dollar in 1933, international trade and finance were overwhelmed by disputes over the valorization of pre-existing debts (commercial or financial). Should they be paid in the now-devalued national currencies in which they were initially extended, in which case the creditor would end up the losers? Or should they be paid at an unchanged gold price, hence revalued in local currency terms, meaning that the debtor would carry the cost of the default? In yet other words, the question is whether the unilateral move of governments should be accepted as such, hence as an act of state, or whether the word of the contracts still bound the parties? This conundrum which, other things equal, is still at the core of the sovereign debt debate, would weigh heavily over the dozens

[18] Walter Loewe left to Chile in 1938, with his library (Schumacher 2012, p. 46); nothing more is known about him afterwards.

[19] Martin's son, Georg, did not join a French Lycée, probably for linguistic reasons and, quite soon, he enlisted an upmarket Swiss boarding school: l'*Institut Montana*, near Zürich, still exists today and bills between 26000 and 31000 euros per year of study.

[20] Letter dated 23 October 1936, to Theodor Sternberg, his old PhD advisor, in: Bartels-Ishikawa (2000), pp. 170-171. Sternberg [¿¿¿].

sovereign defaults of the depression years: many cases were settled only in the early 1950s, generally with substantia losses for investors.

Domke strongly argued against the (coming) consensus and defended the creditors' rights in a series of publications in law journals, in a French-language study of US cases (Domke 1935), and also in a pamphlet published by the Grotius society, in London (Domke 1937). At the time he was also a member of several academic law association, an associate to several Continental law journal and a legal correspondent of the *Neue Zürcher Zeitung*. In a 1936 letter he mentions that he has been associated to some debt-related court cases, most probably with Arpad Pleisch, a Hungarian lawyer established in France [Sternberg]. He co-authored with him a small book (in German) on the Austrian 1922 League of Nations loan (Domke and Pleisch, KKK).[21]

On the other hand, no trace of him was found in the records of the Arbitration Court of the International Chamber of Commerce, where Domke would be a regular visitor after World War II. During the 1930s, the ICC Arbitration court took a number of cases on the gold-clause and generally decided in favor of debtors (Cour d'Arbitrage, 1936). But Domke actually published in 1939 a note on 'arbitration clauses and international loans', in the *The Arbitration Journal*, published by the AAA, where he would soon be working, i.a. as the long-standing editor of the said journal.

Already by about 1936, while he conceded that it was still hard to earn one's bread, the strong ego was back in force: " The name has not been erased, has not disappeared like that of the lawyers who remained in Germany and are not allowed to be printed" (4 August 1936, in Saint Moritz). A few months later, he literally exulted at his success: "the name, the reputation, the effect of the unique I. A good year!" (24 December 1936).[22]

The other international private law issue he dealt with, during those years, was intellectual property. Domke occasionally helped Benjamin being paid for articles published in foreign newspapers.[23] There are indications that they regularly met in Paris, where Benjamin had arrived in spring 1933. In fact, he seems to have been a family friend.[24] There is for instance a small card from 1940 where Martin's son, Georg, adds his own salutations to Walter.[25] In a 1942 letter to Arthur Koestler, Domke even called him his "best friend" and, in a letter to Adorno, he added that they "endlessly discussed" Benjamin's theses (1 August 1951, ref).

From 1935 on, Domke also advised Bertolt Brecht on collecting the royalties from his 1928 global blockbuster, the *Three Penny Opera*. The copyrights being held by a German firm, the *Berliner Bühnenvertrieb* and managed by a Swiss intermediary, Felix Erben, a cat-and-mouse game had soon started with Nazi authorities, which wanted to cut all flows of revenue on which Brecht could

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[21] Arpad Pleisch (or Plesch) has remained known for his fabulous wealth and also for his reputation of a scoundrel: he was apparently blacklisted in the United States and Britain for dubious dealings and is also said to have made money exporting the savings of Jewish families from Germany to Switzerland (Vickers, 2007).

