

**THE RED ARMY FACTION IN PRISON:  
NARRATIVES OF ISOLATION AND RESISTANCE 1970-1995**

**FABIENNE EMMERICH LLB, LLM, MA**

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## **Abstract**

The thesis is a qualitative study that analyses the personal narratives of isolation and resistance of former Baader-Meinhof prisoners (RAF) in the period 1970-1995 within the context of imprisonment and penalty in Germany.

The thesis constructs a picture of isolation and resistance through these individual narratives that illustrate how a state policy to control the communication of individual RAF prisoners was translated into techniques of immobilization –solitary confinement- and surveillance –searches, censorship and monitoring-. The narratives recount how these techniques, though central to security and order in prison, were applied and adapted in order to disable the group both within prison and on the outside, and to diminish the (political) resolve of the individual prisoner. The narratives also give insight into individual and collective resistance to isolation, namely the rationales of individual survival and striving for community in the pursuit of collective detention of RAF prisoners.

The thesis contributes to the literature on RAF imprisonment by framing the lived experiences of former women and men RAF prisoners and the meanings they attach to isolation and resistance within a power and gendered dimensions of prison life and penalty. The study also hopes to contribute wider discussions on imprisonment and penalty in Germany, in particular the governance of women and men prisoners who are constructed as dangerous.

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Finally, to Marc I dedicate this study.

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## List of Translations

Local Court/ District Court	Amtsgericht
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Higher State Court/	Oberlandesgericht/ Kammergericht
Higher Regional Court	
Federal Court of Justice	Bundesgerichtshof
Federal Constitutional Court	Bundesverfassungsgericht
Penal Code	Strafgesetzbuch
Criminal Procedure Code	Strafprozessordnung
Prison Act 1976	Strafvollzugsgesetz
Prohibition of Contact Act 1977	Kontaktsperregesetz
Federal Criminal Police Office	Bundeskriminalamt
State Criminal Police Office	Landeskriminalamt
Federal Office for the Protection of the Constitution	Bundesamt für Verfassungsschutz

## Introduction

This thesis is about the experiences of imprisonment of former members of the Red Army Faction (RAF) in the Federal Republic of Germany (henceforth Germany) between 1970-1995. More specifically the research explores the prison life stories of five former women and men RAF prisoners, who served long sentences, and one family member who served time as a sympathiser. They are very subjective accounts located within a violent conflict that polarised German society, which brought about a fierce conflict about the nature and limits of democracy and a how Germans confronted their recent past (*Vergangenheitsbewältigung*).

### 1. A brief history of the RAF

The RAF, also known as the Baader Meinhof Group, were young women and men radicalised in the 1960s during the student protests and in the 1970s during the campaigns against the conditions of detention of RAF prisoners ('the Anti-torture Committees'). The RAF and other militant groups, most notably the June 2nd Movement (J2M),<sup>1</sup> were a minority within the New Left in Germany (known as the extraparliamentary opposition, APO) and operated at its fringes. The RAF sought to overthrow the German government through an 'armed struggle' modelled on the guerilla campaigns in South America. This 'armed struggle' began proper in 1970 with the creation of the RAF.<sup>2</sup> The first co-ordinated and sustained wave of brutality were a series of bombings in May 1972. Bombs were detonated in two United States Army headquarters, in Frankfurt and Heidelberg, as well as the police headquarters in Augsburg and the headquarters of the State Criminal Police Office (*Landeskriminalamt*) in Munich, and the offices of the Springer publishing house in Hamburg. This resulted a large number of casualties with four members of the United States Armed Forces killed and eighteen injured, seventeen injured at the

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<sup>1</sup> The J2M was a left-wing urban guerrilla group that engaged in a number of kidnappings throughout the 1970s. The name refers to the anniversary of the death of the student Benno Ohnesorg, who was shot by a police officer in 1967 during the demonstration against the visit of the Shah of Iran.

Other groups included the Socialist Patient Collective, a militant group of psychiatric patients; the Red Cells founded in 1973; and various other smaller, informal 'urban guerilla' groups.

<sup>2</sup> For a chronology of the key events, see Appendix 1.

police headquarters and thirty-eight people working at the Springer offices were also hurt. Following the attacks the police initiated a massive co-ordinated police search which relatively quickly resulted in the arrest of the key figures of the RAF. The arrest of Ulrike Meinhof on 15 June 1972 completed the capture of the RAF leadership, Andreas Baader and Gudrun Ensslin, and other important figures, Holger Meins, Jan-Carl Raspe, and Brigitte Mohnhaupt.

From then on the politics of the RAF became one of sustaining the 'armed struggle' both from within prison and on the outside. Yet, it became a conflict that concentrated on the prisoners, the fight against extremely restrictive conditions of confinement through public protest on the outside and a series of collective hunger strikes on the inside, and to secure the prisoners' release through violent means.<sup>3</sup> What became known as the second generation of the RAF and also the J2M conducted a series of kidnappings and assassinations leading up to and including the high point of the violence in the autumn of 1977. After the killing of the president of the Higher State Court of Berlin, Günter von Drenkman, in a supposedly failed attempt to kidnap him in 1974, in a subsequent kidnapping in early 1975 members of J2M were successful in securing the release of four prisoners. This time the Berlin mayoral candidate for the Christian Democratic Party (CDU), Peter Lorenz, was set free after the prisoners were put on a plane to South Jemen. This initial 'success' was followed by more attempts to free the prisoners, yet these proved more deadly. In April 1975 the German Embassy in Stockholm was raided by members of the RAF and the embassy's staff were taken hostage. After the government failed to yield to their demand that twenty six prisoners be released, the hostage takers shot two of the embassy staff before they were overwhelmed and arrested.

A year after the suicide in prison in May 1976 of Ulrike Meinhof, one of the RAF leaders, a group of RAF members assassinated the Chief Federal Prosecutor and his driver, and wounded a police officer. Following the convictions of the remaining RAF leaders, Andreas Baader, Gudrun Ensslin and Jan-Carl Raspe, and their sentencing to life imprisonment, the violence increased. In July 1977 a further failed kidnapping led to the killing of the Chairman of the Board of Dresdner Bank, Jürgen Ponto. The height of the conflict commenced in September 1977 with the kidnapping of Hans-Martin Schleyer, the

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<sup>3</sup> See Appendix 2 for a chronology of the hunger strikes.

president of both the German Employer's Association and the Federation of German Industry, to secure the release of eleven prisoners including the RAF leadership and to secure funds and a plane to fly them out of the country. What became known as the German Autumn, ended with Schleyer's death six weeks later and with officers from a special counter-terrorism police unit (*GSG-9*) freeing the hostages from a Lufthansa plane that had been hijacked by Palestinian militants. On the same day, 18 October 1977, the RAF leaders were found dead in their cells in the high security unit of Stuttgart-Stammheim prison; they appeared to have committed suicide.

The level of brutality and violence did not cease with death of the founding leadership and the imprisonment of the majority of first and second generation RAF members. Throughout the 1980s and early 1990s the RAF and other groups continued with a wave of assassinations and bombings. In 1981 Heinz Herbert Karry, the Minister for the Economy in Hesse, was shot by the Revolutionary Cells. That same year a detonated bomb injured twenty people at the European Headquarters of the United States Air Force and there was a separate attack on General Frederick James Kroesen, the Commanding General of the United States Army Europe. Four years later Ernst Zimmermann, the Chairman of the Board of *Motoren - und Turbinen - Union* (MTU), was shot in his home. Also that same year in 1985 a United States Soldier Edward Pimental was shot and a bomb killed two further Americans at the United States military base at Frankfurt/Main Airport. The following year a car bomb killed Karl-Heinz Beckurts, a member of the Board of Directors of Siemens, and his driver near Munich. That same year Gerold von Braunmühl, a senior civil servant in the Foreign Office, was shot near his home in Bonn. In 1989, the year of the fall of the Berlin Wall, Alfred Herrhausen, a senior board member for Deutsche Bank, was killed in his car through the detonation of an explosive device. Two years later, Detlef Carsten Rohwedder, the chief executive of the Treuhandanstalt, was shot by a sniper on the banks of the Rhine in Dusseldorf.<sup>4</sup> Only in 1992, when Germany had already been unified for two years, did the RAF declare a cessation of violence. They formally disbanded in 1998.

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<sup>4</sup> The *Treuhandanstalt* was 'a government-owned but independent trust agency for the privatisation of eastern German industry with wide powers of disposal'; see Encyclopaedia Britannica eb.com, (<http://www.britannica.com/EBchecked/topic/604439/Treuhandanstalt>) (accessed 28.12.2010.). For a brief overview see 'Treuhandanstalt', Bundeszentrale für Politische Bildung, (<http://www.bpb.de/nachschlagen/lexika/handwoerterbuch-politisches-system/40389/treuhandanstalt?p=all>) (accessed 13.01.2013).

In this historical account I have focused purposefully on the violence of the RAF and on its victims. Although the violence was by no means one-sided,<sup>5</sup> it is significant that at this early stage the deadly destructiveness of the 'armed struggle' is depicted in its full extent, precisely because the focus of this study are the prison stories of former RAF members.<sup>6</sup>

## 2. Democracy and protest in Germany: the context of RAF imprisonment

Indeed, ... West German's very inability to correctly assess conditions in FRG was not a product of hysteria - a word frequently used to describe the German Autumn - but rather of immanently understandable uncertainties about democracy's viability.<sup>7</sup>

Before I proceed with a review of the literature on the imprisonment of the RAF, it is important to broaden the scope to include the debates on democracy and protest in Germany throughout the 1960s and 1970s. Post-war Germany was distinct from its European neighbours for two key reasons; society had to bear the responsibility for the atrocities perpetrated during the Holocaust and it had to deal with the fact of a post-war division into two opposing states.<sup>8</sup> This division was formalised in 1961 with the start of the construction of the Berlin Wall by the German Democratic Republic.

In the 1950s life in Germany, that is West Germany, was marked by an increasing prosperity through what became known as the economic miracle and relative political stability.<sup>9</sup> Yet, this superficial harmony of the immediate post-war decade masked a wide-spread public apathy towards political participation and conflict.<sup>10</sup> At the end of his seminal study *Society and Democracy in Germany*, Dahrendorf analyses the prospects of the Germany of the 1960s becoming a liberal democracy.<sup>11</sup>

<sup>5</sup> For instance a number of fugitives were shot by the police; see J. Varon, *Bringing the War Home: The Weather Underground, the Red Army Faction, and Revolutionary Violence in the Sixties and Seventies* (University of California Press, Berkeley, 2004) 11.

<sup>6</sup> For all the dead, Hans-Peter Feldmann, a renowned visual artist, in his book entitled 'Die Toten' compiled the images of everyone who died as a result of terror and counter-terrorism violence 1967-93; see H. P. Feldmann, 'Die Toten, 1998' in K. Biesenbach (ed.) *Zur Vorstellung des Terrors: Die RAF* (Vol. 2, Steidl/ Institute for Contemporary Art, Berlin, 2005) 25-29.

<sup>7</sup> Hanshew, *Terror and Democracy in West Germany*, 2012) 15.

<sup>8</sup> M. Fulbrook, *German National Identity after the Holocaust* (Polity Press, Cambridge, 1999), 19.

<sup>9</sup> E. L. Dulles, *One Germany or Two: The Struggle at the Heart of Europe* (Hoover Institution Press, Stanford University, Stanford, 1970), 159.

<sup>10</sup> The 1950s were not completely devoid of political dissent, protest did emerge around the re-armament question. This early peace movement and other groups did not rupture or challenge the dominant culture in a serious way; see S. von Dirke, 'All Power to the Imagination': The West German Counterculture from the Student Movement to the Greens (University of Nebraska Press, Lincoln and London, 1997).

<sup>11</sup> R. Dahrendorf, *Society and Democracy in Germany* (Weidenfeld and Nicolson Ltd, London, 1968).



At some points, the qualitative economic miracle has furnished West German society with structures that are capable of supporting the constitution of liberty. However, a conclusion of this kind can be made only with great caution. The chances of liberal democracy in a German society have never been as great as they are in the German Federal Republic.<sup>12</sup>

A number of barriers to achieving a lived, liberal democracy existed. For one a lack of appetite for conflict was evident among many Germans on account of the unpopularity of debate, disputes and strikes. Rather there seemed to be an unrevealed longing to identify the one or the few who had all the answers. Dahrendorf calls this a 'cartel of anxiety': '[t]he anxiety of those who miss a tone-setting elite and therefore close their ranks uncertainly in order to preserve at least the status quo, is a result of the German past'.<sup>13</sup> This led to a further limitation, namely an unintended and involuntary 'passive authoritarianism'.

This is the democracy without liberty under the rule of a political class that is, because of lack of participation and the absence of stable structures of social and political interest, pushed unwillingly into a position of undisputed leadership. The boredom of politics, which does not by-pass the Federal Republic, is not merely ancient minority, but also modern apathy.<sup>14</sup>

The clash of old values with the new technological and scientific reality of economic progress was another hindrance; this was reflected in an education system that was stuck in old images, values and structures. A final obstacle to the evolution of a culture of debate and conflict was that key groups in society still laid claim to authoritative 'speech'; these included public administration, the judiciary, the military, and also to varying extent the church. At the time the majority of German society were simply not convinced of the necessity of dissent and protest to a functioning democracy.

Persistent faultings and specifically modern tendencies combine to create a political system that is authoritarian in effect if not in intention. A cartel of anxiety rules despite itself; the great majority of people deliberately renounces participation in the political process. Nothing essentially new happens, and the administration of the old does not arouse the interest of those involved. Parliamentary institutions continue to exist without being filled with the life for which they were designed. In other respects, too, the ritual of democratic procedure is respected. But it has become mere ritual, unsupported by either a social or a political reality. If one considers the fundamental historicity of all things

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<sup>12</sup> Dahrendorf, *Society and Democracy in Germany*, 442.

<sup>13</sup> Dahrendorf, *Society and Democracy in Germany*, 444.

<sup>14</sup> Dahrendorf, *Society and Democracy in Germany*, 444.

social, and the fact that the administration of the same never means the same for very long, one might suspect that this modern authoritarianism cannot be stable as such either.<sup>15</sup>

By 1968, with the emergence of the student movement, a process was put in motion that challenged the wide-spread political apathy of the public. A culture of protest emerged and gained momentum throughout the 1970s - the new Left's refusal to distance itself categorically from the RAF led to accusations of sympathizing - and in the 1980s the surfacing of a politically influential counterculture was the result of many within the New Left who were silenced as 'terrorist sympathizers' finding ways of political participation in the Alternative List/Greens Party, in media, arts, academia as well as the emergence of new social movements such as the women's movement and the environmental movement.<sup>16</sup> The protest movements, the New Left and those that came out of it, and the debates they forced into the public domain were instrumental in this development of increased participation and reform of the political culture and they were a part of Germany's 'growing pains on the road to political maturity'.<sup>17</sup>

This was by far more than a bumpy road, as the opening paragraphs to this chapter have highlighted. The protest of the 1960s and the violence and terror of the 1970s deeply polarised society between those who understood protest as a vehicle for democratic reform and those who saw it as a threat to democracy and its constitutional order.<sup>18</sup> These opposing viewpoints need to be understood in the context of people's fears linked to Germany's recent history; the political instability and strife of the Weimar years and the subsequent period of fascist dictatorship during the Third Reich that ended in 1945 with Germany's capitulation. Therefore people on all sides could profess to be defending

<sup>15</sup> Dahrendorf, *Society and Democracy in Germany*, 447-8.

<sup>16</sup> Dirke, 'All Power to the Imagination'.

<sup>17</sup> N. Thomas, *Protest Movements in 1960s Germany: A Social History of Dissent and Democracy* (Berg, Oxford, 2003) 1-2.

<sup>18</sup> D. Della Porta, *Social Movements, political violence, and the state: A comparative analysis of Italy and Germany* (Cambridge University Press, Cambridge, 1995) xv; Thomas, *Protest Movements in 1960s Germany*; K. Hanshew, 'Daring More Democracy? Internal Security and the Social Democratic Fight against West German Terrorism' (2010) 43 *Central European History*, 117-147.

democracy.<sup>19</sup>

There are currently two interpretative approaches to the analysis of this polarisation intensified through RAF violence in 1970s.<sup>20</sup> The more recent one is Karin Hanshew's work on the perception of terrorism in the 1970s as a catalyst for a debate between the parliamentary Left, Social Democrats elected into government in 1969, and the new Left on the nature of democracy and its defence;<sup>21</sup> in the other scholars analyse society's experience of terrorism and this includes the protests over the RAF prison conditions as the process of 'coming to terms with the past' (*Vergangenheitsbewältigung*).<sup>22</sup>

To begin with Hanshew's work, she analyses the emergence of two parallel debates on

<sup>19</sup> Thomas, *Protest Movements in 1960s Germany*, 2. I would like to thank Susanne Karstedt for pointing this out to me.

<sup>20</sup> Needless to say that over the years a vast body of literature has emerged on the origins and impact of West German Terrorism, the RAF and J2M in particular. In her extensive review of this literature, Diewald-Kerkmann identifies three categories of publications on the subject matter: journalistic (most famously Stefan Aust's 'Baader-Meinhof Komplex' published in 1985); (auto)biographical and academic. She points to key academic analyses of West German terrorism that have been conducted in the fields of sociology, criminology, political science and legal studies. Most notably in the English language is Della Porta's comparative empirical study of the nature and structure of political violence in Italy and Germany (D. Della Porta, *Social Movements, political violence, and the state: A comparative analysis of Italy and Germany* (Cambridge University Press, Cambridge, 1995)). And similarly noteworthy studies in the German language analyse the social context of political violence (N. Elias, 'Der bundesdeutsche Terrorismus - Ausdruck eines sozialen Generationskonflikts' in N. Elias, *Studien über die Deutschen* (Frankfurt/Main, 1990) 300-89; I. Fetscher and G. Rohrmoser, *Ideologien und Strategien, Analysen zum Terrorismus* (vol. 1, Westdeutscher Verlag, Opladen, 1981); H. Jäger et al., *Lebenslaufanalysen, Analysen zum Terrorismus* (vol. 2, Westdeutscher Verlag, Opladen, 1981); Wanda von Baeyer-Katte et al., *Gruppenprozesse, Analysen zum Terrorismus* (vol. 3, Westdeutscher Verlag, Opladen, 1981); F. Sack and H. Steinert, *Protest und Reaktion, Analysen zum Terrorismus* (vol. 4, Westdeutscher Verlag, Opladen, 1981); see also P. Waldmann, *Terrorismus: Provokationen der Macht* (Munich, 1998); B. Hoffman, *Terrorismus - der unerklärte Krieg: Neue Gefahren politischer Gewalt* (Frankfurt/Main, 2001)). In the field of legal studies in particular the challenges of balancing the need for counter-terrorism measures with the values of the *Rechtsstaat* (R. Blath and K. Hobe, *Strafverfahren gegen linksterroristische Straftäter und ihre Unterstützer* (Bundesministerium der Justiz, Bonn, 1992); H. Hannover, *Terroristenprozesse: Erfahrungen und Erkenntnisse eines Strafverteidigers, Terroristen und Richter* (vol. 1, VSA- Verlag, Hamburg, 1991); R. Gössner, *Das Anti-Terrorssystem: Politische Justiz im präventiven Sicherheitsstaat, Terroristen und Richter* (vol. 2, VSA- Verlag, Hamburg, 1991); M. Overath, *Drachenzähne: Gespräche, Dokumente und Recherchen aus der Wirklichkeit der Hochsicherheitsjustiz, Terroristen und Richter* (vol. 3, VSA- Verlag, Hamburg, 1991)). And more recently there is a multidisciplinary edited collection that aims at identifying a 'topology of RAF terrorism' through contributions from a variety of academic disciplines, including political science, sociology, legal studies, communication and media studies (W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vols. 1 & 2, Hamburger Edition, Hamburg, 2006)). For this footnote, see G. Diewald-Kerkmann, *Frauen, Terrorismus und Justiz: Prozesse gegen weibliche Mitglieder der RAF und der Bewegung 2. Juni* (Droste Verlag, Düsseldorf, 2009) 13-7.

<sup>21</sup> Hanshew, 'Daring More Democracy?'; K. Hanshew, 'Militant Democracy, Civil Disobedience and Terror: Political Violence and the West German Left During the "German Autumn," 1977', in M. Geyer (ed) *War and Terror in Historical and Comparative Perspective* (AICGS Humanities Volume 14, University of Chicago, 2003) 20-46; K. Hanshew, *Terror and Democracy in West Germany* (Cambridge University Press, 2012).

<sup>22</sup> Varon, *Bringing the War Home*; G. Koenen, 'Armed Innocence, or "Hitler's Children" Revisited', in Berendse, G.-J. and I. Cornils (eds) *Baader-Meinhof returns: The history and cultural memory of German left-wing terrorism* (German Monitor No 70, Rodopi, Amsterdam, 2008).

democracy and its defence -legitimate and illegitimate use of force-, the nature of Germany as a 'militant democracy' (*wehrhafte Demokratie*)<sup>23</sup> and the right to 'civil disobedience' (*Widerstandsrecht*) both constitutional principles set out in the Basic Law (German constitution). The Social Democrats' approach to counterterrorism was influenced by their uneasy relationship with state violence and their commitment to promote a lived democracy, one peopled by participating democrats. These assumptions were reflected in a two-fold counterterrorism strategy developed in response to the RAF's armed struggle; namely the concurrent 'modernization and democratization of state and society'.<sup>24</sup> Modernization was to be driven through science and technology. Police, but also other public bodies, were modernised through computer technology, 'new' policing methods (prevention and pro-active policing), and international co-operation.<sup>25</sup> Most famously, the Federal Criminal Police Office introduced a computerised dragnet for a more efficient terrorist profiling that was able to search large datasets, and a specialist armed counterterrorism police unit (GSG9) linked to the Federal Border Police was created following the terrorist attack on Israeli athletes at the Munich Olympics in the summer of 1972. Yet, democracy needed to be protected through active citizens. Therefore, a policy of political education was devised and put into practice through the Federal Centre for Political Education (*Bundeszentrale für Politische Bildung*, BPB). The goals it set out to achieve were the 'prevention of violent radicalism and the enlistment of the population in government efforts to contain it'.<sup>26</sup> Through various media it sought to provide an 'enlightened protection of the constitution', which meant more than mere propaganda but it was to promote political participation and a willingness in citizens to defend democracy and its constitutional order.<sup>27</sup>

The height of the violence, the German Autumn, in 1977 marked a shift in the use of force and the extent of executive power. Measures that were introduced included executive decision-making

<sup>23</sup> The concept was first introduced by Karl Loewenstein. It encapsulates a pro-active democracy in defence against extremism; see K. Loewenstein, 'Militant Democracy and Fundamental Rights, II', (1937) 31(4) *The American Political Science Review*, 638-58. For a review of the significance of militant democracy in German constitutional law, see M. Klamt, 'Militant Democracy and the Democratic Dilemma: Different Ways of Protecting Democratic Constitutions' in F. Brunisma and D. Nelken (eds) *Explorations in Legal Cultures* (Reed Business BV, 2007) 133-58.

<sup>24</sup> Hanshew, 'Daring More Democracy?', 123.

<sup>25</sup> Hanshew, 'Daring More Democracy?', 124-5.

<sup>26</sup> Hanshew, 'Daring More Democracy?', 128.

<sup>27</sup> Hanshew, 'Daring More Democracy?', 131-2.

without the oversight of Parliament and public accountability, a news blackout after the Schleyer kidnapping and a prisoner contact ban that extended to defence attorneys (later put on a statutory footing). Hanshew concludes:

In a country besieged as much by its own past as by terrorism, the shift in Social Democratic conceptions of legitimate state action also expressed a corresponding shift in their assumptions regarding West German democracy. Crucial for the SPD's ability to empower the state was its ability to convince its members of the distance they and their actions had achieved from authoritarian and militarist traditions. Their internal security program, with its two-pronged course of enhancement and democratization of state power, went far toward achieving this, not only by reshaping police and attendant institutions but also by rhetorically connecting the (social) state with the people. Even at the height of the terrorist crisis, Social Democrats very consciously fashioned an image of democracy around the state they were empowering.<sup>28</sup>

One of two areas that caused wide-spread protest in the New Left was the 1972 Decree Against Radicals (*Radikalenerlass*) which prevented those who were deemed radicals from working for public bodies; this included schools and universities. It 'contributed to a sense of political repression on the left - a climate of fear and self-censorship- that many argued had more in common with totalitarian rule than democracy'.<sup>29</sup> The other were RAF prison conditions. In the protest over the restrictive conditions of confinement, the prisoners' collective hunger strikes and the 'Anti-torture Committees' were widely effective both nationally and internationally. At the time the RAF and their lawyers argued that the harsh prison conditions were aggravated by the new terrorism legislation. In addition to the extension of police powers and the creation of new offences in respect of terrorist groups, the terrorism laws passed in the 1970s reflected an incremental process to restrict the defence of members of the RAF/J2M.<sup>30</sup> The

<sup>28</sup> Hanshew, 'Daring More Democracy?', 142-3.

<sup>29</sup> Hanshew, 'Daring More Democracy?', 137.

<sup>30</sup> For a short overview of the development of German terrorism legislation in the context of the wider penal trends, see A. Eser, 'A Century of Penal Legislation in Germany: Development and Trends' in A. Eser and J. Thormundsson (eds), *Old Ways and New Needs in Criminal Legislation: Documentation of a German-Icelandic Colloquium on the Development of Penal Law in General and Economic Crime in Particular* (Max Planck Institut für Ausländisches und Internationales Strafrecht, Freiburg, 1989). For a comprehensive review on of the new terrorist offences created in the 1970s, see E. von Bubnoff, *Leipziger Kommentar* (11<sup>th</sup> edn., 2006) § 129a. For critical responses to the legislation in which authors argued that the guarantees enshrined in the *Rechtsstaat* were being eroded, see H. Dahs, "Das Anti-Terroristen Gesetz" - Eine Niederlage des Rechtsstaates', (1976) *Neue Juristische Wochenschrift* 29(47) 2145-51; S. Cobler, 'Plädoyer für die Streichung der §§ 129, 129a StGB: Zur Revision der "Anti-Terrorismus-Gesetze"', (1984) *Kritische Justiz* 407-17. For more moderate critique, see U.

RAF supported by their lawyers was intent on mounting a collective, political defence. This was in direct conflict with a key counterterrorism strategy, namely to prevent communication between prisoners, who were segregated and dispersed in different institution, but also with members of the RAF-J2M or connected to them on the outside. The RAF lawyers, who belonged to the radical Left (known as the extra-parliamentary opposition - APO), were also intent on challenging the system themselves - albeit through non-violent means- and this was put into practice through a shift to a more confrontational approach in court.<sup>31</sup> The first terrorism legislation was directed at the limitation of legal representation, namely it limited the number of lawyers a client was able to instruct to three and conversely limited a lawyer to taking on only one RAF case.<sup>32</sup> To facilitate the collective defence the lawyers set up an information exchange which was known as '*das info*'. The object was to co-ordinate defence strategy and to supply their clients with literature to prepare their political defence.<sup>33</sup> The lawyers fell under suspicion that '*das info*' was used as a communication network for RAF activity within and outside prison.<sup>34</sup> As a consequence legislation was introduced to monitor a prisoner's legal correspondence through an judge unconnected to the proceedings<sup>35</sup> and restrict physical contact during

Ebert, 'Tendenzwende in der Straf- und Strafprozeßgesetzgebung', (1978) 4 *JR* 136; and H.-J. Rudolphi, 'Die Gesetzgebung zur Bekämpfung des Terrorismus – Versuch einer kritischen Würdigung', (1979) 11(1) *JA* 4. For legitimating responses to this criticism by both the Minister of Justice, Hans Jochen Vogel, and the Federal Prosecutor, Kurt Rebmann, at the time, see H.-J. Vogel, 'Strafverfahrensrecht und Terrorismus – eine Bilanz', (1978) 31(25) *NJW* 1217-28; and K. Rebmann, 'Terrorismus und Rechtsordnung: Erfahrungen mit den Rechtsänderungen der vergangenen Jahre – Vorschläge de lege ferenda', (1979) *Deutsche Richterzeitung* 363-70.

<sup>31</sup> This included openly challenging judges on procedural issues. For a first-hand account and analysis of radical Left lawyering, see K. Eschen, 'Das Sozialistische Anwaltskollektiv' in W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vol. 2, Hamburger Edition, Hamburg, 2006) 957-72. And for a conceptual analysis of Left lawyering, see S. Reinecke, 'Die linken Anwälte' in W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vol. 2, Hamburger Edition, Hamburg, 2006) 948-56. It is beyond the remit of this thesis to analyse the problems around RAF lawyering in more detail. For an analysis of lawyering in Northern Ireland, see K. McEvoy, 'What Did the Lawyers Do During the 'War'? Neutrality, Conflict and the Culture of Quietism' (2011) 74(3) *Modern Law Review*, 350-84.

<sup>32</sup> This was the so-called 'Lex Baader Meinhof' 1975. In effect this meant that a lawyer who had defended a member of the RAF could no longer defend anyone connected to the RAF. As a result the defence was not able to draw on experience and knowledge from previous cases. Both restrictions did not apply to the prosecution; see K. Eschen, 'Rechtsstaat ohne Konfliktkultur' 84.

<sup>33</sup> Interview with a former RAF defence attorney (B2 on 6 May 2008) who was involved until 1975. He was precluded from any further defence work for anyone connected to the RAF by the new terrorism legislation.

<sup>34</sup> In connection to this two lawyers who represented the RAF, Hans-Christian Ströbele and Kurt Groenewold, were convicted of supporting a criminal organisation and were given suspended sentences. As an example, in Ströbele's case the court held that he had helped the group to continue with its existence also within prison through the means of an information system; see Eschen, 'Das Sozialistische Anwaltskollektiv' 970. For a critique see Reinecke, 'Die linken Anwälte', 953-4.

<sup>35</sup> For a review on the role and effectiveness of the surveillance judge; see W. Gohl, 'Hat sich die Einrichtung des Überwachungs- oder Leserichters (§§ 148 Abs. 2, 148a StPO) bewährt?' in H. Ezrich, W. Odersky and F.J. Säcker (eds), *Festschrift für Kurt Rebmann zum 65. Geburtstag* (C.H. Beck'sche Verlagsbuchhandlung, München, 1989) 199-209; and J. Welp, 'Die Überwachung des Strafverteidigers', (1977) *GA* 129-44. Both authors suggest that in

any visits with defence lawyers.<sup>36</sup> This process culminated in the complete lockdown of any prisoners connected to the RAF/J2M during the German Autumn 1977, the height of RAF violence. This included a ban on defence visits, which was put on a statutory footing with the Prohibition of Contact Act 1977.<sup>37</sup>

The second interpretative approach to the analysis of the 1970s experience of terrorism is understood through the lense of society 'coming to terms with its past'. This set of literature sets out how the prison – the conditions of detention- became the RAF's main battleground with the aim to expose what the RAF considered the Federal Republic's authoritarian, even fascist through their 'detention in/torture through isolation'.<sup>38</sup> The hunger strike became the main strategy for subverting the public narrative of the RAF as terrorists – their identity, aims, imprisonment and death. Through the language of 'special treatment' and 'programmatic torture', it is argued, the RAF leadership successfully changed their public image from perpetrators to the oppressed; in effect they managed to portray their starving bodies as the site of anti-fascist resistance by evoking the extermination policies of the Nazi regime.<sup>39</sup> Throughout the 1970s the RAF's prison struggle resonated more with the public than its pre-incarceration revolutionary politics had done, because, it is argued in the literature, the RAF managed to tap into a

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practice the role did not have much of an impact. This was due to the fact that on the one hand verbal communication between lawyer and client remained privileged and on the other hand these judges lacked the necessary contextual knowledge to evaluate the correspondence effectively.

<sup>36</sup> This effectively meant that defence visits were conducted behind a glass partition. Laufhütte, *Karlsruher Kommentar*, 858-60.

<sup>37</sup> The lockdown lasted from 5 September to 20 October. This contact ban was put on a statutory footing on 2 October 1977 as the Prohibition of Contact Act 1977, just over half-way through the lockdown period. The Act is still in force, however, I was told by a number of German law professors and a former Federal Prosecutor that it has never been used since. For a general overview of the Act, see A. Schoreit, *Karlsruher Kommentar StPO & EGGVG* (5<sup>th</sup> edn., 2003) §§ 31-38 EGGVG. For a review that affirms the legitimacy of the Act, see R. Böttcher, *Löwe-Rosenberg StPO und GVG, Großkommentar* (25<sup>th</sup> edn., 2003) §§ 31-38 EGGVG. For impact of the Act on what should be considered a properly conducted defence, see H. Jung, 'Das Kontaktsperre-Gesetz,' (1977) 12 *JuS* 846-7. For a contemporary account of the impact of the contact ban and a collection of the early court decisions on the ban, see Anon, 'Dokumente und Materialien zur Kontaktsperre für Verteidiger', (1977) 10 *Kritische Justiz* 395-412. For a critique of the contact ban prior to its validation through the Act, see K. Amelung, 'Nochmals: §34 StGB als öffentlichrechtliche Eingriffsnorm?', (1978) 13 *NJW* 623-4; and R. Lange, 'Terrorismus kein Notstandsfall? Zur Anwendung des §34 StGB im öffentlichen Recht', (1978) 16/17 *NJW* 784-6.

<sup>38</sup> Varon, *Bringing the War Home*, 227; Jander, 'Isolation', 974;

<sup>39</sup> L. Passmore, 'The Art of Hunger: Self-Starvation in the Red Army Faction', (2009) 27(1) *German History* 52-8.

profound suspicion German society had of itself at the time.<sup>40</sup> Furthermore, what was perceived as inhuman conditions of confinement by some and in particular the extensive use of solitary confinement not only persuaded people to get involved in protest groups, such as the 'anti-torture committees', but they also radicalised a number of people who had participated in these groups to join the RAF's 'armed struggle'.<sup>41</sup> By the mid 1970s this struggle had turned into militant efforts to secure the release of RAF prisoners, in particular the leadership. Yet, the RAF's revolutionary politics beyond the prison struggle failed to engage the wider public, because its exclusive focus on 'liberating' their 'own' prisoners meant its politics became inward-focussed rather than a sustained critique of the German prison system more specifically and Western capitalist societies more generally.<sup>42</sup>

### 3. RAF imprisonment

There are far fewer studies that analyse the RAF in the criminal justice system and imprisonment more specifically. Diewald-Kerkmann, a legal and cultural historian, highlights a high percentage of women in the RAF and J2M (approximately 42%) many of those in key leadership and policy positions, yet the gender perspective is mainly neglected in the literature. Her book *Frauen, Terrorismus und Justiz: Prozesse gegen weibliche Mitglieder der RAF und der Bewegung 2. Juni* is a broad and indepth study of women terrorists and the criminal justice system, from arrest to conviction. The focus of her study is the extent to which the courts in their judgement were not only influenced by a gendered conception of terrorists but also instrumental in the construction as such. In extensive archival research and interviews she analyses through individual case studies of thirteen criminal trials in the period 1971 to 1984 the relationship between perceptions, criminal procedure/process and judgements, and broader social and

<sup>40</sup> Varon, *Bringing the War Home*, 227-8; Passmore, 'The Art of Hunger', 58; Koenen, 'Armed Innocence, or "Hitler's Children" Revisited', 36. This changed markedly after the death of the RAF leaders by October 1977. Throughout the 1980s, the prison struggle no longer managed to gain the public's attention to the same extent: see Passmore, 'The Art of Hunger', 52.

<sup>41</sup> For a detailed discussion see Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 198-9. Three of the former RAF members interviewed for this study, Karl-Heinz Dellwo, Knut Folkerts and Roland Mayer, were among those who made the transition into illegality; see interview schedule in Appendix 3.

<sup>42</sup> D. Fraser, 'If I Had a Rocket Launcher: Critical Legal Studies as Moral Terrorism', (1990) 41(4) *The Hastings Law Journal* 800-1; Varon, *Bringing the War Home*, 225.



political processes, to understand the interconnections between politics, criminal justice and the RAF. Her key findings are that gender perceptions, in particular the category woman, was overshadowed by other other categories. This was the case on both sides of the conflict. For the women of the RAF and J2M the extent to which they had internalised the ideology and the role of the revolutionary influenced their actions and also responses to imprisonment. For most of them it seems that it was inconsequential that they were women, they understood themselves primarily as a 'revolutionary' or a 'combatant' engaged in an 'armed struggle'.<sup>43</sup> Conversely, the accused's gender became less significant as the criminal proceedings progressed. Rather other issues, most notably the 'state of emergency' (*Staatsnotstand*) yet also the denial of political motivation with the criminalisation of the offenders, took centre stage and gender difference became irrelevant. Significant for the governance of the criminal proceedings and the construction of accused as dangerous were both the social construction of the RAF and J2M as a 'real' threat to the state, even though the numbers of offenders were comparatively small, and the media representations of 'top male and female terrorists'.<sup>44</sup>

But how have conditions of detention of members of the RAF and J2M been dealt with in the literature? The central question authors pose is to what extent the RAF's allegations of special treatment hold true; namely that they were detained under conditions of isolation and that this amounted to a form of institutionalised torture/abuse. A number of scholars come to the conclusion that with the exceptions of the experiences of near complete sensory and social isolation in what became known as the 'dead-wing' in Cologne-Ossendorf prison in the early 1970s on the one hand and the privileges and relaxations granted to the RAF leadership in the high security wing of Stuttgart-Stammheim prison from 1974-1977 on the other hand, the majority of RAF/J2M prisoners experienced extremely restrictive conditions of confinement with varying degrees of segregation.<sup>45</sup> More specifically, the

<sup>43</sup> Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 279.

<sup>44</sup> Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 304.

<sup>45</sup> M. Jander, 'Isolation: Zu den Haftbedingungen der RAF-Gefangenen' in W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vol. 2, Hamburger Edition, Hamburg, 2006) 973-93; G. Koenen, 'Camera Silens: Das Phantasma der "Vernichtungshaft"' in W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vol. 2, Hamburger Edition, Hamburg, 2006) 994-1010; G. Diewald-Kerkmann, "'Im Vordergrund steht immer die Tat ...': Gerichtsverfahren gegen Mitglieder der RAF', (2005) 7 *Rechtsgeschichte, Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte*, 138-152; Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*; A. Musoloff, 'Terrorismus im öffentlichen Sprachgebrauch: seine Umdeutung zum Kriegsgeschehen und die Folgen', Conference Paper presented at University of Bielefeld, October 2004, 8.

Federal Government's insistence on the view that RAF/J2M prisoners experienced conditions akin to those of any ordinary prisoner in the system at the time is deemed to no longer carry force, due to a number of factors that point to unequal treatment: the set of standardised special control measures (*Haftstatute*) that had been developed to regulate their pre-trial detention, which included segregation in high security units and prolonged periods of solitary confinement; and the prolonged periods of pre-trial detention coupled with the harsh sentences that were handed down following their convictions.<sup>46</sup> In retrospect, it is considered that this punitive response was unprecedented in the relatively young German democracy of the 1970s and 1980s.<sup>47</sup> Yet, commentators both at the time and in retrospect have highlighted that the RAF/J2M posed a significant challenge to the prison administration, because they were faced a completely different type of prisoners who in pursuit of their political convictions actively tried to galvanise public support and as a group were prepared to use their bodies as weapons.<sup>48</sup>

So how can the imprisonment of the RAF, the restrictive prison conditions and their individual and collective resistance, be understood? I argue there is a need to look to the sociology of imprisonment, the study of both prison life and wider social, cultural and political processes of punishment. The governance and resistance of political/politically motivated prisoners is the focus of two key academic studies.<sup>49</sup> Both studies are concerned with the Northern Ireland context, yet they differ in the population under study and in their approach. In *Paramilitary Imprisonment in Northern Ireland: Resistance, Management and Release*, Kieran McEvoy, through the prism of the conflict between prisoners and prison administration over political status of the prisoners, analyses three key themes of their imprisonment, resistance, management and release within prison literature on coping and resistance, and

<sup>46</sup> Diewald-Kerkmann, "Im Vordergrund steht immer die Tat ...", 151; Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 204.

<sup>47</sup> See Diewald-Kerkmann, "Im Vordergrund steht immer die Tat ...".

<sup>48</sup> W. Rasch, 'Psychological Dimensions of Political Terrorism in the Federal Republic of Germany' (1976) 2 *International Journal of Law and Psychiatry* 79-85; Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 196.

<sup>49</sup> I use these terms interchangeably and do not attach value to either label. I also use the term politically motivated offender in the thesis. Although these terms, political prisoner in particular, could be seen as conferring a status on the prisoners, I think it is useful to highlight the contested political dimension of their imprisonment.

prison management and staff-prisoner relations.<sup>50</sup> He identifies collectivity or collective identity as central to the four types of resistance he examines: escapes 'as ridicule', dirty protests and hunger strikes as 'self-sacrifice', control of space through violence and intimidation, and resistance through litigation. He maps the management of the prisoners' detention through three strategies, reactive containment, criminalisation and managerialism. McEvoy's study is a comprehensive and multifaceted analysis of the intersection of prisoner resistance and their governance with a focus on male population of politically motivated prisoners.

The focus of Mary Corcoran's study, *Out of Order: The political imprisonment of women in Northern Ireland 1972-1998* is the analysis of the marginal position of women political prisoners in Northern Ireland and their resistance.<sup>51</sup> Women political prisoners challenge the dominant construction of women prisoners in penal discourse as difficult due to the nature of their convictions and their conduct in prison. Corcoran conceptualises the construction of women political prisoners as dangerous. In a highly detailed and intricate analysis she sets out the ways in which these women resisted 'gendered and political dimensions' of their imprisonment through a 'continuum of resistance' from everyday refusals to co-ordinated collective acts of defiance.<sup>52</sup> Within this continuum interconnected 'fields of resistance' with an inward and outward outlook are identified and explored.<sup>53</sup> For the former they include 'internal consolidation and self-affirmation' through regrouping after being arrested, building a prison community and the affirmation of political identity and the latter are strategies of 'active disengagement and conditioning of staff' and bodies as weapons.

#### 4. Research question and structure of the thesis

How does my study fit in? The focus of this study are the prison life stories of women and men former RAF members; in particular their perceptions of their incarceration as 'detention in isolation' and the meaning they attach to their responses to these conditions as resistance. The main research question is:

<sup>50</sup> K. McEvoy, *Paramilitary Imprisonment in Northern Ireland: Resistance, Management, and Release* (Clarendon Studies in Criminology, Oxford University Press, 2001).

<sup>51</sup> M. Corcoran, *Out of Order: the political imprisonment of women in Northern Ireland 1972-1998* (Willan Publishing, Cullompton, Devon, 2006).

<sup>52</sup> Corcoran, *Out of Order*, 104.

<sup>53</sup> Corcoran, *Out of Order*, 105.

How have women and men of the RAF experienced their imprisonment? In addition it is hoped that the interpretation of these prison life stories can shed some light on imprisonment and penalty in Germany, in particular the governance of women and men prisoners who are constructed as dangerous.

The focus on prisoner life stories, more specifically those of people who engaged in a sustained politicised prison struggle, creates a 'profound' asymmetry.<sup>54</sup> The methodological challenges they pose and the method for resolving them with a particular emphasis on the validation process are described in Chapter 1.

The intention is to link in theoretically with the studies on the governance and resistance of politically motivated prisoners. It is important to note, however, that both the nature of the Northern Ireland conflict - sectarian violence - and the prison context in Northern Ireland are quite distinct from the situation in Germany. First, the prison system was designed to detain male politically motivated prisoners, which included the spatial separation of members of opposing organisations, in addition to normal prisoners. Second, the proportion of men politically motivated prisoners to the overall prison population was in the range between 50 per cent to 66 per cent.<sup>55</sup> Consequently, the governance strategies identified in McEvoy's study are highly context-dependent to the detention of men politically motivated prisoners in Northern Ireland. Moreover, the large proportion of men prisoners creates a different prison dynamic with regards to resistance strategies. Most notably the strategy of control of space can be put into practice more effectively with such large numbers of prisoners. In contrast, the situation of RAF and J2M prisoners in Germany was one of an unexpected, unpredictable and marginal group of prisoners who were dispersed in prisons across the country and who were either segregated and detained in solitary confinement or isolated in small groups in specially constructed high-security units. As a consequence, I argue there are more communalities with the marginal position of women political prisoners in Northern Ireland.

Essentially the studies that guide my theoretical framework, and this includes Corcoran's study on women political prisoners, are those who have used a governmentality framework to connect the analysis of everyday prison life to wider processes of penal governance. The theoretical framework in

<sup>54</sup> E. Carrabine, *Power, Discourse and Resistance: A Genealogy of the Strangeways Prison Riot* (Ashgate, Dartmouth, 2004) 30.

<sup>55</sup> McEvoy, *Paramilitary Imprisonment*, 16.

Chapter 2 is guided by the work of scholars in studies that range from the nature of prison unrest in England in the 1990s<sup>56</sup> to the reform of women's imprisonment in Canada<sup>57</sup>, who have looked to governmentality scholarship in critical and feminist theory. Despite the criticism that Foucault's approach was 'androcentric',<sup>58</sup> feminist scholars have found his concepts useful for the analysis of governing across different social sites through a decentralised and diffused notion of power. Building on Foucault's analysis of power/knowledge<sup>59</sup> 'it allows for a more complex and detailed understanding of the gendered nature of knowledge and of the disciplining of female bodies'.<sup>60</sup> Why governmentality specifically? Because 'governmentality provides a method for thinking about the interaction and intersection of everyday experience and power relations, with macro-strategies of governance and regulation'.<sup>61</sup> It is a way of connecting what Carrabine has characterised as the *means* and the *ends* of imprisonment.<sup>62</sup>

Chapter 3 makes up the final chapter in Part 1. It describes the provisions in the counter-terrorism legislation that affect detention, such as restricted access to a defence attorney, and looks at the application of the security provisions within the Prison Act 1976 to politically motivated prisoners.

In Part 2, Chapters 4 and 5 explore stories of RAF isolation, which are conceptualized as the control of communication through techniques of immobilisation and surveillance. Through the lens of spaces of isolation Chapter 4 explores immobilising spaces and Chapter 5 surveillance spaces. The final two narrative chapters explore stories of individual and collective RAF resistance in response to their isolating conditions of confinement. The chapters explore both the techniques of resistance through hunger strikes and other refusals in Chapter 6, and escape in Chapter 7. Chapter 7 also engages with the personal meanings of individual survival and the struggle for community in prison that the narrators

<sup>56</sup> Carrabine, *Power, Discourse and Resistance*.

<sup>57</sup> K. Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (University of Toronto Press, Toronto, Buffalo and London, 2001).

<sup>58</sup> See A. Howe, *Punish and Critique: Towards a Feminist Analysis of Penalty* (Sociology of Law and Crime, London, Routledge, 1994).

<sup>59</sup> See M. Foucault, (1980) 'Prison Talk' in Gordon, C. (ed.), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, (Harvester Wheatsheaf, New York, 1980) 37-54, 52; and Foucault, *Discipline and Punish*, 27-8.

<sup>60</sup> Finateri cit. in Hannah-Moffat, *Punishment in Disguise*, 5

<sup>61</sup> R. Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Routledge, Abingdon, 2010) 39/40.

<sup>62</sup> See Carrabine, *Power, Discourse and Resistance*, Chapter 2.

attached to resistance in isolation.

## Chapter 1

### RAF prisoner voices: A methodology for analysing subjective narratives<sup>1</sup>

The focus of this study are the prison life stories of women and men former RAF members; in particular their perceptions of their incarceration as 'detention in isolation' and the meaning they attach to their responses to these conditions as resistance. The main research question is: How have women and men of the RAF experienced their imprisonment? In addition it is hoped that the interviewees' (or narrators') subjective accounts can shed some light on imprisonment and penalty in Germany, in particular the governance of women and men prisoners who are constructed as dangerous. In order to be able to answer this question a further question needs to be posed, namely: How can we understand these individual experiences of incarceration? This question is the subject of both the conceptual framework in the following chapter and the research methodology in this chapter. In this chapter the research context is set out, that is the nature of and assumptions on which qualitative research more broadly and narrative research more specifically are based; the story of the research is recounted, that is how the research evolved into narrative research; and the methods for collecting and interpreting the data, the prison life stories, are described.<sup>2</sup>

#### 1. Research context: qualitative research, narrative research

Though often ignored or minimised in histories of the RAF, the controversy over prison conditions was among the most important aspects of the conflict. The charge of abuse, which the state resolutely denied, dominated the RAF's politics for much of the 1970s and 1980s. The issue of the prisoners' treatment was also among the most vexing dimensions of the conflict. The RAF and the state made *wildly different claims of fact and interpreted the same facts very differently*. So divergent were their perceptions that it seemed as if they were describing fundamentally *different realities*, with no mediating force able to settle which version was truer [my emphasis].<sup>3</sup>

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<sup>1</sup> The research design and proposed fieldwork was approved by the School of Law's Ethical Review Process, University of Nottingham, in 2007.

<sup>2</sup> The chapter structure is loosely based on the guidance on writing a methodology set out in M. Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods* (Sage, Los Angeles, 2011) 274-5.

<sup>3</sup> Varon, *Bringing the War Home*, 216.

The assumptions that are reflected in this quote, from Varon's comparative historical analysis of the RAF and the Weathermen Underground, are that reality is made up of facts, that ultimately there is a true version of events/facts that can be unearthed through a particular set of methods that may include some form of objective verification. But for the qualitative researcher it is precisely the different interpretations, perceptions and meanings that people attach to or derive from their experiences, events or beliefs that make up reality; moreover the assumption is that reality is constructed through interpretation (this includes both participants and the researcher) and validity is achieved through rigour and reflexivity of both researcher and research.<sup>4</sup> A methodological framework for subject-centred research makes it possible to engage with and interpret rather than dismiss the subjective and political accounts of women and men former RAF prisoner of their restrictive conditions of confinement and their prison struggle.

What is qualitative research? It is a broad field that does not correspond to a cohesive set of practices or philosophies and has emerged from a broad spectrum of 'intellectual and disciplinary traditions'.<sup>5</sup> Studies that subscribe to the qualitative research approach do not simply apply a set of methods but also to subscribe to certain theoretical assumptions and motivations. Mason groups these loosely into three themes:

[it is] grounded in a philosophical position which is broadly 'interpretivist' in the sense that it is concerned with how the social world is interpreted, understood, experienced or produced. ... [it is] based on methods of data generation which are flexible and sensitive to the social context in which data are produced ... [and it is] based on methods of analysis and explanation building which involve understandings of complexity, detail and context. Qualitative research aims to produce rounded understandings on the basis of rich, contextual, and detailed data.<sup>6</sup>

An appropriate place to start are the theoretical assumptions on which the interpretive approach is based: the ontological, epistemological and methodological questions. These questions can be summarised as what is social reality? What do we consider evidence of knowledge of this reality

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<sup>4</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 9; U. Flick, *An Introduction to Qualitative Research* (4th edn., Sage, Los Angeles, 2009) 14.

<sup>5</sup> J. Mason, *Qualitative Researching* (Sage Publications, London, 1996) 3.

<sup>6</sup> Mason, *Qualitative Researching*, 4.



(knowledge claims)? How can we capture this knowledge and collect research data?<sup>7</sup> Studies that work within the interpretive paradigm share the privileging of participants' perceptions, meanings and actions.<sup>8</sup> Within this approach social reality is understood as not to be made up of facts, but consists of these 'meanings, perceptions, beliefs and underlying assumptions'.<sup>9</sup> The term interpretive relates to the way in which the researcher approaches participants' lived experiences. The aim is to 'understand subjective meaningful experiences' and 'the meaning of social actions within the context in which people live'.<sup>10</sup> This refers to a particular meaning that is ascribed to the term 'to understand' as derived from Max Weber's concept 'Verstehen'. The focus is on exploring and making sense of lived experiences from the participant's perspective rather than the researcher's point of reference.

The distinction between understanding and Verstehen makes clear that the aim of qualitative research is not simply to understand social phenomena but to go further to achieve Verstehen. The distinction between the two perspectives may be summarized as follows: 'understanding' refers to understanding issues from the researcher's own interpretive framework or the outsider's perspective; 'Verstehen' refers to understanding the issues from the interpretive framework of the study population, or from the 'insider's perspective'.<sup>11</sup>

For instance in this study the concepts that the RAF prisoners and their lawyers created to describe the conditions of confinement, and that were instrumental to the prison and public struggle against these conditions, are explored through the interviews. This is to explore how former women and men RAF prisoners understand the meaning of concepts central to the RAF prison struggle like 'detention in isolation', the 'dead wing' (the disused hospital wing in Cologne-Ossendorf prison in which Ulrike Meinhof experienced a very restrictive form of solitary confinement that involved aspects of sensory as well as social isolation) and resistance as refusal (hunger strikes and other refusals).<sup>12</sup> And also how their understanding of these concepts affected or influenced the way they experienced their imprisonment.

Not only are the participants' experiences intrinsically subjective, contextual and connected, but this

<sup>7</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 12.

<sup>8</sup> M. Williams and T. May, *Introduction to the Philosophy of Social Research* (Routledge, Abingdon, 1996) 199.

<sup>9</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 11.

<sup>10</sup> Snape and Spencer cit. Hennink, Hutter and Bailey, *Qualitative Research Methods*, 14-5.

<sup>11</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 18.

<sup>12</sup> See Chapter 4.

also applies to the researcher's interpretations. This in turn opens up the possibility of a variety of perspectives on reality. This is because

[R]eality is *socially constructed* as people's experiences occur within social, cultural, historical or personal contexts. Even though 'we are individually engaged in acts of sense making', we often do this from a wider social context and constructions and interpretations are usually commonly shared and *inter-subjective*.<sup>13</sup>

The gap between the participant's insider perspective (emic) and the researcher's outsider perspective (etic) is a mediated process.<sup>14</sup> It is mediated through interpretation, both the participant's interpretation of events, emotions, and actions and the researcher's interpretation of the participant's meanings, perceptions and experiences. The methods employed in this study from data collection through narrative interviews and their analysis will be described below in Sections 2 and 3. Here I want to continue with the question how the researcher's influence in the interpretive process can be used in a positive way.

So, am I a criminologist? Yes, I am also a human being, and any methodological approach which asks for separation between these two features of our lives or work is deeply flawed.<sup>15</sup>

In this quote Liebling highlights that as researchers we bring our own values, social, cultural and economic background, and emotions to the data collection and interpretation process. So who am I? I am a woman, who self-identifies as German and European. I was born outside Germany in 1977 to a German father and a Spanish mother. I lived in Germany from the age of eleven to nineteen, during that period I completed secondary education. When I moved to Germany in 1988 this was towards the end of the RAF violence. I remember the assassination of Alfred Herrhausen in 1989, but at the time aged eleven I did not understand the meaning or the context of the event. For me the key memories of the time are the fall of the Berlin Wall, the process of unification, travelling across the border to the 'new'

<sup>13</sup> Prasad cit. Hennink, Hutter and Bailey, *Qualitative Research Methods*, 15.

<sup>14</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 18.

<sup>15</sup> A. Liebling, 'Doing research in prison: Breaking the silence?', (1999) 3(2) *Theoretical Criminology*, 147-173, 166.

*Länder* and other Eastern European countries such as the Czech Republic, Hungary and Poland. Maybe unsurprisingly as someone who is interested in the study of imprisonment and punishment politically I lean towards the left; and I have voted for the Greens in past elections.

This calls to mind Becker's famous question: 'whose side are we on?'.<sup>16</sup> As there is no objective viewpoint, the researcher invariably picks a side. By virtue of taking the former women and men RAF prisoners' perspective seriously, I open myself and the research up to allegations of bias. How do I resolve this problem? Becker writes further: 'Our problem is to make sure that, whatever point of view we take, our research meets the standards of good scientific work, that our unavoidable sympathies do not render our results invalid'.<sup>17</sup> Qualitative research is not free from the need to validate knowledge claims.<sup>18</sup> Central to qualitative research are rigour, reflexivity and sensibility. 'Reflexivity is a process that involves conscious self-reflection on the part of researchers to make explicit their potential influence on the research process'.<sup>19</sup> Reflexivity can be understood in a number of ways and is a continuous process. There is personal reflexivity that is how have my identity, values and prejudices affected the research process? A further form of reflexivity is known as inter-personal reflexivity. This involves the 'interview setting and the inter-personal dynamic between the researcher and participant can influence personal knowledge creation'.<sup>20</sup> And finally 'methodological' and 'theoretical openness', the former is a commitment to flexibility, to adapt methods to the data one is presented with in the field and the latter refers to need for an 'awareness of the wider social context' that may have influenced the research.<sup>21</sup>

In addition to reflexivity, Strauss and Glaser suggest that researchers need to have sensitivity in order to be aware 'what we are "seeing" in data is significant and to be able to discern important connections between concepts'.<sup>22</sup> Sensitivity is contrasted with objectivity. Rather than being a deficiency, the researcher's influence can be something positive. Sensitivity stands for 'having insight,

<sup>16</sup> H. Becker, 'Whose side are we on?', (1966-7) 14 *Social Problems*, 239-47.

<sup>17</sup> Becker, 'Whose side are we on?', 246.

<sup>18</sup> D. Silverman, *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction* (2nd edn., Sage Publications, London, 2001) 40.

<sup>19</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 19.

<sup>20</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 20.

<sup>21</sup> Hennink, Hutter and Bailey, *Qualitative Research Methods*, 21.

<sup>22</sup> cit. in Corbin and Strauss, *Basics of Qualitative Research*, 34.

being tuned in to, being able to pick up on relevant issues, events, and happenings in data. It means being able to present the view of participants and taking the role of the other through immersion in data'.<sup>23</sup> How can what researchers bring to the process be utilized in a way that validates the knowledge created?

When we speak about what we bring to the research process, we are not talking about forcing our ideas on the data. Rather, what we are saying is that our backgrounds and past experiences provide the mental capacity to respond to and receive the messages contained in the data - all the while keeping in mind that our findings are a product of data plus what the researcher brings to the analysis.<sup>24</sup>

Because I was new to the research field of imprisonment in Germany and to the history of the RAF, beyond Stefan Aust's book *Der Baader-Meinhof Komplex*,<sup>25</sup> I needed to complete a number of preparations before I could begin to collect any data. Insights 'happen to prepared minds during interplay with the data'.<sup>26</sup> To begin with the German prison context, as part of an Erasmus exchange I spent one semester at the University of Greifswald in 2007 attached to Professor Dr Frieder Dünkel. In addition to sitting in on some of his criminology lectures, especially the lectures on imprisonment and the German prison system, I took part in a prison visit to Bützow prison in Mecklenburg Western Pomerania.<sup>27</sup> During this semester I was also able to conduct library research into the development of German counterterrorism legislation from the mid 1970s onwards that was in response to the RAF. In addition to this I also worked as a researcher on wider interdisciplinary European study into long-term imprisonment in the EU co-ordinated by Professor Dr Frieder Dünkel, Dr Kirstin Drenkhahn and Dr Manuela Dudeck at the Ernst-Moritz-Arndt-Universität Greifswald, Germany.<sup>28</sup> I assisted Dr Drenkhahn with the data collection at Celle prison in Lower Saxony in October 2007 and in collaboration with Professor Dirk Van Zyl Smit, I conducted a survey in two English prisons, HMP Gartree November 2008 and HMP Whatton January 2009. Combined these experiences have given me

<sup>23</sup> Corbin and Strauss, *Basics of Qualitative Research*, 32.

<sup>24</sup> Corbin and Strauss, *Basics of Qualitative Research*, 33.

<sup>25</sup> S. Aust, *Der Baader Meinhof Komplex* (9th edn., Hoffmann und Campe, Hamburg, 1987).

<sup>26</sup> Corbin and Strauss, *Basics of Qualitative Research*, 32.

<sup>27</sup> As part of my studies I have also had the opportunity to visit the following prisons in England and Wales: HMP Sherwood (2006) HMP Lowdam Grange (2001) HMP Stafford (1998).

<sup>28</sup> 'Long-term Imprisonment and the Issue of Human Rights in Member States of the European Union' (31 December 2006-30 December 2008). With financial support by the AGIS Program. European Commission - Directorate General Justice, Freedom and Security. See Dr K. Drenkhahn, [http://www.jura.fu-berlin.de/fachbereich/einrichtungen/strafrecht/lehrende/drenkhahn/lauf\\_forsch/index.html](http://www.jura.fu-berlin.de/fachbereich/einrichtungen/strafrecht/lehrende/drenkhahn/lauf_forsch/index.html) (accessed 25.01.13).

a basic introduction to the prison as an institution and prison life. I need to be very clear that in no shape or form did I use any of these experiences as data. This was a method of 'preparing the mind' for data collection in Germany, in particular the interviews with the women and men former RAF prisoners.

### *1.1. Narrative research in particular*

Why is the basis of this study narrative research? I did not set out to conduct narrative research. The original study design was based on a qualitative research framework, yet the focus was a comparison of the conditions of detention of former RAF prisoners with those of ordinary prisoners with a view to informing the debate on the imprisonment of those charged and convicted of terrorist offences. As the research process evolved especially during the sampling and data collection stages, I found that the interviewees were all prepared, in fact they offered, to give a comparatively large amount of time for the interviews (they ranged between just under two hours to over three hours) and they all told a story that started with their arrest and ended with their release, in essence they narrated their prison life stories. This was not how I had prepared the interviews. I had prepared the interview around a list of topics with sample questions sent to interviewees beforehand and my aim was to conduct semi-structured interviews around these topics (See Appendix 4). During the interviews I found that they were talking about the areas I was interested in and they provided much richer contextual data. After having reflected on this I adapted to the particular data that was being generated through these narrative interviews (methodological openness).

What is narrative research and what are its benefits? Narrative research is the study of stories that have been captured as text through narrative interviews.<sup>29</sup> Narratives are stories that are also known as life writings, storied narratives or oral narratives. What is interesting about a narrative or life story is that they do not represent a factual account of a sequence of events, but that they are a symbolic (mimetic) presentation of experiences that are constructed for and through the medium of the

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<sup>29</sup> D. Polkinghorne, 'Validity Issues in Narrative Research' (2007) 13(4) *Qualitative Inquiry*, 471-86, 471.

interview.<sup>30</sup>

The narrative, in general, provides a framework in which experiences may be located, presented, and evaluated - in short, in which they are lived. The issue studied by qualitative research (here) is already constructed and interpreted in everyday life in the form in which it wants to study it (i.e., as a narrative). In the situation of the interview, this everyday way of interpreting and constructing is used to transform these experiences into a symbolic world - social science and its texts. The experiences are then reinterpreted from this world: 'In mimetic reference, an interpretation is made from the perspective of a symbolically produced world of a prior (but not necessarily existing) world, which itself has already been subject to interpretation. Mimesis construes anew already construed worlds'.<sup>31</sup>

The narrative as a constructed life story can be useful 'to issue knowledge about neglected, but significant areas, of the human realm';<sup>32</sup> it can add value to research because the participants 'are able to make sense of their lived experience'; through the narrative they can structure their experiences in order to give meaning to events and actions; and they can do this through their own words.<sup>33</sup>

- and even now we still find it difficult to convey to someone what detention in isolation is an what it does to you.<sup>34</sup>

The participants were very conscious of the dominant positivist assumptions of the validity of knowledge claims. Throughout the interviews they made numerous references to legal documents in particular, such as court decisions, but also newspaper articles in order to validate their claims. There seemed to be the perceived need for these stories to adhere to the dominant conceptions of fact and fiction, true and false; what Becker calls the 'hierarchy of credibility'.<sup>35</sup> This leads to the question what makes narratives, constructed life stories, that are by their very nature subjective, credible and intelligible? It is argued that one needs 'imagination' and a openness to 'ambiguity' to understand narratives that deviate from what is considered conventional or acceptable in this hierarchy of

<sup>30</sup> U. Flick, *An Introduction to Qualitative Research* (4th edn., Sage, Los Angeles, 2009) 81-2.

<sup>31</sup> Flick, *An Introduction to Qualitative Research*, 81-2.

<sup>32</sup> Polkinghorne, 'Validity in Narrative Research', 472.

<sup>33</sup> Riesman, Van Manen cit. in H. Endo, P. C. Reece-Miller and N. Santaviceca, 'Surviving the trenches: A narrative inquiry into queer teachers' experiences and identity' (2010) 26 *Teaching and Teacher Education*, 1023-30, 1025.

<sup>34</sup> O. Tolmein, *RAF - Das war für uns Befreiung: Ein Gespräch mit Irmgard Möller über bewaffneten Kampf, Knast und die Linke* (4th edn., Konkret Literatur Verlag, Hamburg, 2005) 71.

<sup>35</sup> Becker, 'Whose side are we on?', 242.

credibility.<sup>36</sup> This is because individual narratives do not and should not adhere to this ideal of what is considered a 'truthful' account, and because of the power relations that drive the interplay between dominant and individual narratives and thereby influence their credibility and intelligibility. The stories we find credible depend on a backdrop of narratives in constant circulation controlled by interests that are not neutral and would have us imagine our world in a certain way.<sup>37</sup> This leaves little room to engage with the unexpected story, one that diverges from the dominant discourse.<sup>38</sup> And imagination is the only faculty we have that lets us see beyond the horizon of convention.<sup>39</sup> The way in which I engage the reader in the process of validation is described in Section 3 below.

## 2. Fieldwork

During the course of the fieldwork the focus of this study shifted from a comparative analysis of the RAF conditions of detention with ordinary prisoners to analysing the prison life stories of women and men former members of the RAF and the meanings they attach to them that are constructed through a narrative interview. I have already mentioned that the method emerged through the interview process. But I also need to explain why the comparative element seems to have been dropped and how I have resolved this issue? The study population are RAF and J2M prisoners; at the time of the fieldwork in 2008 there were two RAF prisoners still incarcerated: Christian Klar, who was released at the end of 2008 after 26 years in prison, and Birgit Hogefeld, who was released in June 2011 after 18 years in prison. The former RAF prisoners that agreed to participate in the study were released as early as 1977/8 and as late as 1995 (See chart Appendix 5). This made a comparison with ordinary prisoner experiences and the prison as an institution in Germany in 2008 unviable. The way I have tried to address the lack of data on the prison context and privilege former RAF prisoner perspective is to

<sup>36</sup> L. J. Kirmayer, 'Failures of imagination: the refugee's narrative in psychiatry' (2003) 10(2) *Anthropology and Medicine*, 167-85; and L. J. Cary, 'Unexpected Stories: Life History and the Limits of Representation' (1999) 5 *Qualitative Inquiry*, 411-27.

<sup>37</sup> Kirmayer, 'Failures of imagination', 183.

<sup>38</sup> Cary, 'Unexpected Stories', 415.

<sup>39</sup> Kirmayer, 'Failures of imagination', 183.

construct a theoretical framework on the power and gendered dimensions of imprisonment and punishment (Chapter 2). Moreover, my previous experiences, albeit limited, of the prison as an institution and prison life, did give me the necessary background knowledge to follow their stories and to ask for clarification where necessary.

## 2.1. Data collection method and participant recruitment

In addition to the narrative interviews, I also conducted semi-structured interviews with participants beyond the study population; with legal professionals who in one way or another were involved in RAF legal proceedings (see Appendix 3). More specifically, I interviewed former defence attorneys who were involved very early on in the 1970s and precluded from further cases on account of the 1974 counter terrorism legislation, known as the *Lex Baader-Meinhof*:<sup>40</sup> namely Klaus Eschen, Kurt Groenewold and Rupert von Plottnitz. I also interviewed a former federal prosecutor, Klaus Pflieger, who was involved in a number of prosecutions. He gave me a contact in the Ministry of Justice of Baden-Württemberg who would have been able to discuss the impact of the RAF on prison administration. Stammheim prison, at centre of the RAF leadership's imprisonment and trial, is within their jurisdiction. The contact declined with the reason that the issue was sensitive. He suggested I apply through the Federal level for access. At that stage in the research I did not have the time to engage in a lengthy access procedure. I also interviewed Professor Peter-Alexis Albrecht, Professor of Criminal Law and Criminology at Frankfurt University, who was consulted as an expert witness in the release proceedings of two of the narrators. These interviews were instructive for clarification of historical and legal context. In particular, Professor Albrecht with the consent of one of the narrators, provided me with a copy of the report he compiled as part of the release proceedings. I also visited three archives to get an idea of the type of information on the imprisonment of the RAF that they held and more specifically as a back-up plan in the event that I was unable to recruit any participants. The archives I visited were the *Archiv 'APO und soziale Bewegungen' (APO-Archiv)* at the Free University

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<sup>40</sup> See the introduction of this thesis for more detail (Introduction).



of Berlin (April 2007),<sup>41</sup> the Federal Archive in Koblenz (May 2008)<sup>42</sup> and the archive at the *Hamburger Institut für Sozialforschung* (August 2008).<sup>43</sup>

Before I move on to the process of the narrative interview, I need to describe the way in which I recruited the participants. In order to get access to the field or the study population I engaged in what is called "'initial sampling" or convenience sampling'.<sup>44</sup> To find participants who were former RAF prisoners I took a two-fold approach. First I searched newspaper articles for the names of defence attorneys. Initially my hope was to gain access to participants from the study population through defence attorneys; however, this proved to be a dead end. Secondly, I searched mainly newspaper articles and also historical accounts for names of former members of the RAF and J2M beyond the main figures on which the historical accounts are based (mainly RAF leadership in the 1970s) and who were still alive. I then did an internet search and found two former RAF members whose current business or profession puts them in the public domain. I was lucky that both of them agreed to participate and one of them put me in contact with three further participants. It snowballed, if I can call it that, to one further participant before further contacts decided to withdraw after initial interest. The nature of the study population is such that more 'purposeful strategies of sampling' let alone 'theoretical sampling' was simply not possible.<sup>45</sup> They are a relatively small group, former RAF and J2M members, and as I later found out it is split into factions.<sup>46</sup> There were various reasons given for not participating in the study. For instance, one of the people I contacted explained that she had already published a book on her experiences and she did not want to go over her life story again. Others I can only assume from what I have read, do not want to publicly talk about their experiences.<sup>47</sup>

Who was recruited for this study? The participants who agreed to take part in the interviews and shaped them as narrative interviews are Astrid, Knut Folkerts, Karl-Heinz Dellwo, M, Roland

<sup>41</sup> [www.fu-berlin.de/APO-archiv/](http://www.fu-berlin.de/APO-archiv/) (accessed 1.11.2010).

