

NEOLIBERAL DISPLACEMENTS: POLITICAL  
DELINQUENCY AND THE ECLIPSE OF  
POLITICS IN GERMANY

Delinquency and its varied forms of institutionalization throughout the modern social world have always belonged with the domain of political practice. As is well known, Foucault had precisely this in mind when he urged us to consider the carceral apparatus and the production of the delinquent as the tactical operations of distinct forms of power (1995). If, following Foucault, we have since shifted our analytic focus from discipline to control, it remains incumbent upon us to continue elaborating the relation between delinquency and politics—the latter understood both in the narrow sense (as the domain of parliamentary democratic politics) and in the broader sense (as defined by the field of possible decisions)—in its particular neoliberal transmutations. In one way or another, many of the articles in this journal have been concerned precisely with this project. In what follows, I would like to advance this discussion by considering the very particular case of Germany. Specifically, I want to look at how a rather peculiar form of delinquency—which I shall call political delinquency—generates in today’s Germany a number of depoliticizing effects, with regard both to the strictly conceived sphere of parliamentary democratic processes and to the political more generally.

But first I should say a few words about the notion of political delinquency that I’m proposing. Most importantly, let

me clarify from the start that my use of this term is not meant to impute an apolitical nature to other forms of delinquency. Quite the contrary, I proceed from the assumption that delinquency is always and everywhere a political institution. Instead, my aim is to capture the peculiar ways in which, in the German context, a whole range of legal codes, expert discourses, penal institutions, and rehabilitative techniques obsessively mark out, target, and arguably also incite a broad and steadily expanding domain of political illegalities. Political delinquency in this sense stands as a special case of a more general, contemporary articulation between politics and criminality that Bernard Harcourt has described as neoliberal penalty (2010). In the case that I discuss here political delinquency emerges at the encounter between neoliberal penalty and a series of cultural taboos, political anxieties, and historical traumas that have marked the German present.<sup>1</sup> Often, the illegalities of which it comprises reference the National-Socialist past. Yet political delinquency is not the sole privilege of neo-Nazis. It indexes a larger putative field of political extremism as hostile and dangerous to the liberal democratic order and hence as legally intolerable. It thus implies a distinct mode of inserting delinquency within the sphere of political practice and, reciprocally, of introducing politics into the institution of delinquency.

My interest, then, is to map out the effects—some seemingly unique, others evidently more generalizable—that such a form of delinquency generates within the sphere of neoliberal politics. I develop my arguments by considering the case of right extremist illegalities, which stands as the more eminent subcategory in this rather porous and ample field (with so-called “immigrant extremism”—read, Islamic fundamental-

ism—coming a close second). Briefly stated, I argue in this article that the effects generated by the sustained and intensive penal investment in and around political delinquency in the neoliberal era can be roughly grouped under three distinct—though unquestionably and intimately interrelated—moments of de-politicization: (1) the political banalization or flattening of delinquents and acts of delinquency, (2) the constriction and naturalization of a so-called mainstream political discourse, and (3) the contraction of the liberal democratic political terrain. Before I consider at greater depth each of these ways in which, counterintuitively perhaps, political delinquency allows a moment of de-politicization, allow me to introduce the legal and penal regimes within which this peculiar type of delinquency emerges and which give it its outlines.

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The criminalization of political extremism in Germany maneuvers an uneasy, highly contested, and necessarily inconclusive negotiation of a constitutive contradiction. It is a contradiction created within the liberal democratic order and endemic to it, in which two ultimately irreconcilable horizons are pitted against each other. And yet, while it rests at the heart of any liberal democratic regime, it arguably takes on particularly acute dimensions in the German case. On the one hand, we have the protection of citizens against an authoritarian or arbitrary sovereign through a set of principles, mechanisms, and procedures (from constitutional guarantees of freedoms or systems of checks and balances to *habeas corpus* or established standards of transparency and accountability). On the other hand the liberal democratic state inevitably authorizes itself to exercise sovereign power and to guard itself against existential

threats. In the German case, the same tension appears unmistakably as the desire to establish distance and difference with respect to the National Socialist *Unrechtstaat* (the state of injustice). First, one must guarantee all the rights and freedoms that were annulled and violated under the Third Reich. But, second, one must also institutionalize the absolute imperative to prevent, by repressive means if need be, the return of such an *Unrechtstaat*. We find here two senses of the dictum “never again” that seem often at odds with each other. The liberal democratic order appears under possible threat from both government and population.