[22] "Und der Name, die reputatio, die Wirkung vom einmaligen Ich. Ein gutes Jahr!"

[23] Letter from Walter Benjamin to Greta Karplus (Adorno), 15 january 1934, in Adorno and Benjamin (2007), p. 113. One *Wolf* Domke, a Rechtsanwalt in Berlin in the late 1930s, with an office on Unter den Linden, was also active defending or representing exiled writers, in his case Robert Musil who then lived in Geneva. See Musil (1998). There is no observed relation between the two.

[24] From 1937, both lived in the 15th arrondissement: the Domkes on 8 avenue Charles Floquet, then 16 rue des Presles (today métro Bir-Hakeim); Benjamin at 10 rue Dombasle, from 1938 on (métro Convention).

[25] Benjamin (2006, p. 112). In a small note, dated 15 September 1931, Lucie Domke invites for diner Siegfried Kracauer and his wife together with common friend, "Herr Benjamin", though she underlines this would only be a casual, ordinary occasion. The two couples, would continue having social relations once in New York. Siegfried Kracauer (1889-1966) was a philosopher and cultural critic, particularly a film critic, loosely attached to the Frankfurt School. Deutsche Literatur Archiv, Marbach. File Krakauer, 72.2216.

have drawn, after having left Germany in spring 1933.[26] Domke intervened on this count in Copenhagen and Paris, but to little avail, apparently[27]. A later case concerned a French movie to be drawn from the opera, a project which turned sour because of a conflict between Brecht, the translator and the director.[28] Here again, and till the war, Domke was regularly an intermediary and counsel.

Some authors have defended that Domke had belonged already in the 1920s to "Brecht's circle", though again no hard fact confirms the point. Brecht's name appears for the first time in Domke's diary only in December 1933, with the mention that he just had a discussion with him (hence in Paris). And the first occurrence of Domke's name in Brecht's correspondence comes as late as 1935, hence well *after* a first trial in Germany over the opera, where Brecht was represented by two other lawyers.[29] Not least, if there had been evidences of a relation with such a notorious, pro-communist figure as Brecht, there are good reasons to expect that they would have surfaced during the 1933 inquiry against him, which led to his ejection from the Bar. A more credible hypothesis is that Benjamin made the connection Brecht and Domke in Paris, probably in late 1933, simply because he had been a friend to both for some time, and because had also relied on Martin's expertise (Wizisla, 2016).

The correspondence between Brecht and his Parisian lawyer was not just about fine points of conflicts of laws. They shared views for instance on classic writing style. Benjamin thus wrote to Brecht how: "The five difficulties in writing the truth have the dryness and therefore the unlimited ability to preserve absolutely classic texts. They are written in a prose that has not yet seen the light of day in German. Domke intended to write to you about this." [30] Brecht also discussed his own, on-going work. He asked for instance for advice regarding speculation on grain, financial crisis and inflation while preparing *Caesar*, a novel on how strong men exploit the market and take power after economic crisis. Domke sent him the second volume of *L'Histoire Romaine – La République*, by Jérôme Carcopino, then the dominant figure in the field, in France. He was warmly thanked and even received an invitation to come and spend the summer on the Baltic, together with Benjamin, probably playing chess: "We could have a nice time together, don't you think so?". But the invitation was declined, perhaps because the "comradely greetings" of the radical leftist were a bit far-fetched for our high-flying business lawyer.[31] Or maybe he just preferred Menton? But Domke still received in 1939 an advance copy of the *Life of Galileo Galilei*, at the same time as Albert Einstein (Hecht 1997, p. 536).