<sup>42</sup> [www.bundesarchiv.de](http://www.bundesarchiv.de) (accessed 1.11.2010).

<sup>43</sup> [www.his-online.de](http://www.his-online.de) (accessed 1.11.2010).

<sup>44</sup> Flick, *An Introduction to Qualitative Research*, 432-3.

<sup>45</sup> Flick, *An Introduction to Qualitative Research*, 432-3.

<sup>46</sup> See A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007).

<sup>47</sup> See Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit*.

Mayer and U.<sup>48</sup> In the following descriptions I am bound by the consent that was negotiated and I am therefore restricted in the amount of detail that I can provide. The original agreement was to anonymise the data, however, because the method changed as a result of the interview process, I re-negotiated the terms of identification with each individual participant. As a consequence, this variation is reflected in the ways in which the participants are presented.

Astrid and M are both women, who were part of the founding generation of the RAF. They were arrested prior to the wave of arrests that followed the RAF's 1972 May Offensive. Both served fixed-term sentences and were released in the late 1970s and in the late 1980s, respectively. Karl-Heinz Dellwo, Roland Mayer and Knut Folkerts, male members of the RAF, had joined the group while the founding members were already in prison. All three were arrested in the period from 1975 to the end of the German Autumn in 1977. Karl-Heinz Dellwo was sentenced to life imprisonment for taking part in the siege on the Germany Embassy in Stockholm in 1975. Knut Folkerts was sentenced to life imprisonment in connection with the assassination of Chief Federal Prosecutor Siegfried Buback in 1977 and the murder of a Dutch police officer. Both Knut Folkerts and Karl-Heinz Dellwo were released in the 1990s. Roland Mayer served a fixed-term sentence for leadership of a terrorist organisation and was released in the late 1980s. Finally, U, who was not a member of the RAF, was arrested in 1977. He spent 18 months in pre-trial detention accused of supporting a terrorist organisation and was convicted after his release from prison. For a more detailed breakdown of the dates of their imprisonment, the sentences, the different prisons that they were detained in across the country and abroad and the dates of their release, see Appendix 5, 'Individual participants cases and their attributes').

## *2.2. Interviews and narrative method*

The section will focus on the interviews with the just mentioned participants and excludes the interviews with the legal professionals. I set out to conduct semi-structured interviews around a certain number of topics which were sent out to each of the participants in the form of a list of interview topics and questions in advance of the interview. I have reproduced the original German document in

<sup>48</sup> The narrators are named in accordance with what was negotiated with them.

Appendix 4. I compiled a list of topics using the European Prison Rules (1973, 1987, 2006) as guidance, because at that stage I had quite a narrow focus, as I was interested in their conditions of confinement. Topics included general information about their detention (institution and dates), the facilities in the cell, daily routine, type of contact with the outside, type of association, work, exercise and if they were subject to any disciplinary measures or special security measures. Also, there were a number of question that sought to explore how they reacted to their conditions of confinement.

The interviewees shaped the interviews into constructed prison life stories that proved to be a much richer account and provided fuller contextual data about their lived experiences. They all delivered a chronological story that started with their arrests and ended in their release. Even though I was unprepared for this in the first interviews, they captured the essence of a narrative interview:

In the narrative interview, the informant is asked to present the history of an area of interest, in which the interviewee participated, in an extempore narrative . ... The interviewer's task is to make the informant tell the story of the area of interest in question as a consistent story of all relevant events from its beginning to its end.<sup>49</sup>

The structure of the narrative interview consists of the story, then the questioning stage where clarifications or more detail are sought (how and why questions) and finishes with a coda.<sup>50</sup> Flick explains what the essence of a narrative is: 'Although to some extent descriptions of situations and routines or argumentation may be incorporated in order to explain reasons or goals, the dominant form of presentation should be a narrative of the course of events (if possible from the beginning to the end) and of developmental processes'.<sup>51</sup> My experience was that all participants were very competent in telling their story. One plausible reason may be that they had told it before. However, narratives are constructed through an inter-personal processes. My influence on the process was at the questioning stage and later through re-interpretation of the narratives. This involved both inter-personal reflexivity and researcher sensibility.

What are the limitations to this approach? Although the interviews provided very rich data of

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<sup>49</sup> Hermanns cit. in Flick, *An Introduction to Qualitative Research*, 177.

<sup>50</sup> Flick, *An Introduction to Qualitative Research*, 179.

<sup>51</sup> Flick, *An Introduction to Qualitative Research*, 179.

the participants' lived experiences of imprisonment, there is one question that remained unanswered or was partially answered: namely the question that sought to explore the internal decision-making processes within RAF prisoners as a group (Question 29, Appendix 4). In terms of local decision-making, that is within the small groups of prisoners who were detained in one prison, participants who were able to associate in small groups agreed to discuss their dynamics. However, the internal dynamics within the RAF prisoners beyond individual institutions was not discussed. A further limitation could be the extent to which the context in which the narratives are told can have an effect on the memories of their prison experiences that are at the centre of the process of narrating.<sup>52</sup> For instance at the time of the interviews, there was some uncertainty whether two of the participants would face detention (*Beugehaft*) for refusing to co-operate as witnesses in the trial of another former RAF member in connection with the assassination of Siegfried Buback in 1977.<sup>53</sup> Having reflected on this I cannot think of how this may have affected the narratives that they produced. More interestingly, the interviews were conducted a year after the thirtieth anniversary of the German Autumn 1977. In the build up to that anniversary, there had been increased media coverage and numerous publications, both academic and journalistic, on the history of the RAF. Some of the narrators indicated that in the process their voices had been discredited as subjective, also by left-leaning publications. Consequently, in their eyes their experiences of RAF isolation and the effects of their incarceration were being downplayed in the literature.<sup>54</sup> Subjectivity is further limitation, which I have already addressed in this chapter.<sup>55</sup>

Before I move on to the method I applied to analyse the data, the method of recording the interviews and any difficulties that I encountered need to be described. I recorded the interviews with a

<sup>52</sup>Flick, *An Introduction to Qualitative Research*, 184.

<sup>53</sup> In July 2012 Verena Becker was convicted of aiding and abetting in the murder of Siegfried Buback. She was sentenced to four years imprisonment; see G. Friedrichsen, 'Urteil im RAF-Prozess: Becker-Verteidiger legen Rechtsmittel ein', *Der Spiegel*, 10.07.2012, (<http://www.spiegel.de/politik/deutschland/raf-prozess-verteidiger-von-verena-becker-legen-rechtsmittel-ein-a-843691.html>) (accessed 28.01.2013).

<sup>54</sup> A few of the narrators referred to the collection of three essays by two leading academics at the research institute, the *Hamburger Institut für Sozialforschung*, and the institute's founder, Professor Reemtsma: W. Kraushaar, K. Wieland and J-P. Reemtsma, *Rudi Dutschke, Andreas Baader und die RAF* (Hamburger Edition, Hamburg, 2005). In particular, they criticised Reemtsma who in their view had 're-written' the history of the RAF and who had denied them any real political motivation. This is also reflected in Becker's review of the literature on the RAF in the prologue to the 2007 collection of essays on the experiences in the group therapy; see D. Becker, 'Vorwort' in A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007).

<sup>55</sup>Hennink, Hutter and Bailey, *Qualitative Research Methods*, 53.

digital recorder and I also took notes. All in all the recordings worked out well. This was because most of the interviews took place in relatively quiet locations, this included participants' homes and also quiet coffee shops. There was one interview, with M, in which the background noise, especially the sound of the espresso machine, made it very difficult to use the recording because I had problems understanding what was said. For M's account I used my notes extensively and relied less on the sound version of the interview.

### 3. Data analysis

Qualitative data analysis has been described as both a 'science and art'.<sup>56</sup> This is because it requires a rigorous, reflexive method but also researcher sensibility and creative insights that can both identify relevant data and understand the connections within the data to ultimately to develop new or improve existing theories.

First I had to prepare the data, interview recordings and notes, for analysis. I had to create the narrative texts. How was data prepared? I transcribed the narrative interviews verbatim with a few exceptions where passages were inaudible, most notably M's interview. Because the interviews were conducted in German, the question of translation arose. I opted for transcription and also data analysis in the original language and I then translated the data at the writing stage.<sup>57</sup> I tried to retain colloquial style used by the participants 'as some expressions hold cultural meaning that you want to retain for analysis'.<sup>58</sup> For instance due to their background and political convictions, it is not surprising that their language is politicised. An example is the use of the term 'political police' as a collective term for the State Criminal Police Office and Federal Criminal Police Office and the Federal Office for the Protection of the Constitution.

At this stage it is useful to explain the process and method of translation that I used throughout the study, and this includes other written texts. There were two challenges: for one I encountered different styles of language, both colloquial and specialized legal terminology. The other challenge was

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<sup>56</sup> Patton cit. in Hennink, Hutter and Bailey, *Qualitative Research Methods*, 205.

<sup>57</sup> Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 214-5.

<sup>58</sup> Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 215.

that there is no official translation into English of public bodies such as the courts. To begin with the latter, I compiled a list of translations through referring to the public body's official website, where this was possible. For the former I employed a two-stage process for translating both colloquial and legal terms. I translated the texts with the help of dictionaries<sup>59</sup> but also academic work on German law, imprisonment and history published in the English language. In my draft work, I would put the original German term in square brackets following the translation. The second-stage was that during supervisions I received feedback or better suggestions from my supervisors. It goes without saying that any mistakes or errors that exist are my own.

To return to the interviews and the analytic process, while I was transcribing I compiled a mind map of 'any particular 'issue, topic, idea, opinion, ... that [was] evident in the data'.<sup>60</sup> These are referred to as *codes*. Codes are essentially topics discussed by participants and are identified through reading the data'.<sup>61</sup> Having reflected on this process that continued after the transcriptions had been completed until saturation was achieved, I used a combination of deductive (originating from the researcher's experience, literature) and inductive (originating from the participants) coding.

This approach is loosely based on Strauss and Glaser's grounded theory, which can also be understood 'in a more generic sense to denote theoretical constructs derived from qualitative data analysis'.<sup>62</sup> Coding is the first step in the circular analytic process.<sup>63</sup> The other steps are data-describe (thick description), compare-categorize-conceptualize- explain (developing theory).

These tasks include identifying codes from the data, grouping codes into overarching categories (categorization), identifying empirically supported links between these categories (conceptualization) and constructing an explanatory framework for the phenomenon studied (theory development). Thus, the process of data analysis moves from description to conceptualization and builds up to theory development, with each task building on the next, such that the resulting theory incorporates aspects of all earlier analytic tasks. These tasks are all inductive, hence lead to the development of inductive theory.<sup>64</sup>

<sup>59</sup> As a legal dictionary I used Langenscheidt Alpmann, *Fachwörterbuch Kompakt Recht English* (2nd edn., Langenscheidt, 2009).

<sup>60</sup> Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 216.

<sup>61</sup> Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 216.

<sup>62</sup> Corbin and Strauss, *Basics of Qualitative Research*, 1.

<sup>63</sup> Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 208.

<sup>64</sup> Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 259.

To provide the reader with insight into how I compared, categorised and conceptualised from the data, I have enclosed copies of diagrams in Appendix 6. The other part to the process is the question of validity; to check that the theory is grounded.<sup>65</sup>

### 3.1. *Validity and narrative research*

What is different is the prism through which the analyst viewed the data. ... But different researchers tend to focus on different aspects. In other words, data talk to them in different ways. What is different about each study is the level of significance accorded to each of the different phenomena and how they are put together in a study.<sup>66</sup>

I have already mentioned rigour, reflexivity and sensitivity as crucial parts of validating qualitative research. Corbin and Strauss summarize ways to mitigate any threats to validity:

[First] compare knowledge and experience against data, never losing sight of the data themselves. The second is to always work with concepts in terms of their properties and dimensions, because it keeps the researcher focused on the similarities and differences in events and prevents being overwhelmed by descriptive data. A third point is that it is not the researcher's perception of an event that matters. Rather, it is what participants are saying or doing that is important.<sup>67</sup>

But what are the particular circumstances or threats to validity that arise in narrative research in particular? Narratives are stories that are constructed for the purpose of the interview and reproduced as textual data before they are re-interpreted by the researcher. In order to explore the question of validity, first the question of what kind of knowledge claims can be made as a result of narrative research. The claims are 'about the meaning life events hold for people. It makes claims about how people understand situations, others and themselves'.<sup>68</sup> This does not mean that that descriptions of life events are not important, because the meanings, perceptions and beliefs are connected to these descriptions. A threat to validity emerges when there is a disconnection between 'the language descriptions given by participants of their experienced meaning' and its interpretation.<sup>69</sup> Polkinghorne identifies four threats to validity:

<sup>65</sup>Hennink, I. Hutter and A. Bailey, *Qualitative Research Methods*, 238.

<sup>66</sup> Corbin and Strauss, *Basics of Qualitative Research*, 50.

<sup>67</sup>Corbin and Strauss, *Basics of Qualitative Research*, 33.

<sup>68</sup>Polkinghorne, 'Validity in Narrative Research', 476.

<sup>69</sup>Polkinghorne, 'Validity in Narrative Research', 480.

- [1.] 'the limits of language to capture the complexity and depth of experienced meaning',
- [2.] 'the limits of reflection to bring notice to the layers of meaning that are present outside awareness',
- [3.] 'the resistance of people because of social desirability to reveal fully the entire complexities of the felt meanings of which they are aware, and
- [4.] the complexity caused by the fact that texts are often a co-creation of the interviewer and participant'.<sup>70</sup>

Because narratives are constructed stories, they can never fully capture participant's meanings, perceptions and beliefs. Consequently, these risks remain. How can knowledge claims from narrative research be validated? The reader is involved in the validation process, because 'validity is a function of inter-subjective judgement'.<sup>71</sup> The reader is asked not to believe that a knowledge claim derived from a life story is based on certainty but to assess 'whether or not the evidence and argument convinces them at the level of plausibility, credibleness, or trustworthiness of the claim'.<sup>72</sup> The question is has the researcher provided sufficient arguments, including a transparent account of data collection and analysis, to demonstrate convincingly 'that the ensemble of storied portrayals, although only partial, does not overly distort participants' meaning'.<sup>73</sup> My contact with the participants did not end with the narrative interview. In addition to the negotiations the extent to which they agree to be identified in the text, there was also a process of confirming interpretations.

It is the readers who make the judgement about the plausibility of a knowledge claim based on the evidence and argument for the claim reported by the researcher. The confidence a reader grants to a narrative knowledge claim is a function of the cogency and soundness of the evidence-based arguments presented by the narrative researcher.<sup>74</sup>

For the meanings that the women and men former RAF prisoners attach to their imprisonment and their perceptions of their 'prison struggle' to become intelligible, they need to be framed within a 'consensus [on prisons and imprisonment] with a community of speakers'.<sup>75</sup> This is the task for Chapter 2.

<sup>70</sup>Polkinghorne, 'Validity in Narrative Research', 480.

<sup>71</sup> Polkinghorne, 'Validity in Narrative Research', 474.

<sup>72</sup>Polkinghorne, 'Validity in Narrative Research', 477.

<sup>73</sup>Polkinghorne, 'Validity in Narrative Research', 482.

<sup>74</sup>Polkinghorne, 'Validity in Narrative Research', 484.

<sup>75</sup> Polkinghorne, 'Validity in Narrative Research', 474.



## Chapter 2

### A framework for the study of RAF prisoner voices: perspectives of power and gender

#### Introduction

The focus in this research on the experiences of imprisonment of former women and men RAF members through their personal narratives not only poses methodological challenges, which I have set out in Chapter 1, but also poses theoretical challenges. The privileging of prisoners' accounts creates a 'profound' asymmetry; because they cannot reveal power relations inside and outside the prison.<sup>1</sup> It can do no more than shed a light on the pains of imprisonment, the processes of mortifications of the self at the heart of total institutions and the various ways in which prisoners adapt to them and survive them.<sup>2</sup> And while the experiences of the degradations of prison life (which involve the loss of control and autonomy down to the simplest daily activities such as the time one gets up and the food that one eats) and individual responses to them are crucial to the scholarship of imprisonment,<sup>3</sup> on their own/in themselves they can result in an over-emphasis on prisoner agency. This means that prisoners' capacity for adaptation and/or resistance to prison life can be exaggerated in favour of the degree to which they are constrained by it.<sup>4</sup> More worryingly, such decontextualised subjective experiences may be considered unintelligible and consequently become discredited. This is even more the case in the context of prisoners who as members of militant groups assert their collective and individual political identity; and where the public struggle over political identity through techniques such as the hunger strike and dirty protests, becomes an integral part of their resistance in prison.<sup>5</sup>

How do you equilibrate so that RAF women and men's experiences of their incarceration can be studied in a meaningful way? The idea is not to overcome the agency-structure binary,<sup>6</sup> but to heed

<sup>1</sup> E. Carrabine, *Power, Discourse and Resistance: A Genealogy of the Strangeways Prison Riot* (Ashgate, Dartmouth, 2004) 30.

<sup>2</sup> G. M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton University Press, Princeton New Jersey, (1958) 2007); E. Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Anchor Books, Garden City, New York, 1961); S. Cohen and L. Taylor, *Psychological Survival: The experience of long-term imprisonment* (Pelican Books, Harmondsworth, 1972).

<sup>3</sup> For a good introduction to theories of prisoner adaptation developed in the early prison studies, see R. Matthews, *Doing Time: An Introduction to the Sociology of Imprisonment* (2nd edn., Palgrave Macmillan, Houndsmill, 2009) Chapter 3.

<sup>4</sup> Carrabine provides a useful, succinct explanation of the problem of agency and structure. He writes: 'The agency-structure issue concentrates on the way in which human beings both create social life and, at the same time, the extent to which they are constrained by or remould existing social arrangements. The defining preoccupation is with the connection between human activity and social contexts'; see Carrabine, *Power, Discourse and Resistance*, 25.

<sup>5</sup> K. McEvoy, *Paramilitary Imprisonment in Northern Ireland: Resistance, Management, and Release* (Clarendon Studies in Criminology, Oxford University Press, 2001); M. Corcoran, *Out of Order: the political imprisonment of women in Northern Ireland 1972-1998* (Willan Publishing, Cullompton, Devon, 2006).

<sup>6</sup> This is beyond the scope of this study. In his structuration theory Giddens aims to overcome this fragmented

Valverde's comment that you should avoid falling into the trap of idealising individual experiences.<sup>7</sup>

The aim of this chapter is to frame the RAF prisoner stories in a way that takes account of how power functions within the 'gendered and political dimensions'<sup>8</sup> of their 'armed struggle' in prison.

## 1. The sociology of imprisonment as a starting point

Unlike other studies on the RAF that tend to analyse the conditions of confinement as part of broader historical analyses of the RAF's 'armed struggle' within the political context of the 1970s and early 1980s, I follow the approach taken in studies on the imprisonment of political/politically motivated prisoners in Northern Ireland,<sup>9</sup> namely to frame the study within the sociology of imprisonment. The sociology of imprisonment is generally understood to comprise two levels of analysis: the micro-sociology in which studies in the main concentrate on the dynamics within particular institution(s); their rich ethnographic data provide an invaluable insight into the day-to-day workings of institutions at a given point in time. Among the central questions they have explored are how order is maintained in prison and how prisoners respond to their incarceration, its deprivations or 'pains of imprisonment'. Whereas within the macro-sociological tradition, the interest lies in analysing relationships between punishment and 'broader social processes, economic relations, political structures, historical formations and cultural sensibilities'.<sup>10</sup> It has been argued that the two levels of analysis reflect two different and,

approach to social inquiry. He proposes agency/structure should be viewed as the 'duality of structure', with his now famous phrase that agency and structure are two sides of the same coin. According to Giddens the relationship of agency and structure is circular. Human agents both constitute and are constituted by structure; A. Giddens, *The Constitution of Society: outline of the theory of structuration* (Polity, Cambridge, 1984). However, critics have argued that the subjective focus of his definition of structure does not account for 'existing objective relations of domination and subordination' nor can it account for how structures continue to exist independently of human agency; see Carrabine, *Power, Discourse and Resistance* and Clegg cited in Carrabine, *Power, Discourse and Resistance*, 27. Despite the criticism a number of his key concepts have proved very useful for the study of imprisonment: such as ontological security, the significance of routines, practical consciousness and his notion of power as a dialectic of control; see Carrabine, *Power, Discourse and Resistance*, 26 and also Sparks, Bottoms and Hay, *Prisons and the Problem of Order*.

<sup>7</sup> M. Valverde, 'Analysing punishment: Scope and scale', (2012) 16(2) *Theoretical Criminology* 245-53, 251.

<sup>8</sup> Corcoran, *Out of Order*, xx.

<sup>9</sup> See note 5.

<sup>10</sup> Carrabine, *Power, Discourse and Resistance*, 21. The key authors and texts within the macro-sociology of imprisonment are É. Durkheim, *The Division of Labour in Society* (Macmillan, Basingstoke, 1964) and É. Durkheim, 'Two Laws of Penal Evolution', (1973) 2(3) *Economy and Society* 2, 285-308; G. Rusche and O. Kirchheimer, *Punishment and Social Structure* (Transaction Publishers, New Brunswick, NJ, 2003); M. Foucault, *Discipline and Punish: the birth of the prison* (Penguin Books, London 1977 (1991)). For an informative critical introduction to these key texts, see D. Garland, *Punishment and Modern Society: A study in social theory* (Clarendon Press, Oxford, 1990). And for a critical feminist analysis of these texts including Garland's analysis see A. Howe, *Punish and Critique: Towards a Feminist Analysis of Penalty* (Sociology of Law and Crime, London, Routledge, 1994).

until more recently, separate traditions, within 'a field of inquiry marked by a range of disparate and largely unconnected studies of particular aspects of imprisonment, and more generally punishment'.<sup>11</sup>

The first step is to look at how the debates on power relations in prison and prisoner resistance on the one hand and the drivers of penal currents on the other can provide the basis of a framework for RAF women and men prisoner narratives.

### 1.1. Power and prison life

One approach is to frame the individual women and men RAF prisoners' experiences with an understanding of the power relations within prison (micro-level of analysis). From this follow three questions: How do you account for the structural processes inside prison that are instrumental to the control of prisoners' daily lives from the control of time and space to the normalisation processes that reinforce dominant conceptions of masculinity and femininity? And at the same time how do you account for prisoners' capacity for subversion and resistance within the institutional environment? Essentially these questions can be summed up as: what is the imprisonment of a group of politically motivated/political women and men *like*?<sup>12</sup>

Prison ethnographies provide rich data on the social isolation of prison life and power relations in prison. The early studies focus on inmate (men) subcultures and the ways in which inmates adapt to the prison's punitive environment,<sup>13</sup> with the exception of a few studies dedicated to women's imprisonment.<sup>14</sup> Their analyses of power highlight its coercive and manipulative elements, more specifically how order is produced partly through the authorities' reliance on informal/prisoner enforcement structures rather than extensive use of force.<sup>15</sup> Following these early studies the field of inquiry has been expanded to analyse the multifaceted and reciprocal/relational nature of power. The

<sup>11</sup> Carrabine, *Power, Discourse and Resistance*, 21. On the value of combining the two approaches, see Carrabine, *Power, Discourse and Resistance*, Chapter 2; and B. Crewe, *The Prisoner Society: Power, Adaptation and Social Life in an English Prison* (Oxford University Press, Oxford, 2009) 461-2.

<sup>12</sup> This question is a rephrased version that originates in Carrabine's work; see Carrabine, *Power, Discourse and Resistance*, Chapter 2;

<sup>13</sup> See for example Clemmer, *The Prison Community*; Sykes, *The Society of Captives*; Goffman, *Asylums*; Cohen and Taylor, *Psychological Survival*.

<sup>14</sup> see for instance D. A. Ward and G. Kassebaum, *Women's Prison: Sex and Social Structure* (AldineTransaction, New Brunswick, 2007)

<sup>15</sup> See Sykes, *The Society of Captives*.

prison community is found to be less cohesive than described in the early studies. For instance in situations where peer solidarity is underdeveloped, it is argued that isolated and competing prisoners utilize 'censoriousness' as an alternative reaction to the exercise of power.<sup>16</sup>

Others explore the significance of legitimacy and accountability in staff-prisoner relationships for the maintenance of prison order.<sup>17</sup> A further layer has been added to this, namely the role of 'fatalistic ritual' in the maintenance of order under conditions of a legitimacy deficit. Under such conditions, it is argued, prisoners reluctantly accept the dominant value system and this results in a fragile system of order.<sup>18</sup> More recently, the emergence of a neopaternalism has been highlighted. Here power is experienced as faceless and unpredictable, so-called 'soft power'; where prisoners need to show active commitment to change and feel compelled to engage with the system (of progression and incentives).<sup>19</sup> These studies highlight the persuasive and productive dimensions of power.<sup>20</sup> With reference to Giddens' concept of a 'dialectic of control', they demonstrate that individual agency is not fixed; rather power relations are continually contested in prison.<sup>21</sup>

In feminist and critical studies prisons have been analysed as gendered institutions. Some argue that gender relations in prison are hierarchically structured (through the institutional setting and the management of the organisation) with all other forms of masculinity and femininity subordinate to

<sup>16</sup> Censoriousness is defined as 'criticism of those in power for not following, in their behaviour, principles that are established as correct within the social system in question'. Mathiesen identifies the conditions when prisoners are more likely to take such an alternative approach to peer solidarity: weak bargaining position, decline in subcultural tradition on the outside, low status (honour) attached to identifying with a particular group, and the attitude of prison management and staff; see T. Mathiesen, *The Defences of the Weak: A sociological study of a Norwegian correctional institution* (Tavistock Publications, London, 1965) 27 and Chapter 12.

<sup>17</sup> For studies that argue for the centrality of staff-prisoner relationships to order and justice in prison see R. Sparks, A. Bottoms and W. Hay, *Prisons and the Problem of Order* (Clarendon Press, Oxford, 1996); A. Liebling with H. Arnold, *Prisons and their moral performance: A study of values, quality and prison life* (Clarendon Studies in Criminology, Oxford University Press, 2005). For a comparative approach that includes Germany see J. Vagg, *Prison Systems: A Comparative Study of Accountability in England, France, Germany and The Netherlands* (Clarendon Press, Oxford, 1994).

<sup>18</sup> See Carrabine, *Power, Discourse and Resistance*.

<sup>19</sup> See Crewe, *The Prisoner Society*.

<sup>20</sup> For a good overview of 'The Elementary Forms of Power' and the distinction between coercive and persuasive elements of power, see Carrabine, *Power, Discourse and Resistance* 27-9; The term productive power derives from Foucauldian conceptions of power. For a good overview of usefulness of Foucauldian conceptions of power and feminist analyses thereof for the analysis of penal reform, see K. Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (University of Toronto Press, Toronto, Buffalo and London, 2001) 5-14.

<sup>21</sup> Giddens, *The Constitution of Society*.

the dominant conception of masculinity (hegemonic masculinity).<sup>22</sup> Power relations in prison manifest themselves as the control of women and men through the reproduction of dominant conceptions of femininity (women as caring, compliant and passive) and masculinity (men as aggressive, violent and active). Whereas a degree of violence and aggression is deemed acceptable or an unavoidable part of prison culture for men, women's imprisonment is characterised by numerous contradictory discourses that require women to be both 'in control' (e.g. coping and caring) and 'out of control' (e.g. in need of protection).<sup>23</sup> The purposes of imprisonment for men are centred on their offending behaviour, the risk that they pose to society and the institution: namely control, rehabilitation or normalisation.<sup>24</sup> Yet, women prisoners are faced with being doubly deviant, that is they are deemed to be 'not real women' and therefore need to be 'disciplined, medicalized and feminized'.<sup>25</sup>

In other prison studies power relations have been explored through the analysis of prisoners' capacity for resistance and subversion. They have looked to the concepts of identity and subjectivity, developed in feminist and critical studies, as the driving force of/ the impetus for resistance in prison. From a comparatively powerless position, prisoners nevertheless engage in everyday negotiations/struggle with other prisoners and staff over food, exercise, visits, and association to retain a degree of choice and autonomy.<sup>26</sup> Within the context of numerous forms of femininity and masculinity, 'subjects are continually constituting and constructing their identity'.<sup>27</sup> Women (but also men) prisoners negotiate power relations within the institution through a sense of self that is formed outside and reflects wider social constructions of gender, race, class, sexuality and gender identity.<sup>28</sup> With regards to politically motivated/political prisoners it is argued that in many cases the negotiation/assertion over/of their political identity in prison and the authorities' response to categorise

<sup>22</sup> Cornel cit in E. Carrabine and B. Longhurst, 'Gender and Prison Organisation: Some Comments on Masculinities and Prison Management', (1998) 37(2) *The Howard Journal* 161-76.

<sup>23</sup> J. Sim, 'Tougher than the rest? Men in prison', in T. Newburn and E. A. Stanko (eds) *Just boys doing business? Men, masculinities and crime* (Routledge, London, 1995) 100-117 and P. Carlen, *Sledgehammer: Women's Imprisonment at the Millennium* (Macmillan Press, London, 1998) 67-8.

<sup>24</sup> Carrabine, *Power, Discourse and Resistance*.

<sup>25</sup> Carlen cit in R. Matthews, *Doing Time*, 192.

<sup>26</sup> M. Bosworth and E. Carrabine, 'Reassessing resistance: Race, gender and sexuality in prison', (2001) *Punishment and Society* 501-15.

<sup>27</sup> Carrabine and Longhurst, 'Gender and Prison Organisation'.

<sup>28</sup> M. Bosworth, *Engendering Resistance: Agency, and Power in Women's Prisons* (Aldershot, Dartmouth Publishing Company, 1999).

them one way or another (ordinary or political) was a significant part of their struggle.<sup>29</sup> How does political imprisonment feature? How are power relations and the resistance of political prisoners understood? Where does the incarceration of women political prisoners fit in?

## 1.2. *The other part of the story: penalty*

Yet, life in prison and this includes its management (the micro-level) is influenced by or subject to broader historical, social, economic and cultural processes (the macro-level of the sociology of imprisonment). More specifically the prison is part of the wider framework of penalty. Hannah-Moffat's definition of penalty highlights how the two levels are connected and is therefore useful here. She writes: "Penalty" is used ... to draw attention to the historical, social, and political aspects of a complex range of institutions and practices that shape modern forms of punishment'.<sup>30</sup> Consequently, in addition to the question what is RAF/J2M imprisonment *like*, following Carrabine I argue that you also need to ask: what might the imprisonment of these groups of political/politically motivated women and men have been *for*?<sup>31</sup> In addition to an understanding of the power relations within prison, this other approach allows for the exploration of trends in penalty and the purpose(s) of imprisonment.

Over the last couple of decades there has been a key debate in the Anglo-Saxon literature on (neo-liberal) penalty in which two major trends have been identified as an increase in the intensity of punishment, the 'new' punitiveness,<sup>32</sup> and the sidelining of the rehabilitative ideal through a 'burgeoning technocratic managerialism'<sup>33</sup>, the 'new penology'.<sup>34</sup> Driven by neo-liberal exclusionary practices that have largely replaced a social welfare inclusionary approach, 'the management of dispossessed and

<sup>29</sup> K. McEvoy, K. McConnachie and R. Jamieson, 'Political imprisonment and the "War on Terror"', in Y. Jewkes (ed) *Handbook on Prisons* (Willan Publishing, Cullompton Devon, 2007) 293-323, 299.

<sup>30</sup> Hannah-Moffat, *Punishment in Disguise*, 5. Penalty as a concept was first introduced by Foucault, who did not define it; see Howe, *Punish and Critique*, 117. Garland also provides a definition of penalty as 'the network of laws, processes, discourses, representations and institutions which make up the penal realm'; see Garland, *Punishment and Modern Society*, 17.

<sup>31</sup> Both these questions build on Carrabine's work and reflect what he has characterised as the *means* of incarceration and the *ends* of imprisonment; see Carrabine, *Power, Discourse and Resistance*, Chapter 2. This will be expanded on in Section 2 below.

<sup>32</sup> J. Pratt, D. Brown, M. Brown, S. Hallsworth, W. Morrison (eds), *The new punitiveness: Trends, theories and perspectives* (Willan, Cullompton Devon, 2005).

<sup>33</sup> M. Cavadino and J. Dignan, *Penal Systems: A Comparative Approach* (Sage, London, 2006) 7.

<sup>34</sup> M. Feeley and J. Simon, 'The new penology: Notes on the emerging strategy of corrections and its implications', (1992) *Criminology* 30(4), 449-474.

dishonored groups<sup>35</sup> manifests itself through a mass incarceration drive, the reintroduction of degrading punishments (such as chain gangs and capital punishment), disproportionate sentencing, expansion of indeterminate sentences, and harsher prison conditions.<sup>36</sup> These punitive responses reflect a heterogeneous approach that blends together features of discipline, rehabilitation and incapacitation.<sup>37</sup> The modern ideals of penology - 'a hopeful project to improve both individual offenders and society'<sup>38</sup> - have been largely replaced in the 'new penology' by a 'new strategic focus' on both the risk management of aggregate groups of offenders (actuarial justice) and the containment of dangerous offenders.<sup>39</sup>

For prisons, this means new and intensified forms of self-scrutiny and measurement, most notably in the shape of performance targets and internal audits that check compliance with organisational standards. Aided by information technology, these targets are set according to national frameworks and are appraised from the organizational nerve centre.<sup>40</sup>

Some argue that these trends in penalty are driven by wider social and political developments that are shared by all western countries.<sup>41</sup> Others disagree with the broad generalizations that cross individual jurisdictions. Despite the effects of globalization it is argued that punitiveness and penology vary across countries.<sup>42</sup> It is rather that the nature of 'penal excess' in the United States and to some extent in the United Kingdom is such that these two countries can be understood as 'outliers'.<sup>43</sup> Globalizing trends in penalty are subject to 'filtering and translating effect of national politics'.<sup>44</sup> For

<sup>35</sup> L. Wacquant, 'Deadly symbiosis: when ghetto and prison meet and mesh', (2001) *Punishment and Society* 3(1) 95-133.

<sup>36</sup> D. Garland, *Culture of Control: Crime and Social Order in Contemporary Society* (Oxford University Press, Oxford, 2001).

<sup>37</sup> O'Malley cit in C. Kruttschnitt and R. Gartner, *Marking Time in the Golden State: Women's Imprisonment in California* (Cambridge University Press, Cambridge, 2005) 4.

<sup>38</sup> Valverde, 'Analysing punishment' 246. Valverde argues that the 'demise of penology as a hopeful project' could have been down to recidivism studies gaining momentum rather than the persuasiveness of the studies that deemed to show the 'failure' of rehabilitation. Most notably Martison's article and 'nothing works'; see R. Martinson, 'What works? Questions and answers about prison reform', (1974) 35*The Public Interest*, 22-54. I would also like to thank Susanne Karstedt for pointing this out to me.

<sup>39</sup> Feeley and Simon, 'The new penology', 459.

<sup>40</sup> Crewe, *The Prisoner Society*, 17.

<sup>41</sup> Garland (2001) and Wacquant (2004) cited in S. Snacken, 'Resisting punitiveness in Europe?', (2010) *Theoretical Criminology* 14(3) 273-292, 257.

<sup>42</sup> M. Cavadino and J. Dignan, 'Penal Policy and political economy', (2006) *Criminology and Criminal Justice* 6(4) 435-56; Snacken, 'Resisting punitiveness in Europe'; S. Karstedt, 'Explorations into the sociology of criminal justice and punishment: leaving the modernist project behind', (2007) *History of the Human Sciences* 20(2) 51-70, 65.

<sup>43</sup> M. Bosworth, 'Introduction: Reinventing penal parsimony', (2010) *Theoretical Criminology* 14(3) 251-6, 252; or 'American Exceptionalism' see Karstedt, 'Explorations into the sociology of criminal justice and punishment', 58.

<sup>44</sup> P. O'Malley, 'Globalizing risk? Distinguishing styles of "neo-liberal" criminal justice in Australia and the USA',

penal policies in individual countries are socially constructed through an interplay of a variety of aspects that include decisions by policy-makers and practitioners;<sup>45</sup> different models of capitalism with varying commitments to social welfare;<sup>46</sup> different democratic structures (consensus versus adversarial politics);<sup>47</sup> and variations in 'commitment to "dignity"' and to human rights.<sup>48</sup> And from this the following questions arise: How does Germany fit in? How can penalty in Germany be understood? How can the intersection of counter-terrorism measures with penal currents in Germany be understood?

In order to be able to address both questions on power relations and resistance in prison and the nature of penalty in Germany and its intersection with counterterrorism measures, a way of connecting the micro and the macro-level of analysis needs to be set out. This is captured by the following question: *How do you connect everyday experiences of the women and men of the RAF within prisons with the wider context of 'penalty' in Germany?*

## 2. Everyday experiences, the prison and penalty – a power and gendered perspective

Within the sociology of imprisonment Jacob's 1977 study of Stateville prison is an early example of connecting the inside with the outside, that is prison life with 'broader functions of imprisonment'. In the study he not only mapped the change in management from an authoritarian regime to a professional, reformist prison administration but also analysed through the mass society framework the permeability of the prison to societal changes, such as the civil rights movement.<sup>49</sup> More recently there have been various approaches. For one Giddens' structuration theory has informed a number of studies on prison life, for instance the impact of prisoners' perceptions of legitimacy and justice on prison order<sup>50</sup>. Others have analysed how changes/shifts in penalty in the form of increased punitiveness and the new

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(2002) *Criminology and Criminal Justice* 2(2) 205-22.

<sup>45</sup> Snacken, 'Resisting punitiveness in Europe', 275, 287.

<sup>46</sup> Cavadino and Dignan, *Penal Systems*.

<sup>47</sup> M. Tonry, 'Why Aren't German Penal Policies Harsher and Imprisonment Rates Higher?', (2004) *German Law Journal* 5(10) 1157-1206.

<sup>48</sup> J. Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (Oxford University Press, Oxford, 2003) 9.

<sup>49</sup> J. Jacobs *Stateville: The Penitentiary in Mass Society* (Studies in Crime and Justice, The University of Chicago Press, 1977).

<sup>50</sup> See Sparks et. al. *Prisons and the Problem of Order*; For a brief description of Giddens' structuration theory see note 6 supra [CHECK].



penology have affected the daily lives of women prisoners in California.<sup>51</sup> More recently, the review and analysis of supermax confinement in the US has been framed within the wider context of penal excess in the US.<sup>52</sup> And the study of prisoner adaptations that reconnects with the tradition of prison ethnography, yet overcomes the limitations of earlier studies by situating the prisoner experience within both the institutional context and more importantly, the wider penal context.<sup>53</sup>

Another approach has been to use Foucault's work on power. Early work utilized his concept of disciplinary power to analyse how within women's imprisonment benevolent or therapeutic ideals for women that included dominant conceptions of femininity were experienced as coercive and intrusive; in effect extending penal control into the lives of women.<sup>54</sup> More recently, some scholars, in studies that range from the nature of prison unrest in England in the 1990s<sup>55</sup> to the reform of women's imprisonment in Canada<sup>56</sup>, have looked to governmentality scholarship in critical and feminist theory. Despite the criticism that Foucault's approach was 'androcentric',<sup>57</sup> feminist scholars have found his concepts useful for the analysis of governing across different social sites through a decentralised and diffused notion of power. Building on Foucault's analysis of power/knowledge<sup>58</sup> 'it allows for a more complex and detailed understanding of the gendered nature of knowledge and of the disciplining of female bodies'.<sup>59</sup> Why governmentality specifically? Because 'governmentality provides a method for thinking about the interaction and intersection of everyday experience and power relations, with macro-strategies of

<sup>51</sup> Kruttschnitt and Gartner, *Marking Time in the Golden State*. Their research revisits David Ward and Gene Kassebaum's 1965 study and Rose Giallombardo's 1966 study, both classic studies on women's imprisonment. With the use of rich data they draw comparisons with women's experiences in the same prisons in the 1990s.

<sup>52</sup> S. Shalev, *Supermax: Controlling risk through solitary confinement* (Willan Publishing, Cullompton Devon, 2009).

<sup>53</sup> Crewe, *The Prisoner Society*.

<sup>54</sup> R. P. Dobash, R. Emerson Dobash and S. Gutteridge, *The Imprisonment of Women* (Basil Blackwell, Oxford, 1986).

<sup>55</sup> Carrabine, *Power, Discourse and Resistance*.

<sup>56</sup> Hannah-Moffat, *Punishment in Disguise*.

<sup>57</sup> See Howe, *Punish and Critique*.

<sup>58</sup> For Foucault reality is constructed through the interplay of power/knowledge (discourse). Power and knowledge are reciprocal and interrelated; it is a circular relationship in which they perpetually produce one another. It is not the actions of individuals that generate a body of knowledge either of use to or opposed to power, it is rather power/knowledge: processes and tensions that cross it and constitute it, that shape the types and potential fields of knowledge; see M. Foucault, (1980) 'Prison Talk' in Gordon, C. (ed.), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*, (Harvester Wheatsheaf, New York, 1980) 37-54, 52; and Foucault, *Discipline and Punish*, 27-8.

<sup>59</sup> Finateri cit. in Hannah-Moffat, *Punishment in Disguise*, 5

governance and regulation'.<sup>60</sup> It is a way of connecting what Carrabine has characterised as the *means* and the *ends* of imprisonment.<sup>61</sup>

I do not want to give the impression that I am the first to think of connecting the two levels of analysis in relation to prisoners involved in a political struggle. This has been done with great success in both McEvoy's study of paramilitary imprisonment in Northern Ireland and Corcoran's study of women political prisoners in Northern Ireland.<sup>62</sup> I will draw on these two studies in Section 4 below. Essentially the studies that guide my theoretical framework, and this includes Corcoran's study on women political prisoners, are those who have used a governmentality framework to connect the analysis of everyday prison life to wider processes of penal governance.

## 2.1. Foucauldian approaches to power

The idea is to provide a brief overview of Foucault's conceptualisation of power with a particular emphasis on its relevance to an approach that connects experiences of prison life and penal governance. It is beyond the scope of this chapter to engage with the vast body of literature that has emerged on Foucault's work. The aim is to introduce Foucault's work so that this can be a basis for understanding Hannah-Moffat's and Carrabine's work on governmentality and penal governance which will be introduced in the subsequent sub-section.

Foucault is concerned with analyses of power beyond a judicial model of sovereignty, which privileges the law as the 'basic manifestation of power'; what he terms the 'juridico-discursive' model of governing.<sup>63</sup> This judicial model can be summarised as: '[F]irst, power is possessed exclusively by certain groups or institutions; *second*, power flows from a centralized source down to the bottom (usually the state); and *third*, power is primarily repressive, involving prohibitions and sanctions' [emphasis in the original].<sup>64</sup> In contrast, in Foucault's conception power is both diffused throughout

<sup>60</sup> R. Harding, *Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives* (Routledge, Abingdon, 2010) 39/40.

<sup>61</sup> See Carrabine, *Power, Discourse and Resistance*, Chapter 2.

<sup>62</sup> McEvoy, *Paramilitary Imprisonment in Northern Ireland*; Corcoran, *Out of Order*.

<sup>63</sup> M. Foucault, *Society Must Be Defended* (Penguin Books, London, 2004) 265.

<sup>64</sup> Sawicki cit. in Hannah-Moffat, *Punishment in Disguise*, 7.

society and centralized in the state;<sup>65</sup> it manifests itself in action; it is relational and can be productive as well as repressive.<sup>66</sup> He is interested in power at its fringes where it becomes 'capillary' and its appearance becomes less and less judicial.<sup>67</sup> In his work on punishment, he analyses

how the power to punish was embodied in a certain number of local, regional, and material institutions, such as torture and imprisonment, and to look at the simultaneously institutional, physical, regulatory, and violent world of the actual apparatuses of punishment.<sup>68</sup>

This quote also highlights how he inverts the top-down approach evident in other theoretical approaches to power.<sup>69</sup> He advocates a bottom up approach from local histories, trajectories and techniques to 'general mechanisms and forms of overall domination'.<sup>70</sup> The focus of analysis is on how power relations within institutions, like the prison, the madhouse, the school and the factory are affected by the 'structural imperatives of capitalism'.<sup>71</sup>

Foucault focuses on the governance of the body; 'the political technologies of the body'.<sup>72</sup> In his major work on the role of the prison in modern penality, *Discipline and Punish: the Birth of the Prison*, Foucault maps the change from the public corporeal punishment in the forms of execution and torture to the predominance of the prison; a punishment that centres on the loss of rights and that is closed off/kept secret from society. His main aim is not to provide an account of punishment as a state institution, but to expose mechanisms of domination and subjugation of the body. He argues that the transition to the prison occurred between the late 18th to mid-19th century, where punishment no longer

<sup>65</sup> D. Garland, "'Governmentality" and the problem of crime: Foucault, criminology, sociology', (1997) 1(2) *Theoretical Criminology*, 173-214, 205.

<sup>66</sup> M. Foucault, 'The Subject and Power', (1982) 8(4) *Critical Inquiry*, 777-795.

<sup>67</sup> Foucault, *Society Must Be Defended*, 27-8.

<sup>68</sup> Foucault, *Society Must Be Defended*, 28.

<sup>69</sup> For instance Durkheim or Marxist sociologists who apply the deductive methods of positivist sociology; see B. Hudson, *Understanding Justice: an introduction to ideas, perspectives and controversies in modern penal theory* (Oxford University Press, Buckingham, 1996) 117.

<sup>70</sup> Foucault, *Society Must Be Defended*, 30. This phenomenological approach to the everyday application of penal policy is considered Foucault's central contribution to the field and distinct from other sociological approaches; see Garland, *Punishment and Society*, 133.

<sup>71</sup> Hudson, *Understanding Justice*, 118. Hudson adds that Foucault takes for granted both Durkheimian notion of moral authority and Marxists questioning of the logic of capitalist economy and incorporates them.

<sup>72</sup> Foucault, *Discipline and Punish*, 30. Hudson refers to 'power of and over the body' as *bio-power*; Hudson, *Understanding Justice*, 119. Yet others explain that Foucault introduced the term bio-power to function at the level of general populations, life and living beings in contrast to the individualized governance of the body through disciplinary power; see A. Fontana and M. Bertani, 'Situating the Lectures' in M. Foucault, *Society Must Be Defended* (Penguin Books, London, 2004) 273-93, 273.

functioned as the public revenge of the sovereign on the body but created a utility of the body (docile) in the economics of power through disciplining the soul.<sup>73</sup> 'Discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience)'.<sup>74</sup> The aim is to transform the individual into a docile body through the increase in utility and production of obedience, which according to Foucault is achieved through training.<sup>75</sup> Training involves both surveillance, 'hierarchical observation', where the ability to see the individual produces power and the coercive techniques makes the individual perceptible, and 'normalizing judgement', where any non-conformity is punished by the power of the norm: through comparison with a standard set; differentiation from others; through a position in the hierarchy; homogenization of a social group; and exclusion.<sup>76</sup> Modern penalty is therefore characterized by 'exclusion, combined with differentiation and classification'.<sup>77</sup> It is through examination, which combines both aspects of training, that the individual becomes an object of the power/knowledge relationship through the generation of 'scientific' discourse.<sup>78</sup>

How does individual agency or resistance fit within the conception of power as discipline? According to Foucault the individual is a reality produced by the technology of power, discipline.<sup>79</sup> This objectification of the individual in *Discipline and Punish* has been criticised as disregarding human agency. For instance Giddens argues that there is no theoretical scope for prisoner resistance; for the desensitised character of disciplinary techniques results in the problem that the docile bodies are not agents. Yet, according to Giddens in prison there is still a 'dialectic of control', 'that autonomy specifically characteristic of the human agent - the capacity to have acted otherwise' is largely restricted, however is seldom wiped out completely.<sup>80</sup> The notion that power is contested and negotiated

<sup>73</sup> Foucault, *Discipline and Punish*.

<sup>74</sup> Foucault, *Discipline and Punish*, 138.

<sup>75</sup> Foucault, *Discipline and Punish*, 138, 170.

<sup>76</sup> Foucault, *Discipline and Punish*, 183-4.

<sup>77</sup> Hudson, *Understanding Justice*, 122.

<sup>78</sup> Foucault, *Discipline and Punish*, 192.

<sup>79</sup> Foucault, *Discipline and Punish*, 194.

<sup>80</sup> For the paragraph Giddens cit in Sparks *et al*, *Prisons and the Problem of Order*, 67. Other criticism levelled at Foucault's *Discipline and Punish* include: that he ignores the differences between prison and other institutions, for imprisonment comes with blame and is painful (see N. Christie 'Prisons in Society, or Society as a Prison - A Conceptual Analysis' in Freeman, J.C., *Prisons Past and Future*, (Heinemann, London, 1978) 179-188; disciplinary power is dehumanised and consequently leaves no scope for prison reform (see Garland, *Punishment and Society*, 170-1).

is reflected in Garland's critique. He suggests:

In particular he might have been led to describe the operation of power upon individuals as being less of an automatic process and more a matter of micro-political conflict in which the individual subject may draw upon alternative sources of power and subjectivity to resist that imposed by the institution.<sup>81</sup>

This notion that the individual may act differently is at the core of Foucault's understanding of power as government; namely how human conduct (individuals and groups) is shaped through a systematic, standardized and reflexive approach for a diverse set of goals.<sup>82</sup> Foucault describes power as government (or governmental power) as the 'conduct of conduct'. It can be understood as to guide, supervise or control behaviour, but also carries a meaning in the reflexive sense, namely the way in which one acts or behaves in certain circumstances (to carry oneself).<sup>83</sup> The connection between government and thought is the basis for the general meaning of governmentality: a 'system of thinking about the practice of government'.<sup>84</sup> This framework makes possible an analysis of the practices of government and the practices of the self; for instance how we govern, are governed and govern ourselves? Government is not exclusively the remit of the state. It can encompass a variety of relations 'between self and self, private interpersonal relations involving some form of control or guidance, relations within social institutions and communities and, finally, relations concerned with the exercise of political sovereignty'.<sup>85</sup> Foucault was concerned with how these different types of government were interconnected.

How can government be understood? Dean suggests the following definition:

Government is any more or less calculated and rational activity, undertaken by a multiplicity of authorities and agencies, employing a variety of techniques and forms of knowledge, that seek to shape conduct by working through the desires, aspirations,

<sup>81</sup> Garland, *Punishment and Society*, 173.

<sup>82</sup> Foucault, 'The Subject and Power', 788-90. In his 1976 lectures on war and domination, Foucault already clarified his view of power to account for individual agency. 'Power functions', it travels through individuals and is not exerted on them. Individuals are considered relays of power, part of a network through which power circulates, where power is not simply applied to them; where they are able to both yield to and exert this power; Foucault, *Society Must Be Defended*, 29.

<sup>83</sup> See Dean, *Governmentality*, 18; and C. Gordon, 'Governmental Rationality: An Introduction' in G. Burchell, G. Gordon and P. Miller (eds), *The Foucault Effect: Studies in Governmentality* (The University of Chicago Press, 1991) 1-53, 2.

<sup>84</sup> Carrabine, *Power, Discourse and Resistance*, 31.

<sup>85</sup> Gordon, 'Governmental Rationality: an introduction', 2-3.

interests and beliefs of various actors, for definite but shifting ends and with a diverse set of relatively unpredictable consequences, effects and outcomes.<sup>86</sup>

Power as government is therefore persuasive and productive; it occupies the space between coercion and consent, freedom and domination.<sup>87</sup> As already noted governance includes self-governance; this means that individuals and groups are 'not only instruments in the pursuit of political, social and economic goals', they can look to other ways of governing as a form of resistance, counter-conducts.<sup>88</sup> The new social movements (e.g. women's movement, environmental movement, peace movement) in Germany in the 1970s-80s are examples of counter-conduct that resulted in changes in governance. In contrast to the student movement and Extra-parliamentary Opposition, the new social movements did not aim to change mainstream culture but worked to produce an 'alternative culture ....(bookstores, printing and craft shops, farm co-ops and so forth) in an attempt to create a countereconomy and a whole alternative lifestyle'.<sup>89</sup> They also led to the founding of the German Green Party in 1980.

Consequently, to analyse the practices of government is 'to analyse those practices that try to shape, sculpt, mobilize and work through the choices, desires, aspirations, needs, wants and lifestyles of individuals and groups'.<sup>90</sup> The approach 'seeks to connect questions of government, politics and administration to the space of bodies, lives, selves and persons'.<sup>91</sup> Another way of putting it is, following Rose and Miller, to analyse 'small histories and their intersecting trajectories'.<sup>92</sup> They propose two levels for the analysis of power as government: *political rationalities* and *governmental technologies*. Essentially these are the conceptual tools to examine both goals and governmental practices, that is a systematic, standardized and reflexive approach to shape human conduct. The former refers to:

[T]he changing discursive fields within which the exercise of power is conceptualised,

<sup>86</sup> Dean, *Governmentality*, 18.

<sup>87</sup> Dean, *Governmentality*, 58.

<sup>88</sup> Dean, *Governmentality*, 21.

<sup>89</sup> S. on Dirke, 'All power to the imagination!' *The West German Counterculture from the Student Movement to the Greens* (University of Nebraska Press, Lincoln and London, 1997) 68.

<sup>90</sup> Dean, *Governmentality*, 20.

<sup>91</sup> Dean, *Governmentality*, 20.

<sup>92</sup> N. Rose and P. Miller, *Governing the Present: Administering Economic, Social and Personal Life*, (Polity Press, 2008) 6.

the moral justifications for particular way of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distribution of such tasks among secular, spiritual, military and familial sectors.<sup>93</sup>

The *political rationalities* of modern western democracies are liberalism, more recently neo-liberalism, and the administrative goals to maximise health, welfare and life of populations (bio-politics).<sup>94</sup> In Germany a type of neo-liberalism, known as *ordo-liberalism*, was instrumental in the rebuilding of the economic system after WW2. In *ordo-liberalism* the market is understood 'as a "game of competitive freedom" whose rules are secured by a juridical and bureaucratic framework'.<sup>95</sup> I will argue below that as a rationality of government it is crucial for understanding penal governance in Germany (Section 3 below).

To return to the second half of Rose and Miller's approaches to the analysis of government, *governmental technologies*: they are the techniques and tactics to achieve the ends of government. They are described as 'the complex of mundane programmes, calculations, techniques, apparatuses, documents and procedures through which authorities seek to embody and give effect to governmental ambitions'.<sup>96</sup> This relates to everyday routines, personal/individual contact or communication with others, and negotiation of identity.

How has this approach to the analysis of government as power been applied to the study of the governance of women and men prisoners? Why is governmentality (as a system of thinking about the practices of government) useful to the study of penal governance?

## 2.2. Penal governance of women and men in prison

In *Power, Discourse and Resistance*, a study on prison unrest with a focus on the Strangeways prison riots in 1990 in England, Eamonn Carrabine explores the relationships between individual agency, the

<sup>93</sup> Rose and Miller cit in Carrabine, *Power, Discourse and Resistance*, 32.

<sup>94</sup> Dean, *Governmentality*, 30.

<sup>95</sup> Dean, *Governmentality*, 28. Dean maintains that *ordo-liberalism* is also a form of neo-liberalism, because the members of the Freiburg School 'sought to reconstruct a market economy and the regime of the price mechanism, even if this did entail extensive social provision'(74 n 2). This is in contrast to the neo-liberalism of the Chicago School.

<sup>96</sup> Rose and Miller cit in Carrabine, *Power, Discourse and Resistance*, 32.

prison and the wider context of economic, social and cultural power relations.<sup>97</sup> The study is a genealogy of the riots in which established views on the causes of prison unrest and their prevention are challenged through a different approach to thinking about disorder in prisons. The premise of the book is that the report published following the judicial enquiry into the wave of prison riots in April 1990, which included the Strangeways riot, chaired by Lord Justice Woolf (the Woolf Report) though it identified the interrelationship of 'security, control and justice' as the basis for order in prisons, it could not explain why the unrest occurred in those particular prisons at the particular points in time.<sup>98</sup> Rather it is due to 'a failure to think through the relationships between human agency, institutional history and social structure'.<sup>99</sup>

The analysis is framed by the analytical symmetry inherent in an approach that builds on the governmentality literature to connect everyday experiences of prison life to wider power formations. Carrabine conceptualises the space between consent and coercion through the role of fatalistic ritual in the maintenance of order in situations where a legitimacy deficit exists.

Although fatalism does generate stability, in prisons it does so largely through the dull compulsion of rituals that serve to signify the inevitability of the social structure, as few prisoners embrace an ideology of fatalism that maintains they are inferior and deserve their fate.<sup>100</sup>

The link between the management of prisons and wider social, economic and cultural processes is achieved through the use of the conceptual tools, political rationalities and governmental technologies; namely to develop an understanding of the purposes of imprisonment and the management of prison life.<sup>101</sup> Carrabine suggests that six discourses, each with a specific history, structure the prison experience: rehabilitation, normalisation and control (political rationalities or 'ends' of imprisonment) and bureaucracy, professionalism and authoritarianism (governmental technologies or 'means' of

<sup>97</sup> Carrabine, *Power, Discourse and Resistance*.

<sup>98</sup> Carrabine, *Power, Discourse and Resistance*, 15.

<sup>99</sup> Carrabine, *Power, Discourse and Resistance*, 17.

<sup>100</sup> Carrabine, *Power, Discourse and Resistance*, 183.

<sup>101</sup> Carrabine's framework is a far more sophisticated and complex framework than I can do it justice here. I merely focus on his application of Rose and Miller's tools to the study of penal governance. For a very illustrative overview of his theoretical approach, see E. Carrabine, 'Discourse, governmentality, and translation: Towards a social theory of imprisonment' (2000) *Theoretical Criminology* 4(3) 309-31.



imprisonment). The prevalence of or the particular dominant position such a discourse occupies within individual institutions or society as a whole affects how individual or groups of prisoners are constructed as subjects. Within the discursive formation of rehabilitation, the prisoner is considered 'deviant' and in need of transformation; normalisation requires an approach that minimises the harmful effects of imprisonment and supports prisoners -who are considered normal- in their reintegration into society; and finally under conditions of control the focus is to maintain the smooth running of the prison, order and discipline; and prisoners who do not or cannot conform are considered 'disruptive'.<sup>102</sup> These formations are not fixed but exist to varying degrees within the prison system as a whole and within individual institutions; moreover they interrelate with the means of imprisonment (bureaucracy, professionalism and authoritarianism) and are constantly negotiated and reflected upon. Bureaucracy relates to the administration of the prison system as a whole conceived of and represented by civil servants; professionalism is reflected in the attitudes and views of prison governors through ideas of leadership and it tends to focus on individual institutions; and finally authoritarianism relates to an 'old school' militaristic approach to the maintenance of discipline and order in particular institutions.<sup>103</sup>

[The] claim is that there are dominant alignments operating within institutions and across societies at any given moment and that these alignments are continually produced and are open to contestation by actors in the penal system.<sup>104</sup>

This approach allows for a more comprehensive analysis of gender relations in prison; in particular it allows for the analysis of prisons as gendered institutions, that is how 'gender relations are embedded in institutional settings' and are performed through the discursive formations of conduct. Carrabine very convincingly demonstrates that the technologies for the management of prisons represent different hegemonic masculinities that exist in tension with one another.<sup>105</sup> For instance the transition from authoritarianism to professionalism did not remain unchallenged. In particular this was reflected in the differing views on how to govern a prison. While one can readily ascribe 'a particular kind of aggressive, domineering and rugged masculinity' to authoritarianism, Carrabine stresses that the other

<sup>102</sup> Carrabine, *Power, Discourse and Resistance*, 38-9.

<sup>103</sup> Carrabine, *Power, Discourse and Resistance*, 40.

<sup>104</sup> Carrabine, *Power, Discourse and Resistance*, 38.

<sup>105</sup> Carrabine, 'Discourse, governmentality and translation' 325.

approaches to governance should not be considered feminine practice (care, therapy and benevolence), but equally perform distinctive and conflicting types of masculinities.<sup>106</sup> For instance the values that underpin bureaucracy are 'instrumental reason, objective knowledge and solid impartiality'; reason has been used to overrule the opinion of others, in particular those deemed to be devoid of it like women, children and animals.<sup>107</sup> Likewise professionalism is based on assumptions that 'prioritize experience, skill and responsibility in the business of administration' which is considered a public activity as opposed to domesticity.<sup>108</sup> Though the public sphere is far from a purely male domain, gender distinctions continue to be conceptualised in this manner. Professionalism is translated into the prison context as an 'emphasis on face-to-face encounters, a celebration of charisma, and elevates intellectual expertise'.<sup>109</sup>

Carrabine's work helps us understand the gendered nature of the institutional context that affects both the keepers and the kept; in particular how different masculinities co-exist and compete in men's prisons. Moreover, his work illustrates how different purposes of imprisonment (rehabilitation, normalisation and control) construct prisoner identities as deviant, normal and disruptive and combined with governmental technologies (informed by bureaucratization, professionalisation and/or authoritarianism) how this affects the ways in which these different prisoner identities are governed (productive as well as repressive).

In *Punishment in Disguise* Kelly Hannah-Moffat explores more recent forms of the penal governance of women in Canadian Federal prisons, women-centred imprisonment, through a genealogy of prison reform.<sup>110</sup> It is a sophisticated study that demonstrates the complexities of power relations at the core of women's imprisonment and the failure of successive strategies of progressive penal reform to address the prison's underlying contradiction; namely that prisons have been tasked to both punish and reform women. The feminization of imprisonment, that is reforms to better respond to the perceived needs and experiences of women prisoners, is mapped through the emergence of various

<sup>106</sup> Carrabine, 'Discourse, governmentality and translation' 325.

<sup>107</sup> Carrabine, 'Discourse, governmentality and translation' 324.

<sup>108</sup> Carrabine, 'Discourse, governmentality and translation' 324.

<sup>109</sup> Carrabine, 'Discourse, governmentality and translation' 324-5.

<sup>110</sup> Hannah-Moffat, *Punishment in Disguise*.

strategies (pastoral, maternal, disciplinary, and empowering/responsibilization) at particular points in time, their variation over time and the co-existence with one another. These strategies are informed by a variety of political rationalities and governmental technologies available to reformers (both expert and, crucially, non-expert) and state agents. The governing of prisoners through these strategies involves different forms of power 'pastoral power, sovereignty, discipline, government' that are productive as well as repressive.

The history of women's imprisonment in Canada reveals that building an institution based on the perceived needs and experiences of women prisoners, employing only female staff and administrators, and integrating feminist, maternal, and therapeutic discourses with a penal regime, is not an original or radical concept.<sup>111</sup>

In the tradition of governmentality studies, Hannah-Moffat questions the taken for granted, she problematizes the more recent form of women-centred imprisonment and the influence of feminist ideals of empowerment.<sup>112</sup> One problem is the homogenous category of woman; for women prisoners' identities are complex and multifarious (class, ethnicity, sexuality and so on).<sup>113</sup> Women-centred imprisonment though informed by feminist themes of difference and ethic of care<sup>114</sup> that 'create a feminized technology of penal governance' are nevertheless informed by 'white, middle class sensibilities' and obscure the fact that prison is painful.<sup>115</sup> Feminist concerns with patriarchy close off an analysis of the way in which women govern other women and promotes the assumption that women who do so are more caring and more gentle.<sup>116</sup> Another problem of women penal governance is the false dichotomy between men-centred prisons (security, discipline and control) and women-centred prisons ('caring, empowering, supportive, respectful and meaningful').<sup>117</sup> This distinction produces and re-

<sup>111</sup> Hannah-Moffat, *Punishment in Disguise*, 189.

<sup>112</sup> Dean, *Governmentality*, 38.

<sup>113</sup> Hannah-Moffat, *Punishment in Disguise*, 191.

<sup>114</sup> In the scholarship on the ethic of care, feminists challenge the ontological and epistemological assumptions of traditional (male/masculine) ethics that privilege the isolated or disconnected self and universal, objective and rational knowledge. Rather they propose alternative ontology and epistemology that replaces 'autonomous man' with 'communal woman'; the significance of the connected self and the notion that 'the more particular, concrete, partial, and emotional knowledge is, the more likely it represents the way in which people actually experience the world'; see R. Tong and N. Williams, 'Feminist Ethics', *Stanford Encyclopedia of Philosophy* (<http://plato.stanford.edu/entries/feminism-ethics/#CarEthThe...>) (accessed 8.06.2012). A key author is C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, Cambridge MA, 1982).

<sup>115</sup> Hannah-Moffat, *Punishment in Disguise*, 192.

<sup>116</sup> Hannah-Moffat, *Punishment in Disguise*, 12.

<sup>117</sup> Hannah-Moffat, *Punishment in Disguise*, 195.

emphasizes dominant conceptions of femininity and masculinity and it oversimplifies the nature of women's and men's imprisonment. For elements of care, respect and responsabilization can exist in men's prisons as much as the subjugation through involuntary detention and treatment is part of women's imprisonment.

Prisons are governed by material structures, cultural sensibilities, and mentalities that limit the extent to which the content of a regime can be changed. Regardless of the form and content of a women-centred regime, it is still in many respects about punishment, security and discipline.<sup>118</sup>

The final problem to progressive and feminist prison reform is the institutional context: 'Prisons are resilient, flexible, and enabling institutions that can resist, incorporate, redefine, and absorb critical discourses'.<sup>119</sup> Institutional culture and bureaucracy effect a layering of different reform strategies and this has limited the impact of newer, progressive measures.

In this book I have shown how gender-based (more recently culturally based) concerns were institutionalized and how demands for change were neutralized to present the appearance of change without addressing many underlying problems.<sup>120</sup>

Similarly to Carrabine's argument Hannah-Moffat's study demonstrates how different governing strategies co-exist and conflict. The women-centred model, based on the feminist conceptions of the differing needs of women, of the need for empowerment and an ethic of care, is aimed at a kinder, gentler form of corrections in which women are empowered to make 'meaningful and responsible choices'.<sup>121</sup> However, this new approach needs to be understood within the strategy of governing under conditions of neo-liberal penalty, in which individuals do not need to subscribe to a shared set of values, rather they have the freedom of choice but must accept the consequences of their actions. Through the strategy of empowerment women prisoners are governed through the decisions they make (self-governance regime); that is the emphasis is on governmental technologies to shape their conduct rather than coercive measures. 'The new technologies steer choices and prevent

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<sup>118</sup> Hannah-Moffat, *Punishment in Disguise*, 197.

<sup>119</sup> Hannah-Moffat, *Punishment in Disguise*, 190.

<sup>120</sup> Hannah-Moffat, *Punishment in Disguise*, 199.

<sup>121</sup> Hannah-Moffat, *Punishment in Disguise*, 173.

misbehaviour, instead of deterring through punishment'.<sup>122</sup> The responsibility for the normalization of prisoners has been shifted from the institution to the individual prisoner; it is the prisoners' responsibility to change, minimize risk to the institution and the public and to self-monitor this process.<sup>123</sup>

Hannah-Moffat points out that this type of power as government is still dependent on disciplinary strategies in order to deal with those prisoners who are considered unable or unwilling to take part in the self-governance regime, 'unempowerable prisoner'.<sup>124</sup> Although the resistant prisoner is not a new problem, within neo-liberal penalty the prisoner is constructed differently; namely viewing or assessing prisoners through the lenses of risk and security has resulted in various exclusionary practices.

Recent correctional policies and narratives of the "unempowerable" (i.e. high-risk and high-need) offender demonize, pathologize, and medicalize women who resist well-intentioned, empowering correctional interventions. These women ... are ultimately portrayed as a danger - to prison culture, to the public, and to themselves. ... The construction of this group of women as "disruptive", "risky", "mentally ill", and "potential escapees" is used to justify the use of force, searches, involuntary transfers, and prolonged solitary confinement, as well as the transfer of some to segregated units in men's maximum security penitentiaries.<sup>125</sup>

Both Hannah-Moffat and Carrabine highlight that power in prison is diffused through mundane practices, routines, local decision-making and that prisoners' lives are governed through the various combinations of such technologies with political rationalities. The political rationalities (rehabilitation, normalisation and control) and governmental technologies can co-exist and compete within one institution and within the system as whole; they are available to both state agents and professional/non-professional agents to creatively and reflexively shape prisoners' conduct through productive and repressive forms of power. The neo-liberal strategies (empowerment/responsibilization) to shape prisoner conduct so that they can be integrated into society, normalisation, are aimed at governance at a distance through self-regulation and self-monitoring. They nevertheless depend on coercive,

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<sup>122</sup> Hannah-Moffat, *Punishment in Disguise*, 173.

