

The "crimes" of the generation of '68

# How the student movement tried to expose the Nazi past of the German judiciary

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For weeks now, the uproar over the radical past of Foreign Minister Joschka Fischer and Environmental Minister Jürgen Trittin has been raging in Germany.

Interest has not waned since it was “uncovered” that—a quarter of a century ago—Fischer took part in a demonstration following the death of the RAF (Red Army Faction) members Baader, Meinhof and Ensslin in the high-security wing of Stammheim prison. In the course of the demonstration Fischer was involved in violent confrontations with the police. In addition, he once protested in Frankfurt against death penalties imposed by General Franco, the Spanish dictator, and in Algiers against the expulsion and terrorism suffered by Palestinians at the hands of the Israelis.

Fischer's critics are not satisfied with the fact that he has apologised for everything he did at the time and that Trittin—in his eagerness to repent—has shown remorse for sins he did not even commit.

It is not just conservative CSU (Christian Social Union) and CDU (Christian Democratic Union) politicians who think that the time has come for a “critical examination of the radical movement of '68 in general”. Also taking up the theme are ex-protagonists of the “Sponti” (radicals) and student movement—like Thomas Schmid (current political editor of the *Frankfurter Allgemeiner* newspaper), Cora Stephan (commentator for *Die Welt*) and Götz Aly (current editor of the *Berliner Zeitung*)—who are all joining the fray against their former co-thinkers with the hysterical zeal of the repentant sinner.

What were these crimes—attributed to a whole generation? People born after the late 1960s and early 1970s will inevitably want to know.

If one momentarily puts aside the dark innuendoes of “criminal violence” and “attacks on the democratic rule of law” being spread in the campaign against the Green Party ministers, and examines instead the actual events of 1968, then the causes and goals of the protest movement of the time, as well as the real aims of the current debate, become clear.

One event that occurred in Frankfurt will serve as a clarifying example of what happened more or less throughout Germany—both in the large cities and in the provinces.

On April 11, 1968 an attempt was made to murder the student leader, Rudi Dutschke. For weeks prior to this, the *Bild* newspaper had carried out a concerted hate campaign against the student movement and its leaders, publishing pictures of Dutschke in the style of mug shots and appealing to readers with slogans such as “Stop Dutschke now or there will be civil war!” and “Not all the dirty work should be left to the police!”

Dutschke was severely wounded. He survived the assassination attempt but succumbed to its long-term effects 11 years later. In the days following the attack, there were protests against the Springer concern, publisher of *Bild*, in many German cities. Students set up barricades in the

streets to try to prevent the delivery of the *Bild* newspaper. The Societas print works in Frankfurt-Main, where a regional edition of *Bild* was printed, reacted by suing for compensation in the amount of 72,000 marks.

The following November the trial was due to take place in Frankfurt's Civil Chamber II, under the chairmanship of Hans-Werner Giesecke, director of the County Court. However, shortly before the trial, the Frankfurt SDS student organisation distributed a leaflet entitled “The Springer Trial and its Judges.” On one side, Giesecke's career in the Third Reich and after 1945 was outlined, on the other was printed a death sentence he had delivered in his capacity as a Nazi wartime judge.

As a judge, Giesecke had belonged to the team of thugs that sent some 50,000 people to their deaths merely because they had refused to undertake military service, or had incriminated themselves as non-Ayrians by committing banal offences such as stealing something to eat, expressing pacifist sentiments or telling jokes critical of Hitler. Giesecke was personally responsible for over 100 death sentences. Of these, 72 can still be substantiated on the basis of surviving records. Eyewitnesses have given accounts of a number of particularly inhuman cases that reveal Giesecke's sadistic amusement over the agonising deaths of his victims.

A milestone in his career was reached in September 1939. A week after the war began, he obtained—as wartime court counsel and prosecutor—the warrant for the execution of 38 Polish workers. To the astonishment of their attackers, these workers had bitterly defended the Danzig post office—at the time under the jurisdiction of the Polish government—during a violent raid by the German police. Only after some hours, during which a number of their fellow workers had been killed and others badly wounded, they submitted to the superior forces ranged against them—only to be immediately arrested and sentenced to death a few days later.