This correspondence stopped with the outbreak of the war, in September 1939, and it never resumed. Brecht would spend the following years in Santa Monica (California), after an eastbound travel via Helsinki, Moscow and Vladivostok, while Domke travelled westward and stopped in New York. In fact, there is no indication that the two ever met, even when the *New School for Social Research* in New York inadvertently offered them the occasion, in 1944: on 6 December, Brecht gave a speech at the School on "Germany – Facts and Problems" and Domke followed on 7 December, with a conference on "International Liquidation of Axis Assets in Latin America". But we don't know whether they shook hands or whether, for instance, they had diner together with Claude Levi-Strauss who had discussed "Moot Problems in Anthropology" on December 5 (*New School Bulletin*, 1944).

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[26] Brecht left Germany on February 27, his apartment being searched the same day. Benjamin left on March 17.

[27] "I derived next to nothing from my writings", quoted by Parker (2014), p. 366.

[28] A small file is kept on this affair by the Société des Auteurs, Compositeurs et Editeurs de Musique (Paris).

[29] Parker (2014) and later email exchange with the author. Note however that the first 1935 letter on record has a rather familiar overtone, which suggests that the two already knew each other.

[30] Letter from Benjamin to Brecht, 20 may 1935, in Haarman and Hesse (2014), vol. 1, p. 410.

[31] April 1938, in Brecht (1998), p. 93.

### *Marseille and the Pyrenees*

At that time, Martin Domke had already found for some time a new footing in New York, at the American Arbitration Association. But before that, the road from Paris to New York had been a long and dangerous one, on which we only have partial elements.[32] In his US 'Application for Certificate of Identification', dated 7 october 1942, he mentioned that between September 1939 and April 1940 he had been interned in three French camps. The first one was Colombes, outside Paris, where all German and Austrian men of fighting age were summoned, when the war broke out. The second was in Vierzon, which was one of the many prisoners' camps across the country where they were sent after a few weeks, until their case had been (very slowly) screened and vetted. The third camp, in Bengy-sur-Craon (near Bourges, also in central France) is probably where he ended up in April 1940, after he had volunteered to the French army in February. Like thousands of foreigners, whether Spanish, Germans or else, which the army did not want to arm, he worked there as a 'prestataire', i.e. a non-fighting worker for the army at a time when a large part of the French civil workforce was mobilized (Peschanski, 2002). What dominated was improvisation, administrative chaos and bad treatment.

Domke's son was with Martin during part at least of this period, which seems however not have been utterly hard to them. Lucie Domke, on the other hand, was part of the second wave of internments, when the war actually started. She was interned from 18 May in one of the best-known camps, in Gurs, near Pau and Lourdes, in southwest France. Spanish Republicans had been parked there after the end of the Civil war, in abject conditions. But they had all left in May 1940 when a new wave of foreigners, mostly women, were sent there, among which up to 8500 from Paris (Schramm and Vormeier, 1979). Together with Lucie was Dora Benjamin, Walter's sister, and also Hanna Arendt for instance. From late June on, these prisoners were gradually freed. At that time, the Nazis were primarily looking for first-rank political opponents, though the risks for foreigners especially stateless Jewish refugees, would only grow with time.[33]

> How the Domke family was then re-united is not known though, by mid-August, Martin was surely in Marseille, with Walter Benjamin, who soon received an American visa, thanks to the *Institute for Social Research*, which had relocated in New York in 1934.[34]

Our story enters here one of the most intensively-researched episodes of the cultural and political history of those years, full of "legends and myths" (Reuter 2007). The central figure is an American journalist, Varian Fry, who organized with a small team the exfiltration towards the Americas of hundreds of political refugees from Germany, Central Europe and France: Jewish and Gentile, mostly leftists but also conservatives (Fry 1945/2017). They include, among many others, Hannah Arendt, André Breton, Marc Chagall, Max Ernst, Arthur Koestler, Alma Mahler, Heinrich and Golo Mann, or the great communist spy Victor Serge.

