

Developments

40/68 – “We Are Not Going to Defend Ourselves Before Such a Justice System!” – 1968 and the Courts

By Martin Klimke*

“I have thrown a stone. But not at the uniformed men of the executive branch, but into the mills of justice, so to speak, because I refused to be milled into flour for the production of a ‘law and order’ – bread.”

- *Fritz Teufel in the closing statement of his trial, December 15, 1967*

“I have already been in prison, and none of us is scared of that. It does not mean that much anymore if we do something, are charged, and then go to jail. The next day, 100, 200, 300, perhaps even more friends that took part turn themselves in to the police so that the individual is never singled out as an individual, so that he can simply be pocketed and destroyed, as in the past, by the bureaucracy and the state executive.”

- *Rudi Dutschke, Interview with Günter Gaus, December 3, 1967*

A. Introduction

On November 29, 1967, Commune I member Fritz Teufel had to face his second day in a West Berlin courtroom.¹ Teufel was charged with breaching the public peace for allegedly

* Martin Klimke (mail@maklimke.com) is a research fellow at the Heidelberg Center for American Studies (HCA) at the University of Heidelberg, Germany. He is the coordinator of the international Marie-Curie project *European Protest Movements Since 1945* supported by the European Union and currently a visiting fellow at the German Historical Institute, Washington, DC.

¹ I would like to thank Alexander Holmig, Casey Sutcliffe, Philipp Gassert and Maria Höhn for their comments on the ideas and arguments expressed in this article as well as many helpful suggestions.

hurling stones at policemen during a demonstration against the visit of the Shah of Persia on June 2, 1967— the same event during which West German police officer Karl-Heinz Kurras killed twenty-six-year-old student Benno Ohnesorg with a shot to the head.² When the judge entered the courtroom that day in late November, Teufel sat in the same spot in which only one week before Kurras had been acquitted of involuntary manslaughter for his actions on June 2.³ As everybody stood up, Teufel alone remained in his seat, leisurely browsing through the day's newspaper. Only after the judge repeatedly urged him to stand up, stop his defiant behavior, and pay his respects to the court did Teufel slowly rise to his feet and utter a seemingly spontaneous and sardonic remark, which became a rallying cry for the mocking and disrespectful attitude of the student movement against West German authorities: "Well, if it's gonna help establish the truth..." (*Naja, wenn's der Wahrheitsfindung dient*).

Even after the 40th anniversary of the historical events, the public memory of "1968" in the Federal Republic of Germany is dominated by images of street demonstrations, crowded lecture halls, political slogans like "Ho-ho-ho-Chi-Minh," student leader Rudi Dutschke, as well as countercultural icons such as Rainer Langhans and Uschi Obermaier.⁴ Yet, the challenges and confrontations the protest movements of the late 1960s and 1970s brought to West German courtrooms and the judicial system continue to be largely overlooked.⁵

² Teufel was not released until August 10, more than two months later, on the condition that he check in at the local police station twice a week. He refused to do so, and, a week later, even appeared in front of the courthouse in a penitent's gown demanding to be readmitted to pre-trial confinement while locked up in a rolling cart secured with chains. When the police denied his request, Teufel violated his court order and was arrested again during a sit-in at West Berlin City Hall in mid-September.

³ On the trial against Kurras from the perspective of Otto Schily, the lawyer for the brother and father of Benno Ohnesorg in 1967, see Stefan Reinicke, OTTO SCHILY: VOM RAF-ANWALT ZUM INNENMINISTER, 82-86 (2003).

⁴ For an introduction, bibliography, and review of recent literature, see Martin Klimke, *The Struggles Continues: Revisiting the German Sixties*, in *THE SIXTIES*, 247-252 (2d ed., 2008); Martin Klimke, *West Germany, in 1968 IN EUROPE: A HISTORY OF PROTEST AND ACTIVISM, 1965-77*, 97-110 (Martin Klimke and Joachim Scharloth eds., 2008).

