Terrorists on Trial

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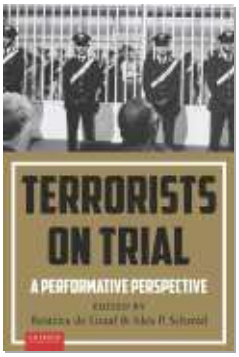

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6. Germany Confronts the Baader-Meinhof Group. The Stammheim Trial (1975–1977) and Its Legacies

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6.1. Introduction

One of the most remarkable twentieth-century legal confrontations between state and terrorists took place at the trial against the leaders of the Rote Armee Fraktion (RAF, Red Army Faction) at Stammheim, Germany, from 21 May 1975 until 28 April 1977. This trial stands out because of its extraordinary length and the ferocity of the altercations between those present in the courtroom, in particular between the presiding judge and the accused and their defence team. Daily proceedings over the 192 trial days lasted between ten minutes and ten hours, a total of about 1,000 hours. After the trial, 14,000 pages of protocol were typed up, and in early October 1977, the Stammheim judges presented a written verdict of 319 pages.[1] We begin our analysis of this trial with a brief history of the RAF. This is followed by a review of research on German left-wing terrorism in the late twentieth century, and an outline of our analytical perspective.

6.1.1. History of the Red Army Faction: A Brief Overview

Between 1970 and 1998, the Red Army Faction (also known as the Baader–Meinhof Group) confronted the Federal Republic of Germany. The RAF was a social-revolutionary terrorist group that began as an offspring of the protest movement of the late 1960s, just as this movement was in the process of disintegrating into various groups. The RAF regarded itself as a left-wing revolutionary urban guerrilla group, and modelled itself on similar organisations in Latin America (Uruguay's Tupamaros) and the United States (the Black Panthers). To continue the struggle for a revolution in West Germany, the RAF opted to take up arms against the state.

The RAF outclassed other left-wing terrorist groups in Germany for several reasons. Firstly, its membership included some of the most prominent people of the protest movement: lawyer Horst Mahler, who had defended many protesters; journalist

Ulrike Meinhof, whose critical columns in the left-wing periodical *Konkret* had earned her respect among Germans of radical and liberal persuasions; and the radical lovers Andreas Baader and Gudrun Ensslin, already convicted of arson against two department stores in Frankfurt in 1968. Secondly, the RAF entered the political stage spectacularly, with the liberation of Baader from captivity on 14 May 1970. Thirdly, the RAF aimed to win the hearts and minds of others on the radical left by publishing declarations and semi-intellectual brochures, including, in 1971, the lengthy essays *The Urban Guerrilla Concept* and *About the Armed Struggle in Western Europe*. Finally, the Baader–Meinhof Group strongly portrayed itself as the vanguard organisation in West Germany for all the radical left-wing groups, action committees and projects, and it emphatically demanded their solidarity and support.

During the first two years of its existence, the RAF concentrated its efforts on building the organisation, with its members only occasionally involved in violent, sometimes fatal, confrontations with the police. Yet even at this stage the RAF caused great upheaval throughout West Germany. On the one hand, there were waves of moral panic in mainstream society, fuelled by anxious press commentaries and politicians demanding tougher anti-terrorist policies. On the other hand, several surveys of public opinion in 1971 found that the RAF enjoyed some sympathy among a number of left-wing intellectuals and youngsters. Partly in reaction to this, state institutions implemented rather radical counter-terrorist policies, not just against the perpetrators of political violence but scrutinising a far wider radical left milieu. The Bundeskriminalamt (BKA, the Federal Criminal Police Office) coordinated counter-terrorist policies, and high hopes were invested in its new president Horst Herold, and the advanced computer-based investigation techniques he introduced. The BKA and other government agencies also mobilised the press in an effort to win over the general public for the fight against terrorism. While genuine support for the RAF remained minimal and decreased over the years even in radical circles, government policies encouraged right-wing politicians and the media to instigate large-scale campaigns against RAF 'sympathisers'.

In May 1972, the RAF launched its first campaign of political violence: six bomb attacks spread over several weeks. On 11 May, the US Army barracks in Frankfurt were attacked, killing one American officer and wounding thirteen. On the following day, explosions in police headquarters in Augsburg and Munich left another ten people wounded. On 15 May a bomb destroyed the car of a federal judge in Karlsruhe, seriously wounding his wife. Four days later, an attack on the Hamburg offices of the conservative Springer Press injured 38 staff members. On 24 May, Heidelberg US military headquarters were targeted in a violent blast that killed three American

soldiers and wounded five more. The RAF's triumph at the 'success' of its May offensive was short-lived, and when in June 1972 police arrested its leaders, including Baader, Ensslin and Meinhof (Mahler had already been apprehended in late 1970), it seemed that the RAF had come to an end. Its members faced court trials and lengthy prison terms.

In the crucial period that followed, 1972–1977, events took an unexpected turn. Instead of passively undergoing their detention in custody, most members of the RAF (excluding Mahler who left the organisation) started a prison struggle involving collective hunger strikes. This was intended to create a solidarity campaign within the left-wing radical milieu and to attract new recruits, which led to the formation of new terrorist cells. Violent acts were committed with the aim of forcing the German government to release the prisoners. The first of these acts was the armed occupation of the German embassy in Stockholm, on 24 April 1975, just weeks before the start of the trial against the RAF leaders at Stammheim.

As will become apparent below, however, the RAF and the state saw the Stammheim trial as their most important battleground over the next two years. Only in the spring of 1977, when the trial was nearing its end, did the RAF cells begin another campaign of violence. 'Offensive 77' drove West German society to the brink of a socio-political crisis in the so-called 'German Autumn' of September/October 1977. During these months German business leader Hanns Martin Schleyer was kidnapped (and four security men were shot and killed in cold blood) and a passenger jet was hijacked by Palestinian terrorist comrades of the RAF. On 18–19 October 1977, German GSG-9 Special Forces liberated the abducted plane at Mogadishu airport in Somalia. After hearing this, Baader, Ensslin and Raspe collectively committed suicide in their Stammheim prison cells and, immediately thereafter, Schleyer was murdered by his captors.

Now that its leaders were dead, it seemed the RAF really would come to an end. It proved to be a long goodbye however, lasting more than twenty years despite further RAF arrests and deadly gun battles with the police. All through the 1980s and until 1991, the RAF mounted attacks against NATO-related targets, German business leaders and government representatives. Remarkably, the perception of the RAF as a fundamental threat to German society gradually faded away despite these events. This was in part caused by changing civic attitudes towards the state. Whereas in 1977, extreme measures by police and state against the terrorists and their prospective 'sympathisers' had met with consent from most quarters of German society, it appears that following the 'German Autumn' a period of critical reflection began. In the last years of the 1970s criticism of the police grew markedly, especially of measures electronically

to collect and process large quantities of personal data. Trust in state institutions eroded and state officials were subject to increased democratic scrutiny. In view of the traditional regard for the state in Germany's political culture, these were remarkable developments.[2]

In the early 1990s, fragmentary discussions between RAF members (both inside and outside prison) and small conciliatory gestures by government officials led to the final dissolution of the organisation. On 10 April 1992 the RAF announced a unilateral armistice, and in 1993 performed its last, highly symbolic bombing. No physical harm resulted but a new prison facility in the final phase of construction was destroyed (60 million Euros damage). Five years later, on 20 April 1998, the RAF announced its disbanding, proclaiming that in future its members would seek other ways to promote social transformation.

6.1.2. Theoretical Outlook and Line of Investigation

'Terrorism' is a contested term.[3] It is often used for political effect: labelling certain acts or organisations as 'terrorism' or 'terrorists' can disqualify political adversaries. We will distinguish between two interrelated meanings of 'terrorism'. Defined narrowly, terrorism is a specific act or threat of political violence through which the perpetrators attempt to influence the behaviour of social actors other than the immediate victims of violence. In their seminal study *Violence as Communication*, Alex Schmid and Janny de Graaf thus frame terrorism as 'a kind of violent language'.[4] On a meta-level terrorism can be interpreted as a 'social construction'; just like any other social problem, the concept of terrorism 'is shaped by social and political processes, by bureaucratic needs and media structures'.[5]

Following this interpretation, we can recognise that the reactions that are provoked by acts of violence, reactions among politicians, the media and the general public, are *constituent* elements of terrorism. While the actual violent attacks cannot be reasoned away, nor the victims discounted, these acts or threats acquire their 'terrorist' quality when other groups in society label them or react to them as 'terrorism'. In this sense, communications and interactions between 'terrorists' and other groups and institutions in society have a considerable influence on the development of 'terrorism' as a social problem. Against this background, we argue that reactions to RAF activities by politicians, social actors and the established media in the FRG in the 1970s co-determined the impact this organisation had on German society at the time. The brief historical introduction to the RAF above has demonstrated some aspects of this notion.

Examining terrorism as both a process of communication and a social construction has important consequences for our approach to the phenomenon. It demands a shift of focus from questions that have usually dominated terrorism research (and research on the RAF)—questions restricted to the emergence of terrorist groups or to their confrontation with the state in violent acts. Broadly-based research is necessary to understand the social, political and cultural dynamics which are set in motion by certain acts or threats of violence that public debate deems to be 'terroristic'. More emphasis on the wider context of events and structures is required.[6] We also need to take a closer look at developments in particular societies *after* specific chains of events (attacks, reprisals, trials etcetera) related to 'terrorism' have taken place. How were the violent acts and the proclamations of the terrorists perceived, interpreted and responded to by state institutions, social actors, the mass media[7] and by other groups in society?[8] The semantic coding which shapes the interpretation of terrorism also requires analysis. Such a broadly-based social and cultural historical approach could not only help to overcome the dichotomous interpretations of terrorism. It could also contribute to opening up some analytically challenging avenues for a general debate about terrorism as a phenomenon which is shaped by the interactions of state, social and media actors on the one hand and militant activists on the other.

Seeing terrorism as an act of communication can help us understand its strong potential for the performative; terrorism is a constructed reality which is shaped and defined by the performances of different actors.[9] From the perspective of communication and performance, the confrontation between the opposing parties can be seen essentially as a clash between different narratives of justice and injustice. This approach is particularly useful for the analysis of terrorist trials, as a recent comparative study into the dynamics around court cases and associated detention conditions (in Germany and the Netherlands in the 1970s) has shown.[10] The courtroom provides a unique stage for the clash of narratives, with its clear division of roles between judge(s), prosecution and defence, as well as the customary procedural court rules and rituals. The various players involved adopt strategies and perform accordingly, with the aim of persuading audiences within and outside the courtroom to endorse their narrative.[11]

Not least because of its extraordinary length and the exceptional vehemence with which the parties involved played out their confrontations, the Stammheim trial against the RAF leaders offers an excellent subject for analysis from the perspective of communication and performance. Of course, ours is not the first attempt to study the trial, and it will not be the last. Following the release of early collections of various documents on the trial,[12] book-length studies first appeared in the mid-1980s. In 1986,

the apparently well-informed *Spiegel* magazine journalist Stefan Aust published *Der Baader Meinhof Komplex*. A long and informative chapter on the Stammheim trial is probably based on newspaper reports and trial transcripts (unfortunately Aust does not reveal his sources). In the same year, Dutch lawyer Pieter Herman Bakker Schut published *Stammheim. Die notwendige Korrektur der herrschenden Meinung*, an insider's analysis of the trial. Smaller books or edited volumes were released around the same time, mainly focused on the so-called 'Deutscher Herbst' (German Autumn) of 1977 when the confrontation between the RAF and the state reached its zenith, but also dealing with some aspects of the Stammheim trial.[13]

Thirty years after these events, in 2007, the journalist Ulf G. Stuberger published an eyewitness account of the trial, and in 2009 a well-researched legal study by Christopher R. Tenfelde appeared.[14] Further books written by and about former RAF defence lawyers cover the trial to some degree.[15] With rare exceptions, professional historians avoided the subject of the trial and the RAF in general until the 21st-century. More historians are now studying and writing about the subject of West Germany's left-wing terrorism.[16]

Although these studies about Stammheim have produced valuable information and many interesting viewpoints, they also have some shortcomings. The older publications about the trial tend to focus on personal drama and many exhibit strong political bias and a lack of objectivity. Aust's journalistic approach provides a clear illustration of the first flaw; he also betrays some personal emotional involvement. Bakker Schut's writing, in spite of the legal discourse he uses, is about as politically partisan as one can get. The smaller books and edited volumes were mostly produced to participate in Germany's public debate and are often biased and often provocative.

Not even the most recent publications escape these shortcomings. Stuberger's attempt at a more nuanced approach, combining the unique circumstance of his eyewitness status with the benefit of hindsight, is valuable. Still, his account is too narrow and personalised really to increase our understanding of the trial. Even Tenfelde's monograph fails to deliver, although at first glance it looks like the most promising serious legal analysis of the trial. Central to Tenfelde's examination is the question of whether or not Stammheim was a 'political trial'. Tenfelde clearly aims to criticise and counter the claims by various German officials at the time that politics played no part in the trial or in the confrontation with the RAF in general. By debating this claim, Tenfelde enters into a dialogue with the historical material he studied as if he were himself part of a discussion taking place in the 1970s. From a jurist's perspective this endeavour might make perfect sense. As historians, however, we are far more interested in asking why the trial's (obvious) political character was

contested at all. Instead of trying to proclaim a final verdict on this, we present a critical, theoretically informed analysis of the probable intentions and deeds of the trial's actors, and of the social dynamics they were involved in.

In general, the authors who have studied Stammheim to date have consciously or unconsciously embraced a narrow view of the RAF's history, reducing the issue to a two-sided confrontation. Caught up in the moral dilemmas presented by the history of the RAF and the counter-terrorist policies it provoked, these authors are constrained within a 'them versus us' perception of this particular chapter of German history. Because of that, in the end, they feel morally obliged to take sides. It seems to us that academic research about the RAF in general until around the year 2000 still betrayed a similarly view.

We suggest that early historiography about the RAF and other German left-wing terrorist organisations has been flawed in two interrelated ways. Firstly, the authors (be they journalists, political scientists, sociologists or legal experts) interpreted terrorism mainly as a bipolar confrontation between the terrorists and the state. The analytical narrowness of this dichotomy was intensified by a second flaw: while some authors told stories about single actors, others focused on social structures, ignoring actions by individuals. Intellectual exchanges or even communications between researchers from both groups were rare.

This gap was bridged only when historians entered the fray after 2000, and the concept of 'terrorism as communication' (introduced to terrorism studies by Schmid and de Graaf in the early 1980s) was applied to the analysis of German left-wing terrorism.[17] Using a communication-oriented approach, scholars were able to escape the dominance of binary coding and gradually to emphasise the triadic structure of communication on the issue. The actors in this process of communication can be clearly named: the militants and their constituency; the state and its institutions; and society at large, which of course consists of many sub-groups. The media (newspapers, radio and television) play an important role, not only providing channels of communication but also performing as agents with their own political agendas.[18]

A communication-oriented approach helps to address the tendency that many publications on the RAF have of insulating confrontations between left-wing terrorism, the state and society from all other developments of the time. The strong focus on communication enables scholars to re-contextualise the RAF, re-connecting its history to the social and cultural history of state and society. As Klaus Weinhauer proposed earlier, this enables the integration of the study of German left-wing terrorism into a broader social and cultural history of 'Internal Security' (Innere Sicherheit), focusing on the interaction of the three main actors mentioned above.[19]

On this theoretical basis, we aim to present an example of what a new approach to the history of the RAF has to offer. Firstly, using a wide variety of publications and sources, our narrative of the Stammheim trial also focuses on the events leading up to the trial and in court, with attention being paid to the performative aspects of the proceedings. We analyse the legacies of the trial from a similar perspective, and this chapter takes a first step towards an analysis of the political, juridical and social consequences or repercussions of the Stammheim trial. Because a solid social and cultural history of West German terrorism is still lacking, this can be only a modest attempt to analyse the collective memory of the Stammheim trial in West German society and to contextualise it within the general re-evaluation of left-wing terrorism and the counter-terrorist policies it provoked at the time.

We see our chapter, and its openness to criticism, as an important step in breaking free from established patterns of thinking about the trial and related themes. Even after their conclusion, terrorism trials exhibit the semantic coding that structures the interpretation of terrorism as a whole. These codes (and sometimes also the trials) frame public memories. We argue that in 1970s/1980s Germany, the semantics of communication about left-wing terrorism were structured by a binary and highly politicised coding system, built on a clear dichotomy of them (terrorists, supporters) versus us (state, society). In this system 'Stammheim' was an important symbol; it helped to locate the transnational struggle of left-wing militants against imperialism, the state and its institutions, and at the same time it drew attention to the German state and its inhumane arrogance. Or, as the news magazine *Der Spiegel* wrote in 1992, 'Stammheim' was 'a symbol, congealed in concrete, of uncompromising raison d'état'.[20]

6.2. Setting the Stage, Writing the Script

Almost three years passed following the arrests of the leading RAF members, Andreas Baader, Gudrun Ensslin, Ulrike Meinhof and Jan-Carl Raspe, before their trial began in the Oberlandesgericht (Higher Regional Court) in Stuttgart, sitting in the city's Stammheim district, on 21 May 1975. This meant all parties involved had a lengthy period to prepare for this unique courtroom confrontation. This section will elaborate on the pre-trial phase and the various ways the prosecution and the defence tried to influence the setting of the stage and the writing of the script. We will discuss new rules (and laws) drawn up by the state, and the way the RAF and its lawyers responded to, or anticipated, these steps.

6.2.1. State Trial Strategy and the Introduction of New Legislation

The various state institutions involved, including the prosecution, regarded the trial as more than just an opportunity to bring the RAF leadership to justice, as the following statement by Bundesgeneralanwalt (Chief Federal Prosecutor) Siegfried Buback shows. 'In this trial', Buback told a radio reporter in June 1976, 'because we were dealing with the leaders of this Baader–Meinhof Gang, we had to prosecute more comprehensively. It was important to present the court with a representative cross-section of their actions.'[21] In effect, politicians and state officials tried to create the preconditions that would turn the trial at Stammheim into a public reckoning with RAF terrorism in particular and German left-wing extremism in general. Firstly, this involved the formulation of the accusations in a bill of indictment against the suspects by which the state hoped to influence the content of the trial proceedings. Secondly, it meant the choice of a stage for the trial; this resulted in the building of a new courthouse. Thirdly, the long period of preparation permitted the state to rewrite laws intended to limit the defence's ability to obstruct trial proceedings.

The Accusation against the RAF Suspects: A Political Trial without Politics

Although no one doubted the political significance of the Stammheim trial, the authorities declared time and again that it was 'ein ganz normaler Strafprozeß gegen Kriminelle' (an absolutely normal trial against criminals).[22] This fitted well with the discursive strategy practised by the authorities in their struggle with the RAF from 1970 onwards. In the eyes of established politics and media in the Federal Republic of Germany (FRG), the RAF's destructive violence automatically disqualified the organisation as a political entity. Instead, the RAF was portrayed as a criminal gang of egotistical maniacs, devoid of any idealism. Rather than using its chosen name Rote Armee Fraktion (RAF—Red Army Faction) or the quasi-neutral Baader–Meinhof Group, politicians, state officials and many journalists preferred the use of 'Baader–Meinhof Bande' (gang), a reference that called up associations with criminals like Bonnie and Clyde, whose story had been made into a successful Hollywood film in 1967.[23]

By denying the RAF's political project, the authorities attempted to isolate the RAF from other critical groups. As Horst Ehmke, Chief of the Office of Chancellor Willy Brandt, declared on 7 June 1972, it was 'one of the most important tasks' to 'deny [the RAF] all solidarity, to isolate it from what other left-wing views there are in this country'.[24] In the bill of indictment, therefore, Baader *cum suis* were not accused of political crimes like 'high treason' (paragraph 81 of the German Criminal Code, StGB[25]) or the preparation thereof (paragraph 83 StGB). Although the option had

been discussed within the Bundesanwaltschaft (Federal Prosecutor's Office),[26] this possibility was dismissed as part of an effort of 'de-politicising by selecting the norms', as German legal scholar Christopher Tenfelde writes in his dissertation about the Stammheim trial. At a 'high treason' trial the political character of the confrontation between the armed groups and the state would necessarily have been acknowledged.[27]

Instead, the bill of indictment (354 pages, with an extra 471-page attachment) mainly stressed the ordinary crimes of the RAF leaders: murder (of one policeman, killed during a bank robbery, and four American soldiers, killed in two of the 1972 bombings), attempted murder (71 wounded, also in 1972), robbery, theft and criminal use of explosives.[28] The problem was, however, that in spite of a massive number of 996 witnesses mentioned by name in the indictment and despite some 1,000 additional reports (mostly by criminal experts), the prosecutors were unable to prove conclusively that the suspects had been on the crime scene at any of the bombing sites, although some witnesses had seen them in the immediate surroundings shortly before the explosions. To circumvent this problem, the Federal Prosecutor's Office built the indictment on the notion that the RAF be regarded as a 'Krimineller Verein' (criminal association), of which the accused had been leading members, thus creating a collective responsibility for RAF acts.