They were executed on October 5, 1939. The chairman of the wartime tribunal was a certain Dr. Bode who—in the view of the Nazi leadership—qualified himself for the position of chief public prosecutor in Danzig as a result of the death sentences he awarded in this case. After the war he went on to become chairman of the senate in Bremen.

German Nobel Prize-winning author Günter Grass gave an account of the battle for the Danzig post office in his novel *The Tin Drum*, thereby honouring the memory of the Polish workers in world literature. The German judiciary also paid tribute to the event—in its own peculiar way. Legal proceedings were repeatedly undertaken against Dr. Bode by the descendants of the murdered postal workers, and official inquiries were initiated against him and Giesecke. However, these were always rejected by the responsible state prosecutors and judges—for the most part, old colleagues of the two from the Nazi era—in Bremen, Lübeck, Mölln and Frankfurt-Main.

Bode and Giesecke were certainly not exceptional cases, the beneficiaries of peculiar, local conditions prevailing in Frankfurt or

Bremen. Not a single judge from the National Socialist (Nazi) special courts or people's courts, nor any state prosecutor or senior judicial officer, has ever been called to account. On the contrary, Hans Globke—author of the official commentary to Hitler's Nuremberg race laws of 1936—became head of the German chancellery and the most important advisor to the first post-war chancellor, Konrad Adenauer. Theodor Maunz—an authoritative constitutional lawyer under Hitler—wrote the first and still authoritative commentary on the German Constitution. He did this together with his pupil, Roman Herzog, who later became federal president. At precisely the same time, Maunz was acting as advisor to the self-confessed Hitler apologist, Gerhard Frey, and supporting him in press articles. Frey is the founder of the extreme right-wing German People's Union (DVU) and publisher of the *German National and Soldiers' Newspaper*.

As in all other academic disciplines, the most important chairs in the field of constitutional and criminal law after 1945 were occupied by professors from the era of National Socialism, who thereby placed their stamp on life and learning in German universities throughout the 1950s and 1960s.

Even the first head of the “Central Authority for the Investigation of Nazi Crimes”—established in Ludwigsburg in 1958—was a senior public prosecutor who had been a member not only of the Nazi Party, but also of the SA (Hitler's “brown shirt” storm troopers).

The Federal Supreme Court, the county courts and higher county courts were securely under the control of former National Socialist judges, who thus enforced an institutional guarantee that their own crimes and those of their judicial colleagues and other National Socialist civil servants would never be called to account. A federal court awarded the widow of Freisler, the chairman of the Nazi People's Court, the highest possible civil servant widow's pension on the grounds that her husband would certainly have assumed a very high position in the Federal Republic, had he not lost his life in a bomb attack during the war.

All sectors of the state apparatus manifested the same seamless links with the authorities and academic institutions of the Third Reich as did the judiciary. In 1952, two thirds of the senior public servants in the Foreign Affairs Department were former Nazi Party members; among the department heads the proportion was as high as four fifths. Formerly active members of the Nazi Party—Heinrich Lübke and Kurt-Georg Kiesinger—became federal president and federal chancellor respectively.

It was only in the 1960s that the first major revelations and debates about the Holocaust occurred, stimulated among other things by the Adolf Eichmann trial and the widely reported Auschwitz tribunal carried out in Frankfurt-Main. Young people, born either during or after the war, were deeply shocked at the gruesome crimes now being exposed—through eyewitness testimonies—to a wider public, after almost 20 years of wilful silence and cover-up.

Against the background of Germany's first major economic crisis in the post-war era and an explosive social upheaval in the whole of Europe, the protest of young people flared up over the succeeding years, and was not restricted to their own social situation or the parlous state of education and vocational training. The target of their attacks was also the undemocratic traditions of German society in general, and the fascist past of its officeholders and dignitaries in particular.

