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Conference proceedings of the international symposium "Terrorism in Court – National Courts as Empirical and Epistemic Field in Terrorism and Violence Research" from November 7 to 9, 2022, at the Center for Interdisciplinary Research (ZiF), Bielefeld University

From November 7 to 9, 2022, we, the conference organizers and authors of this report, hosted an interdisciplinary group of international scholars at the Center for Interdisciplinary Research (ZiF) in Bielefeld, Germany. The event was funded by the *german foundation for peace research* (DSF; grant 08/22-FB2-TG). The conference was oriented toward a growing community of international researchers from different academic disciplines with extensive expertise in conducting courtroom research to provide a conflict-sensitive and critical perspective on the situation in the courtroom itself and/or on the construction of "terrorism" and "terrorists" as socially embedded phenomena. The event, in which 24 international scholars participated, was part of the ongoing collective effort (by us and our colleagues) to systematize contemporary scholarly work within the field of courtroom research. In particular, we had identified the need for interdisciplinary exchange regarding disciplinary conceptual approaches, current empirical research, field-specific methodical designs and comparative studies. The conference was planned and conducted with a particular attention to inclusiveness and diversity in regard to academic background, career status and geographical origin.

In a kick-off session, PhD students gave poster-based presentations of their current or completed work. With his contribution on "Visualized Qualitative Network Analysis – Possibilities and Limitations for the Analysis of Jihadist Networks", *Kai-Sören Falkenhain* (Bielefeld) presented a methodological perspective on developing actor-based networks from a corpus of court files. *Annalisa Mattei* (Paderborn) discussed her project of ethnographic research on "Criminal Judges and the Pragmatics of 'Ansprache' in Courtrooms", problematizing the courtroom as heterotopia where space and speech define, for example, gender and power relations. With her presentation "Against Impossible Odds – Defensive Legal Mobilization in Russian Protest-Related Prosecutions (2012-2017)", *Renata Mustafina* (Paris) shared her research on civil-society support to defendants in Russian courts and the orchestration of interactions between institutions, defendants and the public. *Sophie Marois* (Toronto) presented insights and visualizations from the collaborative project "'Neither Terrorist nor Islamophobe' – Depoliticization in the Trial for the Québec City Mosque Shooting", highlighting how legal, political and media discourses contributed to the depoliticization of violence against racialized minorities in court. *Dyana Rezene* (Cologne) presented the upcoming research project on racism in the courtroom "Biased Courtrooms – Analyzing the Effects of Institutional Racism in Judicial Proceedings". Finally, in her presentation "Courtroom Ethnography in the Context of Jihadist Terrorism – A Gender-Sensitive Analytical Perspective on Performative Practices in Court Interactions", *Viktoria Roth* (Bielefeld) discussed researching gendered representations of identity and performative face work in court.

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The *first panel*, chaired by *Kerstin Eppert* (Bielefeld) and *Olivier Cahn* (Cergy), focused on *Problematizing Local Contexts – Institutional Practices*. The construction of charges of "terrorism" and their implementation are contingent on the pragmatics and politics of local socio-political and legal cultural practices. The local context co-determines, for example, whether and how cases are investigated and brought before courts, where and how power is exercised (e.g., through courtroom design, the duration and conditions of pre-trial detention or a lack of access to legal counsel) and how institutional practices unfold (e.g., in the form of a trial by specialized public prosecutors and courts, splitting up trials and defendants or in-court reporting on social media) to "discipline and punish" and speak the law. The situatedness of "terrorism" in court shapes the transparency, authority and legitimacy of proceedings. It also impacts legal and political change. Regarding research, local contexts determine the accessibility provided to scholars and thus need to be taken into account in the conceptual and methodological design of empirical studies. The presentations in this panel problematized different dimensions and characteristics of "local context" and "institutional practices" and highlighted where and how critical approaches are needed to overcome studying the apparent (e.g., by questioning archival materials, procedural turns within trials, investigating possible intersections of civil and criminal legal institutions) so as to part with dominant narratives and question the obvious.

Corinne Painter (Leeds), in her presentation "'Power and Peripheries' in the Courthouse", discussed her work on women's roles in the German revolution of 1918-1919 using the example of two revolutionary women, Hilde Kramer in Munich and Cläre Jung in Berlin. With these case studies, *Painter* made several important points with regard to methodological and conceptual pitfalls when working with (historical) political and legal accounts. She outlined a bias in the epistemological proceedings of historical work on that period that focuses on researching publicly visible, male-dominated institutions, such as soldiers' and workers' councils or (predominantly male) revolutionary leadership. As a consequence of this focus, women's engagement with and contributions to the revolutionary agenda remain invisible. This effect is compounded through a methodological bias that lies within the traditional approach of document-based historical (archival) research. *Painter* showed how these biases contribute to the inscription of women at the periphery of the revolution of 1918-1919 and argued for a more critical approach to – often less accessible – sources that, when *read against the grain*, provide a more accurate account of women's contributions to the revolutionary agenda. With her analysis of historical court and police records, *Painter* revealed specific insights into women's revolutionary activism, methods and motivations that underscored the relevance of women's activism in the overall political struggle. This approach also allowed her to examine how women engaged in revolutionary work and how they used societal expectations of class and gender in their attempts to evade punishment.