Inadvertently, by reverting to paragraph 129 of the German Criminal Code, the prosecutors themselves reintroduced a political element into the prosecution of the RAF. It is important to note in this respect that the legal history of this paragraph goes back to the legislation of German states preceding the establishment of the Federal Republic. In Prussia, the Kaiserreich (empire) and the Weimar Republic, this paragraph was mostly used against political organisations rather than against profit-oriented criminal gangs. During the Bismarck era, social democratic organisations had been suppressed with the help of this paragraph, while in the Weimar years it had been used against Communist organisations. The fact that the accusation against Baader and others was based on paragraph 129 indicates a continuation of a tradition of the German justice system against left-wing adversaries who were portrayed (and subsequently widely perceived) as criminals.[29]

Paragraph 129 made it possible to hold different members of a criminal association responsible for acts of the organisation as a whole without having to prove their actual participation as individuals. There were also other practical juridical benefits. With only 'typical' crimes like murder on the agenda, it would have been necessary for a range of state prosecutors (from different states within the Federal Republic) to prosecute the accused for separate crimes. The use of paragraph 129 made it possible to prosecute the RAF as a whole and place the central management of the prosecution in

the hands of the Federal Prosecutor's Office. The added benefit was that one central trial could be organised at an Oberlandesgericht (Higher Regional Court) in one of the eleven German state capitals. This was the only way for the state to achieve the exemplary trial against the RAF it so strongly desired.[30]

Building the Stage and Its Props: A Fortress of Fear

Apart from juridical considerations, security issues were important in discussions about the choice of a location for the trial. Politicians, security officials and administrators feared a repetition of the RAF's first act, the armed liberation of Andreas Baader from captivity in May 1970. The Oberlandesgericht in Stuttgart (the state capital of Baden-Württemberg) was selected, as it was in this state that the bombing with the gravest consequences (the attack on the US Army headquarters in Heidelberg) had taken place. The Stuttgart suburb of Stammheim also hosted a modern prison facility that could easily be upgraded to maximum security level. Stuttgart is also conveniently close to the Federal Prosecutor's Office in Karlsruhe. There were objections to Stuttgart on the ground that it violated legal requirements that called for trials be held in the place in which the accused lived or was arrested. The government took care of this problem in a technical sense by moving the accused to Stammheim prison before the trial began, making them Stuttgart residents.[31]

The Second Senate of the Stuttgart Oberlandesgericht consisted of six voting judges (one of them presiding) and three substitutes. Theodor Prinzing, president of the Second Senate at the time of the trial, was a relatively fresh appointee installed on 4 February 1974. Rumours suggested some behind-the-scenes manoeuvring had side-lined his predecessor and that Prinzing had been hand-picked by the political authorities to conduct the impending trial against the RAF.[32] Prinzing (then president of a youth court) was seen to possess experience with lengthy proceedings (gained in trials against former Nazis), as well as the analytical skills, self-assertiveness and ambition necessary for the job. Prinzing also had the reputation of a judge whose verdicts had never been revised by higher courts, which meant he would probably meet public expectations for the trial against the RAF.[33]

If this is a correct interpretation—this information has not been verified by historical research—a conflict arises with the principle that every accused has the right to a lawful judge—in this case Prinzing's predecessor—without political interference. The impression that a special court was created is reinforced by the state's decision to build, alledgedly for security reasons, a new (12 million D-Mark) courthouse close to the Stuttgart-Stammheim prison, rather than make use of the existing court in the city centre. In an ironic remark, Stefan Aust described this new

building as a 'memorial of steel and concrete [which] had been erected to [the RAF leadership] in their lifetime'.[34] In Germany and beyond, concerns were raised that the government was organising a show trial in a special court, which German and international law specifically prohibit. Some RAF lawyers and other critics compared the decision to build the special courthouse to the creation of the Sondergerichte (special courts) by the Nazis to guarantee convictions of perceived enemies of the state.[35]

The law also holds that a fair trial should not take place in prison, because that would be in violation of the presumption of innocence of the accused. Some critics believed that locating the new Stammheim courthouse close to the penitentiary amounted to a pre-trial conviction, or could at least be interpreted as such by the suspects themselves. German authorities reacted to this by declaring that the new concrete hall was part of an older plan to renovate the prison facilities. They described the new structure as a 'Mehrzweckgebäude' (multi-purpose building) that would in future function as a sports facility or workshop for the inmates. Retrospectively, it has become clear that this was mere window dressing, as during the 35 years since its construction the multi-purpose building has been used only for high security trials and has remained the main seat of the Second Senate of Stuttgart's Oberlandesgericht.[36]

Security arrangements around and within the new Stammheim courthouse were extraordinary. This is apparent from a balanced overview written by Ulf Stuberger, a German journalist (who claims to have been the only reporter present on all trial days). Stuberger relates that on his first visit to the trial site the two rows of fencing surrounding the entire facility reminded him of the border with Communist East Germany. The first fence was topped by a roll of barbed wire and the second, twice as high, with military-style NATO razorwire. Between the fences a secure zone was controlled by motion detectors, surveillance cameras and heavily-armed police with watchdogs. Parts of the court building were covered with steel netting to prevent a prisoners' liberation attempt by helicopter. Despite this, and the tight control of airspace above the courthouse, a small aeroplane flew over the site on the first day of the trial and was forced to land by army helicopters. Apparently a photojournalist had hired the plane to take pictures.[37]

Stuberger notes the police presence outside the courthouse, especially on this first day of the trial. Hundreds of police, some on horseback, as well as paramilitary border police, riot police and a special counter-terrorist commando were present to block undesired visitors from approaching the facilities. Physical obstacles such as 'Spanish riders' (knife rests—military-style wire obstacles), road blocks and concrete

walls created further barriers around the courthouse. Visitors entered the building through a revolving door of steel and armoured glass, scrutinised by security officers in a bullet-proof glass room with surveillance camera monitors. Identity papers were checked and visitors were searched and personal belongings temporarily removed (reporters were allowed only paper and one ballpoint pen). Finally, visitors passed through a full-height turnstile to reach the courtroom.[38]

Critics have questioned the impact of this high security environment on the independence of judicial decision-making. Such measures not only reinforced the idea of the accused as being extremely dangerous, but also displayed the performative power of the government's RAF trial policies. Press commentary about the opening day of the trial noted that the whole atmosphere around the court undermined both the state's claim that the trial only involved 'ordinary criminals', and the image of a liberal democracy dealing with criminal behaviour in a matter-of-fact and legal manner. Reports of the harsh treatment of some of the journalists created an impression that the authorities had lost their sense of proportion and humanity.[39] According to Aust, however, the security extravaganza at Stammheim 'can also be explained by the fact that no one in government was willing to take personal responsibility for possible risks. A bit too much safety seemed at any rate better than somewhat too little.'[40]

The enormous interior of the courtroom (610 square metres) did little to redress the balance. Walls and floors consisted of raw concrete, the ceiling was an assembly of heating pipes and other utility installations. The general public were seated in rows of yellow plastic chairs (120). Chairs fitted with small foldout tables (81) were to serve the press. At the end of the room, beneath an oversized coat of arms of the state of Baden-Württemberg, the judges sat behind a table. Behind the judges a giant bookcase would store hundreds of ring binders of trial records. In front of the judges' table stood a solitary witness chair and in between a table for the state prosecutors and one for the defence.[41]

One day during the trial, Stuberger visited the office of the presiding judge Prinzing. For Stuberger, the official quarters confirmed the impression of a machine-like state mercilessly seeking revenge; the judge was no more than a pawn in the game. 'A bunker of justice, I thought', Stuberger writes.

> The whole building radiates nothing but coldness, no trace of humanity. Here the naked state is on display, cold and merciless. I was convinced that in these surroundings, reminiscent of an old black-and-white movie version of George Orwell's *Nineteen Eighty-Four*, I [as a judge] would be unable to reach a humane verdict. Behind

> the scenes [Stammheim] appeared to me [...] like a slaughterhouse. Or, to put it in friendlier terms, like the technical area behind the coulisses of a modern theatre: the aim ruled everything, there was no room for human emotions.[42]

Rewriting the Code of Criminal Procedure, Evicting Lawyers

As a third trajectory towards a trial outcome favourable to the wishes of the authorities several changes were introduced into the Code of Criminal Procedure. These changes were intended to restrict the potential for the defence lawyers and the accused to delay or obstruct a trial through the lawful use of petitions, motions and the like. Such precautionary measures were deemed necessary based on several experiences with left-wing suspects and their lawyers since the mid-1960s. During the student rebellions of the 1960s, there had been unprecedented courtroom scenes in the FRG, with left-wing radicals mocking judges and prosecutors and turning trials into farcical political demonstrations.[43]

More shocking to the establishment than the unruly student behaviour was that lawyers, often working collectively,[44] had also begun to reject juridical conventions. These 'Linksanwälte' (a wordplay on 'Rechtsanwälte'—lawyers, and the adjective 'links'—left-wing)[45] had shed the traditional understanding of lawyers as 'Organe der Rechtspflege' (instruments of the justice system). They had distanced themselves from the traditional interpretation of their job as the 'third profession of the law', alongside judges and prosecutors, 'to form a bridge between the justice system and the accused'. Instead, they decided to advocate their clients' interests far more strongly and single-mindedly.[46]

Obviously, this style of 'political defence', as they themselves dubbed it, drew these lawyers into a direct confrontation with the other parties involved in the justice system.[47] A brochure published in 1975 by the Rote Hilfe (Red Aid), an organisation supporting left-wing radicals against the judiciary, presents a clear picture of how these left-wing lawyers saw themselves. 'In principle, at a trial', the list begins, 'left-wing lawyers practise solidarity with their clients. Although they do not have to identify completely with the ideology of their clients, politically they will always side with them and in principle they oppose the same enemy.' On this basis, left-wing lawyers would lend their technical juridical skills to clients to help 'destroy the illusion of an apolitical and impartial justice system'. Apart from that, they would not hesitate to appeal to public opinion by publicising their clients' detention situation or reporting on miscarriages of justice.[48]

In practice, this concept of political defence meant that the lawyers used every opportunity to exploit the Code of Criminal Procedure to stall and obstruct trials by

procedural means. Rather than attacking the accusations against their clients, these 'Linksanwälte' seemed determined to undermine the legitimacy of the trial and the justice system that had produced it.[49] Angry and frustrated, judges and prosecutors were forced to listen to the fulminations of the left-wing lawyers as if they themselves were in the dock.

From June 1972 onwards, a campaign against the justice system was initiated; lawyers involved accused the state of subjecting RAF members to torture. One aspect of the campaign immediately raised great concerns for the state. The authorities had already been confronted with the possibility that a lawyer would smuggle handwritten notes (*Kassiber*) between RAF members inside and outside prison to maintain communication. A note by RAF member Gudrun Ensslin (clearly written while she was in custody) had been found among Ulrike Meinhof's papers when she was arrested. Ensslin's lawyer, Otto Schily, was suspected as the middleman, but there was no evidence to convict him.

A corresponding effort to have Schily evicted from Ensslin's legal team also failed when on 14 February 1973 Germany's Bundesverfassungsgericht (Federal Constitutional Court) quashed an eviction order made by a lower court. The constitutional judges considered such an eviction to amount to an unlawful breach of the professional freedom of a lawyer. They declared, however, that this case had highlighted 'ein höchst unbefriedigender Rechtszustand' (a highly unsatisfactory legal situation) and advised the legislator to resolve this by making it legally possible to evict a lawyer from a trial.[50]

The authorities sought to protect *their* trial of the RAF leadership from some of these unexpected outcomes by introducing two sets of anti-terrorism legislation: the First Law for a Reform of Criminal Proceedings of 9 December 1974, and the Law to Amend the First Law for a Reform of Criminal Proceedings of 20 December 1974 (both came into force on 1 January 1975).[51] These changes rolled back attempts to strengthen the rights of the defence that had been part of a wave of liberalisation making its mark on the Code of Criminal Procedure and the Criminal Code since 1964.

The first set of changes abolished the right of the defence to have any final say on the criminal allegation before the arraignment by the prosecution. The second set of changes established extensive restrictions on the legal defence. Two measures specifically targeted the practice of collective 'political defence': the number of lawyers for each accused was limited to a maximum of three (paragraph 137, section 1 StPO[52]) and a ban on the common defence of multiple accused by one lawyer was introduced (paragraph 146 StPO).[53] Until then some lawyers had had power of attorney for several RAF members, which created a tightly coordinated defence team. Under

the new law it would be far more difficult to uphold this measure of cooperation. The new laws also prevented an unlimited number of lawyers making use of the defence's rights to petition the court, thus limiting the risk of the obstruction of trial proceedings.

The new legislation created the possibility of evicting a lawyer from a trial (paragraph 138a, 138b StPO). This was the stopgap measure the Federal Constitutional Court had asked for in its verdict in the Schily case. Moreover, the new law made it possible to continue a trial *in absentia* of the accused when a lack of fitness to stand trial was of his or her own doing (paragraph 231a, 231b StPO). Hitherto in West Germany it had been considered taboo to proceed without the defendant, because of experiences during the Third Reich. Finally, the defence's right to make statements during a trial was somewhat restricted (paragraph 257 StPO); and the powers of the presiding judge were expanded to enable the disciplining of unruly participants in a trial, including members of the audience disturbing the proceedings, for example by shouting abuse.[54]

During the Stammheim trial a third set of anti-terrorism legislation was introduced in the form of the Counter-terrorist Law of 18 August 1976 (it entered into force on 20 September 1976 and 1 January 1977).[55] This introduced further restrictive changes to the Code of Criminal Procedure that came into force while the Stammheim trial was underway, as well as changes in the Bundesrechtsanwaltsordnung (the law regarding federal rulings of the legal defence trade) that made it easier to prosecute and punish lawyers who violated their professional code. This ruling provided the authorities with another instrument with which to discipline lawyers who were seen to obstruct normal court proceedings or who assisted imprisoned terrorists in their efforts to maintain links with their organisation.[56]

In his book about the Stammheim trial, Tenfelde reflects upon the mixed reception of the new laws against terrorism. Some authors condemned them as an infringement upon the rights of the defence and as an example of undemocratic ad hoc legislation ('Lex Baader–Meinhof'[57]), while others regarded them as an effective and proportionate response to terrorism within the rule of law. Some even felt the new laws did not go far enough. According to Tenfelde the measures have to be seen as part of a range of responses by the state to the terrorist threat that were directly related to societal reactions to terrorism and to the expectations of state responses held by the general public. This implies there was no 'master plan' behind the legislation, in spite of speculation by some on the left that the new laws were inspired by a totalitarian strategy of pre-emptive counter-revolution that had allegedly engulfed Western societies since the 1950s. Instead, as Uwe Berlitt and Horst Dreier have already proposed

in their early analysis of the anti-terrorism laws, the legislation and the activities of the violent terrorist perpetrators are better understood as 'an interactive process' in which societal and state forces mutually influenced the end result.[58]

The fact that the legislative process around the first two sets of anti-terrorist laws suddenly accelerated at the end of 1974 makes this interaction perfectly clear. In November and December 1974 the confrontation with left-wing terrorism reached a high point during the third campaign of collective hunger strikes by RAF prisoners. On 9 November 1974, the death of hunger striker Holger Meins (one of five RAF leaders to be tried at Stammheim) led to a wave of protest by left-wing radicals throughout West Germany. The revenge killing of Berlin's most important judge, Günter von Drenkmann, by another terrorist group on 10 November 1974, in turn triggered a large-scale police operation against left-wing radicals, their organisations and publications.

Influenced by these events, legislators of the Bundestag (Federal Diet) and the Bundesrat (Federal Council) not only hastened their deliberations on the first set of anti-terror legislation (originally presented to them in 1973), but also approved the second set of changes that the government had only recently proposed.[59] These tensions present in late 1974 encouraged the legislative change that the authorities thought they needed, just in time for the scheduled start of the Stammheim trial in May 1975. As might be expected, this speedy legislation process led to some mishaps that had a negative influence on the trial during its first months.

With the option to evict lawyers in place, the authorities started to move against some of them in the early months of 1975. There were risks associated with this course of action, because German law prescribes that a legal defender must always be available for an accused person. To prevent the interruption or even cancellation of the trial, judge Prinzing (of the Second Senate of the Stuttgart Oberlandesgericht) decided to appoint two 'Pflichtverteidiger' (officially commissioned lawyers) for each of the accused. If a 'Wahlverteidiger' (lawyer of choice) acting for the accused was evicted by order of the presiding judge, he or she could be replaced by such commissioned lawyers. The appointment of these substitute lawyers was intended by German law to ensure the continuity of long trials. Of course the Pflichtverteidiger were paid by the state, not by the defendant.[60] RAF members did not want to speak to the substitute lawyers, whom they called 'Zwangsverteidiger' (lawyers forced upon them), because they did not trust them.[61]

Usually, in order to accommodate the rights of the accused and assist with the organisation of the legal defence, the court formally commissioned all or some of the lawyers of choice as Pflichtverteidiger, with the state covering the bills. Many of the

lawyers originally chosen by RAF members were also officially commissioned by judge Prinzing. In early 1975, however, Prinzing started to decommission some of them. Klaus Croissant (Stuttgart), Kurt Groenewold (Hamburg) and Hans-Christian Ströbele (Berlin), all three lawyers of Baader's choice, were sacked as Pflichtverteidiger, on suspicion of supporting the (criminal association) RAF. In Ströbele's case the suspicion rested on letters in which he had called his clients 'comrades'; he called himself a 'socialist' and his work that of a 'political defender'. Now that the state would no longer cover their costs, the participation of these three lawyers of choice in the impending trial became precarious.[62]

In the last month before the trial started, Prinzing went even further and actually evicted the three lawyers he had already decommissioned as (state financed) Pflichtverteidiger but who had still been allowed to defend the accused at their own expense, one after the other, on the basis of recent legislation (paragraph 138a StPO).[63] These evictions created enormous problems for Baader's defence, especially when the last remaining lawyer to enjoy Baader's trust, Siegfried Haag (Heidelberg), went underground in early May 1977. The Bundeskriminalamt (Federal Criminal Police Office) had temporarily arrested Haag on suspicion of involvement with the armed occupation of the German embassy in Stockholm by a RAF commando on 24 April 1975. Haag spent the next year and a half organising a new terrorist commando group of the RAF, until he was arrested for a second time at the end of 1976.[64]

With the state and media pressure on left-wing lawyers, and the ban on common defence recently installed, it was clear Baader would have difficulty finding a trustworthy new barrister in time for the trial of his life. The pool of leftist or liberal-minded lawyers was small. On 21 May 1975, the front man of the RAF entered the Stammheim courtroom without a lawyer of choice. This did not reflect well on the trial, and subsequently dented the credibility of the state's narrative of justice at Stammheim.

6.2.2. The RAF and Its Lawyers: Expanding the Stage

In complete contrast to the actions of the authorities, the RAF leadership and their lawyers did their utmost to stress the political implications of the impending trial. In the years after their arrests they deliberately expanded the stage for the confrontation with the established order. Firstly, the imprisoned members of the RAF started challenging the conditions of their imprisonment, a struggle intended to inspire a solidarity movement among left-wing radicals (in Germany and abroad). Secondly, the RAF's defence lawyers developed a strategy in line with the style of the late 1960s

political defence we discussed above. As will be demonstrated, the RAF leaders directly influenced the formulation and implementation of this defence strategy.

Prison Struggle: Hunger Strikes and the Rise of an RAF Solidarity Movement

In the years after their arrests, the leaders of the RAF did not passively await their impending trial and the lengthy prison sentences that would probably result from it. Baader, Ensslin, Meinhof and their comrades started a prison struggle. They accused the state of using extreme solitary confinement that amounted to torture ('Isolationsfolter'). They claimed this was intended to destroy their identities as 'guerrillas' and to mentally and physically 'annihilate' them (they spoke of 'Vernichtungshaft'). They stressed their plight by staging several collective hunger strikes, the first one lasting from mid-January to mid-February 1973.[65]

It must be acknowledged that there was some truth in these allegations. The West German state kept the imprisoned members of the RAF and other left-wing terrorist groups on a very short leash indeed. Although a general historical overview of the prison conditions of RAF members has yet to be written, it is generally accepted that, initially at least, three female members were held in solitary confinement for exceptionally long periods.[66] In the case of other RAF prisoners there is reason to believe that (less extreme) modes of solitary confinement were applied, although some group members were held under regular prison conditions. The forced feeding of prisoners on hunger strike, a painful and humiliating procedure, lent, in the eyes of some observers, a degree of substance to accusations of state torture.[67]

The notion that the authorities were out to kill the RAF prisoners was, nevertheless, rather far-fetched. In reaction to the hunger strikes, for example, the authorities began granting privileges to RAF members, especially to the leaders, to avoid jeopardizing their participation in the upcoming trial. From late 1974 onwards, the authorities also began accommodating Baader and other RAF leaders, men *and* women, together on the seventh floor of Stammheim prison. Special favours, like the provision of electric hotplates to cook their own meals, were granted to RAF prisoners to help them recover from the hunger strikes. From February 1975 onwards, they were even allowed to spend several hours a day in the corridor of their high security ward in order collectively to prepare for their trial. To prevent eavesdropping on discussions about the defence strategy, the judge ordered the prison guards to keep out of hearing distance.[68]

Regardless of these and other concessions, Baader and others continued to remonstrate against prison conditions. This indicates that the dual purpose of the prison struggle was not only to put pressure on the German government to improve prison conditions, but also to create empathy that would serve as a platform for an

RAF solidarity campaign. In styling themselves as martyrs for the radical left, the RAF prisoners aimed at mobilising support among other radical Germans and recruiting new members from this pool of sympathisers. Apart from that, the prison struggle can also be seen as an effort to hold on to the RAF claim to lead the vanguard of the radical left, a claim that had been stated from the beginning, especially in the 1971 publications.[69]

The RAF lawyers played an essential role in the solidarity campaign. In February 1973, alongside the first collective hunger strike of the RAF, they staged a four-day solidarity hunger strike in front of the Federal Court of Justice in Karlsruhe to attract public attention to the plight of the prisoners.[70] As hinted at above, the lawyers were of central importance for maintaining communications between the RAF prisoners and with their supporters (and probably also with active terrorist cells) in the outside world. In the spring of 1973 the lawyers established an intricate communication system called 'das info'.[71] Instructed by the prisoners, the office of Hamburg lawyer Kurt Groenewold functioned as an information centre and archive. It collated all instructions, (circular) letters, newspaper clippings and other discussion materials provided or requested by RAF leaders. Subsequently, the lawyers circulated these among the imprisoned members of the RAF by using the *Verteidigerpost* (defence mail between lawyers and their clients) which was protected by law.[72]

After a police raid on Groenewold's office on 23 June 1975, a month after the Stammheim trial had started, the information system broke down. Gradually, however, lawyer Klaus Croissant's office in Stuttgart re-established communications among the prisoners and with the outside world. At first, Croissant and his associates used the defence mail as before. However a change in the Code of Criminal Procedure in August 1976 made it possible to control defence mail in those cases where there was a grounded suspicion that it served to establish or continue a terrorist association. After that, lawyers started touring the country, visiting all of the RAF prisoners one after another.[73]

RAF lawyers also initiated special solidarity committees for the imprisoned members of the RAF, the so-called *(Anti-)Folterkomitees* (Committees against Torture). These were founded in many big cities and university towns throughout the FRG, beginning in April 1973. During the second hunger strike of the RAF, in May and June 1973, a national teach-in of Anti-Torture Committees in Frankfurt strengthened the campaign's base, and created material for propaganda, such as the special issue on the torture of 'Political Prisoners' in the influential left-wing intellectual magazine *Kursbuch*.[74] Around 450 activists joined the Anti-Torture Committees in the first year.[75]

Political activism in defence of the RAF peaked during the third hunger strike, which began after a proclamation by Ulrike Meinhof when the trial against her and others started in the West Berlin Schwurgericht (lower regional jury-based court) on 13 September 1974.[76] The RAF leadership had been preparing this third hunger strike with great care since late 1973, and this time they were very determined. In January 1974, Baader had written to RAF activists outside the prison to insist that this time the hunger strike would not be broken. 'Das heißt es werden typen dabei kaputtgehen.' (This means that some types [of people] will die.)[77] And indeed, on 9 November 1974, RAF member Holger Meins did die of starvation. In a declaration distributed by his lawyer Croissant after his demise, Meins blamed the state for his death: 'In case I switch from life to death in prison, it was murder—whatever the pigs might say. Don't believe the lies of these murderers.'[78]

The significance of this hunger strike for the trial at Stammheim that was to begin half a year later lay in the solidarity and support it managed to mobilise in Germany and abroad. After Meins's death, protests and demonstrations in West Berlin attracted 2,500 participants. A resolution circulated amongst those present at a gathering in Berlin's Technical University. The resolution stated that it was clear that the special treatment of 'political prisoners' in the FRG aimed 'to silence them [...], to make them renounce their political beliefs, and, as a necessary step to that end, to destroy their souls and rob them of their identities.'[79]