⁵ The very few studies that incorporate the legal dimension into their analysis of "1968" in a significant way are: RECHTSANWÄLTE - LINKSANWÄLTE: 1971 BIS 1981 - DAS ROTE JAHRZEHN VOR GERICHT (Hellmut Brunn & Thomas Kirn eds., 2004); Katja Nagel, *Die Provinz in Bewegung. Studentenunruhen in Heidelberg 1964 bis 1974*, PhD. Dissertation, University of Heidelberg (2008); Sandra Kraft, *Vom Autoritätskonflikt zur Machtprobe: Die Studentenproteste der 60er Jahre als Herausforderung für das Establishment in Deutschland und den USA*, PhD dissertation, University of Heidelberg (2008). See also autobiographical literature such as Heinrich Hannover, *Die Republik vor Gericht 1954 - 1995* (2005). Scholarship in Germany has, in general, only very gradually included the establishment's perspective in the historiography of "1968." See, e.g., Klaus Weinbauer, *SCHUTZPOLIZEI IN DER BUNDESREPUBLIK: ZWISCHEN BÜRGERKRIEG UND INNERER SICHERHEIT: DIE TURBULENTEN SECHZIGER JAHRE* (2003); Jeremi Suri, *POWER AND PROTEST: GLOBAL REVOLUTION AND THE RISE OF DÉTENTE* (2003); Christina von Hodenberg, *Der Kampf um die Redaktionen: 1968 und die westdeutschen Massenmedien*, in Christina von Hodenberg and Detlef Siegfried, *Wo 1968 LIEGT. REFORM UND REVOLTE IN DER GESCHICHTE DER BUNDESREPUBLIK*, 139-163 (2006); Martin Klimke, *THE OTHER ALLIANCE: STUDENT PROTEST IN WEST GERMANY AND THE UNITED STATES IN THE GLOBAL SIXTIES* (2009); *THE 'ESTABLISHMENT' RESPONDS: POWER AND PROTEST DURING AND AFTER THE COLD WAR* (Kathrin Fahlenbrach, Martin Klimke, & Joachim Scharloth, eds., forthcoming).

This is all the more regrettable since Fritz Teufel’s sarcastic attitude before the court was not a product of the moment; rather, it was part of a refined provocation strategy employed by the anti-authoritarian faction of the West German student movement to expose the supposedly autocratic character of the Federal Republic’s judicial system and society at large.

B. West German Student Activists and the Courts

I. Situationist Roots

Dieter Kunzelmann, one of the spiritual founding fathers of the anti-authoritarian faction of “1968,” had already set the agenda for this legal strategy in January 1964 in the avant-gardist group *Subversive Aktion*, the German branch of the Situationist International (SI), when he wrote to his colleague Frank Böckelmann:

We provoke monster trials through which all of our ideas will become public. We will storm a department store, for example, take all the goods, and distribute them out on the street; the subsequent trial would have to be conducted in such a clever and impudent way that the lies of the free economy become clear to the last idiot. Or we stage a “fuck-in” in the middle of Stachus [*downtown Munich*] (you and Marion), and in the trial we then come out and say, “Why not?”⁶

According to the SI, an international group of artists that emerged in the second half of the 1950s with roots in Dadaism, Surrealism, and the Lettristic International, capitalism and mass media had alienated human beings in their everyday experience by capitalism and mass media. The Situationists’ means of altering this situation was to shatter the routine of social relations and rituals using “spectacular” actions. They aimed to cut conventional processes from their traditional meaning and place them in new contexts, thus assigning a different significance to them. This “détournement,” such as distributing goods from a department store for free instead of selling them for money, they believed, would provoke a critical rethinking of the modes and routine of daily interactions and lead to a questioning of the society at large.⁷ Kunzelmann imported this action-oriented strategy

⁶ Letter by Dieter Kunzelmann, January 4, 1964, in NILPFERD DES HÖLLISCHEN URWALDS. SITUATIONISTEN, GRUPPE SPUR, KOMMUNE I, 160 (Wolfgang Dreßen and Eckhard Siepmann eds., 1991); One the role of Kunzelmann, see, e.g., Wolfgang Kraushaar, 1968 ALS MYTHOS, CHIFFRE UND ZÄSUR, 302 (2000); Dieter Kunzelmann, LEISTEN SIE KEINEN WIDERSTAND!: BILDER AUS MEINEM LEBEN passim (1998).

⁷ For the major documents of the SI, see Christopher Gray, LEAVING THE 20TH CENTURY: THE INCOMPLETE WORK OF THE SITUATIONIST INTERNATIONAL (1998); Tom McDonough, GUY DEBORD AND THE SITUATIONIST INTERNATIONAL: TEXTS AND

into the Subversive Aktion, and through Rudi Dutschke and others, who joined the group in 1964/65, it eventually became part of the theoretical repertoire of the anti-authoritarian faction of the West German student movement of the late 1960s.⁸

II. The “Kommune I”

Law enforcement agencies in West Berlin had their first encounter with these new protest techniques in April 1967 before the U.S. vice president Hubert Humphrey arrived in the city. The night before Humphrey’s visit, West Berlin police arrested eleven students, among them eight members of the “Kommune I,” for conspiring to assassinate the American dignitary. The next morning, the successful police operation that had supposedly thwarted the attempt on Humphrey’s life made the front-page news in Berlin’s tabloids. The conspiracy allegedly was to involve bombs and other materials from East Berlin or Peking, but the students only possessed pudding, yogurts, and ingredients for butter tart. Thus, they had to be set free the next day. At a press conference, the members of the Kommune I explained that they had intended to throw baked goods at the vice president and referred to similar provocation techniques that the “Provos” in Amsterdam had used.