<sup>123</sup> Hannah-Moffat, *Punishment in Disguise*, 174.

<sup>124</sup> Hannah-Moffat, *Punishment in Disguise*, 186.

<sup>125</sup> Hannah-Moffat, *Punishment in Disguise*, 177.

disciplinary governing strategies directed at the resistant prisoner. Both studies show how binary prisoner identities are constructed through these governing strategies: the normal versus the disruptive/dangerous/risky prisoner. Both studies also show that penal governmental technologies and strategies are gendered; they produce homogenized conceptions of men and women prisoners and reinforce dominant gender relations. The next section explores these power and gendered dimensions in German penal governance.

### 3. Penal governance in Germany

In the comparative literature on penal currents, Germany has featured as an interesting case because it 'remains steadfastly consistent in its moderate use of incarceration'.<sup>126</sup> Over the period 1969-91 there was a significant reduction in the number of offenders sentenced to imprisonment. Initially, this diversion from imprisonment to fines was the result of legislation passed as part of the 'great reform' of 1969 that fettered judges' discretion to impose short-term prison sentences and also extended the remit for the suspension of short-term sentences.<sup>127</sup> Later on the reduction in prison sentences, from 1983 onwards, was more a consequence of a consensus among legal professionals, lawyers, judges and prosecutors who had become 'disillusioned with prisons'.<sup>128</sup> However, a trend towards a bifurcation in sentencing was also noticed; while 'ordinary' offenders were diverted from prison to alternatives, those 'in need of resocialization ... [and] special target groups [terrorism, violence, drug-trafficking/organized crime and foreign criminals post-unification]' were subjected to more and more lengthy prison terms.<sup>129</sup> And this, it is argued, could be one of the reasons why imprisonment rates have remained relatively

<sup>126</sup> Lacey (2008) cited in Bosworth, 'Introduction: Reinventing penal parsimony', 254.

<sup>127</sup> T. Weigend, 'Germany Reduces Use of Prison Sentences', in M. Tonry and K. Hatlestad (eds) *Sentencing Reform in Overcrowded Times: A Comparative Perspective* (Oxford University Press, New York and Oxford, 1997) 177-81; Cavadino and Dignan, *Penal Systems*, 104. Weigend explains that the suspension of sentences in Germany is comparable to probation, see Weigend, 'Germany Reduces Use of Prison Sentences', 178.

<sup>128</sup> J. Feest, 'Reducing the prison population: Lessons from the West German experience?' in J. Muncie and R. Sparks (eds), *Imprisonment: European perspectives* (The Open University, Harvester Wheatsheaf, New York, 1991) 131-65, 142.

<sup>129</sup> J. Feest and H.-M. Weber, 'Germany: Ups and Downs in the Resort to Imprisonment – Strategic or Unplanned Outcomes?', in R. P. Weiss and N. South (eds) *Comparing Prison Systems: Toward a Comparative and International Penology* (Gordon and Breach Publishers, Australia, 1998), 233-257, 256. An increase in the influence of populist punitiveness became evident in harsher legislation to deal with violent and sexual offenders in the 1990s. Moreover at that time an atmosphere of xenophobia and fear of the Other seemed to have emerged in unified Germany (Cavadino and Dignan, *Penal Systems*, 108); see for example the arson attack on a Turkish family in Solingen in West-Germany in 1993 and the Rostock-Lichtenhagen anti foreigner-riot in East Germany in 1992.

consistent over time.<sup>130</sup>

This has led scholars to ask why trends in penalty have been different in Germany. A number of arguments have been put forward. Some have looked at the nature of Germany's political economy - which they have characterised as conservative corporatist - and have found that greater emphasis is placed on informal social control, through for instance the family and religion.<sup>131</sup> This communitarian approach, which is rooted securely in 'constitutional, legal and administrative structures of governance',<sup>132</sup> binds citizens to the state through interest groups and provides a comparatively generous social security net to all citizens. This communitarian perspective also affects how society responds to offenders; namely as 'social being[s] in need of *resocialization* which is the responsibility of the community as a whole' [emphasis in the original].<sup>133</sup> Germany's political culture exemplifies consensus politics, which leads to the 'development of moderate, mainstream policies'; and linked to this the expertise and opinions of professional elites carry significant weight with politicians and the media.<sup>134</sup> Another explanation is that historically Germany, in line with other continental European countries, has seen the development of a 'levelling-up egalitarianism; that reflects the intention to raise the social status of all, including that of prisoners.<sup>135</sup> And this is a way to understand the emphasis that is placed on the human dignity of prisoners. The argument is that the 'long-standing ameliorative' trajectory to end low-status punishments such as hard labour (*Zuchthaus*) was affirmed despite severe incidences of prison unrest in the late 1960s and early 1970s. In Germany a decade of criminal justice reforms, that started with the 'minor criminal procedure reform' in 1964 and culminated in the Prison Act 1976, were guided by the principles of decriminalisation, liberalisation and humanisation. In addition to the measures on sentencing mentioned above, among other things the reforms improved the rights of the

<sup>130</sup> H.-J. Albrecht, 'Sentencing and Punishment in Germany' in M. Tonry and K. Hatlestad (eds) *Sentencing Reform in Overcrowded Times: A Comparative Perspective* (Oxford University Press, New York and Oxford, 1997) 181-87, 185.

<sup>131</sup> Cavadino and Dignan, *Penal System*, chapter 7. See also N. Lacey and L. Zedner, 'Discourses of Community in Criminal Justice: Locating the appeal to 'community' in contemporary criminal justice' (1995) 22(3) *Journal of Law and Society*, 301-25.

<sup>132</sup> Lacey and Zedner, 'Discourses of Community in Criminal Justice', 315.

<sup>133</sup> Cavadino and Dignan, *Penal Systems*, 24.

<sup>134</sup> Tonry, 'Why Aren't German Penal Policies Harsher', 1205-6.

<sup>135</sup> Whitman, *Harsh Justice*, 10.

defence<sup>136</sup> and abolished *Zuchthaus* as a form of punishment in favour of extending '*Einschließung*, the descendant of [the privileged] fortress confinement' to all prisoners.<sup>137</sup> Although this 'ameliorative' trend continued for 'normal' offenders/prisoners, the so-called 'special target' populations, in this case those suspected or convicted of terrorism offences, were subject to longer sentences and a wave of new counter-terrorism legislation in the mid-1970s.<sup>138</sup>

Building on this work that seeks to understand German penalty through broader economic, political and historical processes, in the following section the political rationalities of imprisonment (control, normalisation and rehabilitation) are situated within the overarching rationality of government, neo-liberalism. Following Dean who stresses the importance of recognising that more than one form of neo-liberalism exists,<sup>139</sup> I argue that an account of German penalty needs to be situated within the context of a particular type of neo-liberalism that has been influential in the reconstruction of the post-war German state, *ordo-liberalism*.

### 3.1. '*Ordo-liberalism*' as political rationality in Germany

Previously I have discussed how Foucault's conception of governmentality is a method for thinking about the practice of government and is particularly useful to understand everyday experiences of governance in prison within the broader context of penalty. Connected to this a further meaning is ascribed to governmentality,<sup>140</sup> namely, it is understood as a distinct form of modern rule that represents a shift in power away from the monarch (sovereignty - power conceived of as repressive and centralised) to shaping human conduct -this includes the self- in a systematic and reflective manner for

<sup>136</sup> U. Ebert, 'Tendenzwende in der Straf- und Strafprozeßgesetzgebung', (1978) 4 *JR* 136, 138; and H.-J. Rudolphi, 'Die Gesetzgebung zur Bekämpfung des Terrorismus – Versuch einer kritischen Würdigung', (1979) 11(1) *JA* 4.

<sup>137</sup> Whitman, *Harsh Justice*, 193.

<sup>138</sup> See below Introduction and Chapter 3.

<sup>139</sup> The object is not to attach moral value judgements to any particular form of neo-liberalism; rather it is important for an analysis of government to focus on particular types of political rationality and how they are linked to various government technologies; see Dean, *Governmentality*, 73. For a review of neo-liberalism's many guises across disciplines and a critique of the scholarship that fails to differentiate between various forms of neo-liberalism to the point of criticizing an amorphous concept that in turn prevents the development of a coherent alternative, post-neoliberalism; see T. Biebricher, F. Vogelmann, G. Wagner and M. Walter, 'Beschwörungen des Neoliberalismus: Theorien und Schauplätze', *Normative Orders Working Paper 02/2012* (Cluster of Excellence, Goethe-University Frankfurt am Main, 2012) ([publikationen.ub.uni-frankfurt.de/.../Ordoliberalism\\_and\\_the\\_Evolut...](http://publikationen.ub.uni-frankfurt.de/.../Ordoliberalism_and_the_Evolut...)) (accessed 19.12.2012). See also Garland, "'Governmentality" and the problem of crime', 194; and O'Malley, 'Globalizing risk? Distinguishing styles of "neo-liberal" criminal justice in Australia and the USA'.

<sup>140</sup> Dean, *Governmentality*, 28.



a particular end and in which the role of the state is decentralised. In modern governmentality that originated in the 16th century the population is its object, the well-being of both the population and the individual, and the economy is its rationality. For Foucault, 20th century neo-liberalism is the 'paradigm of governmental reason' because it exemplifies the conditions under which this indirect form of rule is/can be lived out through self-regulation and self-monitoring.<sup>141</sup> The state then is tasked with the creation of what Foucault terms 'apparatuses of security':<sup>142</sup> for instance contract law, stable currency, price stability and insurance. These mechanisms that can be both public and private provide the parameters and a safety net for the 'responsibilized' autonomous individual to prosper and be happy.<sup>143</sup>

This delicate art of government thus depends upon a state's capacity to understand the economic and social subjects who make up the population, and the dynamics of their 'natural' interaction.<sup>144</sup>

Liberalism and neo-liberalism as political rationalities have also led to a reconfiguration of the relationships with and between other forms of power, sovereignty and discipline. Foucault describes the relationship as a dynamic one through the image of a 'triangle: government, sovereignty and discipline, which has population as its target and apparatuses of security as its essential mechanism'.<sup>145</sup> Under liberalism and later neo-liberalism sovereignty is democratized and is therefore understood through a discourse of the rights of the individual; the utility produced through disciplinary power shifts towards a general utility through regulation; and power as government becomes processes directed at the well-being and labour of the population in which 'the subject is revealed in its social, biological and economic form'.<sup>146</sup>

That history [of governmentality] will include a specification of the most characteristic rationality of government, that of liberalism, and the relation of this rationality of government not only to sovereignty [rule of law, and rooted in the discourse of the rights of the individual] but also to the administrative imperative to optimize the health, welfare

<sup>141</sup> Foucault cit. in L. McNay, 'Self as Enterprise: Dilemmas of Control and Resistance in Foucault's *The Birth of Biopolitics*', (2009) 26(6) *Theory, Culture & Society*, 55-77, 57.

<sup>142</sup> M. Foucault, 'Governmentality' in G. Burchell, C. Gordon and P. Miller (eds.) *The Foucault Effect: Studies in Governmentality: with two Lectures by and an Interview with Michel Foucault* (The University of Chicago Press, Chicago, 1991) 87-104, 102.

<sup>143</sup> Garland, "'Governmentality' and the problem of crime', 178, 181.

<sup>144</sup> Garland, "'Governmentality' and the problem of crime', 178.

<sup>145</sup> Foucault cit. in Dean, *Governmentality*, 122.

<sup>146</sup> Dean, *Governmentality*, 122.

and life of populations, or what shall be referred to as *bio-politics* (emphasis in the original).<sup>147</sup>

Why consider *ordo*-liberalism as a political rationality of penal governance in Germany? Two reasons: first Foucault identified the key importance of the '*ordo*-liberal project' as a break with the traditional liberal conception of the relationship between the state, economy and society; namely state intervention in *ordo*-liberal thought is necessary to *construct* a competitive free market economy within a specific institutional framework rather than the traditional liberal conception of the need for intervention to mitigate the social harms that emerge from an unregulated free market.<sup>148</sup> Second, although *ordo*-liberalism shares a fear of the ever encroaching state, what Foucault describes as 'state phobia', with other conceptions of neo-liberalism, commonly equated with Anglo-Saxon capitalism, these other conceptions have moved in an opposite direction to *ordo*-liberal thought; for instance American neo-liberalism has promoted a permeation of economic rationality to areas that in themselves are not necessarily considered economic, such as the family (child-rearing as an investment in the future).<sup>149</sup> In contrast *ordo*-liberals consider 'the mechanism of price formation [to be] so fragile that it needs to be supplemented by an ever-vigilant internal politics, the Rule of Law and a complex set of policies and social provision'.<sup>150</sup> I argue that *ordo*-liberalism as a fundamental political rationality is therefore central to understanding penal governance in Germany and the differences to US and UK penal currents.<sup>151</sup>

<sup>147</sup> Dean, *Governmentality*, 30.

<sup>148</sup> McNay, 'Self as Enterprise', 58-9.

<sup>149</sup> Dean, *Governmentality*, 72. For a genealogy of Neoliberalism and Advanced Liberal Government, see Dean, *Governmentality*, Chapter 8.

<sup>150</sup> Dean, *Governmentality*, 72.

<sup>151</sup> The idea to pursue *ordo*-liberal thought as a political rationality was prompted by the governmentality scholarship, in particular Dean, *Governmentality*, and Gordon, 'Governmental rationality: an introduction'. They review Foucault's analysis of *ordo*-liberalism and other forms of neo-liberalisms which in 1979 was the subject of Foucault's lecture series 'The birth of biopolitics'; see Foucault, *The Birth of Biopolitics*.

In my review of *ordo*-liberalism I rely heavily on Werner Bonefeld's work, because he is a critical political economist who revisited the original German sources to research the origins of neo-liberalism in an ESRC funded study entitled: 'Ordoliberalism and the Crisis of Neoliberal Political Economy: On the Social Market, the Free Economy, and the Strong State' (2010-11) (<http://www.esrc.ac.uk/my-esrc/grants/RES-000-22-4006/read>) (accessed 17.12.2012). This is a very comprehensive and detailed study that consists of a number of journal articles and conference papers.

Examples of the use of this body of theory in legal scholarship exist in particular in European law, where *ordo*-liberalism has been used to frame discussions on European governance and European competition law; see respectively C. Joerges, "'Economic Order' - 'Technical Realization' - 'The Hour of the Executive': Some Legal Historical Observations on the Commission White Paper on European Governance", Jean Monnet Working Paper No.6/01, Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance

*Ordo-liberalism* is a particular type of neo-liberalism that has been influential in Germany, in particular in the post-war rebuilding of the country.<sup>152</sup> The *Ordoliberalen* were scholars associated with the Freiburg School who in response to the Weimar crisis - 'financial crisis and economic depression, mass unemployment, political violence, severe austerity, conditions of ungovernability, and entrenched class positions' - during the late 1920s and early 1930s theorised 'how to make capitalism work as a liberal economy'.<sup>153</sup> Following from periods of exile or internal exclusion during the Third Reich, after the war they became instrumental in the rebuilding of the postwar economic system.<sup>154</sup>

'For the ordo-liberals, the free economy is fundamentally a political practice of liberal governance'.<sup>155</sup> Their aim was to implement a market system as "'an artificial game of competitive freedom" but under particular institutional conditions'.<sup>156</sup> They consider competition as the essential ordering principle, yet the state is needed to provide a framework to diminish its morally and socially divisive effects.<sup>157</sup> From a constructivist perspective they understand the market as 'a reality to be secured by an appropriate juridical, institutional and cultural framework'.<sup>158</sup> The competitive free market is organised (not planned) by the rule of law; economic relations free from 'social distortions' (such as a minimum wage); social provision that include unemployment insurance, health care and

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(<http://centers.law.nyu.edu/jeanmonnet/archive/papers/01/012201.html>) (accessed 19.12.2012) and L. Lovdahl Gormsen, 'Is there a tension between the goals of protecting economic freedom and the promotion of consumer welfare in the application of Article 82 EC?' (PhD Thesis, King's College London, 2007) (<https://www.escholar.manchester.ac.uk/api/datastream?...uk...>) (accessed 19.12.2012).

<sup>152</sup> For a historical account of the influence of *ordo-liberal* thinkers on Ludwig Erhard's policies that established the economic system in post-war Germany; see A. J. Nicholls, *Freedom with Responsibility: The Social Market Economy in Germany 1918-1963* (Clarendon Press, Oxford, 2000).

<sup>153</sup> W. Bonefeld, 'Human Economy and Political Authority: Ordo-Liberalism and the Idea of the Big Society' (2012) Conference for Socialist Economists: Trans-Pennine Working Group (<http://csetranspennine.wordpress.com/2012/07/03/werner-bonefeld-paper-for-tpwg/>) (accessed 28.11.2012) 1-27. Key figures were Walter Eucken, Franz Böhm, Alexander Rüstow, Wilhelm Röpke and Alfred Müller-Armack. They were a group of legal scholars and economists, who gained the name through their contributions to the journal *Ordo*; see also, Gordon, 'Governmental rationality: an introduction', 41. On ordo-liberalism's links with Carl Schmitt's ideas, see C. Joerges, 'Europe as Großraum? Shifting Legal Conceptualisations of the Integration Project' in C. Joerges and N. Singh Ghaleigh (eds) *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and its Legal Traditions* (Hart Publishing, 2003) 167-192. For a differentiated analysis of ordo-liberalism that focuses on individual scholars to show that Schmitt's politics of dictatorship was not supported by Eucken, Rüstow, and Röpke, see W. Bonefeld, 'Freedom and the Strong State: On German Ordoliberalism' (2012) *New Political Economy*, 633-56.

<sup>154</sup> Dean, *Governmentality*, 69-70.

<sup>155</sup> W. Bonefeld, 'Freedom, Crisis and the Strong State: On German Ordoliberalism', (2012) British International Studies Conference, ([www.bisa.ac.uk/index.php?option=com\\_bisa&task...1...](http://www.bisa.ac.uk/index.php?option=com_bisa&task...1...)) (accessed 28.11.2012) 1-21, 21.

<sup>156</sup> Dean, *Governmentality*, 71.

<sup>157</sup> Dean, *Governmentality*, 71. Bonefeld, 'Freedom, Crisis and the Strong State', 20.

<sup>158</sup> Dean, *Governmentality*, 71.

housing; and *Vitalpolitik*.<sup>159</sup>

In the language of ordo-liberals, biopolitics is called *Vitalpolitik* - a politics of life, which they describe as a social policy stance that undercuts demands for collective forms of social provision in favour of a human economy of self-responsible individuals who provide for themselves. The declared purpose of ordo-liberal social policy is to ingrain entrepreneurship into the fabric of society to prevent its proletarianisation (emphasis in the original).<sup>160</sup>

Economic freedom and the competitive market system are dependent on the *vitally* fulfilled individual or worker. As a consequence the state, despite its heterogeneous nature,<sup>161</sup> is constructed to signify the "political and moral framework" that ensures a unified community and guarantees competition between "naturally rooted and socially integrated individuals".<sup>162</sup> To counter-act the isolation of mass production and urbanisation, workers are to be re-rooted in family and community networks; this reaffirms traditional gender roles that restrict women to the domestic sphere leaving the public sphere to men.<sup>163</sup> Workers are to be socialised through the instilling of values 'upon [which] the sociability of competitive social relations and enterprise rests'.<sup>164</sup> These entail 'self-discipline, a sense of justice, honesty, fairness, chivalry, moderation, public spirit, respect for human dignity, firm ethical norms'.<sup>165</sup>

<sup>159</sup> Dean, *Governmentality*, 71.

<sup>160</sup> Bonefeld, 'Human Economy', 5.

<sup>161</sup> On the nature of the state see Foucault: 'The state is nothing else but the effect, the profile, the mobile shape of a perpetual statification (*étatification*) or statifications, in the sense of incessant transactions which modify, or move, or drastically change, or insidiously shift sources of finance, modes of investment, decision-making centers, forms and types of control, relationships between local powers, the central authority, and so on. In short, the state has no heart, as we well know, but not just in the sense that it has no feelings, either good or bad, but it has no heart in the sense that it has no interior. The state is nothing else but the mobile effect of a regime of multiple governmentalities'; M. Foucault, *The Birth of Biopolitics* (Palgrave, London, 2008) 77.

<sup>162</sup> Dean, *Governmentality*, 71.

<sup>163</sup> The family was considered a protected entity in early post-war social policies and this in turn sustained the dominance of traditional gender roles through 'patriarchal authority; women's economic dependence on men; the ideological elevation of motherhood; pronatalist sentiments; and the normative conception of the "family" as an ahistorical social unit transcending class division'; see R. G. Moeller, 'Reconstructing the Family in Reconstruction Germany: Women and Social Policy in the Federal Republic, 1949-1955' in R. G. Moeller (ed.) *West Germany under construction: Politics, Society, and Culture in the Adenauer Era* (The University of Michigan Press, 1997) 109-134, 110. For an analysis of the emergence of women's participation in public life through the themes of 'choice, equal chances and patterns of mobility'; see E. Kolinsky, *Women in Contemporary Germany: Life, Work and Politics* (Berg Publishers Limited, Oxford, 1993). For a historical account of the women's movement in Germany; see N. Thomas, *Protest Movements in 1960s West Germany: A social history of dissent and democracy* (Berg, Oxford, 2003) chapter 12.

<sup>164</sup> Bonefeld, 'Human Economy', 17. For a discussion of ordo-liberalism as an elitist project, see M. Wörsdörfer, 'Ordoliberalism and the Evolution of Norms', *Normative Orders Working Paper 07/2010* (Cluster of Excellence, Goethe-University Frankfurt am Main, 2010) ([publikationen.uni-frankfurt.de/.../Ordoliberalism\\_and\\_the\\_Evolut...](http://publikationen.uni-frankfurt.de/.../Ordoliberalism_and_the_Evolut...)) (accessed 19.12.2012).

<sup>165</sup> Röpke cit in Bonefeld, 'Human Economy', 17.

To support these hegemonic masculine values, women are expected to provide stability through home-making and child-rearing at the same time accepting the authority of the husband and father as head of the family.

The enterprise society aims to shape individuals (if necessary through incentivization) so that they become self-reliant, show initiative in negotiating the sale of their own labour, accept 'life's insecurities and risks', and crucially engage in their *own non-commodified enterprises* outside their workplace in order to be *vitally* fulfilled.<sup>166</sup> This may include smallholdings or allotments to grow their own produce, community engagement (from retained firefighters to church choir), and caring for others.

The problem of vitality can only be solved by a social policy that, on the one hand, does not 'intervene with the free price mechanism' ... and that, on the other, achieves the incorporation of the dispossessed into the social fabric of the market society as willing participants, transforming the proletarianised masses into committed entrepreneurs (of their own labour). 'True' welfare policy is about the empowerment of the worker as a 'citizen'.<sup>167</sup>

### 3.2. 'Ordo-liberal penalty' and the purpose(s) of imprisonment

Ordo-liberal penalty shares with other forms of neo-liberal penalty, commonly equated with Anglo-Saxon capitalism, the strategy of responsabilization/empowerment of prisoners to create the enterprising prisoner.<sup>168</sup> What is distinctive from US and UK penalty is that prisoners in general are accepted as part of the 'dispossessed' that need to be included in 'the social fabric of the market society' as enterprising *citizens*. Prisoners remain citizens<sup>169</sup> and consequently are rights' bearers.<sup>170</sup> For example and most notably prisoners have the right to vote; their personal privacy is respected to the degree that the toilet area in a cell is screened off from view; that prison officers knock before they enter a cell; and that prisoners are addressed with courtesy as 'Ms or Mr so-and-so'. These progressive rules are based on the

<sup>166</sup> Bonefeld, 'Human Economy', 16, 23.

<sup>167</sup> Müller-Armack and Röpke cit. in Bonefeld, 'Human Economy and Political Authority', 11.

<sup>168</sup> See P. O'Malley, *Risk, Uncertainty and Government* (Glasshouse Press, London, 2004) chapter 7.

<sup>169</sup> G. Chantraine, 'French prisons of yesteryear and today: Two conflicting modernities – a socio-historical view', (2010) *Punishment and Society* 12(1) 24-46.

<sup>170</sup> L. Lazarus, 'Conceptions of Liberty Deprivation' (2006) *Modern Law Review* 69(5) 738-769. Also in relation to the instrumental role the Federal Constitutional Court played in the recognition of prisoners' rights and the promotion of resocialization as central purpose of imprisonment.

"principle of approximation" enshrined in the prison legislation, the Prison Act 1976. It signifies that 'life in prison should approximate life in the outside world as closely as possible'.<sup>171</sup> Consequently, great emphasis is put on supporting prisoners to maintain close links with their family and their community. In addition to visits and correspondence, prisoners can be granted home leave and work furloughs.<sup>172</sup> Despite these developments, scholars have criticised that the reform enthusiasm had waned by the end of the 1970s and with it the necessary monies, leaving the Prison Act 1976 an 'empty shell' particularly in relation to prisoner pay rates and their social security benefits.<sup>173</sup>

To return to responsabilization, the enterprising prisoner cannot expect freedom from want. He or she is responsible for his or her successful reintegration to society through active participation in the resocialization process and that includes a duty to work.<sup>174</sup> The resocialization of prisoners is considered the main purpose of imprisonment under the framework of the Prison Act 1976.<sup>175</sup> Resocialization is a German take on the political rationality of normalization. It is aimed at and constructs the 'normal' prisoner; essentially it is 'the process whereby the prisoner, who in offending violates the basic prerequisites of social co-existence, is re-integrated into society'.<sup>176</sup> In contrast to the treatment of deviancy under a rehabilitative regime, treatment in the context of resocialization is generally understood as 'general care, social assistance and charitable endeavours'.<sup>177</sup> Although prisoners are not compelled to participate in the normalisation regime,<sup>178</sup> they are encouraged to participate in their care.

<sup>171</sup> Whitman, *Harsh Justice*, 8.

<sup>172</sup> Feest and Weber, 'Germany: Ups and Downs in the Resort to Imprisonment', 249-51. For an overview see D. Van Zyl Smit, 'Leave of Absence for West German Prisoners: Legal Principle and Administrative Practice' (1988) 28(1) *British Journal of Criminology*, 1-18.

<sup>173</sup> F. Dünkel, 'Imprisonment in Transition: The Situation in the New States of the Federal Republic of Germany', (1995) *British Journal of Criminology* 35(1) 95-112. Dünkel's article analyses the impact of and the tensions within the prison system following the wholesale import of West German prison administration to East Germany after unification in 1990.

<sup>174</sup> Prisoners are under a statutory duty to work, yet they can expect to be remunerated appropriately; see L. Lazarus, *Contrasting Prisoners' Rights: A Comparative Examination of England and Germany* (Oxford University Press, Oxford 2004), 108-9.

<sup>175</sup> For a comprehensive overview of the Prison Act 1976, see Lazarus, *Contrasting Prisoners' Rights*, in particular chapter 4. Please note that in 2006 a federalism reform came into force that devolved the power to legislate on imprisonment to the 16 *Länder*. It is beyond the scope of this thesis to pursue this in any detail. For a critique with respect to youth imprisonment, see F. Dünkel, 'Die Farce der Föderalismusreform – ein Vergleich der vorliegenden Gesetze und Gesetzesentwürfe zum Jugendstrafvollzug' (Stand: 24.9.2007) (University of Greifswald, 2007) ([http://www.rsf.uni-greifswald.de/fileadmin/mediapool/lehrstuehle/duenkel/Stand\\_JuVoG\\_24\\_9\\_2007.pdf](http://www.rsf.uni-greifswald.de/fileadmin/mediapool/lehrstuehle/duenkel/Stand_JuVoG_24_9_2007.pdf)) (accessed 5.01.2013).

<sup>176</sup> Lazarus, *Contrasting Prisoners' Rights*, 61.

<sup>177</sup> Kaiser cit. in Lazarus, *Contrasting Prisoners' Rights*, 61.

<sup>178</sup> Lazarus explains that under German law there is a conceptual distinction between the purpose of imprisonment

Crucially they also share the responsibility for their successful reintegration to society [*soziale Inpflichtnahme*].<sup>179</sup> There is an expectation that prisoners actively and willingly co-operate.<sup>180</sup> Here linkages are apparent with other forms of neo-liberal penalty where prisoners are guided through technologies of the self towards the 'right' choices and are governed through the decisions they make.<sup>181</sup>

How do women prisoners fit into this system? As in most European countries women represent a small percentage of the overall prison population and they are perceived to have additional or special needs.<sup>182</sup> The system is marked by a tension, on the one hand the 'special needs' of women as mothers are catered for in a small number of mother child units,<sup>183</sup> and on the other hand a resocialization deficit is apparent. This is because women are housed largely in buildings attached to men's institutions ('female annexes').<sup>184</sup> This means that not only is access to tailored programmes limited, but women are routinely employed in traditional gender roles such as cooking, cleaning and laundry or are employed for unskilled labour.<sup>185</sup> Also the comparatively low numbers of women in these annexes has the effect that the 'principles of separation' cannot be put into practice.<sup>186</sup> This means that young adults and in some cases juveniles are housed together with adult women prisoners, and women in pre-trial detention are not necessarily provided with accommodation removed from the presence of sentenced prisoners.<sup>187</sup> These small units add further dimensions of control, gender controls, that are

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as a sentence (e.g. retribution and deterrence) and the purpose of prison administration (resocialization); see Lazarus 'Conceptions of Liberty Deprivation'.

<sup>179</sup> K. Laubenthal, *Strafvollzug* (4<sup>th</sup> edn., Springer, Berlin, 2007) 74.

<sup>180</sup> Niedersächsisches Justizministerium, *Einheitliches Niedersächsisches Vollzugskonzept* (2004) ([www.mj.niedersachsen.de](http://www.mj.niedersachsen.de)) (accessed 5.04.2012) 48.

<sup>181</sup> See above Hannah-Moffat, *Punishment in Disguise*, 173-4, above in Section 2.

<sup>182</sup> In comparison for England and Wales, see for example P. Carlen, *Sledgehammer: Women's Imprisonment at the Millennium* (Macmillan Press, Houndsmill, 1998), A. Worrall and P. Carlen, *Analysing Women's Imprisonment* (Willan, Cullompton 2004); and for Canada see for example Hannah-Moffat, *Punishment in Disguise*.

<sup>183</sup> For a brief review of the first mother-child unit in (West) Germany and its founder Helga Einsele, governor of Frankfurt Preungesheim prison, see M. C. Douglas, 'The Mutter-Kind-Heim at Frankfurt am Main: "Come Together - Go Together" An Observation' (1993) 17(1) *International Journal of Comparative and Applied Criminal Justice* 181-7.

<sup>184</sup> Separate women's prisons exist in six of the sixteen *Länder* (Federal States); see International Centre for Prison Studies, *International profile of women's prisons* (King's College London, 2008) 41.

<sup>185</sup> C. Messner and V. Ruggiero, 'Germany: the Penal System between Past and Future', in V. Ruggiero, M. Ryan and J. Sim (eds) *Western European Penal Systems: A Critical Anatomy* (Sage, London, 1995) 128-48, 139; Laubenthal, *Strafvollzug*, 368.

<sup>186</sup> J. Zolondek, 'Outline of the legal framework concerning women's imprisonment in Europe', in F. Dünkel, C. Kestermann and J. Zolondek (eds), *International Study on Women's Imprisonment* (University of Greifswald, Greifswald, 2005) 12-8, 15.

<sup>187</sup> For a detailed discussion of this principle, see Laubenthal, *Strafvollzug* (6<sup>th</sup> edn.), 530.

aimed at 'restoring [offending women] to normative womanhood', because they create a form of 'familial' environment that promotes the domestication of women.<sup>188</sup> This results in a heightened surveillance of women's lives. Women prisoners are not only constructed as different, but also as difficult.<sup>189</sup>

Women's prison punishment has largely been shaped in relation to conventional constructions of the 'difficult' woman of penal discourse, who is deemed to be replete with personal inadequacies, emotionally demanding or self-destructive, has pernicious behavioural problems and lacks the capacity to reform herself. She is thus primarily defined as needy and socially dependent, and requiring intensive professional involvement to render her suitable for reform.<sup>190</sup>

But what about the unempowerable prisoner? In Germany responsabilization carries the label '*Chancenvollzug*': only prisoners who are willing to co-operate are 'treated' and 'cared for' and others are simply incapacitated.<sup>191</sup> Garland captures this duality well in the following statement:

Prisoners are taught to become 'responsible', prudent subjects - in prison and, more optimistically, after release - by techniques of the self that assume an alignment between the self-interest of the prisoner and the governing interests of the authorities. (The prisoner who enjoys criminal behaviour, or who embraces the consequences of crime, or for whom a law-abiding life is not a viable option, will be deemed 'irresponsible', no matter how self-aware and autonomous his or her actions are).<sup>192</sup>

But what about what Hannah-Moffat identifies as the 'unempowerable' prisoners, those who cannot or will not co-operate? Groups of prisoners who are essentially incapacitated [*Verwahrsvollzug*] are considered 'difficult customers' [*schwierige Klientel*].<sup>193</sup> These prisoners are deemed either irremediable, unwilling to participate or not in need of resocialization. They include terrorists/politically motivated offenders, violent offenders, drug addicts, foreign prisoners, and those who refuse to work. The legislation provides prison officers and governors [or management] with a wide discretion to limit prisoners' rights on grounds of security and order and the provisions are ambiguous in many ways, especially with regards to what is considered treatment.<sup>194</sup> Consequently,

<sup>188</sup> Corcoran, *Out of Order*, 80.

<sup>189</sup> Corcoran, *Out of Order*, 80.

<sup>190</sup> Corcoran, *Out of Order*, 79.

<sup>191</sup> Unsurprisingly this approach is criticised in the academic literature; see F. Dünkel, 'Gegenreform im Strafvollzug: Sicherheit als Vollzugsziel – eine Gesetzesinitiative in Hessen', (2004) *KrimPäd* 32(43)16-20, 19.

<sup>192</sup> Garland, 'Governmentality and the problem of crime', 191.

<sup>193</sup> Laubenthal, *Strafvollzug*, 173-4.

<sup>194</sup> F. Dünkel, 'Germany' in D. van Zyl Smit and F. Dünkel (eds), *Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions* (2nd edn., Kluwer Law International, The



some have argued that there exists a dual purpose for prison administration in Germany, namely control as well as resocialization.<sup>195</sup>

In line with prison systems in other countries, the construction of prisoners is both gendered along the binary men as the norm and women as different and difficult, and along the binary the responsabilized or enterprising prisoner - understood through hegemonic masculinity - and the difficult, dangerous, risky, or foreign prisoner.<sup>196</sup>

Carlen provides a useful concept for understanding why prisons inevitably resort to repressive measures when the prison's 'fundamental operating principles are threatened'.<sup>197</sup> She calls it 'carceral clawback', that is 'the power of the prison constantly to deconstruct and successfully reconstruct the ideological conditions for its own existence'.<sup>198</sup> Her argument is that despite the constant refashioning of the prison as a benevolent institution - whether it is to rehabilitate the deviant or to empower in order to re-integrate the normal prisoner into the enterprising society - it is at its core for punishment. Or as Christie puts it, what distinguishes the prison from other institutions is that imprisonment is painful and comes with blame attached.<sup>199</sup>

While prisons continue to store away so many people unable or unwilling to choose to create the conditions of their own imprisonment, even the most liberal regimes of reforming 'responsibilization' will resort to what I term 'carceral clawback', and especially at those times when the prisoner 'choices' made are not conducive to the maintenance of prison security, i.e. to the prison *qua* prison. (Logically, prisons *must* claw back in this way - unless they are to cease being prisons and instead become all the things that the state's legitimating rhetoric would have us believe they really are - e.g. temporary refuges, health farms or hostels).<sup>200</sup>

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Hague, 2001) 288-350, 302.

<sup>195</sup> Messner and V. Ruggiero, 'Germany', 146; H. Hoffmann, *Isolation im Normalvollzug* (Forschungen zur Kriminalpolitik, Centaurus-Verlagsgesellschaft, Pfaffenweiler, 1990).

<sup>196</sup> It is beyond the scope of this thesis to discuss the issues around foreign prisoners and the problems they face.

For more information, see Messner and V. Ruggiero, 'Germany', 144-5. Also for an analysis of the status of the foreigner in the public's perception of crime, see Lacey and Zedner, 'Discourses of Community in Criminal Justice'.

<sup>197</sup> For instance Feest and Weber point out how enterprising measures such as home leave and work furloughs are increasingly utilised as an informal disciplinary tool; Feest and Weber, 'Germany: Ups and Downs in the Resort to Imprisonment', 51.

<sup>198</sup> P. Carlen, 'Carceral Clawback: The case of women's imprisonment in Canada', (2002) 4 *Punishment and Society*, 115-21, 116.

<sup>199</sup> Christie, 'Prisons in Society or Society as Prison'.

<sup>200</sup> Carlen, 'Carceral Clawback', 118.

#### 4. Women and men political/politically motivated prisoners:<sup>201</sup> power, gender and resistance

The penal governance of political/politically motivated prisoners in Germany and their resistance occupy a very marginal position in the German academic literature on imprisonment. This is not surprising because of the relatively small number of prisoners compared to the general prison population.<sup>202</sup> Terrorist prisoners do feature in the literature at the periphery of the debate on the watering down of resocialization as the central purpose of imprisonment. Scholars discuss the impact of the imprisonment of the RAF on both individual institutions and the prison system as a whole. The first RAF prisoners entered the system in the early 1970s at a time when the reforms to humanize the prison system were gaining momentum and culminated in the legislation that came into force in 1977. Some argue that those opposed to the progressive reforms used the threat of terrorism as a means to maintain the prominent status within the Prison Act 1976 of the provisions on security and order.<sup>203</sup> Others highlight how the resultant security focus and measures placed a strain on the system as a whole. As well as the extension of a climate of control to all prisoners within an institution that housed RAF prisoners, the provision of high security detention was a financial drain on the system.<sup>204</sup> Finally, it is argued that this preoccupation with security [*Sicherheitsdenken*] continues to shape [*prägen*] the prison system long after the RAF ceased to be a threat in the 1990s.<sup>205</sup>

How can securitization be understood as a rationality for the governance of political/politically motivated prisoners? How can prisoner resistance within the context of a 'prison struggle' be understood? Within the sociology of imprisonment there are two key academic studies in which the governance and resistance of political/politically motivated prisoners are analysed. Both studies are concerned with the Northern Ireland context, yet they differ in the population under study and in their

<sup>201</sup> I use these terms interchangeably and I attach no value or validation to either term.

<sup>202</sup> There are no official numbers on the imprisonment of members of the RAF and J2M. Diewald-Kerkmann found that in 1979 the number of arrested and convicted members of the RAF/J2M were 108, 42% of which were women; see Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 63.

<sup>203</sup> Lazarus, *Contrasting Prisoners' Rights*; Hoffman, *Isolation im Normalvollzug*.

<sup>204</sup> G. Kaiser, and H. Schöch, *Strafvollzug* (5<sup>th</sup> edn, Müller, Heidelberg, 2002) 52; G. Diewald-Kerkmann, *Frauen, Terrorismus und Justiz: Prozesse gegen weibliche Mitglieder der RAF und der Bewegung 2. Juni* (Droste, Düsseldorf, 2009) 196; P.-A. Albrecht, *Kriminologie: Eine Grundlegung zum Strafrecht* (3<sup>rd</sup> edn, C.H. Beck, München, 2005) 284.

<sup>205</sup> Preusker, former governor of Bruchsal prison, cited in Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 196.

approach. In *Paramilitary Imprisonment in Northern Ireland: Resistance, Management and Release*, Kieran McEvoy through the prism of the conflict between prisoners and prison administration over political status of the prisoners analyses three key themes of their imprisonment, resistance, management and release within prison literature on coping and resistance, and prison management and staff-prisoner relations. He identifies collectivity or collective identity as central to the four types of resistance he examines: escapes 'as ridicule', dirty protests and hunger strikes as 'self-sacrifice', control of space through violence and intimidation, and resistance through litigation. He maps the management of the prisoners' detention through three strategies, reactive containment, criminalisation and managerialism. The governance strategies developed in the first instance from a military style approach in which prisoners were recognised as enemy combatants in a political conflict (reactive containment) to a 'law and order' approach which was part of a wider government security policy to depoliticise the conflict and consequently minimize the role of the armed forces. The criminalisation strategy with its central tenets to assert an 'ordinary' regime proved confrontational and was abandoned after the extended hunger strikes in 1980/1. From that period a managerialist strategy with an 'organisational language of scientific and instrumentalist discourses' was implemented, yet it obfuscated the underlying political motivations.<sup>206</sup> This in turn had a negative effect on the improvement of prisoner situation following the Republican (IRA) ceasefires.

McEvoy's study is a comprehensive and multifaceted analysis of the intersection of prisoner resistance and their governance with a focus on male population of politically motivated prisoners. It is important to note that the nature of the Northern Irish conflict -sectarian violence- and the prison context in Northern Ireland represented in this study are quite distinct from the situation in Germany. First, the prison system was designed to detain male politically motivated prisoners, which included the spatial separation of members of opposing organisations, in addition to normal prisoners. Second, the proportion of men politically motivated prisoners to the overall prison population was in the range between 50 per cent to 66 per cent.<sup>207</sup> Consequently, the governance strategies are highly context-dependent to the detention of men politically motivated prisoners in Northern Ireland. Moreover, the

<sup>206</sup> McEvoy, *Paramilitary Imprisonment*, 21.

<sup>207</sup> McEvoy, *Paramilitary Imprisonment*, 16.

large proportion of men prisoners creates a different prison dynamic with regards to resistance strategies. Most notably the strategy of control of space can be put into practice more effectively with such large numbers of prisoners.

The situation of RAF and J2M prisoners in Germany was one of an unexpected, unpredictable and marginal group of prisoners who were dispersed in prisons across the country and who were either segregated and detained in solitary confinement or isolated in small groups in specially constructed high-security units. Also, the percentage of women in the RAF/J2M was comparatively high; it has been estimated at 42%.<sup>208</sup> As a consequence I argue that for the study of women and men RAF/J2M prisoners there are more commonalities with the marginal position of women political prisoners in Northern Ireland. This is the focus of Mary Corcoran's study, *Out of Order: The political imprisonment of women in Northern Ireland 1972-1998*. Women political prisoners challenge the dominant construction of women prisoners in penal discourse as difficult due to the nature of their convictions and their conduct in prison. Corcoran conceptualises the construction of women political prisoners as dangerous. In a highly detailed and intricate analysis she sets out the ways in which these women resisted 'gendered and political dimensions' of their imprisonment. For the reasons mentioned above, the following section looks to Corcoran's framework to conceptualise the governance and resistance strategies of political prisoners.

#### 4.1. *The governance of women and men political/politically motivated prisoners*

In the German academic literature terrorist prisoners are identified as one of the groups of prisoners together with drug addicts, foreign prisoners, and those who refuse to work, that find themselves outside the resocialization regime and are essentially incapacitated. Yet, these groups are quite distinct, the only commonality they share is that they are not considered enterprising prisoners. The aim of this section is to crystallize this broader notion of incapacitation and control of 'difficult customers' into a conceptualisation of the penal governance of political/politically motivated prisoners through securitization and containment.

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<sup>208</sup> See note 198.

Here I look to the four point framework that Corcoran develops to explain both the political and gendered construction of women political prisoners as dangerous and the coercive and exclusionary practices that follow. This framework lends itself to be expanded to capture the governance of both women and men political/politically motivated prisoners provided the gendered dimension is not lost. Corcoran understands the rationality of securitization and the technique of containment in the broader criminological sense. Namely, containment is the approach to reduce or contain the criminogenic effects of a crime or disorder problem that is perceived to be so wide-ranging or uncontrollable as to be impossible to resolve.<sup>209</sup> This is translated into the prison context through special measures that are aimed at maximum control and surveillance, risk assessment of high-risk groups as to dangerousness, and segregating 'unstable prisoners'. They are what Bauman calls 'techniques of immobilisation' that reduce the prison to its essence for punishment.<sup>210</sup>

First, political/politically motivated prisoners are constructed as dangerous. More specifically, they are perceived to be 'inherently disruptive and high-risk, prone to violence or escaping from custody'.<sup>211</sup> Whereas these attributes are readily identifiable with men in prison under hegemonic masculinity,<sup>212</sup> women who display these behaviours are 'ontologically differentiated' from other women prisoners. For they conflict with what is considered normal criminal and gendered behaviour; namely the conception of the 'passive or virtually powerless subjects of prison punishment and subordination'.<sup>213</sup> Because they jar with the image of the victimized subject, women political prisoners are considered dangerous rather than difficult. Corcoran explains this in the following statement:

Rather, it is precisely their social competence, highly developed organisational skills, critical consciousness and, most of all, their resistance to self-abnegating collaboration with authority which confirm their subversiveness in official eyes. The construction of such women as deliberately placing themselves out of reach of rehabilitative or benevolent influences both reinforces perceptions of their irreformability and provides

<sup>209</sup> Feeley and Simon cit. in Corcoran, *Out of Order*, 84.

<sup>210</sup> Z. Bauman, 'Social Issues of Law and Order' (2000) 40 *British Journal of Criminology* 205-21, 212. Bauman introduces this concept in relation to the phenomenon of the supermaximum security prison in the United States. While these facilities lack comparison in scale and intensity, this is nevertheless a useful concept. For a detailed analysis of the US supermax system, see Shalev, *Supermax*.

<sup>211</sup> Corcoran, *Out of Order*, 84.

<sup>212</sup> Sim, 'Tougher than the rest? Men in prison'.

<sup>213</sup> M. Corcoran, 'Normalization and its Discontents: Constructing the "Irreconcilable" Female Political Prisoner in Northern Ireland', (2007) 47 *British Journal of Criminology*, 405-22, 417.

the justification for organizing security and control around the principles of containment.<sup>214</sup>

These prisoners are constructed as unreceptive to ordinary treatment or care as part of the normalization regime. For instance in a report on the activities and behaviours of detained terrorists commissioned by the German Federal Ministry for the Interior in 1985, Alfred Klaus, a former detective chief superintendent, argues that RAF and J2M prisoners were so attached to their 'revolutionary identity' that they would continue their violent struggle in prison with all the means available to them.<sup>215</sup> He considers a resocialization regime illusive; rather the prison service is tasked with their secure incapacitation (*sichere Verwahrung*) (to prevent escapes) and to forestall any further violent activity within and outside of the prison.<sup>216</sup> Such prisoners are then governed through risk assessments based on characterisations of the terrorist that are 'unequivocal in assuming incurable pathology, and emphatic in warning about the futility of social or rehabilitative approaches to their incarceration, especially for women'.<sup>217</sup>

Second, containment in the prison context is understood as 'special incapacitation'; this is the principal means to prevent political prisoners from radicalising the 'normal' population and to ensure prison security.

These strategies have involved isolating prisoners in secure units (or in segregated cells or wings where there are no specialized facilities) and introducing intelligence-gathering, surveillance and other counter-insurgency methods for the purpose of 'containing and monitoring primarily (though not exclusively) women political prisoners'.<sup>218</sup>

The decision to disperse the prisoners across the system or concentrate them in one institution is often as much influenced by political considerations as perceived security issues.<sup>219</sup>

Third, women prisoners who are classified as high-risk occupy a doubly marginal position: both in the women's population and within the Category A (high-risk male population). Consequently,

<sup>214</sup> Corcoran, *Out of Order*, 83-4.

<sup>215</sup> A. Klaus, *Aktivitäten und Verhalten inhaftierter Terroristen* (Bundesministerium des Innern, Bonn, 1985) 3.

<sup>216</sup> Klaus, *Aktivitäten und Verhalten inhaftierter Terroristen*, 118, 126-7.

<sup>217</sup> Zwerman cit. in Corcoran, *Out of Order*, 84.

<sup>218</sup> Zwerman cit. in Corcoran, *Out of Order*, 84.

<sup>219</sup> Corcoran, *Out of Order*, 84.

these women prisoners are subject to a variety of forms of detention -from solitary confinement in women's prisons to isolation or small group detention in female annexes in men's high security prisons.

Their marginal position in the prison system has also led to the arbitrary application of security practices, the shuttling of individuals from one unit or institution to another and the *ad hoc* improvization of security controls to supplement deficiencies in the design or policies of establishments.<sup>220</sup>

Fourth, these containment practices have intensified 'gender controls'. The domesticated regimes in the form of 'familial' groups, which are prevalent within women's imprisonment and reinforce dominant conceptions of femininity, re-emerge within the high-security regime with full coercive force. This type of special incapacitation of women has developed into 'an ecology of small-group containment which combines an unremittingly "secure" physical environment with the kinds of behavioural enclosure that resemble a perverse variant of the "familiness" that is to be found more generally in women's units'.<sup>221</sup> These units make possible the enhanced surveillance of individuals and the group, this includes conversation and correspondence, and 'justifies pre-emptive and invasive security procedures such as strip searching'.<sup>222</sup>

To sum up this four point framework, political prisoners are constructed as dangerous, they are the unempowerable, resistant prisoner; women political prisoners in particular deviate from the social harm conception of women offenders as victims. The strategy of containment is translated into the prison context as 'special incapacitation' in order to immobilise and monitor (surveillance) prisoners. Political prisoners who are detained in small groups, so-called small group containment, are subject to heightened 'gender controls', namely 'secure' detention with 'familiness' of small groups. And finally, it highlights the extremely marginal position of women political prisoners within the system, both within women's institutions and the male high security system. The impact of securitization through containment of RAF and the meanings the interviewees attached to them is explored in Chapters 4 and 5.

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<sup>220</sup> Corcoran, *Out of Order*, 85.

<sup>221</sup> Corcoran, *Out of Order*, 85.

<sup>222</sup> Corcoran, *Out of Order*, 85.

#### 4.2. Resistance of women and men political/politically motivated prisoners

The problem with re-orientating women political prisoners to their penal condition was not that they lacked entrepreneurial skills, but that they had too many of them, and of the 'wrong' sort. The dilemma for managerialism was that, once destabilized by resistance, the authorities resorted to coercive measures for bringing prisoners back within its remit.<sup>223</sup>

The aim of this final subsection is to conceptualise the resistance of political/politically motivated prisoners within a broader understanding of agency and resistance in the prison context. It is generally accepted that the *potential* for resistance is concomitant to power relations.<sup>224</sup> This connection between power and resistance is displayed in Foucault's famous quote: 'As soon as there is a power relation, there is a possibility of resistance'.<sup>225</sup> As I have touched up in Section 2, Foucault accepts that in productive power relations individuals are able to choose alternative forms of governance, so-called counter-conducts. But how can agency be better understood under conditions of power as government where conduct is shaped through self-regulation and self-monitoring? Garland cautions us not to conflate the two concepts of agency and freedom. For neo-liberal strategies individualise and promote individual freedoms, however governmental strategies of empowerment and responsabilization offer agents regulated choice; the neo-liberal/*ordo-liberal* notion of freedom with responsibility.

The truth is that the exercise of governmental power, and particularly neo-liberal techniques of government, rely upon, and stimulate, *agency* while simultaneously reconfiguring (rather than removing) the *constraints* upon the freedom of choice of the agent.<sup>226</sup>

How is this constrained agency experienced in the punitive environment of the prison? In *The Prisoner Society: Power, Adaptation and Social Life in an English Prison* Crewe provides an in-depth ethnographic study of prison life and prisoner adaptations in a medium-security English prison. Of particular interest at this stage are his findings on the impact of neo-liberal governmental technologies on prisoners' experiences of their incarceration. Since the advent of managerialism in the 1990s there

<sup>223</sup> M. Corcoran, 'Normalization and its Discontents: Constructing the "Irreconcilable" Female Political Prisoner in Northern Ireland' (2007) 47 *British Journal of Criminology*, 405-22, 419.

<sup>224</sup> M. Foucault, 'Power and Sex', in L.D. Kritzman (ed.) *Michel Foucault. Politics, Philosophy, Culture: Interviews and other writings 1977-1984* (Routledge, New York and London, 1988) 110-124.

<sup>225</sup> Foucault (1988) 'Power and Sex', in L.D. Kritzman, L. D. (ed.) *Michel Foucault. Politics, Philosophy, Culture: Interviews and other writings 1977-1984* (Routledge, New York and London, 1988) 110-124, 123.

<sup>226</sup> Garland, 'Governmentality and the problem of crime', 197.



have emerged positive as well as negative developments. There is a need for a differentiated analysis of the effect of neo-liberal governing strategies. He criticizes those who portray a wholly one-sided account of prisons under managerialist strategies and disregard the pains associated with treatment programmes under the 'old penology'. Changes for the better include a reduction in violence between prisoners, a safer and cleaner environment, and a change in prison officer conduct to a less apparent authoritarian style. However, '[i]mprisonment has become "deeper" and "heavier" since the early 1990s'.<sup>227</sup> The increased use of situational control measures, such as restriction of movement and tighter security, and an emphasis on risk management produce a decency administered in a faceless and impersonal way that displays a lack of 'humanity, trust, faith, [and] interest';<sup>228</sup> prisons that are run with a narrow focus on process remain inherently painful and seem to 'perform legitimacy but do not achieve justice'.<sup>229</sup>

The carceral experience is less directly oppressive, but more gripping. It demands more and risks less. It is described by prisoners less in terms of weight than 'tightness'. Instead of brutalizing, destroying and denying the self, it grips, harnesses, appropriates it for its own project. It turns the self into a vehicle of power rather than a place of last refuge.<sup>230</sup>

Strategies of empowerment and responsabilization in prison are experienced as 'tightness', as being harnessed and instrumentalised in their self-governance and self-monitoring.

What does this mean in terms of resistance? To what extent is there a juxtaposition between dull compulsion<sup>231</sup> or harnessed compliance and resistance? In other words a distinction between 'making out' and 'fighting back'<sup>232</sup> or 'prisoners who do what they can to *get by* during their incarceration and those who *resist*'.<sup>233</sup> One approach to analysing resistance in prison, albeit a wide outlook, is to ask how prisoners manage to negotiate power relations (resist) within an enveloping, routinized, punitive environment marked by the control of time and space.<sup>234</sup> The paradigm on power relations in prison is that they are not fixed but dialectic; prison punishment is neither 'fully developed

<sup>227</sup> Crewe, *The Prisoner Society*, 449

<sup>228</sup> Crewe, *The Prisoner Society*, 452.

<sup>229</sup> Crewe, *The Prisoner Society*, 451.

<sup>230</sup> Crewe, *The Prisoner Society*, 449.

<sup>231</sup> Carrabine, *Power, Discourse and Resistance*.

<sup>232</sup> Cohen and Taylor, *Psychological Survival*, Chapter 6.

<sup>233</sup> McEvoy, *Paramilitary Imprisonment*, 31.

<sup>234</sup> Sparks et al, *Prisons and the Problem of Order*. Foucault, *Discipline and Punish*.

and instrumentally coherent prior to being enforced' nor does it emerge isolated from prisoners' challenges.<sup>235</sup> What Giddens' calls a 'dialectic of control' is essential for there to be a *possibility* of resistance.<sup>236</sup>

Resistance can be conceptually helpful to understand the difficulties prisoners face to preserve a feeling that they have some choice and autonomy under very restrictive circumstances.<sup>237</sup> Identity is considered by some the site where power relations are negotiated in prison; the space for prisoners to assert their autonomy through resistance and subversion. In *Engendering Resistance: Agency and Power in Women's Prisons* Mary Bosworth explores the ways in which women in three English penal institutions resist the constraints they encounter in prison.<sup>238</sup> She does this with a conceptual framework that builds on conceptions of identity and subjectivity developed in feminist and social theory. Although women face a lot of restrictions as part of their imprisonment, from this comparatively powerless position they nevertheless engage in everyday negotiations with other prisoners and staff over food, exercise, visits and association to retain a degree of choice and autonomy.<sup>239</sup> Women (and men) prisoners negotiate power relations in prison through a sense of self that is formed outside and reflects wider social constructions of gender, race, class, sexual orientation and gender identity. They 'co-opt' aspects of the dominant conceptions of 'femininity' to affirm their own self-identity and resist parts of the punishment regime.<sup>240</sup>

[I]t reveals how the ability to resist circumstances of confinement is to some extent dependent on a coherent sense of self rather than simply on instrumental choices or opportunities. A full understanding of how prisoners evaluate their experiences of imprisonment is impossible without knowing who the prisoners are in a sociological or socio-cultural way. Without such knowledge, it becomes difficult to recognize motivation or desire, or even to imagine alternatives.<sup>241</sup>

Central to Bosworth's argument is that identity is not fixed and therefore 'change and resistance

<sup>235</sup> Corcoran, *Out of Order*, 103; and cit Carlen.

<sup>236</sup> Giddens, *The Constitution of Society*.

<sup>237</sup> Bosworth and Carrabine, 'Reassessing resistance'.

<sup>238</sup> Bosworth, *Engendering Resistance*.

<sup>239</sup> See also Bosworth and Carrabine, 'Reassessing resistance'.

<sup>240</sup> Bosworth, *Engendering Resistance*, 156.

<sup>241</sup> Bosworth, *Engendering Resistance*, 156-7

may be possible'.<sup>242</sup> For people who are members of gender, class or ethnic groups, their sense of self is not one of distinct identities added on to one another '[r]ather, their identities are located at the intersection of their ethnic, class and gender membership'.<sup>243</sup> Through this diversity in prisoner identities, women subvert the ideal of femininity that is promoted in prison and the wider community - 'white, middle-class heterosexuality' - through a performance of a variety of feminine identities.<sup>244</sup>

The women evaluate their choices through a framework which is embedded in their social relationships and in their ethnic and cultural identities outside the prison. As a result, their ability to resist the pains of imprisonment does not rest entirely upon the choices which prison makes available to them. Their sense of self transgresses the prison walls, enables them to resist much of the daily exigencies of prison life.<sup>245</sup>

The women in the study understand themselves as agents who are in control of some parts of their lives. Although women who have these intersected identities face a number of limitations in prison, also through their membership in certain ethnic and cultural groups, this diversity provides a space to challenge these limitations that reflect homogenous gender conceptions. For 'their alternative interpretations of the meaning of the material and symbolic choices open to them gave them some possibility of resistance'.<sup>246</sup> Sense of self that is formed on the outside is central to how women (and men) prisoners engage in everyday negotiations in prison. More specifically their self-identity influences the way either their conduct is shaped by or they resist to strategies of penal governance. The negotiation of identities is the site of individual agency and resistance.

This very broad conception of resistance that essentially equates agency with resistance has been criticised.<sup>247</sup> '[T]he idea that 'identity', as a loose alignment of oppositional reflexes, resistant consciousness and identity politics, can constitute a valid basis for radically altering the material basis of penal power, has been contested.<sup>248</sup> Rather the prison's inherent capability to co-opt, redefine and resist challenging discourses and construct prisoners who resist as unempowerable, dangerous or in

<sup>242</sup> Bosworth, *Engendering Resistance*, 120.

<sup>243</sup> Bosworth, *Engendering Resistance*, 118.

<sup>244</sup> Bosworth, *Engendering Resistance*, 120.

<sup>245</sup> Bosworth, *Engendering Resistance*, 120.

<sup>246</sup> Bosworth, *Engendering Resistance*, 150.

<sup>247</sup> Carlen cit. in Corcoran, *Out of Order*.

<sup>248</sup> Corcoran, *Out of Order*, 138-9.

need of therapy, means that the parameters, in which prisoner agency takes place, shift.<sup>249</sup> Prisons 'claw back' and their punitive essence becomes felt by the resistant or unempowerable prisoner.<sup>250</sup> However, Bosworth's conceptualisation, in particular the connection between self-identity and wider conceptions of gender, class and ethnicity, is helpful to see how everyday acts of refusal can be linked to a more collective identity.

Similarly, the resistance of political prisoners involved the many mundane acts that signified their partisan or critical consciousness, their appropriation of subordinated knowledges in negotiating various punitive frameworks and their self-legitimation as politically conscious and gendered subjects. These practices point to a continuum of 'resistance' which connected everyday refusals with their premeditated and collective strategies, and which allowed individual resistance to be consolidated into a systematic campaign of opposition.<sup>251</sup>

How does Mary Corcoran develop this 'continuum of resistance' that links everyday refusals to collective resistance strategies? In a highly detailed and intricate analysis she sets out the ways in which these women resisted 'gendered and political dimensions' of their imprisonment through a 'continuum of resistance' from everyday refusals to co-ordinated collective acts of defiance. Within this continuum interconnected 'fields of resistance' with an inward and outward outlook are identified and explored. For the former they include 'internal consolidation and self-affirmation' through regrouping after being arrested; building a prison community to 'make space' and taking control of time within the routinized prison environment; and the affirmation of political identity in opposition to prison identity, which is characterised through criminalisation.<sup>252</sup>

As identities derive from social engagement and action rather than intrinsic categories such as "political prisoner" and "women in prison", their struggle referenced multiple meanings of resistance within these two domains. Rather than choosing between political and gendered identities, women political prisoners reshaped them into plural, mutually transformative positions.<sup>253</sup>

Resistance strategies with an external dimension include 'active disengagement and conditioning of

<sup>249</sup> Hannah-Moffat, *Punishment in Disguise*; Corcoran, *Out of Order*, 138-9.

<sup>250</sup> Carlen, 'Carceral Clawback'.

<sup>251</sup> Corcoran, *Out of Order*, 104.

<sup>252</sup> Corcoran, *Out of Order*, 120, 125, 139-40.

<sup>253</sup> Corcoran, *Out of Order*, 152.

staff' which encapsulates various co-ordinated, planned forms of refusals to reject the prisoner status and disrupt the prison regime, but also direct/indirect violence and intimidation;<sup>254</sup> litigation as a way to instrumentalise the system; bodies as weapons - hunger strikes, no wash strikes - in which the locus of punishment was transformed into a mechanism of resistance through a 'struggle for control'.<sup>255</sup> The prisoner's resistance strategies responded to the prison's productive as well as coercive forms of power. However, this emerges as a multifaceted picture that includes tensions and conflict 'which arose as prisoners crossed the lines between collaboration and subversion, or where conflicts originating in 'ordinary' differences of interest unexpectedly developed into 'political' issues'.<sup>256</sup>

[W]hilst the resistance of Republican women prisoners was intended to negate the prescriptions that laid claim to their bodies, their actions reinforced the 'pathologization' of female protest. Bodily practices of resistance, then, cannot aspire to a free field of autonomy. They are pragmatic expressions of refusal that are embedded in pervasive material and ideological constraints. ... My underlying premise is that women did resist, they resisted the kinds of correctional forms that are also associated with controlling women more generally, but with the additional outcome that this overlapped with, and was reinforced by, conspicuous State interests in embedding order and conformity in prison. ... More accurately, then, this analysis is concerned with the overlapping grids of gendered and political controls that constituted the political imprisonment of women.<sup>257</sup>

The prison life stories that are the subject of interpretation in Part 2 of the thesis, are framed by this inter-relationship between power and resistance in prison and punishment in order to understand that even in a prison regime like Germany that promotes the resocialization of prisoners and recognizes their citizenship, prisons faced with a resistant prisoner claw back through punitive measures.<sup>258</sup> Under conditions of '*ordo-liberal*' penalty the resistant or unempowerable prisoner is constructed in contrast to the enterprising prisoner.<sup>259</sup> As a result the purpose of imprisonment for dangerous prisoners, in this case political prisoners, becomes securitization realised through strategies of containment.<sup>260</sup> The prisoners' resistance strategies, from everyday refusals to collective and co-ordinated acts of defiance, that are located on both a 'continuum of resistance' and in interconnected 'fields of resistance', challenge

<sup>254</sup> Corcoran, *Out of Order*, 156-7

<sup>255</sup> Corcoran, *Out of Order*, 171.

<sup>256</sup> Corcoran, *Out of Order*, 106-7.

<sup>257</sup> Corcoran, *Out of Order*, 99.

<sup>258</sup> Carlen, 'Carceral Clawback'.

<sup>259</sup> Hannah-Moffat, *Punishment in Disguise*, 186.

<sup>260</sup> Corcoran, *Out of Order*, 85.

the prison's punitive power within a dialectic of control.<sup>261</sup>

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<sup>261</sup> Giddens, *The Constitution of Society*.

## Chapter 3

### A review of the counterterrorism legislation and imprisonment

In her analysis of the German Prison Act 1976, Lazarus writes that the 1970s were 'the high point of social liberal values within criminal justice politics in Germany'.<sup>1</sup> These humanising reforms peaked with the enactment of the German Prison Act 1976. Lazarus adds that from the 1980s onwards, the politics of criminal justice changed towards a focus on prevention.

Although the reform drive for a more humane prison system continued throughout the 1970s, arguably the threat of terrorism and the counter-terrorism legislation that was passed in its wake resulted in an increasing focus on securitization. This policy approach that gained momentum in the 1980s placed an emphasis on 'crisis intervention' and was less committed politically to the protection of prisoners' rights.<sup>2</sup>

With a focus on imprisonment, this chapter explores the exceptions that were introduced through counter-terrorism legislation, but also through judicial and executive decision-making, in order to 'cut off' and 'close in' RAF and J2M prisoners.

In 1976 a comprehensive counter-terror framework was introduced with the Anti-terrorist Act. Among the procedural restrictions for those accused of terrorist offences, it broadened the scope for pre-trial detention and restricting access to a defence lawyer. The latter provision was complemented by the Prohibition of Contact Act 1977, which allowed for the complete lockdown of prisoners suspected of being involved with a terrorist organisation for a period of up to thirty days.

In addition to the legislation, the Federal Court of Justice developed a standardised set of prison rules for persons accused in connection with the RAF, J2M or other militant organisation. Finally, in the late 1970s the governments of the individual Federal States agreed to a policy of high security detention for convicted RAF prisoners. For this a number of high security units were built in existing prisons throughout the country.

This chapter examines these exceptions in a review of the two anti-terror laws that were passed in 1976 and 1977 respectively, and also analyses how the existing provisions on pre-trial detention and the 'new'

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<sup>1</sup> Lazarus, *Contrasting Prisoners' Rights*, 69.

<sup>2</sup> Hassemer cited in Lazarus, *Contrasting Prisoners' Rights*, 69.

Prison Act 1976 framed the solitary confinement and segregation measures at the centre of RAF imprisonment.

The chapter is structured in four sections. Section 1 introduces the new 1976 legislative framework in response to terrorism, with a focus on the restrictions for prisoners. Section 2 analyses the nature and impact of the Prohibition of Contact Act 1977, which allowed for the complete isolation of RAF and J2M prisoners within the prison and from the outside. Section 3 explores the standardised conditions of pre-trial detention that have evolved in connection with the RAF and J2M prisoners. It thereby expands on Diewald-Kerkmann's argument that the RAF conditions in pre-trial detention were not equal to those of normal prisoners.<sup>3</sup> Section 4 addresses the question to what extent RAF isolation in 'new' post-1977 purpose-built high security wings was framed by the Prison Act 1976.

## **1. A new terrorist legislative framework: the 'Anti-terrorist Act 1976'**

### ***1.1. After 1972: The RAF's next generation***

After the arrests of the founding members in 1972, the RAF's violence had not ceased. It had changed its focus to 'liberating' those who were incarcerated. After Holger Meins' death in November 1974 during the third collective hunger strike, the then president of the Higher State Court of Berlin, Günter von Drenckmann, was killed in a failed attempt to kidnap him. In February/March 1975 members of the J2M took hostage the chairman of the CDU in Berlin, Peter Lorenz. They successfully negotiated to free a number of imprisoned members of their own group and of the RAF.

In contrast, a further attempt to free RAF and J2M prisoners was unsuccessful. In April 1975 the so-called 'Holger Meins RAF-Commando' occupied the German Embassy in Stockholm and demanded the release of twenty-six 'political prisoners'. The government refused to engage with the hostage takers and the embassy was raided. Two embassy employees had been shot by the hostage takers and two members of the RAF died from their injuries. In 1977 those members of the RAF, who

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<sup>3</sup> See Chapter 1, Section 1.3. for more detail on her argument.



were arrested, were convicted and each sentenced to two life sentences. Among them was Karl-Heinz Dellwo, one on the participants in this study.<sup>4</sup>

In his article in which he reviewed the RAF's politics among other approaches to armed violence, Fraser explains that by focussing on 'liberating' their comrades, the RAF terrorist actions invariably turned inward. Thereby they failed to engage with a public dialogue on terror and revolution, rather they focussed on sustaining their group identity 'talking essentially to themselves'.<sup>5</sup> He adds:

People are terrified because their anchors to the world are sent floating free as meaning is put up for grabs. The mistake, the semiotic fallacy, committed by the RAF was to turn the terrorist him- or her- self into the dominant signifier, by taking the struggle away from de-territorialising dominant signifiers [symbols of Western capitalist societies] and focusing instead on re-territorialising 'terrorists'.<sup>6</sup>

The focus of the 'armed struggle' became the struggle within prison against the conditions of detention and the 'liberation' of the prisoners.