Many young people subscribed to the RAF framing of the situation. Criticism of the organisation and of the use of political violence in revolutionary politics was temporarily silenced. The revenge murder of Günter von Drenkmann, president of Berlin's Kammergericht (higher regional court), did not change this. While most radical left-wing demonstrators did not endorse this killing, few were having second thoughts about their support for the RAF's prison struggle linked to it.[80]

The third hunger strike also raised solidarity with the RAF to an international level. When the strike began on 27 September 1974, RAF sympathisers in Hamburg, Amsterdam and London staged a series of well-coordinated actions, attracting considerable media attention. A visit by French philosopher Jean-Paul Sartre to Andreas Baader in Stammheim prison on 4 December 1974 was a veritable publicity coup.[81] Only days later, the RAF's lawyers established an international network to muster foreign pressure on the German government.[82] Stories about the treatment of imprisoned members of the RAF had raised anxiety outside Germany, and on 14 December 1974 the 'Comité International de Défense des Prisonniers Politiques en Europe' (International Committee for the Defence of Political Prisoners in Europe)

was established in Utrecht. The committee consisted mainly of lawyers and doctors from the Netherlands (where lawyer Bakker Schut was the driving force), Belgium, France and Italy.[83]

The committee was presented as an independent network of foreign professionals, but in reality it was an instrument of the RAF's defence team—as further developments indicated. After the International Committee, known under its German name 'Internationales Verteidigungskomitee' (International Defence Committee, IVK), had reconvened and formulated its programme at a meeting in Paris on 20 January 1975, the secretariat was based in Croissant's office in Stuttgart, where the FRG arm of the committee resided.[84] During the Stammheim trial this bureau helped to coordinate the activities of national committees such as the Dutch Medisch Juridisch Comité Politieke Gevangenen (Medical-Juridical Committee for Political Prisoners, MJC), founded on 19 April 1975.[85] In the following years, the IVK and these national committees published declarations of international solidarity and other kinds of propaganda, including Ulrike Meinhof's last texts in German and other languages[86] as well as a voluminous book documenting prison correspondence by RAF members.[87] The committees were also associated with other international bodies such as the 'independent' research committee that investigated Ulrike Meinhof's suicide in prison on 9 May 1976.[88]

By the time the Stammheim trial began, the RAF had constructed a transnational network able to transmit statements by the accused and their defenders to left-wing supporters they regarded as their first audience, and to the public at large. The operations of this network had already been active during the trial against the only Dutch member of the RAF, Ronald Augustin, at Bückeburg (near Hanover) in mid-February 1975, when activists in the Netherlands vigorously publicised this trial as a dress rehearsal for the Stammheim trial. There were some striking parallels, including the fact that the courtroom was situated on the grounds of Bückeburg prison. The Augustin campaign helped to get the network off to a running start in preparation for the trial at Stammheim.[89]

Guerrilla Tactics: Clients, Lawyers, and the Defence Strategy

As explained above, the RAF had used court cases against its members for propaganda purposes well before the Stammheim trial. RAF members had spoken at length from the dock about their ideology and their plight in prison, hoping to attract the attention of other left-wing radicals and German liberals. Initially there appeared to be some reservations regarding the RAF's defence strategy at the Stammheim trial. 'It is far from certain that there will be a defence in Stammheim', Baader confessed in a circular

letter, dated June 1974. 'We are interested in this show only if we can turn it around.'[90] It took some time for the RAF to understand that the media coverage of this trial had the potential to spread their gospel.[91]

Ultimately, however, the RAF leadership saw their performance at the trial as a continuation of guerrilla warfare against the state and its 'counter-insurgency strategy' against the radical left.[92] To understand this we have to go back to the intellectual roots of the RAF's urban guerrilla practice, which was partly inspired by the guerrilla warfare theory of Latin American revolutionary Ernesto 'Che' Guevara in the 1960s, as it was subsequently popularised by the French left-wing journalist Régis Débray. Guevara had explained guerrilla warfare as a strategy operated by small, elusive, armed groups, designed to provoke the state into large-scale repression of the general population, thereby revealing its true, oppressive nature to the masses and inciting revolution.[93]

Analogous to this, the RAF leadership, using secret letters distributed among RAF members within and outside the prison, devised behaviours at the trial by which they hoped to provoke judges and prosecutors into revealing the naked oppressiveness of the West German state. 'What we want', read one circular letter from early November 1975, 'is that the operations of the Federal Prosecutor, in the legal vacuum between the bourgeois rule of law and the open fascism of the state of emergency legislation, are used to reveal the strategies of the state security apparatus.' The RAF wanted to turn the trial at Stammheim into a demonstration of 'the dimension of the domestic repression', and the unveiling of 'fascism as an institutional strategy'.[94]

A circular letter from September 1975 revealed the optimum result the RAF hoped to gain: a failed trial.

> [A] failed trial contradicts the assumption of a normal situation, a normal criminal procedure—the war begins to look like a war—what the state fears most, because it makes it clear that a small group of 20 or 30 fighters can challenge the state—it makes clear that armed struggle is right, possible, and necessary, in spite of the weakness of the left here and because of its weakness.[95]

The RAF's legal defenders were crucial to its goal: to transform the trial into an instrument of propaganda. It was up to the lawyers to enlighten the public with regard to the trial's alleged political function. In a statement from a circular letter on one of the first trial days, 1 July 1975, lawyers were depicted as teachers, 'let's say, with chalk, pointer, and blackboard'. The lawyers, with their legal skills, could point out the weaknesses in the arguments put forward by prosecutors and judges, showing

'the people' the true nature of these functionaries: 'underneath their robes [they are] politicians, [and] as politicians [they are] reactionaries of the darkest hue, virulent anticommunists, bureaucratic collaborators of mass murder'.[96]

In true communist fashion, the RAF regarded its strategy of political defence as a 'popular front strategy', building a coalition of left-wing and liberal forces around a communist core, like the antifascist alliances in Spain, France and elsewhere during the 1930s. The lawyers were important in building this popular front and creating 'democratic public opinion' against the government policies aimed at the radical left. This did not mean the RAF leaders held their lawyers in high esteem. In their view, it was 'grotesque' that socialist lawyers seemed to have become 'the last defenders of bourgeois rule of law'. In fact the RAF leadership ridiculed their efforts to save the bourgeois state. Baader and his comrades nevertheless considered their efforts useful—defending RAF members in court and protesting against restrictive counter-terrorist legislation, which contributed to the mobilisation of opposition against the established order.[97]

The lawyers reacted differently towards efforts to instrumentalise them. Heinrich Hannover (Bremen), who was very experienced in political cases, was one of several lawyers who were too independent to maintain good relationships with RAF clients. Ulrike Meinhof had once sacked Hannover for refusing to comply with her demands, and he finally left in 1974, having defended her since 1970.[98] Other lawyers were more docile. Prominent RAF lawyer Kurt Groenewold, for instance, had acknowledged as early as 1972 that a lawyer's task was to reveal the essence of the justice system as an instrument of the status quo; he also pleaded for the creation of an association of communist lawyers.[99] His colleague Klaus Croissant went further and identified to a large degree with the RAF. Croissant gave up his independence as a legal adviser to comply fully with RAF wishes and demands.[100]

Otto Schily, the sharpest mind and most able orator on the defence team, kept a seigniorial distance from his clients, staunchly addressing them with the formal 'Sie'—instead of 'du'—the informal term for family members, friends and (especially on the left) political comrades.[101] Yet even Schily adhered to the RAF leaders' defence strategy and complied with Baader's conditions, agreeing in a letter he wrote to Klaus Croissant on 17 April 1974 to 'collective defence, the course that has been discussed by the prisoners, [and] final editing of the plea speeches by the prisoners'.[102]

Before we look at the Stammheim trial in detail, it is worth mentioning that the RAF leaders also displayed a kind of stage fright. More than once they seemed to be searching for an emergency exit to evade facing their judges altogether. They had discussed among themselves whether or not a hunger strike that undermined

their physical fitness would create plausible grounds not to appear in court. A letter that circulated among RAF prisoners in March 1974 proposed this route to obstruct the efforts of the state to bring them to justice.[103] In the press, however, they denied considering this strategy, dismissing police reports about it as examples of the government's 'Countertaktik, Gegenpropaganda' (counter tactics, counter propaganda).[104]

At an early stage, Andreas Baader had also tried to motivate underground RAF comrades to organise a hostage-taking operation to force the government to swap the imprisoned RAF members for the hostages.[105] The arrests of seven members of an underground cell on 4 February 1974 had initially thwarted this plan, but Meins' death in the hunger strike added momentum to rebuilding the armed struggle. One such RAF sympathiser who decided to take up arms against the state was Susanne Albrecht. She remembered thinking after Meins' death, 'If the justice system won't change the conditions of detention, then we must act. We cannot allow more prisoners to die.'[106]

On 24 April 1975, the RAF commando group 'Holger Meins' stormed the German embassy in Stockholm, taking hostage the ambassador and other personnel. They were clearly inspired by the success of an earlier act of hostage-taking of the West Berlin CDU politician Peter Lorenz by another group that had resulted in the release of five left-wing radical terrorists from custody in late February 1975.[107] In exchange for the lives of their captives, the Stockholm hostage-takers demanded the release of 26 'political prisoners' in order to rescue these comrades from 'isolation torture'. To underline their resolve the commandos killed two German diplomats, but the government in Bonn proved unwilling to give in. That evening, with new deaths seemingly imminent in the Swedish capital, there was a sudden series of explosions when RAF explosives accidentally detonated. One RAF member was killed instantly and another was fatally wounded. In the ensuing turmoil, Stockholm police cleared the burning embassy and arrested the hostage-takers.[108] The RAF's final effort to evade the Stammheim trial, a month before its scheduled start, had resulted in bloody failure.

6.3. 192 Days: From Stammheim Stalemate to Ghost Trial

In the days just before 21 May 1975, the day the trial against the RAF leadership would finally get under way, the media set the stage for the proceedings with great anticipation. Many journalists focused on the scale and cost of the security measures and the collection of evidence. The weekly *Der Spiegel* even entitled its article about

the trial's opening 'Materialschlacht' (material battle), comparing the preparation of the opposing forces at Stammheim with the industrialised trench warfare of the First World War.[109] On the one hand this terminology clearly shows, as Andreas Musolff has worked out,[110] that even in liberal newspapers metaphors of warfare were used to describe the confrontation between the RAF and the state, which did not exactly downplay the supposed terrorism threat. On the other hand the WW I comparison became indeed an appropriate metaphor as conflicts over procedural issues sometimes appeared to produce a stalemate. During the 192 days of the trial proceedings, daunting legal complexities and vehement confrontations between the participants combined to confuse and sometimes infuriate observers. We will try to deal with the apparently strictly legal issues and the turbulent theatrics separately to illustrate the performative aspects of the Stammheim trial.

6.3.1. Strictly Legal? Protracted Proceedings in a 'Normal Criminal Case'

After months in which the RAF had been confronted with the consequences of the recent changes in the Code of Criminal Procedure, the Stammheim trial finally presented a chance for them to redress the balance.[111] Thus in the first months of the trial, the accused and their lawyers swamped the proceedings with applications on all kinds of procedural issues. The long second phase of the trial began in November 1975, when the court at last was able to proceed to the actual hearing of the evidence. Most of the legal wrangling in this phase concerned the role played by two 'crown witnesses', as the defence dubbed them. The RAF's lawyers also argued for criminal proceedings against their clients to be abandoned altogether. It was argued that the RAF had committed acts of war in resistance to American interference in Vietnam, rather than crimes, and its leaders should therefore be treated not as criminals but as prisoners of war.

Procedural Issues: Evicted Lawyers and Fitness to Stand Trial

Before the Stammheim trial, the judges of the Stuttgart Oberlandesgericht's Second Senate were among the first to implement the legislative changes hastily introduced for trials against the RAF. This had put the judges in an awkward position, and especially their president, whose task it had been to make decisions on the conditions of imprisonment of the accused and the admission of their lawyers. During the opening stages of the trial, this pre-history made discussion about procedural issues highly likely, as already became apparent on the first day when the RAF's defence team tried to prevent the eviction of Baader's lawyers of choice. As we related earlier, judge

Prinzing had evicted all three of them before the trial, a decision based on a recent change in the Code of Criminal Procedure (paragraph 138 StPO). Immediately after the president had opened the trial, the RAF defence team asked the court to re-admit these evicted lawyers to defend Ensslin, Meinhof and Raspe.

At issue was the question whether evicting the lawyers as Baader's representatives meant they were banned from the Stammheim trial for good. Initially judge Prinzing bluntly denied the lawyers' request; however, the prosecutors sided with the defence, warning Prinzing that it would not do to simply deny them access to the courtroom. The text of the law may indeed have left room for the interpretation put forward by the RAF lawyers, namely that a lawyer could legally only be evicted as counsel to one specific defendant. The prosecutors advised a temporary halt to the proceedings until the lawyers in question had been evicted from the defence of all four RAF members facing trial at Stammheim.[112] In effect, the prosecution admitted that the RAF had spotted one of several lacunae that legal authorities in their haste had allowed to enter the new legislation.

Of course the prosecutors were not keen to admit this lacuna, but were worried that a Stammheim verdict could be overturned in future by a higher court disapproving of the non-admittance of lawyers without proper legal grounds. After hours of deliberation, the president suspended the trial until further notice and left the judges of the First Senate to decide on the matter. After two weeks the First Senate decided to back Prinzing's broad interpretation of the law. Given the doubts that even the prosecutors had displayed, this was a controversial decision. Nevertheless it was later upheld by the Federal Court of Justice.[113]

In relation to the first procedural issue, Andreas Baader himself introduced another issue on 5 June 1975, the second trial day. Pointing out that he lacked a lawyer of his own choice, he asked for a five-day adjournment to find one. The president denied this request, arguing that Baader still had two substitute lawyers commissioned by the court at his disposal. Linked to this was the next procedural issue, which arose on 11 June 1975 (the fourth trial day), when a new lawyer of choice for Baader, Hans-Heinz Heldmann (Darmstadt), finally presented himself and asked the Second Senate for a ten-day adjournment for trial preparation (to look at thousands of pages of police documents). The court denied this request despite the fact that it had evicted Baader's three lawyers at such short notice, arguing that Baader had had ample time before the beginning of the trial to find himself a new lawyer of choice. In protest, Heldmann filed a constitutional complaint against this decision with the Federal Constitutional Court in Karlsruhe, but a commission of three constitutional judges decided not to admit the complaint.[114]

In the meantime, on the third trial day, 10 June 1975, the substitute lawyers commissioned by the court had found themselves at the centre of a row between the RAF members and the court. The defence had demanded the court decommission these 'Zwangsverteidiger' (compulsory defence attorneys) as the RAF called these substitute lawyers. When the substitute lawyers tried to speak, Baader and the other accused shouted them down and called them names until the presiding judge ordered the court's guards to lead the accused from the room.[115] The court decided not to comply with the RAF defence's demand and to keep the substitute lawyers. The judges (and the prosecutors) probably feared that without substitute lawyers the risk was simply too great that at some point in time during the proceedings a walk-out by the lawyers of choice would lead to a failed trial. To the court's embarrassment, later that day one of the substitute lawyers fell asleep. When Baader directed the president's attention to the old man, the audience erupted in a roar of laughter.[116]

The following week, the court's president had become the main focus of attack. On 18 and 19 June 1975, Otto Schily, acting on behalf of his client Gudrun Ensslin, questioned the appointment of Prinzing as president of the Second Senate. He portrayed him as a functionary of the national security state, bowing to the officials of the West German security services and denying the RAF prisoners their rights. Schily accused Prinzing of having allowed and defended the conditions of severe detention for RAF prisoners and of co-responsibility for the death of Holger Meins. Against this background, Schily challenged the judge on grounds of bias: the accused could not regard Prinzing as an impartial judge and therefore he should be taken off the case.[117]Six weeks later on 30 July 1975, lawyers acting for Ulrike Meinhof continued the attack on Prinzing, challenging him on similar grounds. They argued that judge Prinzing had shown bias in an interview on German television on the day before the trial started, because he had called the Stammheim trial a 'normalen Straffall' (normal criminal case) rather than a political matter. In a statement before the court, Ulrike Meinhof declared that this denial of the trial's political character was intended to obscure its function as 'a show trial against revolutionaries'. Without this denial, the trial could not fulfil its counter-revolutionary purpose, she added.[118]

Less than a month later, on 20 August 1975 (trial day 27), Schily pleaded for a cancellation of the trial altogether. According to him there was no longer any question of a fair trial because of the total absence of the presumption of innocence of the accused, as required by the European Convention on Human Rights. To make his point he presented a list of about 30 statements by politicians about the accused, including a comment by Federal Chancellor Helmut Schmidt in reaction to the Stockholm hostage crisis that referred to the accused as 'unscrupulously violent criminals [and]

bandits'.[119] The defence argued that these statements were based on a conscious campaign by the Federal Prosecutor's Office to influence public opinion against the RAF.[120] The defence also pointed to another indication suggesting the absence of a fair trial: although the RAF leaders were far from being convicted, a high security prison ward obviously meant for them was already under construction in Bruchsal (near Karlsruhe).[121]

The biggest procedural issue, however, concerned the health of the defendants and their presence in court. In the Federal Republic criminal trials were rarely conducted in the absence of the accused, the legal maxim being that nobody should be convicted without having his or her say in court. The Code of Criminal Procedure actually obliged the accused to appear before the court. Yet, as explained earlier, the legislator had changed the Code of Criminal Procedure (paragraph 231a StPO) in reaction to the hunger strikes shortly before the Stammheim trial began. This was to enable a court case to proceed if an accused had deliberately undermined his or her fitness for trial.[122]

From June until November 1975, parties at the court in Stammheim wrestled with two questions: were the accused 'verhandlungsunfähig' (unfit to stand trial) and, if so, was this of their own doing (because of the hunger strikes). Only if the accused themselves were to blame for their lack of fitness could the court decide to continue in their absence; otherwise the only legal options were suspension or cancellation of the trial. On 11 June 1975, Marieluise Becker (Heidelberg), acting for the defence, presented the first motion to stop proceedings because of lack of fitness to stand trial, arguing that the Stammheim prison situation and earlier circumstances of detention were responsible for the poor condition of her client, Gudrun Ensslin. Becker painted a bleak picture of the periods of solitary confinement that her client had endured. Becker claimed the confinement imposed a deprivation of the senses that surpassed human tolerance levels. Referring to propaganda material used during the solidarity campaign, she argued that this sensory deprivation was a scientifically proven torture method, a counter-insurgency strategy used by imperialist states, and she demanded a hearing in court of foreign experts such as the Dutch psychiatrist Sjef Teuns (who had written on political prisoners in 1973 in a special issue of *Kursbuch*).[123]At the end of that day, in a demonstrative gesture, the lawyers of choice requested an early end to the day's proceedings due to the condition their clients were in. After judge Prinzing turned down the request the lawyers walked out of the courtroom collectively, leaving the president fuming about what he called their act of sabotage.[124]

As the law required a medical doctor to be consulted before a judge could decide whether or not an accused person was fit to stand trial, the lawyers repeatedly tried

to obtain permission for medical examinations by doctors of their clients' choice (including Teuns). Initially the Second Senate, supported by the prosecutors, refused to comply and was only prepared to consult prison doctors. This led to several accusations of bias against the president and other judges. Later, in a conciliatory gesture, the judges set up a committee of three medical experts from outside the prison system to examine the accused. These doctors diagnosed a limited fitness and advised that proceedings should not exceed three hours a day to enable the accused to follow them with the measure of clarity of mind required by the law. Moreover, the experts listed possible causes of the limited fitness of the accused, explicitly mentioning the tight prison regime.[125]

On the basis of this medical advice, lawyers estimated that just hearing the evidence of the almost 1,000 witnesses would take at least eight years. On 30 September 1975, however, Prinzing announced the decision of the Second Senate to continue as before, because the prisoners themselves were responsible for their weak condition. When the president tried to explain this decision by reading aloud letters by RAF prisoners that clearly indicated their intention to render themselves incapable of standing trial by means of hunger strikes, this led to an uproar in the courtroom among defendants and counsel alike. When the president refused to stop reading, Rupert von Plottnitz (defencelawyer), shouted 'Heil, Dr. Prinzing!'[126]

Although the defendants and especially their defenders reacted with a disturbing degree of emotion, their objections to the court's decision were not wholly irrational. The judges of the Second Senate (and those of the Federal Court of Justice and the Federal Constitutional Court, which later upheld the decision)[127] did indeed stretch the 'limited fitness to stand trial' rule attested to by the medical doctors. This was done in order to be able to fulfil the 'absolute unfitness for trial' ruling that the (recently changed) Code of Criminal Procedure (paragraph 231a, StPO) considered a precondition for continuation of a trial in the absence of an accused. Tenfelde interprets this as an indication of the judges' willingness to serve political purposes and is therefore very critical of their decision.[128] In fairness, though, the judges had a point—it really would have been undesirable to extend the trial by limiting the proceedings as dramatically as the medical doctors had advised. It seems overly principled to demand that the judges accept the ultimate consequences this advice brought with it: a trial in excess of perhaps eight years. This would uphold one specific right of the defendants, but at a huge cost. Such lengthy proceedings would in turn neglect other rights of the defendants, who might then face eight years in custody without a conviction. Moreover, it would have adverse effects on the legitimacy of the trial as such, and for the rule of law in West Germany.