Dieter Kunzelmann, Fritz Teufel, and Ulrich Enzensberger had founded the Kommune I in West Berlin in January 1967; they were later joined by Rainer Langhans and others.⁹ With the media-savvy, so-called *Pudding-Attentat*, the group had successfully captured public attention and continued to orchestrate actions to further its political message and agenda of sexual liberation in the mass media. Due to its blend of Situationist provocation, political existentialism, and alternative lifestyles, it soon emerged as the countercultural representative of the movement. This, however, not only brought the commune in conflict with the more traditional student organizations on the left, such as the German Socialist Student League (*Sozialistischer Deutscher Studentenbund*, SDS), but also with the district attorney’s office.

DOCUMENTS (2002). For an introduction, see Thomas Hecken and Agata Grzenia, *Situationism*, in 1968 IN EUROPE, 23-32 (Martin Klimke & Joachim Scharloth eds., 2008).

⁸ Martin Klimke and Joachim Scharloth, *Utopia in Practice: The Discovery of Performativity in Sixties’ Protest, Arts and Sciences*, in HISTOREIN, SPECIAL ISSUE: THE UTOPIAN YEARS: 1968 AND BEYOND. MOVEMENT DYNAMICS AND THEORETICAL IMPLICATIONS (2009).

⁹ The literature on the Kommune I is still dominated by the biographical accounts of former participants, see e.g., Marco Carini, FRITZ TEUFEL: WENN’S DER WAHRHEITSFINDUNG DIENT (2003); Ulrich Enzensberger, DIE JAHRE DER KOMMUNE I: BERLIN 1967 – 1969 (2004); K 1: DAS BILDERBUCH DER KOMMUNE (Rainer Langhans, Christa Ritter, & Alex Weidner, eds., 2008); Rainer Langhans, ICH BIN’S: DIE ERSTEN 68 JAHRE (2008). The only comprehensive, excellent scholarly examination of the commune and the counterculture that surrounded it is Alexander Holmig, *Wenn’s der Wahrheits(er)findung dient ...: Wirken und Wirkung der Kommune I (1967-1969)*, M.A. Thesis, Humboldt University Berlin, 2004.

On May 22, 1967, during an “American Week” featuring products from the U.S, a fire broke out in a department store in Brussels that claimed 300 lives. Only two days later, the Kommune I distributed flyers on the campus of the Free University (FU) in Berlin that depicted the tragic accident as a “mass happening” organized by Belgian activists protesting the Vietnam War.¹⁰ Imitating the language of the sensationalist local tabloids by the Springer publishing house, a second flyer interpreted the fire as an American marketing strategy, arguing that “A burning department store with burning people conveyed, for the first time in a major European city, the sizzling Vietnam feeling (being there and burning, too), which we in Berlin have had to do without up to now.”¹¹ A third flyer went even further and asked “[W]hen will the department stores in Berlin be on fire?,” thereby seemingly encouraging arson as a legitimate form of protest against the war in Vietnam:

None of us needs to shed any more tears about the poor Vietnamese people while reading the morning paper. From now on, such a person he will go to the clothing department of KaDeWe, Hertie, Woolworth, Bilka, or Neckermann and discreetly light a cigarette in the dressing room. (...) If fires erupt in the near future, if barracks blow up somewhere, if the grandstands in a stadium collapse, don't be surprised. No more so than when the Americans marched over the Line of Demarcation, when Hanoi's city center was bombed, or when the marines invaded China. Brussels gave us the only answer to that: burn, ware-house, burn!¹²

The public reaction to this planned provocation far exceeded the commune's expectations. The local press was outraged by the comparison, and on June 9, 1967, the district attorney's office in West Berlin filed charges against Kommune I members Fritz Teufel and Rainer Langhans.¹³ On July 6, 1967, the trial against Teufel and Langhans began before the Sixth Criminal Division (6. *Grosse Strafkammer*) of the District Court in Berlin-Moabit before an audience of about eighty students and sixty members of the press.

¹⁰ Kommune I, Flyer 6 (May 24, 1967). See also Wilfried Mausbach, *Burn, ware-house, burn!* *Modernity, Counterculture, and the Vietnam War in West Germany*, in *BETWEEN MARX AND COCA-COLA: YOUTH CULTURES IN CHANGING EUROPEAN SOCIETIES, 1960-1980*, 175-202 (Axel Schildt and Detlef Siegfried eds., 2006).

¹¹ Kommune I, Flyer 7 (May 24, 1967).

¹² Kommune I, Flyer 8 (May 24, 1967). The term “ware-house” was Dieter Kunzelmann's translation of the German word for department store (*Warenhaus*). See LANGHANS, *supra*, note 9, at 50.