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[32] "After all you have to suffer, it is time for a better life. At least you do not live under constant threat". Letter to Lucie Domke by her mother, sent to the US at an unknown date, though probably 1941 or 1942. Deutsche Nationalbibliothek/ Deutsche Exilarchiv, Franckfurt a/ Main. File Eckehard [kokot]

[33] The Domkes had given up their German passports to the French administration in 1936, probably after they had lost their German nationality by decree. Their files at the archives of the Paris Prefecture de Police does not include any information of interest. The 'Convention d'Armistice' signed on June 15 committed the French authorities to hand over any Germans from the non-occupied Southern zone, which the occupants would designate. Although few persons would actually extradited following this exact clause, the chilling effect on the thousands of refugees massed across the non-occupied, southern zone of the country was immediate.

[34] The Institute for Social Research had been founded in 1923 at the University of Frankfort am Main; it moved to Geneva in 1933, then in New York, at Columbia University. It returned to Frankfurt in 1950.

In order to get a visa from the local US consulate, they first had to receive an invitation and some guarantee of revenue from a US-based institution, via the State Department. Then, transit visa from Spain and Portugal were required, which became increasingly difficult, in particular for stateless refugees who did not have a passport. False ones had to be provided. Lastly, for most of the time, the Vichy government did not grant exit visa, but would have rather jailed these refugees, or 'surrendered' them to the Germans. Lastly, the clandestine flight to Spain, over the Pyrenees, was also organized by the Varian Fry team, in particular by Albert Hirschman, also a German political refugee who would become after the war a prominent development economist (Sgard, 2017).

As is well-known, Benjamin took this route, with the support of Fry's team. But for an unknown reason, after he had spent his last forces crossing the mountains, the Spanish police refused him entry into the country. He committed suicide the day after, on 27 September 1940, in Port-Bou, where he was buried. The Domke family, on the other hand, received their American visa on November 23 and left France as late as June 1941, following their declarations when they arrived from Lisbon in New York, on 9 July. Why they would have left so late and how they managed to reach Lisbon is not known, though they seem not to have relied on Fry's team. Passports were for sale in Marseille (at substantial prices), innovative paths out of France could be found, connections in the US could also be relied upon.

However, when Martin Domke eventually crossed the Pyrenees (or boarded a ship), he carried with him two suitcases of papers by the now-deceased Benjamin. Part of them belonged to Domke personally, hence manuscripts and books he had received, perhaps long ago, plus the Lichtenberg bibliography and some papers by the same, in particular a precious diary of a travel to England in 1774-1775. But the suitcases also contained manuscripts and papers that had belonged to Benjamin himself.[35] How both sets of papers had first find their way from Paris to Marseille is a complete enigma. Still, they ended up in Martin Domke's suitcases, they were carried across the border and they later reached New York.

It is not the place here to make and test hypothesis regarding what he may have done for his old friend. What is sure, is that his name pops up many times in the known timeline of this tragedy, though it did not attract proportional interest. For instance, in April, on his way to Bengy, his third camp, Domke returned to Paris and visited Benjamin. His wife, Lucy Domke, was freed from Gurs early August, which is not far from Lourdes, where Walter was staying at that time with his sister Dora, also out of Gurs. It has often been said that, after his death, she dispatched her brother's remaining papers to "friends", who would bring them to Adorno, in New York. In a 1943 letter, where she discusses the events of summer 1940, she mentions the name of Martin Domke, "a friend", and adds that the documents had been left by a lawyer (avocat), in Aix-en-Provence, 30 km away from Marseille. For how much time and by whom, she did not say (Luhr, 2000). And beside Hannah Arendt, who had one manuscript with her when crossing the Pyrenees, Domke is the only known carrier. We also know for sure that Walter Benjamin and Martin Domke were together in Marseille in late August: in a letter to Arthur Koestler, he tells him that he was the man "who was sitting with Benjamin one August night last year in the corner-bistro at the Old Harbour in Marseille".[36]

One year later, on 2 September 1941, hence two months after his arrival in New York, Martin Domke duly met Theodor Adorno, then at Columbia University, and gave him the papers and documents he had received from Dora or, more probably, from Walter; he kept for himself the

[35] In June 1940, he had left some books and papers in his apartment in Paris, which would end up in the Moskauer Sonderarchiv, just as Domke's own papers; a second set of manuscripts was hidden in the Bibliothèque nationale, in Paris, and the last part ended up in Marseille (Reuter, 2007).