'Crown Witnesses': The Credibility and Legality of Bought Testimony

As we mentioned earlier, the Federal Prosecutor had not succeeded in establishing the individual guilt of the accused. Therefore it was alleged that the criminal organisation 'RAF' had performed the indicted murders and other criminal acts, creating a collective responsibility for all members of the RAF. However, this notion is absent in the German Criminal Code. Individual members of an organisation can only be convicted of certain criminal acts when it is proven that the individuals have actually committed them. The fact that RAF leaders, on 13 and 14 January 1976, taking turns, had read aloud lengthy political statements (in total 200 pages of manuscript)[129] in which they confessed to being members of an urban guerrilla movement and took 'political responsibility' for the bombings they were accused of, did not really change this. Not only did they, at the same time, explicitly deny responsibility 'in a legal sense', they also refrained from making further statements. Thus a time-consuming demonstration to show an 'Indizienkette' (chain of evidence) of their involvement was still necessary. To establish this, the prosecution at Stammheim relied heavily on witnesses whose evidence put the accused close to the scene of the bombings shortly before the bombs went off. The prosecution tried to close the remaining gap by emphasising further indications of the ultimate responsibility of the accused.[130]

In a seemingly endless row of witness hearings, the questioning of two witnesses for the prosecution stood out. Both were deeply implicated in the crimes that were central to the trial. The first of these was the metal sculptor Dierk Hoff, in whose workshop the 1972 bombs had been produced. At the end of January 1976, Hoff testified against the accused, sketching in detail his cooperation with the RAF. Initially, he told the court, he had been making metal objects for them in the belief that these would be used as props in a film by Holger Meins, a former film maker with whom he was vaguely acquainted, and a few other men who visited his shop. Later, when they admitted they were members of the RAF, he had continued his involvement because they had threatened him.[131]

The other witness was Gerhard Müller, an RAF member who had been involved in a shoot-out with the Hamburg police in October 1971 in which an officer had died. After his arrest in 1972, Müller had remained a loyal member of the RAF, keeping in close contact with the other members through his lawyer, Hans-Christian Ströbele. He had also participated in the collective hunger strikes. In the autumn of 1974, however, after numerous confrontations with police interrogators, Müller decided to split from the RAF and share his knowledge of the organisation with the authorities.[132] His evidence closed many gaps in the prosecution's case. On 8 July 1976 (trial day 124), Müller testified on the structure of the RAF, lending support to the view that

it was a criminal organisation. He called Baader the head of the organisation and mentioned Meinhof, Meins, Raspe and Ensslin as its core members, separating them from ordinary and marginal members.[133]

In Stammheim the role of these two witnesses triggered enormous controversy, not only because of the suspicion raised about the fact that a witness had a criminal background. Many observers openly suggested that Hoff and Müller were in fact 'crown witnesses', whose testimony against the accused had been bought by the prosecution with promises of money and reduced sentencing for their complicity in the crimes committed by the RAF. This was more problematic because the German justice system did not have a place for crown witnesses; the suggestion of their existence therefore also implied that the Federal Prosecutor was breaking the law.[134]

The suggestion was amplified by the preceding public debate about the use of crown witnesses as a means to address the difficulties of raising evidence in terrorist cases. Since 1975, debates in political circles in Bonn had proposed introducing the legal institution of crown witnesses as part of a larger set of anti-terrorism legislation. Many legal experts, even including Chief Federal Prosecutor Siegfried Buback, however, had objected to this element as too foreign to the German justice system. As is well known, in exchange for a crown witness making statements helpful to the prosecution, some of the crimes he or she is suspected of having committed are to be immune from prosecution. Critics pointed out that such measures would collide with one of the central maxims of German law, the 'Legalitätsprinzip' (legalist principle), which holds that all crimes must be prosecuted.[135]

The persistent suspicion that the prosecution had made a deal with these witnesses was not eliminated by these objections. Witnesses on behalf of the defence, as well as the accused, had contradicted some of the remarks by the 'crown witnesses'. Andreas Baader denied having threatened Hoff to obtain his continued cooperation, arguing that the RAF never used coercion when dealing with its sympathisers.[136] And the imprisoned RAF member Brigitte Mohnhaupt contradicted Müller's statements about the organisation's authoritarian traits, declaring that the 'guerrilla' is a 'hydra, which means it has many heads.'[137]

In the end, however, the defence decided against a detailed denial of all of the statements by the alleged crown witnesses. Instead, the defence lawyers concentrated far more on undermining their credibility, especially Müller's. Not only did they try to portray him as an untrustworthy opportunist, but when they questioned Müller on 22 July 1976 (trial day 129) they also openly suggested his evidence had been bought. Although Müller denied this, the defence managed to get him to admit that his

treatment in prison had improved after he broke with the RAF—though he stated that this was also caused by a change in his own behaviour.[138] The defence showed that Müller clearly had much to gain from a deal with the prosecution. They even produced an eyewitness statement by one of the imprisoned members of the RAF, Margrit Schiller, who testified that Müller had shot and killed the Hamburg police officer in 1971.[139] For the RAF's lawyers, this evidence suggested that by acting as a crown witness Müller was evading murder charges and a probable mandatory life sentence.

Federal Prosecutor Heinrich Wunder protested against the accusation that Müller had been bought or brainwashed by members of the Federal Criminal Police Office. Wunder suggested that Müller's earlier criminal behaviour did not lessen his credibility, declaring this would not be 'the first time that a Saul turns into a Paul'.[140] Some journalists, however, suggested that the prosecution had already delivered its part of the deal. Müller had been tried at the Hamburg Schwurgericht during the early stages of the Stammheim trial. He had been sentenced on 11 March 1976 to a mere ten years' imprisonment for membership of a criminal organisation, accessory to murder and some lesser crimes.[141]

Earlier, the authorities had felt it necessary to close a file detailing Müller's early statements to the police. In the autumn of 1975, the file's existence had become public, but the Federal Minister of Justice, Hans-Jochen Vogel, had closed the file citing state security. This added to the suspicions about the quality of Müller's evidence; there were speculations that he had confessed to being the Hamburg shooter and that the state was willing to refrain from prosecuting a possible murderer in exchange for testimony against the RAF. When efforts to obtain the file failed, the defence summoned Chief Federal Prosecutor Buback as a witness in order to question him about its contents. At first, Buback's superior, the Federal Minister of Justice Vogel, refused to grant the necessary permission, but the defence lawyers' efforts led to a new decision by an administrative judge ordering Buback to appear in Stammheim. On 14 October 1976 (trial day 153), Buback was questioned by lawyers Schily and Heldmann, and remarkably also by Baader and Raspe, but he revealed nothing new. He reiterated that the prosecution had not made a deal with Müller or any other witness. Although Buback was composed and answered all questions in a courteous manner, his very brief answers left a bad impression. Vogel had apparently limited his permission to testify.[142]

Just before Buback's appearance, from 5 October 1976, the prosecution had presented its final plea, which took three full days. There was little public interest and of the lawyers of choice only Hans-Heinz Heldmann was present. By now, apparently,

many thought the outcome was a foregone conclusion. In Stuberger's account of the Stammheim trial, we can read that in his long career of trial reporting he had rarely heard prosecutors talk so emotionally and at times even irrationally and defamatorily about the accused. Again and again, the prosecution stressed that the three remaining RAF leaders (Ulrike Meinhof had in the meantime committed suicide) were mere ordinary criminals, devoid of political motivations. State Prosecutor Peter Zeis called the RAF's claim to political ideals 'den größten Etikettenschwindel des Jahrzehnts' (the decade's greatest labelling fraud). His colleague Klaus Holland accused the RAF of a mentality 'devoid of human traces'. Baader's behaviour was especially criticised; the prosecutors decried the stark contrast between his luxurious lifestyle and the proclaimed struggle for the underprivileged. Stuberger found it offensive that the prosecutors talked about the absent lawyers of choice, as if they too were facing trial.[143]

Journalist Gerhard Mauz's report, published in *Der Spiegel* at the time, is largely in line with Stuberger's memories, although Mauz gives more credit to the oldest prosecutor, Wunder. According to Mauz, Wunder argued sharply but matter-of-factly and thereby represented a system of justice that showed respect for the procedural and human rights of the accused. Mauz wrote that his younger colleague Zeis, however, manifested 'a scary kind of "system of justice", in which the prosecution aims at annihilation, destruction, elimination. This "system of justice" does not deal with people, but with phlegm.'[144]

Prisoners of War: The RAF and the Geneva Conventions

On several occasions during the trial the RAF's lawyers were seen as addressing issues that were not strictly legal. More than once, judges and prosecutors and many outside observers expressed their doubts. They suspected the RAF leaders and their lawyers of political motives and accused the defence of, as they saw it, misusing the trial as a stage for political propaganda. As we have shown, this was in fact what they intended to do. One key argument was mistrusted by observers, and was not regarded as a serious legal point. This was the plea to treat the RAF members as prisoners of war who had been fighting on German soil against the US war effort in Vietnam.

On 28 October 1975, this line of argument was expressed in court for the first time, albeit unsystematically. Judge Prinzing began this (41st) day of the trial with an explanation of how he wished the proceedings to continue, now that it was established that the accused were lacking in fitness. He announced that the accused were allowed to follow the proceedings whenever they felt able. The defence lawyers reacted furiously and, not for the first time, challenged the judge on grounds of bias. Von Plottnitz

declared that the president's actions amounted to a 'declaration of war' against the accused. 'However, in war there would always be the Geneva Convention[s], whose provisions would protect the prisoners from something that is to be considered legitimate in consequence of the judge's decision: the deliberate destruction of their health. The risk of the prisoners' health deteriorating if they continue to be kept in isolation, as mentioned in the medical report, does not bother the judges; after all, they long since shifted their responsibility for the destruction of the prisoners' health on the prisoners themselves.'[145]

In the months to come, the 'prisoners of war' argument would return. On 20 January 1976 (trial day 65), Axel Azzola, a law professor from Darmstadt University who had recently joined Meinhof's defence team, brought forward a motion to halt the trial and start treating the accused as prisoners of war. Remarkably, Schily and Heldmann did not endorse this, seemingly because of legal peculiarities. This action broke with the established practice of the RAF lawyers to support each other's motions. Until this time the imprisoned members of the RAF had always demanded to be treated like ordinary prisoners, so Azzola's motion also marked a switch to a plea for special treatment.[146]

The Darmstadt professor based his motion on an intricate analysis of the conflict between the RAF and the West German state. He argued that the two sides were taking part in an international war between the forces of capitalist imperialism and the liberation movements of the third world. At the time international law still considered war to be a matter of nation-states, and excluded members of other organisations from protection as enemy combatants. However since the early 1970s, negotiations about an additional protocol to the Geneva Conventions and the law of war had moved towards including movements of national liberation and their 'soldiers'. Professor Azzola tried to persuade the Stammheim court to accept this impending extension of international law (in the end, the protocol was added to the Geneva conventions in 1977) and to recognise the RAF as a legitimate 'subject of war', being a partner organisation of one of the third world liberation movements, the National Liberation Front of Vietnam (Vietcong). As such, its members should be treated as prisoners of war (to be housed in special, internationally monitored camps) and criminal proceedings against them had to be halted.[147]On this basis, only an investigation into possible war crimes committed by the RAF, and possibly a new trial on the basis of that, still seemed feasible. Azzola also stated that the RAF had legitimately used their constitutionally guaranteed right to resist institutionalised fascism, and, apart from that, had used violence in self-defence, 'not to defend the existing order, but exactly with the aim of its abolishment'.[148]

Federal Prosecutor Wunder was unimpressed by Azzola's inventive analysis, arguing that existing law did not allow for such 'wishful thinking'. According to Wunder this was a preposterous attempt to legitimize the RAF's acts of violence. 'In our country murders are prosecuted as what they are. We live in peace and not in the state of war that the accused have imagined.' Azzola's remarks about the RAF's legitimate use of the right to resist had specifically annoyed Wunder, who called them an offence to the members of the actual resistance during the Nazi era.[149] Wunder thus refrained from an in-depth discussion of the motion. The same applied to the reaction of the court, which swiftly dismissed the motion, concluding that there was 'no legal ground to switch to a treatment of the accused as prisoners of war'.[150] Although these brief reactions may have made good sense from a legal standpoint, they did little to challenge Azzola's faulty reasoning or expose it to the public eye.[151] Azzola's detailed attempt at Stammheim to portray the RAF as Robin Hood-style freedom fighters thus remained untested.[152]

On 4 May 1976, the defence brought forward a large number of motions (among them nine by Schily alone) to summon as witnesses a range of American politicians (among them former President Richard Nixon), military and security service personnel (including former CIA Chief William Colby), various West German politicians (such as former Federal Chancellor Willy Brandt and his successor Helmut Schmidt) as well as experts in international law and other academics. According to the defence their evidence would prove that US forces had committed war crimes in Vietnam, that US military institutions on West German soil had played an important role in these actions, and that members of the Federal government and other leading West German politicians had supported or at least not prevented this. This would lead to the conclusion that the accused members of the RAF should be acquitted, because by bombing American facilities in Frankfurt and Heidelberg they had legitimately made use of the right to resist and the right of self-defence.[153]

With some ceremony, the lawyers declared that their motions at the Stammheim trial would at last introduce the issue of the Vietnam War, which they claimed to be of central importance in the prosecution of the RAF. Axel Azzola, now in full cooperation with the other defence lawyers, even called the RAF 'an answer to Vietnam'. He stated that these motions, finally, put the crucial question on the table as to 'whether the individual, who had put himself up against the murderers of Vietnam and had been prepared to wage this struggle with relatively modest means, must on the basis of existing law be seen as a member of a criminal gang'. Wunder was unmoved. He saw the Vietnam motions as merely another instance of the accused attempting 'to turn the trial against them into a stage for propagandistic

self-presentations'. According to him, the motions were not really meant to serve the purpose of finding the truth and he pointed out that they did not even really refer to the allegations in the bill of indictment.[154] Two weeks later, after ample consideration, the court denied a right of resistance and self-defence in this case, and turned down the motions.[155]

6.3.2. Theatrics: Charming the Audiences

In the end, these attempts by the defence to derail the trial by repeatedly addressing procedural issues, except when dealing with the issue of crown witnesses, all appeared rather far-fetched and futile. Indirectly, however, the RAF leaders and their lawyers scored some points. They managed to turn the trial into a continual bickering between parties; this considerably undermined its legitimacy. Many observers lost interest in the perceived stalemate at Stammheim. This meant that the trial did not become, as the authorities had hoped, the staged reckoning with the RAF. At least as far as spectators close to the RAF were concerned, the protracted proceedings at Stammheim confirmed the political character of the trial that the defence had always alleged. Contributing to the image of a 'failed' trial were the conscious and unconscious performances of the various participants. Constantly interacting with one another, the players in this drama—including the president and the other judges, the prosecutors, the lawyers and the accused, and even some of the witnesses—modelled their behaviour to appeal to audiences inside and outside the courtroom.

Acting Their Part: An Unavoidable Clash between Judge and Accused

For a first impression of the actual events in court we can rely on Ulf Stuberger's eyewitness account from which we have already quoted several times. When this journalist sat down in the Stammheim courtroom for the first time on 21 May 1975, he could not help smiling to himself: 'I could not suppress the thought that I sat waiting for the chime to announce the beginning of the show.' And indeed, 'Suddenly, a buzzing sound could be heard, just like in a modern theatre.' Ulrike Meinhof and the other accused entered the courtroom first, followed by the Second Senate of the Stuttgart Oberlandesgericht. To Stuberger and some of his colleagues this entrance looked like a ballet performance. 'In their black robes the nine men strutted daintily to their seats', he observed.[156] The beginning of this confrontation between judges and accused and between prosecution and defence had long been anticipated by all present and by many more who followed the trial in the media. The question now was whether the actors would live up to expectations.

The accused and their lawyers, as we have made clear in our discussion of the RAF's defence strategy, had given much thought on how to perform in court. One of the RAF's lawyers, Gerd Temming, had even conceived a 'dramaturgical frame for the defence' as a basis for an internal debate on the matter.[157] From Stuberger's memoirs, however, we gather that the demeanour of the defendants at the trial and their trial strategy mostly reinforced the sceptical attitude towards the RAF with which this left-leaning journalist and probably many other more or less neutral observers had entered the courtroom. 'Baader often looked very nervous', Stuberger writes, 'constantly playing with a plastic lighter, plucking his clothes or browsing through legal papers that he had carried in. He was able to control himself for days and would then erupt in choleric outbursts, visibly sweating and blurting out vulgarities like a little child.' The RAF leader was said to have a high sex appeal, but Baader appeared rather dim-witted to Stuberger because of his constant swearing and a cynical grin that clearly annoyed the other participants in the courtroom. It was Baader's bad luck, Stuberger argues, that his looks made him the perfect example of the terrorist scarecrow. In a way, he seemed to confirm the image that the prosecutors had spread of him as the RAF's ringleader.[158]

Of the other three, neither Gudrun Ensslin nor Jan-Carl Raspe appeared in a good light. To Stuberger, Ensslin seemed 'a particularly aggressive, radical young woman, [who] erupted easily and in her way seemed to imitate Baader's behaviour'. Without hesitation, she rebuked the court, the prosecution and the substitute lawyers. Stuberger's impression was that Ensslin felt able to give orders to the other participants at the trial, totally misjudging her actual status. In contrast, Raspe appeared as 'the great taciturn'. Mocking Azzola's prisoners of war motion, Stuberger and other reporters labelled the subservient Raspe as commandant Baader's 'boot-jack'. Raspe seemed to conceal his real motives and ideas, a negative impression that was amplified (in the eyes of Stuberger) by his deep eye sockets.[159]

However, when confronted with Ulrike Meinhof, Stuberger sometimes needed to remind himself of the crimes for which she was on trial. 'From the first trial day onwards, she seemed to stand out from the other [three]', he writes, '[looking] almost well-behaved with her long pigtails'. Meinhof, herself a journalist before turning terrorist, often seemed to have the impression that the other accused RAF members ignored her, for instance when she indicated to Ensslin that it was not polite to light a cigarette in court. In contrast to Baader and Ensslin, Meinhof hardly spoke and rarely raised her voice in anger. She preferred 'fascist' or other political terms of abuse to the use of gutter language. She looked physically and mentally weaker than the other three, an impression that grew stronger by the day. This was confirmed by stories

about tension and arguments between Meinhof and the other RAF members, reported to Stuberger by some of the guards. 'She seemed less and less able to follow the course of [the trial] that would determine her future', he remembers, '[and] she looked more and more absent.'[160]

That there were indeed splits within the group became apparent on 4 May 1976 (trial day 106) when, after the defenders had presented their Vietnam motions, Ensslin addressed the court (in Meinhof's absence) with a remarkable statement:

> If there is one thing about the 1972 affair that depresses us, it is our lack of correlation between head and hands. We would have liked to have been militarily more efficient. To put it simply once again: we are also responsible for the attacks on the CIA headquarters and the headquarters of the Fifth US Army Corps in Frankfurt am Main and the US headquarters in Heidelberg. In so far as we were organised into the RAF from 1970 onwards, fought in it, and were involved in the process of the conception of its policies and structure, we are certainly also responsible to the same degree for operations undertaken by commandos—for instance, against the Springer building [in Hamburg], of which we knew nothing, and disagree with in principle; which we disowned while it was in progress.[161]

Since it is generally assumed that a commando group under Meinhof's leadership was responsible for the Springer bombing, Ensslin's statement basically isolated Meinhof from the other three standing trial, and excluded her from the RAF's central command.[162] It is chilling to note that Meinhof's suicide followed only four days later, during the night of 8/9 May 1976.

To return to the performance of the accused in court, it is clear that they accepted the rules of the trial only to the extent that these enabled them to continue their political struggle from the podium of the courthouse. In this sense their behaviour was typical of the composure of others facing political trials, as analysed by Otto Kirchheimer. According to this German-American jurist and political scientist 'With the political defendant [...] reversal of the roles becomes real; whatever adjustments he is likely to make to the necessities of the situation are of a tactical and narrow nature.'[163] The right to bring forward petitions on all kinds of legal issues (under the Code of Criminal Procedure) created great opportunities for the defence to turn the trial into a platform for the RAF's political communication efforts. Or, as the RAF leaders declared, 'because the Code of Criminal Procedure allows for an explanation of these [motions], they could function as transporters of political argumentation'.[164]

This effort to politicise the trial or, from the RAF point of view, to reveal its political character, made a clash with the court almost inevitable, especially when its president, Theodor Prinzing, appeared to take keeping politics out of the courtroom as one of his most important tasks. From the beginning he displayed an extraordinary eagerness to prevent political speeches, interrupting the accused or their lawyers whenever he felt they were moving away from legal grounds towards political terrain. As a consequence, he repeatedly withdrew their permission to speak when they trespassed beyond the imaginary line in the sand that he had drawn. Prinzing used various disciplinary measures at his disposal to control the proceedings. At an early stage, the lawyers of choice walked out in protest when the court refused to have the defendants' fitness to stand trial tested by independent doctors. The presiding judge warned them that next time he would withdraw their formal court appointment. The lawyers regarded this as a threat, because the state would then no longer cover their costs and they would have to be paid by their clients, who were without means.[165] Over the following months the court would indeed decommission these lawyers, one after the other.[166]

Prinzing tried to soften his strictness with little jokes, but his ironic wit tended to backfire, causing indignation on the defence counsel's bench. Moreover, Prinzing often appeared not to be completely even-handed, thereby confirming the defence's complaint that he was basically working for the state. It left a bad impression, for instance, when he thanked Federal Prosecutor Siegfried Buback for 'his patience' after he had appeared as a witness—*Der Spiegel* clearly found this deference toward a state functionary overdone.[167]

The judge seems not to have been a very good listener. On 28 October 1975 (trial day 41), for example, he lost his patience with Ulrike Meinhof when she was struggling with words, talking in theoretical terms about the difficulties faced by an isolated prisoner. In hindsight, Meinhof's statement could be interpreted as a signal to the authorities that she was contemplating a change of attitude. At the time, though, Prinzing could not be bothered with her theorising and failed to register not only a possible hidden message behind her words, but also how far she had already drifted away from the RAF. After all, for the RAF, a member who openly hinted at leaving the organisation was dangerously close to becoming a traitor. An irritated Prinzing simply interrupted Meinhof several times, finally withdrawing her right to speak altogether.[168]

Prinzing's insensitivity to the defendants reached its nadir with his handling of the trial immediately after Ulrike Meinhof's suicide. On the following trial day the president wanted to continue in a business-as-usual way, as if nothing had happened.