¹³ *Anklageschrift Landgericht Berlin* (Az. (506) 2 P Js 749/67 (55/67)), 9 June 1967, in *KOMMUNE I, GESAMMELTE WERKE GEGEN UNS 29* (1967).

III. The Moabit Soap Operas

Teufel and Langhans used the trial as a public platform to apply the full potential of their anti-authoritarian and situationist repertoire: They appeared unmoved by the charges filed against them, dressed and behaved extremely casually (Langhans, who was dressed in dirty blue denims, a white terry-cloth-shirt, and a pink linen jacket with a Mao-pin, was at first even denied entry to the courthouse because he looked like a “bum” according to the guards). To the great surprise of the court, both of them constantly undermined the traditional roles assigned to them in this formalized, legal environment by addressing the audience, questioning the prosecutor and judge, or pretending to be bored by the proceedings. Adding to the prosecutor’s dismay was the fact that the majority of external experts who examined the flyers of the Kommune I, among them academics and writers such as Walter Jens and Günter Grass, had classified them as irony, parody, and/or satire, but not as documents abetting arson or any other criminal act.¹⁴ In a last and fateful attempt to reverse the inevitable and buy more time, the court ordered a psychiatric examination of the defendants and moved to adjourn. The lawyer for the defense, Horst Mahler, immediately protested against this move. But it was the subsequent intervention of the defendants themselves that caused the atmosphere in the courtroom to boil over once more:

TEUFEL: I will agree to this examination if the members of the court and the district attorney also undergo psychiatric examination.

Audience members clap frenetically.

JUDGE SCHWERDTNER (jumps up): Clear the court, clear the court!! Everybody out!! Break-time!

After the situation had calmed down and the audience had returned to the courtroom, Rainer Langhans followed up on his co-defendant’s suggestion:

TEUFEL: Mr. Langhans wanted to say something else.

LANGHANS (sarcastically): I don’t know to what extent it is allowed, but I would like, first of all, to agree with my friend Fritz’s motion and expand on it in the following way. In addition to the psychiatric examination of the members of the court, the district attorney, and the defendants, an intelligence test of these same people should be drawn up, the complete

¹⁴ Compare the individual reports in: APO-Archive, Free University Berlin: Ordner K I, Auszüge aus gutachtlichen Äußerungen; Kommune I – Zerschmettert den Moabiter Pleitegeier!, Eigendruck-Broschüre, September 1967, 41 ff.; APO-Archiv, blaue Mappe, Frohner-Unterlagen (Excerpts). See also Rainer Langhans and Fritz Teufel, KLAU MICH (1968); KUNZELMANN, *supra*, note 6, 81.

results of which have to be published! *Clear the court!*¹⁵

The court reconvened on March 4, 1968, to continue the trial, which had already been widely labeled the “Moabit Soap Opera.” Having learned from the occasionally chaotic scenes during the first part of the trial, the court took several preventive measures to keep an orderly procedure: it arranged for a smaller room with fewer seats for the audience, utilized a greater number of uniformed and plainclothes policemen, and generously dispensed administrative penalties for contempt of court to rein in the defendants. Despite these precautions, the interactions between the court and the defendants during the eight days of the proceedings continually bordered on the absurd:

JUDGE SCHWERDTNER: But what was your purpose in making the flyers? What did you want that to achieve? An action is, of course, purpose-driven.

LANGHANS: It is all very simple, that's why we were having so much fun with the idea that one could interpret it in this way. We never thought that something like this could be perceived as a call-to-action. That is downright absurd! (To the district attorney) May I ask how you even come to the view that that is supposed to be a call-to-action for arson?

JUDGE SCHWERDTNER (interrupts reluctantly): You don't have...

LANGHANS (yelling at him): I can't even finish a sentence without being interrupted. Now be quiet until I am finished! (continuing) I would now like to ask you how you could get the idea that this could be a call-to-action for arson. That is just idiotic. JUDGE SCHWERDTNER: What is that supposed to mean?

LANGHANS: That means that we can only regard people who feel called upon to commit arson [*by our words*] as stupid, and in this the court has indeed excelled.

D.A. TANKE: In this phrase, too, there is improper comportment; I motion to impose a penalty for contempt of court of one day's confinement. [...]

¹⁵ The transcripts used here are based on the shorthand notes of Hans-Joachim Frohner and his wife, who covered the trial for the radio show “procontra - Menschen und Paragraphen.” See APO-Archive FU Berlin, blaue Mappe, Frohner-Unterlagen: Prozessmitschriften K I, Kurras u.a. They are also reprinted in Rainer Langhans and Fritz Teufel, *KLAU MICH*, passim (1968).

LANGHANS (turning to the audience): No loud remarks or else the boss will get angry and clear the room. I'm warning you for the last time!

ASSOCIATE JUDGE: You ought to criticize yourself; that is even customary in the East.