Following the events in 1975, the State pushed for what were described as improved counter-terrorism measures and appropriate sanctions for criminal-terrorist organisations.<sup>7</sup>

Reflecting in 1979 on the decade just past, the Chief Federal Prosecutor Kurt Rebmann wrote in justification of the new counterterrorism measures:

In the first half of *our* decade [1970s] the criminal justice system was faced with a *new* mission under different circumstances, after Andreas Baader, Gudrun Ensslin, Ulrike Meinhof, Horst Mahler and others attempted to establish an armed underground army in the Federal Republic.<sup>8</sup>

He argued that in order for the criminal justice agencies to defeat terrorism, which he described as a new and particularly dangerous kind of crime, a comprehensive legislative framework was required. This would involve both substantive criminal law, in order to punish proportionately to the gravity of the offence and the degree of individual culpability, as well as criminal procedure law to ensure terrorist trials were conducted in accordance with the rule of law.<sup>9</sup>

<sup>4</sup> The others were Hanna Krabbe, Bernd Rössner and Lutz Taufer. See Dellwo, 'Historischer Abriss/Unvollständige Chronologie', 205.

<sup>5</sup> Fraser, 'If I Had a Rocket Launcher', 801.

<sup>6</sup> Fraser, 'If I Had a Rocket Launcher', 800.

<sup>7</sup> Dahs, 'Das "Anti-Terroristen Gesetz"', (n 2) 2145.

<sup>8</sup> K. Rebmann, 'Terrorismus und Rechtsordnung: Erfahrungen mit den Rechtsänderungen der vergangenen Jahre – Vorschläge de lege ferenda' (1979) *DRiZ* 363 (emphasis in the original).

<sup>9</sup> Rebmann, 'Terrorismus und Rechtsordnung', 363.

## 1.2. The 'Anti-terrorist Act 1976'

The 'Anti-terrorist Act' 1976 introduced such a legislative framework constructed around § 129a of the Penal Code introduced by the Act.<sup>10</sup> This provision created a new offence of 'founding a terrorist organisation' that prohibits the creation of organisations that are aimed at committing a catalogue of offences including murder, manslaughter or genocide, kidnapping and hostage taking, as well as offences severely endangering the public.

The scope of the offence covers persons who found and participate in such an organisation as members, but also those who canvass for or support the organisation.<sup>11</sup> The rationale is one of prevention. It is aimed at terrorist activities at their inception and the planning stages prior to their actual execution.<sup>12</sup>

To complete the counterterrorism legislative framework, § 129a of the Penal Code has criminal procedure elements to it. In the German legal literature it is described as a provision that combines both substantive criminal law and criminal procedural law.<sup>13</sup> This means concretely that once § 129a of the Penal Code is invoked, a number of provisions that are linked with the provision come into operation, in particular those restricting the rights of the defence. Herein lies its practical significance. The procedural restrictions are discussed in detail in Section 1.3. below.

### 1.2.1. Historical origins

The elements of the offence 'founding a terrorist organisation' and the combined substantive and procedural structure of this legislative provision, closely mirror the legislative framework for combating organised crime in § 129 of the Penal Code with the offence 'founding a criminal organisation'. They can be traced back to the 18th century.

In his 1980s critique of both provisions, Cobler dated their origins back to the Prussian decree of 20 October 1798 'preventing and punishing secret associations which could have adverse effects on public security'.<sup>14</sup> He added that it was a response to the 'outrageous' and 'corruptive' effects of the

<sup>10</sup> The Act amending the Penal Code, the Criminal Procedure Code, the Constitution of Courts Act, the Federal Lawyers Act and the Prison Act from 18 August 1976, BGBl I, 2181.

<sup>11</sup> H. Jung, 'Das sog. Anti-Terroristengesetz' (1976) 11 *JuS* 760.

<sup>12</sup> E. von Bubnoff, *Leipziger Kommentar* (11th edn., 2006) §129a, 185.

<sup>13</sup> von Bubnoff, *Leipziger Kommentar*, 185.

<sup>14</sup> Cobler, 'Plädoyer für die Streichung der §§ 129, 129a StGB', 412.

French Revolution. Further decrees during the 19<sup>th</sup> century prohibited and severely punished not merely political activities, but also political free speech, including public political communication of the bourgeoisie. Especially severe measures were taken after the famous *Hambacher Fest* on 27 May 1832, where members of the bourgeois revolution were put on trial for 'preparation for treason'. The 7 January 1836 Act introduced 'criminal' to the catalogue of prohibited associations, which became §§ 98 and 99 of the Prussian Penal Code and, twenty years later, §§ 128 and 129 of the Reich's Penal Code.<sup>15</sup> In Weimar Germany it was the 1922 'Act for the protection of the republic'.<sup>16</sup>

According to Cobler, it was ironic that first the bourgeoisie, and later the social democrats and communists, were the first to be tried under these provisions:

'From the history of § 129 Penal Code – and the same goes for the comparatively "young" § 129a Penal Code – it is evident that the provision has been transformed from a conspiracy-based offence to an incitement-based offence. ... nothing has changed over the centuries with regards to the specific political significance and instrumentalisation of [these provisions]'.<sup>17</sup>

### 1.2.2. *The impact on the Rechtsstaat: critical reflections*

Contemporary commentaries suggested a stark contrast in the process of legislating the Anti-terrorist Act 1976 and the earlier *Lex Baader-Meinhof* 1974, with the 1960s criminal justice reforms. A contemporary of the counterterrorism reforms, Rudolphi maintained:

They are not the product of rigorous preparation and composed discussion with arguments for and against. Rather they are distinguished by the fact that they were passed extremely quickly in a hectic and emotionally charged atmosphere either in response to particularly abhorrent crimes or following new procedural tactics employed by the accused and their defence counsel, which were perceived as outrageous.<sup>18</sup>

The Act reflected a piecemeal approach that emerged in the 1970s towards new instances of criminalisation. Eser describes how the offence 'founding a terrorist organisation' was one of a catalogue of offences responding to acts committed in the 1970s including attacks on air traffic, hostage taking and extortionate kidnapping.<sup>19</sup>

Another contemporary, Jung explained that the Anti-terrorist Act 1976, like all specific legislative interventions of the time, did not allay the concern that the legislature was transfixed by a

<sup>15</sup> Cobler, 'Plädoyer für die Streichung der §§ 129, 129a StGB', 412-413.

<sup>16</sup> Ebert, 'Tendenzwende in der Straf- und Strafprozeßgesetzgebung', 141.

<sup>17</sup> Cobler, 'Plädoyer für die Streichung der §§ 129, 129a StGB', 414. I would like to thank Dirk van Zyl Smit for suggesting this particular translation.

<sup>18</sup> Rudolphi, 'Die Gesetzgebung zur Bekämpfung des Terrorismus', 1.

<sup>19</sup> He goes on to illustrate how this tendency also included new environmental and economic crimes as well. See Eser, 'A Century of Penal Legislation in Germany', 23-25.

particular event. He also said that it did not adequately consider the fundamental implications for the development of the law of criminal procedure as a whole. He added that the balance between the interests of criminal justice and those of the defence had shifted further towards the former.<sup>20</sup>

In turn Rudolphi stressed that the challenge faced by the State and its citizens alike in combating terrorism was to both 'defend and preserve the *Rechtsstaat*'.<sup>21</sup> Other commentators at the time responded more severely to the shift away from the rights of the defence. For instance, Dahs argued that the Anti-terrorist Act 1976 represented a defeat of the *Rechtsstaat*.<sup>22</sup>

### 1.3. The significance of the procedural restrictions

The emphasis on protecting public security and the consequentially wide conceptualisation of the elements of the substantive offence are central to the practical significance of § 129a of the Penal Code.

In his 1979 review of the new Act's interpretation, Rudolphi criticised the wide interpretation of the substantive elements, founding, membership, supporting and canvassing for a criminal/terrorist organisation.<sup>23</sup> This interpretation consisted of protecting public security and order.<sup>24</sup> Rudolphi argued that this had to be linked with a specific threat that emanated from the criminal or terrorist organisation. Although the elements of the offence were essentially precautionary, a focus on protecting public security resulted in an unjustified over-stretch of criminal justice protection.<sup>25</sup>

<sup>20</sup> Jung, 'Das sog. Anti-Terroristengesetz', 761.

<sup>21</sup> H. J. Rudolphi, 'Notwendigkeit und Grenzen einer Vorverlagerung des Strafrechtsschutzes im Kampf gegen den Terrorismus' (1979) 9 ZRP 214.

<sup>22</sup> See Dahs, 'Das "Anti-Terroristen Gesetz"'.  
<sup>23</sup> §§ 129 and 129a of the Penal Code.

<sup>24</sup> Rudolphi, 'Notwendigkeit und Grenzen', 216.

<sup>25</sup> Rudolphi, 'Notwendigkeit und Grenzen', 216. One striking example of the extensive interpretation of §§ 129 and 129a of the Penal Code is the element of supporting a criminal or terrorist organisation. The Federal Court of Justice defined it as an independent contribution leading to the continuation of the criminal or terrorist organisation by either particularly strengthening it in its efforts or activities, or by aiding its missions. Rudolphi argued that the element of supporting needed to be more precisely defined. To qualify as support, the act had to contribute to causing the genesis or continuation of the specific potential danger/threat posed by the criminal or terrorist organisation. See Rudolphi, 'Notwendigkeit und Grenzen', 217.

Von Bubnoff explains that the substantive element of the provision is more or less symbolic in nature, which is reflected in the conviction rates.<sup>26</sup> He adds the Federal German Parliament's intention was for the provision to have a notifying effect [*plakative Wirkung*]. It was to address a particularly severe threat emanating from terrorist organisations. This, it was said, provided the legitimisation for criminal sanctions combined with a preventive measures. This is reflected in the provision's practical significance realised through both the substantive and procedural provisions that are linked to it. These are triggered when a person is arrested under the provision.

Of particular interest for this thesis are the procedural mechanisms because they relate to detention: First there is the extension of the criteria for detention on remand for persons arrested for founding or membership in a terrorist organisation in § 112(3) of the Criminal Procedure Code; secondly, the surveillance of written correspondence between the defence lawyer and the detainee in §§ 148(2)/148a of the Criminal Procedure Code and for sentenced prisoners §§ 26, 27 & 29 of the Prison Act 1976. The Prohibition of Contact Act 1977 that was passed in the aftermath of the German Autumn is also linked to the provision. It will be discussed in more detail Section 2 below.<sup>27</sup>

The following sub-sections, Sections 1.3.1 and 1.3.2 take a closer look at the criminal procedure provisions linked to § 129a of the Penal Code. This highlights the extent to which they complete the comprehensive counterterrorism legislative framework.

### 1.3.1. The 'Anti-terrorist Act 1976' and pre-trial detention

In § 112(3) of the Criminal Procedure Code, the Act expanded the catalogue of offences for which persons can be remanded in custody without one of the grounds for pre-trial detention to be met. These grounds are 'preventing escape, minimising the danger from escape and the danger from suppression or interference with evidence'.<sup>28</sup> In addition to murder, manslaughter and explosives offences, the Anti-

<sup>26</sup> von Bubnoff, *Leipziger Kommentar*, 180. More specifically the conviction rates were the following: 1981 6; 1982 19; 1983 20; 1984 4; 1985 3; 1986 5; 1987 9; 1988 9; 1989 3; 1990 1; 1991 1;

<sup>27</sup> Here the statistics for the number of investigative proceedings per year for § 129a of the Penal Code are illustrative. In the years 1983 to 1993, the average number of proceedings initiated by the police was 185, with the highest in 1985 at 300 and the lowest in 1992 at 49. The numbers for proceedings instigated by the Federal Prosecution Service for § 129a of the Penal Code cases in the period between 1980 and 1993 averaged 273 per year. The majority of these cases, however, addressed the lesser offences of supporting and canvassing for a terrorist organisation with an average of 65 for the former and 154 for the latter per year. See von Bubnoff, *Leipziger Kommentar*, 180.

<sup>28</sup> § 112(2) of the Criminal Procedure Code.

terrorist Act 1976 added the new terrorist offences of founding or membership in a terrorist organisation to the list in § 112(3) of the Criminal Procedure Code.<sup>29</sup>

In his contemporary article, Dahs wrote that § 112(3) received immense criticism when it was introduced in 1965 for homicide offences.<sup>30</sup> For it was a first sign of inroads into the liberalising criminal procedure reforms brought about in the 1964 'Small Criminal Procedure Reform'.<sup>31</sup> He added that the stark criticism at the time at least led to a narrow interpretation of the provision in practice. However, Dahs pointed out that the new offences of founding of, and membership in, a terrorist organisation for the first time included offences that did not involve the killing of individuals and that could not be considered equivalent to the severity of homicide.<sup>32</sup>

In his more recent legal commentary, Boujong reflects on how the provision has been applied in practice. He writes that in order to conform to constitutional principles, pre-trial detention is only justified under the provision in cases where failing to arrest the suspect would threaten the investigation and positive outcome of the offence.<sup>33</sup> He adds that the function of § 112(3) of the Criminal Procedure Code is to relax the stringent grounds for detention set out in § 112(2). The judge is still required to consider the reasons for detention, but is not required to base his decision on actual evidence. The decision to detain can be inferred from the individual circumstances of the case.<sup>34</sup>

Furthermore, persons suspected of the lesser offence of supporting a terrorist organisation in § 129a of the Penal Code could also be caught out by the pre-trial detention provision. Boujong writes that in general, supporting as well as membership in criminal or terrorist organisation is considered a significant piece of evidence for the suspicion of collusion.<sup>35</sup> Also, he suggests that in practice the

<sup>29</sup> The Federal Constitutional Court held that the provision as it stood was disproportionate; see BVerfGE 19, 342 (15 December 1965). The interpretation of the provision that conforms to constitutional principles is described below.

<sup>30</sup> Dahs, 'Das "Anti-Terroristen Gesetz"', 2145.

<sup>31</sup> For more detail see Chapter 2 Section 1.2. and Section 1.2.2. in particular.

<sup>32</sup> Dahs, 'Das "Anti-Terroristen Gesetz"', 2145-2146.

<sup>33</sup> K. Boujong, *Karlsruher Kommentar StPO* (5th edn., 2003) §112, 606. See also BVerfGE 19, 342.

<sup>34</sup> Boujong, *Karlsruher Kommentar*, 606.

<sup>35</sup> Boujong, *Karlsruher Kommentar*, 604.

courts have found that persons who are deemed to have illegal contacts to a terrorist organisation are more likely to go underground in order to evade arrest.<sup>36</sup>

### 1.3.2. Restrictions on access to defence lawyers

The other procedural restriction affects those accused of a terrorist offence who are in detention. The Anti-terrorist Act 1976 also introduced a restriction on the right to unimpeded access to a defence lawyer.

Unimpeded written and oral communication between prisoners and their defence counsel is set out in §148(1) of the Criminal Procedure Code. It is one of the central tenets of a fair defence. Introduced in the 1964 'Small Criminal Procedure Reform', it removed the limitations that provided the possibility of refusing to pass on documents to the prisoner that had not been handed to judge for inspection. Also it removed the possibility of the monitoring of verbal communication between prisoner and defence counsel by a judge prior to the commencement of the main trial.<sup>37</sup>

With the 'Anti-terrorist Act 1976' an exception to the unimpeded communication rule was reintroduced. It provides for the surveillance of written documents for persons detained under § 129a offences. The aim of the surveillance is to prevent prisoners suspected of having committed a § 129a offence from continuing to act for the terrorist organisation or contribute to its continuation.<sup>38</sup> § 148(2) of the Criminal Procedure Code states that documents or other items are to be returned to sender unless the sender agrees for a judge to inspect them. Crucially, this also applies to written correspondence between prisoners accused of § 129a offences and their defence counsel.<sup>39</sup>

An further amendment to § 148(2) was introduced with the 'Act amending the Criminal Procedure Code 14 April 1978'.<sup>40</sup> The third sentence states that once the surveillance of written documents has been determined, measures are to be applied for defence counsel visits that prevent any

<sup>36</sup> Boujong, *Karlsruher Kommentar*, 602.

<sup>37</sup> H.W. Laufhütte, *Karlsruher Kommentar StPO* (5th edn., 2003) §§ 148/148a, 858.

<sup>38</sup> W. Gohl, 'Hat sich die Einrichtung des Überwachungs- oder Leserichters (§§ 148 Abs. 2, 148a StPO) bewährt?' in H. Eyrich, W. Odersky & F. J. Säcker (eds), *Festschrift für Kurt Rebmann zum 65. Geburtstag* (C.H. Beck'sche Verlagsbuchhandlung, München, 1989) 202.

<sup>39</sup> Laufhütte, *Karlsruher Kommentar*, 858.

<sup>40</sup> BGBl I, 497.

documents or other items from being passed on. This resulted in the introduction of a physical glass or Plexiglas partition.<sup>41</sup>

The surveillance of verbal communication, including telephone conversations with defence counsel, continued to be prohibited both for those in pre-trial detention and in prison. As inmates' telephone conversations are routinely monitored by the prison authorities, the prison has to ensure that the rule is observed as far as is reasonably possible.<sup>42</sup>

A decision to surveil written correspondence of prisoners in pre-trial detention is either made by the investigating Federal Court judge who sets the conditions of detention or, once the prisoner has been publicly charged, the presiding judge in the case.<sup>43</sup>

The procedure for surveillance is set out in § 148a of the Criminal Procedure Code. It states that a judge at the Local Court with jurisdiction over the district, in which the prison is located, is assigned the surveillance.<sup>44</sup> It further requires that the surveilling judge is wholly unconnected to proceedings of the case at that time and in the future, and is bound to keep the information obtained confidential.<sup>45</sup>

The judge's function is to analyse the content of the documents or other items and send those back that are not materially related to the defence, or have been deemed as procedurally inadmissible actions of the defence. The judge also has a duty to report the preparation or execution of any criminal activities that might come to light from any documents she or he has inspected.<sup>46</sup>

In 2001, the European Court of Human Rights had to decide whether these measures infringed prisoners' right to privacy enshrined in Art. 8 of the European Convention on Human Rights. It affirmed the privileged status of correspondence between detained persons and defence counsel. The Court stated this fundamental principle can only be restricted in exceptional circumstances. It found this

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<sup>41</sup> Laufhütte, *Karlsruher Kommentar*, 858-859.

<sup>42</sup> Laufhütte, *Karlsruher Kommentar*, 860.

<sup>43</sup> Laufhütte, *Karlsruher Kommentar*, 862.

<sup>44</sup> § 148a(1) of the Criminal Procedure Code.

<sup>45</sup> § 148a(2) of the Criminal Procedure Code.

<sup>46</sup> Laufhütte, *Karlsruher Kommentar*, 864.



to be the case in § 148(2) of the Criminal Procedure Code, as it identified a particular group of persons and was worded in a precise manner. It highlighted the restrictions put in place in the form of an independent judge who is unconnected to the proceedings and has the duty to keep the information confidential. Finally it added:

The power to monitor correspondence is limited, since prisoners are free to discuss their cases orally with their representatives. While it is true that representatives are precluded from delivering written documents or other objects to prisoners, they may provide them with information contained in written documents. The Court reiterates that some compromise between the requirements for defending democratic society and individual rights is inherent in the system of the Convention ...<sup>47</sup>

Reviewing the practical application of the surveillance measures in 1989, Gohl came to the conclusion that it had not proved to be effective.<sup>48</sup> He presented the findings from a questionnaire filled in by Local Court judges in Baden-Württemberg. He found that the majority felt that they lacked the necessary information on the proceedings to properly classify the information, in respect of the persons involved and the degree of the threat they posed. In conjunction with this, mail marked as defence correspondence and accompanied with a return address from a defence lawyer was generally accepted as such.

Responding to the question on the proportion of documents that were found to be in violation of the provision, the judges responded with comments such as “minimal”, “seldom”, “five per cent at the most” ...’. And all questioned explained that they would not be able to recognise concealed conspiratory material. The judges agreed with the statement that the surveilling judge’s function more likely had a detrimental effect on the proceedings.

Gohl explained that the concerns raised in the aftermath of the legislation that it would undermine the principle of equality of arms did not materialise in practice. This was due to the fact that surveilling verbal correspondence remained prohibited. He went on to affirm Welp’s 1977 comment ‘that nobody needed to be afraid of this paper tiger’.<sup>49</sup>

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<sup>47</sup> *Erdem v Germany* (Application 38321/97) (5 October 2001) ([www.coe.int](http://www.coe.int)).

<sup>48</sup> Gohl, ‘Hat sich die Einrichtung des Überwachungs-’.

<sup>49</sup> J. Welp, ‘Die Überwachung des Strafverteidigers’ (1977) *GA* 142.

However, the introduction of the glass or Plexiglas partition for defence counsel visits continued to have a significant impact. Eschen describes the conditions in which the early visits took place. He wrote:

The conversation proceeded mainly through yelling, because the partition [Trennscheibe] deadened every moderately spoken word. Aside from that one had difficulty recognising the client and he his lawyer due to the reflecting pane. On account of the windowless cell, the conversation was also drowned out by the sound of the ventilation system.<sup>50</sup>

The experiences of the surveillance measures and in particular the Plexiglas partition are engaged with in detail in Chapter 5, Section 4.

The following section examines a further and more restrictive restriction to the rights of the defence.

## 2. Prohibition of Contact Act 1977: legislating the exception

### 2.1. *The German Autumn 1977 and the executive contact ban*

The only other legislative measure that permits restrictions on the contact between prisoners and their defence counsel is the Prohibition of Contact Act 1977.<sup>51</sup> This resulted in the complete lockdown of the prisoners linked to terrorist organisations like the RAF and J2M.

Central to understanding the law is the context that led up to its extremely swift creation. It took five days from the end of September to the beginning of October 1977 from presenting the bill to the Federal German Parliament to the law coming into force.<sup>52</sup>

The catalyst for introducing a prohibition of contact measure was the kidnapping of Hans Martin Schleyer, president of both the Employers' Association of the Federal Republic and the Federation of German Industry on 5 September 1977. The RAF demanded the release of the

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<sup>50</sup> Eschen, 'Rechtsstaat ohne Konfliktkultur', 85.

<sup>51</sup> Act Amending the EGGVG (Supplementary Act for the Constitution of Courts Act) 30 September 1977 (in force on 2 October 1977), BGBl I, 1877.

<sup>52</sup> A. Schoreit, *Karlsruher Kommentar StPO & EGGVG* (5th edn., 2003) §§ 31-38 EGGVG, 2550.

Stammheim prisoners Andreas Baader, Gudrun Ensslin and Jan-Carl Raspe, as well as a further eight incarcerated members of the RAF.<sup>53</sup>

The RAF targeted Schleyer for both his Nazi past, which went beyond mere conforming to the Nazi regime, and his role as the leader of organised business in Western Germany as a symbol of 'capitalist oppression'.<sup>54</sup> The degree of Schleyer's connection with the Nazi regime was much debated at the time. However, the full extent of his involvement in the economic governance of occupied Bohemia and Moravia as a member of the SS and as head of the office of the president of the Confederation of Industry for Bohemia and Moravia only came to light in a 2003 documentary.<sup>55</sup> Nevertheless, in 1977,

Schleyer appeared, in short, to be a living symbol of what the RAF asserted was the continuity between the Nazi Reich and the Federal Republic.<sup>56</sup>

Initially, the contact ban was an executive decision. In response to Schleyer's kidnapping on 5 September 1977, the Minister for Justice of Baden-Württemberg had instructed the governors of the prisons in Stuttgart (Stammheim), Heilbronn and Pforzheim to deny the RAF prisoners any requests for defence counsel visits. The Minister justified his decision based on evidence that he had gained from an investigation that linked the kidnappers to a group surrounding Siegfried Haag, who had been defence lawyer and was arrested in connection with the RAF. The Minister suggested that the reason for prohibiting all contact was that in the past the defence lawyers had allegedly been instrumental in passing information between imprisoned RAF members and those active members at large.

The measure that resulted in a complete lock-down of the prisoners had therefore been intended to prevent these prisoners from establishing any contact with Schleyer's captors as well as communication with one another.<sup>57</sup>

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<sup>53</sup> Ulrike Meinhof had committed suicide in 1976.

<sup>54</sup> Varon, *Bringing the War Home*, 197.

<sup>55</sup> For greater detail see Varon, *Bringing the War Home*, 197 n 2.

<sup>56</sup> Varon, *Bringing the War Home*, 197.

<sup>57</sup> BVerfGE 46, 1 (4 October 1977), para 4.

### 2.1.1. Courts ban all visits apart from those with defence lawyers

Initially, the courts upheld the right of access to a defence lawyer. On 6 September Kuhn, the investigating judge at the Federal Court of Justice in the proceedings against Siegfried Haag, Roland Mayer<sup>58</sup> and others, reassessed their pre-trial detention conditions following the Schleyer kidnapping in his capacity under § 119 of the Criminal Procedure Code. He ruled that any visits including those that had already been approved were to be cancelled. He added that this however did not apply to visits by defence counsel.<sup>59</sup>

The central issue was the tension between the judge's discretion for setting pre-trial conditions guided by the test and the prisoner's right to unimpeded contact with defence counsel.<sup>60</sup> The judge's discretion only extended to such limitations that were necessary for ensuring the aims of pre-trial detention and order in prison.<sup>61</sup>

In Berlin, the court also initially upheld defence visits. Franke, the investigating judge at the Higher State Court of Berlin, in the proceedings against members of the J2M,<sup>62</sup> also reconsidered their pre-trial detention conditions following the Schleyer kidnapping.<sup>63</sup> In his ruling on 9 September 1977, he imposed restrictions to last until 20 September. These restrictions included removing access to radio and television reception, newspapers and magazines printed after 4 September, banning contact with other prisoners and taking part in communal activities. All visits were banned apart from those with defence counsel. He argued that the prohibition of defence counsel visits was at that point in time illegal.

He explained that the meaning and function of the provision that guaranteed access to a defence lawyer was to free the communication between prisoners and their defence counsel, as far as it was solely used for defence purposes. He recognised the integrity of defence lawyers acknowledged by the law, and lifted limitations to defence lawyers in the exercise of their duties.

<sup>58</sup> Roland Mayer is one of the participants in this study.

<sup>59</sup> Beschluss BGH 6 September 1977, II BGs 1140/77 in Anon, 'Dokumente und Materialien zur Kontaktsperre für Verteidiger' (1977) 10 *Kritische Justiz* 395.

<sup>60</sup> in § 119(3) and § 148(1) of the Criminal Procedure.

<sup>61</sup> For the aims of pre-trial detention, see Section 3.1. below and Chapter 2, Section 3.3.

<sup>62</sup> These were Ralf Reinders, Ronald Fritzsche, Gerald Klöpfer, Till Meyer, Fritz Teufel and Andreas Vogel.

<sup>63</sup> Beschluss I. Strafsenat KG 9 September 1977, (I) I STE 2/77 (130/77) in Anon, 'Dokumente und Materialien zur Kontaktsperre', 395-396.

He added that restricting access to defence counsel would therefore only be consistent with § 148 of the Criminal Procedure Code if evidence existed that indicated an abuse of the rights conferred by the provision. He found no evidence to substantiate such an argument in this case.<sup>64</sup>

### 2.1.2. *Tension between the executive and the judiciary*

The key tension surrounded the limitations of the judges' authority to set pre-trial detention conditions for prisoners. In particular, the conflict between their interpretation of a prisoner's right to unimpeded contact with defence counsel and the Ministerial orders prohibiting all contact for prisoners connected to a terrorist organisation.

On 7 September 1977, the Federal Minister for Justice suggested that the respective Ministers of the individual Federal States also declared a contact ban between terrorist prisoners and the outside world. This was to include defence counsel, without consideration for judicial discretion and the right to unimpeded legal contact in.<sup>65</sup> The Minister argued that the legal justification for this severely restrictive measure was found in the legal concept of 'necessity as justification' [*rechtfertigender Notstand*] in § 34 of the Penal Code, which reads:

Whoever, faced with an imminent danger to life, limb, freedom, honour, property or another legal interest which cannot otherwise be averted, commits an act to avert the danger from himself or another, does not act unlawfully, if, upon weighing the conflicting interests, in particular the affected legal interests and the degree of danger threatening them, the protected interest substantially outweighs the one interfered with. This shall apply, however, only to the extent that the act is a proportionate means to avert the danger.<sup>66</sup>

Following the Federal Minister's request, the judges' rulings that continued to allow defence counsel visits were disregarded in practice. The presiding judge of the Higher State Court Stuttgart in the criminal proceedings against the RAF member Verena Becker mentioned this.<sup>67</sup> While affirming a previous decision that defence counsel visits were excluded from the ban on visits, he wrote:

<sup>64</sup> Beschluss 1. Strafsenat KG 9 September 1977 in Anon, 'Dokumente und Materialien zur Kontaktsperre', 396.

<sup>65</sup> § 119(3) and § 148(1) of the Criminal Procedure Code. See R. Böttcher, *Löwe-Rosenberg StPO und GVG, Großkommentar* (25th edn., 2003) §§ 31-38 EGGVG, 153.

<sup>66</sup> Translation from the Comparative Law Society, <http://www.iuscomp.org/gla/statutes/statutes.htm> (accessed 11 July 2008).

<sup>67</sup> Beschluss 5. Strafsenat OLG Stuttgart 12 September 1977, 5-I StE I/77 in Anon, 'Dokumente und Materialien zur Kontaktsperre', 398.

In spite of the clear and legally justified court order, these visits are currently not practicable. For the Ministry of Justice of Baden-Württemberg as the superior public authority has instructed the relevant prison governors not to permit any defence counsel visits.<sup>68</sup>

This highlighted the practical limitations to the courts' power to enforce their decisions against a public authority. In German public law there is an assumption that public bodies will abide by the law and consequently follow court rulings. Yet, legally the courts cannot compel a public authority to comply with their rulings.<sup>69</sup>

### 2.1.3. The exception: 'necessity as justification'

Following an appeal by the Chief Federal Prosecutor against the Federal Court of Justice's ruling of 6 September 1977 that continued to allow defence counsel visits, the Federal Court of Justice reversed that decision. It accepted that the temporary restrictions on RAF prisoners' access with defence lawyers contradicted the rule to unimpeded contact,<sup>70</sup> however, it was admissible under the exception 'necessity as justification' following § 34 of the Penal Code. This was because it was in the interests of safeguarding higher-ranking legal goods [*höherrangiger Rechtsgüter*].<sup>71</sup> In this case safeguarding the life of Schleyer ranked above the defendants' right to contact with their defence lawyer.

The court added that the State would not be able to exercise its duty to protect Schleyer's life if the defendants were given the opportunity to establish contact with the outside world through their defence lawyers.<sup>72</sup> On the 23 September the Federal Court of Justice approved the government's justification under § 34 of the Penal Code.<sup>73</sup>

<sup>68</sup> Beschluss 5. Strafsenat OLG Stuttgart 12 September 1977 in Anon, 'Dokumente und Materialien zur Kontaktsperre', 398.

<sup>69</sup> I would like to thank Kirstin Drenkhahn for pointing this out to me. See also U's experiences of the prohibition of contact and the powerlessness of the courts in Chapter 5 Section 5.1.

<sup>70</sup> § 148 of the Criminal Procedure Code.

<sup>71</sup> This refers to the *Rechtsguttheorie*, which is based on a liberal conception of the criminal law. The criminal law's scope is limited by individual legal goods [*Rechtsgüter*]. Only actions that violate a legal good are to be criminalised and sanctioned. Hassemer has developed a comprehensive framework of what qualifies as legal goods. See W. Hassemer, *Theorie und Soziologie des Verbrechens. Ansätze zu einer praxisorientierten Rechtsgutslehre* (Athenaum, Frankfurt am Main, 1973) and 'Grundlinien einer personalen Rechtsgutslehre' (1989) in W. Hassemer, *Strafen im Rechtsstaat* (Berliner Wissenschafts-Verlag, 2000) cited in F. Sack, 'Symbolische Kriminalpolitik und wachsende Punitivität' in B. Dollinger and H. Schmidt-Semisch (eds.), *Handbuch Jugendkriminalität: Kriminologie und Sozialpädagogik im Dialog* (1. edn., Vs Verlag, Wiesbaden, 2010) 63-90.

<sup>72</sup>

<sup>72</sup> Beschluss BGH 23 September 1977 cit in BVerfGE 4 October 1977, para11.

<sup>73</sup> Beschluss BGH 23 September 1977 cit in BVerfGE 4 October 1977, paras 9-11.

The matter was subsequently taken to the Federal Constitutional Court. Three unnamed prisoners in pre-trial detention for § 129a offences and their defence counsel filed for an injunction against the contact ban.<sup>74</sup>

They argued that preventing access to their defence lawyers infringed their basic right to equality before the law and the defence counsel's right to occupational freedom.<sup>75</sup> They added that the provision of 'necessity as justification' could not be legally applied in the given circumstances. For the provision did not extend the exception to public authorities as a legal justification for acting in contravention with the law.<sup>76</sup>

On the 4 October 1977, the Federal Constitutional Court, however, did not rule on whether the exception granted by the provision could be applied to the executive contact ban, because the Prohibition of Contact Act 1977 had just come into force two days earlier.<sup>77</sup> Consequently, the Federal Constitutional Court dismissed the application for an injunction. It maintained that on balance, although the measures did restrict both the defendants in preparing their defence and the lawyers in the exercise of their occupation, in effect this was mitigated. The measure was less restrictive due to the fact that the duration of the measure was fixed and § 34 of the Prohibition of Contact Act 1977 provided procedural safeguards to limit the negative impact on the interruption of the prisoner's defence.<sup>78</sup>

The Court added that there was no middle ground for granting a free and fair defence. The measures had been deemed necessary for preventing the exchange of information between incarcerated members of terrorist groups and members of the group outside. The Federal Constitutional Court continued to describe how the Federal Court of Justice had presented convincing reasons for the assumption that such communication had in the past also taken place via defence lawyers.<sup>79</sup> It acknowledged the generalising impact of this assumption, yet it stated that this could not be circumvented:

<sup>74</sup> BVerfGE 46, 1.

<sup>75</sup> Art. 3 and 12 of the Basic Law.

<sup>76</sup> For critique and discussion on the application of § 34 of the Penal Code justifying the prohibition of contact, see K. Amelung, 'Nochmals: § 34 StGB als öffentlichrechtliche Eingriffsnorm?' (1978) 13 *NJW* 623-624 and R. Lange, 'Terrorismus kein Notstandsfall? Zur Anwendung des § 34 StGB im öffentlichen Recht' (1978) 16/17 *NJW* 784-786.

<sup>77</sup> Art. 3 of the Act contained a continuation clause, which permitted the continuation of measures exercised prior to the coming into force of the Act, providing certain procedural measures were adhered to.

<sup>78</sup> BVerfGE 46, 1 para 42. For a description of the Prohibition of Contact Act, see Sub-section 2.3. below.

<sup>79</sup> BVerfGE 46, 1 para 43.

[The measure] is founded on the fact that nobody is able in advance to decide which lawyer presents a danger of abusing the rights of the defence and which does not. It therefore must be temporarily accepted in the interest of protecting higher-ranking legal goods, in particular the life of the kidnapped Dr Schleyer.<sup>80</sup>

## 2.2. *The Prohibition of Contact Act 1977: framework*

The Prohibition of Contact Act places at its centre the emphasis on protecting an individual from 'an imminent danger to life, limb and freedom'. These principles originate in the provision 'necessity as justification' in § 34 of the Penal Code. § 31 of the Act permits the total prohibition of prisoner contact if it is deemed necessary to avert 'an imminent danger to life, limb and freedom of a person' and evidence exists that this danger emanates from a terrorist organisation.

An order for prohibition of contact can be made against prisoners who are either in pre-trial detention, or finally convicted, of a terrorist offence according to § 129a of the Penal Code, or one of the offences mentioned in the provision. These include murder, manslaughter, kidnapping or hostage taking. The prohibition of contact also extends to prisoners who have been convicted or are in pre-trial detention for a different offence for which it is reasonable to suspect that it was committed in conjunction with a terrorist offence according to § 129a of the Penal Code.<sup>81</sup>

The authority to make a decision for an order lies with the governments of the individual Federal States or if there is a need for the order to cover several Federal States, with the Federal Minister for Justice.<sup>82</sup>

The order is to be retracted once the reasons for making it no longer exist or a period of thirty days has expired.<sup>83</sup>

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<sup>80</sup> BVerfGE 46, 1 para 45.

<sup>81</sup> This broad scope had the potential to cover a wide range of prisoners, as a 1977 report by a defence lawyer from Bavaria indicated. The defence lawyer, Wächtler, documents that to his knowledge five prisoners were isolated in Bavaria after Schleyer's kidnapping. This continued once the Prohibition of Contact Act had come into force. Of the five, only two prisoners were in detention for a terrorist offence according to § 129a of the Penal Code.

The remaining three prisoners were serving a sentence for juvenile offences. One was shortly to be released after serving a sentence for bank robbery. The prohibition of contact was swiftly lifted following the intervention of his defence lawyer. The other two were convicted of a different offence but there it was reasonable to suspect that it had been committed in conjunction with a § 129a offence. Their prohibition of contact was also lifted following the Federal Court of Justice ruling on 13 October 1977. In it the court defined that the unwritten criterion for justifying the prohibition of contact in such cases was evidence that the prisoners had connections with organised terrorism. See Wächtler in Anon, 'Dokumente und Materialien zur Kontaktsperre', 410-412.

<sup>82</sup> § 32 Prohibition of Contact Act 1977.

<sup>83</sup> § 36 Prohibition of Contact Act 1977.



A prohibition of contact order is only legal if it is validated by the relevant Higher State Court within a period of two weeks.<sup>84</sup> A validated order can be extended for a further thirty days if the circumstances remain, whereas if an order was not validated a new order can only be passed once new facts have come to light.<sup>85</sup>

The impact of the prohibition of contact on prisoners' procedural rights and legal standing is set out in § 34 of the Prohibition of Contact Act 1977: Any legal, judicial or contractual time limits are to be halted.<sup>86</sup> While the actual proceedings against the prisoner continue, a main trial would however be postponed for a period of thirty days.<sup>87</sup> Prisoners can file an application with the relevant Higher State Court to appeal against the individual restrictions that make up the ban.<sup>88</sup> For this a Local Court judge would record the application.<sup>89</sup>

### 2.3. *The constitutionality of the Prohibition of Contact Act 1977*

After the failed attempts to free the RAF leadership and other prisoners in the violence of the German Autumn in 1977, the RAF leadership collectively committed suicide on the 18 October. The contact ban was lifted after the killing of Hans-Martin Schleyer by his captors on the 19 October.

Nearly a year later, on 1 August 1978, the Federal Constitutional Court ruled on the constitutionality of the Prohibition of Contact Act. It based its decision on the question of balancing the rights of an individual in real danger of life, limb or freedom through a terrorist group with the rights of a group of prisoners connected to organised terrorism.<sup>90</sup> The judges held unanimously that the Act conformed to the constitutional principles. They stated:

As long as there is a danger emanating from circles within organised terrorism, who aim to realise from within the prison their organisation's objectives that are hostile to the constitution and for this

<sup>84</sup> § 35 Prohibition of Contact Act 1977.

<sup>85</sup> § 36 Prohibition of Contact Act 1977.

<sup>86</sup> In 1985 a legislative amendment was made to the Act, slightly redressing the imbalance against the rights of the defence. The amendment introduced a mechanism for providing prisoners with the opportunity to apply for an independent lawyer as a contact person under § 34a to the Prohibition of Contact Act 1977. See Art. 1 of the Act Amending the EGGVG 4 December 1985, BGBl I, 2141, in force 13 December 1985.

<sup>87</sup> Böttcher, *Löwe-Rosenberg StPO und GVG*, 172-174.

<sup>88</sup> § 37 Prohibition of Contact Act 1977.

<sup>89</sup> § 37(2) Prohibition of Contact Act 1977.

<sup>90</sup> BVerfGE 49, 24 (1 August 1978), 2 BvR 1013/77, 2 BvR 1019/77, 2 BvR 1034/77.

reason aim to maintain a line of communication open with their comrades [Gesinnungsgenosse] on the outside and who aim to influence the events outside of the prison to the detriment of the person at risk fulfilling the criteria in § 31 of the Prohibition of Contact Act, the constitution will tolerate the prohibition of contact as an instrument in the interests of the self-preservation of the state and the it compliance with the duty to protect the life, health and freedom of its citizens.<sup>91</sup>

They found that the Act did not violate the prisoners' basic rights, including their human dignity.<sup>92</sup> The legislative time limits minimised the psychological stress and therefore they did not exceed the constitutional limits.<sup>93</sup> Also, the court did not see a need in the circumstances to analyse the validity of justifying the prohibition of contact ordered prior to the Act coming into force.<sup>94</sup>

The individual experiences of the prohibition of contact measure and legal framework are explored in Chapter 5, Section 5. It highlights the limitations of the contact ban and the permeability of the complete lockdown. The following sub-section critically reflects on the notion of this governmental tactic turned law.<sup>95</sup>

## 2.4. The 'two faces' of the *Rechtsstaat*

In his 1998 legal commentary on the Prohibition of Contact Act, Böttcher comes to the conclusion that 'The Prohibition of Contact Act after its coming into existence appears to be a valuable example for how the *Rechtsstaat* prevails in extremely tense situations'.<sup>96</sup>

It prevailed after being pushed to its limits; it is necessary to consider the circumstances of the executive contact ban and the Prohibition of Contact Act to gain a fuller picture. The complete lockdown of RAF and J2M prisoners and also other prisoners connected to terrorist organisations was brought about by an illegal Ministerial decision. Both the Minister of Justice of Baden-Württemberg and later the Federal Minister of Justice disregarded court rulings that continued to allow these prisoners contact with their defence lawyers. Subsequently the executive contact ban was justified on the basis of

<sup>91</sup> BVerfGE 49, 24, para 114.

<sup>92</sup> Art. 1(1) of the Basic Law.

<sup>93</sup> BVerfGE 49, 24, para 129.

<sup>94</sup> BVerfGE 49, 24.

<sup>95</sup> See Chapter 1, Section 2.1. for more detail on this notion of the tactical application of law as part of governmentality.

<sup>96</sup> Böttcher, *Löwe-Rosenberg StPO und GVG*, 158.

a legal exception under the Penal Code, 'necessity as justification'.<sup>97</sup> The Federal Constitutional Court did not rule upon this interpretation that extended the exception to public bodies, because the Prohibition of Contact Act 1977 had just been rushed through the Federal Parliament.<sup>98</sup> And in a subsequent decision the Federal Constitutional Court held that the Prohibition of Contact Act 1977 did not violate the prisoners' basic rights.<sup>99</sup>

At this point it is necessary to briefly contextualise the executive contact ban and the subsequent Act. The State response to the violence in 1977 was based on a policy of non-negotiation with the RAF. This had been decided by a cross-party executive committee. The prohibition of contact did not prevent Schleyer's murder, nor did it stop information from getting to the RAF prisoners.<sup>100</sup>

Writing in 2007 to re-evaluate the cross-party response during the German Autumn 1977, Kraushaar argues that this crisis was a litmus test for parliamentary democracy. Citing Preuß he explains that in this context the RAF was 'the seismograph rather than the earthquake, which they erroneously held themselves to be'.<sup>101</sup> Kraushaar adds that during the forty-four days of the state of emergency it became painfully obvious what the Federal Republic's true nature under extreme pressure was. He writes that it was akin to an authoritarian regime that only differed from a dictatorship due to the fact that a cross-party executive had sanctioned the responses.<sup>102</sup>

In effect, the Prohibition of Contact Act 1977 can be considered a 'true' exception, for it has only ever been applied once.<sup>103</sup> Arguably, its function was to legalise an illegal executive decision.

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<sup>97</sup> §34 of the Penal Code.

<sup>98</sup> BVerfGE 46, 1.

<sup>99</sup> BVerfGE 49, 24.

<sup>100</sup> See Chapter 5 Section 5.2. for more detail on this.

<sup>101</sup> W. Kraushaar, 'Der nicht erklärte Ausnahmezustand: Staatliches Handeln während des sogenannten Deutschen Herbstes' in W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vol. 2, Hamburger Edition, Hamburg, 2006) 1023.

<sup>102</sup> Kraushaar, 'Der nicht erklärte Ausnahmezustand', 1023.

<sup>103</sup> Though a renewed application was publicly debated, in order to deal with the 1985 RAF collective hunger strike. See Chapter 6, Section 2.3. for details on the 1984-5 hunger strike. H. Hansen, 'Den Staat aushungern oder Die zweite Niederlage der RAF' in M. Sontheimer and O. Kallscheuer (eds.) *Einschüsse: Besichtigung eines Frontverlaufs: Zehn Jahre nach dem Deutschen Herbst* (Rotbuch Verlag, Berlin, 1987) 133-4.

This notion of the Prohibition of Contact Act as one of a number of exceptions to the criminal law is supported by Günther Jakobs, a criminal law professor, in his theory of enemy penology. He first introduced it in 1985.<sup>104</sup> Jakobs argues that throughout the criminal law elements of a distinct criminal law for enemies already exists. As an example he mentions the Prohibition of Contact Act 1977.

In a more recent article, he has further developed his theory by questioning whether terrorists are persons in law.<sup>105</sup> Now Jacobs advocates the formalisation of the exception. He argues that the 1977 Act is part of the law of (state of) exception. He adds that a State making such a provision should clearly differentiate between what exists in law for the enemy, be it a terrorist or another hardened criminal, and what exists in law for a citizen.

According to him, this is a significant distinction in order to prevent enemy penology from contaminating the 'normal' criminal law for citizens.<sup>106</sup> He criticises those who only recognise the fair weather *Rechtsstaat* that forces the State to

camouflage the exceptions necessary for survival in a dirty world and this in turn obscures the boundaries between rules and exceptions; in other words, the imperfect *Rechtsstaat* portrays itself as perfect with an ideological use of words.<sup>107</sup>

Jakobs clearly has a political aim, namely to further promote the bifurcation of criminal justice with the creation of a separate criminal law for persons who are constructed as dangerous, different and arguably also foreign. However, he openly addresses the underlying assumptions of this shift in the German criminal law from punishing offenders to prevention and intervention that started with the counterterrorism legislation in the 1970s.

Schild cited in Diewald-Kerkmann writes that this change of focus to prevention seems to turn the criminal law into a 'police law' that is focused on 'fighting to [safeguard] security and order ...'. The target is no longer the offender, but the enemy, who can strike everywhere'.<sup>108</sup> Throughout the 1980s

<sup>104</sup> For a comprehensive overview and a critical analysis of Jakobs' enemy penology, see S. Krasmann, 'The enemy on the border: Critique of a programme in favour of a preventative state', (2007) 9 *Punishment and Society*, 301-18.

<sup>105</sup> G. Jakobs, 'Terroristen als Personen im Recht?' (2006) 117(4) *Zeitschrift für die Gesamte Strafrechtswissenschaft*, 839-851.

<sup>106</sup> Jakobs, 'Terroristen als Personen im Recht?', 850

<sup>107</sup> Jakobs, 'Terroristen als Personen im Recht?', 851.

<sup>108</sup> Diewald-Kerkmann, *Frauen, Terrorismus und Justiz*, 209.

this approach took hold and was further fuelled by an anxiety over increases in recorded crime and specifically organised crime coupled with a reduction in clear-up rates.<sup>109</sup>

Varon aptly captures the extent to which the counterterrorism legislation and special conditions of confinement, explored in the following section, contributed to the perpetuation of the State's conflict with the RAF. He suggests:

As the terrorist conflict escalated, a vicious psychopolitical cycle set in. Guilt over the past fed the aggression of terrorism's staunch opponents, making them by degrees again like that which they insisted they had never been. Repressive measures used to combat terrorism, in turn, strengthened the left's charge of 'fascist continuity'. This charge, which highlighted the involvement or complicity of Germany's elders in the Nazi past, only compounded their (unacknowledged) guilt and dislike of the radical left. By these complex twists, the very desire of the state's defenders to escape from, compensate for, or redeem their failures in the past led to new forms of denial and even the repetition of undesirable elements of that past.<sup>110</sup>

So far this chapter has described two sets of exceptions for the imprisonment of the RAF/J2M which were brought about through legislation: the Anti-terrorist Act 1976 and the Prohibition of Contact Act 1977. Both centred on restriction or even denial of access to defence lawyers. As Jung writing in 1977 stated, these restrictions nevertheless raised questions as to what should be regarded as the essence of a properly conducted defence.<sup>111</sup>

The following sections examine two further exceptions for the imprisonment of the RAF/J2M. They explore the restrictions placed on RAF/J2M prisoners and other prisoners detained in connection with terrorist offences that made up what the narrators in Chapters 4 and 5 describe as RAF isolation.

Section 3 follows the development of a standardised set of prison rules for these prisoners. It compares the pre-trial detention conditions of three prisoners, one of which was a sympathiser. Section 4 explores the late 1970s policy to construct high security wings, in order to detain convicted RAF and J2M prisoners, in the context of the Prison Act 1976.

### 3. Standardised pre-trial conditions: a collectivised response to RAF prisoners

<sup>109</sup> Lazarus, *Contrasting Prisoners' Rights*, 69.

<sup>110</sup> Varon, *Bringing the War Home*, 289.

<sup>111</sup> H. Jung, 'Das Kontaktsperre-Gesetz' (1977) 12 *JuS* 846-847.

This section explores in detail the nature of the pre-trial detention isolation measures imposed on RAF and J2M prisoners and the development of a standardised set of conditions of detention. This became known as the '24 point detention rules' for persons detained under §129 and 129a of the Penal Code, even though the decisions do not always contain 24 points.

### 3.1. *The pre-trial detention framework*

The system of pre-trial detention is based on the principle of segregation.<sup>112</sup> Prisoners who are remanded in custody are to be detained separately from convicted prisoners. Also, they are to be detained in single cells and are to be allowed a degree of prisoner association during exercise and religious service.<sup>113</sup> The notion of single cell occupancy originated with the idea that the accused prisoner should not suffer from the loss of privacy and cramped conditions that existed for convicted prisoners.

The system is governed by the courts: The investigating judge has a wide discretion in setting conditions of pre-trial detention, with a general test that limitations can only be imposed that are necessary for ensuring the aims of detention and order in prison.<sup>114</sup> The objective of the system is that the judge tailors the conditions of detention to the individual circumstances of the particular prisoner.

The investigating judge can set conditions restricting contact within the prison and to the outside, in order to prevent the prisoner from colluding with others, tampering with evidence and/or to ensure the security and order of the prison.<sup>115</sup>

For this, the judge can refer to the pre-trial detention rules (UVollzO) that suggest a number of restrictions. She can impose these in cases where there is a severe risk of collusion and tampering with evidence. These restrictions include strict solitary confinement, which involves both the continuous

<sup>112</sup> § 119(2) of the Criminal Procedure Code. § 112 of the Criminal Procedure Code governs the purpose of remanding a person in custody. It lists as key aims preventing escape, minimising the danger from escape and the danger from suppression or interference with evidence, and preventing the committing or re-offending of a number of offences listed in § 112a of the Criminal Procedure Code.

<sup>113</sup> S. 23(2) of the UVollzO, *Untersuchungshaftvollzugsordnung* 12. February 1953 amended 15. December 1976

<sup>114</sup> § 119(3) of the Criminal Procedure Code.

<sup>115</sup> § 119 of the Criminal Procedure Code.

segregation of the prisoner from other prisoners and the prisoner being placed under strict observation.<sup>116</sup>

Furthermore, contact with the outside can be restricted through a ban on receiving parcels and a ban on purchasing reading material, as well as particularly detailed surveillance of letters and visits. The complete isolation from the outside can be ordered for a particular period of time, if it is deemed absolutely necessary.<sup>117</sup>

In general the guarantee of unimpeded access to a defence lawyer cannot be restricted.<sup>118</sup> However, through the Anti-Terrorist Act 1976 a number of exceptions were introduced for persons accused of terrorist offences under § 129a of the Penal Code. These included the surveillance of defence correspondence and conducting defence visits behind a physical barrier to prevent the exchange of documents or other items.<sup>119</sup> The ultimate exception was introduced with the Prohibition of Contact Act 1977 that permits a prisoner's complete isolation. This includes prohibiting access to a defence lawyer for up to thirty days for prisoners in pre-trial detention or convicted of an offence according to § 129a of the Penal Code or one the specified offences.<sup>120</sup>

Further restrictions that can be ordered in cases where there is an increased risk of collusion or tampering with evidence are the prohibition or the withdrawal of the permission to cater for oneself, to wear personal clothes, to use personal bedding, and to receive personal belongings.<sup>121</sup> Also daily exercise outside can be reduced to a bare minimum or even suspended for a specific period in consultation with the prison doctor.<sup>122</sup>

The UVollzO also sets out 'special security measures' that include various means of isolating prisoners. The special security measures can be imposed by a judge, and in urgent cases by the prosecutor or

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<sup>116</sup> S. 60(2)1 of the UVollzO.

<sup>117</sup> S. 60(2)2 of the UVollzO.

<sup>118</sup> § 148(1) of the Criminal Procedure Code. See Section 1. above and in particular Sub-Section 1.3.

<sup>119</sup> § 148(2) of the Criminal Procedure Code.

<sup>120</sup> See Section 2 for a detailed description and analysis of the Act.

<sup>121</sup> S. 60(2)3 and 4 of the UVollzO.

<sup>122</sup> S. 60 of the UVollzO.

prison governor, in cases where either the prisoner's behaviour or her mental state indicate that there is an increased risk of escape or to others, or a danger of self-harming or suicide.<sup>123</sup>

The measures include restricting daily exercise, limitation and surveillance of visits, except for contact with a defence lawyer, and transfer to an especially secure cell.<sup>124</sup> The prison governor may request a prisoner's transfer to another institution if that particular prison cannot guarantee the secure detention of the prisoner.<sup>125</sup>

### 3.2. *Pre-trial detention of RAF prisoners*

The following examples illustrate how a standardised approach for the pre-trial detention of RAF and J2M prisoners unfolded. In this sub-section a few decisions on the conditions in pre-trial detention from the period 1971-82 are compared. They demonstrate how consistently these special restrictions and security measures were applied, even to the point of using the same wording in places.

A very early example is the decision by the Local Court Hamburg on 22 October 1971 setting out the 'special security measures' for Margit Schiller. The list included:

Strict solitary confinement; hands cuffed behind her back when outside her cell; her cell was only to be entered by two female and one male prison officer; solitary exercise in the yard (cuffed) and in the presence of two female and one male prison officer; a ban on taking part in communal activities including religious service; visits including those with the defence lawyer were to be conducted in the female wing in cell 6; purchases only of approved products; she was to be placed under half-hourly surveillance; all furnishings, personal clothes and cutlery were to be removed; she was to wear prison clothes.<sup>126</sup>

#### 3.2.1. *Holger Meins*

The foundation for the standardised prison rules can be found in the more comprehensive set of restrictions in the case of Holger Meins. The governor of Wittlich prison in his decision 26 March 1973 initially ordered them.<sup>127</sup> This decision was then largely upheld - in particular the restrictions relating

<sup>123</sup> S. 62(2) and (3) of the UVollzO.

<sup>124</sup> S. 63 of the UVollzO. Furthermore, prisoners should receive adequate medical supervision and the duration of the measures should only last as long as is necessary, S. 65 of the UVollzO.

<sup>125</sup> S. 66 of the UVollzO.

<sup>126</sup> Reprint in Eschen *et al.*, 'Folter in der BRD', 23.

<sup>127</sup> Reprint in Eschen *et al.*, 'Folter in der BRD', 18-20.



to visits and those isolating him within the prison - by the Federal investigating judge, Dr Knoblich, in his decision on 11 April 1973.<sup>128</sup>

The original decision contained twenty-three points, which can be loosely grouped into three areas. Firstly, it imposed increased security measures for the entire prison such as an increase in staff at the entrance and on the night shift. It also restricted access to the prison when Holger Meins was in the exercise yard (1-3, 6).

The second group consisted of restrictions surrounding visits: All visitors including lawyers were subjected to pat down searches and visits, apart from lawyer visits, would be held in the presence of two prison officers. After the visit, the prisoner would be subjected to a full body search in the presence of a supervising officer and another prison officer.

The third group involved measures preventing Holger Meins from any contact with other prisoners. He was to be detained in strict solitary confinement, all neighbouring cells were vacated, and the duty officer on the wing was to ensure that no prisoner would be unsupervised outside Meins' cell door.<sup>129</sup> For any exercise the prisoner would be handcuffed and would be on his own in the yard accompanied by two officers. Furthermore, he would not be allowed to take part in any communal activities, including religious service and he would not be allocated any work.

In his 1986 thesis on the Stammheim trial, Bakker Schut, a Dutch academic and RAF defence lawyer, explained how the defining features of the conditions of detention of RAF prisoners were both an internal and external isolation.<sup>130</sup> In a review of the material leading up to the Stammheim trial in May 1975, Bakker Schut wrote that internal isolation involved the prisoners being detained in strict solitary confinement. He argued that this and the additional restrictions were mostly justified with a general statement that there was an increased risk of escape, of resistance and of an attempt to free the prisoner.

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<sup>128</sup> Knoblich, Beschluß des Ermittlungsrichters des Bundesgerichtshof vom 11.04.1973, 1 BJs 6/71, II BGs 185/73, reproduced in Eschen *et al.*, 'Folter in der BRD', 20.

<sup>129</sup> The cell itself would be doubly secured with an extra lock and only a supervising officer [*Aufsichtsdienstleiter*] accompanied by another officer was to enter the cell.

<sup>130</sup> Bakker Schut, *Stammheim*, 55.

All these risks could be deduced from the strong suspicion that the prisoner was a member of the 'Baader-Meinhof-organisation'.<sup>131</sup>

Similarly, the measures amounting to external isolation he classified as those denying visits and correspondence to persons beyond close family. He added they also included the censorship of newspaper and magazine articles. Here again he questioned the extent to which the court's justifications for the isolation measures, for instance a danger to prison order, were merely serviceable terms. He suggested that they were applied in order to completely isolate the prisoners merely based on their political convictions and membership in a particular group. He maintained that '[i]n any case the decisions setting out the isolation measures neither weigh competing interests nor do they refer to concrete facts and criteria'.<sup>132</sup>

These decisions were made before the coming into force of the 'Anti-terrorist Act 1976'. The situation after this enactment is illustrated in the following Subsection.

### 3.2.2. *U, a sympathiser*

Bakker Schut's argument is even more persuasive when the extent of the application of these standardised prison rules is considered. This Subsection reviews two decisions in the proceedings against U, who was not a member of the RAF. U, who is also one of the narrators in this dissertation, was sympathetic to the RAF's politics, but disagreed with the violence.

The two decisions in the case of U were made by the Federal investigating judge, Kuhn, on 9 May and 25 October 1977.<sup>133</sup> These decisions demonstrate the special security measures imposed at the height of the conflict with the RAF. They highlight the consistency of conditions that were set. More specifically the decisions were passed in the lead-up to, and the aftermath of, the German Autumn.

In the first decision on 9 May 1977, Federal Judge Kuhn approved the special security measures set out by the governor of Karlsruhe prison on 5 May 1977.<sup>134</sup> He summarised the new conditions of detention in twenty-seven points. Broadly speaking there are a number of parallels with the decision in

<sup>131</sup> Bakker Schut, *Stammheim*, 56.

<sup>132</sup> Bakker Schut, *Stammheim*, 59-60.

<sup>133</sup> Kuhn, Beschluß des Ermittlungsrichters des Bundesgerichtshof gegen U vom 9.05.1977 I, BJs 126/76: II BGs 444/77; Kuhn, Beschluß des Ermittlungsrichters des Bundesgerichtshof gegen U vom 25.10.1977, I BJs 126/76: II BGs 1371/77 (copies provided by U, 2008).

<sup>134</sup> Kuhn, Beschluß 9.05.1977.

the case of Holger Meins, above, in particular the sections that cover restrictions on visits and the measures completely segregating U from other prisoners.

The main differences are firstly in relation to visits with the defence lawyer. Here the provision under the Anti-Terrorists Act 1976 was applied, in which defence correspondence or any material to be discussed during the visit was to be inspected by the surveillance judge.<sup>135</sup>

Secondly, although the decision does not specifically state that he was to be detained in strict solitary confinement, the individual measures - that included solitary confinement, exclusion from communal activities and religious service, segregation from other prisoners during any movements within the prison, such as visiting the prison doctor, solitary meals and exercise - taken together did amount to the continuous segregation from other prisoners. Thirdly, there were a number of sections that regulated access to information from the outside. For instance radio was restricted to the built in access, the number of books was restricted to twenty and he was allowed to procure through the prison up to four German language daily newspapers and up to four German language weekly or monthly newspapers or magazines. Furthermore, he was to be given access to a type writer at specified times for the preparation of his defence.

Fourthly, the judge did not exclude the option for U to request work or other creative activities to be conducted within his cell and within the parameters of the security restrictions. Finally, a rather unusual provision provided Federal police officers from the Terrorism department – *Abteilung TE* – access to interrogate him at any time and to take him out of the prison to assist with the investigation.<sup>136</sup> Federal judge Kuhn justified these special security measures on the grounds that U was strongly suspected of membership in a terrorist organisation headed by Siegfried Haag, who had been a RAF lawyer.<sup>137</sup>

With the members of such a group there is always the risk on account of their immense animosity towards the law and belonging to such a group that they will attempt to escape and prepare such

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<sup>135</sup> § 148(2) of the Criminal Procedure Code.

<sup>136</sup> The department was founded in 1975 with the mandate to prevent terrorist violence or, if necessary, to solve such cases and to apprehend the perpetrators. The commentary states that the emphasis continued to lie on early prevention measures and comprehensive exchange of information. See G. Bauer, 'Kriminalistik' in R. Sieverts and A. Elster (eds.) *Handwörterbuch der Kriminologie (vol. 5 Nachtrags- und Registerband)* (2nd edn., de Gruyter, Berlin and New York, 1998) (Googlebooks, accessed 30.06.2010) 120. See Chapter 4, Section 2.1. for more detail on this particular measure.

<sup>137</sup> See Section 2.1. below.

escapes as well as exerting influence on accomplices still at large, on supporters and on sympathisers.<sup>138</sup>

Throughout the period of the German Autumn 1977, the prisoners including U were under a prohibition of contact order, which included no contact with their defence lawyer. After the RAF leaders' collective suicide in Stammheim prison on 18 October 1977, the Federal judge Kuhn approved further security measures on 25 October in the second Federal Court decision for U.

These further security measures were aimed at suicide prevention and had been first introduced by the governor of Karlsruhe prison on 18 October.<sup>139</sup> The suicide prevention measures included the removal of razors and cutlery; any shaving was to be done in the presence of an officer; and continuous checks through the spy hole or door flap every five minutes.<sup>140</sup>

Judge Kuhn then added a further eleven points, which can be broadly grouped into two categories. First, securing the prisoner's safety through removing any dangerous items, such as replacing the standard cutlery with a plastic set; windows and light-fittings were to be secured so that broken glass could not be used for self-harm; equally all bedding and towels were to be replaced with a paper equivalent.

Second, this group of restrictions involved increased searches: The prisoner had to change his clothes prior to and after each visit and any for any exercise that would include the presence of other prisoners; the contents within the cell were to be reduced to four books and there were restrictions on the number of days newspapers could be kept in the cell. Dailies could be kept hold of for up to three days, weeklies for up to four days and monthlies for up to seven days. Also the prisoner's cell was to be searched daily in his absence.

Judge Kuhn acknowledged that these restrictions unduly affected the prisoner. However, he considered that following the suicides in Stammheim prison there was a real possibility that persons who belonged to the RAF or successor organisations could commit suicide 'due to the futility of their venture to cast

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<sup>138</sup> Kuhn, Beschluß 9.05.1977.

<sup>139</sup> Kuhn, Beschluß 25.10.1977.

<sup>140</sup> For a detailed account of the immobilising effect of these measures, see Chapter 4, Section 2.1.

doubt on this democratic and social *Rechtsstaat*'.<sup>141</sup> Furthermore it was the duty of the *Rechtsstaat* to safeguard the life of a person, in this case one that supported a terrorist organisation. Here it is important to note that though the charge against U had been changed to the lesser offence of supporting a terrorist organisation from membership, both in terms of § 129a of the Penal Code, the judge did not distinguish between the two categories for his justification for the special measures to prevent suicide.

U's example highlights the broad application of these standardised prison rules to include all offences under the Anti-terrorist Act 1976.

### 3.2.3. Christian Klar

The final example of the standardised prison rules is from the early 1980s. Christian Klar, who had played a central role in the RAF violence of the late 1970s, was arrested in 1982. In 1985 he was convicted of conspiracy to murder on several counts in connection with the murder of Siegfried Buback, the Chief Federal Prosecutor in 1977. After twenty-six years in prison, in December 2008 he was one of the last remaining RAF prisoners to be released.

Federal Judge Gollwitzer set out the pre-trial detention conditions that are considered here in his decision on 17 November 1982.<sup>142</sup> They also reflect the standardised approach for RAF prisoners. The majority of the special security measures were phrased either with the exact wording used in the decision for U on 9 May 1977, or very similar wording. For instance the provisions that listed various ways in which the prisoner was to be continuously segregated from other prisoners were identical. Also, those on security and searches, as well as those on access to newspapers, books and a typewriter were virtually identical. The majority of the measures in relation to the restrictions on visits and their surveillance were also very similar.

The key differences were that the surveillance of the prisoner by day and night in Klar's case was to be conducted discreetly. In contrast, U's decision stated that surveillance was to be at irregular intervals

<sup>141</sup> Kuhn, Beschluß 25.10.1977.

<sup>142</sup> Gollwitzer, Beschluß des Ermittlungsrichters des Bundesgerichtshof gegen Christian Klar vom 17.11.1982, 1 BJs 54/80-5, 1 BGs 133/82, reprinted in D. Adler et al. (eds.) *Dokumentation zu den Haftbedingungen der Gefangenen aus der RAF und aus dem Widerstand* (Hannover, März 1985) 39-40.

and that prison officers could turn on the light briefly if they were not able to check the presence of the prisoner in any other way.

Also, the criteria for breaking-off a visit that was supposedly being abused by either party were expanded. In Klar's decision they ranged from disregarding orders, illicitly handing-over items, and passing on encrypted messages to include 'discussions on criminal activities in the "terrorist scene", or sympathising groups, and discussions on resistance in prison including "hunger strike".<sup>143</sup>

The points in U's decision that permit an application for work or creative activities within his cell and the provision permitting Federal Police officers access to him at any time, are omitted from Klar's decision.

Finally, the justification for these special security measures in Klar's decision was reduced to one sentence: 'The unusual nature of the charges necessitates the above ordered security measures in the current stage of the investigation'.<sup>144</sup>

The various examples highlight how a distinct standardised approach for persons detained under §§ 129 and 129a of the Penal Code developed over time. They also demonstrate that these special prison rules were applied irrespective of the individual circumstances of the case or the severity of the offence.

This contradicts the rationale behind providing the investigating judge with a wide discretion on setting individualised pre-trial detention conditions.<sup>145</sup> The decisions in the case of U a sympathiser illustrate this, as he was initially charged with membership in a terrorist group and this was later reduced to supporting such a group.

Together this set of restrictions gives the sense of prisoners being both closed in and cut off. These are the two themes at the centre of the narrative chapters on RAF isolation. Chapters 4 and 5 explore the experiences of both the immobilising and surveillance techniques that feature in the standardised prison rules.

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<sup>143</sup> Gollwitzer, Beschluß 17.11.1982 40.

<sup>144</sup> Gollwitzer, Beschluß 17.11.1982 40.

<sup>145</sup> § 119 of the Criminal Procedure Code.

A good summary of the standardised prison rules is found in Demes' 1994 thesis.<sup>146</sup> She conducted a documentary analysis of RAF isolation from the 1970s until the early 1990s and concluded with:

Isolation is marked by a continuous state of being cut off from the outside world. For the prisoner this signifies a two-fold segregation, for it effects both a remoteness to the world outside the prison and simultaneously a forcible separation from other prisoners in the prison, in particular strict segregation from former "comrades".<sup>147</sup>

#### 4. RAF isolation: beyond the Prison Act 1976?

The final exception for RAF imprisonment that is discussed in this chapter, are the high security units. In the late 1970s, they were purpose-built in prisons across the country in order to incarcerate the growing number of convicted RAF and J2M prisoners. Some of the narrators for this thesis (Karl-Heinz Dellwo, Roland Mayer, Knut Folkerts and M), were to serve their sentences in them.<sup>148</sup> The high security units were put into operation virtually at the same time as the coming into force of the progressive Prison Act 1976 on 1 January 1977.<sup>149</sup>

This section analyses the RAF detention in the high security units in the context of the Prison Act 1976. It highlights the tensions within the Act between the progressive aim of resocialization, and isolation under the security and order provisions. It also examines the debate over the legitimacy of the high security units.

##### 4.1. RAF isolation in the high security units

Throughout the 1980s the campaign against the isolation conditions for RAF and J2M argued that the 'new' post 1977 high security units were a continuation of the practice of isolation that existed in the high security wing in Stammheim prison in Baden Württemberg. These new units were purpose-built

<sup>146</sup> Demes, *Die Binnenstruktur der RAF*.

<sup>147</sup> Demes, *Die Binnenstruktur der RAF*, 76.

<sup>148</sup> For the personal RAF narratives and the context of the high security wings, see Chapter 4, Section 3.

