The Penal Colony

I

My lawyer was visibly shaken.

She never saw anything like it.

She tried to reassure me as she handwrote an appeal. She would need to submit a handwritten appeal to the judge immediately, then and there. The appeal was written out on lined paper that was already slightly crumpled, as if she pulled it out of her pocket. She started writing on the grade-school table, the defense table, we were seated at.

It all happened within a matter of minutes. I could barely register it.
I couldn't understand a thing but it was like watching a meteorite fall.

"No reason to hear anything further," said the judge. He was sitting on the bench of the old Moabit courthouse, *die Kriminalgericht Moabit,* a gigantic edifice of the 19th century piled high with racial and political persecution.

"No one disputes the conversation," said the judge, "and the officers do a very needed job. I have no reason not to accept the officer's report."

And without being able to present a shred of evidence or mount any defense whatsoever, I was found guilty of insulting a public official.

I hadn't really intended to insult a public official (*Beamtenbeleidigung*), not that I even really understood what *Beamtenbeleidigung* meant. I mean, I vaguely knew that freedom of speech were not guaranteed in post-war Germany. But a Jewish student engaging in a relatively harmless, somewhat Socratic conversation with a police officer on an honest sunny afternoon in Berlin along the *Hasenheide* park*?*

Admittedly it hadn't ended that well for Socrates. But the idea that you could say something to a public official that

would be so injurious that it merited a prison sentence of up to a year was basically unthinkable to the young American, however much he called Berlin his home.

An insult? How exactly is that an insult? You can't get out of a cab in Berlin without getting into the fine details of something or other. A simple question like "how are you?" might elicit a full medical workup with differential diagnosis.

Naturally it hadn't helped any that the attorney was part of a women's radical law collective rumored to have defended members of the Red Army Faction. I suppose I never really took much note of this. Kreuzberg was wild, and often surprising. But the RAF seemed like a something you read

about. Like the Panthers or the Weather Underground, it wasn't something that touched me or my friends directly, personally. This was true, still true perhaps, except on Friday when they discovered someone around the corner from my apartment cohabitating with a Kalashnikov and a grenade launcher (nyt). I'm sure we both shopped at *Kraut and Rüben (Naturkost und Frauenkollektiv),* a health food store collectively-run by women.

There were very few Black people in Berlin in those days. It was perfectly clear that the police were only stopping Black people on that busy boulevard next to the park. So when they stopped this guy on a bicycle, and then let him go shortly afterward, I really couldn't help but ask a question as they walked by:

“Why did you stop that man?”

I hadn’t gone out of my way to trouble them. I was standing in the late summer sun waiting for Misako. We just made some little purchases at *Bauhaus*, which sounds really grand, I know, but is actually the equivalent of Home Depot.

“You only stopped him because he’s Black?”

II

There were two officers.

There was a tall, narrow man who was not Prussian infantry material, as no one under two meters need apply. But he was tall enough from a little Eastern European Jewish vantage point.

There was also a woman, a bit more my size. They were dressed in bluish police uniforms that look like something between road maintenance and cross-fitness outfits.

“I can see you’re only stopping Black people. You stopped that man because he was Black?”

“Na ja,” the man responded without batting an eyelid. And with an absolute matter-of-factness that could only be imagined in German, he said

“Na ja, only Black people sell drugs in the park.”

This is where grammar comes into play.

By this point, I had been studying German for years.

Learning a language as a conscious adult is like pledging to relive infancy all over again. German is the worst form of infantilization. Every stage of learning must be redone: the single morpheme, the holophrastic stage, the telegraphic. There are hours and hours of grammar before the willing object can speak a single sentence.

I began with a half year of study before I entered university and then took five-hour long classes, every day, five days a week, for a full year, two semesters. I would have to get up in pitch dark in the winter to take the train from Bornholmerstrasse (the East-West spy exchange station) up to the university in order to be there for an 8 AM class. But by then I was a PhD student and with some practice, I knew very well how to use the formal “Sie” and informal “Du,” and the worlds surrounding that difference. And I knew how to form a sentence with “Das” and I knew how to form a sentence that began “Es ist.”

In that moment, however, all that grammar came to nought. I was in shock or disbelief at the matter of factness with which the police officer responded.

Like Plato's characters who have the strangest beliefs sometimes (Meno, for example, who says the meaning of virtue is being able to "acquire beautiful things"), what the officer had heard and believed about Black people, that only Black people sell drugs, was a sentence from another planet, in a language I could only intuit but not really understand.

In that moment of "na ja" (something like "yeh, so"), all the sentence structure and syntax I had worked on for years and years collapsed into an awful heap. That heap

was a sad mixture of *Es ist* and *Das ist* and *Sie ist*. In other words, my language became a totally incomprehensible salad of words. But to be sure, the salad had no personal pronouns: no “Sie sind” and certainly not “Du bist.” That much I was certain.

It was a sunny day, and a more or less friendly conversation.

