

# Ferdinand von Schirach's *Enemies*: German public television puts police torture up for consideration

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ARD, the German public television network, began the new year with a controversial programme examining the value of police using torture to compel suspects to confess.

The network went to considerable lengths, broadcasting *Enemies* (*Feinde*) in two 90-minute parts. The first part, *Against Time*, was shown in prime time on a Sunday evening, followed by a half-hour “documentary” on the issue of “law or justice,” during which a selected audience of “parents, police officers and lawyers” was allowed to vote on the verdict reached in the film. A second part, *The Confession*, was aired afterward.

To ensure maximum viewership, the film was broadcast simultaneously on a number of channels. Additional coverage of this “television event” included a “Web Special” intended to “focus on the legal issues,” another so-called documentary featuring various talking heads, including well-known writer and lawyer Ferdinand von Schirach, who wrote the original story, plus the film’s leading actors Klaus Maria Brandauer and Bjarne Mädel.

The plot of *Enemies* is as follows: The bodyguard of a wealthy family kidnaps their daughter, in order to extort money. He leaves no detectable evidence. The police investigator, Inspector Peter Nadler (Mädel), intuitively concludes that the bodyguard is guilty of the kidnapping, but the latter denies any involvement under interrogation. Nadler applies to his police chief for permission to torture the man under medical supervision. The police chief refuses the request. The inspector then subjects the kidnapper to torture by waterboarding. The kidnapper confesses and reveals the girl’s hiding place but, as it turns out, she is already dead.

In court, a contest takes place between Nadler and the kidnapper’s defence attorney, Konrad Biegler (Brandauer). At first, the two argue about whether “rescue torture” (the inspector emphasises that his aim was to quickly learn the girl’s whereabouts in order to save her life) was appropriate, but Biegler eventually elicits the confession that the policeman had indeed tortured the kidnapper, the “guilty party.” As a result of the inspector’s admission the bodyguard is acquitted after the judge dismisses his confession exacted illegally under torture.

The two parts of the film do not differ significantly: *Against Time* takes the point of view of the policeman. Mainly through the use of camera angles, it aims to convince the audience that the arrogant and cruel-looking bodyguard is the culprit, although there is no concrete evidence of his guilt.

*The Confession* is supposed to adopt the perspective of the defence attorney and depicts the lawyer as a sedate, refined member of Germany’s educated upper class, a man fond of good food and drink.

In the course of the film, he comes into conflict with his wife, who knows the family of the kidnapped girl.

Following the films’ showing, the German television network asked its selected audience whether the verdict (acquittal of the kidnapper) was “just.” The result: the majority of parents voted no along with a majority of police officers. The majority of lawyers agreed with the verdict.

The author of the script, von Schirach, together with those responsible for the production, makes no secret of the fact that the film is based on a real incident that took place almost 20 years ago: the kidnapping and murder of 11-year-old Jakob von Metzler, a banker’s son, by Magnus Gäfgen, a law student who knew the family.

Based on this, it is all the more remarkable that the films’ considerable variance from the facts of that case is not acknowledged, let alone explained. It was the vice-president of the Frankfurt police, Wolfgang Daschner, who personally argued in a memo that Gäfgen should be forced to testify about Jakob’s whereabouts by inflicting pain under medical supervision. The threat itself was sufficient to illicit Gäfgen’s confession. Subsequently, Gäfgen repeated his testimony in court, when the threat of torture had already been revealed.

The kidnapper later received compensation for the police torture threat. The compensation did not change his conviction. The police officer who threatened to torture Gäfgen and his superior, Daschner, who had given the order, were found guilty of coercion (but not of the more serious offence of illegally eliciting a statement). They were both ordered to pay small fines. The court registered their honourable conduct and issued a warning with a suspended sentence without probation. The verdict meant the two cops did not have a criminal record and could continue with their official careers. The sentence amounted to a virtual acquittal.

Unlike the protagonist in von Schirach’s, Daschner made no attempt to conceal his recommendation to use torture. In the movie, the fictitious police inspector admits that torture was forbidden under all circumstances.

In the Frankfurt kidnapping case, Daschner received widespread political support, not only from the tabloid press, but also from the state’s premier, Roland Koch (Christian Democratic Union, CDU), the federal justice minister Brigitte Zypries (Social Democratic Party, PD) and the chairman of the Association of Judges and subsequent justice minister for the state of Saxony, Geert Mackenrooth (CDU). Daschner also received backing from leading representatives of the Association of German Criminal Police Officers and various law

professors, as well as the co-founder of the Left Party, Oskar Lafontaine. This took place at a time when it was already known the CIA was using waterboarding and other forms of torture with the full approval of the Bush administration, all in the name of the “war on terror.”