Emma Rowden (Oxford) discussed her work on the evolution of courtroom design in her presentation "'Power and Peripheries' in the Courtroom – Examining Changes to the Position of the Defendant Over Time Through Discourses About Court Design". Using a Foucauldian discursive approach, *Rowden* focused on the historical development of societies' acceptance of docks as a regular part of the courtroom and provided an overview of historical-legal architectural accounts of the justification of docks. *Rowden's* central question was how the confinement of defendants changes court proceedings or even indictments. She presented collaborative empirical analyses by her and her colleagues that assess the negative impact of confinement and remoteness (e.g., in testimony via video stream) on the perception of the defendant

by the judges and its detrimental effect on sentencing. Her analyses suggest that docks are a result of the securitization of court proceedings and undermine democratic principles. As democratic justice institutions, she argued, courtrooms have to enable and ensure fair trials – a fact that needs to be reflected also in courtroom design.

Kerstin Carlson (Roskilde), in "'Discipline and Punishment' – Missing the Point – Narratives of Responsibility in the Charlie Hebdo Trial", presented her analysis of the constructions of defendants' legal responsibility before court during the "Charlie Hebdo trial" in France. The trial addressed the series of attacks from January 7 to 9, 2015, in Paris, in which seven editorial staff members of the satirical newspaper Charlie Hebdo were murdered, attacks on police were carried out and clients in a kosher supermarket were shot. *Carlson* examined how the prosecution's justification and presentation of the charges juxtaposed the state's case and the defendants' responsibility. She compared her examination's results to the reconstruction of the attacks themselves and to investigative knowledge gained in the preparation of the trial. *Carlson* outlined and problematized how the prosecution, representing the state, developed specific narratives of complicity and guilt for some of the more marginalized actors on trial and excluded actors from the case who were known to have played a more central role in the preparations of the attacks, such as the arms dealer Claude Hermant or Peter Cherif, who had planned the attacks.

Jacqueline Hodgson (Warwick) spoke about "Institutional Practices – Drivers of Legal and Political Change", providing a comparative perspective on the similarities of the relationships between terrorism and "ordinary" everyday criminal law in the British and French legal systems. The conjuncture of a securitization of "terrorism" as a crime and a "politics of fear" regarding the potential risk of "terrorism" has led to treating "terrorism" as an exceptional crime that justifies the erosion of individual rights and access to justice. Suspects, accused and convicted in pre- and post-crime spaces, have become subject to a more punitive treatment; they are stigmatized through policing and investigative practices. Through their political dimensions, terrorism trials often stretch the criminal process to its limits, both in national and international procedures (including at the ECtHR). Criminalization as a strategy for risk management and crime prevention has been a powerful driver of political and legal change in recent years, blurring the boundaries between criminal and civil/administrative law – for example, extraditions of potential "terror" suspects are sometimes processed despite insufficient evidence, thus violating individual rights of protection.

In "Institutional Practices – Legal Procedures from a Comparative Perspective", *Thomas Scheffer* (Frankfurt am Main) introduced the method of "trans-sequential analysis" of legal procedure, which he had developed in a collaborative project. Trans-sequential analysis focuses on relational (1) turn-by-turn analysis and (2) step-by-step reconstruction of procedural episodes on the basis of (3) the "court-as-apparatus" and infrastructure. In it, the legal work of "doing procedure" is oriented toward formative objects. These "objects-in-the-making" are (a) formed across episodes, (b) formatted in line with rules and rituals and (c) forming teams attached to them. During a trial, these teams do the necessary work on a series of hands-on (legal or procedural) problems that come with performing certain legal acts as required and, additionally, might deal with referential problems that come with professional objectives and ambitions, for example, to win the case. Ultimately, the procedural competition moves the cases toward a final, socially binding decision: an interrelated unity of "evidence-norm-punishment" within the legal discourse formation. *Scheffer* discussed how this methodological framework can be used for the analysis of terrorism trials. Terrorism, he argued, pushes even the most

independent courts toward the "state to be protected" due to the common/joint threat of the status quo; it pushes even the most capable defense teams, with any ambition they show, dangerously close to the "enemy of the state/people". Thus, such cases render observable the procedural foundations and ethics that otherwise remain unnoticed in the normal business of the legal apparatus at work.