Thus, while the German constitution includes a categorical prohibition on censorship and a variety of guarantees of individual freedoms<sup>2</sup>, side by side with it we find a whole range of legal and administrative mechanisms whose combined censorial effect and repressive nature cannot be misrecognized. While these form an elaborate, dynamic, and often confusing assemblage whose proper analysis I will not attempt here, we may describe them—with some unavoidable simplification, to be sure—as falling within one of three broad categories. First, we find a range of illegalities and prohibitions linked with the banning of anti-constitutional (*Verfassungswidrige*) political parties and organizations and, by extension, of anything associated with them.<sup>3</sup> The swastika, the Hitler salute, the phrase “with German greetings” (*mit deutschem Gruß*) and innumerable other symbols and phrases are not prohibited in and of themselves, but rather only insofar as they are viewed as effective propaganda for the Nazi party (the former NSDAP, or *Nationalsozialistische deutsche Arbeiterpartei*). Accordingly, accommodations are made for their carefully circumscribed,

critically captioned use, for example for pedagogical or artistic purposes. Secondly, the German Youth Protection Law (*Jugendschutzgesetz*) regulates the exposure of young persons to all sorts of places, materials, cultural products, and activities that are considered too dangerous for those who, in a very “What is Enlightenment” Kantian sense, are viewed as not yet fully mature. It creates a special council—The Federal Authority for Youth-Endangering Media (*Bundesprüfstelle für jugendgefährdende Medien*)—composed of experts from diverse fields of pedagogy, religion, state administration, psychology, and cultural production, and charges it with evaluating the danger that particular media products pose for minors.<sup>4</sup> Periodically, the council publishes a legally binding black list of banned items, including music, literature, movies, computer games, and so forth. Finally, the most amorphous and least coherent category comprises a diverse set of paragraphs in the penal code that criminalize offenses against the honor of people, organizations, collectivities, the dead, or the victims of National Socialism. They include as well prohibitions on approving of, justifying, denying, or downplaying the acts of the National Socialist regime.<sup>5</sup> In brief, they group together as illegal such discursive acts as racist statements about immigrants or Jews, Holocaust denial, or positive references to, for example, Nazi labor laws.

Such legal mechanisms and the tentative, situated resolutions that they allow between criminalization and liberties result in a series of ambiguities. This is so for several reasons, among which we could cite for example their application not to acts in and of themselves but rather to their performance in public, the latter understood in terms of social situations. Thus, a party held at a person’s private apartment can be deemed as

public if enough people are judged to have been present who were not closely related to the host, while an intimate gathering on a park bench might qualify as private for the opposite reasons. Secondly, they require the demonstration of criminal intentions, and such intentions are conventionally understood in terms of knowledge: say, can a reasonable argument be made that the alleged culprit knew about the relation between a symbol and a banned organization? Additionally, they rely on assessments of similarity as judged from the presumed perspective of an “ordinary person.” A given symbol need not correspond exactly to that of a banned organization in order to qualify as illegal. It suffices that the fictional gaze of an “average citizen” identify in it the prohibited item. Finally, particular rulings and interpretations vary widely across the Federal Republic’s decentralized juridical system, so that a given symbol may be declared illegal in one community and pass for legal in another, neighboring community.<sup>6</sup> Taken together, such ambiguities circumscribe a malleable criminal-penal mechanism that can be deployed differentially in response to particular considerations, as is evident for example in the recurring legal battles over the use of Nazi symbols in anti-fascist protests.