<sup>149</sup> The entire Prison Act 1976 did not come into force on that day. A number of provisions were delayed or staggered; see §§198, 200, 201. These included the provisions on prisoners' rate of pay (§ 200), unlimited deferral of prisoners' access to medical insurance and pension schemes (§ 198), and the expectation that prisoners were to be placed in open prisons (§ 201). See Lazarus, *Contrasting Prisoners' Rights*, 68-9.

inside existing prisons: Celle prison in Lower-Saxony, Berlin-Tegel and Berlin Moabit<sup>150</sup> prisons, Lübeck prison in Schleswig-Holstein, Munich-Straubing in Bavaria, Frankenthal prison in Rhineland-Palatinate and Bruchsal prison in Baden-Württemberg. The Campaign defined these wings as self-contained buildings with isolation cells and a separate exercise yard and visitor room, so that prisoners were never to leave the units.<sup>151</sup>

They argued that the authorities consolidated their experiences on detention in isolation gained throughout the 1970s in the administration of the high security unit in Stammheim prison. Moreover, this type of detention represented an intensification of the existing isolation conditions.<sup>152</sup>

The nature of the isolation measures varied across the different prisons. This varied from solitary confinement in special security cells, such as Roland Mayer in Bruchsal prison,<sup>153</sup> to a form of joint isolation [*Zweierisolation*], where prisoners were allowed contact to one other prisoner. Moreover, the segregation of three groups of four prisoners who were imprisoned in high security wings'.<sup>154</sup> Some of the narrators for this study were among these groups: Karl-Heinz Dellwo and Knut Folkerts in Celle prison high security wing and M in Moabit high security wing.<sup>155</sup>

In a 1985 collection of documents, the isolation conditions of detention were summarised in the following terms:

The prisoners are cut off from communication within prison and to the outside to the largest possible extent. The prisoners are detained in single cells. The windows are constructed in a manner so that taking up contact with other prisoners is impossible. Taking part in activities offered by the prison, such as religious service, is prohibited. The prisoners are not allowed to come into contact with other prisoners when outside their cell. They have exercise on their own; frequently this does not take place outside, but in a yard with a roof within the prison building. The prisoners' cells and their contents, including their personal notes and correspondence with their lawyers are frequently searched, seen and confiscated. Moreover, the prisoners undergo full body searches before and after every visit. During the visits they are separated from the visitor by a glass barrier. Any books, newspapers or magazines that are left for the prisoners are subject to political censorship.<sup>156</sup>

<sup>150</sup> The high security wing in Berlin Moabit was constructed between 1978-80 at a cost of 6.5 million DM to detain prisoners involved in terrorist activities and was closed down in 1989. See <http://www.berlin.de/sen/justiz/justizvollzug/moabit/historie.html>, (accessed 2.12.09). This is the only reference to the detention of RAF prisoners and high security wings on any of the prison websites.

<sup>151</sup> Bakker Schut et al., *Todesschüsse*, 15-6.

<sup>152</sup> Bakker Schut et al., *Todesschüsse*, 15-6.

<sup>153</sup> See Chapter 4, Section 3.1. for his experiences in Bruchsal prison.

<sup>154</sup> Bakker Schut et al., *Todesschüsse*, 3-4.

<sup>155</sup> See Chapter 4, Sections 3.2 and 3.3 for more detail on their experiences of small group isolation.

<sup>156</sup> Bakker Schut et al., *Todesschüsse*, 15.



In another collection of documents in the mid 1980s, lawyers for the RAF and J2M prisoners highlighted a number of new measures that they suggested resulted in an increased external isolation of RAF prisoners.

They identified four ways in which they believed the State authorities aimed at enforcing stricter isolation, amounting to total isolation.<sup>157</sup> These were criminalising visitors and persons who corresponded with prisoners; increasingly intimidating family members; restricting access to defence lawyers who held the prisoner's confidence; and finally, criminalising the prisoners through the construct of a 'terrorist organisation within prison'.<sup>158</sup> The latter measure was a means of initiating criminal proceedings against the participants in the RAF collective hunger strikes, in order to invoke the restrictions on access to a defence lawyer under the Anti-terrorist Act 1976. The restrictions involved the surveillance of defence correspondence by a judge and the use of a glass partition during defence visits.<sup>159</sup>

These measures were considered further tactical use of the law to thwart the prison campaign against the isolation of RAF and J2M prisoners and those from other militant groups. The campaign sought to end the isolation of RAF/J2M prisoners and to effect their integration into intercommunicative groups of up to twenty.<sup>160</sup> The political campaign on the outside was supported by various RAF collective hunger strikes.<sup>161</sup>

While the RAF and J2M prisoners were incarcerated in high tech purpose-built high security units, the prison system was still very much in a process of transition towards modernisation. This is briefly set out in the following subsection.

<sup>157</sup> A. Brenneke-Eggers, 'Redebeitrag von Rechtsanwältin Anke Brenneke-Eggers, Stuttgart, auf der Veranstaltung von Angehörigen der politischen Gefangenen in der BRD am 27.7.1984 in München' in D. Adler et al. (eds.) *Dokumentation zu den Haftbedingungen der Gefangenen aus der RAF und aus dem Widerstand* (Hannover, März 1985) 67-8.

<sup>158</sup> § 129a of the Penal Code. Brenneke-Eggers, 'Redebeitrag', 68.

<sup>159</sup> § 148(2) of the Criminal Procedure Code.

<sup>160</sup> See Chapter 7, Section 2.1. for more detail on the concept of intercommunicative groups.

<sup>161</sup> See Chapter 6 for more detail.

## 4.2. 1970s: prison system in transition

Despite an emphasis on the education and improvement of prisoners in the post-1945 prison rules,<sup>162</sup> until the 1970s the prison system was in practice retributive and marked by deprivation.<sup>163</sup> This was due to a number of factors that contributed to poor conditions and hindered the necessary reforms. These included run-down buildings and accommodation in a state of disrepair, in addition to insufficiently trained and poorly qualified staff. Moreover the prison regime was centred on administering punishment, making prisoners work and keeping the institutions secure. This was exacerbated by a lack of funds available for modernisation and also by a negative public attitude towards the resocialization of prisoners. Finally, the widespread use of pre-trial detention added to this focus on incapacitation.<sup>164</sup> Reformers thought that the main obstacle to implementing the principle of the resocialization of prisoners was the overcrowding in prisons.<sup>165</sup>

The high recidivism rates that had not changed by the 1970s, and a number of prison scandals in the second half of the 1960s and the middle of the 1970s, added impetus to the politics of reform.<sup>166</sup> In 1964, two prisoners died after incidents of severe violence in two prisons, in the old prison in Cologne<sup>167</sup> and in Hamburg.<sup>168</sup> In his thesis on the history of Italian prisoners in North-Rhine Westphalia, Saputo captures the context well: 'These tragic circumstances and the impulse of a society in transition that existed in the 1960s and 1970s, acted as input for the reform of the prison system in Germany'.<sup>169</sup>

<sup>162</sup> In a deliberate contrast to the prison system under the Nazi regime, the new post-war system, set out in the 'Basic Principles for the Administration of German Prisons', was to focus on the education and improvement of offenders. These were the guiding principles for the imprisonment of offenders in the Weimar Republic set out in the 1923 *Reichsratsgrundsätze*. Control Council Directive 19, 12.11.1945. K. Laubenthal, *Strafvollzug*, 61-2.

<sup>163</sup> Kaiser and Schöch, *Strafvollzug*, 38.

<sup>164</sup> Kaiser and Schöch, *Strafvollzug*, 37.

<sup>165</sup> S. Saputo, 'Export Kriminelle: Ein soziologisches Portrait Italienischer Strafgefangener in NRW', PhD Thesis (Technische Universität Dortmund, 2008) ([dspace.hrz.uni-dortmund.de:8080/bitstream/2003/25757/1/Export%20Kriminelle%20Salvatore%20Saputo%202008.pdf](https://dspace.hrz.uni-dortmund.de:8080/bitstream/2003/25757/1/Export%20Kriminelle%20Salvatore%20Saputo%202008.pdf)) (accessed 22.05.2009) 10-11.

<sup>166</sup> Kaiser and Schöch, *Strafvollzug*, 37-9.

<sup>167</sup> The Klingelpütz, a nineteenth century prison, was demolished in 1968. It was replaced with the modern prison in Cologne-Ossendorf.

<sup>168</sup> The Minister for Justice in North-Rhine Westphalia and Justice Senator for Hamburg initially kept this quiet. Pressure from the media, the public and penologists forced parliamentary enquiries into the matter. These resulted in the prison governors taking responsibility for the deaths. The prison officers culpable for the deaths received prison sentences.

<sup>169</sup> Saputo, 'Export Kriminelle', 10-11.

Central to modernising the prison system was the enactment of the Prison Act 1976 that put prisoners and their well being at the heart of the administration of imprisonment. With the emphasis on the resocialization of the prisoner, the idea was to move away from a system unnecessarily focussed on security and order.

#### 4.3. The Prison Act 1976: a humanising approach

Prior to the enactment of the Prison Act 1976, the prison rules that regulated the prison system set out two forms of incarceration. These were solitary confinement and communal imprisonment.<sup>170</sup>

In the 1972 Prison Rules (DVollzO) the provision on solitary confinement stated that this form of detention could only be ordered for reasons relating to correction, health or security.<sup>171</sup> Under a solitary confinement regime prisoners remained in their cells throughout the three periods of the day; work, recreation and exercise, and rest.<sup>172</sup>

In contrast, the same provision defined communal imprisonment [*Gemeinschaftshaft*] as detention in single cells with association at least during work.<sup>173</sup>

The Prison Act 1976 introduced a completely new approach to imprisonment. It was recognised that all prisoners should be able to fulfil the basic human need of socialising with others.<sup>174</sup>

This is underlined by the key principles of imprisonment; that life in prison should resemble as much as possible living conditions on the outside and that any detrimental consequences of imprisonment are counteracted, in order to facilitate the prisoner's reintegration once released.<sup>175</sup> In their legal commentary, Callies and Müller-Dietz explain that these principles are intended to provide prisoners with dignified living conditions. Moreover they are to neutralise the negative effects

<sup>170</sup> S. 64 of the Dienstvollzugsordnung (DVollzO) 1972, cited in Hoffmann, *Isolation im Normalvollzug*, 5.

<sup>171</sup> S. 64 of the DVollzO.

<sup>172</sup> S. 67(1)1 and 65(1)1 of the DVollzO cited in Hoffman, *Isolation im Normalvollzug*, 5.

<sup>173</sup> S. 65 and 68(1)1 of the DVollzO cited in Hoffman, *Isolation im Normalvollzug*, 5.

<sup>174</sup> Hoffmann, *Isolation im Normalvollzug*, 4.

<sup>175</sup> § 3 of the Prison Act 1976; *Angleichungsgrundsatz, Gegensteuerungsgrundsatz, Integrationsgrundsatz*, see R-P. Callies and H. Müller-Dietz, *Strafvollzugsgesetz* (Beck'sche Kurzkommentare, 8th edn, Verlag CH Beck, München, 2000) 68.

associated with the loss of liberty. These include isolation from family and friends, deprivation and the process of prisonization.<sup>176</sup>

In line with these principles, prisoners are to be detained in single-cells where they spend any sleep or rest periods.<sup>177</sup> Life within the prison is organised around prisoners' interaction with others during work and, depending on the facilities within the institution, during the recreation and exercise period.<sup>178</sup>

#### *4.3.1. Isolation and the Prison Act 1976: the relationship between resocialization and, security and order remains unclear*

During the drafting of the Prison Act 1976, there was a lack of political discussion on effective control mechanisms to regulate implementation of isolation measures. There was also a lack of an overall concept for the systematic creation of a treatment orientated prison administration. The reform politicians criticised the previous system as repressive and focused on security and order, yet they included broadly drafted isolation provisions in the Act. This was done while acknowledging the need to restrict such practice through legislation.<sup>179</sup>

In his seminal study on isolation in the prison system, Hoffmann argues that the reform politicians had failed to adequately regulate the extent of their application in practice. As a consequence, he argues that an unresolved conflict remained between the aims of resocialization on the one hand, and security and order on the other, which left room for the tactical application of the measures.<sup>180</sup>

Early on in the 1970s, the RAF lawyers criticised the prison reforms and in particular their emphasis on resocialization. They argued that they system was designed on the basis that prisoners' conformed.

<sup>176</sup> Callies and Müller-Dietz, *Strafvollzugsgesetz*, 68. The concept of 'prisonization' was developed by Donald Clemmer. It describes the process in which prisoners are socialised to prison culture and to its norms. See D. Clemmer, *The Prison Society* (Holt Rinehart, New York, London, 1958).

<sup>177</sup> § 18(1)1 of the Prison Act 1976.

<sup>178</sup> § 17(1), (2)1 of the Prison Act 1976.

<sup>179</sup> For the paragraph see Hoffmann, *Isolation im Normalvollzug*, 118-9.

<sup>180</sup> Hoffmann, *Isolation im Normalvollzug*, 134.

Consequently, those who disrupted or resisted the therapeutically-based prison regime would be segregated.<sup>181</sup>

In his critique of the concept of imprisonment, Hoffmann stresses that this was one of the problems that needed to be regulated to prevent the creation of a prison system based on the traditional concepts of divide and rule.<sup>182</sup> In particular Hoffmann refers to the danger of a blanket application of segregation to certain groups of prisoners, such as those who have been convicted for particular types of offences – drug dealers or those convicted of terrorist offences under § 129a of the Penal Code – or prisoners refusing to participate in particular activities offered by the prison system – those who refuse to work - under the mantle of ‘essential prevention’.<sup>183</sup>

The following two sections look more closely at the application of the Prison Act to the isolation of RAF prisoners and other politically motivated offenders imprisoned for terrorist offences. Section 4.4 reviews the isolation provisions set out in the Prison Act 1976 and Section 4.5. critically reflects on the doubts raised as to the legality of the high security wings.

#### 4.4. *The isolation provisions: the question of political conviction*

This principle of association during the day can be curtailed on the basis of a number of exceptions. These isolation measures can be put into three categories: Firstly, placing restrictions on prisoner association; secondly, isolation from other prisoners under special security measures; or thirdly, isolation from other prisoners under disciplinary punishments.<sup>184</sup> The analysis here focuses on the first two categories, because they deal with the management of ‘dangerous’ or problematic prisoners, rather than the punishment of infractions.

<sup>181</sup> See Chapter 2, Section 3.4. for the arguments put forward in the *Kursbuch 32*, a collection of documents and articles in support of the RAF's allegation of detention in isolation.

<sup>182</sup> Hoffmann, *Isolation im Normalvollzug*, 116-21.

<sup>183</sup> Hoffmann, *Isolation im Normalvollzug*, 134.

<sup>184</sup> §§ 17(3), 88-9 and 102-3 of the Prison Act 1976; see J. Feest, *Strafvollzug: Kommentar zum Strafvollzugsgesetz* (3rd edn., Reihe Alternativkommentare, Luchterhand, Neuwied, 1990) 163/7.

#### 4.4.1. Restricting prisoner association: politically motivated prisoners

In the first category of measures restrictions can be placed on prisoner association with others during the work and recreation periods, if the prisoner is suspected of negatively influencing others and/or to ensure the security and order of the prison.<sup>185</sup> The prison administration has to act proportionately. This means that the restrictions are to continue only as long as the suspicions are justified. The term 'negative influence' can refer to acting in contravention with the aim of imprisonment (resocialization), as harming other prisoners or creating unwanted dependencies.<sup>186</sup>

The provision is to be interpreted restrictively. There have to be compelling grounds that include severe disruptions during communal meetings and danger of violence against staff. To assess whether a risk to security and order exists, the prison management need to take into account factors in addition to the personality of the individual prisoner in question. These additional factors include the security classification of the particular prison's population and the building design.

In this context Hoffmann argues that the creation of high security wings to deal with disruptive prisoners, including those who refuse work, drug addicts and politically motivated offenders, posed a risk of hollowing out the central provision that emphasised association for all prisoners. Also the wings were a means of circumventing disciplinary measures.<sup>187</sup>

The question of whether the prison administration should be given some discretion as to limiting prisoner association has been analysed in relation to the creation of high security wings. With a particular focus on the segregation of politically motivated offenders, there have been divergent interpretations. The Higher State Court Hamburg concluded that the evaluation needed to be based on concrete facts rather than abstract dangers. For instance it was deemed insufficient to argue that a prisoner who acted from unshakable convictions posed the risk of involving young people in politically

<sup>185</sup> § 17(3) 1, 3 of the Prison Act 1976; § 17(3) 2, 4 of the Prison Act 1976 mentions two further reasons for restrictions, which are if the prisoner is being assessed for rehabilitative treatment, yet this is limited to a maximum of three months, and if the prisoner agrees to the restriction. During the transition period, § 201(2) German Prison Act states that prisoner contact during work and leisure time can be limited if and, as long as, it is necessary due to staffing issues, matters arising from the running of the prison and the facilities available. However, in terms of contact during work, the transition period run out 31.12.1988.

<sup>186</sup> Examples of this are disrupting work, inciting others, starting fights or sexually harassing others. See Hoffmann, *Isolation im Normalvollzug*, 11.

<sup>187</sup> Hoffmann, *Isolation im Normalvollzug*, 12.

motivated offences. The court also found that the concern that this could lead to extremist activities including the recruitment of followers was merely an unfounded general assessment.<sup>188</sup>

In contrast, the Higher State Court Frankfurt held that a prisoner who belonged to the group of violent terrorist offenders and had not distanced herself from their aims, already posed a heightened security risk for the prison and it was appropriate to assume an increased risk of escape.<sup>189</sup> Furthermore, there was a continued risk of activities aimed at liberating these prisoners. The court pointed out that despite a lack of concrete evidence to substantiate these risks, this nevertheless did not disprove them. In such cases a particular incentive to escape existed due to the long time, in particular life sentence still to be served.<sup>190</sup>

This interpretation was largely based on inference from political convictions and connections to terrorist organisations, which could include anything from membership to supporting the group. The latter could also extend to family members, persons who campaigned against RAF isolation and RAF defence lawyers.<sup>191</sup>

In the following section, the diverging interpretations by the courts continue in relation to the extent of the provision on solitary confinement.

#### 4.4.2. *Special security measures: politically motivated prisoners*

The second set of isolation measures, special security measures, include segregation and solitary confinement.<sup>192</sup>

Special security measures can be applied if the prisoner's behaviour or mental health presupposes an increased risk of escape or violence against persons or objects, or if there is a risk of suicide or self-harm.<sup>193</sup> Here prisoners can be segregated from others in normal cells and wings of the prison<sup>194</sup> or they can be placed in an especially secure cell without any dangerous objects.<sup>195</sup>

<sup>188</sup> OLG Hamburg 27.05.82 cit. in Hoffmann, *Isolation im Normalvollzug*, 14

<sup>189</sup> OLG Frankfurt 21.01.80 cit. in Hoffmann, *Isolation im Normalvollzug*, 17.

<sup>190</sup> OLG Frankfurt 21.01.80 cit. in Hoffmann, *Isolation im Normalvollzug*, 17.

<sup>191</sup> See Section 4.1. above.

<sup>192</sup> §§ 88-9 of the Prison Act 1976.

<sup>193</sup> § 88(1) of the Prison Act 1976.

<sup>194</sup> § 88(2) 3 of the Prison Act 1976, Feest, *Strafvollzug Alternativkommentar*, 484/13.

Segregation under this provision is intended to be a temporary under which prisoners are segregated from others in one or some part of the work, leisure and rest periods.<sup>196</sup> This form of segregation should not exceed twenty-four hours and cannot be used to move prisoners into high security wings.<sup>197</sup>

In contrast, solitary confinement requires approval from the supervisory authorities if it exceeds a period of three months per year.<sup>198</sup> It is defined as the continuous segregation from other prisoners and involves all three periods of the day.<sup>199</sup> It can only be ordered if it is essential. That is, no other measures including medical and psychological intervention or a transfer to a more suitable institution are available. Furthermore it has to be necessary on grounds that are specific to the individual prisoner.<sup>200</sup>

There is some debate over what these particular grounds entail. Some commentators maintain that this refers to the criteria of increased risk of escape and violence, which are the basis for temporary segregation.<sup>201</sup> However, Feest argues for a more restrictive interpretation. He suggests that these grounds relate to the prisoner's health, either an illness for which the prisoner is yet to be transferred to hospital or a prisoner's continued violent behaviour against other prisoners that cannot be resolved with short-term measures. Citing the Local Court Celle, he states that it does not refer to the political conviction of a prisoner whose aim is to destroy the free and democratic social order of the Federal Republic by means of an armed struggle.<sup>202</sup>

However the State Court Lüneburg applied this standard to a politically motivated offender. It stated that the criteria for deciding to place such a prisoner in solitary confinement had been met in cases where a prisoner's declared aim was to destroy the free and democratic social order of the Federal Republic of Germany by means of an armed struggle. The judges added that from the prisoner's

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<sup>195</sup> § 88(2) 5 of the Prison Act 1976. Both these measures can be ordered if there is a danger that an attempt may be made to free a prisoner or if a severe disturbance of order cannot be averted or limited, § 88(3) of the Prison Act 1976.

<sup>196</sup> Feest, *Strafvollzug Alternativkommentar*, 484/13.

<sup>197</sup> Callies and Müller-Dietz, *Strafvollzugsgesetz*, 494/5.

<sup>198</sup> § 89 of the Prison Act 1976.

<sup>199</sup> It is akin to strict solitary confinement under the pre-1976 prison system, see S. 60 and S. 67 of the DVollZO cited in Hoffmann, *Isolation im Normalvollzug*, 31.

The period of isolation is not disrupted if prisoners attend religious service or an exercise period with others, Feest, *Strafvollzug Alternativkommentar*, 488/2.

<sup>200</sup> § 89 of the Prison Act 1976.

<sup>201</sup> § 88(1) of the Prison Act 1976, see Callies and Müller-Dietz, *Strafvollzugsgesetz*, 496/2.

<sup>202</sup> Feest, *Strafvollzug Alternativkommentar*, 489/3 cit. AG Celle 1979.



personal aggressive conviction stemmed an increased risk of escape, as he was not to come close to achieving his goals within the prison.<sup>203</sup>

In interpreting both sets of isolation measures, the courts seemed to have found that political convictions are both not enough and sufficient for isolating a prisoner. Political convictions were very much at centre of the government's justifications for the detention of RAF/ J2M prisoners and other politically motivated offenders in high security units. This is discussed in the following section that questions the legality of the units.

#### 4.5. *The search for high-security detention in the Prison Act 1976*

The legality of the units is doubtful. Hoffmann suggests that the general clauses on isolation, in particular those placing restrictions on prisoner association and the special security measures, did not justify the introduction of high security wings.<sup>204</sup>

These provisions presuppose a danger for the security and order of the prison based on a concrete behaviour of a prisoner displayed within the prison. They do not include any provision for the creation of special units for persons who have been convicted of special offences [including terrorist offences] and who the prison authorities have identified as being particularly dangerous based on unclear criteria.<sup>205</sup>

He explains that as early as 1972 the proposals for addressing the future imprisonment of politically motivated offenders, who were considered by the prison authorities to be particularly dangerous, took on a technical and practical nature. This resulted in an additional isolation measure through the creation of these wings. Most strikingly, this discussion took place outside or removed from the political discussions on reforming the prison system.<sup>206</sup>

Instead, throughout the late 1970s and the early 1980s, the lawyers and campaigners against the isolation conditions of RAF and J2M prisoners drove the debate on the legitimacy of the high security units. Yet, in May 1984, the relatively young Green Party<sup>207</sup> put forward questions on the legislative basis for the transfer of prisoners to a high security wing. In response, a Federal government

<sup>203</sup> LG Lüneburg 15.09.78 cit. in Hoffmann, *Isolation im Normalvollzug*, 29.

<sup>204</sup> Here §§ 17, 88 of the Prison Act 1976.

<sup>205</sup> Hoffmann, *Isolation im Normalvollzug*, 120.

<sup>206</sup> Hoffmann, *Isolation im Normalvollzug*, 119.

<sup>207</sup> The Green Party, now Bündnis 90/ Die Grünen, was founded in January 1980. For a brief history of the Green Party see [www.gruene.de/einzelansicht](http://www.gruene.de/einzelansicht) (accessed 15.11.2010).

official stated that a transfer from the mainstream regime was legitimate on the basis of the provision that governed prisoner transfer to another prison. This provision allowed for a prisoners' transfer either because it was beneficial for their treatment, the organisation of the prison or for 'an important reason' in conjunction with the provision on secure detention.<sup>208</sup>

The German government also gave this justification to the United Nations Human Rights Committee in 1986, in response to questions about persons sentenced for terrorist offences. The German government referred to an order under this provision that,

permitted the transfer of particularly dangerous, recalcitrant or unruly prisoners to a suitable high security area. Because of their fanaticism and their continuing links with accomplices still at large, terrorist convicts clearly fell within that special category. ... An order for special detention under section 85 of the Prison Act of 1976 had no time-limit and remained in effect for as long as the persistence of the danger made it appropriate.<sup>209</sup>

The legal commentaries by both Feest and Callies and Müller-Dietz seriously question whether the creation of high security units for specific categories of offenders, such as terrorists, is permissible. This is because decisions to invoke the provision are to be based on the individual circumstances of the prisoner, rather than a blanket application to members of a particular group, here terrorist offences.<sup>210</sup> Feest explicitly states that the provision does not cover a transfer to such a unit, as the creation of such a segregation measure is not envisaged in the legislation.<sup>211</sup>

This highlights the status of the detention in high security units as a further exception that was created by governmental power, governmentality. This also involved the tactical application of counterterrorism legislation against both the RAF prisoners and their supporters in the campaign against isolation.

The experiences of the high security units as spaces of immobilisation and surveillance are explored in Chapters 4 and 5.

## 5. Conclusion

<sup>208</sup> Here §§ 8, 85 of the Prison Act 1976:

<sup>209</sup> Report of the UNHRC A/41/40, 61-2.

<sup>210</sup> Callies and Müller-Dietz, *Strafvollzugsgesetz*, 486/2; Feest, *Strafvollzug Alternativkommentar*, 473/3.

<sup>211</sup> Feest, *Strafvollzug Alternativkommentar*, 473/3.

This chapter has highlighted how at the intersection of the 1976 counterterrorism framework with the Prison Act 1976 the themes of prevention and security already predominate. In the context of RAF imprisonment a number of exceptions were made in order to isolate the prisoners.

Under the Anti-terrorist Act 1976, the broad wording of § 129a of the Penal Code criminalises membership, canvassing and supporting a terrorist organisation and carries with it a framework of procedural provisions that significantly restrict the rights of the defence through the introduction of various surveillance measures.

The Prohibition of Contact Act 1977 legitimated an executive decision that banned all contact of RAF prisoners including access to their defence lawyers. In effect, it legislated the exception under what Jakobs has conceptualised as enemy penology. In her Foucaultian analysis of Jakobs' enemy penology, Krasmann summarises the concept:

Enemy penology is exception law, but as such it is at the same time also a rule; not only because it is defined through the dominating rules, the principles of the rule of law with which it maintains a form of parasitic relationship, but also because its intention is to regulate the exception.<sup>212</sup>

The Prohibition of Contact Act 1977, although the most extreme preventative measure, also is an example of the limits of both the surveillance measures and of total isolation. This is explored in more detail in the experiences of the surveillance techniques under conditions of isolation in Chapter 5.

Further examples of regulating the exception were the standardised prison rules. They were developed for and applied consistently to persons connected to terrorist organisations,<sup>213</sup> as opposed to the individualised approach set out in the pre-trial detention framework.<sup>214</sup>

The final exception examined in this chapter was the decision in the late 1970s to construct high security units to house convicted RAF/J2M prisoners. As a consequence the new Prison Act 1976 and its principle of resocialization was circumvented, and arguably undermined, in favour of security and order in prison.

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<sup>212</sup> Krasmann, 'The enemy on the border', 310.

<sup>213</sup> § 129a of the Penal Code.

<sup>214</sup> § 119 of the Criminal Procedure Code.

Together with Chapter 2, this sets the context for exploring the extreme spaces of what Bauman describes as 'communicative separation' of RAF isolation. The following two chapters explore the personal narratives of experiences of isolation as immobilising spaces (Chapter 4) and surveillance spaces (Chapter 5).

## Chapter 4

### Isolation: closed in - a room with no view

This chapter explores the individual Red Army Faction (RAF) narratives of isolation in prison. The stories, retold for this thesis, but also written accounts that have been printed in various collections of documents, are preoccupied with how the spaces of isolation severed or severely restricted their contact to others within and outside of the prison. Using Bauman's characterisation of isolation as communicative separation through techniques of immobilisation, this chapter explores these individual narratives of exclusion.<sup>1</sup>

These techniques of immobilisation comprise both prison and cell design including the windows and lighting, and also their location within the institution as a whole. The stories recount how the narrators experienced these techniques of immobilisation that were either existing measures compounded through a combination of techniques, or measures that were created as part of the counterterrorism framework. The latter were either formal or legislative provisions such as the introduction of a glass partition for visits with a defence lawyer<sup>2</sup> or more informal measures like the construction of special high security units in the late 1970s.<sup>3</sup>

This chapter explores these techniques of immobilisation within the narrators' individual lived experiences of detention in isolation. Chapter 5 engages with the RAF narratives on the techniques of surveillance that form the other part of detention in isolation. Together, Chapters 4 and 5 make up a picture of RAF isolation that is centred on the control of communication with the aim of disabling the group and diminishing the (political) resolve of the individual prisoner.

Initially, the narratives were to be analysed within the context of the remand system and prison system respectively. During the process of engaging with these narratives, I realised that I was imposing a distinction that was not acknowledged by the narrators. To the question 'what changed once the

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<sup>1</sup> See Chapter 1 for communicative separation and techniques of immobilisation based on Bauman, 'Social Issues of Law and Order'.

<sup>2</sup> § 148 of the Criminal Procedure Code.

<sup>3</sup> For details on the development of the German Counterterrorism legislation in the 1970s see Chapters 2 and 3; and for the debate questioning the legitimacy of the high security wings see Chapter 3.

sentence was executed?', the answer was invariably nothing or virtually nothing. Knut Folkerts in the context of his pre-trial detention in Stadelheim prison in Munich early 1979 said that

*formally it was pre-trial detention, but that is relatively insignificant. Whether remand or imprisonment it signified isolation.*<sup>4</sup>

There are several examples in the context of the RAF that demonstrate how the boundary between the two formal systems was blurred. In Berlin M, a female RAF prisoner, served her sentence with other RAF and J2M prisoners first in a special unit and later in the purpose-built high security unit in Moabit prison, a male remand facility. Some of the narrators also mentioned that throughout the period in which they were incarcerated, a number of new criminal proceedings were initiated for terrorist offences under § 129a of the Penal Code.<sup>5</sup> Especially the taking part in a collective hunger strike was deemed evidence of membership in a terrorist organisation. This triggered a number of enhanced security measures under both the counterterrorism legislation and the remand system.

Throughout the narratives, the RAF prisoners distinguish between the mainstream or normalisation regime and containment or control through enhanced regimes of isolation. Chapter 3 has shown that there are differences between the normal regime in pre-trial detention, which is based on the notion of segregation, and what is considered the normal regime in the prison system under the German Prison Act 1976 with its strong focus on prisoner association to create an environment that facilitates the resocialization of prisoners. The individual RAF narratives contain some experience of the 'normal' regime, yet at different stages/points of their imprisonment, which the narrators have used as a contrast to their experiences of isolation.

Rather than imposing what from the narratives seems an artificial distinction, the chapter is structured around spaces and institutions that within the context of the RAF have taken on particular meanings. This chapter will focus on Cologne Ossendorf, Stammheim and the 'new' high security wings built in the late 1970s. It explores how the narrators' construction of the imprisoned space and their endeavour to attach meaning to these spaces are represented in their stories of individual and also shared experiences of RAF isolation.

In her article on segregation in Canadian prisons, Martel critically engages with the women prisoners' construction and perception of space in segregation. Whereas Martel's focus is on women's

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<sup>4</sup> Interview with Knut Folkerts, a former male RAF prisoner (ref. A2), 29.07.2008, 2. The narrative voice in the following chapters is visually set apart from other quotations with a larger indent and set in italics.

<sup>5</sup> See Chapter 3 for a detailed analysis of the counterterrorism legislation under §129a of Penal Code.

experiences in segregation, the influence of sexual difference on lived experiences and also gendered space are part of the underlying methodological assumptions in this thesis.<sup>6</sup> In terms of gendered space in relation to RAF imprisonment, some women were detained in annexes, such as the detention of women prisoners in Moabit, a male remand prison in Berlin. But it also included the association of women and men RAF prisoners, most famously the RAF leadership during their detention in the high security unit in Stammheim prison. Citing Montulet, Martel explains how the link between lived experiences and space is mutually reinforcing, for

spaces are constituted through human existence, and existence is realized through spaces. The social, cultural and personal meanings of a space, then, are solely comprehensible through the mode of spatialization at play, i.e. the process of constituting socially significant spaces.<sup>7</sup>

In this chapter, prisons as spaces of isolation are revisited through the individual lived experiences that construct but are also constituted by them. Through these narratives it critically explores the broader discourses and the power relations that drive them. The chapter is structured in three sections. Section one explores Cologne Ossendorf as an extreme space that emerged as the 'dead-wing', but also considers the existence of other spaces of isolation. Section two critically engages with the 'myth' of Stammheim prison and the RAF leadership with the introduction of multiple lived stories of 'another' Stammheim. The final section again considers multiple stories of detention in the 'new' high security wings in Celle, Bruchsal and Moabit prison; (post)modern spaces of exclusion.

## **1. Cologne Ossendorf prison: the 'dead-wing' and beyond**

Chapter 2 highlighted the central role of Cologne Ossendorf prison in the development of the discourse of RAF isolation. It became synonymous with the complete isolation - including complete sensory deprivation - of Astrid and later Ulrike Meinhof in a disused hospital wing of the prison that was dubbed the 'dead wing'.

In particular, Ulrike Meinhof's eight-month detention in the 'dead wing' became the most forceful picture of RAF isolation. The image of Ulrike Meinhof in the 'dead wing' was also the key

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<sup>6</sup> See Chapter 1.

<sup>7</sup> J. Martel, 'To be, one has to be somewhere: spatio-temporality in prison segregation' (2006) 46 *British Journal of Criminology* 587-612, 599.

depiction of RAF isolation in the cinema picture 'The Baader-Meinhof Complex'.<sup>8</sup> In her recent biography of Ulrike Meinhof, Dittfurth, maintains that the detention in the 'dead-wing' in the period 16 June 1972 to 9 February 1973 was unique in Federal German history and amounted to 'white torture'. She adds that Astrid's early release from detention followed the severe deterioration of her health caused by a shorter period of isolation than Meinhof's in the 'dead-wing'.<sup>9</sup>

From the individual narratives it emerges that in addition to the extreme space of isolation in the 'dead wing', Cologne Ossendorf was also a hub for the detention and isolation of terror suspects. Three of the other narrators, M, Karl-Heinz Dellwo and Roland Mayer, were also incarcerated in Cologne Ossendorf for part of their pre-trial detention. The following section engages with Astrid's narrative of Cologne Ossendorf, that describes a passage to and from the 'dead wing', but also with one other story of isolation in Cologne Ossendorf, Karl-Heinz Dellwo, who also experienced multiple spaces and varying forms of isolation.

### 1.1. A journey in and out of the 'dead-wing'

Astrid was arrested in May 1971, one of the first members of the RAF to be remanded in custody. It was a year after the inception of the RAF that had followed the escape of Baader in May 1970. From Hamburg she was transferred to Cologne Ossendorf, a modern prison on the outskirts of Cologne that had been completed in 1968.

It had replaced the famous '*Klingelpütz*' prison, which was constructed in the period 1839-1845 in the Pentonville design with a central building and four radiating wings, three of which were designed for communal detention and one for solitary confinement.<sup>10</sup> Throughout its history the prison had also been used to detain political opponents, most notably during the 'culture struggle' in the 1870s

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<sup>8</sup> Constantin Film, *Der Baader-Meinhof Complex* (2008) ([www.thebaadermeinhofcomplex.com](http://www.thebaadermeinhofcomplex.com), accessed 23.05.2010). The film was based on Stefan Aust's book with the same title.

<sup>9</sup> J. Dittfurth, *Ulrike Meinhof: die Biographie* (Ullstein Buchverlage GmbH, Berlin, 2007) 354.

<sup>10</sup> S. Braun, *Das Gefängnis als staatliche Bauaufgabe dargestellt am Beispiel der Kölner Strafanstalt „Der Klingelpütz“* (1834-1838 und 1843-1845) (PhD thesis, Philosophischen Fakultät der Universität zu Köln, 2004) 156-7.



and during the Nazi period for Gestapo and SS prisoners before their transfers to the concentration camps.<sup>11</sup>

In contrast, the new and modern prison in the suburb of Ossendorf was constructed to put into practice a humane prison administration based on the values of the Basic Law (the Federal constitution) and human rights.<sup>12</sup> It followed a design typical of its time.

Astrid explained how the construction of the one and two story flat-roofed buildings reminded her of the pavilions her father, an architect, had designed for school buildings in the 1960s. She added that the whole prison had been built on green belt land and was very spread out. For an idea of the prison's design, she referred me to the art book 'Women in Prison' by Hans-Peter Feldmann and Klaus Heilmann, a collection of photos, texts and pictures on the lives of women and young women in Cologne Ossendorf prison 2004-5.<sup>13</sup>

In the prison information leaflet, reprinted in the art book, the prison layout is described as comb-like, where a central, long, one-story building connects a number of two-story prison blocks that are parallel to one another and that are located on either side of the central building.<sup>14</sup> Astrid added that though it was all

*extremely 'widespread' [English in the original] everything was interconnected. This resulted in very long corridors. It was a completely different construction to the old nicks [Knast] that one knows ... also in England.*<sup>15</sup>

She compared the new design to the old prison she had experienced as a visitor to her brother, and also Ensslin and Baader in Frankfurt prisons, during the so-called 'arsonists trial' 1968-9.<sup>16</sup> She explained that during these visits the prison experience was brushed off, everyone was 'cool, cool, cool'. She said that

*I just wanted to say that at the time I never thought that I could ever end up there [in prison]. There I was in 71. .... ok ... I was there [Cologne Ossendorf] for two years 'all in all' [English in the original]. And then just about a year in Frankfurt Preungesheim, where I had my trial*

<sup>11</sup> JVA Köln-Ossendorf, <http://www.jva-koeln.nrw.de/wir/historie/klingspueetz/index.php> (accessed 23.05.2010).

<sup>12</sup> H.-P. Feldmann and K. Heilmann, *Frauen im Gefängnis* (Verlag der Buchhandlung Walther König, Köln, 2005) 6-7.

<sup>13</sup> Feldmann and Heilmann, *Frauen im Gefängnis*.

<sup>14</sup> Feldmann and Heilmann, *Frauen im Gefängnis*, 6-7.

<sup>15</sup> Interview with Astrid, a former female RAF prisoner (ref. A1), 29.04.2008, 3.

<sup>16</sup> See Chapter 2 Section 1.3. for more detail.

*and I was released. And then later on [I was detained again] during the extradition procedure where I spent another year in England and [then] in Frankfurt [again]. Then I was released.*

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Astrid was one of the first members of the RAF to be detained in Colonge-Ossendorf prison. Her time in the prison was marked by the experience of different spaces of isolation within the prison, from the prison block for women to the 'dead wing' and the psychiatric/therapeutic wing for men. She recalled:

*In the beginning I was held in one of the two prison blocks [for women prisoners on remand or with short sentences]... but also isolated. That is I was never allowed to leave the cell when other prisoners were outside. I went on exercise alone. I had a window on the ground floor and could open it ... of course there were iron bars. I could see them [the other prisoners] when they were on exercise. I could also shout across to them. Once in a while exchange a secret message. You saw people. ... Around me, above and to both sides the cells were empty. I was in the first cell [on the block] next to the observation room and the shower room.*<sup>18</sup>

She spent around six months in that block, where she had solitary exercise. She was transferred to the 'dead wing', the disused and vacant hospital wing for women, after two days in the 'bunker' for a disciplinary punishment following a tussle with a prison guard. She explained that when she arrived in her new cell, she did not know where she was. Though the immediate impression, she added, was positive, in the sense that it was light, the cell was larger and there was even a bathroom with a bathtub:

*It was all pretty luxurious... I mean what kind of prison has that.*<sup>19</sup>

It dawned on her instantly that there was no one around:

*As I already said, at first I thought marvellous, bright light... [but] I did not know where I was. And then I noticed there was nobody there. There is nobody there [emphasis]. And I did not hear anything, nor did I see anything. That is really tough after a while.*<sup>20</sup>

It was an empty single story prison block with some vacant offices and a separate small exercise yard.

Astrid constructed what she referred to simply as 'the wing' as a void by contrasting her experiences with those that went immediately before, namely the isolation in one of the women's prison blocks. Again referring to the aerial picture of Cologne Ossendorf prison in the art book by Feldmann and Heilman, mentioned above, she explained that though she was detained in strict solitary confinement in

<sup>17</sup> Interview with Astrid, 4-5.

<sup>18</sup> Interview with Astrid, 23-4.

<sup>19</sup> Interview with Astrid, 29.

<sup>20</sup> Interview with Astrid, 31.

the women's block, her cell was located on the 'main street' of the prison, the normal prison, with the main exercise yard, the offices and the visitation rooms:

*Now I was away from that. Before one had... one could hear... there were announcements [over the loudspeakers], then the others went to work, sometimes a prisoner would knock... somehow one existed. Here there was nothing anymore. Here was the end, over, finished. Here nobody came. Nobody passed by.*<sup>21</sup>

For Astrid, 'the wing' was a space of complete isolation, because it created a void. It removed the vicarious experience of others and any chance contacts or interactions with others that had previously offered a space for the possibility of subversion. She added how the daily routine of three meals a day had remained the same. Due to its remote location, the prison officers no longer dropped in between scheduled mealtimes to deliver any mail that had arrived, and thereby removing any interruption of the daily routine.

Before she was moved to the 'dead wing', she dreaded the passing of five o'clock in the afternoon, the last meal of the day, because she knew that that was it for the day:

*it was just me. The long night and I. ... somehow I developed a kind of pattern. I had adapted [to the extent] that I simply exploded. This intensified during the complete isolation.*<sup>22</sup>

She reiterated that this feeling of existing in vacuum in 'the wing' was distinct from being alone in society:

*[T]here was nothing, do you understand... nobody passed by or came... you no longer had an environment. The environment was the silence.*<sup>23</sup>

When Ulrike Meinhof was transferred to Cologne Ossendorf in June 1972, Astrid was moved into the adjoining block, a male psychiatric/therapeutic wing. In the following statement she explains that this had a significant effect on her:

*I never saw any of the other prisoners, but I heard how they played ping-pong and when the food was handed out. It was only a small operation, but somehow I had... it was a difference between night and day. You would not believe it. You have, you feel you are again .... You are grateful when somebody next door [makes a noise].... You would not believe it.*<sup>24</sup>

At first she felt happy and also a real relief that she could experience the existence of social surroundings. She added that she quickly crashed from this elation, because she experienced guilt

<sup>21</sup> Interview with Astrid, 30.

<sup>22</sup> Interview with Astrid, 25-6.

<sup>23</sup> Interview with Astrid, 32.

<sup>24</sup> Interview with Astrid, 33.

towards Ulrike Meinhof who was now in the cell that she had been moved out of. Astrid said that she projected onto her, her experiences of the 'dead wing', the emptiness and the silence.

When Astrid's trial started in late 1973 she was transferred to Frankfurt Preungesheim prison where she experienced a significant change in her detention. The following dialogue from the interview highlights the extent of this change.

*FE: Briefly, in relation to contact. Did you have contact [with others]?*

*Astrid: Eventually, in Preungesheim ... yes.*

*FE: Preungesheim.*

*Astrid: Everything was different in Preungesheim.*

*FE: Preungesheim was normal?*

*Astrid: What is normal? I could not bear it. Really, I could not bear it. It was the way back, so to speak. In Preungesheim there was normal pre-trial detention with everybody. There was a wing/block with banisters... there was association on the wing and noise and so forth.<sup>25</sup>*

In the interview Astrid emphasised the 'noise' and openness on the landings. It represented the stark contrast to the emptiness and silence that she had experienced in the 'dead wing', but also the varying degrees of isolation in the other spaces in Cologne Ossendorf. Under these normal conditions she was faced with readjusting to social life.

As mentioned above, Cologne Ossendorf became a hub for the detention of RAF prisoners under federal investigation. In addition to Astrid, three of the other narrators were incarcerated there for some part of their pre-trial detention. It was suggested by some of the narrators that this was due to the prison's relative proximity to the offices of the Federal Criminal Police Office in Bonn.

## *1.2. Other isolation spaces in Cologne Ossendorf*

This subsection engages with Karl-Heinz Dellwo's experiences that were an initial brief stay at the prison in 1975 and then a lengthier return, the day after Schleyer was kidnapped on 5 September 1977. On his return to Cologne prison, he then experienced the prohibition of contact imposed as a response

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<sup>25</sup> Interview with Astrid, 46-7.

to the kidnapping, but also a brief period of relaxation of the isolation measures that included strict solitary confinement and segregation from other prisoners.<sup>26</sup>

For Karl-Heinz Dellwo's story of imprisonment and also for the others that follow, it is important to note again that the narratives of resistance and subversion and in particular the hunger strike are intertwined with the stories of isolation. The stories emphasise how they responded to the immobilising spaces and the surveillance techniques that make up RAF isolation. Through confrontation in the form of hunger strikes and other everyday refusals over time they were able to influence and shape the spaces of confinement to achieve some relaxations to the regime.<sup>27</sup> Ultimately, resistance proved to be crucial their individual survival.<sup>28</sup>

Consequently, this is a somewhat artificial separation, but it is necessary in order to critically engage with both RAF isolation and resistance.

Karl-Heinz Dellwo arrived in Cologne Ossendorf in 1975 and remained there initially for two months, before he was transferred to Essen prison. He described this first period in the following words:

*I can briefly say this. In 1975 I arrived in Cologne Ossendorf. There I was isolated in the transportation wing. The transportation wing signifies ... Cologne is just a prison with long corridors from which individual wings lead off to the left and right. ... The transportation wing is used as a stopover for prisoners that are transferred from Hamburg to Munich or Stuttgart to Berlin or something like that. They cannot just take a break/make a halt [Zwischenstation] anywhere, for lunch for instance. ... The first five cells on the wing were completely empty. Then sometimes, twice a week, there were other prisoners there. But I never saw them. [I had] no exercise with them.<sup>29</sup>*

Here in Karl-Heinz Dellwo's account some of the same themes that emerged in A's narrative of Cologne, become visible, particularly the experience of a remote or unusual space that was removed from the normal everyday life of the prison. In his case, it was the transportation wing, a space designed to accommodate prisoners on transfer.

In a passing comment he recalled an occasion where he was taken to a different exercise yard to the main yard, in which until then he had been let out:

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<sup>26</sup> For a summary on the prohibition of contact measures and the development of the Prohibition of Contact Act 1977, see Chapter 3.

<sup>27</sup> See Chapter 6 for more detail.

<sup>28</sup> See Chapter 7.

<sup>29</sup> Interview with Karl-Heinz Dellwo, a former male RAF prisoner (ref. A3), 31.07.2008, 1-2.

*a troupe of guards came and said 'exercise'. ... okay. They led me [irgendwie] somehow through the prison. I always found it interesting when you had a kind of different perspective. ... Past the administration and there was sort of a yard... there were no prisoners and there was nothing there.*<sup>30</sup>

Karl-Heinz Dellwo also pointed to the prison's architecture and this distinction between the old and the new prisons. He compared Cologne Ossendorf to Essen prison, where he was detained for the majority of the time, during his trial, before being transferred back to Cologne after judgment. Essen is an old prison. It was mainly constructed in 1911, rebuilt after WWII and refurbished in the mid-1970s. It was designed as one main building, which was cross-shaped and five stories high, circumvented by four buildings connected at right angles to one another.<sup>31</sup> Karl-Heinz Dellwo talked about how Cologne prison was different, from the perspective of the structure of the building. He referred to the one-story buildings and the elongated corridors.

Whereas in the transportation wing in Cologne Ossendorf he did not see other prisoners, his account of Essen prison showed how both the architecture and the cell design left some space at least to catch a glimpse of other prisoners:

*Karl-Heinz Dellwo: ... Essen is just a prison that is in the centre of town, five stories high ....*

*FE: The same prison that Gudrun Ensslin was detained in?*

*Karl-Heinz Dellwo: Yes, exactly. The same one. You know that is separated. There is a section for men and one for women. ...*

*There, I sat in a cell that had crown glass windows. You know crown glass.... that is simply a kind of lattice window. Of the whole lattice window and the individual panes - I did not count them exactly, lets say there were sixteen, then fourteen were opaque, so that you were not able to see through... and two were made of plastic. And therefore you were able to look onto the yard a little bit. And then, you were able to see other prisoners.*

*But I was still completely isolated. That was isolation in the normal regime, so to speak.*<sup>32</sup>

As in Astrid's account, Karl-Heinz Dellwo differentiates between isolation spaces based on whether there was an awareness of social surroundings. In Karl-Heinz Dellwo's account this was visual awareness. This contrast between the exceptional remote space and isolation on a normal prison wing, and also the distinction between the old and new prison design are both themes that reoccur throughout the narratives of isolation. These are reflected in the location and the particular high-tech design of the high security wings, explored below.

<sup>30</sup> Interview with Karl-Heinz Dellwo, 19

<sup>31</sup> JVA Essen, see <http://www.jva-essen.nrw.de/wir/Behoerdenpraesentation/index.php> (accessed 09.06.2010).

<sup>32</sup> Interview with Karl-Heinz Dellwo, 5-6.

This complete communicative separation was interrupted on a few occasions. This involved different degrees but also different types of contact. For instance, after some time in Essen prison, he was able to associate with one of his co-accused. Karl-Heinz Dellwo maintained:

*After two months in Cologne, I was transferred to Essen prison. In Essen I was then isolated until February 1976. I think it was the end of February. And then [L.] was transferred from Schwalmstadt to Essen. We had association in a prison cell for two hours per day, because the trial was due to start. The lawyers requested this. The judges knew that we were going to make a lot of noise about the isolation measures.<sup>33</sup>*

After his transfer back to Cologne Ossendorf he experienced two further short periods in which the isolation measures were relaxed to allow joint exercise.

The transfer had followed a period of hunger strikes in which the RAF collectively fought for the end of isolation and for the detention of prisoners in groups. There was a decision, explored in more detail below, that up to eight RAF prisoners were to be held in Stammheim on the seventh floor in the high security wing, where the RAF leaders were being detained at the time. Karl-Heinz Dellwo explained that eventually, prior to the German Autumn in 1977, there was a court decision that a group of four prisoners including Karl-Heinz Dellwo were to be detained together in Cologne. The group consisted of three male prisoners and a female prisoner. The expectation was that at least the men were to be held on the same wing and were to be granted some form of association on the wing.

However, on the 5 September, as a response to the Schleyer kidnapping, the RAF prisoners were placed under a prohibition of contact that lasted until 20 October 1977.

*The prohibition of contact had already started on the 5 [September] in the evening. As I said, I was in Bochum [prison] at the time. [On the following day he was transferred to Cologne]. The door opened and the guards came in and simply took the radio and that was it. The provision of newspapers also stopped. That is the way it was.<sup>34</sup>*

As discussed in Chapter 3, the prohibition of contact was intended to prevent RAF prisoners from communicating with Schleyer's captors. As a consequence all contact with the outside, including access to a defence lawyer, was banned. Initially a contentious executive measure that was justified as a legal

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<sup>33</sup> Interview with Karl-Heinz Dellwo, 7-8

<sup>34</sup> Interview with Karl-Heinz Dellwo, 2-3.

exception, it very rapidly became law at the beginning of October.<sup>35</sup> It was controversial because it curtailed a fundamental guarantee of unimpeded access to a defence lawyer set out in the Criminal Procedure Code.<sup>36</sup>

After the contact ban was lifted, Karl-Heinz Dellwo explained that the four RAF prisoners in Cologne, though dispersed within prison, had joint exercise until March 1978. This included the one female prisoner. The association of men and women RAF prisoners did occur and was an anomaly in both the remand and prison system. This is explored further below.

In Cologne, they had exercise for one hour per day in the transportation wing. For this they had to change their clothes completely both before and after that period on the yard. The joint exercise stopped once their appeal was dismissed and their sentence was in force. Karl-Heinz Dellwo emphasised that the prison management was now in charge. They reintroduced the isolation measures and the two other male RAF prisoners were transferred to other institutions. Karl-Heinz Dellwo described the situation as follows:

*And then again, I was completely isolated... again. That is in individual isolation [Einzelisolation], but on a normal wing. And then they decided to integrate me into the mainstream/normal regime. ... because they had to do something. Somehow, for three weeks I came together with other prisoners, but only on exercise. And then they broke it off again, because the other prisoners .... they did not trust the other prisoners. They then transferred the prisoners. At the time, I referred to it as 'Bahnhofsvollzug', in the sense that formally you were no longer isolated, but in effect you had nobody you could establish any kind of relationship with. You were still alone. You can't and you don't relate [your thoughts or experiences] with some stranger who you happen to meet. ... You are still alone.*

*But despite that, they isolated me again.*<sup>37</sup>

This sense of a lack of meaningful contact is one that is shared by other prisoners. In their 1978 study on the effects of long-term imprisonment in a high security wing in England, Cohen and Taylor explained that this was compounded by transient relationships easily broken when people got moved on and also by the prisoners' restricted choice of relationships.<sup>38</sup>

In Karl-Heinz Dellwo's story he experienced two periods where the solitary confinement was interrupted by some contact with members of the RAF some of whom he had known on the outside, where a relationship existed prior to his detention. This is contrasted with the more 'normal' experience

<sup>35</sup> For a detailed analysis of the law and the debate over its lack of legitimacy, see Chapter 3.

<sup>36</sup> Chapter 5 engages in more detail with the effects of the prohibition of contact on the experience of their detention.

<sup>37</sup> Interview with Karl-Heinz Dellwo, 28.

<sup>38</sup> Cohen and Taylor, *Psychological Survival*, 63, 75.



of what Karl-Heinz Dellwo described as '*Bahnhofsvollzug*', because the prisoners were selected by the prison administration.

He described the remaining part of the year before his transfer into the 'new' high security wing in Celle on 8 December 1978, explored below, as

*And this is how I experienced the entire year in Cologne after the prohibition of contact. ... most of the time, like I said, I was totally isolated and then you are banned from talking to others and also solitary exercise...*<sup>39</sup>

Summing up his experience of Cologne Ossendorf, Karl-Heinz Dellwo explained that its management was marked by arbitrariness and a failure to give reasons. In response to the question on how the prohibition of contact was communicated, he made a broader statement that

*In Cologne ... I did not speak to anyone anyway ... Cologne never gave any reasons for what they did. They always prided themselves on the principle of arbitrariness.*<sup>40</sup>

One of the stories he recounted much later in the interview underscores this notion of arbitrary decision-making. On the occasion where Karl-Heinz Dellwo was picked up by prison officers and taken to another exercise yard, he added that on the ground a rectangular area had been marked out with a white line. He was told that he had to remain in that space during his time in the yard.

Roland Mayer, whose detention in Stammheim is explored below, spent eight months in Cologne after his arrest in November 1976. He mentioned a very similar situation in which his movement was restricted during his exercise. In his case, it was a circle that had been painted on the ground. Both described the space as small and restrictive. Karl-Heinz Dellwo referred to this as '*completely senseless*'.

With Astrid's experiences of her transfer to the 'dead wing' and not knowing where she was, the arbitrariness that Karl-Heinz Dellwo experienced and the failure to provide reasons could be considered additional techniques of immobilisation that intensify isolation. It could be argued that within this architecturally modern institution, which was constructed to put into practice the ideal of humanising

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<sup>39</sup> Interview with Karl-Heinz Dellwo, 7.

<sup>40</sup> Interview with Karl-Heinz Dellwo, 2-3.

imprisonment, so central to prison reform at the time, the approach towards RAF prisoners, who presented the supposedly highest security risk, was largely guided by the pre-reform (militaristic) emphasis on discipline and order.<sup>41</sup>

## 2. Stammheim prison and high security - room service not included

A newspaper article that was written in 2007, as part of a series on the 30th anniversary of the German Autumn, argues that Stammheim and in particular the seventh floor high security wing are 'a symbol both for the power and powerlessness of the state'.<sup>42</sup>

The high security prison is located in a northern suburb of Stuttgart. It took four years to construct (1959-63) and had been in operation for ten years when the RAF leaders were transferred into the seventh floor high security unit in 1974. At the time it was the most advanced high security prison in West Germany. It was constructed to the latest security standards.<sup>43</sup> The prison layout is made up of three blocks of buildings, a seven story prison block, an administration block and a workshop area. The prison with its purpose-built high security courtroom, which was constructed specifically for the trial of the RAF leadership 1975-77, became the public space of the RAF's armed struggle in prison.

The same newspaper article goes on to explain how the judges chaired by Dr Prinzing in the trial against the RAF leadership made unheard-of allowances. They write that these relaxations were such that

other prisoners in Germany could only dream of then; association/communal detention of men and women [*gemeinsamer Umschluss*], daily showers, generous regulations for visits, television sets, hundreds of books, record players, newspapers and magazines – all this were normal day-to-day occurrences on the seventh floor in Stuttgart-Stammheim. ... In preparation for their trial the accused were allowed to come together in the corridor between their cells – two women and two men – this also a breach of a taboo.<sup>44</sup>

This view of the RAF leadership's detention in Stammheim was reflected in its description as 'Hotelvollzug', that is imprisonment hotel-style or 'five star detention' by one former federal prosecutor

<sup>41</sup> See Chapter 3 for more detail.

<sup>42</sup> S. Klein, 'Gefangen im Unglück', *Süddeutsche Zeitung* Nr. 213 (Munich, Süddeutsche Zeitung GmbH), 15.-16. September 2007, 3.

<sup>43</sup> Justizvollzugsanstalt Stuttgart, Geschichte und Gebäude (<http://www.jva-stuttgart.de/servlet/PB/menu/1158034/index.html?ROOT=1157996>) (accessed 23.05.2010).

<sup>44</sup> Klein, 'Gefangen im Unglück', 3.

in an interview for this study.<sup>45</sup> In his recent article analysing RAF hunger strikes with a focus on the five-year period from 1972-7, Passmore describes their conditions of confinement as fluid but notes that there was a trend towards alleviation of the restrictions.<sup>46</sup>

In his reflections of his detention in the prison, one of the narrators, Knut Folkerts, addressed this dominant representation of RAF imprisonment that is far removed from the isolation they had claimed. He was arrested abroad during the German Autumn 1977 and a year later he was handed over to the German authorities and detained in two Bavarian prisons, Munich Stadelheim and Straubing, before his transfer to Stammheim. He arrived in May 1980 in time for his trial and was detained there until his transfer to the Celle prison high security wing in September 1981. With reference to this dominant view of preferential treatment and privileges he said:

*Although there were also other RAF prisoners on the seventh floor, R amongst others, I had no contact with them. Equally, this [is] very important, because in every single one of the media representations six months Stammheim, which was achieved through hunger strikes - integration [of RAF prisoners] and more relaxed conditions - is portrayed as a constant. And in reality this was a short period, everything else was the maximum of isolation and stress that can be done.*<sup>47</sup>

## 2.1. After the German Autumn 1977: an alternative view of Stammheim

This sense of Stammheim as a place of extreme isolation and stress is also reflected in more detail in Roland Mayer's story of his detention from March 1978 in the aftermath of the RAF leaderships' collective suicide in October 1977. Roland Mayer and his co-accused were transferred there after eight months in Cologne Ossendorf prison and roughly eight months in Düsseldorf prison. He explained how they were first detained in a 'mini' high security wing on the ground floor, because there was construction work going on on the seventh floor. His impression of the prison on his arrival was that it was in a state of turmoil:

*Then, like I said, we were transferred to Stammheim. There was still a state of emergency. It had been fifteen months after the 18 October [RAF leaders suicide in Stammheim] and there were -we were on the ground floor - on a permanent basis there were some members of the Federal Criminal Police Office, State Police Service, Federal Office for the Protection of the Constitution, Federal Prosecution, Federal Border Force and so on... they were there in fact there for the seventh floor.*<sup>48</sup>

<sup>45</sup> Interview with B3 (25. July 2008).

<sup>46</sup> Passmore, 'The Art of Hunger', 3.

<sup>47</sup> Knut Folkerts, 2.

<sup>48</sup> Interview with Roland Mayer, a former male RAF prisoner (ref. A4), 6.08.2008, 18.

Roland Mayer referred to his conditions of confinement as standard for RAF prisoners at the time. As discussed in Chapter 3, these were termed the 'twenty-four point plan':

*Well, apart from that, it [conditions of confinement] was also such that the twenty-four point status was in effect, that is the prohibition of any kind of contact etc. And there was also the special feature namely permanent lighting.<sup>49</sup>*

The fact that the lights were on all the time has twofold significance in Roland Mayer's story. He recounted that following the RAF leadership collective suicide in October 1977, he and other RAF prisoners were put under suicide-watch, which meant the cell was lit up at night. He added that in Stammheim it continued until the end of 1979. The other reference to light in his narrative was that the particular design of the window in the cell blocked out natural light and this required the use of artificial light during the day. The constant of artificial light and conversely the lack of natural light and stagnant air were experienced as additional immobilising measures to the lack of contact that is central to isolation:

*In Stammheim, right, there was the normal neon light that was constantly on, also during the summer. This was because in Stammheim there were a total of four grilles in front of the windows. And apart from a 30 by 30 centimetre surface the whole window consisted of frosted glass blocks. And this 30 by 30 centimetre opening was covered in one normal steel grille and two narrow wire- mesh fly screens, so that virtually no light nor air could enter.<sup>50</sup>*

This lack of fresh air and natural light is also echoed in Knut Folkerts' description of his detention in Stammheim. He explained that in summer on the seventh floor,

*in Stammheim, the temperature made margarine melt.<sup>51</sup>*

He added:

*In Stammheim it was even the case that I did not get out of my cell for days on end. That was particularly extreme, because you did not so much as get any fresh air.<sup>52</sup>*

Roland Mayer's narrative deals a lot with the other significance of light, the suicide watch as a stress factor.<sup>53</sup> He suggested:

*And the light was on at night. In these prisons there was still official lights out, 2200 or 2300. In Stammheim a so-called blue light was turned on, which was not as bright as the neon light,*

<sup>49</sup> Interview with Roland Mayer, 19.

<sup>50</sup> Interview with Roland Mayer, 19.

<sup>51</sup> Interview with Knut Folkerts, 4.

<sup>52</sup> Interview with Knut Folkerts, 3.

<sup>53</sup> This measure had stopped before Knut Folkerts' arrival.

*but it was bright enough to read without problems. And then there was the additional provision that they had to look into the cell every half hour and also to wake you if at night the prison officer was not able to ascertain without doubt that you were still alive. These measures existed until the end of 1979. ... Over the period of two years I had lights on for twenty-four hours per day.*<sup>54</sup>

He described the futility of resistance to this particular situation:

*If you smashed the light, it only led to the reaction that 'aha you can see that there is in fact a suicide risk. Therefore, the measures need to be applied more strictly, because the prisoner is aggressive'.*<sup>55</sup>

And the smashing of the light resulted in a steel and bulletproof glass casing around the light fitting.

In conjunction with this, Roland Mayer mentioned a further immobilising technique, namely the unrestricted access of federal criminal police officers from the Terrorism branch -*Abteilung TE*- to his cell that was stipulated in the investigating judge's decision on his remand conditions.<sup>56</sup> He recounted that in practice the measure involved federal officers gaining access to his cell during the night in order to press him into co-operation:

*Well, it was pretty much impossible [to defend] oneself against these measures [suicide watch] and those that involved somebody ripping open the cell door and waking you up during the night. As far as I am concerned you can go berserk or throw something against the door, despite that you will still be woken up again in half an hour's time, that is if you are able to sleep...*<sup>57</sup>

Roland Mayer described the impact of both these measures on him as severe:

*That is really hard. It's clear, you are constantly in a state of exception.... permanently in a state of stress and so to speak, permanently on Adrenalin high, because you are always expecting everything [possible to happen]. As I said, that was the intention of entering a cell at night, for which there was no need. That could have equally been done during the day.*<sup>58</sup>

The measures in effect abolished the day and night routine in which prisoners have a period of rest at night. This period can be a cause of stress and anxiety for prisoners in solitary confinement, when the noises of the day-to-day running of the wing disappear, as voiced in A's story above.<sup>59</sup>

Roland Mayer summed up these measures again:

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<sup>54</sup> Interview with Roland Mayer, 19.

<sup>55</sup> Interview with Roland Mayer, 17-8.

<sup>56</sup> This measure was identified in the analysis of the first remand decision in U's case May 1977; see Chapter 3 Section 3.2.2.

<sup>57</sup> Interview with Roland Mayer, 18.

<sup>58</sup> Interview with Roland Mayer, 16.

<sup>59</sup> For a historical account see M. Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850* (Macmillan Press Ltd, London and Basingstoke, 1978).

*But a lot more strenuous and much more stressful is the psychological stuff where nobody lays a hand on you; when during the night the cell door is ripped open; with the lights permanently on. In case of doubt much more insidious, because there is really very little that you can do about it.*<sup>60</sup>

Knut Folkerts linked this permanent sense of stress under the isolation in Stammheim with their 'performance' at their trial. Both Roland Mayer and Knut Folkerts were detained in Stammheim specifically for their individual trials before the higher regional court of Baden-Württemberg held in the special courtroom attached to the prison. It had been purpose-built for terrorist trials and had first been used for the RAF leadership trial 1975-77. Knut Folkerts maintained:

*The conditions of confinement always had a direct purpose. That is why my trial commenced three and a half years after I was arrested. This is because you are meant to be softened up in that situation, because you like to summon someone who backs down [klein begeben] or who can no longer be articulate.*

*This is the concrete experience but it is also based on scientific research that you loose your ability to vocalize your thoughts under conditions of isolation, that you are no longer able to be articulate. The prosecution is political and highly complex. The conditions of detention leading up to the trial were to effect that you were not able to cope with it adequately.*<sup>61</sup>

In this comment, Knut Folkerts highlighted how the effects of the restrictive detention in Stammheim contributed to the process of discrediting his account in the public area of the court. It is the notion that under conditions of isolation you loose the ability to express yourself. You become unintelligible and this is compounded by the extreme nature of the experiences that lack a shared framework for understanding.

### **3. The 'new' high security wings - 'postmodern' spaces of exclusion**

After 1977 a number of high security units were constructed to detain convicted RAF and J2M prisoners. These units were built in existing prisons located in various Federal states. For instance, the units explored in this section, were set up in Celle prison in Lower-Saxony, Moabit prison in Berlin, and Bruchsal prison in Baden Württemberg. Celle and Bruchsal detained male RAF prisoners, whereas in the Moabit high security unit both women and men J2M and RAF prisoners were incarcerated, but

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<sup>60</sup> Interview with Roland Mayer, 17.

<sup>61</sup> Interview with Knut Folkerts, 6.

segregated. Other significant units were the women's unit in Lübeck, Schleswig-Holstein and the security cells in Straubing, Bavaria.

In stark contrast to Stammheim prison, the locations for these post-1977 units were either late 19th century to early 20th century modern prisons (Moabit and Bruchsal) or an early 18th century *Zuchthaus* (Celle). Moabit and Bruchsal were the first two modern prisons to be built in the German territory in the mid 19th century.<sup>62</sup> Architecturally they followed the Pentonville star design, a central tower with radiating wings, and introduced the solitary regime to varying degrees of severity.

In contrast, Celle prison was built in the early 18th century in the design of a French palace as a '*Zucht- Werck- und Tollhaus*' (discipline-, work- and madhouse). The German *Zuchthaus* that predated the modern prison was modelled on the medieval monastery. It combined discipline, work and prayer. Harrington writes that 'from the start [they were] corrective institutions aimed at disobedient and disruptive locals rather than vagrant beggars or other outsiders'.<sup>63</sup> According to Celle prison's own historical summary, prisoners were allocated the type of detention according to their physical fitness, where the weaker ones were sent to the *Zuchthaus*, rather than hard labour [*Strafe in Festungsbauarbeit or Karrenstrafe*].<sup>64</sup> This meant that in the mid-19th century until their transfer to another institution, Celle prison housed mainly women inmates. In 1969 this form of disciplinary punishment was abolished.

Knut Folkerts, who was detained in Celle from September 1981 until October 1995 and spent all but the last three years in the high security unit, mentioned this stark contrast in this one institution:

*At the time the contrast between the modern high security wing, maximum isolation, and normal Zuchthaus<sup>65</sup> [prison] was quite large. At that point it had a different name... There were still wooden floors, with the advantage that prisoners could hide things; and wooden doors and long corridors; and during association there was room to do things.<sup>66</sup>*

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<sup>62</sup> See Chapter 1.

<sup>63</sup> J. F. Harrington, 'Escape from the Great Confinement: The Genealogy of a German Workhouse', (1999) 71(2) *The Journal of Modern History*, 324.

<sup>64</sup> JVA Celle, Geschichte (<http://www.jva-celle.niedersachsen.de/>) (accessed 30.06.2010).