The court turned down a request from the defence for an adjournment of the trial until after Meinhof's burial, even though one of the substitute lawyers, Manfred Künzel (Waiblingen), supported their plea. This decision caused uproar in the crowded public gallery on the day following Ulrike Meinhof's death. Her death had enhanced the motivation of these RAF sympathisers in the gallery to show their support, 'to show, especially today, that there is somebody there [for them]'.[169] After the protesters were led out on the president's orders, others in the room jumped up and chanted abuse: 'Prinzing "raus"', 'Prinzing murderer' and 'Suicide is a lie.' The lawyers of choice collected their files and left in protest, saying they would not return until after the funeral.[170]

Importantly, the court's refusal to allow for an adjournment may have been caused in part by the way the lawyers and defendants argued for it. For example, Hans-Heinz Heldmann, defending, not only pointed to the close ties between the four prisoners torn by Meinhof's sudden and unexpected death, but also remarked that the lawyers saw reason to doubt the official explanation of her death because Meinhof had supposedly not given the slightest hint of suicide plans.[171] Jan-Carl Raspe even went a step further and openly declared:

> We think Ulrike has been executed. We don't know how, but we know by whom. And we can work out the way it was calculated. [...] It was an execution, conceived in cold blood, in the same way as Holger [Meins] was executed.[172]

In fact, prison notes reveal that only hours after having been informed of her death, in a reflex reaction, the remaining leaders of the RAF together with their defence counsel had decided to use Meinhof's death as an opportunity to revive the RAF solidarity campaign.[173]

Et tu, Künzel? Prinzing's Final Challenge and the End of the Trial

The accused RAF leaders regularly erupted in anger against the strictness and formality of the presiding judge and were genuinely frustrated at Prinzing's interruptions, which ruined the effect of statements they had so laboriously drafted in their cells.[174] In part, however, these outbursts were consciously provoked confrontations with the president to show disdain for the court and the established order of the Federal Republic. Other commentators have already cited some of these clashes in detail, so we will only relate one illustrative discussion from the court, taking place on 19 August 1975. On trial day 26 the accused stood up and shouted abuse in an attempt to be removed from court. The ensuing violent exchange mimicked an absurdist play. At

first judge Prinzing refused to expel them, then Raspe asked if they should 'make some sort of formal disturbance'. Finally the judge informed the accused that they were 'now causing disruption of the trial'. Later in the day, when the defendants were led back into the courtroom, they repeated their abusive language, calling Prinzing 'a fascist asshole', 'an old pig' and 'a dirty bastard'.[175]

The climax of animosity toward the presiding judge occurred on 28 July 1976 (trial day 131), when Klaus Jünschke, an RAF member who at that time was facing a trial in Kaiserslautern, testified on behalf of the defence. In the middle of a dispute with Prinzing, after he already had called the president 'a fascist' and had received disciplinary punishment, Jünschke suddenly stood up, ran around the witness table and cried, 'Wait, here I come.' In three quick paces he had jumped onto the judges' table and crashed onto the president, so that they fell to the floor together. Several judges, guards and policemen overpowered the enraged witness. As Jünschke shouted, 'For Ulrike, you pig!', the guards tied his hands and feet and carried him out.[176]

Within the parameters of the Code of Criminal Procedure the clearest expression of confrontation from the defence was the torrent of accusations facing Prinzing and other judges on the grounds of bias.[177] In theory, for any such challenge to succeed it was sufficient for the accused to come to a convincing rational conclusion that a certain judge was biased.[178] Within a total of 175 trial days, various lawyers brought a total of 85 challenges against Prinzing, of which only the last was successful.[179] The sheer number of challenges in the Stammheim trial raises the question whether this was a misuse of defendants' rights. This question is further justified because according to the Code of Criminal Procedure these challenges have to be dealt with immediately, making them a powerful tool for trial obstruction.[180]At Stammheim, the prosecutors and the judges did indeed accuse the lawyers of deliberately slowing down the trial with their challenges.[181] Tenfelde's legal study of the Stammheim trial argues that the lawyers, in his opinion, were simply exploiting the rights of their defendants. He criticised the judges' negativity when faced with such challenges, which they considered to be shameful and damaging to their professional honour.[182]

In Prinzing's case it was probably indeed a question of his honour that led to the success of the 85th and final challenge against him. It all began in January 1977 when Otto Schily, defence counsel for Ensslin, received explosive information that revealed Stammheim's presiding judge had been in contact with Federal Judge Albrecht Mayer, of the Third Senate of the Federal Court of Justice in Karlsruhe. This court was not only responsible for dealing with complaints about the judges at Stammheim, but would also have to consider any appeals after the court had reached a verdict. Prinzing regularly spoke to Mayer by phone and once even sent him copies of trial documents

through his private mail. Mayer, in turn, forwarded these to the chief editor of the conservative newspaper *Die Welt*, apparently hoping that this might result in an article that could damage Schily.[183]

On 10 January 1977 (trial day 171), Schily challenged the presiding judge over his contact with Mayer, but the other judges of the Second Senate curtly disallowed this challenge. Substitute lawyer Manfred Künzel (Waiblingen), court-appointed counsel for Ensslin, challenged the president again, because he felt that Prinzing's contact with Mayer and Mayer's actions should be openly discussed. This motion was also rejected by the court, but Künzel had obviously hurt the president's feelings, or damaged his honour as Tenfelde suggests, since Prinzing now began to show signs of panic. On the evening of 13 January 1977, he telephoned Künzel, who was still acting as a lawyer in the case he was presiding over.[184] It was an act of desperate disillusion, remotely reminiscent of Julius Caesar's last encounter with his former pupil, the dagger-wielding senator Brutus.

To Künzel's astonishment, the president complained that his challenge had been the worst experience in the two years of the trial, because it came from such an unexpected quarter. Prinzing was hinting at their shared past, when Künzel was a junior in Prinzing's chambers. The lawyer replied that he simply desired a better explanation for Prinzing's contact with a judge of a superior court. In his opinion it was not enough to say, as the president had done, that he would not comment on private conversations, because that nourished the suspicion that such contacts had occurred. 'Put yourself in Frau Ensslin's position', Künzel explained. 'She must now be saying to herself that any future appeal is pointless, since there's been an interchange between the two courts with the aim of ensuring that no appeal against the court's judgment can succeed.' Prinzing replied that Ensslin would not care, and that it was all Schily's doing. Künzel disagreed, whereupon the president told him that he was looking at it 'in the abstract'. The conversation ended with Prinzing complaining about the stress the case put upon the court and on him especially: 'I'm almost at the end of my tether. And if I can't see it through, Herr Künzel …'[185]

After Prinzing had hung up, Künzel told Baader's lawyer Hans-Heinz Heldmann about the telephone conversation. On 20 January 1977, Heldmann challenged the president again, and this time the Second Senate decided to uphold the challenge. 'Ultimately it does not depend on whether Dr. Prinzing is or feels himself to be biased', they declared. 'The deciding factor is whether, from the defendant's viewpoint, there may be reasonable distrust of the judge's impartiality. Such misgivings cannot be dismissed.' On the basis of this decision Prinzing was discharged from the case. His associate, Dr. Eberhard Foth, replaced him.[186]

All in all, Prinzing had clearly not been in full control of the trial. Stuberger remembers that he was often reminded of Don Quixote as the president engaged in one procedural quarrel after another, as did the man of la Mancha with Spanish windmills.[187] Nevertheless, Stuberger also reminds us that it would be too easy to put the blame for the unfortunate turn of events in the Stammheim trial solely on Prinzing. So much was at stake, and external pressures for a conviction were so demanding that no judge would have been able to preside over the trial without making mistakes.[188]

Still, Prinzing appeared to be lacking both the sovereignty and impartiality required for his role. He appeared to have taken the trial's events and challenges rather personally, missing the point that they were mainly attacks on his function. We can illustrate this by his remarks in a recent interview. The former president confessed to a certain sportsmanlike respect for his most important opponent. 'Baader was capable of cool calculation', Prinzing told the press, 'and for me he was really a highly intelligent desperado, who on account of his failed career up to that moment found a confirmation of himself in this new career as revolutionary'.[189]During the trial, it seemed that the president's pride was hurt that this respect was not returned by the accused. Time and again, the lawyers argued that it was not Prinzing presiding over the proceedings, but the Federal Prosecutor.[190] Psychologically, many of these challenges were rather testing, for instance when Baader sneered just after the president turned off his microphone, 'So maybe you're in charge of the microphones, but you're not in charge of this trial, far from that.'[191]

The constant bickering and legal nitpicking on display at the trial was nearly fatal to the public interest in it. After the first few trial days, media coverage dwindled and the press chairs were left empty. 'Most of the time, I was really lonesome and the only representative of "published opinion" in Stammheim', Stuberger remembers. The court was also less attractive to visit when the RAF leaders were absent. As one visitor concluded, 'The zoo effect is lost.' In the eyes of most observers, the trial took too long and was far too expensive. Nevertheless, Stuberger notes that the visitors' benches were often well occupied and that altogether there were about 30,000 visitors attending one or more sessions of the court.[192]

Most observers agreed that compared to Prinzing the new president was a relief. Eberhard Foth not only reprimanded the lawyers, for example, but also corrected the prosecutors if their statements were too aggressive.[193] In essence, though, Stuberger reveals that president Foth, like Prinzing, kept up the pretence that the trial was a strictly legal affair. He recalls the president's final statement, after reading out the verdict, on 28 April 1977. Foth addressed the audience and the press with a short

rhetorical question: 'Some might ask: Where now is politics? There where it belongs, outside this courtroom.' Stuberger wrote that he and other journalists could barely suppress their laughter.[194]

Nevertheless, the Stammheim trial clearly had a better judge in its final stages, although on Foth's watch the going was at times also rough. For instance, in the early months of 1977 the weekly *Der Spiegel* revealed that the German secret service had installed a listening device in the private home of nuclear scientist Klaus Traube when it was discovered that he had been in contact with a left-wing terrorist. Following this revelation, a member of parliament in Bonn asked the government to prevent similar actions in future, adding, as if he knew more, 'including wiretapping in prisons'. As a consequence, on 15 March 1977 (trial day 184), defence lawyer Otto Schily demanded an interruption of the trial proceedings and invited the Federal Minister of the Interior, Werner Maihofer, to the witness stand. Schily wanted to ask him if state security services or other agencies had possibly overheard, taped and analysed conversations among the RAF prisoners, and between them and their lawyers.[195]

Senior Public Prosecutor Zeis reacted strongly, accusing Schily of capitalising on the developing scandal around Traube. However on the next trial day, 17 March 1977 (day 185), Zeis had to tone down his comments, because in the meantime the Baden-Württemberg State Ministers of the Interior and of Justice had confessed that prisoners in Stammheim had been overheard, albeit only during two small intervals.[196] Thereafter, Schily called for a suspension of the trial until further notice, because the affair had uncovered 'a systematic destruction of all constitutional guarantees'. He declared the defence did not feel able to continue to cooperate in the proceedings, 'when it may perhaps seem to offer a kind of alibi by appearing'. All of the substitute defenders, too, asked for an immediate suspension of proceedings.[197]

Zeis distanced himself from the affair, professing that his office had not been informed about the taps. After that statement, president Foth tried to continue the proceedings, but he was interrupted by Schily's announcement that the defence lawyers of choice would leave the courtroom if the trial proceeded. 'I can't stop you', Foth reacted, '[but] I think you must stay'. Schily and his colleagues gathered their files and walked out, leaving the defence of their clients to the substitute lawyers. Remarkably, Künzel also asked for a suspension of the trial, on the grounds that a lawful defence might have been rendered impossible from the moment the taps had been installed. Thereupon, the president closed the proceedings for deliberation.[198]

On 29 March 1977 (trial day 187), president Foth opened by reading a letter of assurance by State Justice Minister Traugott Bender, stating that the taps had had no connection with the Stammheim trial. After this, in what was to be their last trial

appearance, the accused spoke one after the other. Baader and Raspe demanded to hear important politicians as witnesses about the wiretaps, while Ensslin announced that the prisoners had just started another hunger strike. When Raspe and Ensslin tried to make political statements, the judge interrupted them and they gave up.[199] Later in the day, several substitute defence lawyers asked for more assurances from the court with regard to an absolute ban on wiretapping. After the court had turned down all the formal requests regarding the wiretaps, Künzel sent a telegram requesting that he be decommissioned as substitute lawyer. He announced that he would no longer cooperate in the proceedings because he thought it demeaned the standards of the legal profession.[200] At that point in time, the Stammheim trial had finally turned into a 'ghost trial', as Stefan Aust calls it.[201]

The impotence of the justice system was made all the more visible by the murder in broad daylight of Chief Federal Prosecutor Siegfried Buback and two employees—the work of a RAF commando group in Karlsruhe, on 7 April 1977. This ruthless assault was the start of a string of violent attacks by the RAF in an effort to force the German government to release its imprisoned leaders. This campaign of violence has since become known as the 'German Autumn' of 1977.

On 21 April 1977 (trial day 191), in the absence of the lawyers of choice, the substitute lawyers made their final pleas, lasting between one minute and three quarters of an hour. Most defence lawyers demanded the cancellation of the trial. Thereafter, the presiding judge instructed a prison guard to ask the accused whether they wanted to use their right to make a final statement. In the presence of four witnesses all three waived this right.[202]

A day before the final trial day, on 27 April 1977, in the Park Hotel in Stuttgart, the lawyers of choice held a press conference at which Schily and Heldmann pronounced their final pleas, which they called 'Bewertung' (evaluation), in the presence of about 100 journalists.[203] On the next day, 28 April 1977 (trial day 192), judge Foth concluded the trial with the oral presentation of the verdict: life sentences for all of the accused.[204]

After this, a long process of appeals before the Federal Court of Justice was to be expected. In the aftermath of Prinzing's dismissal, a disciplinary procedure instigated by Schily had forced the replacement of Judge Mayer. Although most observers expected the higher court to uphold the life sentences, representatives of the prosecution had cautiously informed Stuberger that they were worried that certain aspects of the sentences would be revised. Journalists expected that the lawyers of choice would launch a multitude of challenges against the judges on grounds of bias. They also expected the lawyers to try to petition for a temporary release for their clients. Baader, Ensslin and Raspe had already spent almost five years in custody before a verdict

was reached, which could be regarded as a breach of provisions in the European Convention on Human Rights. Legal observers thought that especially Raspe, who had no previous convictions, had a real chance of being released from prison during a second trial. The state thus seemed to have manoeuvred itself into a cul-de-sac. In the end, however, the appeals against the Stammheim verdict were never heard. The collective suicides of Baader, Ensslin and Raspe in their Stammheim prison cells during the night of 18/19 October 1977 made them irrelevant.[205]

6.4. Legacies of the Stammheim Trial

The 'Todesnacht' (night of death) at Stammheim prison not only ended the lives of RAF's triple leadership, but it also propelled the Stammheim trial definitively into the domain of collective memory, which is the topic of this final section of our article.[206] Our analysis of the legacies of the Stammheim trial will present a critical overview of how 'Stammheim' was 'remembered' in German-language academic publications on terrorism and in the West German press. A complicating factor is the fact that in public memory, 'Stammheim' as a trial was soon overshadowed by 'Stammheim' as a symbol for the battle between the state and the RAF. This broader interpretation of 'Stammheim' integrated many elements. These included the debates related to the incarceration of the accused RAF members, and their deaths in October 1977—and the accusation that the state had killed the RAF prisoners rather than that they had committed suicide. 'Stammheim' also stood for the ultimate confrontation between the West German state and the RAF, and as such was a universal code for the climate of fear, anger and state repression during the 'Deutscher Herbst' (German Autumn) of 1977. The initial intense media interest in the Stammheim trial almost completely vanished after 1977. Press articles published in 1987, ten years after the German Autumn, mentioned the trial only in passing, and concentrated mainly on the events triggered by the Hanns Martin Schleyer kidnapping.[207]

6.4.1. Dichotomies Rule: Remembering Stammheim

Media scrutiny at a very early stage after the Stammheim trial led to the expression of serious reservations. *Der Spiegel*, for instance, criticised the over-activity of state institutions during the trial, while political elites had displayed such a lack of interest in earlier trials against Nazi perpetrators.[208] After the verdict in May 1977, both the *Frankfurter Rundschau* (FR) and the *Süddeutsche Zeitung* (SZ) expressed a sense

of resignation over the trial and the verdict. In their view, the judiciary had not fully uncovered the truth about the RAF's actions. These newspapers even claimed a lack of dignity on the part of the judges, who had made many 'mistakes' (SZ). The consequences were a sense of 'helplessness' (SZ) and a 'stale feeling' (FR) about a trial that had 'negative consequences for the rule of law' (*Der Spiegel*).[209]

A further consequence that left a bad taste was the introduction of anti-terrorism laws. Some of them have remained in place since their inception in the mid-1970s, including provisions against terrorist associations (tightened up after 9/11) and the restrictions of defence rights for those accused of terrorist acts. For these reasons, legal expert Uwe Wesel deems the Stammheim trial 'a catastrophe of the rule of law' in his 2006 assessment of the criminal proceedings against the RAF in the 1970s and beyond. Moreover, Wesel argued that the trial and conditions of incarcerationof the accused RAF members had violated human dignity, as well as undermined the principle of proportionality.[210] As early as May 1977, *Der Spiegel* journalist Gerhard Mauz had declared somewhat less forcefully that, at the trial, 'the effort to come a little bit closer to the rule of law had failed'. Mauz also identified an atmosphere of 'bitterness' and 'hatred' during the trial.[211]

Counter-intuitively, we will begin our analysis of the social and political effects of Stammheim by examining the few positive effects of the trial. Firstly, it seems clear that after 1977, in general, defence lawyers were motivated by the frustrating experiences of the Stammheim trial to a heightened commitment in confrontations with their counterparts in legal cases. Secondly, in a more general sense, the long view shows that civic attitudes in Germany *were* changed by the experience with the RAF. 'Stammheim' and the 1977 German Autumn marked a historical caesura, a breach with a long tradition of state-centred political culture in Germany (see our earlier historical overview). At least in some sections of West German society, scepticism towards the state and the criticism of police measures became more widespread. Moreover, the last third of the 1970s saw a growth of (new) social movements which addressed many political issues that were first raised around or during the German Autumn.[212]

Despite these positive long-term effects, Stammheim had mainly negative consequences at first. In conjunction with other terrorism trials, Stammheim strongly contributed to a process of growing political radicalisation in West Germany's left-wing milieu and to a polarisation in German politics in general.[213] The major publications about the trial, especially the books published by Aust and Bakker Schut in 1986, did not escape the pitfall of partiality. While the political direction of their criticism differs, both of the trial itself and of the actors involved,[214] each author presents a polarised narrative that uncritically copied the lack of communication between the opposing

groups involved, portraying the judiciary and West German state institutions on one side, and the RAF, its lawyers and sympathisers on the other side, fighting each other relentlessly. State officials are depicted as imagining themselves deeply threatened by the activities of the so-called terrorists, while the RAF and its supporters are seen to be convinced that the state was utterly and mercilessly opposed to all left-wing radicals. No matter how accurate this picture may be, Aust's and Bakker Schut's texts help to construct and re-enact an unbridgeable gap, the entrenched lack of communication between these two opposing camps.[215]

Similar dichotomies can be found in the state's documentation (in late 1977) of the Schleyer abduction, and in edited volumes published by radical intellectuals, such as *Ein deutscher Herbst* (1978/1997) and *Der blinde Fleck* (1987).[216] Polarised interpretations also shaped the book written by journalists Oliver Tolmein and Detlef zum Winkel, *Nix gerafft* (1987), and also Tolmein's later publication, *Stammheim vergessen* (1997).[217] In October 1987, ten years after the trial, commemorative issues of the liberal newspapers *Frankfurter Rundschau* and *Süddeutsche Zeitung* were dominated by the polarised interpretations outlined above. This model of analysis can still be found in more recent publications on the RAF.[218] Interpretations claiming that the RAF's activities were an indication of insanity were part of the same problem, as this explanation denied the RAF militants any political purpose and sought to exclude them from West German society.[219]

The weekly newspaper *Die Zeit* observed early in 1986 that there were obvious 'difficulties in coping with our recent past … the problem has been isolated, the chapter is closed, [we only have] time for the theatre and for the feature pages …'[220] Indeed, media interpretations usually collided with harsh social realities, as the reception of Reinhard Hauff's film 'Stammheim' demonstrated. Early in 1986 a public debate about the film, scheduled for Hamburg's alternative theatre venue *Kampnagelfabrik*, was cancelled when fistfights and brawling broke out. Once again, the inability of both 'sides' to engage in dialogue was an indication that the radical left's motto still applied: 'Über Stammheim wird nicht gesprochen' (Stammheim is not open for discussion).[221]

6.4.2. Establishing the Individual Victim

A first crack in this entrenched view of the struggle came late in 1986. Gerold von Braunmühl, a German middle-ranking diplomat, was assassinated by the RAF on 10 October 1986. Following his death, von Braunmühl's brothers published an open letter to the militants who killed him in the left-wing daily *taz*.[222] In September 1987,

they also released a small book entitled *Ihr habt unseren Bruder ermordet* (You have killed our brother) which included some reactions by *taz* readers and a few short articles.[223]

The von Braunmühl brothers' attempt to initiate a public dialogue with the RAF constructed a clearly recognisable third party, the individual victim,[224] located between the two opposing parties (the state and the RAF). The language of victimhood was by no means new in this field.[225] Siegfried Buback and Hanns Martin Schleyer, assassinated by RAF commando groups in 1977, had also been labelled as victims of the RAF. In the case of Gerold von Braunmühl, however, it was individuals rather than the state who claimed the right to victimhood. In this process it was not the victim's relationship to the state or to structural or social issues which served as the primary point of reference. Instead, the von Braunmühls' letter to the RAF underlined their brother's individuality, his aims and his personal life. Moreover, they stressed the suffering of his family—this was not about von Braunmühl's death as a representative of the state.

This kind of communication between victim and offender, with its strong emphasis on the suffering of human beings, is a very ambivalent process. Firstly, it has the potential to detract attention from a necessary analysis of social interactions between state and social institutions, and the terrorist(s). A focus on victims can also sustain the omnipresent tendency that many commentaries have: to individualise and personify terrorism. On the other hand, defining the victims of terrorism inevitably intervenes in the communicative process between state and society and terrorism. Consciously or not, the von Braunmühls questioned the state's monopoly to claim and define the victims of terrorism. Simultaneously, they cast doubts on the state's ability adequately to protect its citizens against terrorism or to care for the victims of terrorism. The criticism implicit in the initiative of the von Braunmühl brothers may explain the irritated reactions of some politicians and state functionaries to their intervention in the public discourse. From a criminological perspective, the state's monopoly on setting the conditions for the sentencing of offenders can also be challenged when the interests of victims dominate. Victims and their families may have completely different opinions with regard to the length and severity of offenders' sentences. A focus on the victims of terrorism can also be seen as a by-product of new penal policies that have emerged since the late 1970s, which tend to stress the rights of victims above the re-integration of offenders in society.[226]

Considering the discourse around terrorism in West Germany in the 1980s, however, it was victim-led communication that indicated a first step towards breaking down the entrenched interpretative model of them (terrorists), versus us (the state). Further efforts to move away from a polarised pattern of interpretation can be

discerned in the attempts by Antje Vollmer and Christa Nickels of the Green party to communicate with (former) terrorists and discuss new exit options for them.[227] At about the same time, plans were made to establish a foundation for terrorists who wished to leave their militant way of life.[228] It took another ten years for the process of victim-focused communication to emerge strongly. The language of victimhood became much more widespread in the late 1990s, and elements of victim-based communication can be found in the films of Heinrich Breloer ('Todesspiel'—1997) and Andres Veiel ('Black Box BRD'—2001).[229]

By the late 1990s, interest had also moved beyond the 'big name' victims of the RAF. Press articles were written about the son of Schleyer's chauffeur, for example, mourning his father who was also killed in 1977, and about the shocked residents of the street where Schleyer and his escort were ambushed.[230] By 1999, former militants and some relatives of their victims began talking to each other.[231] This disruption of entrenched patterns also took place among some former RAF prisoners, creating a platform for changing self-definitions. Former militants spoke of their individually traumatising experiences, their fears and their suffering, eroding the tough fighter image step-by-step. Acceptance of this new image should not be overestimated as widespread, however.[232] Also in the late 1990s, criticism emerged that the state's tactics towards the RAF had been too hard-line and inflexible during the German Autumn.[233] Nevertheless, even as late as the end of the 1990s it remained highly controversial openly to stress the structural roots of West German left-wing terrorism by examining the interactions of the state, society and the media.[234]

In the early 2000s, two parallel and interrelated tendencies could be discerned in discussions about 1970s terrorism. One was an erosion of the established polarised interpretations, which is not to say that this view disappeared altogether. Secondly, the dominant interpretations of left-wing terrorism and the state's responses splintered into several competing narratives. A very strong current among these was the focus on victims, as demonstrated by controversy around plans for an art exhibition on the RAF at the KunstWerke art centre in Berlin in 2003. The exhibition finally opened in early 2005.[235] KunstWerke curator Klaus Biesenbach and his team's main aim was to focus on the terrorists as perpetrators, and on the pre-history of 1970s terrorism. The public debate generated in summer 2003, however, called for the role of victims to be integrated into the concept. At the same time it became obvious that the old dichotomous interpretation of the terrorists versus the state still existed.[236] Against this background, it was no surprise that the early 21st-century saw a wave of popular literature on individual victims of German left-wing terrorism, mostly written by

family members of people killed by the RAF.[237] Interestingly the role of victim was only conceded to family members or friends of those killed by the RAF. It was almost unimaginable to write about dead militants as victims, or about the suffering of their families and friends.[238]

But victim-based communication was not the only way of recalling the history of terrorism. Interpretations of certain other aspects of terrorism also began to appear.[239] These published individual accounts still did not focus on the Stammheim trial, but they did comment on related aspects, such as the conditions of imprisonment of RAF members.[240] The old polarised codes dominated biographies about former militants, which appeared from the late 1990s. The same was true for other authors like Butz Peters (who published several popular books on the RAF), although he at least tried to demystify the RAF.