LANGHANS: What do you mean by that? I would really like to know!

JUDGE SCHWERDTNER: Don't ask questions. The court does the questioning.

ASSOCIATE JUDGE: It is true everywhere that one tests oneself self-critically, in East and West.

D.A. TANKE (loudly): The implausibility of your argument is only strengthened by what you just said. So what was your purpose in making the flyers? You sidestepped this [*question*]!

LANGHANS: Don't scream like that!

D.A. TANKE: I thought you wouldn't be able to hear me well beneath that hair.

LANGHANS: Now I can't hear you.

As becomes clear in this passage, Langhans did not adhere to the formal rules and rituals of the court. Instead of accepting the traditional role of defendant, he posed questions like the judge and prosecutor, questioned their intelligence, addressed the audience, and expressed his reservations about the legitimacy of the charges brought against him.¹⁶ The judge's only effective recourse to this subversive role reversal and defiant behavior was to impose administrative penalties on the defendants. Overwhelmed by the situation, both judge and prosecutor had to witness their courtroom being turned into a stage on which Langhans and Teufel could act almost as they pleased, ridiculing the criminal justice system and revealing the grotesque nature of its bureaucratic proceedings. As Langhans concluded in his last words before the sentencing: "We don't often get to see such a play. No author of a play for the theater of the absurd could have come up with a better one. Often, we were not even players in it, because it was not our game. It would not have even occurred to us that one could create plays like this. We only became players and gradually more like directors when we realized the opportunities being offered to us. [...] We are curious [*about the sentence*] and thank you for this play."¹⁷

¹⁶ For a more detailed examination, see Joachim Scharloth, *Ritualkritik und Rituale des Protest. Die Entdeckung des Performativen in der Studentenbewegung der 1960er Jahre*, in 1968. HANDBUCH ZUR KULTUR- UND MEDIENGESCHICHTE DER STUDENTENBEWEGUNG, 75-87 (Martin Klimke & Joachim Scharloth eds., 2007).

¹⁷ Rainer Langhans and Fritz Teufel, *KLAU MICH*, passim (1968).

The playful attitude and mocking posture of the Kommune I soon became an example for other activists across the country who came face to face with the courts. Here, as well as in other areas, the actions of the commune proved to be the blueprint for all kinds of spectacular actions that provoked intense media coverage and challenged local authorities. One of the most drastic cases of this spiral of continuously expanding provocation was the trial against Karl Pawla, another member of the Kommune I, in September 1968. Charged with being a public nuisance, contempt of court, trespassing, and obstructing a police officer in the course of his duty, Pawla jumped on the judge's table during the trial, defecated, and wiped himself with several court files. He was eventually sentenced to ten months in prison for his actions in the courtroom.¹⁸ As Langhans later admitted, the Kommune I members on trial actually carefully staged and prepared such seemingly spontaneous acts of rebellion and mockery; they designed them to use the media and public attention to disseminate their artistic and political message: “Our joyful faces, our fun, our intellectual skills were very subtle. There was nothing that was unplanned. All these court stories were infinitely calculated events – always with the feeling that they had to deliver us points.”¹⁹

IV. Protest Techniques and Strategies of the West German Student Movement

With their actions, this generation of youthful activists not only subverted traditional hierarchies and ritualistic modes of behavior; they also created new modes of representation that the television and print media industry eagerly latched onto. Undergoing fundamental structural change, this industry began increasingly to rely on visual codes. In this environment, the more spectacular and visually enticing the protest events, the more interesting it became for journalists to cover them. Mass media and activists thereby entered into an ambivalent relationship that was characterized by the students' criticism of press monopolies and capitalist means of production, on the one hand, and their embrace of the mass media as a platform for disseminating their message, mobilizing other activists, and powerfully impacting the public sphere, on the other. At the same time, the visual nature of the students' protest, which was connected to a revolution in lifestyle and daily cultural practices, led public discourse and communication to become more emotional. This, perhaps, explains the continuing fascination with many of their protest actions.²⁰

¹⁸ *Zehn Monate für Kommunarden: 'Gerichtssäle dürfen keine Bedürfnisanstalten werden'*, in Frankfurter Rundschau, SEPTEMBER 7, 1968; see also Mererid P. Davies, *Bodily Issues: The West German Anti-Authoritarian Movement and the Semiotics of Dirt*, in UN-CIVILISING PROCESSES: EXCESS AND TRANSGRESSION IN GERMAN SOCIETY AND CULTURE, 225-53 (Mary Fulbrook ed., 2007).

¹⁹ Johann Soyka, Interview with Rainer Langhans, *Die wunderbare Wandlung des Rainer Langhans*, in KOMMUNEN UND WOHNGEMEINSCHAFTEN: DER FAMILIE ENTKOMMEN? 70 (Johann August Schüle in ed., 1978).

