

# The attack on civil rights in West Germany

Claudia von Braunmühl

## Introductory note

Recent months have seen a heightening of public concern in Britain and other West European countries about the systematic erosion of civil rights in the German Federal Republic. The principal cause of this process of erosion is the administrative practice known as Berufsverbote, by which 'radicals' or 'extremists' whose 'loyalty to the Constitution' is held in doubt by the authorities are excluded from employment by the state. This practice, instituted six years ago under the auspices of the then Federal Chancellor, Willy Brandt, has received only sporadic coverage in the British press, which has scarcely conveyed the enormity of the repressive effects of the Berufsverbote. In such a context, Helmut Schmidt's election slogan, 'Modell Deutschland', the 'German Model', takes on a new and disturbing meaning for the citizens of other Western states. It is now estimated that about 1.3 million West Germans have so far been investigated by the 'Constitutional Protection Agency' (Verfassungsschutz), and that around 4,000 persons have been banned or dismissed from employment in the state sector.

Radical Philosophy is happy to be able to publish Claudia von Braunmühl's study of the legal and juridical decisions and principles by which the Berufsverbote have been justified. The practice was inaugurated at a concerted national level by the so-called 'Decree on radicals' issued by a conference of state Prime Ministers held in January 1972. (Under the West German Constitution, such a conference has no legislative powers.) The policy of investigations and bannings inaugurated by this administrative 'decree' was subsequently upheld as constitutionally valid by the courts, which exercise supreme authority in the interpretation and application of the 1949 Basic Law of the Federal Republic.

In spite of the immense wave of McCarthyite intimidation and repression unleashed by the Berufsverbote, with political dissent being officially

equated with 'sympathy for terrorism', protest against the policy has not been silenced, but continues to grow. The various groups in West Germany struggling to defend and recover basic democratic rights have repeatedly appealed for support and solidarity from other countries, noting the sensitivity of the West German authorities to the pressure of international opinion. In response to these appeals, the Bertrand Russell Peace Foundation has set up an International Russell Tribunal on human rights in West Germany, which is to conduct its hearings in West Berlin this spring. Details of the Tribunal, and of the campaign of support for it currently being organised in this country, are given in the News section of this issue. Readers may have seen the recent press reports of the regret and distaste for the Berufsverbote policy expressed by leading SPD politicians such as Willy Brandt and Helmut Schmidt, and of their desire to dismantle it. (Contrary to a recent report in the Observer, however, there is no sign of a let-up in the Berufsverbote and allied forms of repression, even in the SPD-governed states of the Federal Republic.) Such reassurances contrast strangely with the denunciations in advance of the Russell Tribunal's intended investigations, recently issued by Willy Brandt, as Chairman of the SPD, and by the Federal Minister of the Interior, Werner Maihofer. According to Herr Brandt, the Tribunal is an insult to the German state and to the ruling Social Democrats; SPD members have been instructed to boycott the Tribunal. Herr Maihofer, in an official statement, has alleged that the organisers of the Tribunal are implicated with 'sympathisers of terrorism'. This follows the established pattern by which challenges to the Berufsverbote are themselves held as evidence of 'enmity towards the Constitution'. As Claudia von Braunmühl's postscript to her article clearly demonstrates, the present political climate in West Germany is indeed one of intensifying McCarthyite persecution.

the term 'Rechtsstaat' in referring to the state acquires an ironic and bitter flavour.

This 'rule of law', which is historically a device for the protection of the citizen and a constraint on the power of the state, has become a means for protecting the state against the claims of its citizens. In West Germany, however, political repression operates within a legal and judicial framework provided by a willing legislature and judiciary. The very 'Rechtsstaat' West Germany prides itself on has become a means to eliminate any actual content of a rule of law.

What distinguishes present-day political repression in West Germany from the McCarthy era, with which it is often compared, and gives it a much more dangerous character, is that administrative action is turned into law and sanctioned by the ruling of the highest courts, petrifying these into legal instruments at the disposal of a strong state. Possibly more important, any domestic opposition against political repression finds itself deprived of legality and risks criminalization or loss of work (Berufs-

## Political repression and legality

West Germany is considered to be a liberal democratic state, holding a position of considerable economic strength amongst the western powers. While the latter point is hardly disputed, recent developments have thrown much doubt on the liberal democratic side of the country and its much celebrated 'rule of law' (Rechtsstaat).