Accompanying these legal mechanisms is what amounts to a veritable industry of expert discourses, therapeutic techniques, and normalizing institutions and professions that produce and implement the most diverse typologies and models so as to render legible, legitimize, and put into effect a multitude of interventionist programs that converge upon right extremists. Young right extremists, we are sometimes told, are to be understood as a youth phenomenon, the relatively arbitrary outcome of group formation dynamics among adolescents, of

the ebb and flow of young subcultural milieus, of shifting fashions. Alternatively, they are represented as the psychological victims of pathological parenting – authoritarian, abusive, violent, neglectful. Or they may appear as the products of increasing social alienation and polarization in post-industrial societies, an unacknowledged, disempowered reservoir of socioeconomic and political resentment. Some see them as the misguided, at times excessive, but ultimately banal case of underclass delinquency that follows an ascending trajectory of criminal intensity. Finally, they are also rendered as irrational beings, vulnerable to deception, superstition, and myth, and incapable of logical thinking, critical reflection, and reason-based judgment. And to each explanatory paradigm there correspond distinct technicians and techniques: youth workers organize “multicultural” activities for street milieus, parole officers supervise conditional sentences, psychologists lead anti-violence group therapy sessions, professors offer workshops in rational argumentation against National Socialist ideas, and the list goes on.

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No doubt, there is an entire story to be told here not only about the techniques and knowledges of the penal governance of political delinquency, but also about its excesses, its infatuations, and its follies. But let us not digress and, keeping in mind the dimensions and intensity of this penal field in Germany, let us now turn to consider some—by no means all—of its political effects. As I mentioned before, these appear to me to fall roughly into three general domains: the flattening of acts of political delinquency, the diluting and naturalization of political

debates, and the limitation of the terrain of parliamentary politics.

First, then, the penal governance of xenophobic and politically extremist acts usually entails a radical reduction of the political significance of those very same acts. There is certainly some irony in the fact that so-called politically motivated offenses become construed as either barely or not at all political. And yet this is precisely what we see in the field of political delinquency. Often, this watering down proceeds quite simply by the blanket reduction of right extremist legal transgressions—and of many acts that, bigoted or misguided as they may be, skirt the boundaries of legality—to National Socialism pure and simple, the latter standing for a uniform, total ideological edifice. The outcome is an impoverished, narrowly defined notion of political motivation – say, the restoration of the Third Reich.<sup>7</sup> The massive universe of government-sponsored—at times also government-administered—programs, initiatives, and campaigns against right extremism is replete with the discursive collapsing of the politically alienated, disgruntled, and xenophobic residues of the racist European welfare nation-state with Nazi Waffen-SS troops or party ideologues. The unquestionably ignorant nostalgia for National Socialist welfare policies (which nevertheless expresses a critique of contemporary neoliberal precariousness) or the uninformed romanticization of field marshal Erwin Rommel or vice-Führer Rudolf Hess (which indexes disenchantment with today's political leaders) are cast as already entailing support for the Final Solution and loyalty to the Führer. Needless to say, the consequences of such reductive operations for the delinquent careers of young offenders can be momentous. And the interpellation of angry

and no doubt bigoted teenagers as Nazis does not seem to offer much in the way of enlightening them.

Paradoxically, however, political delinquency is often enough evacuated of virtually any political significance whatsoever. It becomes a mere symptom of pathological psychological predispositions, themselves the result of authoritarian upbringing; or the unfortunate, happenstance outcome of teenager subcultural dynamics; or finally a simple error in rational judgment, a rectifiable logical inconsistency. As a social problem, then, it becomes displaced from the domain of politics and implanted within the fields of individual psychology, consumption and style, or knowledge and education, and entrusted to corresponding experts and technicians (psychologists, youth workers, teachers, parole officers, and so on).