[36] Edinburgh University Library, MS2371/2. Wesseling (2002) writes that Benjamin would have arrived in Marseille sometimes between August 16 and 22. Dora then reached Zürich in December 1940, or perhaps as late as 1942 and later recovered a number of papers and manuscripts, which she sent to Adorno. She died there in 1946, fully destitute.

papers and books he owned. The day after, Adorno wrote to Horkheimer, in Los Angeles, that he had met « the Domke [*jenem Domke*] who saved Benjamin's estate.»[37] In another letter to Gershom Scholem, in Jerusalem, he wrote later how "Dr Dohmke" (sic) had told him what he knew about Benjamin's suicide, which Adorno did not believe: "…all this cannot possibly explain what has happened and it remains as senseless, as completely beyond any reconciliation as ever before.»[38]

At that moment, Adorno may well have inaugurated the long-standing pattern of the Benjamin studies that entirely ignores the possible role of Martin Domke in this story. There are indeed good reasons to believe that he said a lot about his old friend, which may have cleared up part at least of "the myths and legends" that surround the whole episode. He was most probably one of the last persons to have seen Benjamin alive, having possibly spent his last weeks with him. But Adorno did not accept what he heard, and Domke never spoke again or write anything about his friends and his adventures in Vichy France.

### *New York*

In July 1941, however, when he landed at Ellis Island, Domke had more with him than his family and the two problematic suitcases. For instance, he apparently had some money, or maybe money he had transferred earlier was waiting for him. Not only did he pay for the family travel himself, as the Port Authority documents indicate.[39] It seems also he had no need either for a host institution, which suggests that he had enough resources to cover his family expenses for some time. Hence, his name appears in the files of the Emergency Committee in Aid of Displaced Foreign Scholars, which played a major role at the time, but with the only mention that he had not requested any support.[40]

But more than money, Domke had expertise and he had now a reputation. He even had a network on the ground. The first reference he gave in support of his demand for an American visa was signed by no less than a former US Attorney General, William DeWitt Mitchell (1929-1933). The second reference was provided by a New York-based, Colombian international lawyer, Phanor Eder, would had been President of the American Branch of the International Law Association, among several other similar positions. In 1943 Domke published an international law treaty on 'Trading with the Enemy' which received a series of resounding endorsements from the very top of the legal academy: Hersch Lauterpacht, Edwin Borchard, Antonio Bustamante, and also Frederick Coudert, one of the inventors of international lawyering.[41]

Domke, who became an Adjunct-Professor at NYU only in 1950, aged 58, did not have the blue-blood academic pedigree of some better-known exiled German lawyers, like Ernst Rabel and Arthur Nussbaum (or Clive Schmitthoff and Ernst Cohn, in England). But during the 1930s he had build-up his personal credit and academic network, primarily with his series of publications and

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[37] Horkheimer, 1996, vol. 17, p. 166.

[38] 19 February 1942, in Adorno and Scholem, 2015, pp. 40-41.

[39] 'List of Alien Passengers for the US Inspector'.

[40] Emergency Committee in Aid of Displaced Foreign Scholars Records, 1927-1949. The New York Public Library. MssCol 922, Box 52, file 38.