A good deal of information has appeared on recent developments in West Germany, the decline from the short period of liberalization from 1969 to 1971-2 and the rise of a strong state resorting to political repression to an increasing extent. There have also been reports on specific cases of political repression, specific abuses of administrative power, alarming trends within particular institutions, and so on. And, indeed, it is a long and sad tale. However, little, far too little, is known about the actual legal and judicial changes that have taken place within the last few years. In the light of these developments the habitual and euphemistic use of

verbot) on perfectly legal grounds. Apart from the obvious personal distress for the victim, this has devastating consequences for the organisation of any kind of protest. Not only do people feel threatened, intimidated and discouraged, but, faced with the form of legality assumed by political repression they tend to neglect the question of its legitimacy. This is all the more so, as the conforming mass media, themselves under political pressure, will hardly allow sensitive information to penetrate, much less seriously raise the question of legitimacy.

Furthermore, West Germany can still rely on its postwar image favourably contrasting with fascism, and, despite some cold war 'lapses', passes as a stable liberal-democracy. 'Stability' and 'liberality' are taken here quite wrongly as synonymous. Compared with other West European countries in socio-economic terms, West Germany is indeed an economically strong and relatively stable country, increasing in strength even to the extent of achieving regional hegemony - and making more and more use of it. However, a closer analysis of this stability would easily reveal that the cost of this has been a drastic loss of liberalism and rule of law, a price which cannot but raise concern not only in the FRG but elsewhere in the Western world.

For obvious reasons, this concern will be of a less direct nature outside the FRG as it lacks information and immediate experience. It seems particularly necessary when addressing a non-German audience to stress the 'legal' aspects of political repression. For reasons of space this article will be concerned only with the civil service. The civil service was the immediate target of the 'Decree on radicals' (Radikalenerlass) issued in January 1972 by the Conference of the Prime Ministers of the Federal States (the Federal government lacking the power to issue such a decree itself). This decree bans all alleged radicals from the civil service and authorises the notorious practice of the 'Berufsverbot' (professional ban). This should not be taken to imply that political repression is limited to the sphere of the civil service only. Nor should it diminish the importance of repression in the realm of private employment, which is not considered here. Political censorship has been introduced through legislation; the right of demonstration has been severely curtailed (e.g. at present a law on 'passive armament', i.e. banning the covering of one's face to avoid special branch filming, is being prepared); the rights of defendants in political cases, as well as those of their lawyers, have been curtailed to the point where legal defence becomes impossible; the rights of foreigners, particularly students and workers, have been limited to a considerable extent; the universities have been coerced into special penal codes. (These are only a few examples.)

The concentration of this article on the civil service is not arbitrary. Firstly, 15% of the working population is employed by the civil service, which includes the education system and social services which are the main job orientation of politically aware, critical students, and are particularly under attack. Also with the commitment to the socio-political status quo and the traditional state orientation of the Social Democratic Party and the trade unions, these bodies, rather than opposing the Berufsverbot (the SPD indeed was largely responsible for initiating it) have, to the extent of imitating its very phrasing, administrative decrees, procedures, laws and court sentences,

extended it into their internal organisational conduct. Thus they not only do not encourage any kind of opposition but continue state induced political repression within the much wider scope of their organisational reach. So the public sector can be seen as quite directly setting a pace which is adopted by the rest of society.

## Enemies of the Constitution

It was for the civil service that the Decree on Radicals was originally issued, thereby providing the a posteriori basis for an administrative practice that hitherto had lacked legal basis and indeed had been widely criticized for being in no way compatible with the constitution of the FRG. At the same time, the Special Branch (Verfassungsschutz) was strengthened enormously in manpower and technical equipment, and in subsequent years was provided with the legal right to intervene as part of the normal procedure into the filling of any vacancy in the civil service, from secretary of state to cleaning personnel.

The state evaluates commitment to the constitution on the basis of material collected by the Verfassungsschutz. This is often collected in dubious ways. Partly, however, the collecting of material is facilitated by the extensive amount of legislation, recently created, which is truly breathtaking in its scope and surpasses anything the Third Reich had to offer.