But secondly, political delinquency also generates de-politicizing effects with regard to the far broader field of public discourse and political deliberation that goes under the comforting label of “mainstream” (*Mitte*, literally “middle”). Here too we find at least two ways in which politics is flattened. To begin, there is the familiar hijacking of public debates by the sensationalization, hyper-mediation, and demonization of delinquency at the cost of a whole range of social, economic, and political issues that become eclipsed. As various contributions to this journal have insisted, such disavowals appear typical of neoliberal penalty in general: an obsessive focus on criminality dominates political deliberation and confines public discourse, effacing not only the political and social dimensions of delinquency itself but also an entire range of other problems that, were they to be confronted, could put at risk certain power arrangements. In our particular case, we could say that,

rather than being entirely effaced, the political dimension of delinquency is perhaps reduced to farce: if elsewhere neoliberal penalty disavows complex social processes by equating shoplifting with murder (as in the increasingly popular three-strikes laws), here we see the xenophobic underclass delinquent equated with the Nazi. In both cases we find similar discourses of security and of broken windows-style zero-tolerance strategies.<sup>8</sup> And both cases seem to impoverish political deliberation in the public sphere.

But political delinquency in Germany entails an additional effect that seems to exceed those of conventional criminal delinquency: the naturalization of mainstream public discourse as at once consensual, legitimate, and heterogeneous to illicit racist bigotry. To be sure, the so-called middle comes into being only through a sufficiently determinate specification of the extremes in the first place. There is, then, a reciprocal discursive constitution of the extremes and the mainstream of the political terrain as separate zones through the elaboration of certain limits that mark them apart. Mainstream idioms thus naturalize themselves and disavow their own xenophobic rhetoric through the oppositional alibi of an officially acknowledged and often criminalized racist extreme.

Yet more interesting, perhaps, are the ways in which not the differences but precisely the relations between extreme and mainstream and the nature of their unsettling intimacies are imagined and construed. There is certainly no lack of alarmed condemnations of the xenophobic or anti-democratic undertones of mainstream political discourse in Germany. In fact, there is an almost ritualized, rhythmic regularity of hyper-mediated scandals, invariably sparked by some provocative rac-

ist, nationalist, or historically revisionist statement of a leading political or cultural figure. On such occasions public discourse appears all too eager to interrogate itself and to shed light on its contamination by the racist intolerance of the extreme right. The repetitiveness of the debates that ensue is astounding.<sup>9</sup> But particularly instructive is the dominant, almost uncontested presumption that an otherwise tolerant, democratic, and enlightened mainstream has been polluted by the venomous influence of political delinquents and must be thoroughly cleansed.<sup>10</sup> It is then not so much that political delinquency facilitates the disavowal of racism and intolerance in so-called mainstream publics *per se* (though this certainly transpires as well). Rather, it allows their construal as external intruders that naturally belong elsewhere. Dovetailing this construal is the emergence of a mainstream as inherently heterogeneous to the ills of political delinquency.

I want to conclude this discussion by briefly mentioning a third location in which the effects of political delinquency become evident, and where they also arguably exceed those of ordinary criminal delinquency: the domain of parliamentary liberal democratic politics. Here we see time and again how the creation of a milieu of political delinquents serves to narrow down the political terrain by imposing upon it the strict limits of a neoliberal consensus. Such a de-politicizing move proceeds by means of a recursive operation that allows the extension of political delinquency—unlimited in theory though highly discriminate in practice—to a whole range of oppositional voices. After all, we are dealing with Germany here, a country with two traumatic historical horizons of dictatorship, both National Socialist and state socialist. In such a context, if the clearly rac-

ist demand for privileging ethnic Germans in the labor market is collapsed with genocidal tyranny, the subsequent collapsing together with these two of the demand to replace capitalism with socialism is not so difficult to perform. Precisely such recursive, reductive logic has marked the reception of the Party of Democratic Socialism (PDS, *Partei des demokratischen Sozialismus*) and its offspring party the Left (*Die Linke*). Despite the broad support that they have garnered, they have been delegitimized as pariah organizations, shunned by other political parties, and repeatedly compared with the far right, ultra-nationalist, and nearly banned National Democratic Party of Germany (NPD, *Nationaldemokratische Partei Deutschlands*).

Between and around these different sites—delinquent acts and individuals, political debates in the public sphere, and the terrain of parliamentary democratic politics—the incessant investment in political delinquency would surely seem to reflect a very specific constellation of taboos and historical traumas, and a peculiar, nervous politics of memory that are unique to Germany. And yet, the palpable traces of the logic of neoliberal penalty are never too far away, and remain clearly evident in multiple effects of political displacement.