<sup>65</sup> It is important to note that at the time the *Zuchthaus* no longer existed. It had been abolished following the prison reform in the 1970s.

<sup>66</sup> Interview with Knut Folkerts, 22.

It can be argued that these old 'factories of discipline' are also the location for the new 'factories of exclusion', following Bauman's description of the shift in the use of solitary confinement from the solitary system to the supermax.<sup>67</sup> In the period that Karl-Heinz Dellwo and Knut Folkerts spent segregated in the high security unit in Celle, from 1978/81 to 1992, respectively, the mainstream prison was undergoing a fundamental reform to develop the humanising prison regime set out in the Prison Act 1976. Its guiding principle of resocialization promotes association of prisoners in order to facilitate their reintegration into society on release. In stark contrast during their incarceration the high security unit in Celle prison was physically removed and completely excluded from the rest of the prison and its reformatory regime.

In the following narratives of the lived experiences in the three different high security facilities, the overarching theme continues to be the immobilising effect of cell and unit design. The following extract from the Committee for the Prevention of Torture (CPT) report of the first visit to Germany in 1993, underlines the significance the narrators place on the design of the high security units. The extract relates to the impression the team gained from visiting the security cells in Straubing prison in Bavaria, mentioned above. The CPT wrote that

It is interesting to note that the isolation cells were so designed that, from within the cell, no human contact with other prisoners was possible. Once inside the cell with all the doors closed, prisoners could not hear any of the usual prison sounds. The cells were located at the intersection of the wings of a building and were reached through a door opening onto a corridor, which served as a form of antechamber and where the showers were also situated. Each corridor contained two cells. In principle, there were no guards in the corridors and the occupants of the cells had no opportunities for visual or other forms of sensory contact with other prisoners or prison officers. Thus, apart from intermittent dealings with staff and occasional visits from relatives or lawyers, these prisoners were effectively isolated from all forms of human contact.<sup>68</sup>

The three units, Bruchsal, Celle, and Moabit are structurally different. In Bruchsal, it consisted of two adjacent security cells that were located at the entrance of a ground-floor wing, otherwise occupied by normal prisoners. In Celle and Moabit, the high security unit consisted of wing closed off from the rest

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<sup>67</sup> See Chapter 1.

<sup>68</sup> Council of Europe, 'Report to the Government of the Federal Republic of Germany on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 20 December 1991' (CPT/Inf (93) 13) 31.



of the prison. Both differed in their design. This structural variation is reflected in the individual stories: Roland Mayer in Bruchsal; Knut Folkerts and Karl-Heinz Dellwo in Celle; and M in Moabit.<sup>69</sup>

### 3.1. Bruchsal

Roland Mayer was transferred to Bruchsal in February/March 1981, after his period in Stammheim that had proved highly stressful due to the additional measures of Federal police investigation and suicide prevention. He served time for a fixed-term sentence and was released on 16 December 1988 under a control order [*Führungsaufsicht*].

As just mentioned, Bruchsal's high security facility consisted of a pair of adjacent security cells built into the original structure of the 19th century prison. Roland Mayer described them as follows:

*Actually there were two security cells. Bruchsal is an old nick [Knast]; thick walls but hollow. These two cells were refurbished. A concrete casing was put around them. Flooring, heating and plastering was ripped out and ... replaced with unplastered walls made of reinforced concrete. In accordance with the post 1977 security standards, the interior consisted of a steel washbasin, a stainless steel toilet, special bars - I think there were two additional grids -; the door had additional locks put on.<sup>70</sup>*

He continued to explain that they were used as a pair. The authorities would rotate him and his belongings between the two cells, in order to search the cell more thoroughly:

*Every few days, at least once a week you had to get out of the cell and you were strip-searched. You got new clothes and you transferred to the completely empty cell; and your belongings in the old cell were searched and were literally thrown into the new cell.<sup>71</sup>*

Knut Folkerts and Karl-Heinz Dellwo's stories of their experiences in Celle also mention that the cells were rotated. Roland Mayer added that the intervals between these transfers became longer over the years. He said that by 1984-85, it had changed to once a month or sometimes every six weeks:

*The cell was searched daily. Only the big ones with transfer into another cell happened at bigger intervals. The cell continued to be searched daily, even on the day before I was released.<sup>72</sup>*

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<sup>69</sup> M's story is a more mediated account than the other stories. This is simply due to the circumstances of the interview that resulted in a poor recording. As a consequence, I have filled in some of the gaps in her narrative voice, however, only in sections where the substance of her comments was clearly audible.

<sup>70</sup> Interview with Roland Mayer, 4.

<sup>71</sup> Interview with Roland Mayer, 4.

<sup>72</sup> Interview with Roland Mayer, 23.

In this context Roland Mayer mentioned that apart from these two different routine searches, on particular occasions a more large-scale search was co-ordinated at Federal level and was conducted in the cells of RAF and J2M prisoners across West Germany at the same time. Roland Mayer remembered two concrete examples:

*Two cases that I remember clearly when they [large scale searches] happened was a road traffic accident that happened close to Stammheim in which Juliane Plambeck and Wolfgang Beer were killed; it happened after the arrest of Christian Klar and Brigitte Mohnhaupt; and also on so-called commemoration days/anniversaries that is 18 October [1977] or 8 May [1976], that is the Stammheim [suicides] or the anniversary of Ulrike Meinhof's death...<sup>73</sup>*

He added that in the particular case of the arrests of Christian Klar and Brigitte Mohnhaupt, the exceptional circumstances under which he was detained came to the fore. He explained that

*Also notable in relation to the theme normality: after the arrests of Christian Klar and Brigitte Mohnhaupt, the Federal Criminal Police occupied Bruchsal prison so to speak, [jedenfalls] well in relation to us ... in fact for a number of days. This meant that what we usually considered normality was suspended.*

*Following this search I requested to telephone my lawyer and as a response the assistant governor's notice read that at that time he was not able to make a decision on such matters. The Federal Police would have to make such a decision.*

*So for a couple of days the Federal Police made decisions on for example whether and when we went on exercise. The prison management no longer had a say in this.<sup>74</sup>*

This extract of Roland Mayer's narrative on searches highlights permeability of RAF isolation by various State agencies through techniques of surveillance. This story, which arguably would sit better in the following chapter on surveillance techniques, Roland Mayer used to further demonstrate the special nature of RAF detention in isolation. The searches, in particular the co-ordinated nationwide searches, are an indication of the limits to the extreme immobilising space of RAF isolation. Its limitations are explored in more detail in following chapters of the thesis on surveillance techniques central to RAF isolation in Chapter 5, but also Chapters 6 and 7 on RAF resistance to isolation.

In relation to the routine in the new security cells in Bruchsal, Roland Mayer explained that immediately after his arrival, the prison governor decided to introduce a form of normality to his and another RAF prisoner's regime. He was allocated work in the print shop. This meant that there was a degree of contact with other prisoners during breaks. He added that his presence resulted in the

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<sup>73</sup> Interview with Roland Mayer, 9.

<sup>74</sup> Interview with Roland Mayer, 9-10.

allocation of an extra prison officer to his workplace. Roland Mayer recalled that the other prisoners recognised the drawbacks of further restrictions:

*Okay. We did this for two to three months. We realised, ... for us, in any case, it was all totally new ...that it seemed to look relatively normal, apart from the fact that I was detained in a security cell. [The extra guard] and in addition to that the permanent strip-searches ... on leaving and entering the cell. For these reasons we stopped [working]. For two to three months normality was played out normality.<sup>75</sup>*

He then went on to describe the routine that followed on from this early period:

*Like I said, we broke off work after two to three months. As a consequence we were punished, no purchases. Exercise on the yard was partly alone or with other prisoners who refused to work. And then again more or less the same security measures were enforced: strip-searched on leaving and returning to the cell. Apart from the one-hour exercise per day, nothing was permitted. Apart from exercise, I spent twenty-three hours per day in the cell.<sup>76</sup>*

This form of high security isolation in cells located on a normal wing did not provide a space for any association with other prisoners outside the exercise period. This differed from the other two high security facilities that were separate units, in which the prisoners to varying degrees were able to associate with one another. This was not without its problems, as becomes evident in the following subsection.

### 3.2. Celle

Karl-Heinz Dellwo and Knut Folkerts' stories of living in the high security unit in Celle from 1978 and 1981, respectively, to 1992, are marked by their experiences of the immensely immobilising effect of the wing's design and also the tensions that emanated from what they termed small group isolation. At the beginning, when Karl-Heinz Dellwo arrived the regime was very restrictive with no opportunity for contact between him and the other two prisoners on the wing. However, following hunger strikes the regime relaxed to allow some degree of association between the prisoners on the wing. For the majority of the time, from 1981 onwards, Karl-Heinz Dellwo, Knut Folkerts and another former RAF prisoner were detained together with some degree of association. This is what the narrators described as small group isolation.

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<sup>75</sup> Interview with Roland Mayer, 3.

<sup>76</sup> Interview with Roland Mayer, 4.

Celle's high security wing was finished in 1978. The wing is L-shaped and is located on the ground floor of the prison. It has a separate exercise yard, sectioned off from the main interior courtyard and separate visitor's room with a retractable glass barrier.<sup>77</sup> At the time of RAF prisoners' detention, the exercise yard was covered by razor wire, with the effect that could be described as a chicken coop.<sup>78</sup>

Karl-Heinz Dellwo, who was transferred from Cologne Ossendorf to serve a life sentence and was the first of the two to arrive in the wing, explained what he considered were the main characteristics of the high security unit:

*I define high security wings as sections in a prison that are hermetically sealed off. They are completely removed from the mainstream regime ...; in the sense that there was never a possibility that another prisoner could have passed, not even by chance; and also in the sense that the guards were a special kind of guard.*<sup>79</sup>

He explained that the prison officers only worked on the high security wing compared to the prison officers they experienced in the mainstream regime, who rotated their duties.

Karl-Heinz Dellwo described the shock he experienced on arriving in this new, sterile wing:

*I arrived in Celle. When I saw the wing, I thought I was going into a freezer. ... you know. Inside there was an atmosphere like a fridge. Everything was brand new and tiled and security doors and cameras and all that stuff. Then I was put in the cell. The cell had two windows and two doors. ...*<sup>80</sup>

These cells with the two doors leading on to the corridor were located in the second part of the wing (L). They provided the prison officers with two forms of access to the cell in cases where they were ordered to remove a prisoner who refused. Karl-Heinz Dellwo continued with his first impressions:

*Then I wanted to open the window and it would not open. And then I thought, that's it in here [das war's hier]. .... Then I realised that they aren't going to open the window. Then, for a moment, I panicked and I thought I am not going to be able to get through this.*

*No sound got through. ... for a moment I felt anxious, claustrophobic.... ....*

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<sup>77</sup> This information is based on information gained on a prison visit to Celle in 2007 in conjunction with another study.

<sup>78</sup> See drawing in P. Bakker Shut et al., *Todesschüsse, Isolationshaft, Eingriffe ins Verteidigungsrecht* (4th edn, Verlag Rote Säge, Berlin, 1995) 185.

<sup>79</sup> Interview with Karl-Heinz Dellwo, 31-2.

<sup>80</sup> Interview with Karl-Heinz Dellwo, 32-3.

*You think, this is such a horror, you are not going to get through this.*<sup>81</sup>

At that time he made a number of drawings of the layout of the wing, the design of the exercise yard, referred to above, the windows and the ventilation shaft adjacent to the windows. These were published.<sup>82</sup> In the same publication, a report of his first impressions of his detention in Celle was reproduced:

to say it differently: this isolation wing is something we have not experienced in this way before, that is wing completely sealed off. this here is the accumulative effect of completely sealed off isolation units. if i did not know that the two Berliners were here - there would not have been any way for me to have noticed. they have incorporated all the experiences of eight years of isolation in this unit. i have been here for 48 hours [now] - apart from the bathroom and the visit in the visitor's room i have nothing new to expect in here. i want to say that from now on there will only be repetitions of this routine. no more coincidences - as i said: the experiences of two dozen isolation units put into practice. i do not think that there is a qualitative progression beyond this - *camera silens*: that is only a quantitative variance [no capitalisation in the original].<sup>83</sup>

Reflecting on this very restrictive period, Karl-Heinz Dellwo said that

*In my life I was never as isolated as I was in that prison. I did not even know whether there were other prisoners. Only days later, when my lawyer came and said that there are others [two other prisoners from context of J2M].*<sup>84</sup>

Knut Folkerts, who arrived in Celle in 1981, summarised the situation on the high security wing as an extreme form of special detention. He explained that compared to the three years he, Karl-Heinz Dellwo and the other former RAF prisoner experienced in the mainstream regime, there was no normal prison life in the high security wing. He added that when he did get to leave his cell, he was surrounded by a number of prison officers. Knut Folkerts described it as a state akin to a

*permanent siege. It is not only the isolation, but a constant aggression that surrounds you; an encirclement. If you look at these wings, they have CCTV; there were microphones suspended in front of the cells; completely deserted. There was a control room behind bullet-proof glass with monitors ... hmm a huge difference between special detention and 'normality'.*<sup>85</sup>

Karl-Heinz Dellwo's narrative also reflects this sense of stress that was created through this form of prison regime and its effect. He commented on the security routine that also included cell rotation. He said that

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<sup>81</sup> Interview with Karl-Heinz Dellwo, 32-3.

<sup>82</sup> Bakker Shut *et al.*, *Todesschüsse*.

<sup>83</sup> Karl-Heinz Dellwo cit. in Bakker Shut *et al.*, *Todesschüsse*, 180.

<sup>84</sup> Interview with Karl-Heinz Dellwo, 34-5.

<sup>85</sup> Interview with Knut Folkerts, 4.

*Celle, this is important. The window was shut. The walls were a pastel yellow colour. As a mirror, there was only a steel pane. That is you were only able to see a blurred reflexion of yourself.*

*Every six weeks, we moved into the neighbouring cell. ... We were in the exercise yard ... and on our return, the guards had put all our clothes and things in an empty cell. You know there were eleven cells. Then all my stuff lay there on the floor. Then you had to remake your bed.*

*That was one of their control measures, so that we were not able to hide anything. And so you came into your cell and you always saw the traces of the predecessor.*

*And at one point during the stress, I do not remember exactly when that was, I looked into the mirror and I thought that I had completely lost it [verbloedet]. I got really scared. I could not come up with anything [mir ist nichts mehr eingefallen]. My head ... my head was vacuous .... you think and there is nothing there.<sup>86</sup>*

This sense of stress that emanated from the emptiness and monotony was far from alleviated but perpetuated by the degree of association that the narrators stated they fought for/negotiated through hunger strikes. This form of small group isolation, limited contact between the same three prisoners over an extended period - the major part of ten years - proved to place additional tension on the individual prisoners:

*The problem was the small-group isolation. It might help you for three weeks, maybe even five. And then ... it tips over. It is just so cramped. You always have to refer to the others. You always have to only relate to the other. ... the rest of the time you sit in your cell for twenty hours [per day].<sup>87</sup>*

Karl-Heinz Dellwo continued to describe the limits to what they could do in the four hours that they were not locked up in their cells:

*in the evening you sit together for an hour and you can discuss something like a newspaper article. And then there is disagreement, because the other sees it differently. Small-group isolation becomes stressful.<sup>88</sup>*

This tension seemed to perpetuate the effects of isolation rather than ameliorate them. Karl-Heinz Dellwo maintained that he continued to experience the long periods throughout the day that he was locked up in his cell. He described it as follows:

*When I was completely alone, I realised that I was lost for words. I just couldn't remember them. I wasn't able to write anything anymore; I wasn't able to read anything anymore. The newspapers, when they arrived, you maybe looked at the pictures. They went out as they came in, so to speak. Books were out of the question.<sup>89</sup>*

<sup>86</sup> Interview with Karl-Heinz Dellwo, 38.

<sup>87</sup> Interview with Karl-Heinz Dellwo, 36.

<sup>88</sup> Interview with Karl-Heinz Dellwo, 37.

<sup>89</sup> Interview with Karl-Heinz Dellwo, 37.

In Karl-Heinz Dellwo's story of small group isolation there is a sense of the shock of losing oneself and the capacity to engage with others in the remoteness, emptiness and monotony of the wing.

Knut Folkerts expressed the same sentiments by making reference to the period of mainstream detention for long-term prisoners in our discussion on the effects of isolation.

*FE: back to isolation again ... Cohen and Taylor<sup>90</sup>, they made comparisons with people in extreme situations, lost without a trace in the open spaces of the arctic...*

*K: an interesting comparison*

*FE: ... where it is a fight for survival*

*K: yes, definitely. When you are extensively/widely isolated from external contacts, influences and people, ... it is virtually like being on an island. ... Maybe that is an imperfect example, because on an island you can still see into the distance. The wing is absolute confinement and also the restriction of vision.*

*After we came out of the tract, we were only moved one floor up into a small section. The first few days [during association] we just stood at the window [on the top floor] and looked out. In the fifteen years [in the high security wing] we were not able to look beyond the wall. For the first time you were able to take in the surroundings.*

*When we arrived by helicopter, you were immediately brought to the high security cell ... That was it. The horizon was the wall surrounding the tract.<sup>91</sup>*

The themes that emerged in the experiences of Celle high security wing, the sense of being closed in and the stress from small group isolation, continue albeit with variation in the following subsection that explores M's experiences of the high security wing in Berlin Moabit prison.

### 3.3. Moabit

This section picks up M's story at the stage of her second and last period of detention in Moabit, a remand prison for men, in West Berlin from the end of July 1976 to 1988. She was returned to Moabit in late July 1976, after she had been recaptured following a successful escape with three others from the women's prison, Berlin Lehrter Strasse, in early July 1976.<sup>92</sup> At the time of the escape, she had been in

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<sup>90</sup> Cohen and Taylor, *Psychological Survival*.

<sup>91</sup> Interview with Knut Folkerts, 23.

<sup>92</sup> This escape is recounted in detail in Chapter 7 Section 1.

prison on remand for almost six years, since October 1970, and her conviction had just been declared valid.<sup>93</sup>

Throughout her detention in Moabit, M experienced two different spaces. One, which the RAF and J2M prisoners had named 'the tower', was a section at the top of the main building that had been designated for women J2M and RAF prisoners. M had been detained there in the period from March 1972 to January 1974, before her transfer to Lehrter Strasse women's prison, and again from July 1976 until 1980, when she and the other RAF and J2M prisoners were moved into the newly constructed high security area, the other space. According to the prison's own website, between 1978-80 A-wing in the main building - the original panoptic star-design building - was converted into a high security facility at the cost of 6.5 million DM. It had a capacity to hold 27 prisoners connected to terrorism and it came with its own exercise yard. This facility was used for nine years and closed in 1989.<sup>94</sup>

The focus of this sub-section are M's lived experiences of the high security wing between 1980-8, in particular the immobilising features of its design and also the effects of small group isolation. M's experiences in the 'tower' provide the context for this. She explained that

*[In Moabit] there was the so-called tower, that is in one of the buildings... - from the inside you could not see it well, but from the outside - there was an extension, as it were ... Because some parts had been destroyed in the war, they had added an extension. And there they put another floor on top. ... And, well the floor below belonged to a different part and the top floor contained five cells.*

*It was called tower... we named it the tower, because from the outside it looked a bit like a tower. ...*

*That is where we were. One cell was for two female prison officers and the other four were occupied.*<sup>95</sup>

Over the years in the tower, there was no association on the wing. According to a report M wrote in 1976 on her conditions of detention, she and the other RAF or J2M prisoners on the wing were segregated from one another. Yet, they were able to share exercise on the yard with one other prisoner and later they had the opportunity to play table tennis. And after her return to Moabit in 1976, she was still segregated from others in the tower. Again in fixed groups of two, they had exercise, were able to

<sup>93</sup> See also M, 'Report on Detention covering period October 1970 to July 1976', dated 16 December 1976, HIS, RAF, RA 02/020, 002, 'okt. 70. - mai 71.

<sup>94</sup> see JVA Moabit, Geschichte (<http://www.berlin.de/sen/justiz/justizvollzug/moabit/historie.html>) (accessed 2.07.2010).

<sup>95</sup> Interview with M, a former female RAF prisoner (ref. A5) 8.08.2008, 7.



play table tennis for one and a half hours per week and they were allowed to spend time with one another five times per week for two hours.<sup>96</sup>

M explained that following the arrest of others in 1978 the women's section in the tower was expanded to a section on the floor below, to which it was connected. In that lower part, as well as in the high security wing, the prisoners were able to associate with one another. She said that

*M: We did not have any communal activities. But like in the section under the tower, we had association - or did we only have association in the [high security] wing?... I would have to think about this. I think up there we also had association, probably, not as long.*

*FE: In the high security wing?*

*M: In the high security wing we then had association. ...*

*FE: [What did that mean?] The cells were unlocked like in the mainstream regime?*

*M: Yes, the cells are unlocked and you can go into other cells, you can go to the bathroom, to the TV room. Upstairs we had a separate TV room. In the high security wing it was the case that ... [inaudible section]... the TV was in the corridor.<sup>97</sup>*

She added later in the interview that association in the high security wing was from midday to 10 pm, whereas in the section below the tower it was slightly shorter, from 2 pm to 10 pm.

Unlike in the Celle high security wing, where at the start K-H experienced complete segregation from the other prisoners on the wing, in Moabit, M was able to associate with her fellow prisoners on the wing. However, M's account demonstrates how this association in small groups, similar to that experienced by Karl-Heinz Dellwo and Knut Folkerts in Celle prison later on in their sentence, was compounded by the immobilising effects of the design of the wing, which projected a remoteness, monotony and complete lack of perspective/view beyond it.

The stories of the experiences of small group isolation both in Celle and M's that follows, contradict the superficially intuitive notion that a degree of association in the wing would counteract or alleviate the immobilising effects of the wing. However, the stories of Celle so far and also M's narrative describe how the prolonged incarceration under such conditions with essentially the same people in small groups of three or four prisoners for prolonged periods of time intensified their experiences of isolation.

<sup>96</sup> M, 'Report on Detention', 2-4.

<sup>97</sup> Interview with M, 17.

M's story of Moabit high security wing immediately contrasts with the silence and the void central to the initial experience of Celle and most notably A's account of the 'dead wing'. M and three other women prisoners of the J2M and RAF wrote in a 1980 report on the situation in the high security wing.

The report stated that

This is not a dead wing; nevertheless a central part of its destructive effect is created through its acoustics.<sup>98</sup>

M's account of the high security wing is one of noise, but mostly a lack of air or ventilation that one could argue amplified the feeling of isolation.

M's story starts with a description of the wing and in particular the effect of the lack of air. She said that

*The wing consisted of two levels. The cells were on the bottom part. The whole wing was divided into smaller sections with different numbers of cells. There were doors that divided these sections. They were locked. It was possible to combine two sections. One cell was converted into a shower-room. Later another cell, converted would be overstating the matter, was equipped as a kitchen. [There was] a cooker and a shelf. The toilet was covered.*<sup>99</sup>

She continued with the main concern that emerged, namely a lack of sufficient ventilation in both the cells and in the corridor of the wing. She said that

*At some point, after a while ... we realised that there was insufficient air. The air that we were getting in the wing was not enough. Because there was no ventilation ...*<sup>100</sup>

One aspect of this was down to the design of the window in the cell. She added that

*It was a double-glazed window with very thick bulletproof glass. ... as wide as these here [in the café] and pretty high. There was enough light, right. Double-glazed and in between there was the grille. At the side there was a narrow thing that you could open [like a vent]. ... This is where the air could get through. ... This was the ventilation in the cell.*<sup>101</sup>

She explained and gesticulated that the air from the outside had to get in at one end of the window travel through the gap between in the double-glazing and then through the narrow vent to the side of the window. And as a consequence not a lot of air got through. She said that later on

*They introduced a pipe to the outside with a flap that could be opened or closed. ... it only worked when there was a draught ...*<sup>102</sup>

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<sup>98</sup> 'Der neue Hochsicherheitsbereich in Berlin-Moabit' reprinted in Bakker Shut *et al.*, *Todesschüsse*, 187.

<sup>99</sup> Interview with M, 17.

<sup>100</sup> Interview with M, 20.

<sup>101</sup> Interview with M, 21.

<sup>102</sup> Interview with M, 20.

M continued to explain that the lack of ventilation in the corridor, which was their communal area, was worse. And in addition to that there was only artificial light.

*In the beginning we still played table tennis [there]. After two or three times I stopped. You just sweltered in the heat. [After that] I only played outside. There was also a table.<sup>103</sup>*

She added that the improvements that were made were ineffective. She said that

*They then introduced a ventilation shaft, which received the air from the roof. This meant that in summer it was hot and in winter it was cold.<sup>104</sup>*

To emphasise her point on the lack of ventilation M retold a story that happened after her release. M was released in 1988 and the wing was closed in 1989. The two remaining women prisoners were transferred to Berlin Plötzensee. M explained that in response to her correspondence with the authorities about closing the wing, she was received a letter that stated that it had already been closed. She recalled that the letter also contained information what they had wanted to use the space for. She continued that

*They wanted to use the wing - there was nobody left in there, it was empty - as a storeroom for prisoners' belongings. And then they reconsidered because there would also have to be prison officers in the storeroom. And because of the bad air ratio it would be a health risk. ...*

*Where we were for years and years, a health risk.*

*I still have it in writing. I think health risk was the expression they used.<sup>105</sup>*

This inadequate supply of fresh air seems to have reinforced the sense of being closed in which is central to isolation. This was further intensified by the acoustics on the wing. The design of the wing made it possible to easily communicate between cells from the window without a raised voice. She commented that

*Any opera house would have envied the acoustics.<sup>106</sup>*

However, this also meant that life on the wing was accompanied by a high level of noise. For instance she explained that

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<sup>103</sup> Interview with M, 22.

<sup>104</sup> Interview with M, 22.

<sup>105</sup> Interview with M, 20-1.

<sup>106</sup> Interview with M, 22.

*The toilets roared. When one of us used the toilet the whole wing could hear. Really, these are issues when you are on top of each other for twenty-four hours a day.*<sup>107</sup>

This was reflected in the early report on the conditions in the high security wing, mentioned above. It said

and specifically in the individual sections: due to the structural conditions, the cramped space and the acoustics that leads to the result that practically every human activity from one of us during association becomes a distraction, a hindrance for the other (as far as we are not doing something together) and therefore it is a key part of the stress programme. Association .... is intended to be counterproductive for us, as source of additional pressure and restriction.<sup>108</sup>

M recollected that a Berlin politician had explained that the rationale behind the high security wing was to evoke the break-up of the group. She summarised his comments as follows

*[he said something like] 'we stick them in there and wait until they annoy one another so much that they want to get out again'. This is how [the wing] was intended.*<sup>109</sup>

The effect of small group isolation resulting in tension and friction among the prisoners reflects Karl-Heinz Dellwo's account of detention with the same two other prisoners for a prolonged period in the Celle high security wing. The question how the narrators individually responded to both small group isolation and the complete isolation, experienced earlier on in their detention, is explored in Chapter 6 that engages with their rationales for resistance, individual survival and striving for community beyond small groups.

#### 4. Conclusion

This chapter explored the personal narratives of the immobilising spaces of RAF isolation. Through these individual stories it revisited two prisons that in the context of RAF incarceration have taken on particular meanings, Cologne Ossendorf prison and the 'dead wing' and the sixth floor high security wing of Stammheim prison. It further explored the experiences of RAF isolation in three of the high security wings constructed following the height of the RAF's armed struggle during the German Autumn in 1977.

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<sup>107</sup> Interview with M, 22.

<sup>108</sup> 'Der neue Hochsicherheitsbereich in Berlin-Moabit' reprinted in Bakker Shut *et al.*, *Todesschüsse*, 192.

<sup>109</sup> Interview with M, 22.

The two stories of Cologne Ossendorf prison were marked by this disjuncture between the modern architectural design reflecting the ideals of a humanising imprisonment, which drove the prison reform at time and later culminated in the Prison Act 1976, and the experiences of a regime in relation to the RAF prisoners seemed to be largely guided by the pre-reform (militaristic) emphasis on discipline and order. This is reflected in A's experiences of her transfer to the 'dead wing' and not knowing where she was, and also K-H's experiences that decisions were arbitrariness and were followed by a failure to provide reasons. It is argued that these were additional immobilising techniques that intensified the already immensely restrictive conditions of their detention through complete segregation and solitary confinement.

The two stories of Stammheim prison relate to RAF isolation in the aftermath of the RAF leadership's collective suicide in October 1977. R described the prison in a state of turmoil. Both R and K's experiences during their trials from 1978-81 and 1980-1 respectively, portray a space of extreme isolation and stress. This stress was perpetuated by the suicide prevention measures that had been introduced following the suicides, which involved twenty-four hour lighting. R explained that this resulted in a permanent state of alertness and was further exacerbated by the unrestricted access of Federal criminal police officers to the cells also during the night. K concluded that the three years of extreme isolation before and during his trial impacted on his ability to vocalise his thoughts and also how he related to others. It is argued that these immobilising techniques contributed to presenting a disorientated and unintelligible person to the public in court, in order to discredit their accounts.

The techniques of immobilisation central to RAF isolation were formalised in the construction of the new high security wings in the late 1970s. The stories of Bruchsal, Celle and Moabit, share how the various designs of the spaces (wings, cells and exercise yard) intensified their experiences of isolation. The design in Bruchsal differed from the other two in that R was detained in special security cells located on one of the ground floor wings of the prison rather than a segregated high security wing. For R there was no association with others apart from the periods of joint exercise with another RAF prisoner also detained in Bruchsal prison.

In contrast the stories of both the Celle and Moabit high security wings include the experiences of varying degrees of association on the wing. However, the narratives reflect how this detention in small groups of the same three to four people for prolonged periods of time compounded/intensified the very restrictive space of the wings. In Celle it was the sense of remoteness,

vacuity, monotony and lack of distance of the wing, whereas in Moabit it was the lack of air and a sense of living on top of one another caused by the wing's acoustics.

The personal narratives of RAF imprisonment focus on how they responded to the conditions of isolation through resistance techniques such as hunger strikes and everyday refusals, and also escape. Further the resistance stories recount the processes and rationales to achieve community through the integration of RAF and J2M prisoners in larger groups in order to break the individual and small group isolation explored above. Though ultimately the integration of RAF and J2M was not achieved, the personal narratives describe the techniques for and the importance of individual survival. These resistance stories follow in Chapter 6 on hunger strikes and other refusals and in Chapter 7 on escape, survival and community.

The following chapter explores the other half of RAF isolation. It engages with the experiences of the surveillance space through the regulation of visits, censorship of material, monitoring of defence contacts and the control of prison staff. Together with the immobilising techniques explored in this chapter the underlying aim was to disable the group and break the (political) resolve of the individual prisoner. Chapter 5 analyses the limits of this approach. The most striking example for this was the RAF leadership's collective suicide under complete lockdown conditions, following the failed attempt to press them free during the violence of the German Autumn in 1977.

## Chapter 5

### Isolation: cut off - high/low-tech surveillance

*Isolation is the severance of contacts within the prison, the severance of contacts to the outside, that is through letters and visits, and the severance of other forms of access to information such as newspapers, magazines, books, music and the like. That for me is isolation.*<sup>1</sup>

This chapter explores the individual RAF narratives of surveillance that, with the narratives of exclusion explored in the previous chapter, make up the individual experiences of RAF isolation. What Roland Mayer's words highlight with their emphasis on severance of contact is voiced throughout this chapter in the individual stories on censorship of material or the monitoring of visits. The techniques of surveillance are seen as part of the strategy of containment. Through techniques of immobilisation and surveillance aimed at controlling the RAF prisoners' communication within the prison and to the outside.

Conceptually there is an overlap between the techniques of immobilisation and surveillance central to RAF isolation. For example, the suicide prevention measures in relation to Roland Mayer's experiences in Stammheim prison.<sup>2</sup> On the surface they can be described as a surveillance measure - the prison officer periodically checks through the spy hole that the prisoner has not harmed himself - however, following Roland Mayer's story, it seemed to sit better as the experience of reinforcing the immobilisation techniques of RAF isolation. Whereas these measures were aimed at preventing communication of the prisoners with others, the surveillance techniques were employed in situations where contact with others could not be curtailed completely. This included visits and correspondence.

In the analysis of the RAF individual narratives of surveillance techniques, the experiences of space that were central to the stories explored in Chapter 4 continue to be significant. The narratives illustrate how these are linked to the specific context of their isolation.

In his conceptualisation of surveillance, Coleman points out the importance of understanding surveillance as a 'spatial practice' that is context-dependent:

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<sup>1</sup> Interview with Roland Mayer, 8.

<sup>2</sup> See Chapter 4, Section 2.1. for more detail.

[I]t reflects, modifies and reinforces power relations in space. .... [S]urveillance is embroiled in managing movement within, between and beyond spatial borders - it also reinforces common perceptions and understandings of what particular spaces are for (the activities they support, and the resources and rights they forge in relation to particular groups and individuals).<sup>3</sup>

Though Coleman's proposition needs to be slightly adapted for this analysis, namely to replace the management of movement with the control of RAF communication. This highlights how context impacts on the level and intensity of surveillance. The continued conflict between the RAF and the state throughout the 1970s, 1980s and until the early 1990s was a significant factor for the persistence of the surveillance measures for RAF prisoners, their supporters and sympathisers; the population under surveillance.

The chapter is divided into five sections. The first four sections explore the stories of surveillance techniques under conditions of RAF isolation. Section 1 examines the restrictions and the monitoring of visits. Section 2 analyses the types of political content that was censored and the restriction of access to media. Section 3 explores the surveillance space of RAF isolation and how it affected the prison staff, who worked there. Section 4 examines the role of the defence lawyer and the impact of the restrictions on defence contact brought about by the counterterrorism legislation introduced throughout the 1970s.<sup>4</sup>

Section 5 again engages with a measure in which the boundaries between surveillance and immobilisation are blurred, namely the prohibition of contact.<sup>5</sup> The RAF and J2M prisoners were detained in complete lockdown at the height of the German Autumn in 1977. It is included in this chapter as a separate section in order to explore its limits as a technique of isolation.

## 1. Visits: regulation and monitoring

This section engages with early -1970s pre-trial - and later - post German Autumn 1977- stories of the regulation and monitoring of visits from family members, friends and supporters.

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<sup>3</sup> R. Coleman, 'Surveillance and social ordering' in D. Drake, J. Muncie and L. Westmarland (eds.) *Criminal Justice: Local and Global* (The Open University/ Willan Publishing, Milton Keynes/Cullompton Devon, 2010) 151.

<sup>4</sup> See Chapter 2, Section 4 and Chapter 3, Section 1 for an overview.

<sup>5</sup> For a detailed explanation of the contact ban and the Prohibition of Contact Act 1977, see Chapter 3.



Astrid recalled visits in Frankfurt Preungesheim prison during her trial in 1973. They were either 30 minutes every two weeks or 1 hour per month. Apart from family, she also had visits from supporters. But overall they were a negative experience for both sides:

*Right, the visits were crap. They were all so closely monitored. You could not do anything nor could you say anything. And you know the visitors thought that we were all being led to our death.*<sup>6</sup>

Though Astrid's experiences recounted here are from the early 1970s, the monitoring of visits, and the tension that ensued from it, also emerge in the later stories below.

### 1.1. Private visits: restrictions upon restrictions and other tactics

Knut Folkerts' account of his experiences of visits throughout his detention in isolation, both on remand and then after 1981 whilst serving his sentence in the high security wing in Celle, mirrors the themes that Astrid raised; namely the monitoring of visits and how it affected them.

When he started to talk about visits, the first point he mentioned was that there were very tight restrictions on who was authorised as a visitor. He talked about a 'blanket ban' on visitors. By this he means that a person, who had applied to visit him and was rejected, consequently would also be rejected in a further application to visit other members of the RAF in other prisons. He commented on the uncompromising even unlawful implementation of the rules. He explained that,

*... you actually have a right to visits, but in our case it was always applied extremely restrictively, also illegally. My brother's right to visit me was withdrawn, which actually is impossible.*

*And everybody who wanted to visit us over the years simply received, initially as a matter of course, a ban and when they did gain access then there was so much provocation that the visit ended coercively.*<sup>7</sup>

To illustrate what he meant by provocation, Knut Folkerts explained the nature of visits in the high security wing in Celle prison in greater detail. He started out with:

*When you did have a visit in the wing that wasn't prohibited from the start, in addition to the prison guards political police sat in [Federal Criminal Police Office (BKA) or State Criminal*

<sup>6</sup> Interview with Astrid, 48.

<sup>7</sup> Interview with Knut Folkerts, 5.

*Police Office (LKA)], who provoked you, in order to provoke the situation so that they could terminate the visit.<sup>8</sup>*

He elaborated on the particular surveillance space that was the visitor's cell in the high security wing:

*You sat opposite someone with whom you want to converse with and you cannot talk. It is not like a visit in a normal visitor centre where you sit at a table with your visitor. Rather you are put in a tight, special cell and there are not only guards there but also political police.<sup>9</sup>*

He continued with the statement that summed up this particular surveillance space with the presence of not only prison officers, but also members of the State or Federal police, which in turn compounded the isolation experienced in the wing.

*And at the time with their feeling of power they felt that they were allowed to do anything that they liked mmm ... and as a result visits were pointless.<sup>10</sup>*

In addition to the police presence, visits were also conducted behind a glass partition. Knut Folkerts explained how this measure aggravated an already tense situation. Again he provided a contrast with his experiences after the transfer out of the high security wing into the mainstream regime in the early 1990s:<sup>11</sup>

*And they did this glass partition for private visits, even with my father, the closest relative. The effect is that you cannot communicate acoustically.*

*Towards the end we had normal conditions of detention that included visits in the normal visitation area.*

*As a result you can see that the special detention is the greatest deprivation of contact possible and causes maximum stress and provocation as a permanent state.<sup>12</sup>*

Knut Folkerts' narrative illustrates how the experience of isolation was intensified through not only the restrictions placed on who was to be authorised as a visitor, but also through the vocal presence of State officials effectively censoring conversation. Apart from the Federal/State police and the prison service, he mentioned the role of the courts in their isolation:

*Basically I was without visits for years. As long as my parents were still alive, they visited me, but for years people who were close to me just did not receive permissions to visit.*

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<sup>8</sup> Interview with Knut Folkerts, 7. Here he uses politicised language when he refers to the Federal Criminal Police Office and the State Criminal Police Office as political police.

<sup>9</sup> Interview with Knut Folkerts, 7. Here again he uses politicised language when he refers to political police.

<sup>10</sup> Interview with Knut Folkerts, 7.

<sup>11</sup> See Chapter 6, Section 3.1. for more detail.

<sup>12</sup> Interview with Knut Folkerts, 7.

*Only through the hunger strikes, we could change it a bit. Time and again there was a rollback [English in the original]. The investigating judges during the pre-trial detention and later the judges of the Strafvollstreckungskammern,<sup>13</sup> who made hundreds of decisions, put a lot of effort into sealing us off.<sup>14</sup>*

The role of the *Strafvollstreckungskammer* is explored further in Subsection 2.1.1. with a focus on its role in the appeal of censorship decisions.

This sense of tension created by the vocal and 'meddling' State presence was echoed in the other narratives. From Astrid and Knut Folkerts' accounts the impression gained of the visits are of spaces influenced by control and containment that frustrated communication and rendered the visits pointless. In conjunction with the glass partition, they contributed to pursuing the aim of communicative separation at the centre of RAF isolation. The following section on the restriction and censorship of correspondence, publications and media provides further examples of a strategy of containment.

## 2. Correspondence, publications and media: restrictions and censorship

The narrators considered the restrictions on these forms of contact with the outside and also their censorship significant. This was in light of the public perception that RAF and J2M prisoners supposedly received privileges throughout their detention that far exceeded what prisoners in the mainstream regime were entitled to at the time.

The 2007 newspaper article on the RAF leadership's conditions in Stammheim stated that the prisoners had access to '... television sets, hundreds of books, record players, newspapers and magazines - all this were normal day-to-day occurrences on the seventh floor in Stuttgart-Stammheim'.<sup>15</sup> And in the movie *The Baader-Meinhof Complex*, this period in Stammheim is visually depicted with cells that resemble dorm rooms or offices, filled with books, papers, radio and TV-sets.

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<sup>13</sup> *Strafvollstreckungskammer* is the chamber of the local State Court responsible for the execution of punishment. See D. van Zyl Smit, 'Release from life imprisonment: A comparative note on the role of pre-release decision making in England and Germany', in Groenhuisen, M. and T. Kooijmans, T. de Roos (eds.) *Fervet Opus. Liber Amicorum Anton van Kalmthout* (Maklu Publishers, 2010).

<sup>14</sup> Interview with Knut Folkerts, 5.

<sup>15</sup> S. Klein, 'Gefangen im Unglück' *Süddeutsche Zeitung* Nr. 213 (Munich, Süddeutsche Zeitung GmbH), 15.-16. September 2007, 3.

The images suggest that this had been the operational headquarters of the RAF in the lead up to the German Autumn in 1977.<sup>16</sup>

Against this backdrop, the narrators were mindful to emphasise that this did not reflect their overall experiences. Access to audio-visual media varied in the individual narratives. For instance, M in her account of the high security wing in Moabit prison in the 1980s mentioned that there was access to a communal TV, whereas Roland Mayer emphasised the point that throughout his imprisonment he never had access to a TV.

During his sentence in the security cell in Bruchsal prison, Roland Mayer's request for a tape-player was granted, however the record function had been disabled. And in the high security wing in Celle prison, Karl-Heinz Dellwo applied to purchase a record player, which after initial rejection was eventually granted following appeals. Here the requirement was that the player had a complete Perspex casing. This variation in access to audio-visual media presumably was down to differing interpretations of the Prison Act 1976 in the individual Federal States.

In the stories the narrators mentioned that it took time until the request for a personal radio was authorised, yet even then this was restricted to radios without FM broadcasting. Apart from that some prisons had the facility in individual cells for listening to what M described as the '*official radio*'. She added with a sense of irony,

*Wow .... the amazing music it played.*<sup>17</sup>

Karl-Heinz Dellwo addressed the debate of the Stammheim privileges directly in the context of how he dealt with the isolation measures.<sup>18</sup> In particular he stated that the offset of the number of books and the like against the severe solitary conditions was dreadful:

*If we go back to Stammheim, ... they [the RAF leadership] supposedly had 800 books and 270 LPs and 46 newspapers ... and so on. Then I would say, that is correct, but you just have to consider the period beforehand. The time Ulrike was in Cologne-Ossendorf or Astrid.*<sup>19</sup>

<sup>16</sup> Constantin Film, *The Baader-Meinhof Complex* (2008) ([www.thebaadermeinhofcomplex.com](http://www.thebaadermeinhofcomplex.com), accessed 23.05.2010).

<sup>17</sup> Interview with M, 7.

<sup>18</sup> The narrators' responses to isolation through resistance are explored in more detail in Chapters 6 and 7.

He went on to explain that he did not consider the eighteen months he was detained in Dusseldorf during his trial, where he had association with his co-accused, as 'ill-treatment through isolation':

*In those eighteen months in Dusseldorf, we also sat together and of course the lawyer constantly visited [with reference to the Stammheim privileges mentioned above]. We were occupied with a project and you felt completely different.*<sup>20</sup>

Karl-Heinz Dellwo contrasted this with the effect of the isolation measures after he was sentenced. At first this was the extreme solitary regime in the high security wing in Celle prison and later the limited association in small group isolation.<sup>21</sup> He criticised the dominant debate:

*And the period thereafter is simply faded out ... . And in Celle we supposedly had 800 books. That would not have been of any use to me, because even with my twenty books I was not able to finish a book and with the newspapers it was equally difficult.*<sup>22</sup>

As with visits, a contact ban could also be placed on correspondence. Karl-Heinz Dellwo recalled how on his arrival in Celle prison high security wing in 1978 an initial ban had been put in place. He said that prior to his transfer he had had authorised contact with nine people:

*Nobody was informed that you had been transferred. So I thought I'd write to them briefly that from now on I was in Celle.*

*Because it was Friday evening, the mail would be dispatched on Monday morning. On the following Monday morning at 1130am I was led into the office of the head of the high security wing ... and he told me that one of the measures was to be that I no longer had contact with the following persons. He had ordered that a contact ban was raised for the following people. And he had copied down all the addresses of people I had written the letters to. My sister was even among them.*<sup>23</sup>

He went on to explain what he thought the motivation behind this measure was:

*The aim was, along the lines, they affirm him in his conviction and therefore contact with them does not support resocialization....*

*Who else could I have had contact with. I did not know anyone anymore.*<sup>24</sup>

This situation did not continue. For instance, Knut Folkerts' account above highlighted the impact of the hunger strikes, which resulted in some relaxations to the restrictions. This is explored in more detail in Chapter 6 on the techniques of resistance. However, Karl-Heinz Dellwo's initial

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<sup>19</sup> Interview with Karl-Heinz Dellwo, 78.

<sup>20</sup> Interview with Karl-Heinz Dellwo, 78.

<sup>21</sup> See Chapter 4, Section 3.2. for his experiences of small group isolation.

<sup>22</sup> Interview with Karl-Heinz Dellwo, 78.

<sup>23</sup> Interview with Karl-Heinz Dellwo, 33.

<sup>24</sup> Interview with Karl-Heinz Dellwo, 33-4.

experience in the Celle high security wing was one of an extreme solitary regime, which he likened to being in a fridge.<sup>25</sup> Within this context, the contact ban on all his non-legal correspondence for that period effectively completed the social isolation.

The restriction and censorship of contact explored in the stories that follow are loosely grouped into two overlapping categories, namely correspondence and print publications (books, newspapers, magazines). The stories illustrate how these measures were targeted at the RAF prisoners' political identity and outlook and how the censorship was central to the narrator's experiences of isolation.

## 2.1. Correspondence and print publications

Roland Mayer's account gives an overview of the restrictions and also the nature of the censorship. In the following dialogue he reiterated Karl-Heinz Dellwo's comments on the restrictions on the amount of books and newspapers that they were allowed to hold in their cell at any one time:

*FE: Books and newspapers, were there any restrictions?*

*Roland Mayer: Yes. You were not permitted to have more than twenty books in your cell.*

*FE: Also in the prison system?*

*Roland Mayer: Yes. ... Catalogues from publishers also counted as books.*

*FE: I heard something like that from Karl-Heinz Dellwo.*

*Roland Mayer: They also counted it as a book. And with newspapers there was the limitation that you were only handed a newspaper after you handed back the previous issue. That meant we were never allowed to hold on to an old copy.<sup>26</sup>*

Crucially, he said that a restriction also was placed on the amount and type of legal files they were permitted to have in their cells. He said:

*Another important point ... equally a restriction was the number of files or folders that you were allowed to have in your cell, ten to twenty. If you bear in mind the extent of the case files of around sixty ... and added to that the lever arch file was considered a technical appliance and banned. You only had the use of folders, because there was too much metal on a lever arch file and you could conceal something in them that could not be found in a normal search.<sup>27</sup>*

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<sup>25</sup> See Chapter 4, Section 3.2. for more detail.

<sup>26</sup> Interview with Roland Mayer, 8.

<sup>27</sup> Interview with Roland Mayer, 9.

Section 4 explores some individual stories of the restrictions of defence visits and correspondence that had been introduced with the Anti-terrorist Act 1976.<sup>28</sup>

Apart from these restrictions, the censorship of the various materials, which provided a link with the outside world, intensified the experience of isolation. Roland Mayer explained the nature and extent of censorship:

*While we are talking about censorship. Of course it always varied. There was always censored content; all political themes that were topical at the time, for instance in the eighties the debate on the deployment of Pershing II Missiles in Germany [and] the movement that emerged around it ... if that was in a letter it was withheld.*<sup>29</sup>

At this stage the mail was censored and stopped in the individual prisons. Karl-Heinz Dellwo explained the administrative and legal process for appealing such decisions in Lower Saxony. Though the prison administration is State and not Federal jurisdiction, one can assume that procedural structures were similar, because in the period in which the narrators served their sentences -mid 1970s to early 1990s - the Prison Act 1976 applied equally in all Federal states.<sup>30</sup>

Karl Heinz Dellwo suggested that in the first instance one appealed to the Office of Prison Administration in Celle. His impression was that they 'naturally dismissed everything'. From there the appeal went to the *Strafvollstreckungskammer* and finally to the Higher State Court. He continued with his assessment of the process:

*I think at the Strafvollstreckungskammer ... I cannot recall a single decision where we succeeded. After the Strafvollstreckungskammer you could only go to the Higher State Court.*  
....

*At the time I always said that every 80 to 100 cases, that was my impression but it is not accurate, we got a positive result at the Higher State Court.*<sup>31</sup>

One example that stuck in his mind where they succeeded at the Higher State Court was not a censorship issue, but a refusal to adhere to unreasonable rules. Karl-Heinz Dellwo and another prisoner, who was detained in Celle before Knut Folkerts arrived in 1981, had joint exercise. Karl-Heinz Dellwo

<sup>28</sup> See Chapter 3, Section 1.3. for more detail.

<sup>29</sup> Interview with Roland Mayer, 9.

<sup>30</sup> Following the federalism reform, the power to legislate on the prison system was transferred from the Federal level to the individual Federal States from September 2006. See Frieder Dünkler, Bernd Geng und Christine Morgenstern, 'Rechtstatsächliche Analysen, aktuelle Entwicklungen und Problemlagen des Strafvollzugs in Deutschland' (2010) 7 *Politik und Zeitgeschichte* (<http://www.bpb.de/publikationen/>) (accessed 2.01.2011).

<sup>31</sup> Interview with Karl-Heinz Dellwo, 54.

recalled that at one point a table tennis top was put in the yard that was attached to the high security wing. The top's use was limited to Tuesdays and Thursdays. He explained that there was no apparent reason for this restriction:

*At one point we decided we are going to play on Wednesdays, instead of Tuesdays and Thursdays. We set up the table tennis top and there were no prison officers on the yard, only the cameras. A few minutes later the door opened and the table tennis was packed up and the situation turned into a question of power.*

*We refused to co-operate and the result was that a troop of officers cleared the yard and dragged us into our cells.<sup>32</sup>*

They filed a complaint and Karl-Heinz Dellwo remembered that the issue went up through the appeal's process until it came before the Higher State Court.

*And then we get to the Higher State Court and they find in our favour and take a swipe at the prison, because the judge was appalled. That is why I can still remember his reasoning: 'The prison does not have a right to blind obedience'.<sup>33</sup>*

He experienced this as one of the victories against the institution as part of their strategy to create personal space within isolation. The rationale and strategies for resistance and subversion are explored in more detail in Chapters 6 and 7. This story highlights that there was a possibility of succeeding with appeals, albeit according to Karl-Heinz Dellwo a very slim one.

### 2.1.1. Three examples: from anarchist publication to subversive socks

This section continues with three examples of the censorship of print material in order to gain an insight into the type of 'political topics' that were restricted. These examples are taken from a collection of legal materials published by RAF lawyers in 1989. They illustrate the continued severe restrictions that extended well into the 1980s, a decade after the height of the struggle against the RAF. The general tenet of the collection of decisions from which the examples derive, seem to be to prevent access to any print material where there was a risk that it confirmed the RAF prisoner's political convictions.<sup>34</sup>

Knut Folkerts' comment highlights how the arguably wide interpretation of this approach compounded the effects of isolation:

*And what you are left with is that you mentally confront the perforce fabricated emptiness and fill it with the little that you are left with, that you occupy yourself with. And that is again the*

<sup>32</sup> Interview with Karl-Heinz Dellwo, 55.

<sup>33</sup> Interview with Karl-Heinz Dellwo, 55.

<sup>34</sup> See Chapter 3, Section 4.4. on the question of political conviction in decisions on the application of isolation measures under the Prison Act 1976.



*other point that is limited through isolation, through hundreds of rulings, access to any kind of literature that you are interested in. Over a period of years there was - you can read it up in one of the booklets what the ... judges in Celle thought was great - ... political censorship, visitation bans, or why the sending of hand knitted socks in the mail poses a threat to the security and order of the prison. It is all in there.*<sup>35</sup>

Leaving the socks till last, the first two examples are decisions in which print material was partially withheld. This material was either attached to a letter or sent as a subscription. The first example is a letter from the President of the Office of Prison Administration Celle, dated 9 October 1986, in which he gave reasons why the prison governor withheld parts of a letter sent to one of the RAF prisoners in the high security wing:

The prison governor stopped parts of the letter addressed to you, namely pages one to eight of the publication 'Initiative of the family members of political prisoners at the United Nations Human Rights Committee in New York'. Receipt of this publication would confirm your subversive attitudes.<sup>36</sup>

This extract raises the question to what extent information on the human rights campaign of the relatives perpetuated the individual prisoner's enmity towards the state. From reading the UN Human Rights Committee's (UNHRC) 1986 report one could argue that the UNHRC's thorough scrutiny of the routine special regime of detention and the nature and extent of isolation of prisoners accused and convicted of terrorist offences tarnished the Federal Republic's human rights image.<sup>37</sup>

In particular, the detailed questions on whether the penal approach to these prisoners was in compliance with Art. 7 of the International Covenant on Civil and Political Rights demonstrated that these issues were taken seriously at international level. As a consequence, the prisoners, their relatives and other supporters received some affirmation that their complaints were worth considering.

The second example is a judicial justification for censoring a particular issue of a journal. The judge at the *Strafvollstreckungskammer* of the State Court in Lüneburg on 4 January 1989 wrote the following with reference to the aim of imprisonment:<sup>38</sup>

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<sup>35</sup> Interview with Knut Folkerts, 5.

<sup>36</sup> Trobitzsch et al. (n) 77.

<sup>37</sup> UNHRC, Report of the United Nations Human Rights Committee (A/41/40) 61-3. See Chapter 3, Section 4.5. for more detail.

<sup>38</sup> § 2(1) of the Prison Act 1976.

The publication '*Blätter des IZ 3W Nr. 151*' addressed to you - 'a murderous machine can only be fought' contains on pp 19-36 depictions that effectively promote violence in order to achieve particular goals within the Federal Republic of Germany. Publications with this content effectively encourage your terrorist, subversive convictions that are known to the court. And consequently, there is a severe risk that the aim of imprisonment is undermined. The aim of imprisonment is to empower the prisoner to lead a socially responsible life in future without crime (§ 2(1) of the Prison Act 1976).

At the beginning of the article printed on page 36 there is a cartoon that depicts a vampire and a number of brand names of well-known German banks. This is intended to give the impression that ultimately poverty and misery in third world countries has been caused by large banks.

The chamber is of the opinion that the content of these withheld pages is not only completely partial, but also thoroughly inciteful, malicious and directed at creating resistance.<sup>39</sup>

This publication was listed in the *OECD, 1990 Directory of Non-Governmental Development Organisations in OECD Member Countries* as a journal published by the Third World Information Centre in Freiburg founded in 1968.<sup>40</sup> The particular issue No. 151 had the title 'IMF-World Bank campaign'.<sup>41</sup>

This example highlights the difficulty the court faced to establish where to draw the line to political opposition in the context of prisoners' rights, in particular freedom of expression. In this case there was no reference to the promotion of violence, but simply promoting resistance against the alleged exploitation of developing countries.

The final example illustrates how the judges approached the question of disabling the group identity of the RAF and J2M prisoners. In the decision on whether Karl-Heinz Dellwo was allowed to receive a pair of hand-knitted socks, the *Strafvollstreckungskammer* at the State Court in Lüneburg in its decision from 3 January 1989 wrote the following:

The applicant is a terrorist. He rejects the existing order of the Federal Republic. He is filled with hate and seeks to fight against it. For this reason he was detained in the high security wing of Celle Prison I.

His application to receive a pair of socks knitted by the [female] terrorist prisoner S.H., at present detained in Bielefeld prison, was to be rejected on the aforementioned grounds.

The dispatch of hand knitted socks by a detained violent offender would encourage a sense of group cohesion.<sup>42</sup>

<sup>39</sup> R. Trobitzsch et al. (eds.) *Zur Haftsituation der Gefangenen aus der RAF und aus dem Widerstand: gegen die Propaganda von Normalvollzug, Privilegierung und Selbstisolierung der Gefangenen* (Hannover, April 1989) 77.

<sup>40</sup> *OECD, Directory of Non-Governmental Development Organisations in OECD Member Countries* (Paris, 1990) Ref. DEU 0789.

<sup>41</sup> According to its current website it is a journal for politics, economy and culture between the north and south. See <http://www.iz3w.org/> (accessed 23.07.2010).

<sup>42</sup> Trobitzsch et al., *Zur Haftsituation der Gefangenen aus der RAF*, 82.

These examples illustrate how wide and comprehensive the restriction and censorship of material was. They also suggest that both the administrative and judicial approach was based on isolation through communicative separation from political ideas and also from various forms of solidarity.

For instance, in Roland Mayer's experience in Bruchsal prison this affected how he was able to purchase books. He explained:

*Catalogues for books had to be sent from the publisher directly, [but] there was no permission to send books directly. Rather they had to be purchased through the prison. I wrote the title of a book on a piece of paper and the prison officer went to the [local] bookshop and ordered a copy. The same [procedure] was applied for music tapes.<sup>43</sup>*

Roland Mayer continued with why he thought this was the case:

*It meant that I had to raise the money from some people, because they did not want publishers to send books or other deals out of solidarity.<sup>44</sup>*

The following section returns to censorship under the pre-trial detention framework and highlights that the standardised approach to RAF/J2M prisoners extended to the banning of print publications.

### *2.3. Pre-trial detention: a standardised approach to censorship of print media*

This point underscores the argument that while under the jurisdiction of the Federal investigating judge there was a degree of standardisation of the conditions of detention of RAF and J2M prisoners.<sup>45</sup>

In the interview with U, who was convicted as a sympathiser of the RAF in the late 1970s, copies of Federal Court of Justice decisions on the censorship and ban of various 'sponti' (neo-anarchist) magazines like *Pflasterstrand*, *Rebellen Nr 26* or *Arbeiterkampf 113* were discussed. Under § 119(3) of the Criminal Procedure Code the investigating judge can apply his discretion and set conditions or restrictions on an individual basis where there is a threat to the institution or where there is a risk of escape or tampering with evidence.

The overall impression from these decisions was that a number of prisoners, who had requested a particular magazine, were grouped together in a decision. For instance, one particular

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<sup>43</sup> Interview with Roland Mayer, 9.

<sup>44</sup> Interview with Roland Mayer, 9.

<sup>45</sup> See Chapter 3, Section 3.

decision referred to *Arbeiterkampf 113* and applied to five different prisoners including U and Roland Mayer. U commented that '*they were probably the ones who in effect received the publication*'.<sup>46</sup> The decision not only grouped prisoners together, who were detained in different institutions - Pforzheim, Frankenthal, Karlsruhe, Stammheim and Düsseldorf - but also prisoners with different case numbers.

This once more underlines the idea that these surveillance measures as a part of RAF isolation were aimed at disabling the group and breaking the (political) resolve of the individual prisoners.

So far this chapter has engaged with the individual narratives on the futility of the visits due to a catalogue of restrictions that rendered the visits pointless. Also, it has highlighted the extent to which material was censored based on a wide interpretation of political convicts and group cohesion. Furthermore, with the standardised approach to pre-trial detention of prisoners connected to terrorist organisations, the censorship of print media was also standardised.

The following section explores the effect of the surveillance spaces of RAF isolation on the prison staff.

### **3. The surveillance space of RAF isolation and prison staff**

This section explores the question how the narrators perceived the impact of the surveillance space of RAF isolation on prison staff they encountered. The individual stories include Astrid's account of a lack of sympathy by women prison officers during her extreme isolation in Cologne-Ossendorf prison. This is followed by accounts of the adverse consequences for staff that interacted with RAF prisoners and, lastly, the perceived effect of working in the Celle prison high security wing over a prolonged period of time.

#### **3.1. Prison staff and the RAF: simply doing their duty**

Astrid started out with a description of the staff she encountered on the normal wing in Cologne-Ossendorf before she was transferred to the dead-wing.

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<sup>46</sup> Interview with U, 53.

*Every block had their prison officers [women officers]. They worked shifts. I still remember that there was one, who was quite cheerful. ... She was the brusque type but quite alright. ... And then there were other prison officers, who were somewhat older, close to retirement, [ ] still from the war. ... They weren't inhuman but everything was done properly.*<sup>47</sup>

After the transfer to the dead-wing, a remote, disused hospital wing in which she was the only detainee until she was moved out for Ulrike Meinhof, who was to be detained there in 1972, Astrid explained how in this extreme isolation she sought some form of contact, in order to maintain a link with reality.<sup>48</sup> She said:

*I am the kind of person who always needs a bit of reality in order to check - I mean normally I am level-headed - ... [but at the time] I had so much fear in me; I had so much fear; I always thought that people must be horrified by my fear. And then every time I looked at them [prison officers] and they then smiled at me; it made me relax.*<sup>49</sup>

Astrid went on to explain how the remote location of the dead wing basically resulted in extra work for the prison officers:

*Where was I, oh yes ... there were these old ... prison officers. They knew me. I was kind of a special case but somehow still a normal prisoner. And then they always had to come to the back [of the prison] where I was. And ultimately it was also more work. And only the main prison officers were allowed to totter to my cell; they were sixty... they never complained. ... But you did notice ... when I got a visit, then they had to come and I needed to be changed [searched], that was simply more stress for them.*<sup>50</sup>

Astrid explained that to break the solitude, and to see that she was still a human being, she tried to connect with the prison officers through simple things like commenting on the weather or a piece in the newspaper. She added that she later received criticism for this.<sup>51</sup> At the time the RAF had a policy of hate, which was already voiced in the early RAF publications that polarised the debate in terms of friend/foe, or more specifically 'human or pig'.<sup>52</sup> She added that she needed this check or reciprocity to see how others and the prison officers perceived her. The prison officers were the only people she saw on a daily basis.

An important point for Astrid was that she could not understand the prisoner officers' lack of response to her situation in the dead wing:

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<sup>47</sup> Interview with Astrid, 24.

<sup>48</sup> See Chapter 4, Section 1.1. for more detail on Astrid's experiences.

<sup>49</sup> Interview with Astrid, 41.

<sup>50</sup> Interview with Astrid, 41.

<sup>51</sup> She did not explain who criticised her.

<sup>52</sup> See Chapter 2, Section 2.

*But on the other hand I thought, gosh these old women. I never thought Nazis or Fascists, but I knew that during the war ...- and just before the end of the war the Nazis had killed some [prisoners] - ... they [the prison officers] were all such subordinates these people, still. And I always waited for the occasion when one of them would say - maybe they cannot show any sympathies - that there would be one and she would say, gosh we have never seen this here, they way you are being detained. Not you poor sod.<sup>53</sup>*

She went on to say:

*Of course they did not know anything about psychology, how the silence affects a person, but they surely knew something about community. .... But they never said that it was somehow extraordinary the way in which I was detained. I mean I really moaned ... I did not know what was happening to me... and of course I was afraid. And they were always so friendly: 'now we are going to go back into the cell. We also have to continue [with our work]'.<sup>54</sup>*

Astrid repeated the point that she could not understand their reaction. She said that prison officers referred her to the legal process. They stated that she should write to the Federal Court of Justice. Astrid added:

*Yes, of course they could do nothing and I did not want to agitate them. I simply wanted to hear a reaction. That might have helped me somewhat; a little bit of sympathy. But there was not much there.<sup>55</sup>*

Finally, Astrid said in response to the polarised discourse on the dead wing as an experiment in sensory deprivation and its critiques including Koenen<sup>56</sup> that,

*I do not want to claim anything. That is not the point, rather it is about fact. What happened there, ... I have no interest in weakening something but also I have no interest in constructing something hysterical. Yes, the matter of fact is the result. How much idiocy, how much devastation, how much damage people can inflict through their ignorance; because they do not care; because they look away...<sup>57</sup>*

Astrid criticised the unquestioning, subordinate attitude of the old-school prison officers that was a remnant of a political apathy in the relatively young Federal Republic. It was a direct contrast to the challenging of authority at the centre of the APO and the 1968 student movement.<sup>58</sup>

In the following section the narrators highlight that staff themselves were under suspicion.

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<sup>53</sup> Interview with Astrid, 42.

<sup>54</sup> Interview with Astrid, 43.

<sup>55</sup> Interview with Astrid, 43.

<sup>56</sup> See Koenen, 'Camera Silens'.

<sup>57</sup> Interview with Astrid, 44.

<sup>58</sup> See Introduction for more on democracy and dissent.

### 3.2. Staff not free from suspicion

The surveillance space of RAF isolation, especially at the height of the German Autumn in 1977, also increased the suspicion of those who worked there. Roland Mayer addressed this directly. In response to the question whether he knew the names of the prison officers he said:

*To some extent, well the situation was such that at the high point 1977 and during the prohibition of contact, afterwards one of them [a prison officer] told me that they had received the order not to speak to us, at that time. Apart from that they were advised to have little contact with us.*

*Of course they knew - it was made public in the context of Stammheim - that they had been vetted by the Federal Office for the Protection of the Constitution. For that reason the majority of them - after 1985 the situation had relaxed somewhat - apart from that most of them were anxious to have as little contact with us as possible.<sup>59</sup>*

He stated that in the period 1977-78 prison staff were particularly cautious, because they were told that they themselves could be targeted in future attacks if the RAF or J2M prisoners knew their identities.

At a later stage he returned to the effect on staff, but also highlighted a similar mindset of the staff:

*The prison officers themselves were hacked off to some extent. They had orders in abundance and they knew that the Federal Office for the Protection of the Constitution was monitoring them. Some also turned this against us, however overall they remained neutral with some exceptions. They always followed orders. I never experienced someone who failed to follow an order. But I know that this happened in other cases, for instance there was [a situation in which] a paramedic refused to take part in force-feeding.<sup>60</sup>*

Another story is about an occasion in which a member of staff, this time a social worker, got into trouble for chatting to U. In 1977, U was in pre-trial detention accused of supporting a terrorist organisation.<sup>61</sup> He recalled that on this occasion, when he was being led through the empty corridors of the prison to the exercise yard, he met a social worker, who was an acquaintance of a friend he had known at school:

*[H]e passed on a greeting from an old school-friend. ...*

*And this social worker later had serious problems, because somebody else overheard the conversation and passed it on to the Federal Criminal Police Office. He was then interrogated and then had trouble at his work.*

*He told me this much later when I met him [on the outside].<sup>62</sup>*

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<sup>59</sup> Interview with Roland Mayer, 11..

<sup>60</sup> Interview with Roland Mayer, 17.

<sup>61</sup> § 129a of the Penal Code. See Chapter 3, Section 3.2.2.

<sup>62</sup> Interview with U, 26.

The surveillance space of RAF isolation extended to the suspicion and mistrust to staff. They not only received pressure from the RAF prisoners' resistance to the regime, but also from the authority that they represented.

### 3.3. *The impact of the high security wings: postmodern spaces of isolation and staff*

Later in the high tech, high security wing with its control pod and surveillance cameras, the space itself also adversely affected staff. Whilst recalling his experiences of over a decade in the high security wing in Celle prison, Karl-Heinz Dellwo argued that it was designed to infantilise the inmates. This also affected the wing's 'specialist' staff:

*They [specialist warders] had nothing to do with the mainstream regime. They solely worked in the high security wing.*<sup>63</sup>

He explained that in contrast to prison officers in the mainstream regime, where their duties and areas rotated providing them with variation in their work, the prison officers attached to the high security wing only worked there:

*We grew old with these guards, so to speak. And to some extent we observed their stupefaction.*<sup>64</sup>

He elaborated on what he meant by the perceived effect on the prison officers who, unlike the prisoners who engaged in subverting the space over the years, maintained it:

*It is the case that ... to stick people into something, where you can hardly effect a change, if you do not fight it, ultimately it leads to the infantilisation of the person. Right?*

*And we gained the impression that the warders sat there. What did they have to do? They had nothing. In the mornings they brought breakfast on a trolley. At midday we had exercise. They did not even have to monitor the exercise, because the yard had CCTV coverage. And in the evenings they brought our supper. What did they have to do?*

*In the beginning they had to unlock us twice a week to shower and the like... And then they sat there. They always played cards and cracked jokes. I sometimes thought, 'they are deteriorating mentally'. I do not know whether they perceived this themselves.*<sup>65</sup>

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<sup>63</sup> Interview with Karl-Heinz Dellwo, 31.

<sup>64</sup> Interview with Karl-Heinz Dellwo, 31.

<sup>65</sup> Interview with Karl-Heinz Dellwo, 32.



This account needs to be read in the context of Celle RAF prisoners' strategy of resistance and subversion. This strategy included refraining from communication with individual ranking officers. Karl-Heinz Dellwo explained that they elected a representative from their group in Celle and the representative only communicated or negotiated with the head of the high security wing. This form of everyday refusal is explored in more detail in Chapter 6.

The high-tech surveillance space of RAF isolation in the Celle high security wing coupled with the RAF prisoners' strategy of non-communication replicated the experiences of monotony and vacuity for the wing's staff.

This strategy of non-communication is contrasted with Karl-Heinz Dellwo's account of relations with prison officers once they had been moved into the mainstream regime in 1992. There he spoke of mixed relations, some officers they got on with better than others. On his return to Celle and the high security wing as part of a 2003 Swedish documentary *'Stockholm-75'*, about raid of the German Embassy in Stockholm during in which he took part, there is a scene in which he is chatting with some of the 'mainstream' prison officers that he knew from his time in the normal regime at Celle.<sup>66</sup> It was a brief chat about what he and the other two former prisoners were now doing, but importantly the conversation gave the impression of respect and civility among the men.