And suddenly, before I noticed, I was under arrest, the bicyclist long gone, the lanky officer called for backup, (I was hardly a menace or resisting), a wagon pulled up and out jumped a whole group of sullen police officers, which then prompted an even larger group of Sunday shoppers, among them a good number of Berliners, who, in their

matter-of-fact demeanor sounds something like Bronx Yankee fans, now wanted to see, and most of all, what to know what all the fuss was about. There were maybe 6 or 7 officers at that point, who all looked a bit annoyed with our Westdeutsche, cookie-cutter Prussian guard in miniature.

How could this possibly be happening?

III

the penal colony : conclusion

Back in the court, my lawyer was trembling.
I couldn't tell if it was out of fear or anger or a combination of both.

I was suddenly transported to another world again.

I was a Jew, after all.

And a PhD in JEWISH Studies, for GODSAKE!

That's what I told the police officer.

Naturally I was concerned.

How could a judge refuse to hear the case?

Looking at him now, he was probably in his late 60s, not particularly distinguished, overweight, frumpish, of course too young.

He couldn't have been anything more than a toddler in the Nazi period.

What was really remarkable about the court setting is that were seated to the side of the judge.

In retrospect, I think it really was odd.

In any other courtroom, the defendant faces the judge. The setting was architecturally dissociative.

It felt like we were sitting in the gallery to watch the proceedings, not to actually participate in them.

As the judge turned to me, and I looked down at my trembling attorney hunched over her tiny bits of paper and then back again at him, I could see, at least I thought I could see for a tiny moment, the rudiments of a belief system. It was a form of racial law and order against which no legal or grammatical analysis was possible.

There was nothing more to be done.

There was a first handwritten motion and then a second. But after the judge summarily dismissed the second handwritten motion, he announced the preceding complete, and got up and left the bench. It all seemed rather abrupt.

Admittedly I understood everything at a slower pace.

But there was something absurd about his gesture, as if it was clear that he had no place better to be.

Where was he racing off to?

We stood there for a moment, the lawyer and me, a kind of laughter came over us.

I admit I started it. The absurdity of it all.

The only option left was to file an appeal at the next *Instanz* of the law (level of jurisdiction).

On appeal, the risks were however higher.

Apparently, you have a right to make a challenge, but if found guilty at the appellate level, the crime turns from a misdemeanor to something resembling a felony.

Found guilty, I would be spending a year in prison for using the wrong personal pronoun.

*

About two months ensued between the first and second *Instanz* (the appeal).

I was going back and forth to a post-doc in Erfurt, in Thuringia, about four hours by train to Berlin in the former East Germany.

I would go down on Monday and return on Friday. During those train rides, I would think about what I would do for the year in prison.

What would I read? Maybe some of the long Russian novels.

Would it be so bad? A Jew in a German prison for insulting a public official engaged in an official racial proceeding.

So I'll go to prison, I thought.

The things I'll be able to write.

*

Two months later we were back in court.

On the bench at the appellate level was what you might expect of a judge in the late 1990s *Bundesrepublik* — a bespectacled, clean-cut fellow, maybe married, a single-family house with a small yard, a teenager at home. He might vote for the ruling party, Social Democratic.

The police did not turn up for the second trial.

A middle-aged Berliner who had witnessed the whole thing, a barrel of a man, came out in my defense, giving testimony in Berlinerisch, that this fellow over here was just trying to have friendly conversation with the officer.

He was kind. It was the kind of kindness that's simple, a working class street-smarts kindness that isn't impressed with all of ooos and aaas of the West German economic miracle. They weren't very impressed with blackshirts either, with skulls and bones, light-shows, and the leather-bound *Thus Spoke Zarathurstra* issued to every Wehrmacht soldier.

I was grateful.

We were able to make our case, which all hung on the fact I hadn't intended any offense as my language demonstrated. I was asking about the stop-and-search policy.

In truth, I really never said "Sie sind ein Rassist" (You are a racist) but rather something like "Es ist rassistisch zu sagen daß nur Schwarzen drugen verkaufen," (It is racist to say that only Blacks sell drugs).

Of course Socrates was much more clever.

He would have asked another question. Maybe something about pigmentation and measure.

He would have asked "how much pigmentation would a person need to be considered reasonably suspect for selling drugs?"

Very black or a little black? How about chocolate-black? How about Cookies and Cream? How about wheatish, how about whitish?
How about olive complexion like me?

But of course Socrates was in his element, and I was on the *Hasenheide* with my little table lamp, trying to figure out what planet I was on.

The appellate judge said:

“I really don’t understand what all this fuss is about,” and intimating that Herr Jacobson was a little too nosy for his own good,

he dismissed the case.

Socrates was also a little nosy.
But unlike him, I was grateful to be heading right out of that prison, right down those stairs and out of that building where surely the Nazi judges administered not that many years before.

Today, with a little PTSD, I read an article in the German liberal newspaper *Die Zeit* about the Moabit Courthouse where my trails were held. The article from September 7, 2000, was right around the time of my trials. It began with these words:

“Die Strafkolonie von Moabit. In Europas größtem Gericht Berlin-Moabit steht die Justiz vor dem Kollaps.”

“The Penal Colony of Moabit: In Europe’s largest courthouse located in the Moabit section of Berlin, the justice system is teetering on collapse.”

I felt like I emerged from the rubble.