²⁰ See the groundbreaking work by media scholar Kathrin Fahlenbrach, *PROTEST-INSZENIERUNGEN: VISUELLE KOMMUNIKATION UND KOLLEKTIVE IDENTITÄTEN IN PROTESTBEWEGUNGEN* (2002).

The subversion of social conventions and overstepping of legal boundaries was, however, not unique to the countercultural segments of the West German protest movement of the later 1960s. Ever since the beginning of the decade, the example of the African-American civil rights movement had exerted a powerful influence on West German activists, who slowly added these new forms of “direct action” to their protest repertoire to foster their political agenda. Sit-ins, for example, now became a firmly established tool in the German SDS for voicing political and cultural dissent. The first sit-in at the Free University of Berlin took place on June 22, 1966, after the Academic Senate had decided to delete the paragraphs in the university constitution that allowed political student groups to use university rooms for events they organized, and after official plans to introduce time limits for the duration of university education had emerged. Originally designed as a teach-in outside the next meeting of the Academic Senate, the sit-in drew about 2,000 students into the Henry Ford Building of the Free University demanding that university structures be made more democratic.²¹

When direct action techniques were adopted in the Federal Republic, however, they merged with other political theories and intellectual traditions into a revolutionary amalgam that consisted of Situationism, Herbert Marcuse’s minority theory, revolutionary voluntarism propagated by George Lukacz, as well as Che Guevara’s foco theory.²² They also became tightly intertwined with the protest against the U.S. war in Vietnam and against perceived post-fascist and autocratic legacies in the academic, social and political sphere of the Federal Republic. The writer and student activist Peter Schneider voiced the frustration of many of his generation and their motivation to cross legal boundaries on May 5, 1967, during another sit-in at the Free University:

We provided information in all objectivity about the war in Vietnam, although we have found that we could quote the most unbelievable details about the American policy in Vietnam without this triggering our neighbors’ imagination, but that we only needed to step on a lawn where this is prohibited to cause honest, general, and lasting terror [...] That’s when we came up with the idea that we must first destroy the lawn before we can destroy the lies about Vietnam [...] that we must first break the rules of conduct for the

²¹ *Resolution verabschiedet von der versammelten Studentenschaft der FU Berlin auf dem Sit-in am 22./23. Juni 1966*, in 4 *Freie Universität Berlin, 1948-1973, Hochschule im Umbruch*, 333 (Siegward Lönnendonker & Tilman Fichter eds., 1978).

²² *Sit-In, Teach-In, Go-In: Die transnationale Zirkulation kultureller Praktiken in den 1960er Jahren*, in 1968. *HANDBUCH ZUR KULTUR- UND MEDIENGESCHICHTE*, 119-135 (Martin Klimke & Joachim Scharloth eds., 2007).

building before we can break the rules of the university. [...] That's when we realized that in these prohibitions, the criminal indifference of a whole nation runs rampant.²³

V. *From Protest to Resistance*

As the provocation between student protesters and the authorities began to escalate after the killing of Benno Ohnesorg on June 2, 1967, a small section of activists grew ever more willing to resort to more militant measures. During the night of April 3, 1968, in two department stores in Frankfurt, Andreas Baader, Gudrun Ensslin, Thorwald Proll, and Horst Soehnlein planted incendiary devices timed to ignite a fire at midnight. An anonymous caller alerted the authorities shortly after the timer went off, and no personal injuries resulted from the fire, although the property damage amounted to about 675,000 German marks.²⁴

Just a few days later, the perpetrators were caught. In many ways, the subsequent trial against Baader, Ensslin, Proll, and Soehnlein that started on October 14, 1968, in Frankfurt followed a performative dynamic similar to that of the trial against Teufel and Langhans in Berlin. In high spirits, the defendants ridiculed and insulted the prosecutor and judge, who responded by imposing excessive administrative penalties for contempt of court. The defendants seemed at times strangely removed from their surroundings, lounging in their seats, one of them even leisurely sucking on a cigar. But in this case the playful performance and mockery displayed in the Kommune I trial gave way to much more aggressive and confrontational rhetoric, as well as a growing reluctance to even acknowledge the legitimacy of the court itself. This went along with a clear moral stance that belittled the nature of their crime in the context of the war in Vietnam. Gudrun Ensslin, for example, hurled this comparison at the prosecutor: “I’m not talking about burned foam mattresses; I’m talking about burned children in Vietnam.”²⁵ Refusing to speak when asked for some closing words before her sentencing, she explained: “I do not want to give you the chance to create the impression that you were listening to me.”²⁶ Thorwald Proll, on the other hand, used his final words for an all-out attack on the judicial system and the continuities it allegedly displayed to National Socialism:

²³ Peter Schneider, *Wir haben Fehler gemacht*, in Bernard Larsson, DEMONSTRATIONEN. EIN BERLINER MODELL 162 (1967).