The second panel, chaired by *Anja Schmidt-Kleinert* (Frankfurt am Main) and *Olivier Cahn* (Cergy), focused on *Intersectional and Postcolonial Perspectives on Terrorism in Court*. This panel addressed the idea of terrorism trials as situated processes that reflect and reproduce intersectional discrimination and reiterate colonial subjectivity in various ways. The narratives and images of the "Global War on Terror" and its implementation through (inter)national security practices has put a strain on non-Western populations globally. Narratives and visualizations of "terrorism" suggest suspicion and complicity, shared guilt and the need for personal legitimization. Through its securitizing effects, global discourse has served populism and nationalism in different national contexts by widening definitions of "threat", "risk" and the category of "terrorists" to such an extent that, depending on the local context, they may apply to anything from political opposition to sexual orientation, ethnic or religious belonging to social status. Empirical studies substantiate the argument that intersectional categories of ethnicity, religion, gender, social class and race, to different degrees and varying in their relationality, play a role in criminal-justice systems across the globe. Comparing country cases and understanding the legal-cultural situatedness of political and legal justification is a fundamental undertaking in order to sensitize and decolonize methodologies and inform interpretative stages of research as well as academic debate.

In her presentation on "Laws of In/Security", *Nahed Samour* (Berlin) explored the question of who is considered a threat to a society and the state using the example of the German security-related designation of "Gefährder" – a "potentially dangerous person" that is seen as "likely to threaten public safety". This term has developed as an agent-focused category in German security practices and is being used for describing the increased potential threat that an individual poses to the state. Although "Gefährder" is not a legal category, being classified as such by the authorities can trigger a number of legal measures under German police law, intelligence law, public law and migration law. *Samour* underlined that we should no longer have a debate that juxtaposes liberty and security only, but that it has become necessary to also include equality before the law. With regard to the "rationalization of suspicion", *Samour* discussed how the discriminatory effects of German security law become particularly visible in places where religion, race and gender intersect, critically outlining how legal protection in the field of security law is still struggling to effectively address this intersectionality. Regarding methodology, *Samour* stressed that the colonial questions of the im/mobility of bodies and state knowledge over those surveilled need to be linked to intersectional approaches to security law.

Tansiem Anwar (Amsterdam), in her presentation on "Postcolonial Theory and Terrorism Studies", discussed how new developments in international law have contributed to regulations that criminalize and prosecute the funding of "terrorism" ahead of terrorist violence. While many of these regulations have been adopted quite recently through UN Security Council resolutions or EU directives, *Anwar* argued that the fight against "terrorism" has a longer history that is rooted in colonial forms of governance. These can be made visible by deploying a post-colonial lens to researching terrorism trials as legal spaces where the "colonial afterlives" can be studied. *Anwar* suggests that court cases have become important spaces for con-

testing and evaluating multiple knowledge claims on terrorist threat and suspicion. By analyzing case proceedings from both the Netherlands and the United Kingdom, she illustrated how legal practices continue to be informed by post-colonial definitions of terrorist threats and suspicion. Furthermore, she showed how, as a result, court cases differentiate between different ways of knowing by dismissing certain experiences as "emotional" or "subjective" in contrast to the assumed objectivity of other knowledge claims, which reproduces post-colonial divisions of subjectivity and knowledge.

In his presentation on "Reframing Terrorism Trials in India", *Mayur Suresh* (London) showed that terrorism trials in India are marked by torture, illegal detentions and fabricated evidence, taking years, and sometimes more than a decade, to be brought to a close. *Suresh* argued that this has led to extremely low conviction rates and that the laws have been used to target and keep minority populations and human-rights groups in jail for as long as possible. This specific national context challenges the study of terrorism trials. So far, one mode of study has been to locate these trials within the frame of nationalist politics and the expansion of the security state. In this, trials are seen as a means to understand social structures and political power, with the court as an extension of political and social life outside the courtroom. *Suresh* proposed another mode of inquiry that takes a closer look at the social world *within* the terrorism trial. As he argued, an important part of this social world revolves around legal technicalities, including paperwork, legal concepts, modes of speech and writing. During his fieldwork, *Suresh* found that defendants were highly concerned with technicalities. Though seemingly mundane, these technicalities are fraught and highly contested and acquire urgent ethical qualities in the course of a trial – legal language becomes a way to speak in the trial, the file becomes a space in which the world can be made and unmade, the petition becomes a way of imagining a future and investigative and courtroom procedures become facilitators of unexpected close relationships between the police and those accused of "terror". The itineraries of technicalities are important because they do not only determine a trial's outcome but also chart possible paths for defendants through the momentum of the terrorism trial.