The state authorities have been known to call in doubt an individual's commitment to the constitution on account of his or her attendance at a meeting of the Communist Party, candidature for the Communist Party or one of the Maoist parties, signature of a radical party campaign leaflet, distribution of a leaflet amongst whose signatories was a radical party member, living or having lived in the same flat with 'members of the new left', activity in a left student group, candidature for student parliament on a radical list, even one that at the time was the official student organisation of the SPD, parking near to the Communist Party Office when a meeting was being held, signing a petition against the close-down of a hospital, participation in the movement against nuclear plants or dumping grounds, working in any organisation like a prisoners aid committee, neighbourhood organisation or community organisation in which members of radical parties are working, visiting someone who has been arrested for alleged sympathies with anarchists, selling leftist pamphlets, criticising the practice of Berufsverbot as Gesinnungsschüffelei (snooping into beliefs), being on the mailing list of a left publishing house, signing a resolution against Berufsverbote, sticking up posters for a radical party, asking for information on and forms for a course run by the Communist Party, protest against the pro-Vietnam War film 'The Green Berets', participation in anti-Vietnam demonstrations, parking your car near a demonstration, conscientious objection, donating money to any organisation in which there is a communist working, visiting a political prisoner, informing the public by leaflets and meetings of one's own pending Berufsverbote (this is known as taking 'undue refuge in the public'), contributing a picture to an exhibition of political art organised by a group of artists supposedly close to the CP, being the wife of an attorney of a person accused of anarchist affiliations, being the wife of a teacher struck by the Berufsverbote, having passed on in class the address of an

attorney defending an alleged anarchist (the subject of the class was contemporary press reports on political cases), inviting a political theatre group to play in school, etc. (These 'reasons' are all taken out of official correspondence.) Are these grounds enough for one to be considered an 'enemy of the constitution'? Not necessarily all of these people lost their jobs or did not get one. It is enough, though, to 'raise doubt about your allegiance to the Constitution and your will to defend the liberal democratic fundamental order at any time', to quote the standard phrase in letters summoning the individual to explain her/himself to his/her superior and, of course, the mere knowledge of the existence of such letters, of their possibility, of the iceberg of screening of which they are the tip, is enough to intimidate people, to create an atmosphere of mutual distrust and fear, of 'proving' one's *Verfassungsfreundlichkeit* (friendliness to the constitution) by carefully avoiding any links with those who are suspected of being 'enemies of the constitution' (*Verfassungsfeinde*).

The details of the procedure resulting out of the Decree on Radicals were left open in 1972 to be filled in by the individual states. But so far the majority of them have failed to do so. A Constitutional Court decision of 1975 calls for legal assistance and minutes, use only of material that could stand up in legal action, no consideration of student activities, no storing of information after use. Not a single state meets all of these requirements. Some will allow for legal assistance and minutes, others will not or will bypass the rules for an interview altogether by declaring it to be an informal get-together. Quite often the screening is deliberately dragged on because of the weakness of evidence against an applicant, while the institution in question will fill its vacancy with a more 'suitable' candidate, available at short notice since no 'doubts' have been cast upon him/her.

The administration shields itself against critical interference from outside by imposing silence on the employing institution about the real reasons for its delay in employment, or non-employment of an individual, and equally imposing a ban on civil servants coming out in defence of a present or future colleague. All this besides, of course, imposing silence on the individual concerned; the state of Hamburg even went as far as to declare it illegal for any civil servant to publish any kind of information that has not already been made public. In 1973

the newly created offence of 'undue refuge in the public' (*Flucht in die Öffentlichkeit*), violation of the 'moderation' that the civil servant is obliged to exhibit, was sanctioned by the ruling of the highest administrative appeal court and consequently is now irrefutable on legal grounds.

## The legitimization of the bannings

The essence of the concept of rule of law which the West German state proudly claims for itself lies in the fact that any state activity might be subject to scrutiny by the courts. The legal recourse of the citizen ends where the highest courts have ruled. It is for this reason, amongst others, that supreme court rulings are of the utmost importance.

In the rest of this article, therefore, four decisive judicial rulings on the practice of *Berufsverbote* will be reported and briefly discussed.

(A) Ruling of the Highest Administrative Court of Berlin (because of the special status of Berlin this is the highest appeal court for citizens of West Berlin) (December 1974).

Case: Sybille Plogstedt, member of the 4th International, contracts with the Free University of Berlin for a one-year research project on Eastern Europe. The political authorities refuse to accept the validity of the contract and sue the University for having entered it.

1 The court extends the special obligations of a civil servant to anybody employed by the state - worker or *Beamter* (tenured official). It is on the basis of this extended interpretation that it becomes possible to resort to the rigorous application of the special status of *Beamter* even in the case of a one-year research assistant. (A law to this effect was passed only in 1976, so the argument came as quite a legal surprise at the time.)

2 Further justification is considered necessary. The court reasons that, even though SP will not be lecturing but only doing research for which the court agrees she is highly qualified, she will still move within university territory, will communicate and might in that way exert influence. This in itself is considered to be unacceptable. Article 5 of the Constitution is quite explicit on freedom of research. In reaffirming that article the court at the same time denies interference into the right of free research by asserting that it is not because of the expected results of her research activities, but of her possibilities of contact, that SP's presence in



the university is undesirable. 'As she is actively and passively eligible for elections, she might try, furthermore, to misuse the institutions of the university for her political goals.' (Note: only political parties that conform to the socio-political status quo use the ways and means of parliamentary democracy, others misuse them.)