²⁴ Sara Hakemi and Thomas Eschen, *Die Warenhausbrandstifter*, in DIE RAF UND DER LINKE TERRORISMUS, 316-331 (Wolfgang Kraushaar, ed., 2006).

²⁵ Quoted after REINICKE, *supra*, note 3, at 93.

²⁶ Quoted after Uwe Nettelbeck, *Die Frankfurter Brandstifter*, Die Zeit, November 8, 1968.

We do not answer to a judiciary that sentences small murderers of Jews and lets the big murderers of Jews get away. We do not defend ourselves against a judiciary that delved into fascism unharmed in 1933 and similarly emerged from it in 1945. Furthermore, against a judiciary that has always imposed more severe punishments on people on the left (Ernst Niekisch, Ernst Toller) and been soft on people on the right (Adolf Hitler), that rewarded the murderers of Rosa Luxemburg and Karl Liebknecht (it shot them, too) with a mild sentence, we cannot defend ourselves [...] Against a judiciary that does not abolish its authoritarian structures but keeps on rebuilding them, we do not defend ourselves. [...] Where is the prosecutor who would indict the state?²⁷

Although most observers and activists on the left rejected the idea of setting a department store on fire as a viable means of protest, some were palpably sympathetic to the arguments of the defendants and their ideological goals. The most famous proponent of this perspective was the prominent leftist intellectual Ulrike Meinhof, who argued in her column in the magazine *Konkret*, “The progressive aspects of setting fire to a department store do not lie in the destruction of goods, but in the criminal act, in breaking the law.” In Meinhof’s view, capitalism had estranged people not only from the production process and the profits of their own labor, but also from the goods themselves, which the advertising industry packaged for them. The system thus depended on the creation of artificial needs to keep the market place booming. As a result, it followed that “The law that gets broken when department stores are set on fire is not a law that protects people. It is a law that protects property.” Reinforcing this idea, Meinhof concluded by quoting Fritz Teufel: “It is still better to set fire to a department store than to run one.”²⁸

Unsurprisingly, the court disagreed with this logic. For the prosecutor, the criminal nature of the offense was unquestionable, even though the defendants had labeled it a “political happening.” He was, therefore, determined to demand the maximum sentence: six years in jail for each defendant for a series of crimes ranging from damaging property to heavy arson. The court eventually sentenced the defendants to three years in prison. After

²⁷ VOR EINER SOLCHEN JUSTIZ VERTEIDIGEN WIR UNS NICHT. SCHLUSSWORT IM FRANKFURTER KAUFHAUSBRANDPROZESS (Andreas Baader, et al, eds., 1968). For the legal dimensions of West Germany’s treatment of the Holocaust in the 1960s, see the contributions of Marc von Miquel, Bernhard Brunner, and Juergen Lillteicher in Philipp Gassert and Alan Steinweis, *COPING WITH THE NAZI PAST: WEST GERMAN DEBATES ON NAZISM AND GENERATIONAL CONFLICT, 1955-1975* (2006).

²⁸ Ulrike Meinhof, *Setting Fire to Department Stores*, in *EVERYBODY TALKS ABOUT THE WEATHER-- WE DON'T: THE WRITINGS OF ULRIKE MEINHOF*, 246, 248 (Karin Bauer ed., 2008).

fourteen months, the defendants were discharged on June 13, 1969, while the verdict was appealed. When the appeal was denied on November 10, 1969, only Soehnlein accepted the sentence and went to jail. Baader, Ensslin, and Proll fled to Paris. A year later, Baader was apprehended and Ulrike Meinhof subsequently aided in his escape. This dramatic development of events not only set the stage for the foundation of the Red Army Faction (RAF) in the summer of 1970, which would spread and inspire waves of terror in the Federal Republic up to the 1990s. This new, clandestine and highly organized violence also fundamentally redefined both the atmosphere and the legal strategies of activists and the authorities in the Federal Republic.²⁹

C. Conclusion

The story of “1968” and the law still needs to be written. As the trials against the Kommune I and Baader, Ensslin, Proll, and Soehnlein from 1967 to 1969 demonstrate, the battle between the student movement and the establishment was also waged in West German courtrooms. The events depicted here—the acquittal of Karl-Heinz Kurras, the Situationist provocation techniques and role reversals of the Kommune I, direct actions by activists all over the country, as well as defendants' refusal to defend themselves before a judicial system perceived as autocratic and tainted by its National Socialist past—are but glimpses of a much wider narrative of the 1960s. This narrative involves alternative judicial forms such as the Springer Tribunal, the Bertrand Russell War Crimes Tribunal, and leftist lawyers' associations such as the Socialist Lawyers Collective (*Sozialistisches Anwaltskollektiv*). Moreover, it explores how law enforcement agencies, district attorneys, judges, politicians, and lawmakers, as well as the intelligence community, dealt with the various forms of dissent expressed in and around “1968”.