[41] This book contains a rare, if not the sole, yet un-avowed autobiographical development in all Domke's publication record: « A German Jew left Germany in 1933, emigrated to France and because of his German birth was interned there in September 1939, after the outbreak of war between France and Germany. He finally came to the United States in April 1942, from Marseilles, in the then un-occupied zone of France. He is and remains an enemy within the meaning of the German as well as the French and British Trading with Enemy Acts, and he is not 'a generally licensed national' in the United States, since he acquired residence in the United States after February 23, 1942 » (Domke, 1943, p. 99). These last words are the only ones that do not apply to Domke, because he arrived in New York in July 1941.

conferences on sovereign debts and international private law. He then leveraged this academic capital, first when asking a visa, then when launching his third career, in New York. It is doubtful that his academic capital played a comparable role in his first, Parisian exile. The small books on German business tax law may not have offer that kind of support: this was local knowledge, which did not travel well. Most probably, in Paris he relied much more directly on his personal wealth, which he had accumulated during his great years, in Berlin between 1925 and 1932; and in turn, this allowed him to invest heavily on international private law matters, as he had so clearly announced to Theodor Sternberg in 1936. If anything, this is a cosmopolitan knowledge, just as arbitration is a cosmopolitan practice.

The *American Arbitration Association* became the place of choice where he invested this capital, to a so remarkable success. Already in 1944, he published a landmark essay on the record and the prospects of international commercial arbitration, together with the Grand Old Lady of the AAA, Frances Kellor (1873-1952), with whom he must have had an interesting conversation (Domke and Kellor, 1944). This collaboration, which has left no paper-track, marked in practice the convergence of two genealogies of commercial arbitration: the American one, with its roots in the creation of the AAA and the Federal act on arbitration, in 1925; and the European one, which was still in formation, primarily at the International Chamber of Commerce, but which would directly shape the future regime of international commercial arbitration (Sgard 2016).

In the following decades, Martin Domke became the main go-between in this international genealogy. Firmly established in the United States (of which he became a citizen in 1947), he also had his intellectual roots in Europe, especially in the civil law tradition, which was dominant at the ICC at least until the 1970s. This unique position became fully operative in the run-up to the 1958 United Nations arbitration Convention, where he was personally, directly involved, together with the whole ICC group. They would then navigate together for another twenty years, from international conferences to collected volumes. [Revue de l'Arbitrage/ Festchrift??]

And what happened, during this time, to his good old German friends, Benjamin and Lichtenberg, one may ask? Did they find a place in this third act of Martin Domke's long life? The story has been told by Reuter (2007), and it is short: in 1960, Domke auctioned off his Lichtenberg papers, including the precious travel diary; they have been since then at the Göttingen University Library. And in 1965 he put for sale his Benjamin papers, including the *Bibliographie raisonnée*, in Montreal. A German Visiting Professor, Clemens Heselhaus, bought the whole set and took it back to the University of Giessen, where it quietly waited the great Benjamin revival in the late 1970s, after a decades-long eclipse.[42]

We have no clue as for the reasons why Domke decided to sell.[43] Reuter references a 1938 letter to Reneke where he already suggested that he might sell, but as for the rest, we can only speculate again. Two brutal exiles in a single life is a lot, even for someone with a great force of character, like him. Benjamin's death may have also played a role here. Perhaps the passion for German literature and for old German books had gradually waned, after he had left his native country. Another dimension is that Lucy and Martin divorced in the late 1950s and he married in 1960 Ewa Dienst, a doctor rather than a *femme de lettres*, though also a Berliner by origin (1904-1982).

One of his former assistants, Gerald Aksen, wrote upon his death how "few of us will forget the elegant dancing of the attractive, beautifully groomed woman being swirled around by the scholarly academic at receptions from Thailand to Germany to New Dehli to (…) New York." Maybe success in the New World just came with a new life, with new interests, where the construction of international commercial arbitration absorbed most of his time. And as for the rest, perhaps Sankt-Moritz, Ibiza and Menton had fully won him over.

[42] A copy of the list of the documents sold to Giessen University in 1965 can be found on page 237 of Reuter (2007).

[43] There is no indication in his probate that he left beyond rare books or manuscripts

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