Legalized Repression and the Therapeutic State

The Berster Case, Part IV

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When Kristina Berster arrived in Heidelberg to study in 1970, German young people were restless and angry. The rhetoric had turned revolutionary since the days of "Ban the Bomb." This paralleled the trajectory of American dissent. The US "New Left" had also passed a tipping point, marked by the Chicago police riots and the "days of rage" that launched the Weather Underground.

In West Germany, protest turned violent with demonstrations in Berlin and the bombing of two empty department stores by Andreas Baader and Gudrin Ensslin. The purpose of the bombing, announced Baader, was "to light a beacon" against the consumer society. "We set fires in department stores so you will stop buying," added Ensslin. "The compulsion to buy terrorizes you." An incomplete analysis, it nevertheless struck at the core of German complacency in a time of intensive economic development.

The couple and some accomplices were caught and convicted, but not before they found support from one of Germany's leading leftist journalists, Ulrike Meinhof. Released in 1969 during the appeal of their cases, Baader and Ensslin went underground with Meinhof's assistance. On September 29, 1970, with the robbing of three West Berlin banks, the Red Army Faction was born.

To justify the tactic, Baader explained that the first problem of the revolution was financial support.

Dark clouds began to descend. West German police turned to automatic weapons and extreme tactics, anyone who looked like a nonconformist risked spontaneous interrogation, roadblocks became common on the autobahn, and new search, arrest, and gun laws were passed. The excuse for such a broad extension of police powers was the nationwide search for the Baader-Meinhof group. It didn't matter that the fugitives were responsible for only five of the 1,000 robberies committed during their heyday.

Witnessing the isolation of prisoners and the alienation around her, Berster couldn't accept it. She was already steeped in politics and radical concepts of therapy. One US thinker who exerted a strong influence, Thomas Szasz, had written about the "myth of mental illness" and the emergence of a therapeutic state. He also inspired William Pierce, the Vermont mathematician who shared his story of harassment and involuntary commitment after blowing the whistle about security procedures and high-tech repression.

In Law, Liberty and Psychiatry Szasz proposed, "The parallel between political and moral fascism is close. Each offers a kind of protection. And upon those unwilling to heed peaceful persuasion, the values of the state will be imposed by force: in political fascism by the military and the police; in moral fascism by therapists, especially psychiatrists."

Berster was fascinated by the critique of institutional psychiatry, and simultaneously repelled by German psychiatric units where patients had no rights and anything could be interpreted as crazy. A new criminal psychiatric unit was under construction in Heidelburg, geared toward mind control and the use of complete isolation. During the dispute over it, someone tried to set fire to the site.

The violence escalated with the shooting of several police officers. In response, the government widened its dragnet to root out the conspiracy. Help came from an informer, Hans Bacchus, who had read books on guerrilla warfare before leaving the student scene. He subsequently supplied the police with a list of people he accused of radical activity or terrorist sympathies. Among the names was Kristina's.

Apprehended as a suspect, she was charged with having "built up a criminal association." The maximum sentence was five years. But even pre-trial detention could mean serious time. Some suspects were already being detained in solitary for long periods. It was exactly the type of treatment she had been protesting.

Berster spent the next six months in detention, watching the erosion of her right to legal counsel. Even her lawyer's office was raided. Police alleged that Eberhard Becker had photographic files of the Heidelburg police department's employees. Although the evidence was never produced, he was barred from participating in her trial. Obstruction of justice charges were later leveled at two other attorneys representing defendants in the case.

A pattern of harassment aimed at defense attorneys was emerging. The pressure intensified with laws that permitted the exclusion of lawyers and the holding of trials without the presence of defendants. In reaction, some young people joined the Red Army Faction.
Kristina went back to school, but continued her prison reform work.

In early May 1971, the Red Army decided to strike at political targets in retaliation for the bomb blockade of North Vietnam. They hit an officer's club in Frankfurt, the Augsburg Police Department, the parking lot of the State Criminal Investigation Office, and finally, on May 24, the US Army's European Supreme Headquarters in Heidelburg. A month later they were caught.

At first, people thought the country would finally return to normal, easing attacks on civil liberties and ending the state of emergency. Instead, the "emergency" was institutionalized.

Red Army leaders were locked in "wipe-out detention," a luminous white world of total sterility in which fluorescent lights were always on and every window was covered. Their soundproof cells, filled with nothing but white noise, were in a section of the prison called the Dead Wing, a place off limits to all visitors except lawyers and relatives. Reading material was heavily censored, and other prisoners were never seen or even heard.

When Jean-Paul Sartre saw Baader after two years in the Dead Wing, he said, "This is not torture like the Nazis. It is torture meant to bring on psychic disturbances."

This type of confinement was "the most effective way to destroy personality irreversibly," Kristina told me during our jailhouse interview. "Humans are social. When you cut that off, when people are not able to talk or relate to others, an internal destruction begins. You become catatonic, and somatic problems begin."

Despite the growing risks, she continued to fight for small improvements like allowing prisoners to see and hear one another. But reforms faced new obstacles. Not only had public sentiment hardened against the Red Army; the Right, prodded by the Springer newspaper chain, had pushed through more repression laws. A Decree on Radicals, passed in 1972, denied “a position of civil service…if the candidate has been politically active in either an extreme rightist or leftist group.” Any doubt about a person’s support for the “free democratic basic order” would henceforth be sufficient grounds for blacklisting. It was an effective job ban in a country with 16 percent of workers in this sector.

