

Fighting the legal mainstream

Some people forget that it was left-wing journalists who in the 60s and 70s carved out a culture of tenacious criminal defense lawyers.

Wolfgang Kaleck, 23 May 2016

The German journal [Kritische Justiz](#) recently published a special volume with portraits of “*Streitbare Juristen*,” i.e. combative lawyers, including writers Franz Kafka and Kurt Tucholsky, who both studied law, or women’s rights pioneers Margarete Berent and Marie Munk. They represented a distinct tradition, standing up for the oppressed and those unjustly marginalized by the traditional legal system.

The individuals featured are the opposite of the “frightful lawyers” described by Ingo Müller in his book *Furchtbare Juristen*, lawyers who served under the Nazi regime and many of whom continued to hold important roles in the West German justice system until well into the 1970s.

For the launch of the special volume I had the chance – together with Hannes Honecker from the German group [RAV](#) – to have long discussions with the experienced and no less pugnacious lawyers Hans-Christian Ströbele, Rupert von Plottnitz and Heinrich Hannover on being a lawyer during these post war decades.

Hannover described his work defending communists, and how he felt about German prosecutors in the 1950s going after people who had in earlier times put up resistance against Hitler, been convicted for their political views and locked up in prisons and concentration camps.

Ströbele told us about his outrage when in 1968 a Berlin appeals court acquitted Hans-Joachim Rehse, the only judge from the *Volksgerichtshof*, a Nazi special court, to ever be charged for his crimes.

Von Plottnitz aptly sums up the dilemma facing the lawyers in the trials of Red Army Faction (RAF) members, describing how his role was to “enforce as far as possible the rights of the clients ... including where required through verbal altercations with the court”, and all this for clients who rejected “the rule of law itself as a project aimed at masking existing structures of dominance.”

These discussions made it clear to us how difficult it was, especially in political cases, to use criminal law procedures to represent clients’ interests, especially since West Germany had lost so many lawyers – Jewish and left-wing colleagues who were murdered or exiled.

Our role models from this era doggedly refused to merely offer a kind of public service on the legal frontlines. They also refused to support the purported consensus as to what the law was; for them this was something to be determined through contentious legal proceedings.

For us younger (if no longer so young) lawyers and criminal defenders, Ströbele, von Plottnitz and Hannover are part of the group that painstakingly carved out the culture of tenacious criminal defense lawyering in the 1960s and 70s, a culture that is still to be played for today, which must be continually created anew.

So why am I retelling all this here? Because in the current biography *Ströbele* by Stefan Reinecke there is very little on this historical background and the long-term cultural impact of this generation of lawyers. In one of his many psychologizing assessments, Reinecke describes what he claims is Ströbele's fascination with his pot-smoking, militant clients: "They did what he never did: they rebelled." But the establishment of a socialist lawyers' collective, in which Ströbele played a central role, and the rediscovery of passionate political criminal defense lawyering in Germany was in fact a rebellion. It went even further: it marked a radical break from the authoritarian, deferential, obedient legal mainstream.

The reviews of this biography also failed to grasp the meaning and value of a (legal) culture of dissonance when they say Ströbele never expressly criticized his clients while defending the RAF prisoners or squatters – as though the broader public hadn't already prejudged them, and as though this were something a lawyer was supposed to do!

Reinecke does acknowledge the function of the lawyer in criminal proceedings, if only to express his regret that "most defense lawyers ... invoked lawyers' professional secrecy obligations" to "dodge uncomfortable questions." Political criticism of ex-lawyer Horst Mahler and the RAF is warranted, but to write from today's standpoint accusing the lawyers of that time of failing to express such criticism shows an abysmal lack of understanding of the duties of such lawyers. Taking clear sides and giving a voice to the hitherto voiceless are central functions in the adversarial criminal law process. Lawyers who do this are not only serving the interests of their clients but also upholding the fabric of society's legal and political culture.