There is no indication in *Enemies* that some of the highest representatives of the state, legal and political elite in Germany argued that the police should be allowed to use torture “in exceptional cases...in order to save innocent human lives.”

It should be noted that von Schirach himself is an opponent of torture. He allows the fictional defence attorney, Biegler, to present various valid arguments against it: What constitutes an “exceptional case” in which torture is allowed? How far should the state be allowed to go in a case ostensibly calling for “rescue torture”?

These considerations, however, are largely nullified in the film—in both portions—by the fact that the tortured person is clearly identified as guilty and the police inspector, who desperately wants to save the life of an innocent child, has only the alternatives of torture or “receiving no answer,” as the film’s lawyer, Biegler, succinctly states.

In a number of interviews, von Schirach emphasises that his aim was to allow the viewer to see different perspectives and question his or her own position. Within this context, it was “not bad” if the viewer sided with the policeman. In his many books and dramatisations, von Schirach treats legal issues primarily from the standpoint of the conflict between morality and law. As is the case in countless other police films, the inspector, Nadler, is presented as a “fighter for the common good,” prevented from doing the right thing by legal” restraints, rather than as a representative of state power.

The outcome of the vote staged by the television network—i.e., whether it is justifiable in this concrete case to exclude the use of torture—is not really surprising. The prohibition of torture is presented in the two-part film as essentially immoral and a means of illegitimately protecting offenders, preventing the police from saving innocent lives and punishing those guilty.

In a comment in *Der Spiegel* magazine, Thomas Fischer, a former judge in the criminal division of the Federal Supreme Court and author of a standard work on the criminal code, sharply criticised the television programme. He wrote:

“Nor is it a question of whether suffering or pain may be inflicted on perpetrators. The question that actually arises is easy to answer: any reader or viewer could imagine that a police inspector might have the ‘feeling’ that a suspect was a member of a gang of robbers or that his son had sexually abused a child. Would it be morally okay for the police officer to smash the suspect’s little toe with a hammer to find out if he knows anything pertinent? If not: why not? ... So it’s not just about murderer X or child abductor Y in movies and case histories, but it quite directly concerns every citizen. Anyone prepared to ‘morally’ allow the torture of Mr. G, who is suspected of murder, would also have to agree that he himself, his spouse or child could also be tortured. ... What is at stake is the constitution of the state and the foundations of democracy.”

The *World Socialist Web Site* wrote the following about the Gäfgen/Daschner case almost 20 years ago: “Without doubt, it is a ‘difficult situation’ and even a ‘provocation’ for interrogating police officers when a defendant exercises his right to remain silent. All those involved in the history of torture up until today have invariably argued that their motives were ‘honourable’ and that a ‘difficult’ or even ‘exceptional situation’ justified its use. The defence of the ‘only true faith’ against heresy and devilry, the protection of state and

nation against communism or separatism, the saving of human lives from terrorism and criminality, based on all these and similar ‘honourable’ motives—torturers worldwide have always ‘subjectively’ felt justified in what they do.”

The WSWs warned at the time: “His superior, the Frankfurt chief of police, insists that Daschner acted in an ‘emergency situation.’ Legally this is untenable, since Daschner did not find himself in an exceptional situation, but in one covered explicitly by police regulations and the law. A police officer is not permitted to act in the same way as might a desperate family member, who by chance ended up in a life-threatening situation and could not expect assistance from the state.”

Nevertheless, most of Daschner’s defenders argue as though preliminary investigations in serious criminal offences where human lives are at stake were a completely new phenomenon, in which legislators had never considered the prohibition of torture and arbitrary action.

On the other hand, what is relatively new from a historical standpoint is the limitation of the state’s recourse to violence against alleged or actual criminals—a product of the Enlightenment, democratic revolutions and the workers’ movement. The widespread acceptance of this concept, especially in western Europe and the US, was deepened by the experiences of the fascist dictatorships in the Second World War.

Today, under conditions where the world is being re-colonised in a series of brutal wars of conquest and divided up by the Western powers, achievements such as the ban on torture, democratic norms and the rule of law are increasingly regarded as outdated within ruling circles.

These lessons are more relevant today than ever before. In the course of the coronavirus pandemic, the German ruling elite has reached the point where it is permitting several hundred or even a thousand people to die in agony in intensive care units every day, as it “weighs up” its short-term economic interests and the lives it is sacrificing. At the same time, it is rearming the German military and preparing for new global wars on a much larger scale than ever.

In this situation, a public television station has organised a supposedly “open discussion” on whether the most elementary democratic rights, such as the ban on torture, remain morally justifiable. In the film, only one person is shown to be acting morally: the policeman who tortures a suspect. This must be taken as a very serious warning.



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