Still, by the early 2000s the dualistic 'them versus us' was less prevalent in the discourse about terrorism. In recent years several narratives have coexisted. As early as 2002, Christopher Roth's film 'Baader' had depoliticised the leading RAF figure, focusing on Andreas Baader's ambivalent personality as other pop cultural interpretations of the Baader–Meinhof Group had in the meantime emerged.[241] This trend becomes even more evident in a series of articles published in the *Frankfurter Allgemeine Zeitung* in 2007, dealing with the experiences of the traumatised passengers and crew of the Lufthansa jet that had been hijacked during the German Autumn (by a Palestinian terrorist group supporting the RAF). In the same year the *Süddeutsche Zeitung* suggested that West German terrorism had contributed to a 'democratisation of society' (*Demokratisierung der Gesellschaft*).[242]

As Thomas Steinfeld pointed out in the *Süddeutsche Zeitung* in April 2007, relatives of the victims of terrorist attacks now played a much more important role in public debates about West German terrorism. Almost no trace of the original political motives of the terrorists can be found in these discourses. As Steinfeld put it, 'in the near future everything that was political about terrorism will fragment into individual fates.'[243] The discourse about 1970s left-wing terrorism was no longer dominated by a polarised political controversy.

There is no easy explanation of why this occurred. Some may relate this change to the end of the Cold War as the black-and-white images of the Cold War enemy dissolved; or to German unification in 1989/1990, as the Federal Republic of Germany developed more self-awareness in its dealings with domestic political opponents. The situation had altered since the 1970s, when at the end of the decade political commentator Alfred Grosser could still detect a lack of self-assurance in West Germany, which 'had not sufficiently realized how stable her state was [and] how stable the

foundations of [the] ideological consensus underpinning this state really were'.[244] By 2002, the *Süddeutsche Zeitung* could declare that the West German state had become 'more stable and self-confident than ever before'.[245]

A closer look, however, reveals far more complex and contradictory patterns. First, the perception of the West German state had been changing from the early to mid-1980s, as the importance of the state in people's lives became less central. State services (like unemployment payments) began to be seen as comparable to goods and services offered by the marketplace. As contemporary observers, whose statements also echoed the demise of the welfare state, claimed, citizens used these state payments for individual purposes only. They did not care about articulating feelings of moral obligation or gratitude towards the welfare state.

The public debates about globalisation and its practical consequences may have contributed to assumptions that state power was waning.[246] Remarkably, the latest films and press series mainly focus on the question of how far the state had intercepted the communications between the imprisoned RAF members in Stammheim until their deaths in October 1977.[247] Second, the demise of the radical left at the end of the Cold War made it less problematic for state and police institutions in West Germany to make concessions to the RAF. Third, as the individualisation of society placed more value on individual suffering, the discourse shifted to individual victims of terrorism.[248] Fourth, the scale of the attacks in the United States on 11 September 2001 served to put the RAF into perspective as a terrorist organisation, which led to a more balanced interpretation of its political threats.[249] Three other important developments should be taken into consideration in explaining the changing discourse on 1970s terrorism: the initiative to bring about a 'reconciliation' with RAF prisoners by the liberal Minister of Justice Klaus Kinkel in early 1992,[250] the cease fire declared by the RAF on 10 April 1992, and the RAF's self-dissolution in April 1998.[251]

All in all, the double process of the erosion of the entrenched lack of communication with (1) its hermetic binary political code and (2) the splintering of the memories of 1970s West German left-wing terrorism had unquestionably begun in the last third of the 1980s and saw its breakthrough in the early 21st-century. At that time, remembering 1970s terrorism was mainly structured by victim-based communication and by individualised, often non-political narratives. Even the temporal resurfacing of old dichotomous 'frontline' arguments, such as in the debates about the Berlin RAF exhibition, could not conceal that there was no more space for the highly polarised atmosphere of the 1970s/1980s. As memories finally splintered and the hermetic master narrative became depolarised and depoliticised, Germany's left-wing terrorism of the 1970s had become part of history.

6.5. Conclusion

We have examined the Stammheim trial from the perspective of communication and performance, focusing on the way that different actors (defendants and their lawyers, prosecutors, judges, the media and bystanders) manipulated their behaviour and statements with the aim of mobilising public and political support for their interpretations of politics and justice in post-war Germany. The trial resembled a staged drama, with the players often losing sight of legal issues while leading commentators classified the trial as a 'Justizalbtraum' (justice nightmare).[252] The trial also displayed the enduring negative results a terrorist trial can produce. Partly because of the extraordinary theatricality of the proceedings at Stammheim, we believe the public memory of the trial remained highly politicised and polarised, in a sense reproducing the lack of communication between the parties that was so manifest at the trial itself.

The Stammheim trial turned into a bizarre game of shadow boxing over its purported political character. Even in the lengthy pre-trial phase, it became clear that the question whether this was 'an absolutely normal trial against criminals' as the authorities maintained, or a 'political show trial' as the RAF would have it, would become a major issue. In essence, the RAF leadership saw their performance at Stammheim as a continuation of their guerrilla warfare against the state, meant to undermine its legitimacy by subverting court trial procedures whenever this promised to be to their advantage. The credibility of this RAF strategy was reinforced by the inconsistent pre-trial policies of the government. The Federal Prosecutor's Office itself inadvertently reintroduced a political element into the prosecution of the RAF, building the indictment on the notion that the RAF be regarded as a criminal association, thus creating a collective responsibility for its acts. Numerous other factors, such as the choice of the Stuttgart Oberlandesgericht for the trial and the extreme security arrangements in and around the purpose-built courthouse, the many changes in the criminal code procedure, the appointment of the court president and the use of de facto 'crown witnesses' all created the impression that the state regarded the RAF as political adversaries, in spite of its own rhetoric that they were criminals. These inconsistencies were rooted in the desire of the authorities to achieve more with the Stammheim trial than merely bringing the RAF leadership to justice. We believe the intention was to create the preconditions for a public reckoning with RAF terrorism in particular, and with German left-wing radicalism in general.

By addressing these inconsistencies and legal anomalies at the trial the RAF defenders seem at first glance to have effectively shifted the burden of self-justification

away from the RAF, and onto the state representatives (and especially to Stammheim's presiding judge, Theodor Prinzing). The fierce attacks against Prinzing undermined the authority and legitimacy of the court. Both contemporary press reports and historical accounts of Stammheim reflect a high degree of criticism about Prinzing's handling of the trial, and show some understanding for the arguments brought forward by the defence. However one could also argue that the RAF missed a chance to use the trial as a stage to spread its message of dissent, because the protracted wrangling over procedural issues meant that both media and public attention for the trial quickly faded away in the first months. As a result, there was hardly any opportunity for the RAF to directly communicate their radical ideas; they managed only to accuse the state of a miscarriage of justice.

Summing up, we offer some final conclusions regarding the effectiveness of the performance of the different players at Stammheim. Firstly, the aim of the authorities to stage a public reckoning with the RAF leadership largely failed, due to the inconsistencies in their own trial strategy. The problem was twofold: the blatantly unrealistic denial of the RAF's political clout by politicians and state officials lacked credibility from the start, and the special arrangements around the Stammheim trial (location and construction of the court, security, the appointment of officials) indicated that the authorities clearly felt this was a highly political case, in spite of their statements to the contrary. The state thus performed rather poorly, largely because it did not want to discuss the 'political' elephant in the room. The attitude and demeanour of judge Prinzing and many of his peers contributed further to this problem. Their approach resembles a viewer who observes only the puppets at a Wayang theatre, and neglects the shadows that are the crux of this Indonesian art form.

To the state participants, this attitude made perfect sense. It matched the post-war West German tradition of a militant democracy that banned the fundamentally radical opposition forces from the competitive forum of official politics.[253] Or, as Ralf Dahrendorf argues in his seminal article on the social structure of German politics:

> Wherever opposing interests meet in German society, there is a tendency to seek authoritative and substantive rather than tentative and formal solutions. Many institutions of German society have been and still are set up in such a way as to imply that somebody or some group of people is 'the most objective authority in the world', and is therefore capable of finding ultimate solutions for all issues and conflict.[254]

This tendency has fostered a very specific political attitude among West German elites from the 1950s until the 1980s. They have neglected or shown blatant disinterest in

extreme political viewpoints, because in their daily lives it has been unnecessary to take these into account (as one does not even come across these voices). At Stammheim, neither the prosecutors nor the judges conceded a semblance of curiosity about the political or other motives that led the accused to their deeds. Yet the urge to discover these motives might reasonably be considered an essential part of establishing the truth (*Wahrheitsfindung*) that the elites themselves would claim to be central to criminal trials. Instead of making an effort to communicate with the defence, prosecutors and judges seemed merely interested in communication with each other, over the heads of the defendants. In our view, this lack of curiosity at Stammheim shown by the prosecutors and judges betrays an underlying insecurity or anxiety on the part of those elites.

For reasons discussed above, the RAF's performance, measured against its aim to use the trial as a platform for its own propaganda, was also poor. The efforts of the leaders of the RAF to enforce their interpretations of reality upon audiences within and outside the courtroom failed. A clear parallel can be discerned here with their campaigns of violence, which never resulted in tangible gains, but occasionally succeeded in scratching the reputation and legitimacy of West German democracy. Ultimately, the RAF was never able to match the achievements and power of its counterparts at the trial, the judges and prosecutors who represented the state.

One of the most striking features of the Stammheim case (and its legacy), finally, was the lack of genuine communication within the court, and within German society as a whole. As an instrument to restore social peace and renegotiate norms and values, the trial was clearly a failure. Rather, our overview of the collective memory of 'Stammheim' suggests that the trial contributed to a continuation of the 'entrenched speechlessness' that had been characteristic of the German government's dealings with contestant militants from the start. In the late 1970s some of these dichotomies between the state and the militants were re-articulated (a menacing fascist state had been replaced by a menacing security state). However, as we have elsewhere stated,[255] the codes for remembering Stammheim both in a narrow sense (focused on the trial) as well as in a broader sense (taking Stammheim as a summary symbol of the battle between the state and the RAF) remained fairly stable until the late 1980s. It seemed unlikely that there was a way out of this interpretative spiral.

The semantics of (the symbolic) 'Stammheim' and of the 1970s terrorist–state confrontation was structured by a highly politicised dualistic master narrative until the late 1990s. As we have explained, two developments played a crucial role in breaching the stasis in the communication between 'them' (terrorists) and 'us' (state

and society). The individual victims intervened in this polarised field, and at the same time the collective memory of 1970s terrorism splintered into a variety of co-existing narratives.

In hindsight it seems clear that the early 2000s presented an analytical and methodological turning point. For the first time, historians began writing about the history of the RAF and integrating that story into the general history of the German Federal Republic and its society. This enabled memories and narratives to coexist within a broader framework and time span, and to be re-interpreted against established patterns. We see the present analysis as a contribution to this innovative socio-cultural and historical research agenda.

6.6. Table of actors at the Stammheim trial

Categories	Subcategories	Names and age*	Limitation	Specifics
Suspects**		Andreas Baader (32) Gudrun Ensslin (34) Ulrike Meinhof (40) Jan Carl Raspe (30)	Until 9 May 1976	Died in prison
Court of Judges (Second Senate of the Stuttgart Oberlandesgericht)	*President*	Theodor Prinzing (49) Eberhard Foth	Until 20 January 1977 From 20 January 1977	Forced to quit by the defence
	Other members	Eberhard Foth Hubert Maier Kurt Bruecker Ulrich Berroth Otto Vötsch	*See President* From 20 January 1977	
	Substitute members (present at the trial no vote in the court)	Otto Vötsch Heinz Nerlich Werner Meinhold Hans-Jürgen Freuer	*See Other members*	

* At the start of trial, if available.

** Originally, Holger Meins was also indicted, but he died on 9 November 1974 after a hunger strike, before the trial started.

Categories	Subcategories	Names and age	Limitation	Specifics
Prosecutors (representing the Federal Prosecutor's Office)	*Chief Prosecutor* *Other team members*	Heinrich Wunder (51) Peter Zeis, Oberstaatsanwalt Werner Widera, Regierungsdirektor Klaus Holland, Staatsanwalt		
	Chief Federal Prosecutor	Ludwig Martin Siegfried Buback Kurt Rebmann	Until 30 April 1974 30 April 1974–7 April 1977 From 1 July 1977	Only pre-trial phase Killed by RAF commando
Law	*Lawyers of choice active at the Trial**	Hans-Heinz Heldmann (Darmstadt) Otto Schily (West Berlin) Marieluise Becker (Heidelberg) Helmut Riedel (Frankfurt/Main) Axel Azzola (Darmstadt) Rupert von Plottnitz (Frankfurt/Main)	From 11 June 1975 Late 1975 	Representing Baader Representing Ensslin Representing Meinhof Representing Raspe

* There were also other lawyers but they appeared not to have been active at the trial. At the beginning of the trial these were Franz Josef Degenhart (Hamburg), representing Ensslin, Jürgen Lauschner (Heidelberg), representing Raspe, and Rainer Köncke (Hamburg) and Dieter Hoffmann (West Berlin), both representing Meinhof. Apart from that several lawyers and law students worked for the defence team, some of them accredited to the court.

Categories	Subcategories	Names and age	Limitation	Specifics
	Pre-trial evicted lawyers of choice	Klaus Croissant (Stuttgart) Kurt Groenewold (Hamburg) Hans-Christian Ströbele (West Berlin)	Evicted 22 April 1975 Evicted 2 May 1975 Evicted 13 May 1975	Representing Baader
	Substitute Lawyers	Schnabel (Ditzingen) Eberhard Schwarz (Stuttgart) Eggler (Karlsruhe) Manfred Künzel (Waiblingen) Karl-Heinz Linke (?) Dieter König(?) Peter Grigat (Stuttgart) Stefan Schlägel (Esslingen)	 Until 11 May 1976 Until 11 May 1976 	Representing Baader Representing Ensslin Representing Meinhof Representing Raspe
Witnesses	*'Crown witnesses'*	Dierk Hoff Gerhard Müller		
	Defence witnesses appearing at the trial	Several imprisoned RAF members, the journalist Ulf Stuberger, etc., Siegfried Buback, Generalbundesanwalt		

Categories	Subcategories	Names and age	Limitation	Specifics
	Defence witnesses turned down by the court	Nixon, Brandt etc.		
Media	*Prominent journalists*	Gerhard Mauz		*Der Spiegel*
		Hans Schueler		*Die Zeit*
		Karl-Heinz Krumm		*Frankfurter Rundschau* (FR)
		Renate Faerber		*Frankfurter Rundschau* (FR)
		Hanno Kühnert		*Süddeutsche Zeitung* (SZ)
		Jürgen Busche		*Frankfurter Allgemeine Zeitung* (FAZ)
		Werner Birkenmaier		*Stuttgarter Zeitung*
		Rudolf Gerhard		Algemeine Rundfunk Deutschland (ARD), ex-FAZ
		Ulf G. Stuberger		Reuters, writer of memoirs
Audiences	RAF *sympathisers*			
	Members of the general public			
	Outside protesters			

Notes

1 Ulf G. Stuberger, *Die Tage von Stammheim. Als Augenzeuge beim* RAF*-Prozess* (München: F.A. Herbig Verlagsbuchhandlung, 2007), pp. 85, 180 and 183.

2 Nicolas Büchse, 'Von Staatsbürgern und Protestbürgern—Der Deutsche Herbst und die Veränderung der politischen Kultur in Deutschland', in: Habbo Knoch (ed.), *Bürgersinn und Weltgefühl. Politische Moral und solidarischer Protest in den sechziger und siebziger Jahren* (Göttingen: Wallstein Verlag, 2007), pp. 311–332; Cf. Jacco Pekelder, 'Towards Another Concept of the State: Historiography of the 1970s in the USA and Western Europe', in: Cordia Baumann, Sebastian Gehrig, and Nicolas Büchse (eds), *Linksalternative Milieus und Neue Soziale Bewegungen in den 1970er Jahren* (Heidelberg: Winter, 2011), pp. 61–83.

3 A good start for a discussion of the term 'terrorism' is: Rudolf Walther, 'Terror, Terrorismus', in: Otto Brunner, Werner Conze and Reinhart Koselleck (eds), *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland, Studienausgabe, 6* (Stuttgart: Klett-Cotta, 2004), pp. 323–444.

4 Alex P. Schmid and Janny de Graaf, *Violence as Communication. Insurgent Terrorism and the Western News Media* (London: Sage, 1982), pp. 1 and 15.

5 Philip Jenkins, *Images of Terror. What We Can and Can't Know about Terrorism* (Hawthorne, N.Y.: Aldine de Gruyter, 2003), p. ix.

6 Klaus Weinhauer, 'Terrorismus in der Bundesrepublik der Siebzigerjahre. Aspekte einer Sozial- und Kulturgeschichte der Inneren Sicherheit', *Archiv für Sozialgeschichte*, 44 (2004), pp. 219–242, is programmatic in this respect.

7 See for the RAF and the media: Martin Steinseifer, 'Zwischen Bombenterror und Baader-Story. Terrorismus als Medienereignis', in: Martin Klimke and Joachim Scharloth (eds), *1968: Handbuch zur Kultur- und Mediengeschichte der Studentenbewegung* (Stuttgart: J.B. Metzler, 2007), pp. 289–301; and Sonja Glaab, 'Die RAF und die Medien in den 1970er Jahren', in: Sonja Glaab (ed.), *Medien und Terrorismus. Auf den Spuren einer symbiotischen Beziehung* (Berlin: Berliner Wissenschaftsverlag, 2007), pp. 31–50.

8 Some of the researchers involved legitimise the change of perspective by referring to modern sociological studies about violence that are based on a triadic approach to violent confrontation: they do not just concern themselves with the confrontations of perpetrators and victims, but also with the role bystanders or onlookers play. See for instance: Trutz von Trotha (ed.), *Soziologie der Gewalt* (Opladen: Westdeutscher Verlag, 1997); and Wilhelm Heitmeyer and Hans-Georg Soeffner (eds), *Gewalt. Entwicklungen, Strukturen, Analyseprobleme* (Frankfurt/Main: Suhrkamp, 2004).

9 On historical aspects of performativity in general see: Jürgen Martschukat and Steffen Patzold (eds), *Geschichtswissenschaft und 'performative turn'. Ritual, Inszenierung und Perfor-*

manz vom Mittelalter bis zur Neuzeit (Cologne: Böhlau, 2003). The performative perspective in terrorism research is highlighted by Beatrice de Graaf, *Evaluating Counterterrorism Performance. A Comparative Study* (Abingdon: Routledge, 2011).

10 Jacco Pekelder, 'Dynamiken des Terrorismus in Deutschland und den Niederlanden', *Geschichte und Gesellschaft*, 35 (2009), pp. 402–428: here pp. 402–403.

11 See the remarks on the performative perspective in the Introduction to this volume.

12 See: Ulf G. Stuberger (ed.), *'In der Strafsache gegen Andreas Baader, Ulrike Meinhof, Jan-Carl Raspe, Gudrun Ensslin wegen Mordes u.a.' Dokumente aus dem Prozeß* (Frankfurt/Main: Syndikat Autoren- und Verlagsgesellschaft, 1977); RAF/BRD, *texte: der* RAF (Lund: Verlag Bo Cavefors, 1977).

13 Oliver Tolmein and Detlef zum Winkel, *Nix gerafft. 10 Jahre Deutscher Herbst und der Konservatismus der Linken* (Hamburg: Konkret Literatur Verlag, 1987); Michael Sontheimer and Otto Kallscheuer (eds), *Einschüsse. Besichtigung eines Frontverlaufs zehn Jahre nach dem Deutschen Herbst* (Berlin: Rotbuch Verlag 1987).

14 Stuberger, *Die Tage von Stammheim*; Christopher R. Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz. Anti-Terror-Gesetze und ihre Umsetzung am Beispiel des Stammheim-Prozesses* (Osnabrück: Julius Jonscher Verlag, 2009).

15 Hellmut Brunn and Thomas Kirn, *Rechtsanwälte, Linksanwälte. 1971–1981—das Rote Jahrzehnt vor Gericht* (Frankfurt/Main: Eichborn, 2004); Peter O. Chotjewitz, *Mein Freund Klaus. Roman* (Berlin: Verbrecher Verlag, 2007); Martin Block and Birgit Schulz, *Die Anwälte. Eine deutsche Geschichte* (Cologne: Fackelträger-Verlag, 2010); Stefan Reinecke, *Otto Schily. Vom* RAF*-Anwalt zum Innenminister* (Hamburg: Hoffmann und Campe, 2003).

16 Recent overviews of the historiography of German left-wing terrorism include: Klaus Weinhauer, 'Einleitung: Die Herausforderung des 'Linksterrorismus'', in: Klaus Weinhauer, Jörg Requate, and Heinz-Gerhard Haupt (eds), *Terrorismus in der Bundesrepublik. Medien, Staat und Subkulturen in den 1970er Jahren* (Frankfurt/Main: Campus, 2006), pp. 9–32; Jacco Pekelder, 'Historisering van de RAF. Geschiedschrijving over dertig jaar links Duits terrorisme, 1968–1998', *Tijdschrift voor Geschiedenis*, 119:2 (2006), pp. 196–217; Wolfgang Kraushaar, 'Einleitung. Zur Topologie des Terrorismus', in: Wolfgang Kraushaar (ed.), *Die* RAF *und der linke Terrorismus* (Hamburg: Hamburger Edition, 2006), pp. 13–61. Recently Gisela Diewald-Kerkmann presented a very short historical overview of the Stammheim trial: 'Der Stammheim-Prozess. Vorgeschichte, Verlauf und Wirkung', in: Johannes Hürter and Gian Enrico Rusconi (eds), *Die bleiernen Jahre. Staat und Terrorismus in der Bundesrepublik Deutschland und Italien 1969–1982* (Munich: R. Oldenbourg Verlag, 2010), pp. 53–62.

17 In Germany Peter Waldman's study *Terrorismus. Provokation der Macht* (Munich: Gerling Akademie Verlag, 1998) was very influential.

18 See as a historical study on the media reports on West German left-wing terrorism: Hanno Balz, *Von Terroristen, Sympathisanten und dem starken Staat. Die öffentliche Debatte Über die* RAF *in den 70er Jahren* (Frankfurt/New York: Campus, 2008); see also: Andreas Elter, *Propaganda der Tat. Die* RAF *und die Medien* (Frankfurt/Main: Suhrkamp, 2008).

19 Cf. Klaus Weinhauer, *Terrorismus in der Bundesrepublik. Medien, Staat und Subkulturen in den 1970er Jahren* (Frankfurt am Main: Campus Verlag, 2006).