The Frankfurt leaflet directed against the wartime judge, Giesecke, was only one of hundreds suddenly appearing all over the country. Long respected dignitaries such as lord mayors, county directors or university professors were exposed as former supporters of the Hitler state. High school teachers were revealed to be former Nazi cadres, gym teachers to be former SS navy sergeants still venting their rage over the loss of the war against their “soft” students.

The desire by broad layers of the population to come to grips with the crimes and criminals of National Socialism and to effect a democratic

renewal of society from top to bottom was strongly echoed in the trade unions. After the “grand coalition” government of the conservative CDU/CSU and the SPD (Social Democratic Party of Germany) had forced the infamous “emergency laws” through parliament, the biggest mass demonstrations by the trade unions since 1945 took place.

But the leaders of this movement and its programme fell far short of doing justice to the emergent democratic aspirations, let alone helping the people achieve their immediate goals. Notwithstanding all their verbal radicalism, the leaders of the protest movement oriented themselves politically towards either the social democratic bureaucracy of the SPD and the trade unions, or the ruling Stalinist bureaucracy in the GDR (German Democratic Republic—East Germany), or the Stalinist regime in the Soviet Union, that is, towards the deadly enemies of even the slightest stirrings among workers and youth toward their political independence from the bourgeoisie.

As a result, the social unrest of 1967-68 was soon dispelled through the tactic of the carrot and the stick. Willy Brandt—who had helped obtain a majority in parliament for the “emergency laws” as well as for a retrospective amnesty for all those who masterminded the crimes of the National Socialists—led the 1969 election campaign with the slogan “Let's dare to have more democracy!”

He was thereby successful in getting the majority of youth and workers behind him and the SPD. Then, in addition to a few social reforms, the new Social Democratic Party-Free Democratic Party coalition government granted some democratic freedoms to the lowest levels of society in order to integrate the rebellious youth back into the state. At the same time—under the pretext of “the fight against terrorism”—the state, the judiciary and the army were empowered as never before to suppress a new eruption of mass protest.

Under these conditions, it is no wonder that the radical political mood of 1968 soon gave way to a sense of depression and frustration. In the 1970s, the Frankfurt street battles between squatters and “Spontis” on one side and the police on the other merely represented the final degenerate stage in the decline of a spontaneous movement—often enough provoked by adventurous and shady elements, informers and agents provocateurs, whose role was to provide an excuse for the state to embark on a new round of armament and repression.

But what happened to the Nazi criminals, judges and professors who had been pilloried in the years before? Not a great deal. In Giesecke's case, the public uproar occasioned by the leaflet forced the court to have the trial conducted under another chairmanship. But the revelations had no consequences at all for the county court director himself. He remained in office unmolested, reported voluntarily as usual as a stand-by colonel each year for military exercises conducted by the national army, and also continued to participate in the annual reunions of National Socialist judges. As in past years, it was there that he came into contact with (among others) the district judge, Dr. Lattmann, who—as member of the supreme command of Hitler's army (OKH)—had promoted Giesecke in the 1930s and 1940s, counselled him about the sentencing of the Polish postal workers, and in the 1960s stood up in his support during investigative proceedings in Saxony concerning the raid on the Danzig post office. There he also met up with Dr. Erich Mantel, a judge in the Federal Supreme Court, who as a senior officer in the supreme command had refused a plea for clemency from the condemned Danzig postal workers and thus gave the official seal to their execution.

In 1971, Giesecke died shortly after retiring at the age of 64. Bode did not die until 1979 when he was 84. Most of the victims of the two judges were younger than 25 at the time of their execution.

Legal battles concerning the deeds of these jurists were drawn out over decades, until “political realists” in Germany's governing SPD-Green coalition finally saw a chance to rid the world of the affair once and for all. In 1996 a court in Lübeck conceded that the Danzig Poles had a right

to have their trials re-examined and deemed the wartime judges—who had since died—to have committed gross perversions of justice in issuing the death sentences. After that, federal authorities subordinate to the German government felt compelled to attend to legal demands for compensation—pending for decades—from the victims' relatives. They did this toward the end of last October in the cynical and miserly fashion that typifies Red-Green politics: final lump sum payments of 10,000 marks for every widow and 5,000 marks for every child.