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NOTES

- 1 I will not have the space to elaborate upon these here. For a more extensive discussion, see Shoshan, N. (2008). From SS to Stasi and back again? Ossi, Wessi, and right-extremists in contemporary Germany. Ossi/Wessi. A. Sakalauskaite and D. Backman. London, Cambridge Scholars Press: 241-266.
- 2 Article 5 of the German Constitution (*Grundgesetz*) states that “there shall be no censorship.” The very same article then proceeds to describe the limits of the right to free expression. German Bundestag (2001). Basic Law for the Federal Republic of Germany. Berlin, German Bundestag.
- 3 Articles 9 (freedom of association) and 21 (freedom of political parties) of the German Constitution permit the banning of organizations and political parties that seek to subvert the democratic constitutional order of the Federal Republic. Sections 86 and 86a of the German Criminal Code prohibit the use and the distribution of symbols and other propaganda materials of banned organizations. German Law Archive (1998). “Criminal Code (Strafgesetzbuch, StGB).” Retrieved April 12, 2008, from <http://www.iuscomp.org/gla/statutes/StGB.htm>.
- 4 The Youth Protection Law includes regulations on access to bars, dancing venues, gambling, events, alcohol, tobacco, and media. Sections 17-25 of the law regulate the structure, jurisdiction, and responsibilities of the Federal Authority for Youth Endangering Media. Bundesministerium der Justiz (2008). “Jugendschutzgesetz (JuSchG).” Retrieved June 13, 2008, from <http://bundesrecht.juris.de/bundesrecht/juschg/gesamt.pdf>.
- 5 Prominent sections in the German Penal Code that belong with this group include, among others, 130 (agitation of the people), 131 (representation of violence), 166 (insulting of faiths), and 189 (disparagement of the memory of deceased persons).
- 6 For a more detailed discussion of some of these ambiguities and of their sometimes paradoxical implications see Stegbauer, A. (2007). “The ban of right-wing extremist symbols according to section 86a of the German Criminal Code.” German Law Journal 8(2): 173-184.

- 7 For example, in the neighborhood where I conducted fieldwork a group of rather hapless young people, more than a few of them already well established political delinquents, organized annual marches demanding increased government budgets for youth, and particularly for “nationalist” (*nationale*) youth. Their demonstrations, which attracted small crowds (and usually far larger crowds of protesters), seemed to appeal to participants who resented the closure of youth clubs following municipal budgetary cuts or the exclusion of their cliques from still functioning youth venues under a “zero-tolerance” policy. There was no doubt a sinister, xenophobic flavor to these demonstrations. Yet that hardly explains why counter-demonstrators bombarded the streets with Hitler caricatures and yelled Nazis at them, nor why media reports discussed the “neo-Nazi demonstration.”
- 8 For example, we see demands for the blanketing of cities with CCTV cameras so as to prevent (or punish) anti-Semitic graffiti. The dominant approach since the mid-‘90s has been of total exclusion of even potential offenders from cultural and consumption venues, media outlets, government-funded resources, and even classrooms.
- 9 The most recent case at the time of writing was the aftermath of Chancellor Merkel’s comments on multicultural integration, which were closely preceded by the more blatantly racist statements of Thilo Sarrazin, a social democrat politician, on Jewish genes and Turkish intelligence. Sarrazin lost his appointment at the German Federal Bank as a result but was allowed to remain a member of the Social Democratic Party.
- 10 For example, a *Berliner Zeitung* article reports that “right extremism has reached the middle of society” and goes on to describe the results of a recent study that revealed concerning levels of xenophobia among broad publics in Germany. Förster, A. (2006) Rechtsextremismus erreicht Mitte der Gesellschaft. *Berliner Zeitung*. Retrieved November 9, 2006 from [http://www.berlinonline.de/berliner-zeitung/spezial/dossiers/rechte\\_gewalt/50200/index.php](http://www.berlinonline.de/berliner-zeitung/spezial/dossiers/rechte_gewalt/50200/index.php).