These stories highlighted that in the surveillance space of RAF isolation everyone was a suspect. Yet, the attitude of prison staff was to unquestionably follow orders.

The following section engages with the narrators' experiences of the role of the defence lawyer and the impact of the surveillance measures on defence visits.

#### **4. Defence contact - visits and correspondence**

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<sup>66</sup> D. Aronowitsch, *Stockholm-75: en film om en före detta raf terrorist* (Sweden, Hysteria Film AB, 2003). For the historical context see Introduction.

The Anti-terrorist Act 1976 introduced a framework of procedural provisions that included limiting the guarantee of unimpeded contact between the defence lawyer and the prisoner.<sup>67</sup> This meant that for prisoners, either accused or convicted of a terrorist offence, defence correspondence was to be subject to inspection by a surveillance judge.<sup>68</sup> The provision was amended in 1978 to allow for the glass partition to be used for defence visits to prevent any documents from being passed between counsel and the prisoner.<sup>69</sup>

#### 4.1. *The surveillance of defence visits*

The individual accounts of defence visits conducted with a glass partition echo the narratives of family visits under similar conditions, namely that they were extremely restrictive and severely inhibited effective communication.

The key difference to private visits is that defence visits are to be free from surveillance.<sup>70</sup> However, in the context of the RAF this was not necessarily the case. In his comprehensive and critical analysis of the Stammheim trial, Bakker Schut discussed one concrete example that came to light and was subsequently investigated during the RAF leadership's trial.<sup>71</sup>

In 1977 the Minister of the Interior for Baden-Württemberg, Traugott Bender, admitted before the Higher State Court that in the period 25 April to 9 May 1975, during the Lorenz kidnapping by the J2M, the defence visits of Andreas Baader, Ulrike Meinhof, Gudrun Ensslin and Jan-Carl Raspe with the lawyers they trusted had been taped by the State Police of Baden-Württemberg.<sup>72</sup>

Though this was prohibited, the Minister invoked § 34 of the Penal Code - 'necessity as justification' -, which at that time in 1975 had just come into force.<sup>73</sup> The Minister was not able to give the exact number of lawyers that had been surveilled, because the tapes had been deleted, as they had

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<sup>67</sup> § 148 of the Criminal Procedure Code. See Chapter 3 Section 1.3. for a review.

<sup>68</sup> §§ 129a and 148(2) of the Criminal Procedure Code and § 29 of the Prison Act 1976. For a detailed analysis of the development of the Anti-terrorist Act 1976 and its procedural framework, see Chapter 3, Section 1.

<sup>69</sup> § 148a of the Criminal Procedure Code and §§ 27, 29 of the Prison Act 1976.

<sup>70</sup> § 148 of the Criminal Procedure Code and § 27(3) of the Prison Act.

<sup>71</sup> Bakker Schut, *Stammheim*, 427-446.

<sup>72</sup> Bakker Schut, *Stammheim*, 428, 435.

<sup>73</sup> Bakker Schut, *Stammheim*, 431.

not revealed any information relevant to the investigations at the time. He estimated that the number amounted to approximately fifteen lawyers.<sup>74</sup>

The invocation of the exception to justify an illegal Ministerial decision, that time to tape defence visits, was taken further two years later with the executive contact ban. Both are quite clear examples of the tactical application of the law, to control and then stop defence contact justified on the basis of a general legal exception.

#### 4.2. Defence material - beyond the surveillance judge

In connection with the surveillance of defence material, in particular defence correspondence, Karl-Heinz Dellwo remarked that he remembered incidents where he identified that defence correspondence had been opened and resealed in violation of the lawyer/client privilege. He said:

*There was always such a case. We received our defence correspondence and in Germany it is illegal to open it. And they passed in the defence mail at midday. And I sit down to eat my lunch and I think what is happening and the whole defence correspondence comes undone. The entire strap breaks and opens up. They had used the wrong glue to stick it back together.*

...

*I filed a formal complaint.*<sup>75</sup>

In response to a question about the role of the surveillance judge in monitoring defence correspondence, he stated that this could only be done in connection with counterterrorism legislation. He and the other members of the RAF, who had been involved in the siege of the German embassy in Stockholm in 1975, were not convicted of membership in the RAF, so the surveillance measures linked to § 129a of the Penal Code could be applied. He argued that after their arrest in 1975 the State officials had not wanted to acknowledge that the RAF had re-emerged after nearly all of the RAF founding generation had been imprisoned by 1972. He added:

*This [the counterterrorism surveillance measures] happened later, when retrospectively they tried to argue that we had joined the RAF through [participating in] the hunger strikes. They then instigated preliminary proceedings [under the counterterrorism framework] and that resulted in the glass partition for defence visits and that defence correspondence would go through the surveillance judge.*<sup>76</sup>

He explained that while he was in pre-trial detention prior to his transfer to Celle in 1978, he had defence visits without a glass partition. He added that these incidents happened in Celle:

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<sup>74</sup> Bakker Schut, *Stammheim*, 435.

<sup>75</sup> Interview with Karl-Heinz Dellwo, 44.

<sup>76</sup> Interview with Karl-Heinz Dellwo, 45.

*Then there was another preliminary proceeding, I do not know how many I had; I think there were three for § 129[a]. Then invariably the glass partition was up for everyone for twelve months or ten months.*<sup>77</sup>

Karl-Heinz Dellwo's story highlights how § 129a of the Penal Code was invoked in connection with the RAF collective hunger strikes in order to use the surveillance measures as part of the counterterrorism framework.<sup>78</sup>

### 4.3. The crucial role of the defence lawyer

Throughout the narratives the role of the defence lawyer in mitigating the effects of RAF isolation is highlighted. Astrid contrasted the general visits with her experiences of defence visits. She characterised defence visits as hugely significant throughout her detention, also in Cologne-Ossendorf from 1971-73. She explained:

*Lawyer visits were important, because they were without restrictions. You knew that somebody would come and that person would have one and a half hours to spend with you.*<sup>79</sup>

She explained that at the time in 1972 there were two other RAF prisoners in Cologne, Ulrike Meinhof and Jan Carl Raspe. The lawyer on his or her trip to Cologne-Ossendorf prison visited all three. She explained how it worked in the period prior to the Counterterrorism legislation that started with the '*Lex Baader-Meinhof*' in 1974, in preparation for the RAF leadership's Stammheim trial.<sup>80</sup>

This legislation introduced provisions that started the wave of restrictions against the defence in terrorist trials. The provisions were the prevention of multiple defences, restrictions on the number of defence lawyers per defendant, and the introduction of a framework for excluding defence lawyers from the proceedings. Astrid went on to say:

*So there were these lawyers, the lawyers came from Hamburg or Bremen ... world travel. They did these prisoner trips. Every lawyer was instructed to represent us all. That meant that we received an optimal amount of visits. And this was the only way I could receive information on the others, on Ulrike...*

*we had no contact. We knew that we were detained there, but we exchanged information through the lawyers.*<sup>81</sup>

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<sup>77</sup> Interview with Karl-Heinz Dellwo, 47.

<sup>78</sup> See Chapter 3, Section 4.1. for the tactical application of the provision, and Chapter 6 for more detail on the collective hunger strikes.

<sup>79</sup> Interview with Astrid, 49.

<sup>80</sup> See Chapter 2, Section 4 for more detail on the *Lex Baader-Meinhof* 1974, and Chapter 3 for a general overview of the development of the new counterterrorism law throughout the 1970s.

<sup>81</sup> Interview with Astrid, 31.

In order to make a multiple lawyer and multiple defendant approach possible, the layers had set up an information system, '*das info*', to co-ordinate the defence strategy. They collated information and documents and also distributed material amongst the prisoners, who in the early 1970s were dispersed across the country.<sup>82</sup>

With the Anti-terrorist Act 1976 restrictions to defence visits were introduced for those accused or convicted of a terrorist offence. These included the monitoring of defence correspondence by a surveillance judge. A further restriction was the use of a glass partition to prevent any documents from being passed between prisoners and lawyers.<sup>83</sup>

Karl-Heinz Dellwo mentioned the significance of the defence lawyer's support throughout his entire incarceration. In particular, he credited them with contributing to his individual survival.<sup>84</sup> He said:

*This is why... I personally feel. As I have said, that I came through I certainly owe to the fact that I did an immense amount. I owe it also to the group's solidarity; and I owe it to the lawyers. I do not know how we would have survived without lawyers ...*<sup>85</sup>

Karl-Heinz Dellwo went into more detail on the role of his lawyers.

*They were the only people in a position of trust with whom you could discuss your personal issues. You could finally open up a bit. And you just trusted them, right. I never had a bad experience with the lawyers.*<sup>86</sup>

The continued support of lawyers is also reflected in some of the other narratives. Karl-Heinz Dellwo summarised:

*They were super lawyers. They worked for free. You also have to bear that in mind. .... they were part of our survival. If we hadn't had them, I do not know whether I would have survived it. I do not know.*<sup>87</sup>

This is a further indication of the extreme nature of completely isolating prisoners through the contact ban, which is discussed in the following section.

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<sup>82</sup> See Chapter 2 for the discussion on the legality of '*das info*' and the trials of some of the defence lawyers.

<sup>83</sup> See Chapter 3, Section 1.3.2. for more detail.

<sup>84</sup> See Chapter 7, Section 3 for more detail on the personal narratives of individual survival.

<sup>85</sup> Interview with Karl-Heinz Dellwo, 78-9.

<sup>86</sup> Interview with Karl-Heinz Dellwo, 79.

<sup>87</sup> Interview with Karl-Heinz Dellwo, 79.

## 5. Limits of surveillance? - the prohibition of contact

During the German Autumn 1977, at the height of the conflict between the RAF and the State, in the period 5 September to 20 October all contact of RAF prisoners with events and persons on the outside was suspended, including access to a defence lawyer. This initial executive measure was also justified by the invocation of the exception 'justification as necessity'<sup>88</sup> and was swiftly followed by Federal legislation, the Prohibition of Contact Act 1977. At the time the measure was extremely contentious. It most clearly highlighted the powerlessness of the Federal Court of Justice to enforce its decision affirming the guarantee of access to a defence lawyer against governmental power.<sup>89</sup>

Chapter 3 critically analysed the legal arguments that questioned the legality of the executive measure and the legitimacy of the 1977 Act. This section explores how this measure was experienced, which in effect was an acknowledgement of the limits of surveillance in the control of RAF prisoner contact.

### 5.1. *U's experience of the contact ban: a sympathiser perspective*

The most detailed narrative of the experience of the suspension of all contact is that of U, who was arrested in May 1977 and released in October 1978 before he was ultimately convicted of supporting the RAF in December that year. In pre-trial detention U was subject to the conditions of confinement that had become routine under the Federal Court of Justice's standardised prison rules.<sup>90</sup>

In his account U explained the lead up to the prohibition of contact measure in the autumn of 1977. He said that he had unsuccessfully applied to the Federal Court of Justice to have the isolation measures lifted.<sup>91</sup>

After the failed applications, he joined the RAF's collective hunger strike in August 1977. This had been a difficult decision, because he and others in his situation as so-called sympathisers may have had a common political ideological background, but he did not share the RAF's use of violence as a

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<sup>88</sup> § 34 of the Penal Code.

<sup>89</sup> § 148 of the Criminal Procedure Code. Beschluss BGH 6 September 1977, II BGs 1140/77 in Anon, 'Dokumente und Materialien zur Kontaktsperre für Verteidiger', 395.

<sup>90</sup> For a detailed description of Federal Court of Justice's decisions relating to U, see Chapter 3.

<sup>91</sup> See Chapter 3, Section 2.1.

means to effect change. He recalled that he took part in the hunger strike for three and a half weeks. His conditions were then relaxed once he had stopped with the strike:

*And then at the end of August, for exactly one week, they let me go on exercise with other prisoners and [I was allowed] one hour of television per week. That went on until 5 September [1977], until the Schleyer kidnap. That was exactly one week in which I had, lets say, relatively normal conditions of detention.*<sup>92</sup>

U went on to explain how in the beginning the tension between this executive measure and the Federal Court of Justice decision played out in practice:

*After the kidnapping of Schleyer on 5 of September.... the prohibition of contact was also imposed on me. Though the law was not in force, then. My lawyer tried again to get access, because I think access was still granted through the Federal Court of Justice. ...*

*That is the prison administration had denied access, even though there was a court decision that granted it. He [my lawyer] even requested [the Federal Court of Justice to call on] armed Federal officers to enforce the law.*<sup>93</sup>

The Federal Court of Justice was completely powerless in this situation, for there is no legal mechanism in administrative law to enforce a court decision against public bodies. This is because the legal system is based on the assumption that public bodies will always apply a court decision.<sup>94</sup>

U continued with an account of how the suspension of contact was communicated to him:

*The Federal prosecutor came, I still remember this .... [he] came with Federal and State Police officers. They came very aggressively, they came into my cell and ripped everything from my locker and threw it on the floor. Books and personal letters were covered in jam...*

*Then they took everything away and I was transferred into another cell. The cell was searched and ... yes it was very aggressive. And they threatened me that should anything happen to Schleyer that that would naturally have consequences for us.*<sup>95</sup>

He went on to describe the effect the actions had on him:

*It was really terror... to give you the feeling of utter powerlessness and then I had to strip off all my clothes and I was searched ... all body cavities and ... well everything was taken away.*

*Then first of all of course no lawyer, no visits, no radio, nothing.*<sup>96</sup>

This account provides an indication of the forcefulness of the contact ban in that it projects the State's total control over the prisoner through his or her complete isolation.

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<sup>92</sup> Interview with U, 27.

<sup>93</sup> Interview with U, 27-8.

<sup>94</sup> See Chapter 3, Section 2.1.2. for more detail.

<sup>95</sup> Interview with U, 29.

<sup>96</sup> Interview with U, 37.

Arguably it raises serious doubts on the Federal Constitutional Court's ruling that the Prohibition of Contact Act 1977 did not violate prisoners' dignity, as the time restrictions minimised the psychological stress and therefore they did not exceed the constitutional limits.<sup>97</sup>

## 5.2. The permeability of the complete lockdown

But this complete lockdown failed to achieve what it set out to do, namely to cut off the prisoners completely from any information and contact with others on the inside and outside of the prison. The most public example of this failure was the RAF leaders' collective suicide in Stammheim prison on 18 October 1977, after it became clear that the plan to secure their release had failed.

Throughout the individual stories of those who experienced the prohibition of contact the narrators explained that they were roughly aware of the events that were taking place on the outside. U explained how he got access to information through other 'normal' prisoners:

*Well, I could ... because the cell and the window faced inwards, I was aware of some of the phases [news items] that prisoners had shouted across to other prisoners, ... or on occasions they put a radio in the window to let me know what was happening outside.*<sup>98</sup>

He went on to say:

*Then I heard through this that the ultimatum [Schleyer kidnap] was running out. I was up to date on events because of the radio that other normal prisoners had put [in their windows]. That was interesting. Then the screws came and confiscated a radio and suddenly it started again at another window. This was an amazing feeling, [this] expression of solidarity.*<sup>99</sup>

After the ultimatum had passed and the RAF leadership had committed suicide on 18 October, U was moved to another cell and put under suicide prevention.<sup>100</sup> The overall contact ban was lifted for all RAF, J2M and other prisoners detained for terrorist offences on 20 October 1977.

## 6. Conclusion

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<sup>97</sup> BVerfGE 49, 24, para 129.

<sup>98</sup> Interview with U, 37.

<sup>99</sup> Interview with U, 38.

<sup>100</sup> See Roland Mayer's story of Stammheim in Chapter 4, Section 2.1. for a detailed account of his experiences of the suicide prevention measure introduced after the RAF leadership's collective suicide.



The individual narratives of surveillance in this chapter have highlighted the extent to which these techniques completed the experiences of RAF isolation.

The theme that runs through the various restrictions of contact to the outside, be it visits, correspondence, media access and access to a lawyer, to achieve the specific aim of controlling the contact of RAF prisoners. One could even go as far and argue that these techniques ultimately were aimed at reducing contact to the absolute minimum. The prohibition of contact measure was the most extreme example.

However, other examples such as the use of the glass partition for visits with the closest relatives rendered them virtually pointless. Similarly, the wide application of censorship to print material to include publications that did not incite violence, and the restrictions on the number of items that were allowed in a cell at any one time, further underscore this point. The example of the subversive socks that promote group cohesion is extreme, yet very illustrative.

In the mid-1970s this started the course of eroding the rights of the defence going beyond the restrictions that were introduced with the Anti-terrorist Act 1976. In 1975 this involved the taping of defence visits during the RAF leadership's trial, which was justified on the basis of a general legal exception 'necessity as justification'. The same exception was applied once again to justify the executive contact ban in 1977 that very swiftly became law, the Prohibition of Contact Act 1977.

Both the narrators' experiences of the prohibition of contact and the restrictions on access to a defence lawyer highlight the crucial role that the lawyers played in mitigating the effects of RAF isolation. The defence visits were the only space in which the State presence was excluded and therefore allowed for more openness in the conversations.

Yet, the prohibition of contact measure was experienced as aggressive but also as permeable. This is because the narrators were made aware of the events that were happening on the outside, through a variety of actions by 'ordinary prisoners'. U mentioned the radio on the windowsill, others mentioned crumpled up newspaper articles that were left in the exercise yard.

The stories also extended to the impact of the surveillance spaces on the staff, who worked there. The surveillance spaces by their very nature made suspects of everyone, even of those who merely followed orders. The postmodern high-tech surveillance spaces of the high security wing were perceived as

taking this notion further. Karl-Heinz Dellwo suggested that it infantilised those who did not actively resist. Consequently, he argued that they could observe how the staff regressed in the monotonous and empty environment of the wing.

The contextual analysis of the individual stories of surveillance in this chapter combined with the individual narratives of immobilising spaces in Chapter 4 has highlighted how the experiences of RAF isolation in effect meant that they were closed in and cut off.

In his 1979 article on the psychological dimensions of terrorism, in which he also examined the effects of the isolation on the RAF prisoners during the 1970s and criticised the then newly constructed high security units, Rasch summarised it aptly:

There was no chance of making spontaneous or incidental contacts. Every feature of their lives was strictly planned and organised. Surrounded by an aura of suspicion and people afraid of being suspected as sympathisers, they lived, shut off from reality, as if under a glass cover.<sup>101</sup>

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<sup>101</sup> W. Rasch, 'Psychological Dimensions of Political Terrorism in the Federal Republic of Germany' (1979) 2 *International Journal of Law and Psychiatry*, 84.

## Chapter 6

### Resistance stories: hunger strikes and other refusals

This chapter engages with some of the individual narratives of RAF resistance to isolation. It explores how the RAF narrators through individual and collective resistance responded to the spaces of immobilisation and surveillance detailed in Chapters 4 and 5. These stories explain the significance of the resistance techniques, such as hunger strikes and everyday acts of refusal that were key to the RAF narrators' experiences of incarceration. They add valuable insight to the dominant discourse of RAF imprisonment that focuses on the political impact and initial successes, but ultimate failure of RAF resistance in prison.

The overarching aim of the ten collective hunger strikes between 1973-89 was to secure the collective detention of RAF prisoners and thereby end RAF isolation. In his more recent article on the RAF collective hunger strikes leading up to the German Autumn in 1977, Passmore argues that the RAF successfully utilised the performative function of the starving body and its treatment. He adds that during the early RAF collective hunger strikes the starving body was both inscribed by and able to influence social discourses in the period until the end of the German Autumn in 1977. In other words, the starving body became text documenting its suffering. Ellmann in her critical analysis of twentieth century Anorexia Nervosa writes that what distinguishes the hunger strike as protest from other forms of self-starvation is the need to communicate the reasons for fasting.<sup>1</sup>

According to Passmore's analysis the RAF externally subverted the scientific-medical discourse that emerged on terrorism and its perpetrators: their identification, motives, prison conditions and their death through the medicalised language of 'special treatment' and 'programmatic torture', that were intended to invoke the extermination policies of the Nazi past.<sup>2</sup> Passmore puts this succinctly:

Central to the newly medicalised political programme of the RAF was the hunger strike. The starving body and its treatment enabled the RAF prisoners literally to embody their rhetoric and construct their own bodies as loci for both Nazi resistance and anti-colonial struggle.<sup>3</sup>

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<sup>1</sup> M. Ellmann, *The Hunger Artists: Starving, Writing, and Imprisonment* (Virago Press, London, 1993) 17-8.

<sup>2</sup> Passmore, 'The Art of Hunger', 47, 56.

<sup>3</sup> Passmore, 'The Art of Hunger', 52.

The individual RAF stories of resistance reveal that through confrontation they challenged and also shaped these spaces of severe isolation. The only viable techniques under these restricted conditions were individual and collective hunger strikes and other refusals, including everyday refusals that they applied in a systematic manner. This reflects Corcoran's finding of a 'continuum of resistance' consisting of co-ordinated acts, such as hunger strikes, as well as individual everyday practices of refusal.<sup>4</sup>

The individual resistance narratives also mirror some of the categories of political prisoner resistance, which McEvoy *et al.* identify as community, escape, legal challenge, hunger strike and violence.<sup>5</sup> Collectivisation was central to the co-ordination of RAF resistance. Passmore adds that crucial to the success of co-ordinating the hunger strikes, and also their political impact, was the establishment of internal and external communication networks, which he maintains were based on the privileged prisoner-lawyer relationship. In addition to 'das info', which he describes as 'capable of smuggling, collecting, collating, copying and archiving prison communiqués before redistributing them among prisoners in the form of a newsletter', Passmore also identifies an 'out-fo', which he describes developed into a mechanism for publishing texts and mobilising sympathisers, in particular through the Anti-Torture Committees.<sup>6</sup>

Yet, the pressures of small group isolation prevented the development of a meaningful community capable of reflection and discussion. Consequently, the striving for community became the continued demand of the collective hunger strikes. The aim was to achieve the collective detention of RAF prisoners in groups of at least fifteen to twenty, which became known as 'intercommunicative groups'.<sup>7</sup>

Both struggle for community and individual survival are the rationales for resistance that emerge in the narratives.<sup>8</sup> They are the counter-forces to the overall function of RAF isolation, namely to disperse the group and break the individual (political) resolve of the prisoner.

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<sup>4</sup> Corcoran, *Out of Order*, 104, see Chapter 1.

<sup>5</sup> McEvoy et al., 'Political Imprisonment and the "War on Terror"', 307-14.

<sup>6</sup> Please see Chapter 2, Subsections 4.2.2 and 4.3.

<sup>7</sup> See Chapter 7, Section 2 for more detail.

<sup>8</sup> These two themes are explored in detail in Chapter 7, Sections 2 and 3.

This chapter engages with the techniques of resistance in three sections. Section 1 explores stories that deal with the significance of resistance to RAF isolation. In particular, it explores individual motivations for taking part in hunger strikes and other forms of refusal. Section 2 engages with the experiences of force-feeding and a change in the State's response to RAF hunger strikes. Section 3 examines personal narratives of the continued refusal to co-operate that in some cases extended to the release process.

### 1. '... the modest and one of the few opportunities for resistance'

The stories explored in this section deal with the individual experiences of resistance under extreme conditions of isolation. They detail how the narrators challenged and shaped the space of isolation through everyday acts of refusal and hunger strikes. As previously noted, their experiences of resistance are intertwined with their experiences of isolation.<sup>9</sup> They are somewhat artificially separated for the purpose of this analysis.

Therefore, these resistance stories need to be understood in the context of the individual stories of immobilisation and surveillance explored in Chapters 4 and 5, respectively. Furthermore, the stories have been selected with a focus on resistance in the high security wings or special security cells in the period after the German Autumn 1977. They also contain the narrators' more general reflections and assessment of their resistance practices during the lengthy terms that they had spent in prison.<sup>10</sup>

Karl-Heinz Dellwo referred to their situation after the German Autumn 1977.

*After 1977, the guards thought that nobody was going to look out for us. We are isolated in the public eye. They can just do things with us....*<sup>11</sup>

This is reflected in Passmore's analysis of the early RAF collective hunger strikes. He suggests that after the death of the RAF leaders in 1977 the strategy of the RAF hunger strikes 'failed to elicit the sort of response the carefully choreographed spectacle of hunger had done during the incarceration of

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<sup>9</sup> See Chapter 4, Section 1.2.

<sup>10</sup> For more detail on their detention in the high security unit, see Chapter 4, Section 3.2.

<sup>11</sup> Interview with Karl-Heinz Dellwo, 19.

the first generation of the RAF from 1972 until 1977'.<sup>12</sup> As an example of this he states the hardly documented death of Sigurd Debus during the 1981 hunger strike.<sup>13</sup>

Knut Folkerts, who served the main part of his life sentence in Celle high security wing together with Karl-Heinz Dellwo, explained why resistance under those circumstances meant refusal:

*We were [detained] in solitary or in small groups... and in this situation over a period of years we naturally tried to resist. And for this reason we also [conducted] hunger strikes. We did them at very large intervals as far as we were able, because they were extremely draining.*

*Of course, we co-ordinated them as far as was possible under the circumstances ...*<sup>14</sup>

He continued to explain how as members of the RAF they understood themselves as political actors and how they translated this to their prison experience and strategy:

*We were political prisoners. That was quite clear. The RAF defined itself through this confrontation with the state. [Before] we knew how the state would react. It wasn't a surprise. There were previous experiences [and] you knew of methods employed in other countries, for instance how the IRA was treated...*<sup>15</sup>

He then vividly described what he felt once he had arrived in prison:

*And then you are in the actual situation. That is you are on your own against total supremacy. There is not much left. Physically you are totally subjugated ...*<sup>16</sup>

Knut Folkerts continued to explain how they responded to this one-sided power relation that was reinforced through the various techniques of isolation:

*Then we said that we have to do something. That needless to say means confrontation. In practice, resistance meant only refusal.*<sup>17</sup>

In the extremely immobilising environment of the high security wing, refusal was the only means to create space and thereby shape the space of their detention. Apart from the very public and highly demanding hunger strikes, Knut Folkerts and the other RAF narrators mentioned various forms of

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<sup>12</sup> Passmore, 'The Art of Hunger', 32.

<sup>13</sup> He died from a brain haemorrhage following a procedure of force-feeding. See Hansen, 'Den Staat aushungern', 125.

<sup>14</sup> Interview with Knut Folkerts, 10.

<sup>15</sup> Interview with Knut Folkerts, 14.

<sup>16</sup> Interview with Knut Folkerts, 14.

<sup>17</sup> Interview with Knut Folkerts, 14.

refusal throughout their stories of imprisonment. Knut Folkerts gave an example of such an act of refusal:

*For instance refusing to leave the wing's exercise yard. As a consequence the whole prison was put on alert... not returning ... and then there [was] total alarm, even though it is completely harmless, because the only thing we can do is stand around.*

*In response the whole prison was locked down; prisoners weren't led to work; all the forces were concentrated. And then as many as went into the yard came in, approximately twenty-five guards, some equipped with helmets, truncheons, CS gas, they stormed the yard. They then circled us three prisoners and threw us back into our cells. At that point you are as light as a feather. ... You were folded over and carried inside.<sup>18</sup>*

This action is reflected throughout the various narratives. For instance, in one of M's prison reports she noted that in 1971 she was disciplined for refusing to leave the exercise yard with 10 days in disciplinary solitary confinement [Arrest].<sup>19</sup> Similarly, Karl-Heinz Dellwo recalled a situation during his detention in Cologne Ossendorf prison before his transfer to Celle in 1978, where such a refusal was responded to with force.

Inevitably, Knut Folkerts, Karl-Heinz Dellwo and the other RAF prisoner in Celle high security wing at the time were removed from the yard and received some form of disciplinary punishment. Knut Folkerts explained that the refusal still had a significant impact on the prison as a whole. To some extent this type of refusal started to erode the 'total control' of the wing. For it not only tied up manpower, but also put a strain on the prison and its population. Knut Folkerts summed up this story:

*But you had to accept [the use of force]. These [acts of everyday resistance] were the modest, and one of the few opportunities for resistance.<sup>20</sup>*

Through the perseverance of their resistance over time they managed to shift the power relations that existed in the wing. He expanded on how a combination of the resistance measures, hunger strikes and everyday refusals, in conjunction with the anti-isolation campaigns on the outside, created different, arguably less imbalanced, power relations:

*It was also a huge effort for the opposition and in future they had to consider how often they intended to do this. After some time a particular power relationship had developed with the*

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<sup>18</sup> Interview with Knut Folkerts, 14-5.

<sup>19</sup> HIS, RAF, RA 02/020, 002. See Chapter 3, Section 3.1. for more information on the pre-trial detention framework.

<sup>20</sup> Interview with Knut Folkerts, 15.

*hunger strikes or public political campaigns of relatives or sympathisers or other political groups, so that over time we were able to improve our conditions of detention.*<sup>21</sup>

Over time, life on the wing changed through these acts of resistance. Relaxations developed over the course of their detention. This resulted in what the narrators then no longer considered as isolation in the period from 1989 until they were moved out of the wing in 1992.<sup>22</sup> Among these were exercise in the main prison yard and the removal of the sightscreens from their cell windows, which then opened up the view onto the main prison yard.<sup>23</sup>

However, Knut Folkerts' further comments detail how these power relations were in flux and therefore continually contested. It is important to note that these power relations existed at various levels, nationally with the collective identity of the RAF and the State, and locally between the individual or small group of RAF prisoners and the individual prison or high security wing. In the case of Celle high security wing, Knut Folkerts explained that

*It goes without saying that when there were 'rollbacks' [English in original] every once in a while, [that is] restrictions of the conditions, we had to decide to do something about it, because again we were being totally reduced. The head of the high security wing [in Celle] initiated this again and again, whenever we had a little bit more space.*<sup>24</sup>

The RAF prisoners were dispersed in different prisons across the country and consequently were subject to varying degrees of isolation. On occasions there were tensions between the level that collectively negotiated with the State to effect the integration of RAF prisoners and local demands to improve the conditions in a particular institution.

For instance in the 1981 collective hunger strike referred to below, Karl-Heinz Dellwo and another RAF/J2M prisoner detained there at the time refused to stop the strike after the group had collectively decided to end it.<sup>25</sup> The RAF prisoners had negotiated with the Federal Ministry of Justice that if they stopped, nobody was to remain in isolation. Karl-Heinz Dellwo explained that he did not believe anything was going to change for them in Celle:

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<sup>21</sup> Interview with Knut Folkerts, 15.

<sup>22</sup> See Section 3.1. below.

<sup>23</sup> Further examples of how the Celle high security space was shaped are detailed below in Section 3.1.

<sup>24</sup> Interview with Knut Folkerts, 14.

<sup>25</sup> This was before Knut Folkerts was transferred to Celle high security wing.



*I wanted finally to be able to read something again, to be able to write and have a discussion and the like. And that is why I refused. All the prisoners in the Federal Republic stopped apart from [HH] and me in Celle.*

*And all of a sudden you receive phone calls... never ever were you allowed to get phone calls. Now all of a sudden you are getting phone calls [from various leading RAF prisoners] ...*

*[I was told] you have to stop, there is a collective decision and I said, no I am not doing it. It is ok for you but we can't do this here. I am just not going to survive this. We had spent the last two and a half years in locked down rooms ... for real. And of course we were totally under pressure because we were in breach of a collective decision.<sup>26</sup>*

This example highlights the tensions that existed between the RAF collective identity, which through the hunger strikes was based on a politics of self-sacrifice, and individual survival. However, this tension is quite complex, as Karl-Heinz Dellwo's story of force-feeding during the same strike highlights. In that case he refused treatment for a procedure that had gone wrong, unless the collective demands of the strike were met.

This apparent contradiction runs throughout the narratives, as the narrators explain that both the hunger strikes and the collective identity were key factors for their individual survival.<sup>27</sup>

The following Sub-section examines some examples of everyday refusals. These relatively harmless resistance practices were a counterpoint to the autophagy of the hunger strikes.

### **1.1. Further stories of every-day refusals**

In her book on prison activism on Robben Island, Buntman writes about refusal as the baseline of the continuum of resistance, where the prisoners ultimately strove for 'resignification, reconstrual, and emancipation'.<sup>28</sup> With these concepts she refers to how the prisoner activism moved beyond the shaping of the spaces of their imprisonment. Rather the political prisoners constructed spaces where political resistance would encourage and enable others to follow.

In contrast, the spaces of immobilisation and surveillance that made up RAF isolation, initially proved too restrictive for resistance to be anything more than refusal. Shaping the space of RAF isolation was a long process, which consisted of the various RAF collective hunger strikes spread out over the years of incarceration and co-ordinated every-day acts of refusal. To continue with further examples of this baseline of resistance, every-day refusals, two very different stories of non-

<sup>26</sup> Interview with Karl-Heinz Dellwo, 48.

<sup>27</sup> See Chapter 7, Section 3 for more detail.

<sup>28</sup> Buntman, *Robben Island*, 251.

cooperation are explored: Roland Mayer's refusal to go on exercise for a period of two years during his detention in the special security cells in Bruchsal prison; and Karl-Heinz Dellwo's strategy of non-communication with prison staff.

### 1.1.1. Refusing to go on exercise

Roland Mayer was detained in Bruchsal prison in the special security cells from 1981 until his release at the end of his fixed-term sentence in 1988. Another RAF prisoner was also detained in Bruchsal. Together they had exercise in an otherwise empty yard. He recalled that at the end of 1982 they decided that they would stop going on exercise. He explained this decision as follows:

*Because of all the security measures. Because we said that enough is enough. On the outside they continued to claim that we were treated as completely normal [prisoners], everything is totally normal. But in reality this was not the case. For this reason we decided to stop going on exercise.*<sup>29</sup>

He expanded on the extent of the security measures. He said that going on exercise was always connected with strip searches and a change of clothes, both before and after the exercise. He described this procedure as extremely invasive. He added that this was the procedure for every time they left their cells.

Roland Mayer and the other prisoner continued this refusal until the end of 1984. This effectively resulted in twenty-four hour solitary confinement, with the exception of visits. He explained that the reason they had stopped was because they had joined the collective hunger strike. During the strike it was more important to have one-hour contact with the other RAF prisoner than to continue their refusal practice.

The refusal to go on exercise is an example of how the surveillance techniques amplified the isolation. Ultimately, this refusal that further increased his isolation did not yield the result of a change in the prison's approach. Rather, Roland Mayer mentions that it had a further adverse effect:

*After this period I noticed that I had become short-sighted as a result of not leaving my cell, apart from visits. ... because there was a lack of .... distance [in the sense of seeing into the distance].*<sup>30</sup>

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<sup>29</sup> Interview with Roland Mayer, 5.

<sup>30</sup> Interview with Roland Mayer, 5.

### 1.1.2. Strategy of non-communication

Karl-Heinz Dellwo's story also involves a self-imposed restriction. He explained that on entering prison he adopted a strategy of non-communication. He recalled that during his pre-trial detention in Cologne-Ossendorf prison he spoke to no one, but added that he amended his strategy slightly after his transfer to Celle high security wing in 1978. There he said he only spoke to the head of the high security wing. Throughout the years in Celle, the small group of prisoners mainly spoke through a representative chosen from the group.

Karl-Heinz Dellwo suggested there was this perception that segregated prisoners like him were not excluded from human contact, because they could communicate or connect with prison officers and other staff. He explained that this was simply not an option for him, because he considered it a form of co-operation with the authorities:

*When your only contact is with guards, then you were supposed to ... I saw it as collaboration... you were meant to interact with them. In reality it was the case that the guards always tried to get close to you. For example [they would say] 'good morning, would you like a double ration of cold meat' or this and that, with a friendly approach.<sup>31</sup>*

...

*At times it was really difficult for me, because the way I was raised ... even though we were seen as terrorists who somehow are always armed to the teeth, but actually I am very... I tend to respond to courtesy with reciprocity. This is how I was brought up. I did find this extremely difficult. They entered my cell ... [with a] 'good morning' or the like and I always clenched my teeth.<sup>32</sup>*

He admitted that on a human level this persistent course of action was difficult for both sides.<sup>33</sup> He said:

*It was really difficult towards the end. It took months, with some years until their face dropped and they walked about depressed.<sup>34</sup>*

Karl-Heinz Dellwo mentioned two reasons for refusing to engage with prison officers. For one, in Celle they only communicated through a representative with the head of the high security wing. They took turns in nominating the representative. He explained how this worked in practice:

*If wanted something I demanded to speak to the head of the high security wing. I told him in no uncertain terms that what he was doing there was unacceptable. And [I said] that I want*

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<sup>31</sup> Interview with Karl-Heinz Dellwo, 40.

<sup>32</sup> Interview with Karl-Heinz Dellwo, 40-1.

<sup>33</sup> See Chapter 5, Section 3.3. on how he evaluated the combined impact of this resistance technique and the surveillance space of the high security wing on the prison staff that worked there.

<sup>34</sup> Interview with Karl-Heinz Dellwo, 41.

*this and than etc. He rejected that and then I said that we could go on hunger strike or something.*<sup>35</sup>

He went on to set out the historical context of the wing:

*I was the first to [be detained] in the high security and I managed to change a lot, right. ... I found that in Celle, this person in charge you could gauge certain things, how the other was going to react... that was the case ...*<sup>36</sup>

The other reason he put forward for the refusal to communicate with individual prison officers was that the officers remained anonymous. It can be argued that this security measure was intended to protect the individual officer; nevertheless, it created a barrier and further perpetuated the exclusionary space of the wing.

Karl-Heinz Dellwo described their response to this as follows:

*That is why we attached pseudo-names to them, for us, so that we could identify them. We never knew their names. Later we found them out through other means.*<sup>37</sup>

For instance, he mentioned that on some occasions the prison had failed to black out names in the official paperwork. But he also mentioned a rather amusing story:

*There was one [prison officer] who was ... there are some amusing things, where you think that they otherwise only exist in England. In fact there is such a thing as the world championships in ploughing. I don't know whether you have heard of it ...*

*And this guard in Celle was the world champion. ... what a story. I didn't know that such things existed. In the newspaper... there was our guard. The world championships were held in Celle ... what a story. That was one way of finding out the names.*<sup>38</sup>

## 1.2. Hunger strikes: power and negotiation

This subsection explores the personal significance and experience of self-starvation with the public spectacle of RAF hunger strikes as a backdrop. The collective hunger strike as public performance became synonymous with the RAF's armed struggle against isolation. Ellmann in her book 'The Hunger

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<sup>35</sup> Interview with Karl-Heinz Dellwo, 42.

<sup>36</sup> Interview with Karl-Heinz Dellwo, 42.

<sup>37</sup> Interview with Karl-Heinz Dellwo, 41.

<sup>38</sup> Interview with Karl-Heinz Dellwo, 41.

Artists' writes that through self-starvation the hunger striker's message is inscribed on the body.<sup>39</sup> Food is replaced by words. She argues that the hunger striker subverts rather than rejects order.<sup>40</sup>

The RAF hunger strikes managed to subvert the order of RAF isolation through this open confrontation of its immobilising and surveillance spaces.<sup>41</sup> As mentioned above, the RAF prisoners created ways of communication through 'das info' or by other means. Further, the personal narratives highlight how they confronted extreme immobilisation, and the numbness it created, through inaction, namely not eating. Ellmann captures this well in the following quote:

Because its secret is to overpower the oppressor with the spectacle of disempowerment, a hunger strike is an ingenious way of *playing* hierarchical relations rather than abnegating authority.<sup>42</sup>

The hunger strike features dominantly in the personal narratives. Knut Folkerts' comments, voiced above, highlight the immense strain involved in this form of resistance. Astrid, who in the very early 1970s was one of the first to experience RAF isolation under the extreme conditions in the 'dead wing' in Cologne-Ossendorf prison, recalled with relief that she had not taken part in the early collective hunger strikes:

*Wait a minute, hunger I did... I was so finished ... thank god ... there were one or two that I did not take part in. I was spared all this torment.*<sup>43</sup>

But throughout their relatively long terms in prison, for the other narrators the hunger strike was central to their resistance strategy. For instance, Roland Mayer listed the number of both individual and collective hunger strikes that he went on during his time in prison between 1976-88:

*I think that in the twelve years in which I was in prison, I believe I did ten or eleven hunger strikes that varied in length between one week and I think 64 days.*<sup>44</sup>

Karl-Heinz Dellwo who was arrested in 1975 and released in 1995 clearly expressed the personal significance of food refusal:

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<sup>39</sup> Ellmann, *The Hunger Artists*.

<sup>40</sup> Ellmann, *The Hunger Artists*, 22.

<sup>41</sup> See Chapter 4 for more detail on RAF isolation as immobilising spaces and Chapter 5 for experiences of RAF isolation as surveillance spaces.

<sup>42</sup> Ellmann, *The Hunger Artists*, 21.

<sup>43</sup> Interview with Astrid, 41.

<sup>44</sup> Interview with Roland Mayer, 23.

*I am so glad that during my detention I spent eighteen months in total on hunger strike. One and a half years out of over twenty years in which I did not eat; in retrospect I am extremely content that I did them.*<sup>45</sup>

Karl-Heinz Dellwo gave a very detailed account of why the hunger strike as a method of resistance was so central to his response to isolation. In particular he referred to the period he spent in the high security wing in Celle prison from 1978-92.

Early on the regime was very restrictive and the space itself had an increased immobilising effect, because the windows could not be opened.<sup>46</sup> Karl-Heinz Dellwo described the feelings this evoked:

*When you imagine what kind of a prospect that was. How do you go on? Then you think am I going to end up an imbecile at some point ... . No idea. And the next day I made a hunger strike declaration. ... And then I already felt better. It is really very good ...*<sup>47</sup>

He continued to explain that the hunger strike broke the sense of the futility of action that had been brought about by isolation. He said:

*And every time... against isolation you can't... you can't kick against the door or pound on walls or something the like. You can't condition yourself ... you think all of this shouldn't affect you.*

*This is what we always thought in the past. Whatever happens, the political consciousness has to be above such things. And you realise that it doesn't work.*

*The moment you start a hunger strike, in that instance you feel that you doing something again, you are actively taking part ...*<sup>48</sup>

For Karl-Heinz Dellwo this was key to preserving his personal identity. He noted:

*You return to reality. It is simply back and it's for real. That is just the way it is. ... The entire struggle, your right to identity ... it becomes a reality. Before, it's there - you could say - as fantasy or as an idea, but you no longer feel it. ... And at that point you sense it.*<sup>49</sup>

The hunger strikes shattered the numbness produced through isolation and also effected a shift in the power relations. He stated:

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<sup>45</sup> Interview with Karl-Heinz Dellwo, 39.

<sup>46</sup> See Chapter 4, Section 3.2. for more detail.

<sup>47</sup> Interview with Karl-Heinz Dellwo, 38-9.

<sup>48</sup> Interview with Karl-Heinz Dellwo, 39.

<sup>49</sup> Interview with Karl-Heinz Dellwo, 40.

*Now the others are on the defensive. At the beginning they inevitably try to ignore it. [They] pretend that none of it's happening.*

*They have to deal with it. All of a sudden you have something to negotiate with. I want this and I want that.<sup>50</sup>*

This form of protest through self-starvation provided a platform for negotiation and shaping the space of isolation. However, this took time. He explained that only after the second hunger strike he conducted in Celle in 1979, that time with the two other RAF/J2M prisoners in the wing, the strict solitary confinement was lifted to allow them very limited association in a separate cell and collective exercise.

It took another hunger strike, the collective RAF hunger strike in 1981, before the authorities unlocked the windows as an inducement to stop the strike. During that strike, the group in Celle had continued their protest for a further three to four days, despite the collective declaration that the RAF had ended it. He said that after the three or four days they returned from the exercise yard and the windows in their cells were open for the first time in two and a half years:

*At that point I knew that we had won. Afterwards I was taken to the head of the high security wing and he said, 'the windows are open. What do you think about that?'*

*And I responded that that was very good, but that it wasn't sufficient to persuade me to stop. [I added that] I also want you to erect wire fence [in the wing's corridor] so that we can [effectively] have association behind it. Beforehand we only had very limited association. That meant that we were locked in a small cell and we sat there the two of us... in completely empty cell... you were able to bring a newspaper along ...<sup>51</sup>*

On behalf of the RAF prisoners in the Celle high security wing at the time, he also managed to negotiate an increase both in the number of visits and spending money, which he said was just about enough to buy coffee and milk with. It took two months until the wire fence was put in place. As a consequence, they were able to have their cell doors unlocked in the evenings and have their supper together at a table in the corridor. This resulted in the change from strict solitary to small group isolation.<sup>52</sup>

Karl-Heinz Dellwo concluded:

*With the benefit of hindsight I consider this type of confrontation necessary for my survival, for my personal identity, for my ego. I am glad that I did this time and again, even though to go on these hunger strikes was an immense strain.<sup>53</sup>*

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<sup>50</sup> Interview with Karl-Heinz Dellwo, 39.

<sup>51</sup> Interview with Karl-Heinz Dellwo, 49.

<sup>52</sup> See Chapter 4, Section 3.2.

<sup>53</sup> Interview with Karl-Heinz Dellwo, 39. See Chapter 7, Section 3 for more detail on personal narratives of individual survival.

Though the 1981 collective hunger strike resulted in a significant relaxation to their conditions, it was also highly contested. Sigurd Debus, one of the strikers, had died. This reignited a public and legal debate on the question of force-feeding. As a result there was a shift away from force-feeding in the following RAF collective hunger strikes. The subsequent section engages with stories of force-feeding and the shift to an intensive care medicine approach that was applied in the last two collective hunger strikes in 1984-5 and 1989.

## **2. State Response: from force-feeding to 'coma solution'**

This section explores this shift in the governmental response to the RAF collective hunger strikes from 1981 to 1984 through two narratives: Karl-Heinz Dellwo's experiences of force-feeding during the 1981 hunger strike and Knut Folkerts' experiences of what the RAF termed the 'coma solution' during the 1984-5 hunger strike.

### ***2.1. The 1981 collective hunger strike: experiences of force-feeding in Celle***

#### ***2.1.1. The law on force-feeding: context***

Following Holger Meins's death during the third RAF collective hunger strike in November 1974, force-feeding became an extremely contested political issue. Furthermore, the lack of a legal basis for the procedure was increasingly questioned. Most notably, the Chairman of the CDU/CSU raised questions in the Federal Parliament as to the extent of the State's right and duty to force-feed hunger strikers.<sup>54</sup> The issue was so divisive that it threatened to stall the humanising prison reform. The concern was that this could result in the Draft Prison Act to be dropped in favour of a law that simply

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<sup>54</sup> J. Wagner, 'Die Neuregelung der Zwangsernährung: Zur politischen Genese einer rechtlichen Fehlkonstruktion' (1976) 1 ZRP 1.



defined the legal status of prisoners in compliance with the Federal Constitutional Court decision in 1972<sup>55</sup>, rather than the comprehensive Prison Act 1976 with its guiding principle of resocialization.<sup>56</sup>

Essentially, there were two central and contrasting approaches to force-feeding: on the one hand, the CDU/CSU promoted a focus on artificial feeding that would either require the consent of the prisoner or judge's approval if the prisoner lacked the capacity to make such a decision. On the other hand, the SPD and FDP was largely concerned with the potential political impact of any further deaths in custody. Therefore they promoted the notion of a general duty to force-feed.<sup>57</sup>

Both approaches were incorporated in the original provision on force-feeding that was included in the Prison Act 1976.<sup>58</sup> According to a contemporary, the legal provision was essentially an unworkable solution. It set out a two-step approach to force-feeding.<sup>59</sup> The provision distinguished between when it was legal to authorise the procedure and when there was a legal duty to force-feed a prisoner.

The force-feeding was legal only in a life-threatening situation or where there was a severe risk to the health of the prisoner. Further, it had to be determined that the measure had to be reasonable in the circumstances and that there was no serious risk to the life or health of the prisoner.

In relation to the legal duty to force-feed, the provision stated in an indirect manner that such a duty existed where the prisoner was in an 'acute life-threatening state'. In such cases it was irrelevant whether the hunger-striking prisoners were still able to freely declare their will [*freie Willensbestimmung*].<sup>60</sup>

### 2.1.2. Force-feeding and collective resistance: what happens when it goes wrong?

Karl-Heinz Dellwo recalled the 1981 collective hunger strike as heavily fought. He experienced the force-feeding as particularly aggressive. He was under the impression that the authorities in Celle were

<sup>55</sup> BVerfGE 33, 14.03.1972. See Chapter 2, Section 1 for more detail.

<sup>56</sup> Wagner, 'Die Neuregelung der Zwangsernährung', 3.

<sup>57</sup> Wagner, 'Die Neuregelung der Zwangsernährung', 2-3.

<sup>58</sup> § 101 of the Prison Act 1976. The Act came into force on 1 January 1977.

<sup>59</sup> In connection with § 178(1) of the Prison Act 1976 it can also be applied to prisoners in pre-trial detention.

<sup>60</sup> § 101 of the Prison Act 1976. It states that, '[t]he prison authority [had] no legal duty as long as the prisoner can declare his free will [*freie Willensbestimmung*], unless the prisoner [was] in an acute life-threatening state'.

ordered to force the procedure upon him, in the hope that if he gave in, others would follow suit and stop the strike:

*I fought back fiercely. ... They already started the force-feeding after thirty days or less.*<sup>61</sup>

Then he proceeded to describe how the force-feeding in Celle was done:

*They always got me out of my cell. You know I had a cell with two doors. ... they always came from two sides.*

*They had a special chair made with wheels and metal plates at the front... and ... various straps ... almost like what's it called, like in 'Silence of the Lambs'... Lecter.*<sup>62</sup>

He added that his feet rested on the metal plate and his legs were fastened to the chair. His arms were locked behind his back and leather straps were tied around his chest, waist and legs:

*It had handles, so that the chair could be tilted once you were tied down. And then you were brought into the medical facility of the wing.*<sup>63</sup>

The chair was wheeled into the centre of the room where the procedure was administered whilst he continued to be strapped to the chair. The force-feeding involved a liquid solution being pumped through a nasal-gastric tube into his stomach.<sup>64</sup> He added that the whole procedure was antagonistic because he invariably resisted and the prison staff used force to push him down, so that he was unable to move.

He recalled one occasion during the course of the force-feeding where the procedure had gone wrong:

*And once ... they always wanted me to resist... that I resist ... and on one occasion to my own shock it was almost like my body had seized up. And I realised that something had gone wrong.*

*It was really as if I was paralysed, right. ... Then I couldn't breathe and then I thought my head is going to explode. And then somehow I collapsed.*

*Then the guards looked and ... the physician... and all of a sudden he jumped into action and frantically pulled the tube out and shouted stop... he also [shouted] at the guards to let go...*<sup>65</sup>

He explained what he thought had happened:

*Somehow something from my stomach, what they had pumped in had been regurgitated and at the same time entered the trachea.*

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<sup>61</sup> Interview with Karl-Heinz Dellwo, 10.

<sup>62</sup> Interview with Karl-Heinz Dellwo, 10.

<sup>63</sup> Interview with Karl-Heinz Dellwo, 10.

<sup>64</sup> See also *Der Spiegel* 16/1981, 34-7.

<sup>65</sup> Interview with Karl-Heinz Dellwo, 11.

*And there I was shaking with cramps. Then they untied me and there I lay on the ground with cramps for half an hour and I had snot running down my nose, and I cried and coughed. It was horrendous. It was simply horrendous.*<sup>66</sup>

This inevitably also affected the prison staff. He described the situation as it unfolded:

*The situation was such that two of the guards were weeping ... they had not wanted it to go this far. The physician was pleading with me - the ambulance was about to arrive - to let myself be treated.*<sup>67</sup>

*And I replied that I would only agree to treatment if they agreed to the demands. This is what we had agreed and ... I did not have a choice. Then they returned me to my cell and then the emergency doctor came. I said no and then they left again.*

*And to their luck and mine I somehow got through.*<sup>68</sup>

He said that one of his lawyers, who normally only came once a year, by chance turned up on that day in the late afternoon. He said:

*It was a coincidence. I was so grateful to her. And she became aware of what had happened. She also did a lot ...*<sup>69</sup>

Karl-Heinz Dellwo explained that following the force-feeding that had gone wrong, combined with increased pressure on the prison authorities in Celle, the authorities stopped the procedure a short while later. He added that

*They stopped and then in parallel the news arrived from Hamburg that Sigurd Debus was dying. After that the force-feeding ceased.*

*After that I was never force-fed again, even though ... in '84-'85 [I spent] 70 days on hunger strike and '89 another 74 days.*<sup>70</sup>

## 2.2. Physicians as 'sympathisers': conflicting interpretations of the threshold for intervention

Following the hunger strike, in 1982 there was another death. This time it was a physician who had committed suicide. This followed the repercussions he faced on account of his refusal to force-feed the prisoners in Moabit prison during the 1981 hunger strike.

Roland Mayer mentioned this Berlin physician:

*There had been some debates .... there were also conferences where he [physician at Hohenasperg] the organisation of physicians had his back covered. At least, because during*

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<sup>66</sup> Interview with Karl-Heinz Dellwo, 11.

<sup>67</sup> Interview with Karl-Heinz Dellwo, 11.

<sup>68</sup> Interview with Karl-Heinz Dellwo, 11-2.

<sup>69</sup> Interview with Karl-Heinz Dellwo, 12-3.

<sup>70</sup> Interview with Karl-Heinz Dellwo 13.

*the 1981 hunger strike a medical doctor in Berlin refused to force feed. As a consequence he was put under so much pressure that he committed suicide.*

*[Following the 1981 hunger strike] the prison administration had transferred him to a new post where he was in charge of hygiene in prison.<sup>71</sup>*

Following his refusal, the physician had faced disciplinary allegations and was also suspected of politically sympathising with the prisoners' cause.<sup>72</sup> This was because he had managed to persuade the prisoners to co-operate with him.<sup>73</sup>

In the contemporary legal commentaries, the physicians' refusal to force-feed was put down to their misunderstanding of the legal concepts set out in the provision. For instance, Nödelke, a judge at the Higher State Court of Berlin, and Weichbrodt in their commentary following the 1981 strike criticised the supposedly misconception physicians had about the term 'acute life-threatening state'.<sup>74</sup> They wrote that physicians mistakenly identified it as the point when a hunger striker had become unconscious. At that point, however, the patient's health may have already deteriorated beyond saving. Consequently, they maintained that there was a legal consensus that 'acute life-threatening state' referred to the last possible moment where there was still a chance to save the patient.<sup>75</sup> They argued that this misunderstanding was based on the physicians' unwillingness to treat the prisoners against their will.<sup>76</sup>

In fact after 1975 there had been international consensus amongst physicians that force-feeding was a form of inhuman and degrading treatment. This standard was set by the World Medical Association's (WMA) Tokyo Declaration that stated:

Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to

<sup>71</sup> Interview with Roland Mayer, 23.

<sup>72</sup> M. Zieger, 'Stellungnahme zum Gesetz zur Änderung des § 101 StVollzG (Zwangsernährung)' (1985) 3 *StrVert* 128.

<sup>73</sup> Zieger, 'Stellungnahme zum Gesetz zur Änderung des § 101 StVollzG', 128.

<sup>74</sup> W. Nödelke and S. Weichbrodt, 'Hungerstreik und Zwangsernährung - Muß §101 Strafvollzugsgesetz reformiert werden?' (1981) 8 *NSiZ* 283.

<sup>75</sup> Nödelke and Weichbrodt, 'Hungerstreik und Zwangsernährung', 283. They added that for this a very workable rule of thumb existed: where hunger strikers had lost about a third of their body weight, there was a severe risk to their health (legal threshold for force-feeding), and where they had lost about half their body weight, then they were considered to be in an 'acute life-threatening state'. In their opinion, generally a healthy person with good energy reserves and sufficient fluid intake was able to fast for a period of fifty to eighty days without serious risk to their health. They concluded that therefore force-feeding in principle was prohibited during that period.

<sup>76</sup> Nödelke and Weichbrodt, 'Hungerstreik und Zwangsernährung', 283.

form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.<sup>77</sup>

In 1985, the legal provision was reformed and subsequently provided physicians with more scope to refuse to treat hunger strikers against their will. This was, because the legal duty to force-feed was qualified. The term 'acute life-threatening state' was deleted. And as a consequence, a legal duty to treat only existed where prisoners were no longer able to declare their free will.<sup>78</sup> The effects of this change in approach are explored in the following subsection.

#### 2.4. The 1984-5 collective hunger strike: a move to the 'coma solution'

The narrators mentioned that in the final two hunger strikes, in 1984-5 and in 1989, force-feeding as a practice was no longer used. Rather, there had been a shift towards an intensive care medicine approach.

During the 1984-5 hunger strike, Knut Folkerts' health deteriorated severely and he fell into a coma. His story recalls the shift in approach from force-feeding to intensive care medicine, which he described as the 'coma solution' [*Komalösung*],

He described the situation he was in:

*The [84/85] hunger strike in Celle had come to a head. I fell into a coma and [then] I was flown to the university hospital in Hannover. And I was half-dead. ... Afterwards another prisoner [from the small group in Celle] was also transferred out.*<sup>79</sup>

Knut Folkerts explained:

*After fifty-six days I went into a coma and the strike continued possibly another five days.*<sup>80</sup>

Knut Folkerts stated that Karl-Heinz Dellwo's piece in *Der Spiegel* magazine in 1981 had had a significant impact on the change in approach.<sup>81</sup> There he had described the method and effect of force-feeding.

Knut Folkerts continued to explain this shift away from force-feeding:

<sup>77</sup> WMA, *Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment* (Adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975).

<sup>78</sup> This version has remained in force to date.

<sup>79</sup> Interview with Knut Folkerts, 10.

<sup>80</sup> Interview with Knut Folkerts, 11.

<sup>81</sup> See *Der Spiegel* 16/1981, 34-7.

*Then there was a change in method and it was called the coma solution. The advantage was that it could be publicly portrayed as conducted with respect for the prisoner's will and as a huge medical effort.*<sup>82</sup>

He criticised the approach that purportedly respected the hunger striker's individual autonomy.

He described his experience as follows:

*They wait until you go into a coma and then they apply intensive care medicine. And then you alternate between life and death. Particular forms of torture are not only aimed at unbearable pain but like waterboarding for instance are intended to bring the prisoner to the threshold between life and death.*

*At this threshold to death, the most extreme point of physical and psychological weakness, you want to bring the prisoner to the point of breakdown.*

*That is the association that I have. The coma solution gives the impression of a method without force in comparison to force-feeding. The aim is not to cause pain, but to break the resolve of the prisoner, who finds himself close to death.*<sup>83</sup>

Knut Folkerts' comments highlight the effect of the escalation of the hunger strike on the individual striker. Although the method of responding to hunger strikes had changed from the application of force to intensive care medicine, the underlying interpretation of the hunger strike remained the same. Through the legal framework, the hunger strike continued to be seen as a form of self-harm rather than a form of protest or resistance. For the State and the RAF, prisoners continued to conceptualise the hunger strike very differently.

Although formally the hunger strike was seen as a kind of self-harm that needed to be medicalised, the hunger strike was also interpreted as an attack on the State.

This is reflected in some of the legal commentaries published in the late 1970s to early 1980s. For instance, one commentator wrote that the hunger strikes had held the State and the prison authorities to ransom.<sup>84</sup> Another argued that it was perfectly reasonable to consider the hunger strike as a weapon employed against the state in the pursuit of particular goals. This commentator agreed with the view that the hunger strike was a form of 'aggressive coercion' in which the State was to be held responsible for the death of the prisoner.<sup>85</sup>

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<sup>82</sup> Interview with Knut Folkerts, 11.

<sup>83</sup> Interview with Knut Folkerts, 11.

<sup>84</sup> J.-H. Husen, 'Hungerstreik im Justizvollzug' (1977) 10 ZRP 291.

<sup>85</sup> K. Geppert, 'Die gegenwärtige gesetzliche Regelung der Zwangsernährung von Gefangenen (§ 101 Strafvollzugsgesetz)', (1982) 4 Jura, 184.

Moreover, the state was faced with an impossible conflict between two basic rights that the hunger strike provoked. These were the State's duty to safeguard the life of the prisoner and the prisoner's right to self-determination.<sup>86</sup>

These views of the hunger strike allude to an apparent powerlessness of the State faced with a group of hunger strikers. Both the force-feeding and the intensive medicine response to the hunger strike mirrored the techniques of immobilisation at the centre of RAF isolation. It represented a refusal to publicly recognise the hunger strike as a form of protest and as an opportunity to engage with the strikers. Knut Folkerts summarised his views as follows:

*Yes, these were highly political conflicts, a real power struggle. There we were from the extreme defensive, completely emaciated, and there the State was with all its means, who would not let itself be blackmailed. Bearing in mind that we demanded minimum conditions of detention. This is not supposed to be discussed during the [re-evaluation of thirty years of history].<sup>87</sup>*

### 3. Refusal and release

The stories in this final section are further refusals to co-operate. They highlight the consistency of the narrators' approach and their refusal to compromise on their political convictions. Throughout their imprisonment, they continued to see themselves as political prisoners. There are three stories: These are the refusal to move out of the high security wing in Celle prison and also Roland Mayer and Karl-Heinz Dellwo's stories of release from prison.

#### 3.1. Refusal to move out of the Celle high security wing

In this Sub-section the focus is on Karl-Heinz Dellwo's account of his initial reaction to the transfer out of the high security wing in 1992. He refused to leave the wing. In response to my surprise at this refusal he stated:

*You just have to understand, we had this wing... I had been in there since 1978 in this wing, over twelve years. I had gone on some really tough hunger strikes in there and had successfully fought for a lot.*

<sup>86</sup> Geppert, 'Die gegenwärtige gesetzliche Regelung der Zwangsernährung', 184. This tension was also voiced by the European Commission on Human Rights in the decision *X. v Germany* (1984) 7 E.H.R.R. 135. However, it acknowledged that faced with this conflict the State's duty to safeguard the prisoner's life outweighed the prisoner's right to physical integrity.

<sup>87</sup> Interview with Knut Folkerts, 11-2.

*And towards the end, after 1989 it was... after 1989 I no longer consider [it] isolation. That's evident. The fact that during the day we had exercise in the main prison yard... when was that again... 1989 we were still on our own on the main yard and ...*

*In 1990 [the SPD took over the government of Lower-Saxony]... 1990 or 1991 I cannot recall it exactly.... at that time we went on exercise with other prisoners. Our exercise was in the afternoon at 1pm and the other prisoners were those who did not have to work. ... They had exercise with us ... in the main prison yard.<sup>88</sup>*

He reasoned that the changes they had achieved through their continued resistance measures over the years in effect meant that there no longer was isolation:

*And at the same time with [the new SPD Minister for Justice] the around 120cm high security screen that had been attached to the cell windows, was removed. That meant that from our windows we were able to look onto the main prison yard. And because we then had windows that could be opened, we were then able to shout across to exchange some words with the prisoners who were on the yard or ... . That was relatively relaxed.*

*We considered this, for me personally, because I had done a lot, I simply saw this as a success. And in fact we had reconstructed the entire wing and with the additional contacts that we had at that time, you could no longer refer to it as a high security wing in that sense. We were patted down on leaving the wing, but that was no longer as strict.<sup>89</sup>*

Karl-Heinz Dellwo's comments highlighted how through confrontation and refusal over time they had shaped the space to such an extent that it no longer resembled the extreme immobilisation of RAF isolation.

He recalled how they were informed of the transfer out of the wing, in order to make space for others:

*And in 1992 I think it was, the prison governor appears and says that they need the high security wing for other prisoners. He said .... we were to join the mainstream regime... and then I said 'nah we're not doing it'. And I said that this was completely out of the question. We fought for this.*

*I always proposed a compromise. So I said that we would move to the mainstream regime if they also transferred other [RAF or J2M] prisoners there to the same wing in the mainstream regime.*

*We were not averse to the mainstream regime, but other prisoners were to have that option, as well ... . Of course, they did not agree to it.<sup>90</sup>*

Karl-Heinz Dellwo went on to state how the subsequent events unfolded:

*And then the situation was such ... we were not going to leave. ... And then they said that we had to. They cleared the level above us. The cells there were a considerable change for the worse, because they were half the size. They were really small cells, which they had cleared.<sup>91</sup>*

On the day of the move, he refused to leave his cell. He recalled that he was completely surprised by the course of action that was taken to force him out:

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<sup>88</sup> Interview with Karl-Heinz Dellwo, 64.

<sup>89</sup> Interview with Karl-Heinz Dellwo, 64-5.

<sup>90</sup> Interview with Karl-Heinz Dellwo, 65.

<sup>91</sup> Interview with Karl-Heinz Dellwo, 65-6.



*And then they came and we were supposed to get out. And I refused and they removed me by force. And they... I resisted vehemently ... upstairs in this cell I... there was a locker. I continuously bashed it against the door and then the whole thing fell apart.*

*They subsequently arrived with a fire extinguisher and emptied the entire load into the cell. ... they had sought permission ... and someone from the ministry was there. And I was bowled over. I had never experienced something like that before ...*

*They opened the flap [in the door] and there was a shhhht ... in the space of certainly I'd say a second... I could not see anything. You can't see your hand in front of your face anymore. Everything is white and you can't breath anymore. ... I could have suffocated in there. That is simply the way it was. Then they got me out and put me in the [bunker]... I was very agitated.<sup>92</sup>*

Karl-Heinz Dellwo noted that the Minister for Justice was in favour of their release but was also under pressure from the prison authorities. The space in the high security unit was now needed for dangerous prisoners:

*She [the minister] made a statement in which she affirmed that I had to be removed from the high security wing by force. But she could relate to it ... I had fought the conditions for so long and so on. It was all very very harmless. And towards the end that is the way it was.*

*Upstairs, I insisted that we should get our own cell for books. And we got it. And finally upstairs it was much better than in the high security wing. You were able to see a bit more; you were then able to go to the top floor during association and you could look beyond the prison walls. Before that was completely impossible for us ...<sup>93</sup>*

Karl-Heinz Dellwo and Knut Folkerts spent three years in the mainstream regime until their release in 1995.

After the refusal to move out of the wing, the following two stories explore the refusal to co-operate with the release process: first Roland Mayer's narrative of release from a fix-term sentence and second K-H's story of the release procedure for a life sentence.

### 3.2. Fixed-term sentence, release and control order

Roland Mayer served a twelve-year sentence. He explained that at the time it was the case that a prisoner could be released after he had served two thirds of a fixed-term. Roland Mayer explained that he refused to co-operate with the sentence review procedure. He further explained that in 1984, after eight years of his twelve-year sentence, his co-accused had already distanced himself from the RAF. He

<sup>92</sup> Interview with Karl-Heinz Dellwo, 66-7.

<sup>93</sup> Interview with Karl-Heinz Dellwo, 67-8.

had co-operated with the process and was subsequently released. Roland Mayer described how he was approached:

*The prison governor came into my cell and said that I knew that [S.H.] had distanced himself [from the RAF] and if I also did this then I would be released... then none of the other usual prerequisites necessary for release were required to be fulfilled.*

*I did not go along with this. Then they came and wanted a signature that I consented to the early release procedure. I did not provide this.<sup>94</sup>*

Following this he received notice of the court's decision in writing:

*Then the decision of the Higher State Court Stuttgart came through that stated that I had refused to consent to early release.<sup>95</sup>*

He was eventually released in December 1988 after he had served the full term. His release was subject to a type of control order. Initially the court intended to include clauses that required the permission of the court for any change of residence or workplace. Following public protest, the residential requirement was removed. Rather, a term was included that he was not permitted to leave the country without court approval. One of the terms that remained was the requirement to report to a specific police station once a week.

After the move towards public reconciliation with the RAF through the so-called 'Kinkel initiative' in 1992 and the subsequent ceasefire declaration of the RAF in 1993, Roland Mayer applied for an end to the control order. This was accepted.

### 3.3. Life sentence and release: a parallel process

Within this broader public debate on the question of reconciliation and the change of government in Lower Saxony to the SPD, Knut Folkerts and Karl-Heinz Dellwo's release took place. As previously mentioned, both were serving life sentences.

Before moving on to Karl-Heinz Dellwo's story of how he refused to co-operate with the release process, it is useful to briefly set out how the legal principles. In a recent comparative note on the comparison of the release from life imprisonment in England and Germany, van Zyl Smit writes:

The decision-making process that takes place in Germany after 15 years is potentially very complex as the decision is made on a mixture of factors: both whether the 15 years is sufficiently severe to

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<sup>94</sup> Interview with Roland Mayer, 6.