On the final day*, invited keynote speaker Marieke de Goede* (Amsterdam) spoke about "Terrorism Trials – Politics of Counter-Terrorism Between the Universal and the Particular". *De Goede* laid out her rationale for studying terrorism criminal trials as concrete spaces where relatively new terrorism laws are given meaning, helping determine their reach and impact. Trials always address a universal law or norm through a concrete, particular and situated case. In that sense, trials are a site where the universal and the particular meet and where universal norms are given concrete meaning and impact. *De Goede* argued that the politics of "Combating the Financing of Terrorism" (CFT) constituted "a site of transformation of the rule of law in democratic societies" as it aims at sentencing the potential violence of the future associated with financial transactions. She illustrated this using examples from her research on terrorism financing trials, in which the criminalization of certain acts ahead of terrorist violence is both shaped and contested: "The potential future that never happened is made real in the sentencing." *De Goede* discussed the effects of criminalization and an unpacking of "doing expertise" in court using the example of the *R v Lane & Letts* trial in London, in which parents were convicted of terrorism financing after their attempt to financially support their son in IS-held territory.

The *third and final panel*, chaired by *Nicole Bögelein* (Cologne) and *Mayur Suresh* (London), focused on *Methods in Courtroom Research*.

While researchers in the field of courtroom research use the methodological and conceptual tools and approaches of their respective disciplines and follow their disciplines' ethical standards, they are also required to reflect on some specifics, for example, regarding gaining access to trials, the physical and procedural opportunities and limitations of collecting data within trials, in person or by proxy, conducting social media analysis or audio/video footage of trial proceedings, analysis of courtroom scripts or analysis of media documentation and public discourse on trials beyond the courtroom using mixed-method approaches as well as semi-automated analyses such as semantic networks or other corpus data. The presentations in this panel addressed questions of methodological considerations regarding the dichotomy between rationality as a professional standard and judges as human beings that have and show emotions, regarding the ongoing process of the digitalization of judicial trials or communication about them as well as regarding field researchers' positionalities and tools of reflexivity.

Åsa Wettergren (Gothenburg), in her presentation "Researching Emotions When 'There is None'", focused on the question of how to research emotions in court when they are claimed to not be present. Using the example of her empirical work in Swedish courts, she problematized the fraught dichotomy of rationality and emotionality in Western legal cultures. To satisfy professional standards of rationality, and so far as judges are concerned, trial proceedings and legal judgements are expected to be devoid of any emotion in order to support impartiality. So as to research emotions in court, *Wettergren* and her colleague developed the concept of "professional emotions" that differentiates between "foreground" and "background" emotions. This model situates the judge at the center of a network of actors and events that challenge or rupture the proceedings, break with norms and contribute to the evolution of the trial, which the judges are to stabilize through their professional emotional regime. Building on insights from her previous work, *Wettergren* has advanced the concepts of emotional work and epistemic emotions which, she argues, fuel judicial fact-finding processes through "certainty-doubt spirals".

Lisa Flower (Lund) provided insight into the numerous transformations of legal proceedings in the context of the digitalization of communication in her presentation "Studying the Courtroom Digitally". Digital changes have important consequences on how the courtroom and trials held in it can be approached. The "digital courtroom" may include open courts through livestreams of hearings as well as court reporting via social media and other online platforms. Using the example of Sweden, *Flower* provided an overview of how the digital courtroom can be studied, including potential problems and implications of the digital turn. She placed a particular focus on videoconferencing in criminal trials, the use of which increased explosively during the global pandemic in 2020 and 2021, despite a number of problematic aspects as well as still unknown factors. *Flower* argued that while the procedural codes have not yet settled the legal grounds for digital media in courts, digitalization is taking place already and risks upsetting due process. She further discussed the ethical and legal implications of live reporting concerning witnesses who are waiting to testify but may access ongoing testimonies and statements through digital media as well as ethical and legal implications with regard to the principle of publicity where courtrooms were established digitally.

Sarah Klosterkamp (Bonn) closed the conference with an overview of her experiences, insights and observations from five years of field work on German terrorism trials as "Multi-Sited Ethnography". She reflected on her positionality as a researcher and the ambivalence it produced in conversations and intimate interactions with defendants' close family members, neighbors,

lawyers and security guards. *Klosterkamp* explained in detail the moments of embodied listening in shared waiting areas, restrooms or parking lots and how these moments gradually deepened her understanding of the subjectivities and relational networks that the trials (and the wider legal process) made visible, erased, privileged or was blind to. She found these multiple encounters to be methodological challenges as well as entry-points of self-reflexivity and moments of embodied experiences, which are key to auto-ethnographic analysis. By focusing on three vignettes taken from her empirical data, *Klosterkamp* argued that such disrupting research relationships have much to offer to a feminist analysis of power, including its expressions through the law.

After two days filled with productive exchange on current research and lively discussions of ongoing and planned studies, the conference ended. However, in line with the objectives of the symposium, efforts to strengthen and expand the research network will continue. A dedicated group is set to continue and advance international cooperation and project development for comparative research in 2023 and beyond.

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