Hans-Jürgen Groth and Andrzej Remin, representatives of the relatives' lawyers, explained that the relatives would either accept this settlement and content themselves with the financial arrangement, or the Federal Republic of Germany—as successor to the Third Reich—would drag out the legal battle until all of the claimants had passed away.

Almost 60 years to the day after the event, the Danzig mass execution was thus settled legally and financially—at least in the eyes of the German judiciary and government.

It is worth examining the reaction of former '68 leaders, now playing the role of inquisitors of the movement, to the attempt to settle the score with fascist traditions and criminals—an attempt which was so earnestly made at the time, but so obviously failed.

Thomas Schmid—Joschka Fischer's comrade-in-arms in the Frankfurt “revolutionary struggle” of the 1970s—speaks of a “masquerade” in which the violence “led, not away from the fathers, but back to them.” A leaflet produced by the Berlin SDS in 1968 induces him to offer the following diagnosis: “In the mad rush to root out every trace of Nazism, there was a return to the “final battle” mentality that the Nazis had pushed to such monstrous extremes” (“A German Miracle”, *Frankfurter Allgemeine Zeitung*, February 3, 2001).

A similar view of the student movement is expressed by Götz Aly, who 10 years ago published an extensive historical study of the mass extermination of the Jews in eastern Europe and the Soviet Union. Aly suggests that the students—with their anti-fascist and anti-imperialist slogans—“undoubtedly linked up with the thinking of their Nazi parents” in a “weird hermaphroditic paradox of their experience of continuity and fracture.” Aly continues: “But the National Socialist students, too, had displayed this double-sidedness in their struggles between 1930 and 1933. The musty smell of the Thousand Year Reich. Unfortunately with success. And so their energies aimed at improving the world became a concrete utopia” (“The Rest is Silence”, *Berliner Zeitung*, January 8, 2001).

And Hans-Christian Ströbele—the Green politician who up to now has been almost the only one in the entire debate to recall the incredible escalation of state violence against demonstrators and innocent citizens in the 1960s and 1970s—advised Aly to give his recollections the same title as that of the old Nazi, Franz Schönhuber, who entitled his memoirs of Hitler's SS storm-troopers *I Was There*.

The equation of democratic strivings with National Socialist terror! Does one really have to look far to discover the political trajectory of such a “debate”?

The following literature and sources used by the author for this article are recommended for further reading:

*Dieter Schenk, Die Post von Danzig—Geschichte eines deutschen Justizmordes* (Hamburg, 1995) . A thoroughly researched, detailed and alarming documentation, not only about Danzig in 1939, but also about the careers of Giesecke, Bode and many of their colleagues before and after 1945.

*Heinrich Hannover, Die Republik vor Gericht 1954-1974. Erinnerungen eines unbequemen Rechtsanwalts* (Berlin, 1998). With its wealth of precise information and vivid descriptions by a contemporary witness who took an active part in the events as a democratic attorney, this work is not only an exciting commentary on post-war history, it is also a genuine reference book on the German political judiciary.

*Jörg Friedrich, Die kalte Amnestie—NS-Täter in der Bundesrepublik*

(Frankfurt am Main, 1984).

*Ingo Müller, Furchtbare Juristen—Die unbewältigte Vergangenheit unserer Justiz.* (Munich, 1989).

(The two paperbacks listed above document in detail the integration of those responsible for the holocaust into the “democratic constitutional state” after 1945.)

*Gegen Rassismus und Kriegsgefahr. Resolutionen und Dokumente der Frankfurter Konferenz vom 5./6. Dezember 1992.* The conference was organised by the Bund Sozialistischer Arbeiter, predecessor of the Partei für Soziale Gleichheit, the German section of the Fourth International. Obtainable from the *Arbeiterpresse Verlag*, Essen, Germany.



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