<sup>95</sup> Interview with Roland Mayer, 6.

punish offenders for the specific conduct of which they were guilty and whether the offender continues to pose a risk to society.<sup>96</sup>

The fifteen years refers to the minimum period after which the court may determine the further incarceration of the lifer. In 1992 the Federal Constitutional Court decision held, the court that originally passes the sentence also has to consider whether the offender was particularly blameworthy [*die besondere Schwere der Schuld*].<sup>97</sup> This is intended to guide the court that later reviews the lifer's detention as to whether the fifteen years can be deemed sufficient punishment in the individual circumstances. Once this is accepted, the court then turns to the question 'whether the offender continues to pose a risk to society'.<sup>98</sup>

The following story deals with the refusal to co-operate with the court's process for assessing precisely this question. Karl-Heinz Dellwo explained that he refused to co-operate with the court procedure, because of the fact that the assessment whether he continued to pose a risk to society was to be based on a psychiatric assessment.<sup>99</sup>

Karl-Heinz Dellwo described his reaction to the requirement of a psychiatric assessment and how he, Knut Folkerts and the other remaining RAF prisoner collectively rejected this procedure. He said:

*And then the Higher State Court Dusseldorf went and said for this we need a psychiatric assessment and then the only thing I said was: we are not doing it.*

*At the time I made a political statement on behalf of all [Knut Folkerts and L.T.] and I said that ... well what you can expect from us, evidently is that we explain our standpoint ... none of us will return to the political... to the armed struggle.*

*Everything else does not need to be discussed with the judiciary. This is a political dispute with others.*

*And because we make political decisions we will not agree to be assessed by a psychiatrist.<sup>100</sup>*

Despite their objections, the court appointed a psychiatrist. At the initial meeting with him, Karl-Heinz informed him that he was not going to co-operate. He described what he said:

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<sup>96</sup> van Zyl Smit, 'Release from life imprisonment'.

<sup>97</sup> BVerfGE 86, 288 (3 June 1992).

<sup>98</sup> For the paragraph, see van Zyl Smit, 'Release from life imprisonment'.

<sup>99</sup> He added that the court had to retrospectively determine whether he had been particularly blameworthy, as this had not been done as part of the original sentence in 1978.

<sup>100</sup> Interview with Karl-Heinz Dellwo, 70-1.

*How do you do? My name is... Please do not take this personally; I am sure that you are good at your job, but you are the wrong person in this context. We are happy to speak to a political scientist or the like.*

*I would do that, but there is no innate aggression from which the armed struggle emanated, rather it resulted from social context at the time and how we perceived it. This is why I refuse to take part [in this assessment]. Goodbye.*<sup>101</sup>

He added:

*I was really friendly and he did not make a sound.*<sup>102</sup>

The psychiatrist then informed the court that he was not able to make the assessment without Karl-Heinz Dellwo's co-operation and as a consequence, the release process stalled. The lawyers filed a complaint. Karl-Heinz Dellwo explained:

*I constantly said that after all we have been through we will not be psychiatrised even if we rot here, in this prison [hier grün und schwarz werden]. ... The whole time they have been depoliticising the issue ... I fought against this for decades. And then we said we will not be psychiatrised.*<sup>103</sup>

Karl-Heinz Dellwo mentioned that the Federal Court of Justice subsequently ruled the psychiatrist was able to continue with his assessment and, if necessary, he could base it solely on information from Karl-Heinz Dellwo's prison and court files.

In the context of an increased political interest in a process of reconciliation with the RAF, a parallel process to the legal procedure was negotiated between the lawyers and the Ministry of Justice of Lower Saxony. They agreed to a criminological assessment of the three Celle prisoners by a criminology professor from Frankfurt University, Professor Albrecht.

Karl-Heinz Dellwo explained:

*They said that there needed to be an assessment and we said okay. Whether it is a political scientist or we would also agree to a criminologist. And then the prison requested an assessment ... whether we needed a planned release.*<sup>104</sup>

Karl-Heinz Dellwo added that he had been concerned that the release process would occur in stages:

*I just did not want that. It simply has something to do with my pride... I told the prison governor at the time that ... because he had already suggested that we could go on a prison leave... and I just said that I will leave once and if you want to have me back you will have to send the flying squad [Sondereinsatzkommando]. I will not return of my own free will.*

<sup>101</sup> Interview with Karl-Heinz Dellwo, 71.

<sup>102</sup> Interview with Karl-Heinz Dellwo, 71.

<sup>103</sup> Interview with Karl-Heinz Dellwo, 71.

<sup>104</sup> Interview with Karl-Heinz Dellwo, 72.

*Never in my life would I enter a prison freely. I do not do that kind of thing. That was my conviction ...*<sup>105</sup>

In addition to the question whether he posed a risk to society, the court would also decide on how the release needed to be structured.

Karl-Heinz Dellwo explained that during the court hearing, he refused to answer any questions in relation to the psychological assessment. He said that he simply repeated the same sentence '*we will not return to the armed struggle*'.<sup>106</sup>

Yet, he contrasted this with the process of the criminological assessment, which he had found constructive and positive. Professor Albrecht's assessment was positive. He conducted a very comprehensive review in which he came to the conclusion that Karl-Heinz Dellwo's declaration that he had relinquished violence was highly credible, after taking into account the historical and current political context, his move away from the collective identity of the RAF and the critical reflexivity he had demonstrated in relation to his past violent actions.<sup>107</sup>

In response to the question on the need for a planned release, he found that this was not necessary, because of Karl-Heinz Dellwo's strong family and social ties. These would provide the necessary stability to facilitate his integration into society. Moreover, he pointed to the prison administration of Lower Saxony's past practice in relation to the release of politically motivated offenders, albeit those convicted of violent crimes committed during the Nazi regime. In those cases the prison administration had predominantly refrained from a planned release.<sup>108</sup>

Karl-Heinz Dellwo contrasted these positive findings with the findings of the psychiatric assessment:

*He went on for a long while and ended his assessment with the statement that I could not be released, that there was no change in my attitude and that I was still dangerous... and all of that. And if the court did want to release me then .... a whole series of measures were necessary, right. He was fuming and the court ignored it ... and then after that I was released.*<sup>109</sup>

<sup>105</sup> Interview with Karl-Heinz Dellwo, 72.

<sup>106</sup> Interview with Karl-Heinz Dellwo, 73.

<sup>107</sup> P.-A. Albrecht, 'Kriminologisch-sozialwissenschaftliches Gutachten zur Frage der Legalprognose über Herrn Karl-Heinz Dellwo ...' (Frankfurt am Main, 25.07.1994) 22-3.

<sup>108</sup> For the paragraph, see Albrecht, 'Kriminologisch-sozialwissenschaftliches Gutachten', 25-6.

<sup>109</sup> Interview with Karl-Heinz Dellwo, 74.

Knut Folkerts was released in October 1995. There was a separate court hearing, but he also had a criminological assessment done by Professor Albrecht.

#### 4. Conclusion

This chapter has explored the personal narratives of the various resistance techniques that the RAF prisoners employed under conditions of isolation. The impact of the spaces of immobilisation and surveillance were such that the scope for resistance was reduced to refusals; the baseline of resistance.<sup>110</sup> The refusals were a combination of both individual and collective hunger strikes with a catalogue of everyday refusals that were applied in a systematic manner. The stories of the high security wing recount how over time and through perseverance, they were able to effect a shift in the power imbalance in their favour. As a consequence, they were able to shape the space of their confinement.

However, the power relations were continuously contested. An example for this was the refusal to move out of the high security wing in Celle prison. The prison authorities very clearly asserted their authority by forcibly removing Karl-Heinz Dellwo from the wing.

Yet, this final set of refusals that included the two stories that described how the narrators' refused to co-operate with the release process, highlight the extent of the political convictions and identity.

The collective hunger strikes were the most public power struggle between the RAF prisoners and the State. The individual stories highlight how through the process of self-starvation, the strikers were taking the techniques of immobilisation towards their ultimate conclusion. They successfully subverted punitive power. They undermined this perception of the total control of RAF/J2M prisoners through high-tech high security.

From this perspective, force-feeding can be seen as an attempt by the State to reassert its dominance. The stories describe the procedure as a form of aggression. This was reflected in the WMA

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<sup>110</sup> Buntman, *Robben Island*.

1975 Tokyo Declaration that suggested physicians refrain from artificially feeding prisoners' against their will. The international consensus amongst the medical profession was that force-feeding was considered a violation of the prisoners' right to physical integrity. Arguably, German physicians were largely critical of force-feeding. There had had been public debates, especially following the suicide of the Berlin prison doctor. The repercussions that he had suffered for refusing to force-feed the RAF/J2M prisoners in Berlin Moabit prison during the 1981 hunger strike had extended to being accused of sympathising with terrorists and their cause.

During the 1984-5 hunger strike, there had been a shift towards an intensive care medicine approach. However, this was not experienced as respect for their individual autonomy. Rather, it was seen as a new step in the repression of the hunger strike: the 'coma solution'.

The themes that run through these resistance strategies are the RAF prisoners' struggle both against isolation and for a RAF/J2M or even political prisoner community on the one hand, and individual survival on the other. This is explored in more detail in Chapter 7.

## Chapter 7

### Resistance stories: Escape, community and survival

The aim of this final narrative chapter is to further explore the importance the narrators attached to their collective and personal resistance in prison. It builds on the resistance stories in the previous chapter in three distinct, yet interconnected, ways. In the first section an unexpected story<sup>1</sup> is engaged with. Accounts of RAF resistance tend to be dominated by the analysis of the collective hunger strikes against RAF isolation. This unexpected story is an escape, in which M and three J2M women prisoners escaped from Lehrter Strasse Prison in Berlin in July 1976.

The two subsequent sections explore the two themes striving for a RAF/J2M prisoner, or even a broader political prisoner community, and individual survival. These two sections differ from the stories of isolation and resistance that have been engaged with throughout this thesis, in that they are general reflections of their overall experiences of isolation and resistance. Therefore the context, in which they were told, rather than the context, in which they were experienced, is significant for their analysis. Another aspect that is significant for understanding the narrators' reflections on striving for community and individual survival is the fact that a group of them took part in a type of group therapy in the period 1996-2003. Originally, the group emerged to provide a space for the former RAF and J2M members to engage with their traumatisation in prison with the help of psychoanalysts and psychologists. In 2007, the narrators, Karl-Heinz Dellwo, Knut Folkerts, Roland Mayer and M, together with a former J2M prisoner Ella Rollnik, two women who were sympathisers, and the therapists published a collection of essays that in various ways retold or described their experiences within the group therapy. In the prologue to the book, entitled 'After the armed struggle', a leading German psychologist in the area of trauma and human rights, Becker, describes its stories as a 'psycho-social process':

It is not about either a political discussion or an analysis of the mental state of former prisoners. It simultaneously deals with both.<sup>2</sup>

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<sup>1</sup> Carey, 'Unexpected Stories: Life History and the Limits of Representation'; see Chapter 1 on the narrative method.

<sup>2</sup> Becker, 'Vorwort', 10.



In other words, the stories deal with the intersection of the history of the RAF and collective identity on the one hand, and life after the RAF and individualism on the other. Holderberg, one of the therapists, explains that the central theme to their sessions was the tension between the collective identity of the RAF, in which individualism was not conceived of, let alone, lived, and arguably the guilt and mourning associated with the individual survival of former RAF prisoners.<sup>3</sup> She added that in each session they addressed this tension with an emphasis on what divided or connected the individual to the others. They also considered the questions: how they engaged with the more recent history [1970s-90s] and how they perceived their personal role in RAF history.<sup>4</sup>

Within this context, Section 2 engages critically with the RAF's central demand in their hunger strikes for the end of RAF isolation and their integration in intercommunicative groups. Although ultimately this was never achieved, the narrators' comments explore the possibilities and limits of such a space for critical reflection within the group. Section 3 moves on from the idea of the collective to the narrators' understanding of individual survival. The section engages with personal stories of surviving the extreme conditions of RAF isolation retold within the context of the 'total defeat' of the RAF and its politics.

## 1. Escape from Lehrter Strasse prison in Berlin

Heeding Carey's call for the inclusion of unexpected stories<sup>5</sup>, this section engages with an escape story that took place outside of the extreme conditions of RAF isolation, yet still within its context. In early July 1976, M together with three J2M women prisoners, Ella Rollnik, Juliane Plambeck and Inge Vielt, escaped from Lehrter Strasse prison in Berlin.

To put her experiences into context, M was one of the first RAF members to be arrested. Following her arrest in Berlin in October 1970, she was transferred to West Germany in May 1971. There she was detained in three different prisons in strict solitary confinement, before being transferred

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<sup>3</sup> A. Holderberg, 'Begegnungen, Berührungen, Reflexionen: Psychoanalytisches Verstehen eines Gruppenprozesses mit ehemaligen Mitgliedern der RAF, Bewegung 2. Juni und Unterstützerguppen' in A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007) 43-4.

<sup>4</sup> Holderberg, 'Begegnungen, Berührungen, Reflexionen', 44.

<sup>5</sup> Carey, 'Unexpected Stories: Life History and the Limits of Representation'.

back to Berlin in March 1972. On her return, she was first detained in 'the tower' in Moabit prison, a male remand prison.<sup>6</sup> At that time she was able to have joint exercise with another RAF prisoner. In January 1974, she was transferred to the women prison in Lehrter Strasse.

The conditions of confinement in Lehrter Strasse prison were more relaxed than the severely restrictive conditions that M had experienced in Moabit prison.<sup>7</sup> Like Moabit prison, the Lehrter Strasse prison was an old structure. However, unlike Moabit prison, it was not constructed as a modern 19th century prison. This was because originally the redbrick building from the *Gründerzeit*, late 19th century, had been designed to detain Prussian military officers. For instance, parts of the building and windows immediately faced onto the street without a surrounding wall. Later the building had been used as a garrison prison, before it had been converted into a women's prison after 1945.<sup>8</sup>

M described her conditions of confinement in Lehrter Strasse prison as 'formal integration'.<sup>9</sup> She had joint exercise with other RAF prisoners and was able to attend communal activities such as craft classes or television in the evenings. Initially, this was with a group of prisoners that had been selected by the prison management.

The three J2M prisoners, who she later escaped with, were arrested and had arrived in Lehrter Strasse prison in 1975. These were prominent arrests, because in February/March 1975 the J2M had kidnapped the leader of the CDU party in Berlin, Peter Lorenz. They successfully had managed to force the release of five political prisoners in return for Peter Lorenz.<sup>10</sup> The conditions after the arrival of the three J2M prisoners included limited association. The political prisoners were divided into three groups for association during exercise, television and other activities such as craft classes.

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<sup>6</sup> See Chapter 4, Section 3, for a description of the detention of women RAF prisoners in Moabit prison.

<sup>7</sup> See Chapter 4, Section 3.

<sup>8</sup> *Der Spiegel*, 'Ausbruch in Berlin'.

<sup>9</sup> M, Report on Detention, 2.

<sup>10</sup> In chapter six of her autobiography, Inge Viett describes the planning and execution of the kidnapping; see I. Viett, *Nie war ich furchtloser: Autobiographie* (4th edn., Edition Nautilus, Hamburg, 2007).

M started the story of the escape with the reason behind it. She explained that after her conviction had been declared valid in 1976,<sup>11</sup> she found out that she was going to be transferred to West Germany once again. Others had already been transferred by that time:

*I was still in Berlin. I was due to be transferred. Before this could happen, we legged it.*

...

*FE: How did you do it?*

*M: Oh, well ... [laugh]. ... First of all, ... [laugh] ... Inge had already escaped once before, Viett. ... She was hardly back in jail, when she already started filing at [the bars] again.<sup>12</sup>*

Inge Viett, who had planned and had taken part in the kidnapping of the conservative politician Peter Lorenz in 1975,<sup>13</sup> had already broken out of Lehrter Strasse prison once before, in 1973. At that time she and two ordinary prisoners had managed to dislocate one of the iron bars on the windows in the TV room. They subsequently had slipped through the bars and had descended onto the pavement with the use of curtains, which they had knotted together. M recalled that on Inge Viett's return to the prison in 1975, they put her in the same cell that she had previously been detained in. There she had hidden in one of the bedposts had not been found by the prison officers and was still there where she had left it.

The idea for the escape turned into a realistic prospect after M and the others had noticed that the window above the door to the prison library did not have any iron bars. They realised that from this window they would be able to get out of the building and then onto its roof. However, M explained that this was far from straightforward, because there were still a number of locked doors that they had to get through to get to the library:

*First, we had to figure out how to get there. Initially we thought we'd do it during the day or in the evenings after watching TV and knock them out. We thought mmm not good. And then at one point we had the idea or it just developed that ...<sup>14</sup>*

They decided to copy the keys:

*We needed an imprint of the key. And of course the craft classes were very useful for this. They were organised by a social worker...*

<sup>11</sup> She was convicted of bank robbery and membership in a criminal organisation. She was sentenced to twelve years in prison, of which she had served nearly six in pre-trial detention up to that point.

<sup>12</sup> Interview with M, 25.

<sup>13</sup> See Chapter 1 for more detail on J2M.

<sup>14</sup> Interview with M, 27.

*Anyway we made a replica key and it fit.*<sup>15</sup>

Here M referred to the key to her cell door, which could only be unlocked from the outside. She recalled that during the planning stage of the escape, she had been transferred to a more secure cell, which had a door flap, in addition to the spy hole. The key to door flap was a square key:

*Somehow I still had the square key from Mayence prison. I then unlocked the door flap [from the outside]. And it was pretty heavy and therefore remained shut, even though [it was unlocked]. [From the inside] you could push against it and it opened. And then the whole thing was set.*<sup>16</sup>

In her autobiography, Inge Viett described the planning of the escape in more detail. It had taken six months all in all. In addition to the cell door key, they had needed the keys to access the corridor to the library and to the library itself.<sup>17</sup> She recounted in great detail how she had created models of the keys with the help of material she had received from the outside. These models had been smuggled out and made into replicas:

*Our escape plan took on proper contours. I managed to get out to Susan the cell key, which fit, and the two wooden models. From these models she created real replica keys. Like ants all things secretly walked out of the jail and back in again. We could not let anything be found in the frequent cell searches. Nothing was to raise suspicion.*<sup>18</sup>

On the night of the escape, they waited until the two women officers had done their round, before M unlocked her cell door and also let the others out:

*We waited ten minutes. I unlocked and let the others out. And then I locked the door again. After that we tried the other key and it didn't fit.*

*We knew that they [prison officers] went on another round between one and two in the morning. We waited until then. ...*

*They came around the corner and we were waiting for them.*<sup>19</sup>

M continued:

*We had also armed ourselves. One had a pipe; one had bedsprings; one had something that looked like a small handgun. I had nothing, because I was the tallest and I had thought about*

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<sup>15</sup> Interview with M, 27.

<sup>16</sup> Interview with M, 28.

<sup>17</sup> Viett, *Nie war ich furchtloser*, 153-5.

<sup>18</sup> Viett, *Nie war ich furchtloser*, 155.

<sup>19</sup> Interview with M, 29.

*what to do if they [the prison officers] panic. That is something you definitely need to consider. You overwhelm them and they start to scream. ...*

*I was able to relatively quickly react and cover her mouth.*<sup>20</sup>

After that they managed to get to the library, they tied up the prison officers and made their escape:

*We climbed through this window - it wasn't big, but we didn't have problems getting through - onto a projecting roof; then onto the roof of the corridor that linked the library with the main building; and then using the iron bars on the windows, we climbed past the TV room. It was a bit of luck that there were bars on the windows.*

*In a very textbook manner [klassisch] we used knotted sheets to descend onto the street.*<sup>21</sup>

By the time the guards raised the alarm, they had already dispersed.

When M recounted the story of the escape, her tone changed. It became more relaxed. There was laughing or giggling. That part of her narrative really conveyed a sense of taking action. This can be considered similar to the characterisation of the hunger strike explored in the previous chapter.

Yet, in contrast to the hunger strike, escape as resistance defies authority. The hunger strike with its immense self-sacrifice, as Ellmann puts it, 'plays hierarchical relations rather than abnegating authority'.<sup>22</sup> The escape's defiance and in this case a sense of achievement in outwitting the various government agencies came across strongly in M's recollection of the escape.

### 1.1. The Escape: a political embarrassment

This was mirrored in the article the magazine, *Der Spiegel*, ran following the escape in 1976.<sup>23</sup> The escape featured on the front cover with the title: 'The women escaped: the terrorists are mobilising'. The design of the front cover included small photographs of the four women and a large image of a knotted sheet. The article characterised the escape as the

most spectacular prison break in post-war Federal German history. It was professionally executed (that is if the stories of the guards are accurate), and it seems that in any case it was flawlessly organised.<sup>24</sup>

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<sup>20</sup> Interview with M, 30.

<sup>21</sup> Interview with M, 30.

<sup>22</sup> Ellmann, *The Hunger Artists*, 21: See Chapter 6, Section 1.2. for more detail.

<sup>23</sup> Anon, 'Ausbruch in Berlin: Das ist eine Riesensache', *Der Spiegel* 29/1976 ([www.spiegel.de](http://www.spiegel.de)) (accessed 3.12.2010).

<sup>24</sup> *Der Spiegel*, 'Ausbruch in Berlin'.

The central message of the article was that the government had lost the public's confidence in their counterterrorism strategy. The escape was perceived as an embarrassment for the Federal government.

The escape once again fuelled the political and academic debates on the role of women in the RAF/J2M and other militant groups. These debates centred on explaining the high percentage of female membership. The highly organised and successfully executed escape contradicted the dominant perception of women members of the RAF and J2M as submissive and passive. This was the view promoted in the tabloid press, with their derogatory references to 'Baader's Bonnies or Bunnies'.<sup>25</sup> Other views pointed to the question why these women had so violently rejected the traditional gender roles. *Der Spiegel* quoted the former Chief of the Federal Office for the Protection of the Constitution, Nollau, who had suggested that there was 'something irrational in all of this'. He was reported to have said that it was 'an excess of women's liberation'.<sup>26</sup>

In her more recent article in which she analysed the role of women in the RAF and J2M, Diewald-Kerkmann displaces this perspective:

It is evident that the female actors [RAF and J2M members] like many other women lived through a process of becoming aware in which the traditional [gender] role models were shattered. Yet, these women chose a different path to the majority.<sup>27</sup>

A further critique of the government and the authorities was that they had exhibited a lack of control at a time when terrorism was internationalising. The escape signified ineptitude in keeping hold of imprisoned terrorists and raised serious doubts in their capacity to deal with any future threats. One of the sub-headings in the *Der Spiegel* article read 'after the daring feat of Entebbe the embarrassment of Berlin'.<sup>28</sup>

It reported that the Israeli government had received worldwide approval for the manner in which they had responded to the hijacking of an Air France plane *en route* from Tel Aviv to Paris in June 1976 by two Palestinians from the Popular Front for the Liberation of Palestine - External Operations, and two members of the German Revolutionary Cells. The hijackers had redirected the

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<sup>25</sup> *Der Spiegel*, 'Ausbruch in Berlin'.

<sup>26</sup> Nollau cit. in *Der Spiegel*, 'Ausbruch in Berlin'.

<sup>27</sup> G. Diewald-Kerkmann, 'Bewaffnete Frauen im Untergrund: Zum Anteil von Frauen in der RAF und der Bewegung 2. Juni' in W. Kraushaar (ed.), *Die RAF und der linke Terrorismus* (vol. 1, Hamburger Edition, Hamburg, 2006) 674.

<sup>28</sup> *Der Spiegel*, 'Ausbruch in Berlin'.

plane to Entebbe Airport, near Kampala in Uganda, where they controversially released all but the Jewish passengers. In early July, Israeli forces raided the plane freeing the majority of the hostages.

Not only did the Federal government receive widespread criticism for the escape, but it also gave critics added impetus against the prison reform drive towards a more humane prison system.<sup>29</sup> *Der Spiegel* wrote that conditions of confinement for RAF and other militant prisoners, which had included varying degrees of isolation, had been relaxed after 1974. It suggested that

[a]fter being informed of the subtle consequences of such practices of incarceration, the prison authorities had to increasingly yield to pressure. In addition to the nationally organised hunger strikes by the Baader-Meinhof prisoners and protests from the liberal camp, the courts had seen to it that conditions of confinement were relaxed.<sup>30</sup>

Though the prison system in Berlin was not under Federal jurisdiction, the government was highly criticised for the inefficiencies and the lax security measures at Lehrter Strasse prison, which were deemed wholly inappropriate for detaining such high-risk prisoners.

The escape as an act of resistance was successful in that its open defiance had such a broad impact. M was recaptured in Berlin towards the end of July 1976. She was detained in Moabit prison and served the balance of her first sentence and an additional sentence of four years in connection with the escape, until she was eventually released in 1988.<sup>31</sup>

After this account of a particular resistance story, the following sections engage with the two themes, namely striving for community in Section 2 and individual survival in Section 3.

## 2. Intercommunicative groups: an (un)reasonable demand

This section analyses the narrators' views on the potential effect that their integration into larger groups would have had, which in turn would have effectively created the space for political prisoner communities to develop.

<sup>29</sup> See Chapter 2, Section 1 and Chapter 3, Section 4 for more detail on the prison reform and the Prison Act 1976.

<sup>30</sup> *Der Spiegel*, 'Ausbruch in Berlin'.

<sup>31</sup> For a detailed analysis of M's experiences of isolation in Moabit prison, see Chapter 4, Section 3.3.

The narratives in this section came about in response to the question how in their opinion the state should have reacted with a view to their conditions of detention. Their invariable first response was that it was not for them to say, or that they could not say. But actually the following comments set out nuanced accounts of their persistent demands throughout the hunger strikes, namely putting an end to isolation through integration into the mainstream regime and later integration into intercommunicative groups.

These reflections need to be read within the context of the themes: collective identity and history of the RAF/J2M, and individual responsibility and survival. These were the themes that the narrators explored in the sessions throughout the group therapy from 1996-2003.

One of the members, Ella Rollnik, explains this well in her chapter in the 2007 collection of essays on the experiences of the group therapy. Before her reflections in that chapter are relayed, a brief description of her background is set out. She was one of the J2M prisoners who had taken part in the 1976 prison break. She later served the large part of her long fixed-term sentence in the high security unit in Moabit prison in Berlin. She was one of the last prisoners to be moved out of the high security wing, before its closure in 1989. She was eventually released in 1992.

To return to the context for this section, in her chapter Ella Rollnik writes that after the founding generation, the politics of the RAF had stagnated. She states that in the end only the militarised form remained, aimed at breaking with the existing political system, rather than producing a politics that was politically and socially relevant. She refers to this as a politics that would have been emancipated from the old and would have promoted a liberated society.<sup>32</sup>

However, she adds that in prison all they had wanted, was to survive

together and in a struggle against the system. A system that through special and isolation measures created an environment in which resistance was unavoidable, in order to survive and not to lose one's identity.<sup>33</sup>

She adds that had the authorities allowed their integration in one institution and the association among RAF/J2M members, they might have admitted political defeat while still in prison. Yet, the

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<sup>32</sup> E. Rollnik, 'Nach dem bewaffneten Kampf' in A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007) 147.

<sup>33</sup> Rollnik, 'Nach dem bewaffneten Kampf', 148-9.



continued segregation conserved and perpetuated their resolve, for only a collective change would have provided a way out.<sup>34</sup> She summarises:

Through the external conditions we were welded into a collective; that is we fought through walls and separation for physical contact with those who were arrested under the same circumstances, in order to create a unity and to act as a group. We succeeded from time to time and this was achieved through the hunger strikes, in which we could gradually improve our situation in prison. Two comrades died during the hunger strikes: Holger Meins and Sigurd Debus. We did not achieve integration.<sup>35</sup>

## 2.1. *The concept intercommunicative groups*

This concept was introduced by Professor Wilfried Rasch from the Institute of Forensic Psychiatry at the Free University of Berlin. He was one of the independent experts called upon by the defence, during the RAF leadership trial in Stammheim in 1975-7, to assess the defendants' fitness to stand trial.<sup>36</sup> In this context, Professor Rasch found that at the time the RAF leadership was allowed some degree of association. He wrote:

Their current situation is akin to that of a small group under extreme conditions. The relationships of the defendants remain strictly channelled and they continue to be insulated from normal or semi-normal interactions within the prison...<sup>37</sup>

Though he argued that integration into the mainstream regime was more likely to help the prisoners revise their views, he suggested that an alternative was to integrate the prisoners in larger groups of about fifteen to twenty. This was in contrast to the segregation in small groups of three to four prisoners, which was to be the policy of the post-1977 high security wings. In a later article in 1979, he criticised the construction and total design of the new high security units:

[O]ne cannot but receive the impression that the authorities condone the impairment of health likely to result from this type of detainment. These measures arouse the suspicion that mausoleums are being erected for the negative heroes of the nation (English in the original).<sup>38</sup>

The argument for the larger groups promoted the idea to end solitary and small group isolation and provide a space for meaningful interaction and communication among the RAF and J2M prisoners.

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<sup>34</sup> Rollnik, 'Nach dem bewaffneten Kampf', 148-9.

<sup>35</sup> Rollnik, 'Nach dem bewaffneten Kampf', 148.

<sup>36</sup> Stuberger, *In der Strafsache gegen Andreas Baader*, 102. See Chapter 2, Sections 4.4. and 4.5. for more detail.

<sup>37</sup> Rasch cit. in Stuberger, *In der Strafsache gegen Andreas Baader*, 103.

<sup>38</sup> W. Rasch, 'Psychological Dimensions of Political Terrorism in the Federal Republic of Germany' (1979) 2 *International Journal of Law and Psychiatry*, 84.

This is reflected in Knut Folkerts' account. He explained the rationale behind the fight for detention in intercommunicative groups:

*Especially after the tough ... hunger strike in 1974 it was about [achieving] integration into the mainstream regime.*

*Holger Meins died in the fight for the demands of equal treatment with other prisoners. Thereafter the political prisoners demanded to be detained together in intercommunicative groups.*

*The best outcome would have been if we had been together as a group and had been integrated into the mainstream regime. Of course, that would have resulted in the least amount of restrictions for our detention where you would have been able to communicate.<sup>39</sup>*

He went into detail about what he understood by the concept of intercommunicative groups:

*All those early years where people are now claiming that the RAF had normal conditions of confinement [Normalvollzug] - that is incorrect - the modern high security wings did not exist and where there was contact to normal prisoners they introduced informers, for instance in the case of Sigurd Debus (not a RAF member) in Celle in 1978.<sup>40</sup>*

*Based on these circumstances we demanded to be detained together in intercommunicative groups where we were free to interact. We were not interested in a status, but in substance about minimum standards for survival.<sup>41</sup>*

He concluded his point:

*But precisely because we wanted to be brought together it was rejected to the end.<sup>42</sup>*

Knut Folkerts maintained that these large groups were a baseline for survival, where free interaction but also space for meaningful exchanges could have taken place. This lay in stark contrast to the small group isolation that both he and Karl-Heinz Dellwo had experienced in the high security unit in Celle prison.<sup>43</sup>

## 2.2. Integration: scope for critical reflection?

The conditions of RAF isolation, both solitary and small group isolation, provided a lack of meaningful contact between the RAF/J2M prisoners, who had largely been dispersed in prisons across the country. Throughout their incarceration, this had been a barrier to critical reflection of both the continued armed

<sup>39</sup> Interview with Knut Folkerts, 18-9.

<sup>40</sup> Here Knut Folkerts is referring to what became known as the 'Celler Loch'. It was supposedly an attempt by the State office of for the Protection of the Constitution in Lower Saxony to infiltrate the RAF. An agent had detonated an explosive device and blown a hole into the outer perimeter wall of Celle prison to suggest an attempt to free Sigurd Debus. See C. Ellersiek and W. Becker, *Das Celler Loch: Die Hintergründe der Aktion Feuerzauber* (Verlag am Galgenberg, Hamburg, 1987).

<sup>41</sup> Interview with Knut Folkerts, 19.

<sup>42</sup> Interview with Knut Folkerts, 19.

<sup>43</sup> See Chapter 4 Section 3.2 for more detail on their experiences in the Celle high security unit.

struggle on the outside and their own prison struggle.<sup>44</sup> RAF isolation created an environment in which resistance and the promotion of group cohesion were the driving forces of their prison struggle.

Karl-Heinz Dellwo commented on the potential for critical reflection such an integration of RAF and J2M prisoners could have had:

*I think that at the time you could only have done... we would probably still have tried to fight against it, but one should have integrated the prisoners for whatever reason. One should have given them the opportunity to discuss.*<sup>45</sup>

He maintained that the detention in larger groups would not necessarily have resulted in meaningful interaction, but the reinforcement of their views. He said that

*we would have still held on [to our views] for many years, but I think through all these contacts with others - that did not necessarily have to be the state, just contacts - ... are substantively fruitless [inhaltlich fruchtlos] for the reason because you see yourself in a hostile relationship [Feindverhältnis] and you yourself are in fact reproducing a friend/enemy concept [Freund/Feindbild]. This is also what we did.*<sup>46</sup>

In order to break through this polarisation of views, Karl-Heinz Dellwo emphasised the importance of a political approach to addressing prison struggle. He explained that there could have been the opportunity for contact with people who challenged their political views through debate. He went into more detail:

*Therefore there could have been [the possibility] of debate with other viewpoints that maybe could have questioned the opinions that between us had long been considered normal, unwavering. Well, it could still have taken twenty years or the like, but that would at least have been something where we could not have accused them [the authorities] of the isolation measures or the whole thing.*

*And it would have been something that would have ... it would have started where we were at, how we perceived ourselves. We saw ourselves as political... and I still see myself today like that, despite my many mistakes I see myself still in the whole context as political.*<sup>47</sup>

These comments reflect Rasch's emphasis on critical reflection and the challenging of views that would have proved difficult in larger but still isolated homogenous groups.

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<sup>44</sup> Rollnik, 'Nach dem bewaffneten Kampf', 148.

<sup>45</sup> Interview with Karl-Heinz Dellwo, 86.

<sup>46</sup> Interview with Karl-Heinz Dellwo, 86.

<sup>47</sup> Interview with Karl-Heinz Dellwo, 86-7.

This would also have meant a different approach to the aim imprisonment set out in the Prison Act 1976. It would have introduced 'political socialization' to the dichotomy of the resocialization of ordinary prisoners and the exception in the high security units.

In 1978 Helga Einsele, the progressive prison governor of the women's prison Frankfurt Preungesheim and a renowned criminologist, and Nele Löw-Beer first introduced the concept of 'political socialization'.<sup>48</sup> Based on the experience of managing the detention of several women RAF prisoners, they argued that in addition to any therapeutic approach there was a need for a tailored programme that, in co-operation with the prisoners, promoted their critical reflection and analysis of history, politics and society.

They explained that this entailed opening up the prison to carefully vetted political groups and academics, who would challenge the prisoners' views and engage them in critical discussions. Most importantly, political socialization focussed on channelling the positive force of the RAF prisoners through critical interactions, rather than expecting them to conform without protest.<sup>49</sup> They concluded with an appeal to extend the humanisation of imprisonment to RAF/J2M prisoners:

Those, who do not believe in the human potential for positive development, even from such a desperate situation, certainly cannot be helped.<sup>50</sup>

Karl-Heinz Dellwo summed up the importance of critical reflection of their collective past and individual political identity. He said that

*if you see it that way... Today I consider these stories... I am after all jointly responsible for two fatalities. And ... I also ... in contrast to the past, today I no longer voice the opinion that I reject the bourgeois judiciary in its entirety. It is simply so grave that judgement has to be passed on it. I have also said that I am happy that I did not get away unscathed. I am happy that it was not without consequence.*

*That means... I would not say that I agree with the twenty years that I spent in prison or other.... but these are simply issues and as I am aware that .... so much went badly wrong you cannot simply say 'forget it, let's move on'. That is my perspective today.*<sup>51</sup>

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<sup>48</sup> H. Einsele, and N. Löw-Beer, 'Politische Sozialisation und Haftbedingungen', in S. v. Paczensky (ed.) *Frauen und Terror: Versuche, die Beteiligung von Frauen an Gewalttaten zu erklären* (Rowohlt Taschenbuch Verlag GmbH, Reinbek bei Hamburg, 1978) 24-36.

<sup>49</sup> Einsele and Löw-Beer, 'Politische Sozialisation und Haftbedingungen', 35.

<sup>50</sup> Einsele and Löw-Beer, 'Politische Sozialisation und Haftbedingungen', 36.

<sup>51</sup> Interview with Karl-Heinz Dellwo, 86.

### 2.3. The split: silence versus space for argument

In his response to the question of an alternative to RAF isolation, Roland Mayer also highlighted the potential of the integration of RAF/J2M prisoners as a space for critical reflection. However, he went further and pointed to the split in the group after their release from prison. This had occurred after the first few sessions of the group therapy. As a result the group had fragmented into small groups of twos and threes. And that beyond these small groups there was no real contact existed anymore. He suggested that the integration of RAF/J2M prisoners would probably have accelerated the split:

*I cannot say. I think ... it should have been done... even if reluctantly, so to say. Probably, if they had done what we had demanded, namely to detain all prisoners in one large group, with hindsight it is likely that what happened later on the outside would have happened earlier on; namely the atomisation of this group.*<sup>52</sup>

In his brief chapter in which he reflects on his experiences in the group therapy, Roland Mayer writes in 2005 that over time the political differences had hardened to the extent that all forms of communication had ceased between individuals across factions.<sup>53</sup> His main argument is that the central theme in the history of the RAF and its actors has been defeat:

First and foremost, to voice this, is still considered taboo. The defeat itself is not damaging, rather the way it is dealt with is pathetic. Certainly, what is more difficult than that? But it in no way excuses the destructive silence.<sup>54</sup>

The following section explores this tension between the notions of political defeat and individual survival in more detail.

## 3. Individual survival: between collective and personal identity

The starting point for this section is Holderberg's suggestion of a tension between collective identity (politics of the RAF and its ultimate defeat) and the individual survival of its former members with the

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<sup>52</sup> Interview with Roland Mayer, 12.

<sup>53</sup> R. Mayer, 'Streiten Können' in A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007) 153-6.

<sup>54</sup> Mayer, 'Streiten Können', 156.

guilt that might have been attached.<sup>55</sup> Both the RAF leadership's suicide in Stammheim prison in October 1977 and the continued emphasis on the collective hunger strikes, as the dominant resistance measure of the RAF/J2M prison struggle, arguably point to a politics of self-sacrifice, rather than survival. In his 2009 article on the communicative effect of the early RAF collective hunger strikes, Passmore writes about the 'constructions of holy hunger'. He maintains:

A rhetoric of virtue, sacrifice and martyrdom built around self-starvation served to maintain morale within the group, reinforce the unquestionable nature of the ordained goal, and foster a willingness among the prisoners to sacrifice their own lives. This represented an expression of the pre-existing group dynamic of psychological domination, peer pressure and sense of duty in terms of the starving body.<sup>56</sup>

Yet, the notion of individual survival is a theme that runs through the personal narratives of RAF isolation and resistance. The following stories are as much about choosing life and fighting for it, as they are about a critical evaluation of the role of collective identity in their individual survival.

### 3.1. Choosing life and fighting for it

Astrid's story of her journey inside Cologne Ossendorf prison in and out of the 'dead wing', in which she experienced varying degrees of isolation, is accompanied by a struggle to survive these conditions. She mentioned during her isolation in Cologne Ossendorf she had thought that it was due to her personal weaknesses that she struggled in that extreme environment:

*Then of course I always thought that I personally had failed; that I was too weak; that I was not able to do it .... stupid.... that I was not tough enough ...*<sup>57</sup>

In a different context in the interview, she recounted that she had had a sheltered, 'middle class' upbringing. She had never experienced prison before, let alone the extreme space of isolation in the 'dead wing'. At the time she considered the taking of medication to help her calm down as a further sign of weakness. She stated that this had been accompanied by feelings of both guilt and failure to cope.

She went on to explain that the real struggle for her life came after she had been transferred out of the 'dead wing' into the psychiatric facility for men, which was adjacent to it. After her transfer

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<sup>55</sup> Holderberg, 'Begegnungen, Berührungen, Reflexionen'.

<sup>56</sup> Passmore, 'The Art of Hunger', 58.

<sup>57</sup> Interview with Astrid, 32.

she continued to be detained in solitary confinement, however, the situation had changed from complete isolation to being able to at least hear prison life. She described this struggle for life as follows:

*And then .... I think it is also a typical reaction. First I felt elated and then I crashed completely. You hold it all together and then something .... or it was in fact quite a relief.... I sensed that there was an environment... and then I had very strong suicide fantasies.*<sup>58</sup>

She continued to explain how she got through that period:

*And I really saved myself through talking to a carer at night. There was a nice carer and he somehow thought Rudi Dutschke was cool. I talked with him all night to stop myself from self-harming... crazy. You are really fighting for your life. ... You would not believe it.*<sup>59</sup>

In the following section this bare struggle for life and personal identity is explored further.

### 3.2. 'Particular time travellers'<sup>60</sup> who have completed their journey

In their 1978 study on the psychological survival of long-term prisoners, Cohen and Taylor wrote that these prisoners, whether they were detained in a very restrictive environment or more open conditions, were faced with 'the problems of time and ... the fears of personal deterioration'.<sup>61</sup>

These themes of time and regression are also present in the RAF narratives. The latter has emerged previously in relation to the effects of isolation, most notably Knut Folkerts' comments on losing the ability to vocalise his thoughts;<sup>62</sup> Roland Mayer's comments on the restriction and the lack of distance affecting his eyesight;<sup>63</sup> and Karl-Heinz Dellwo on the significance of the hunger strike in breaking through the numbness of isolation.<sup>64</sup>

This Sub-section focuses on the concept of time, and the fear of regression is explored in Sub-section 3.3.

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<sup>58</sup> Interview with Astrid, 36.

<sup>59</sup> Interview with Astrid, 36.

<sup>60</sup> Cohen and Taylor, *Psychological Survival*, 104.

<sup>61</sup> Cohen and Taylor, *Psychological Survival*, 87.

<sup>62</sup> See Chapter 4.

<sup>63</sup> See Chapter 6.

<sup>64</sup> See Chapter 6.

In contrast to Cohen and Taylor's study, where the participants characterised their prison experience as 'doing time', the RAF narrators did not particularly attach a temporal signifier to their experiences of RAF isolation. This can be explained in two ways. First, Cohen and Taylor's research was conducted with participants who at that time were serving long-term sentences. They summarised the importance of time for these 'particular time travellers':

The marking and passing of time are then major elements in long-term prisoners' lives. Time presents itself as a problem. It is no longer a resource to be used, but rather an object to be contemplated - an undifferentiated landscape which has to be marked out and traversed. Conventional markers cannot be used and neither can one's journey be expedited by recourse to conventional methods. Nevertheless the length of the journey continually preoccupies the mind, for only after it has been made, can life be effectively resumed.<sup>65</sup>

At the time of the interviews in 2008 the narrators had already been living in society for a substantial time. For instance, in 1995 Karl-Heinz Dellwo and Knut Folkerts were the last of the narrators released from prison. Consequently, throughout the narratives, time is mainly referred to as retrospective markers in the sense of dates and periods spent in the various institutions. Similarly the narrators refer to the periods spent under the varying conditions of isolation from strict solitary to small group isolation. These markers helped provide a structure to their stories.

Second, the general absence of a reference to the significance of time under conditions of RAF isolation could arguably be down to the sense of indeterminacy that accompanied even those RAF prisoners on fixed-term sentences. Roland Mayer explained that in the late 1970s there was a debate whether sentences for terrorist offences were to be followed by preventative detention [*Sicherungsverwahrung*]. He explained that although he had received a twelve-year fixed-term sentence, he was not sure what was going to follow:

*None of us really looked to the future much, but it was simply about surviving, getting through every day. There was permanent conflict, daily conflict in response to some kind of harassment and restrictions. And we then had to resist.*<sup>66</sup>

### 3.2.1. U, RAF isolation and time: a sympathiser perspective

This focus on getting through each day is also mirrored in U's experiences of surviving isolation.

To place his experiences in context, U is related to one of the RAF narrators. In 1977 he was arrested and initially charged with membership in the RAF. This was later revised to the offence of

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<sup>65</sup> Cohen and Taylor, *Psychological Survival*, 104.

<sup>66</sup> Interview with Roland Mayer, 5.



supporting the RAF. In 1977/8 he spent eighteen months in pre-trial detention under the standardised prison rules for persons accused under the 'Anti-terrorist Act 1976'.<sup>67</sup> In 1978 he was sentenced to seventeen months in prison for supporting a terrorist organisation, which was less than the period he had spent in pre-trial detention.<sup>68</sup>

In contrast to the RAF narrators, his story is marked by an ambivalence towards collective resistance. As a sympathiser to the ideals of the RAF, in particular their sense of community, he nevertheless had disagreed with their violence. He suggested that once in prison he would not simply 'change hats' and, more importantly, there was the question of identity:

*But of course, I also had my problem who do I relate to. We were a completely different group of prisoners [J, S] and I. .... We also did not have a label... What kind of prisoners are we? We are not guerrilleros, we are not armed fighters... and somehow it was really difficult to engage with combat conditions [kampfbedingungen] that the others had.*<sup>69</sup>

He did end up joining the RAF collective hunger strike in August 1977, because after exhausting the legal process, he had considered it as the last hope to effect an end to his isolation.

U's experiences of isolation and his story of individual survival are characterised by focussing inward.

He explained that under these extreme pressures he was confronted with his true self:

*During the period of isolation, it was very important for me that you concentrate on yourself. This is when it emerges who you.... what you are really are made of.*<sup>70</sup>

U went on to describe that he experienced the highs and lows very closely together. He added that it was crucial for him to feel that he persevered another day.

*And I always said, every day, ... every morning you got up and you started to push out the walls that were very close. Figuratively speaking. Every day it was a strenuous task to push those walls out so that you did not suffocate. That is how I felt. ...*<sup>71</sup>

He added that

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<sup>67</sup> See Chapter 3, Section 1 for more detail on the counterterrorism legislation, and Section 3.2.2. for a review of the investigating judge's decisions on U's conditions of confinement.

<sup>68</sup> For a detailed account of U's conditions of confinement in pre-trial detention, see Chapter 3, Section 3.

<sup>69</sup> Interview with U, 68-9.

<sup>70</sup> Interview with U, 78.

<sup>71</sup> Interview with U, 79.

*it was worse than I could have imagined, but I was also able to discover that you can develop strength, more than I had initially believed I had in me.*<sup>72</sup>

U's experiences differ from the others in the sense that because he was not a member of the group, he did not experience the tension between collective identity and personal identity. However, as the RAF narratives in the following Sub-sections suggest, the subsuming of identity to the collective proved crucial to their individual survival of the prolonged periods of isolation.

### 3.3. Fear of regressing: the significance of resistance

In contrast to U, the RAF narrators all served long fixed-term or life sentences. Knut Folkerts who served a life sentence (1977-95) and was incarcerated in Celle high security wing from 1981-92 under conditions of small group isolation (three to four prisoners) described the extreme situation and the need for survival in the following comment:

*You just have to see how you survive it. They are actually unendurable conditions over a period of years.*<sup>73</sup>

He went into detail about the destructive effects of the isolation he had experienced. He explained that during the 1978 collective hunger strike the lawyers had managed to persuade the courts to allow physicians of choice to deliver medical care to the hunger strikers:

*The doctors, whose treatment we agreed to, observed that during the course of six months I had developed life-threatening circulatory disturbance etc. ... in six months [of isolation].*<sup>74</sup>

Knut Folkerts added that he had noticed a further adverse impact after he had been transferred to Celle high security wing in 1981. Following the 1981 collective hunger strike they achieved a degree of association of the small group of prisoners on the wing. However, this type of association proved difficult over the years:<sup>75</sup>

*A further experience was that you lose your voice. You are constantly thinking but not talking to them, and consequently in a relatively short period of time [you find] that thinking and talking are no longer co-ordinated. And these were difficult experiences, especially when after a period of years you are brought into contact with other political prisoners; that your tongue was not able to communicate properly what you were thinking.*

*Then it becomes apparent how destructive the attack on you is; and that it is actually working.*<sup>76</sup>

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<sup>72</sup> Interview with U, 78.

<sup>73</sup> Interview with Knut Folkerts, 4.

<sup>74</sup> Interview with Knut Folkerts, 24.

<sup>75</sup> See Chapter 4, Section 3.2. for details of the experiences of small group isolation in Celle high security wing.

<sup>76</sup> Interview with Knut Folkerts, 24.

This mirrors Cohen and Taylor's notion of the fear of deterioration. They describe it as '[t]he terrible fear is that one may be overtaken by resignation, by a desire for death, however much one consciously resists'.<sup>77</sup>

In the following comments Knut Folkerts described the significance of resistance in countering the feelings of deterioration and total lack of control:

*The question you ask yourself is how do I survive this nonetheless? A lot of it is so obvious. There are also other measures that are aimed at degradation. The frequent strip searches were carried out under the guise of security.*

*In actual fact the aim is to physically and psychologically demonstrate total control every day and to degrade you.*<sup>78</sup>

The RAF resistance measures, such as the collective hunger strikes, the everyday acts of refusal, and the escape, were characterised by the narrators as a means for taking action and rebuffing authority.<sup>79</sup>

The RAF collective hunger strikes were particularly complex, because of the tensions that arose from the subsuming of individual aims to those of the collective. This presupposed the individual's self-sacrifice for the collective, what Passmore describes as 'constructions of holy hunger'.<sup>80</sup> In an interview for the 2007 collection of essays on the experiences in the group therapy, Knut Folkerts talks about his loyalty to the group and fighting for its aims in the prison struggle.<sup>81</sup> An example of this was the period he had spent in a coma during the 1984-5 collective hunger strike.<sup>82</sup>

However, in his narrative he also suggested that the hunger strikes were crucial to his survival of RAF isolation. This exemplifies an inherent contradiction that the hunger strike, which nearly resulted in his death, was so crucial to his survival:

*But when it is so apparent then needless to say ...then you resist with all your strength.*

*The exhaustion, of course you notice that the resistance measures, the hunger strikes, really take it out of you. After a couple of years we had to fight again, otherwise we would not have*

<sup>77</sup> Cohen and Taylor, *Psychological Survival*, 111.

<sup>78</sup> Interview with Knut Folkerts, 24.

<sup>79</sup> See Section 1 above and Chapter 6.

<sup>80</sup> Passmore, 'The Art of Hunger'. See Section 3 above for more detail.

<sup>81</sup> K. Folkerts, 'Warum ich immer wieder zu den Treffen gekommen bin' in A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007) 139-42.

<sup>82</sup> See Chapter 6, Section 2.

*survived. We would not be free today. We would no longer be alive, if we had not fought. That is the experience.*<sup>83</sup>

This highlights how intertwined notions of political collective and community are with the experiences of individual survival throughout their detention in RAF isolation. The RAF as a political and violent project was defeated, yet the narrators emphasise their individual survival of isolation through the collective prison struggle.

### 3.4. Political defeat: 'identity emerges through confrontation'

The RAF collective hunger strikes, with their element of self-sacrifice, were part of the spectrum of resistance measures that were central to individual survival. The other key resistance measures, under conditions of RAF isolation, were acts of everyday refusals.<sup>84</sup>

In the following account, Karl-Heinz Dellwo detailed the importance of the resistance measures for creating the space to rediscover and build up his sense of self. To begin with he acknowledged that resistance had resulted in what Cohen and Taylor characterised as 'doing hard time'.<sup>85</sup> Karl-Heinz Dellwo stated:

*You just have to accept it. You cannot make yourself comfortable. I mean, you cannot engage in acts of resistance and think about how you can be comfortable. It just won't be comfortable. That is the logic behind it. You just have to hold on and clench your teeth. There just is nothing else.*<sup>86</sup>

He suggested that his approach to incarceration had been a continuation of his attitude prior to his arrest. This was a rejection of authority and hierarchy. The failed project of the RAF had been to create an alternative society [*Gegengesellschaft*]; new relationships and a new society after completely breaking with the old.<sup>87</sup> Karl-Heinz Dellwo described the effect this attitude had had in prison:

*And then you arrive in prison and from the start [you say] what you have got here, you are undoubtedly holding us captive, however, we reject this complete normality that you have [here] so to speak; and we also reject hierarchy and positions and insist on our own identity.*

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<sup>83</sup> Interview with Knut Folkerts, 24.

<sup>84</sup> See Chapter 6 for more detail on the spectrum of RAF resistance measures.

<sup>85</sup> Cohen and Taylor, *Psychological Survival*.

<sup>86</sup> Interview with Karl-Heinz Dellwo, 21.

<sup>87</sup> Mayer, 'Streiten Können', 154.

*And with this we completely deviated from expectations. And certainly this was a big problem for them in the first years.*<sup>88</sup>

He added that over time through the strategy of refusal they had managed to face down the imposition of these hierarchical structures:

*They themselves were occupied with hierarchical structures; they wanted to establish hierarchy by force, but after some time, that was my subjective feeling, I thought that they'd backed off; they'd lost confidence.*<sup>89</sup>

At the centre of their resistance was a degree of self-confidence that they had developed over time through confrontation. Karl-Heinz Dellwo explained,

*[t]hat has something to do with self-confidence that you do not just have or bring with you, but that you developed in all this confrontation. If one sentence or one of the sentences of the RAF rings true, it was that 'identity emerges through confrontation', right.*<sup>90</sup>

For Karl-Heinz Dellwo the resistance measures were crucial for creating space for his own identity to be nurtured under the conditions of RAF isolation. These conditions at first had been solitary conditions and after 1981 small group isolation in Celle high security wing:

*That is why it was extremely important for me, like I said, from the start irrespective of how futile it was to say stop, reject. ... And behind the rejection exists your sense of self, that you want to construct and that demands something...*<sup>91</sup>

And again he described the 'reality' of resistance and the importance of perseverance. He explained:

*Frequently, first you get a smack on the gob, somehow you get through it and over time you figure out a strategy to assert yourself.*<sup>92</sup>

Karl-Heinz Dellwo continued to say that through their resistance measures over time the individual had prevailed, even though the group had suffered political defeat:

*There were still confrontations from time to time, but they had lost their fight. In the end we were granted a special status by all.*

*At that point we had asserted ourselves. That was the point when I knew that politically the whole group had lost and all that it had wanted to achieve, but personally I always felt that that which they wanted to take away, I managed to protect, right. And I had expanded my scope and I could also walk around with confidence.*<sup>93</sup>

In a sense, through the defeat of the RAF, one of the two aims of RAF isolation, namely to disable the group, had been achieved. However, the RAF narratives of individual survival through resistance

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<sup>88</sup> Interview with Karl-Heinz Dellwo, 76.

<sup>89</sup> Interview with Karl-Heinz Dellwo, 76.

<sup>90</sup> Interview with Karl-Heinz Dellwo, 77.

<sup>91</sup> Interview with Karl-Heinz Dellwo, 77.

<sup>92</sup> Interview with Karl-Heinz Dellwo, 77.

<sup>93</sup> Interview with Karl-Heinz Dellwo, 76.

highlight its failure to achieve the second, namely ultimately breaking their individual (political) resolve.

However, the prolonged periods of their incarceration under conditions of RAF isolation did adversely affect the narrators. It was the traumatisation in prison, especially through isolation, that prompted the creation of the group therapy in 1996.

### *3.5. Release: reflections on traumatisation and survival*

The group therapy was put together as a space for dealing with the trauma of their experiences of isolation in prison. However, in his chapter in which he reflected on the group therapy, Roland Mayer criticises those members, who had split from the group therapy, of a lack of openness to critical reflection. He disapproves of what he considers their superficial approach to traumatisation, one that simply accuses the State of ill treatment:

Fact is that evidently all [including those who left the group therapy] have been traumatised. This is only acknowledged as a political statement and in reference to the experiences in the jails, the experiences of isolation.<sup>94</sup>

Rather he points to three stages of traumatisation. He writes:

However, the traumatisation is threefold: in prison and isolation; through relationships in the RAF and in the group of the prisoners [RAF and J2M]; and in the experiences after the release from prison.<sup>95</sup>

This chapter so far has engaged with stories of individual survival in connection with the collective identity of the RAF in prison and the tensions this may have created. This Sub-section explores the personal reflections on the shift from the collective rationale of the RAF and J2M prison struggle to disassociation and individualism after release from prison.

In her 2007 reflections on the group therapy, Rollnik describes the tension between collective and individual identity within the group, RAF and J2M. She writes that their armed struggle was based on ideals of individual freedom and emancipation. Yet, from the start there was very limited space for

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<sup>94</sup> Mayer, 'Streiten Können', 154.

<sup>95</sup> Mayer, 'Streiten Können', 154.

individuals to actually realise these ideals. In turn these restrictions prevented them from further developing the politics of their struggle and putting the necessary changes into action.<sup>96</sup>

The tight collective had stifled their politics on the outside and resulted in the RAF's defeat. However, Rollnik mirrors Knut Folkerts and Karl-Heinz Dellwo's comments that in prison the notion of the collective was central to individual survival. She states:

In jail it was liveable within the existential perspective that the collective was a standard for all our actions and gave us the strength not to break under conditions of isolation. It was only liveable, as long as it was not confronted with life on the outside. Outside it had to crumble, because the material basis, which had made this possible for so long, was gone: the armed struggle, illegality, the prison struggle against isolation and special conditions of confinement.<sup>97</sup>

She states that after her release there was this sense of having to cope on her own with the problems of adjustment to everyday life. But there was also the certainty of having to start afresh.<sup>98</sup>

In her 2007 chapter in the same book, M describes in some detail the challenges she faced after her release in 1988. In the first years she intensely reflected on the process of adjusting to life on the outside with the help of a very close friend. In the chapter she describes the problem of reconciling two different positions. She noted the fact that after her release she was an adult with all the responsibilities that entailed, yet emotionally she felt like a child that was incapable of facing the challenges of everyday life.<sup>99</sup>

M also mentions that this process of reflection and adjustment involved re-evaluating her sense of self that she had developed in prison. For instance the kind of behaviour that had proved effective and necessary in prison was deemed hostile and inappropriate in ordinary society.<sup>100</sup>

M adds that at the time she had underestimated both the physical and the psychological after-effects of her long-term imprisonment. In all it had taken five years until she felt that she had achieved an equilibrium.<sup>101</sup>

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<sup>96</sup> For the paragraph, see Rollnik, 'Nach dem bewaffneten Kampf', 148.

<sup>97</sup> Rollnik, 'Nach dem bewaffneten Kampf', 149.

<sup>98</sup> Rollnik, 'Nach dem bewaffneten Kampf', 149.

<sup>99</sup> M., 'Erfahrungen in der Gruppenarbeit mit Psychoterapeuten' in A. Holderberg (ed.) *Nach dem bewaffneten Kampf: Ehemalige Mitglieder der RAF und Bewegung 2. Juni sprechen mit Therapeuten über ihre Vergangenheit* (Gießen: Psychosozial-Verlag, 2007) 131.

<sup>100</sup> M., 'Erfahrungen in der Gruppenarbeit mit Psychoterapeuten', 132.

<sup>101</sup> M., 'Erfahrungen in der Gruppenarbeit mit Psychoterapeuten', 132.

In the various reflections of the group therapy there is this sense of a shared experience. This is the rediscovery of their personal identity following the break up of the group and release from prison. In the group therapy they were engaged in a process of confronting their past, but also a process of accepting the other's new, individual and different choices. Rollnik expresses this well:

At its conclusion, I find that the group has helped me to better understand why we failed. Also, it has helped me to move away from a perspective, which had been based on the notion that there was only one true ideology [*Alleinstellungsanspruch*].

We are going our separate ways as individuals; maybe the group has also enabled us to dissociate without remorse and without criticising the other for the different choices s/he has made.<sup>102</sup>

#### 4. Conclusion

This chapter has explored both an isolated act of resistance, the 1976 escape, and more broadly analysed the interrelationships of the notions of collective identity and individual survival.

The meticulously planned and well-executed escape was an open act of defiance that went beyond the subversion, which was at the centre of the RAF collective hunger strikes against isolation. Rather, M's escape from the women's prison in Lehrter Strasse with the three J2M prisoners and also its preparation represented an abnegation of state's punitive control.

M's narrative indicated a sense of achievement in outwitting the prison and other governmental authorities. This was mirrored in the political embarrassment to the Federal government that women RAF and J2M prisoners had escaped successfully. This had occurred at a time when both a new counterterrorism legislative framework was under parliamentary review and reformers were pushing for a more humane prison system.<sup>103</sup>

The final two sections explored the two themes of RAF resistance stories, striving for community and individual survival. As part of that, the tension between the collective identity of the RAF that

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<sup>102</sup> Rollnik, 'Nach dem bewaffneten Kampf', 152.

<sup>103</sup> See Chapter 3 for more detail.



dominated the RAF politics in prison on the one hand, and the individual survival of the RAF and J2M prisoners on the other hand, was critically examined.

Throughout their prison struggle, the RAF and J2M prisoners fought for an end to RAF isolation, both solitary and small group isolation, and strove to be integrated into intercommunicative groups. At the centre of this was the idea to create a space for, and openness to, critical reflection. However, as Karl-Heinz Dellwo identified, this would have necessitated more than mere integration into homogenous groups. Rather, it would have entailed interaction with others who challenged their political views and perspectives, a form of 'political socialization'.

Another point mentioned in connection with the striving for a political prisoner community was that interaction and reflection might have brought the political and personal differences to light whilst still in prison. Consequently, this might have speeded up the dissociation of the group that happened after their release. The narrators highlighted that the struggle against RAF isolation had 'welded' the collective identity together across the physical boundaries and distances that lay between them.

The majority of the narrators mentioned that the RAF collective hunger strikes and also the everyday acts of refusal were the resistance techniques that were crucial to their individual survival of RAF isolation. There seemed to be an inherent contradiction in particular in relation to the RAF collective hunger strikes, which relied on the self-sacrifice of the individual for the collective.

However, the individual resistance stories against RAF isolation are very much marked by both choosing life and fighting for it, as well as the significance of the collective identity for their individual survival.

This notion of individual survival as a process, rather than an end state, runs through the narratives. After their release a group of the narrators participated in a type of group therapy that sought to engage with their traumatisation in prison. But they ended up going further. They engaged and mourned the political defeat of the RAF, but also started to critically reflect on their role in RAF history and its politics of violence. Finally, they completed the process of dissociation from the collective identity of the RAF.

In her 2007 chapter M summarises this well:

For me personally, the central question that crystallised out of all the developments after the split within the prisoner group and also the RAF on the outside was: How could it be and what led to it that a group could crash in such a manner that its former members completely at odds with one another publicly dragged each other through the mud. A group that had set out to fight in an existential and incorruptible way; that had polarised and at times had influenced the politics of the Federal Republic of Germany. I think that there is no simple answer to this question; it consists of many pieces to the puzzle. And our attempt, in the [therapy] ... group at [critically] engaging with a part of our past, is one such piece.<sup>104</sup>

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<sup>104</sup> M, 'Erfahrungen in der Gruppenarbeit mit Psychoterapeuten', 136.

## Chapter 8

### A summary of RAF voices: perceptions of isolation and resistance

The focus of this study are the prison life stories of women and men former RAF members; in particular their perceptions of their incarceration as 'detention in isolation' and the meaning they attach to their responses to these conditions as resistance. Their lived experiences and the meanings they attach to isolation and resistance were framed within power and gendered dimensions of prison life and penalty. The aim of the theoretical framework was to connect the everyday experiences of the women and men of the RAF within prisons with the wider context of penalty in Germany. In it I drew on the governmentality literature, in particular on the governance of women and men prisoners, to understand that even in a prison regime like Germany that promotes the resocialization of prisoners and recognizes their citizenship, prisons claw back through punitive measures when faced with a resistant prisoner.<sup>1</sup> Under conditions of '*ordo-liberal*' penalty the resistant or unempowerable prisoner is constructed in opposition to the enterprising prisoner.<sup>2</sup> As a result the purpose of imprisonment for dangerous prisoners, in this case political prisoners, becomes securitization realised through strategies of containment.<sup>3</sup>

#### 1. Narratives of isolation

The essence of how the interviewees understood 'detention in isolation' is best captured by what Bauman describes as 'communicative separation' through techniques of immobilisation.<sup>4</sup> This invoked a sense of being both *closed in* through the various spaces of their isolation and *cut off* from one another and the outside through techniques of surveillance. Isolation as spaces of immobilisation is explored in Chapter 4 through interviewees' experiences of prisons that have become 'symbolic' of RAF imprisonment. These spaces included the experiences of total

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<sup>1</sup> Carlen, 'Carceral Clawback'.

<sup>2</sup> Hannah-Moffat, *Punishment in Disguise*, 186.

<sup>3</sup> Corcoran, *Out of Order*, 85.

<sup>4</sup> Bauman, 'Social Issues of Law and Order'.

isolation in the 'dead wing', but also other spaces in the very modern Cologne-Ossendorf prison. The prison was relatively new at the time and was constructed for the new, humanised prison system. However, the narrators' experiences highlighted a regime that was still largely based on the pre-reform (authoritarian) emphasis on discipline and order.

Continuing with this sense of immobilising spaces, experiences of Stammheim prison high security wing after the RAF leadership's collective suicide were described as extreme isolation and stress. The experiences were intensified by the suicide prevention measures that had been introduced. The narrators were detained in Stammheim for the duration of their trial. They maintained that the effects of immobilising techniques were to present a disorientated and unintelligible person in court in order to further discredit their accounts.

The narrators who still had the balance of their sentence to serve after the long periods in pre-trial detention, were transferred to high security wings that had been newly constructed. There had been a significant shift from the very public Stammheim high security prison with its adjacent high security courthouse, purpose-built for the terrorist trials. These postmodern high tech high security units were transplanted into the architecture of 19th century modern prisons (Bruchsal and Moabit) and one 18th century *Zuchthaus* (Celle).

In the units in Moabit and Celle prison, the prisoners also experienced what they termed small group isolation. Throughout the long periods of their imprisonment they only had contact to virtually the same group of three to four prisoners. In essence, this compounded the experiences of immobilisation. Both women and men experienced what can be described as an 'ecology of small-group containment' that achieves heightened control and surveillance over the prisoners' lives through a merging security techniques with an aberrant type of family group environment that more commonly exist in women's units or prisons.<sup>5</sup>

Together with these techniques of immobilisation, the surveillance measures completed their experiences of isolation. Chapter 5 explored the narratives of the various surveillance tactics that were employed. The narratives emphasise the crucial supporting role of the defence lawyer in mitigating the experiences of isolation. For defence visits were the only space in which the

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<sup>5</sup> Corcoran, *Out of Order*, 85.

authorities' presence was excluded. These stories also highlight the extreme nature of the prohibition of contact during the height of the conflict in 1977, known as the German Autumn. Yet, ultimately the measure failed in its aim to completely cut off the prisoners from the outside world. Through various acts of solidarity, ordinary prisoners had illicitly passed on information to the RAF prisoners during the contact ban. It is this kind of solidarity also from persons on the outside that the authorities sought to prevent. This was mirrored in the court rulings on the censorship of print media and other material that were reviewed. Finally, the surveillance space of RAF isolation extended to the prison staff. All were suspects, even those who obediently followed orders.

## 2. Narratives of resistance

The final two narrative chapters engaged with resistance techniques in Chapter 6 on the one hand and the underlying rationales for resistance in Chapter 7 on the other. There was one exception to this, namely the 1976 prison break that featured in Chapter 7.

The escape in 1976 from the women's prison in Lehrter Strasse in Berlin contrasted with the other forms of resistance. The women had exploited weaknesses in the prison's security measures and in complete defiance of authority had broken out of the prison.

Resistance to the extreme spaces of immobilisation in the high security wings was reduced to the baseline of resistance, refusal.<sup>6</sup> These refusals ranged from everyday refusals that were applied in a systematic manner to the collective hunger strikes. The narrators explained that these strikes were conducted at large intervals, because of immense strain that they involved. This form of resistance, rather than abnegating authority, subverted it, inverting power relations.<sup>7</sup>

The state response to the hunger strikers shifted from a focus on force-feeding to an intensive care medicine approach in 1985. The experiences of both approaches highlight a shift from a coercive measure to one that is perceived as the state's total control over the prisoner's body. What the RAF termed the 'coma solution' was experienced as a further repressive measure, rather than respect for the striker's individual autonomy.

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<sup>6</sup> Buntman, *Robben Island and Prisoner Resistance to Apartheid*, 251.

<sup>7</sup> Ellmann, *Hunger Artists*.

This interpretation made sense from the perspective of the RAF prisoners as a group with a collective identity. Until the late 1980s, the RAF's politics of resistance in prison had aimed to achieve an end to isolation and the integration of the RAF/J2M prisoners into intercommunicative groups. Its politics of resistance was one that demanded self-sacrifice for the collective aims.

The other dominant theme throughout the prison narratives was individual survival. This seemed to conflict with the politics of self-sacrifice; however, the narrators affirmed that the collective identity and prison struggle were crucial to their individual survival. They became the only buffer against the atomisation of prisoners that occurred under conditions of isolation.<sup>8</sup> Yet, individual survival was a process. And after release, it became very much a process of adjusting to life in society and dissociating from the collective identity. Part of this process was a critically reflection on the RAF's politics and their individual role in the violence. This also involved accepting both the defeat of the RAF and the dissolution of the group.

Finally, it is hoped that the interpretation of the perceptions and meanings of their imprisonment can shed some light on wider issues of imprisonment and penalty in Germany, in particular the dichotomy between the enterprising prisoner and the governance of women and men prisoners who are constructed as dangerous. This is what Garland refers to as the 'criminology of the *self*' (prisoner as rational consumer) and the 'criminology of the *other*' ('the punitive strategy is one of essentialized difference': prisoner as 'the threatening outcast, the fearsome stranger, the excluded and the embittered').<sup>9</sup>

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<sup>8</sup> Shalev, *Supermax*, 168.

<sup>9</sup> D. Garland, 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society' (1996) *British Journal of Criminology* 36(4) 445- 71, 461.

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## **APPENDICES 1 AND 2**

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