20 In German: 'ein zu Beton erstarrtes Symbol unbeugsamer Staatsräson'. 'Grundgebot der Versöhnung', *Der Spiegel* (20 April 1992).

21 Quoted in: Pieter H. Bakker Schut, *Stammheim. Der Prozeß gegen die Rote Armee Fraktion* (Kiel: Neuer Malik Verlag, 1986), p. 274.

22 Stuberger, *In der Strafsache*, p. 242.

23 See, for instance, the annual reports on state security published by the Federal Ministry of the Interior: Bundesministerium des Innern (ed.), *betrifft: Verfassungsschutz* (Bonn: Der Bundesminister des Innern, Referat Öffentlichkeitsarbeit, 1970). In the issues from 1971, 1972 and 1973 the RAF was explicitly called 'Baader/Meinhof-Bande'; Cf. N.N., *Der Baader-Meinhof-Report. Dokumente—Analysen—Zusammenhänge. Aus den Akten des Bundeskriminalamtes, der 'Sonderkommission, Bonn' und dem Bundesamt für Verfassungsschutz* (Mainz: Hase & Koehler Verlag, 1972).

24 Quoted in: Bakker Schut, *Stammheim*, p. 44.

25 StGB: Strafgesetzbuch (German Criminal Code).

26 Bundesanwaltschaft is the commonly used unofficial name. Actually the institution is called 'Der Generalbundesanwalt beim Bundesgerichtshof' (the Chief Federal Prosecutor at the Federal Court of Justice). The fact that this name applies both to the institution and its leader creates some semantic confusion, even for Germans, especially when the acting Chief Federal Prosecutor is female (since 2006 this is 'die' Generalbundesanwältin Monika Harms, while the institution remains 'der' Generalbundesanwalt).

27 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, p. 94.

28 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 19 and 87–89.

29 Karsten Felske, *Kriminelle und terroristische Vereinigungen—§§ 129, 129a StGB. Reformdiskussion und Gesetzgebung seit dem 19. Jahrhundert* (Baden-Baden: Nomos Verlagsgesellschaft, 2002).

30 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, p. 94.

31 Stuberger, *Die Tage von Stammheim*, pp. 267–268.

32 At the time, newspapers reported that the Federal Prosecutor's Office and the Minister of Justice of Baden-Württemberg, Traugott Bender, were not convinced that the ruling president of the Second Senate of the Oberlandesgericht that dealt with state security issues was up to the task of successfully leading the impending RAF trial. They were thought to have conceived of a plan to promote this judge to the presidency of the

First Senate (after clearing this post by appointing his predecessor to a high ranking administrative job) and thereafter nominate their own candidate, Prinzing, to the Second Senate. Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 102–106.

33 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 102–103.

34 Stefan Aust, *Der Baader-Meinhof-Komplex. Neuausgabe.* (Hamburg: Hoffmann und Campe, 2008), p. 467. [Translation from: Stefan Aust, *Baader-Meinhof. The inside story of the* R.A.F. (Oxford: Oxford University Press, 2009), p. 231.]

35 Stuberger, *Die Tage von Stammheim*, pp. 267–269.

36 Ibid., pp. 53, 267 and 269.

37 Ibid., pp. 52–53 and 66.

38 Ibid., pp. 53–54, 61 and 65.

39 Stories about excessive behaviour by security officials, who forced an English reporter to tear the bandages off his injured leg and a woman to take her sanitary towel out of her underwear during searches, helped confirm this impression. Stuberger, *Die Tage von Stammheim*, p. 62.

40 Aust, *Der Baader-Meinhof-Komplex*, p. 469.

41 Stuberger, *Die Tage von Stammheim*, p. 54; Bakker Schut, *Stammheim*, pp. 184–188; Aust, *Der Baader-Meinhof-Komplex*, p. 476.

42 Stuberger, *Die Tage von Stammheim*, p. 120.

43 Cf. Sandra Kraft, *Vom Hörsaal auf die Anklagebank. Die 68er und das Establishment in Deutschland und den* USA (Frankfurt/Main: Campus, 2010).

44 Klaus Eschen, 'Das Sozialistische Anwaltskollektiv', in: Kraushaar (ed.), *Die* RAF *und der linke Terrorismus*, pp. 957–972.

45 See: Brunn and Kirn, *Rechtsanwälte, Linksanwälte.*

46 Stefan Reinecke, 'Die linken Anwälte. Eine Typologie', in: Kraushaar (ed.), *Die* RAF *und der linke Terrorismus*, pp. 948–956, here: p. 949.

47 Otto Schily and Christian Ströbele, *Plädoyers einer politischen Verteidigung. Reden und Mitschriften aus dem Mahler-Prozeß, Rote Hilfe, Internationale Marxistische Diskussion Arbeitspapiere*, 11 (Berlin: Merve Verlag, 1973).

48 N.N., *Ausschluß der Verteidiger—wie und warum? Dokumente und Analysen zur politischen Strafjustiz seit 1945, Internationale Marxistische Diskussion, Arbeitspapiere*, 17 (Berlin: Merve Verlag, 1975), p. 75.

49 Reinecke, 'Die linken Anwälte', pp. 950–953.

50 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 74–75.

51 In German: 'das Erste Gesetz zur Reform des Strafverfahrensgesetz vom 9.12.1974' (1. StVRG) and 'das Gesetz zur Änderung des Ersten Gesetz zur Reform des Strafverfahrensgesetz vom 20.12.1974' (1. StVRGErgG).

52 StPO: Strafprozessordnung (German Code of Criminal Procedure).

53 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 72–73.

54 Ibidim.

55 In German: 'das Terrorismusbekämpfungsgesetz vom 18.8.1976' (this is the official, abbreviated law title).

56 Changes in the Criminal Code, including the introduction of the 'terroristische Vereinigung' (terrorist association) (§ 129a StGB), were obviously not relevant for the Stammheim trial (*nulla poena sine lege*). Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, p. 73.

57 The term is mentioned in several publications such as: Frits Rüter, 'Lex Baader Meinhof?', *Delikt en Delinkwent* (June 1975), and 'A la Klettermaxe', *Der Spiegel* (9 June 1975).

58 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, p. 77; Uwe Berlit and Horst Dreier, 'Die legislative Auseinandersetzung mit dem Terrorismus', in: Fritz Sack and Heinz Steinert (eds), *Protest und Reaktion. Analysen zum Terrorismus, Band 4/2* (Opladen: Westdeutscher Verlag, 1984), pp. 227–318. Here: p. 229.

59 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 74–75; Stuberger, *Die Tage von Stammheim*, pp. 11 and 13.

60 Stuberger, *Die Tage von Stammheim*, p. 85. According to Stuberger, their participation at Stammheim would in the end set the state back about 100,000 D-Mark per lawyer.

61 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 146–149.

62 Stuberger, *Die Tage von Stammheim*, pp. 13 and 19.

63 Stuberger, *In der Strafsache*, pp. 13, 19.

64 After his arrest, Haag had successfully appealed with the Bundesgerichtshof (Federal Court of Justice), which ordered his immediate release. Butz Peters, *Tödlicher Irrtum. Die Geschichte der* RAF (Berlin: Argon Verlag, 2004), pp. 371–372.

65 Wolfgang Kraushaar, *1968 als Mythos, Chiffre und Zäsur* (Hamburg: Hamburger Edition, 2000), pp. 163–171; Jeremy Varon, *Bringing the War Home. The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies* (Berkeley: University of California Press, 2004), pp. 196–253; Sebastian Scheerer, ''Folter ist kein revolutionärer Kampfbegriff' Zur Geschichte des Foltervorwurfs in der Bundesrepublik Deutschland'; in: Jan Philipp Reemtsma (ed.), *Folter. Zur Analyse eines Herrschaftsmittels* (Hamburg: Junius Verlag, 1991), pp. 209–237; Martin Jander, 'Isolation. Zu den Haftbedingungen der RAF-Gefangenen', in: Kraushaar (ed.), *Die RAF und der linke Terrorismus*, pp. 973–993.

66 This took place in the prison of Cologne-Ossendorf, where Astrid Proll spent a total of 119 days in solitary confinement from late 1971. Ulrike Meinhof was held there in similar circumstances for 237 days in a row, from 16 June 1972 to 9 February 1973, and during two

shorter intervals: two weeks in December 1973 and between 5 February and 20 April 1974. During that last period Gudrun Ensslin was also held in isolation in the same prison. Scheerer, 'Folter ist kein revolutionärer Kampfbegriff', pp. 215 and 218.

67 Some authorities might have been aware of this adverse public relations effect of forced feeding, but they nevertheless stuck to the policy. According to the Social Democrat Federal Minister of Justice Hans-Jochen Vogel, there was no legal way around the obligation to do everything to keep the prisoners alive, if necessary against their will. The state was obliged by law to take care of people in its custody and was bound by constitutional provisions to safeguard their lives and corporeal integrity. Appeals by members of the Christian Democrat opposition to stop forced feeding, because of the financial burden caused by the number of personnel and the specially processed food that was required, failed to change his position. Vogel is quoted in: Peters, *Tödlicher Irrtum*, p. 318.

68 Aust, *Der Baader-Meinhof-Komplex*, p. 435 ff.; Kurt Oesterle, *Stammheim. Die Geschichte des Vollzugsbeamten Horst Bubeck* (Tübingen: Klöpfer & Meyer, 2003).

69 Jacco Pekelder, 'Links slachtofferschap. De RAF als afrekening met de Duitse schuld', in: Patrick Dassen, Krijn Thijs, and Ton Nijhuis (eds), *Duitsers als slachtoffers. Het einde van een taboe?* (Amsterdam: Mets & Schilt, 2007), pp. 305–335. Here: pp. 312–321.

70 See the documentation published by the Rote Hilfe (Red Aid): Wienke Zitzlaff (ed.), *Hungerstreik vor dem BGH gegen Psychoterror in deutschen Gefängnissen, Freitag 9.11. bis 12.11.1973* (Gießen: Prolit-Buchvertrieb, 1973). Zitzlaff was Ulrike Meinhof's sister.

71 Pieter H. Bakker Schut (ed.), *Das info. Briefe der Gefangenen aus der RAF 1973–1977* (Kiel: Neuer Malik Verlag, 1987); Olaf Gäthje, 'Das 'info'-System der RAF von 1973 bis 1977 in sprachwissenschaftlicher Perspektive', in: Kraushaar (ed.), *Die RAF und der linke Terrorismus*, pp. 714–733.

72 Alfred Klaus, *Aktivitäten und Verhalten inhaftierter Terroristen* (Bonn: Bundesministerium des Innern, 1985), pp. 16–18.

73 Ibid., p. 20.

74 N.N., *Kursbuch 31. Folter in der BRD. Zur Situation der Politischen Gefangenen*, n.d.; *Der Kampf gegen die Vernichtungshaft* (Komitees gegen Folter an politischen Gefangenen in der BRD, 1974).

75 Peters, *Tödlicher Irrtum*, p. 314.

76 Together with Mahler and other companions Meinhof was tried because of her role in the armed liberation of Baader in 1970.

77 Andreas Baader, *Kassiber* [prison letter] (January 1974), available via labourhistory.net.

78 Quoted in: Peters, *Tödlicher Irrtum*, p. 320.

79 Varon, *Bringing the War Home*, p. 220.

80 Pekelder, 'Links slachtofferschap', p. 317.

81 Sartre had accepted an invitation written by Meinhof and Baader and delivered to Paris by their lawyer Croissant. The ageing philosopher and the imprisoned terrorist conferred for an hour in a visitor's cell, accompanied by former student leader Daniel Cohn-Bendit, who acted as interpreter. Afterwards, Sartre explained Baader's inhumane treatment to the international media at a press conference in Stuttgart organised by the RAF's lawyers, and later again at a press conference in Paris. See Klaus Croissant, 'Bericht zur Pressekonferenz in Paris am 10.12.1974' (10 December 1974), RA 02/039, 011, HIS.

82 This transnational RAF solidarity network is explored in: Jacco Pekelder, 'The RAF Solidarity Movement from a European Perspective', in: Martin Klimke, Jacco Pekelder, and Joachim Scharloth (eds), *Between Prague Spring and French May. Opposition and Revolt in Europe, 1960–1980* (New York and Oxford: Berghahn Books, 2011), pp. 251–266.

83 In its press communiqué, the committee expressed its 'concern about the development of new forms of repression in Western Europe, especially in the Federal Republic of Germany, where prisoners of the Red Army Faction [were] submitted to murderous prison conditions [...].' Its first task was therefore to ensure the legal defence of the German 'political prisoners'. As the legal foundation for its work the committee referred to the European Convention on Human Rights, article 3, which stated that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'. Press Communiqué, *Niederlande, International Institute for Social History, Amsterdam (IISH), Ronald Augustin Collection* (14 December 1974), Folder 14.

84 The International Committee reconvened under a slightly different name: *Comité International de Défense des Prisonniers Politique en Europe-occidentale*. There had been no mention of 'occidentale' (Western) in the earlier statement—it might be suspected that some members had succeeded in excluding Eastern Europe from the International Committee's activities. See P.H. Bakker Schut, 'Politieke justitie in de Bondsrepubliek Duitsland', *Nederlands Juristenblad* (15 February 1975), pp. 203–212.

85 'ANP-Persbericht', *Knipsels en persberichten betreffende het proces tegen de Amsterdammer Ronald Augustin, 1975–1976, Deel II, 8/3/75-28-4-75, Collectie Willem de Haan, IISH.* (19 April 1975), Folder 3.

86 Ulrike Meinhof, *Letzte Texte von Ulrike* (Internationalen Komitee zur Verteidigung politischer Gefangener in Westeuropa, 1976).

87 RAF/BRD, *texte: der RAF*.

88 *Der Tod Ulrike Meinhofs. Bericht der Internationalen Untersuchungskommission. 2. Überarbeitete Auflage* (Tübingen: IVA-Verlag, 1979).

89 Jacco Pekelder, *Sympathie voor de* RAF. *De Rote Armee Fraktion in Nederland, 1970–1980* (Amsterdam: Mets & Schilt, 2007), p. 137 ff.

90 Baader's opinion was quoted in a decision by the Second Senate of Stuttgart Oberlandesgericht (30 September 1975), reprinted in: Stuberger, *In der Strafsache*, p. 112.

91 In contrast, Baader wrote, 'trials that could not support anything [no political messages], that don't have public resonance, won't be conducted. They only get a statement, afterwards no defender + no accused.' Andreas Baader, *Kassiber* (June 1974), available via labourhistory.net.

92 '"Wir werden in den Durststreik treten" SPIEGEL-Fragen an Andreas Baader, Ulrike Meinhof, Gudrun Ensslin und Jan-Carl Raspe', *Der Spiegel* (20 January 1975).

93 John Shy and Thomas W. Collier, 'Revolutionary War', in: Peter Paret (ed.), *Makers of Modern Strategy from Machiavelli to the Nuclear Age* (Princeton, N.J.: Princeton University Press, 1986), pp. 815–862.

94 RAF/BRD, *texte: der* RAF, p. 547.

95 Ibid., p. 541.

96 Ibid., p. 149.

97 RAF/BRD, *texte: der* RAF, p. 149.

98 Note, by Ulrike Meinhof (9 February 1974), RA, J/001, 005, HIS, and Letter by Hannover to Klaus Croissant a.o. (of 18 February 1974), J/RA, J/002, 001, HIS. With this letter Hannover resigned as lawyer for Meinhof and Raspe. On the one hand, he judged the measures taken by the state as too intrusive for the activities of the defenders and, on the other, he noticed that there was a lack of trust between Meinhof and himself. 'Ihr Kommentar in ihrem Rundschreiben vom 9.2. reicht mir nun wirklich. Es hat keinen Zweck, darüber zu diskutieren. Eine Identifizierung mit Faschisten lasse ich mir von niemandem vorwerfen, auch von U.M. nicht' (Your commentary in your circular letter of February 9th is really not sufficient. There is no use, discussing it. Nobody can accuse me of being a fascist, not even U.M. [Ulrike Meinhof].) Cf. Heinrich Hannover, *Die Republik vor Gericht 1954–1995. Erinnerungen eines unbequemen Rechtsanwalts* (Berlin: Aufbau Taschenbuch Verlag, 2005), p. 370 ff.

99 Klaus, *Aktivitäten und Verhalten inhaftierter Terroristen*, p. 52.

100 Chotjewitz, *Mein Freund Klaus*.

101 Reinecke, *Otto Schily*.

102 Peters, *Tödlicher Irrtum*, p. 345.

103 Klaus, *Aktivitäten und Verhalten inhaftierter Terroristen*, pp. 141–143.

104 '"Wir werden in den Durststreik treten" SPIEGEL-Fragen an Andreas Baader, Ulrike Meinhof, Gudrun Ensslin und Jan-Carl Raspe', *Der Spiegel* (20 January 1975).

105 Andreas Baader, *Kassiber* (January 1974), available via labourhistory.net.

106 Peters, *Tödlicher Irrtum*, pp. 322–323.

107 About these connected actions: Michael März, *Die Machtprobe 1975. Wie RAF und Bewegung 2. Juni den Staat erpressten*. (Leipzig: Forum Verlag Leipzig, 2007).

108 Peters, *Tödlicher Irrtum*, p. 364 ff.

109 'BM: die Materialschlacht', *Der Spiegel* (19 May 1975). This comparison had been introduced by BKA president Horst Herold: 'Große Schlacht', *Der Spiegel* (14 January 1974).

110 Andreas Musolff, 'Terrorismus im öffentlichen Diskurs der BRD. Seine Deutung als Kriegsgeschehen und die Folgen', in Weinhauer, Requate and Haupt (eds), *Terrorismus in der Bundesrepublik*, pp. 302–319.

111 Bakker Schut, *Stammheim*, p. 190.

112 It seems this reasoning was also behind the plea, a few weeks later, by Federal Minister of Justice Hans-Jochen Vogel for a re-writing of the law to broaden its scope.

113 Stuberger, *In der Strafsache*, pp. 28–31.

114 Ibid., pp. 54, 59.

115 Aust, *Der Baader-Meinhof-Komplex*, p. 473 ff.

116 Ibid., p. 478. According to Stuberger the sleepy lawyer was Eggler (Karlsruhe). He told Stuberger that he had not read the documents of the trial. See Stuberger, *Die Tage von Stammheim*, p. 68.

117 Stuberger, *In der Strafsache*, p. 154 ff.

118 Ibid., pp. 181 ff. and 195 ff.

119 Ibid., pp. 81–82.

120 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 115–116.

121 Stuberger, *Die Tage von Stammheim*, p. 82.

122 Stuberger, *In der Strafsache*, pp. 71–72.

123 Stuberger, *In der Strafsache*, pp. 72–73; *Kursbuch*, p. 32.

124 Aust, *Der Baader-Meinhof-Komplex*, p. 480.

125 Stuberger, *In der Strafsache*, pp. 101–104.

126 Stuberger, *Die Tage von Stammheim*, pp. 76–77.

127 Stuberger, *In der Strafsache*, pp. 104–114, 119–120 and 130–132.

128 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 138–139.

129 Bakker Schut, *Stammheim*, p. 382.

130 Stuberger, *Die Tage von Stammheim*, pp. 85–87.

131 Aust, *Der Baader-Meinhof-Komplex*, pp. 310–312, 318–322 and 516.

132 The lawyer Heinrich Hannover is very critical about the use of this 'crown witness' by the Federal Prosecutor in: Heinrich Hannover, *Terroristenprozesse. Erfahrungen und Erkenntnisse eines Strafverteidigers. Terroristen & Richter*, 1 (Hamburg: VSA-Verlag, 1991), p. 144 ff. According to him in cooperation with the Federal Minister of Justice the prosecution suppressed

documents that could have led to the condemnation of Müller for the murder of a Hamburg police officer and for his contribution to the building of bombs for the RAF. In Hannover's opinion, in effect, this means that Müller's testimony has been bought.

133 Aust, *Der Baader-Meinhof-Komplex*, pp. 550–552. This statement was also important, because in the bill of indictment, the prosecution had initially placed much emphasis on Baader's alleged 'Rädelsführerschaft' (ring leadership). Later on, the prosecutors largely dropped this point, because it was hard to prove as it was practically only based on the statements of the two 'crown witnesses' and on an offhand remark of Meinhof comparing Baader to other revolutionary leaders (such as Fidel Castro and Ernesto 'Che' Guevara). In the end more emphasis was put on the idea of collective leadership. Cf. Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 94–95.

134 'Singen um die Wette', *Der Spiegel* (26 January 1976).

135 'A la Klettermaxe', *Der Spiegel* (9 June 1975).

136 Gerhard Mauz, 'Herr Schily, zu welchem Behufe?', *Der Spiegel* (2 February 1976).

137 Aust, *Der Baader-Meinhof-Komplex*, pp. 552–554.

138 Ibid., pp. 562–565.

139 "Müller schoß, Schmid fiel", *Der Spiegel* (12 July 1976).

140 Aust, *Der Baader-Meinhof-Komplex*, pp. 562–565.

141 Stuberger, *Die Tage von Stammheim*, p. 114. See also: 'BM-Prozesse. Sprengstoff brühwarm', *Der Spiegel* (19 July 1976); '"Heute diene ich mit der reinen Wahrheit." Gesetzwidrige Manipulationen mit "Kronzeugen" in Terroristenprozessen', *Der Spiegel* (14 May 1979). The 1976 *Spiegel* article also highlighted how precarious Müller's position was as a crown witness in a jurisdiction in which crown witnesses did not officially exist. In contrast to the US, where a crown witness could always rely on an official deal with the prosecution, in Germany he constantly had to heed the danger of implicating himself by his statements. According to the article, this also explained why Müller answered questions by the judges and prosecutors far more easily and openly than questions by the RAF's lawyers.

142 Gerhard Mauz, 'Wir danken Ihnen für Ihre Geduld', *Der Spiegel* (18 October 1976); Stuberger, *Die Tage von Stammheim*, p. 92.

143 Stuberger, *Die Tage von Stammheim*, pp. 167–168.

144 Mauz, 'Wir danken Ihnen für Ihre Geduld', *Der Spiegel* (18 October 1976).

145 Aust, *Der Baader-Meinhof-Komplex*, p. 512. English translation: Stefan Aust, *Baader-Meinhof. The Inside Story of the RAF* (Oxford: Oxford University Press, 2008), pp. 249–250.

146 Bakker Schut, *Stammheim*, p. 329.

147 Bakker Schut, *Stammheim*, p. 329 ff.; Hannes Breucker, *Verteidigungsfremdes Verhalten. Anträge und Erklärungen im 'Baader-Meinhof-Prozeß'* (Berlin: Duncker & Humblot, 1993), p. 134 ff.

148 Bakker Schut, *Stammheim*, p. 336.

149 Bakker Schut, *Stammheim*, p. 337; Breucker, *Verteidigungsfremdes Verhalten*, p. 149.

150 Breucker, *Verteidigungsfremdes Verhalten*, p. 149.

151 Azzola, for instance, had only referred to the attacks on US army buildings in Frankfurt and Heidelberg in May 1972 in his motion. As legal expert Hannes Breucker rightly pointed out, he had not made it clear to what extent the bombings of a judge's car in Karlsruhe, two police stations in Augsburg and Munich, and the Hamburg offices of the Springer media concern were also legitimate targets in a 'war' against American involvement in Vietnam. Cf. Breucker, *Verteidigungsfremdes Verhalten*, pp. 143–144.