The Decree also permitted the executive branch to create political isolation without directly banning political parties. Instead, it created a category of “constitutional enemies.” Acts no longer had to be proven; the job ban punished attitudes, and the enemies list extended to “sympathizers” who were indifferent to or critical of the state’s war on terrorism.

A prominent target was Nobel Prize winner Heinrich Boll, who had criticized the demagoguery of the Springer press. Conservatives tried to ban his books, and the police harassed his son. His hate mail was signed, he once noted sardonically, while complimentary notes were apt to be anonymous.

Kristina Berster and her co-defendants became convinced that a fair trial was impossible. There was ample evidence that the outcome was rigged: exclusion orders against their lawyers, the treatment of prisoners, new laws, and Right-Wing propaganda. Therefore, in an open letter to the court they announced that they weren’t showing up, and would instead hold a counter-trial at which they could present themselves for judgment. A huge audience, gathering from across Western Europe, attended that event. But many people left confused.

Disagreement had erupted over the use of violence. Many people were attracted, but Berster rejected the idea. Nevertheless, persuaded that the official trial could not be just, she joined those who decided not to appear.

At first she didn’t believe she would have to become a fugitive. But when “wanted” posters went up it was clear that she would not be free for long if she stayed in West Germany. By 1973 the national mood was grim, much akin to the repressive climate of the Nixon era, when the anti-war movement cracked and the country continued to reel from politically-motivated assassinations. By the time Bacchus, the informer whose testimony had originally implicated her, had recanted, she was out of the city, living on the edge, cut off from family and friends.

Perhaps leaving had been a mistake, she thought. But it was too late to turn back.

Five years later, while Berster was in Montreal looking for a way into the US, a German lawyer was being convicted of “conspiracy” for assisting his clients to maintain their identities. Kurt Groenwold, who had defended Red Army Faction leaders during the intervening years, was sentenced to two years in jail because his assistant had provided support for the suspects. Defending “enemies of the state” in anything but a perfunctory manner had become grounds for a conspiracy charge.

It was the first in a series of similar cases. The court had rejected Groenwold's argument that his clients had the right to determine the nature of their own defense. Such a defense, ruled the court, would "promote the ideas of the defendants." Those ideas were too dangerous to be heard.

The crackdown on left-leaning lawyers was no surprise. German attorneys had already been disbarred and indicted on similar charges. This served as a major incentive for Bill Kunstler to take Kristina's case after she was caught attempting to enter the US. Groenwold's conviction reminded him of what had happened to Kristina's first attorney.

After an early attempt to disbar lawyers in 1971, the federal parliament had passed amendments pointedly labeled "Lex Baader-Meinhof." They provided prosecutors with legal grounds to bar overly-aggressive lawyers, to limit the number of lawyers on a case, and to exclude defendants from their own trials if the court believed that "they willfully caused their own unfitness."

On March 11, 1975, Groenwold was excluded from the Baader-Meinhof trial. Three months later he was disbarred. He had "only been disbarred," he thought, "perhaps because of my wealthy family associations…I have been lucky for now." But criticism of the constitution or government had become a crime, and lawyers could now be jailed for objecting to prison conditions.

"Always the so-called liberals and social democrats come to power and make the state bigger and more powerful," noted Groenwold. "They think that if they do the work of the fascists, then the fascists will never come to power. But always, the fascists eventually come to power and then the social democrats are arrested by the very policemen they hired."

In 1978, the Bertrand Russell Tribunal concluded that constitutional rights in Germany were being seriously eroded by repressive laws, censorship, and a job ban. Perhaps those chilling effects were the price of Germany's preoccupation with order. In any case, dissent was no longer to be tolerated. The prescription for social crisis was prior censorship, confiscations, blacklisting, detention, the Radical Decree, and much more.

There was also an unanticipated side effect: a new generation of terrorists. Even Andreas Baader, who had been locked up for five years by the time former SS official Hans Martin Schleyer was murdered, disapproved of such actions. On the eve of Baader's own mysterious death from gunshot wounds, he told a chancellery official that he had never approved of, and would never approve of, terrorism in its current form of brutal actions against uninvolved citizens.

By this time, however, both the state and its enemies had gone beyond symbolic bombings and police riots. Despite protests from former Red Army supporters that terrorism provided an excuse for more repression, the violence of the new generation continued, capturing the imagination of some disaffected young people. Danny Cohn-Bendit, who had moved to Germany from France after the 1968 student uprising there, concluded that the Germany Left was trapped in a battle that was a product of German society itself.

None of this, of course, made it into the record during the Berster trial. It was one of several ironies in her situation. Rejecting the violence that had enveloped her homeland, she had left Germany only to be haunted by its specter, then exploited by the US intelligence

community to justify excessive counter-terrorist tactics.
Guilt by association was clearly a cheap shot. But it made good copy, and provided a flexible excuse for almost anything in response.

***Greg Guma**'s new book, Dons of Time, will be published in October by Fomite Press. Next in this story, a simulated siege and following the counter-terror money.*

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