All of these facets helped to shape the impact the protest movements of the late 1960s would have on the Federal Republic over the next decades. The biography of Otto Schily, a defense attorney for Benno Ohnesorg's father and brother, for Gudrun Ensslin in the Frankfurt trial of 1968/69, as well as for members of the Red Army Faction in the 1970s,

²⁹ For an introduction to the legal dimensions regarding the 1970s and the Red Army Faction (RAF), see RECHTSANWÄLTE - LINKSANWÄLTE: 1971 BIS 1981 - DAS ROTE JAHRZEHT VOR RICHTER, passim (Hellmut Brunn & Thomas Kirn eds., 2004); Stefan Reinicke, *Die linken Anwälte: Eine Typologie*, in DIE RAF UND DER LINKE TERRORISMUS, 948-956 (Wolfgang Kraushaar, ed., 2006); Klaus Eschen, *Das Sozialistische Anwaltskollektiv*, in DIE RAF UND DER LINKE TERRORISMUS, 957-972 (Wolfgang Kraushaar, ed., 2006); Uwe Wesel, *Strafverfahren, Menschenwürde und Rechtsstaatsprinzip: Versuch einer Bilanz der RAF-Prozesse*, in DIE RAF UND DER LINKE TERRORISMUS, 1048-1059 (Wolfgang Kraushaar, ed., 2006); Gisela Diewald-Kerkmann, *Verfuehrt'-'Abhaengig'-'Fanatisch': Erklaerungsmuster von Strafverfolgungstaetern und Gerichten fuer den Weg in die Illegalitaet: Das Beispiel der RAF und der Bewegung 2. Juni (1971-1973)*, in TERRORISMUS IN DER BUNDESREPUBLIK: MEDIEN, STAAT UND SUBKULTUREN IN DEN 1970ER JAHREN, 217-243 (Klaus Weinhauer, Joerg Requate, Heinz-Gerhard Haupt, eds., 2006); Joerg Requate, *Terroristenanwaelte und Rechtsstaat: Zur Auseinandersetzung um die Robe der Verteidiger in den Terroristenverfahren der 1970er Jahre*, in TERRORISMUS IN DER BUNDESREPUBLIK: MEDIEN, STAAT UND SUBKULTUREN IN DEN 1970ER JAHREN, 271-301 (Klaus Weinhauer, Joerg Requate, Heinz-Gerhard Haupt, eds., 2006).

who becomes a founding member of the Green Party at the beginning of the 1980s and Minister of the Interior for the Social Democratic Party from 1998 to 2005, is a particularly colorful example, but by no means the only one, of how the legal history of “1968” and its aftermath are intertwined with the history of the Federal Republic as a whole.³⁰ In coming to terms with “1968,” historians must therefore begin to recognize the courtroom, next to the university and the street, as another crucial space where protesters contested social norms and the political culture of the Federal Republic, thereby creating very different forms of dissent. Only by including this legal dimension and the dynamic of its interactions into our narratives of “1968” will we be able to do “justice” to Fritz Teufel’s dictum of establishing the much sought-after “truth.”³¹

³⁰ See Reinhold Michels, *OTTO SCHILY: EINE BIOGRAPHIE* (2001); REINICKE, *supra*, note 3, *passim*. Other equally revealing political biographies of legal actors are those by Christian Ströbele (Green Party) or Horst Mahler (who has now adopted right-wing extremist and anti-Semitic positions). For the latter, see Martin Jandel, *Horst Mahler*, in *DIE RAF UND DER LINKE TERRORISMUS*, 372-397 (Wolfgang Kraushaar, ed., 2006).

³¹ In terms of the interaction between activists, the courts and public opinion the case of Beate Klarsfeld is particularly interesting. On November 7, 1968, Beate Klarsfeld, who had initiated a comprehensive public campaign against the National Socialist past of Chancellor Kurt Georg Kiesinger, interrupted his speech at the CDU party convention in Berlin. Walking up to Kiesinger and denouncing him as a “Nazi,” Klarsfeld slapped him in the face before she was dragged away. In a matter of two hours, a Berlin court found her guilty of assault and sentenced her to a year in prison. This fast and draconic ruling provoked a public outcry from observers of different political backgrounds, especially since Klarsfeld’s defense lawyer Horst Mahler had only been able to speak to her for half an hour before the sentencing without any time to prepare the case. For an examination of the event and the subsequent trial see Philipp Gassert, *KURT GEORG KIESINGER, 1904-1988: KANZLER ZWISCHEN DEN ZEITEN*, 651-659 (2006).