152 It should be noted that the media, judging by the trial reports in the weeklies *Die Zeit* and *Der Spiegel*, seems not to have reported on this attempt to change the legal framework to any significant extent.

153 Breucker, *Verteidigungsfremdes Verhalten*, pp. 150–151.

154 Indeed, as noted earlier, there were only vague references to the attacks on the American facilities and again no mention was made of the other four strictly German bombings of May 1972.

155 Breucker, *Verteidigungsfremdes Verhalten*, pp. 150–153; Bakker Schut, *Stammheim*, pp. 326–327. On 28 June 1976 (trial day 121), there was another attempt by the defence to introduce Vietnam into the proceedings. The lawyers had brought five Americans who had been employed at US military facilities in West Germany to testify about the use of these in the performance of the supposed war crimes in Vietnam. After prolonged discussions and deliberations the court decided not to allow the questioning of these witnesses: 'The Vietnam War is not the subject of this trial'; Aust, *Der Baader-Meinhof-Komplex*, pp. 541–544.

156 Stuberger, *Die Tage von Stammheim*, pp. 64 and 68–69.

157 Bakker Schut, *Stammheim*, p. 311. Alas, this book does not quote Temming's note at length and does not mention its archival whereabouts.

158 Stuberger, *Die Tage von Stammheim*, pp. 94–95.

159 Ibid., pp. 96–99.

160 Ibid., pp. 99–100.

161 Aust, *Der Baader-Meinhof-Komplex*, p. 526.

162 Ibid., pp. 523–525.

163 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 143–145; Otto Kircheimer, *Political*

Justice. The Use of Legal Procedure for Political Ends (Princeton, NJ: Princeton University Press, 1961), p. 19.

164 Breucker, *Verteidigungsfremdes Verhalten*, p. 145; RAF/BRD, *texte: der* RAF, p. 140.

165 Aust, *Der Baader-Meinhof-Komplex*, p. 481. The Federal Prosecutor had asked the judge to decommission the lawyers of choice.

166 Stuberger, *In der Strafsache*, pp. 61, 63. Apart from that, various disciplinary procedures and libel actions were set in motion against RAF lawyers such as Hans-Heinz Heldmann and Otto Schily as a consequence of some of their statements or petitions during the Stammheim trial. Some of the legal actions lasted well into the 1990s. Hannover, *Die Republik vor Gericht*, p. 559 ff..

167 Mauz, 'Wir danken für Ihre Geduld', *Der Spiegel* (18 October 1976).

168 Aust, *Der Baader-Meinhof-Komplex*, pp. 513–514.

169 'Dienstag Morgen—Prozess in Stammheim', *Fuzzy Extra* (9 May 1976).

170 Aust, *Der Baader-Meinhof-Komplex*, p. 530 ff.

171 Ibid., pp. 530–531.

172 Aust, *Der Baader-Meinhof-Komplex*, pp. 531–532. Translation from: Aust, *Baader-Meinhof. The inside story of the* R.A.F., pp. 260–261.

173 Small notice, without date [May 1976], by one of the prisoners [probably Gudrun Ensslin], HIS: Me, U/015, 005; Notice, 'am 9.5.76 nach der pk [Pressekonferenz] zu ulrike' (9 May 1976), HIS: Me, U/015, 006.

174 Aust, *Der Baader-Meinhof-Komplex*, p. 494.

175 Aust, *Der Baader-Meinhof-Komplex*, p. 496 ff. Translation from: Aust, *Baader-Meinhof. The inside story of the* R.A.F., p. 244.

176 Aust, *Der Baader-Meinhof-Komplex*, pp. 565–566.

177 The correct German term is 'Antrag zur Ablehnung wegen Besorgnis der Befangenheit'.

178 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, p. 107.

179 Stuberger, *Die Tage von Stammheim*, p. 129. There were also a number of similar challenges against other judges. Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, p. 108.

180 Aust, *Der Baader-Meinhof-Komplex*, p. 492.

181 Stuberger, *Die Tage von Stammheim*, p. 74.

182 Tenfelde, *Die Rote Armee Fraktion und die Strafjustiz*, pp. 108–109.

183 The documents in question concerned protocols of the interrogation of Gerhard Müller by the criminal police and trial protocols of his evidence in court. Mayer had hoped that this journalist would use the material to address a report by the liberal weekly *Der Spiegel* of 4 September 1972 that dismissed the possible smuggling by Schily of a letter written by Ensslin out of prison, an affair we alluded to with earlier in this chapter. Aust, *Der Baader-Meinhof-Komplex*, pp. 578–579.

184 Aust, *Der Baader-Meinhof-Komplex*, pp. 579–580.

185 Ibidim. Translation from: Aust, *Baader-Meinhof. The Inside Story of the* RAF, p. 275.

186 Aust, *Der Baader-Meinhof-Komplex*, pp. 580–581. Translation from: Aust, *Baader-Meinhof. The Inside Story of the* RAF, p. 276.

187 Stuberger, *Die Tage von Stammheim*, pp. 128–129.

188 Stuberger, *Die Tage von Stammheim*, p. 127.

189 Quoted in: Aust, *Der Baader-Meinhof-Komplex*, pp. 467–468.

190 Stuberger, *In der Strafsache*, p. 145 ff.

191 Aust, *Der Baader-Meinhof-Komplex*, pp. 494–496. Translation from: Aust, *Baader-Meinhof. The Inside Story of the* RAF, p. 240.

192 Stuberger, *Die Tage von Stammheim*, pp. 74, 78–79 and 83–85.

193 Aust, *Der Baader-Meinhof-Komplex*, pp. 593–594.

194 Stuberger, *Die Tage von Stammheim*, pp. 177–178.

195 Aust, *Der Baader-Meinhof-Komplex*, pp. 593–594. The court did not summon Maihofer.

196 Ibidem. It remained uncertain whether these ministers had spoken the full truth—some newspapers doubted this. For factual details about the affair: ibid., pp. 451, 458–460. It is clear that during at least two hostage takings probably some conversations between the RAF prisoners and their lawyers were overheard.

197 Aust, *Der Baader-Meinhof-Komplex*, pp. 595–597. Translation from: Aust, *Baader-Meinhof. The inside story of the* R.A.F., pp. 281–282.

198 Aust, *Der Baader-Meinhof-Komplex*, pp. 596–597.

199 Ibid., pp. 608–610.

200 Ibid., pp. 610–611.

201 Ibid., p. 288.

202 Ibid., pp. 615–616.

203 Stuberger, *Die Tage von Stammheim*, pp. 168, 172 ff.

204 The accused were found guilty of having collectively committed three murders and six attempted murders as well as of one additional murder and a murder attempt. Next to that, they were also found guilty of 27 attempted murders resulting from bomb attacks. Moreover, all three were found guilty of forming a criminal organisation. Baader and Raspe were found guilty of two further attempted murders and Ensslin of one. Aust, *Der Baader-Meinhof-Komplex*, pp. 616–617.

205 Stuberger, *Die Tage von Stammheim*, pp. 182–183.

206 Of course, since the trial we deal with in this article there have been several other RAF related trials in Stammheim. In an ironic twist of fate, from late September 2010, the *Mehrzweckhalle* even hosted yet another RAF trial, this time against Verena Becker, who was accused of participation in the 1977 killing of Chief Federal Prosecutor Buback. Cf.

Michael Sontheimer, 'Der Stammheim-Komplex. Prozess gegen Verena Becker', *Spiegel Online* (29 September 2010).

207 'Der wichtigste Hinweis ist übersehen worden', FR (17 October 1987); 'Die Tode von Stammheim und die Annehmlichkeiten des Ungewissen', *Die Tageszeitung* (*taz*) (17 October 1987); 'Tage des Zorns, Tage der Trauer', *Zeit* (16 October 1987). This last article at least deals (in some paragraphs) with elements of the Stammheim trial.

208 'Das verlangt das Recht von ihm', *Der Spiegel* (2 May 1977).

209 'Ende in Stammheim', FR (29 April 1977); 'Urteil, aber kein Ende', SZ (29 April 1977); 'Früher hätte man sie als Hexen verbrannt', *Spiegel* (2 May 1977). In 2005 even the conservative *Frankfurter Allgemeine Zeitung* (FAZ) wrote about 'pecularities and blunders' (*Merkwürdigkeiten und Patzer*) of the trial: 'Test auf Rechtstaatlichkeit', FAZ (22 May 2005).

210 Cf. Uwe Wesel, 'Strafverfahren, Menschenwürde und Rechtsstaatsprinzip. Versuch einer Bilanz der RAF-Prozesse', in: Kraushaar (ed.), *Die RAF und der linke Terrorismus*, pp. 1048–1057. Here: p. 1057 (quote).

211 'Das verlangt das Recht von ihm', *Der Spiegel* (2 May 1977).

212 See Klaus Weinhauer, 'Terrorismus und Kommunikation: Forschungsstand und -perspektiven zum bundesdeutschen Linksterrorismus der 1970er Jahre', in: Nicole Colin, Beatrice de Graaf, Jacco Pekelder, Johachim Umlauf (eds), *Der 'Deutsche Herbst' und die RAF in Politik, Medien und Kunst. Nationale und internationale Perspektiven* (Bielefeld: transcript, 2008), pp. 109–123. Here: p. 121 f.

213 See Wesel, 'Strafverfahren', p. 1057; Weinhauer, *Terrorismus in der Bundesrepublik*, p. 227 ff.

214 Bakker Schut, for example, underlines the communicative structure of that trial. With other authors, he emphasises one important fact: that in Germany of the 1970s a political climate existed that lacked a 'culture of conflict' (Eschen) in which controversies between the state and its opponents could be acted out. See Klaus Eschen, 'Rechtsstaat ohne Konfliktkultur. Die RAF-Prozesse im politischen Ausnahmezustand', in: Michael Sontheimer and Otto Kallscheuer (eds), *Einschüsse. Besichtigungen eines Frontverlaufs zehn Jahre nach dem Deutschen Herbst* (Berlin: Rotbuch, 1987), pp. 78–98.

215 These perceptions are discussed in more detail in: Weinhauer, *Terrorismus in der Bundesrepublik*; Heinz Steinert, 'Sozialstrukturelle Bedingungen des 'linken' Terrorismus der 70er Jahre', in: Bundesministerium des Innern (ed.), *Analysen zum Terrorismus*, 4:2 (Opladen: Westdeutscher Verlag, 1984), pp. 387–603.

216 Presse- und Informationsamt der Bundesregierung (ed.), *Dokumentation zu den Ereignissen und Entscheidungen im Zusammenhang mit der Entführung von Hanns Martin Schleyer und der Lufthansa-Maschine 'Landshut'* (Cologne: Druckhaus Deutz, 1977); Tatjana Botzat, Elisabeth Kiderlen, Frank Wolff, *Ein Deutscher Herbst. Zustände, Dokumente, Berichte,*

Kommentare (Frankfurt: Verlag Neue Kritik, 1978); Tatjana Botzat, Elisabeth Kiderlen, Frank Wolff, Wolfgang Kraushaar, *Ein Deutscher Herbst. Zustände 1977* (Frankfurt: Verlag Neue Kritik 1997); Klaus Hartung, Christiane Ensslin, Gert Schneider, *Der blinde Fleck. Die Linke und die* RAF (Frankfurt: Verlag Neue Kritik, 1987) (this was also partly published in a special issue of the *Tageszeitung* at the ten year anniversary of the German Autumn, *taz*, 5 October 1987). See also Karl Kopp, Rainer Kreuzer, and Peter Maroldt (eds), *Die Mythen knacken. Materialien wieder ein Tabu. Neue Linke—*RAF*—Deutscher Herbst—Amnestie* (Frankfurt/Main: Linke Liste an der Universität Frankfurt (a/M), 1987).

217 Tolmein and Zum Winkel, *Nix gerafft*; Oliver Tolmein, *Stammheim vergessen. Deutschlands Aufbruch und die* RAF (Hamburg: Konkret, 1992).

218 See Willi Winkler, *Die Geschichte der* RAF (Berlin: Rowohlt, 2007); Butz Peters, *Tödlicher Irrtum. Die Geschichte der* RAF (Frankfurt/M.: Fischer-Taschenbuch Verlag, 2007).

219 'Das Wahnsystem RAF', FR (18 October 1997).

220 'Die Wunde Stammheim', *Zeit* (7 February 1986).

221 'Die Wunde Stammheim', *Zeit* (7 February 1986). See also 'Das Gefühl, es platzt einem der Kopf', *Der Spiegel* (27 January 1986); 'Wie kommt ihr dazu?', *Zeit* (19 June 1987).

222 'An die Mörder unseres Bruders', *taz* (7 November 1986).

223 N.N., *'Ihr habt unseren Bruder ermordet'. Die Antwort der Brüder des Gerold von Braunmühl an die* RAF (Reinbek bei Hamburg: Rowohlt, 1987).

224 The German language does not differentiate between 'sacrifice' and 'victim', using the word 'Opfer' for both terms. On the one hand, victims can be people, whose passive death is turned into an interpretation of an active process of dying *for* something or someone. On the other hand, referring to victims can serve to underline the suffering of these victims, their relatives and families; see Sabine Behrenbeck, *Der Kult um die toten Helden. Nationalsozialistische Mythen, Riten und Symbole* (Vierow: SH-Verlag, 1996).

225 See Nicole Colin, 'Täter- versus Opferdiskurs: Eine *andere* Geschichte des deutschen Terrorismus', in: Colin, De Graaf, Pekelder, Umlauf (eds), *Der 'Deutsche Herbst' und die* RAF *in Politik, Medien und Kunst*, pp. 187–194.

226 See David Garland, *The Culture of Control. Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001), pp. 11 f. and 179. 'The new political imperative is that victims must be protected, their voices must be heard, their memory honoured, their anger expressed, their fears addressed. [...] The victim is now, in a certain sense, a much more representative character, whose experience is taken to be common and collective, rather than individual and atypical. Whoever speaks on behalf of victims speaks on behalf of us all.' (p. 11).

227 See Grünen im Bundestag (eds), *Ende der bleiernen Zeit? Versuch eines Dialogs zwischen Gesellschaft und* RAF (Bonn: Die Grünen, 1989).

228 See 'Wie kommt ihr dazu?' *Zeit* (19 June 1987); 'Die Ausgrenzung ist für beide Seiten tödlich', *Der Spiegel* (19 October 1987). See also 'Dein Vater ist ein Mörder', *Der Spiegel* (24 June 1991).

229 'Todesspiel' is about the kidnapping of Hanns Martin Schleyer and related events such as the hijacking of the Lufthansa airliner 'Landshut' and about the death of the imprisoned RAF members in October 1977. It was broadcast on 24 and 25 June 1997. See 'Spiel mir den Film vom Tod', SZ (19 June 1997); 'Harter Staat, Schleyers Not', *Der Spiegel* (30 June 1997); 'Der heisse Herbst' and 'Schleyers Stimme', FAZ (18 and 26 June 1997 respectively). 'Black Box BRD' (2001) tells the life stories of the banker Alfred Herrhausen, assassinated by the RAF in November 1991, and the militant Wolfgang Grams, who died in a (still controversial) shoot-out with the police in Bad Kleinen in June 1993.

230 'Ich bin derjenige, der weiter leidet', *Zeit* (1 August 1997); 'Wenn die Erinnerung nicht loslässt', SZ (5 September 2002). See also 'Eine Kindheit zwischen Schickeria und Untergrund' [about the daughter of Ulrike Meinhof], *Brigitte* (12 November 1997).

231 See the report about a conference held at the Evangelische Akademie Bad Boll, where former militants met relatives of their victims 'Die Zeit ist reif oder: überall ist Oldenburg', FR (22 February 1999); 'Kein wohliges Gefühl linker Selbstgerechtigkeit', FAZ (6 March 1999).

232 See Angelika Holderberg, *Nach dem bewaffneten Kampf. Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Giessen: Psychosozial-Verlag, 2007); 'Endlos im Käfig einer Zwischenzeit', SZ (10 March 2007). In the 1997 meeting of former militant activists no traces of a victim-based communication could be discerned; see 'Ich habe dieses Land gehasst', *Der Spiegel* (26 May 1997); 'Talkshow für taube Terroristen', SZ (21 May 1997).

233 See 'Bist du verrückt?', *Der Spiegel*, 29 September 1997, where Alfred Klaus, a policeman of the Bundeskriminamt, mentions his doubts about the effectiveness of the official hard-line tactics against the RAF. See also 'Bleierne Zeit—bleierne Schuld', SZ, 11 October 1997; 'Wie aus Schutzrechten für Bürger Staatsschutzrechte wurden', *Zeit* (17 October 1997).

234 See 'Sie fielen nicht vom Himmel', *Zeit* (17 October 1997).

235 See the catalogue Klaus Biesenbach (ed.), *Zur Vorstellung des Terrors. Die RAF-Ausstellung*. 2 volumes (Göttingen: Steidl, 2005).

236 See 'Zwischen Historie und Hysterie', *taz* (23 July 2003); 'Auf dem Grund der Geschichte der Republik', and 'Protest gegen RAF-Ausstellung', SZ (both 24 July 2003); 'Auch Schily hat Vorbehalte gegen RAF-Ausstellung', and 'Rituale der Labilität', FR (25 and 26 July 2003 respectively); 'Ausstellung mit blutrotem Faden', FAZ (29 July 2003); 'Kunstwärts', FR (16 September 2003); 'Engel der Geschichte', SZ (11 December 2004).

237 See as a personal account of a relative of the assassinated Alfred Herrhausen: Carolin Emcke, *"Stumme Gewalt". Nachdenken über die* RAF (Frankfurt/M: S. Fischer Verlag, 2008); analytically weak is Anne Siemens, *Für die* RAF *war er das System, für mich der Vater* (Munich: Piper, 2007). Julia Albrecht and Corinna Ponto, *Patentöchter. Im Schatten der* RAF*—ein Dialog* (Cologne: Kiepenheuer & Witsch, 2011). See for more literature and for a detailed critique of such 'Befindlichkeitsbeschreibungen' (descriptions of empathy): Colin, 'Täter- versus Opferdiskurs', p. 194.

238 With one exception: the book about an RAF member who died in a bomb blast, by his mother: Ulrike Thimme, *Eine Bombe für die* RAF*. Das Leben und Sterben des Johannes Thimme von seiner Mutter erzählt* (Munich: C.H. Beck, 2004).

239 Some of these biographies are quoted in Weinhauer, *Terrorismus in der Bundesrepublik*; see also Diewald-Kerkmann, *Frauen, Terrorismus und Justiz. Prozesse gegen weibliche Mitglieder der* RAF *und der Bewegung 2. Juni* (Düsseldorf: Droste Verlag, 2009), p. 16 f.

240 On Stammheim, see Oesterle, *Stammheim*. This book was based on interviews published in the *tageszeitung* ('Nur für Stammheim spreche ich', 27 April 2002). Another individual account is Alfred Klaus, *Sie nannten mich Familienbulle. Meine Jahre als Sonderermittler gegen die* RAF (Hamburg: Hoffmann und Campe, 2008).

241 See 'Die Prada-Meinhof-Bande', *Der Spiegel* (25 February 2002); 'Der Che-Guevara-Effekt', FAZ (16 February 2002); 'Sohn der Angst', FAZ *Sonntagszeitung* (17 February 2002); 'Die Söhne Stammheims' and 'Der kalte Schmerz', SZ (both 17 October 2002); 'Das Wesentliche am Terrorismus ist die Inszenierung', FAZ (17 October 2002).

242 Butz Peters, 'Die Legenden der RAF', FAZ (6 May 2007); 'Zu wütend, um Angst zu haben', FAZ, (8 August 2007); 'Das stille Einvernehmen mit dem Terror', SZ (5 April 2007).

243 'RAF privat', SZ (24 April 2007).

244 Alfred Grosser, 'Die innere und die äussere Sicherheit', in Walter Scheel (ed.), *Nach dreissig Jahren. Die Bundesrepublik Deutschland Vergangenheit, Gegenwart, Zukunft* (Stuttgart: Kohlhammer, 1979), pp. 47–75. Here: p. 54.

245 'Der kalte Schmerz', SZ (17 October 2002). See for the following paragraph: *Der Spiegel* (10 September 1980), pp. 32–47.

246 See Klaus Weinhauer, 'Terrorismus und Kommunikation', p. 119.

247 See the film by Stefan Aust and Helmar Büchel 'Der Baader Meinhof Komplex' (2007) and the related series of articles published in: 'Der letzte Akt der Rebellion' and 'Dann gibt es Tote', *Der Spiegel* (10 and 17 September 2007 respectively). As the FAZ underlined, it was a film mainly about the perpetrators; 'Wissen wir jetzt, wer Schleyer erschoss?', FAZ (8 September 2007). See also 'Die Stimmen von Stammheim', FAZ *Sonntagszeitung* (9 September 2007); 'Die Namen der Mörder', FAZ (10 September 2007); 'Suche nach dem Tonband der Todesnacht', SZ (11 September 2007); 'Eine Überwachung hätte uns viele

Tote erspart' [interview with former BKA president Horst Herold], *SZ* (12 September 2007).

248 See as the solid historical overview on the main trends in German history of the 1970s/1980s by Anselm Doering-Manteuffel and Lutz Raphael, *Nach dem Boom. Perspektiven auf die Zeitgeschichte seit 1970* (Göttingen: Vandenhoeck & Ruprecht, 2008).

249 See '45 Tage im Herbst', *SZ* (11 August 2007).

250 See 'Grundgebot der Versöhnung' and 'Eine ehrliche Chance', *Der Spiegel* (both 20 April 1992).

251 See 'RAF: Abschied vom bewaffneten Kampf' and 'RAF bekennt sich zum eigenen Scheitern', *taz* (14 April 1992); 'RAF erklärt sich zu Geschichte' and 'Die RAF macht Schluss' (21 and 22 April 1998 respectively); 'Etwas loslassen', *FAZ* (22 April 1998).

252 Peters, *Tödlicher Irrtum*, p. 336.

253 For a discussion of the emergence of this specific post-war (and post Weimar), political culture of the FRG, see Sebastian Ulrich, *Der Weimar-Komplex. Das Scheitern der ersten deutschen Demokratie und die politische Kultur der frühen Bundesrepublik* (Göttingen: Wallstein Verlag, 2009). See also Stephan Scheiper, *Innere Sicherheit. Politische Anti-Terror-Gesetze in der Bundesrepublik Deutschland während der 1970er Jahre* (Paderborn: Ferdinand Schöningh, 2010).

254 Ralf Dahrendorf, 'Conflict and Liberty: Some Remarks on the Social Structure of German Politics', *The British Journal of Sociology*, 14:3 (1963), pp. 197–211. Here: p. 198. Interestingly, Dahrendorf uses the example of the German judge.

255 Weinhauer, *Terrorismus in der Bundesrepublik*.