3 The court continues: 'Particularly in the light of political, social and economic crisis, the coming about of which can never be discounted, the demand for loyalty to the Constitution on the part of employees in the public sector is essential.' This, indeed, comes close to declaring an emergency law status in anticipation of crisis for those employed in the public sector. It is calling for a definite degree of loyalty which is far beyond and quite apart from that which is constitutionally obligatory and will be determined by just how much crisis-threatened those in power consider themselves to be. In other words, it comes close to suspending liberal rights for members of the public sector, i.e. teachers, professors, social workers, etc and submits them to the immediate discretionary power of the state.

### 'Inner commitment'

4 The civil servant and, in the extended interpretation, any employee in the civil service, is not only obliged to adhere to the Constitution as anybody else is, but he/she in addition is subject to the 'obligation of political allegiance' (*politische Treuepflicht*). The relation of state to civil servant is supposed to be one of allegiance on the side of the civil servant and of trust on the side of the state and is quite distinct from any other employment relationship. Trust implies a prognosis concerning the future conduct of the applicant. It can be open to doubt. Therefore, reasons the court, these doubts have to be dispersed by the applicant. Doubts will persist, if his/her 'total conduct' does not show 'friendliness towards the constitution', a definite 'inner commitment to defend the constitutional order at any time' (a new term referring to the socio-political status quo which has come to replace reference to the Constitution per se). A prognosis of future disloyalty cannot be refuted on the basis of present evidence. It is, however, argues the court, quite clearly for the applicant to provide sufficient evidence against doubts rather than for the state to provide sufficient evidence for having them. The matter therefore stands a good chance of being decided a priori as soon as 'doubts' arise.

5 According to the Constitution, a political party can only be declared unconstitutional by a Constitutional Court ruling. However, the court opens up a difference between a political party being quite constitutional and therefore legal, and its simultaneously pursuing 'unconstitutional goals', in view of which its members or adherents have to be barred from employment.

6 Possibly the most important element in the ruling: Article 33 of the Constitution is quite explicit on the exclusion of religious and political criteria for access to the public service. 'Every German has equal access to the public sector according to his suitability, competence and professional performance. Nobody should be disadvantaged for his affiliation to a denomination or political conviction.' Past jurisdiction (a ruling to this effect was passed only in 1973) upheld this constitutional provision. Now the court reasons that allegiance to the 'constitutional order' is an inherent part of the notion of suitability, thereby turning into an instru-

ment of political subordination that very constitutional liberal guarantee that the experience of fascism had prompted.

(B) Ruling of the Highest Federal Administrative Court (February 1975)

Case: the teacher Anne Lehnhardt is debarred from her job for being a member of the Communist Party.

Here we will find all the above mentioned arguments reaffirmed on a federal level.

1 Reversal of the burden of proof

2 Inner commitment. 'A neutral, distanced attitude without positive inner commitment' will not do. A teacher, e.g. 'would at least unconsciously run the danger of influencing students in a way which might not be compatible with the liberal democratic fundamental order'.

3 The unrefutable prognosis

4 The dichotomy between a constitutional political party and its 'unconstitutional goals'. Indeed, the court does not even bother to give evidence for these. Arguing on the basis of Special Branch 'knowledge', it just states that the CP is a successor organisation to the old CP, banned in the height of the Cold War in 1956 and furthermore, that the teacher AL joined the CP 'although she knew that the present federal government as well as its predecessors made it clear that the CP pursues unconstitutional goals'.

### Compulsory allegiance

(C) Ruling of the Federal Constitutional Court (final instance of appeal) (May 1975)

Case: a law student is not accepted for his professional training on account of his belonging to the so-called 'red cells', organisations of the student movement of the late 1960s.

1 The ruling starts out with a most remarkable survey of the history of the public service ever since the age of absolute monarchy, demanding 'the obligation for political allegiance' (*politische Treuepflicht*) to any type of state. 'The state relies on a body of civil servants with inner commitment to the constitutional order. If the civil service cannot be relied upon, society and the state will be lost in critical situations.' 'The state cannot relinquish the endorsement by the civil servant of the state - in spite of its imperfections - and the prevailing constitutional order as it stands today.' (my emphasis - CvB) 'The state must be able to rely upon the civil servant being willing to accept responsibility for the state and feeling at home (sich zu Hause fühlen) in that state, which he is supposed to serve, now and at any time and not only after wished-for changes have been brought about through corresponding changes in the Constitution.' The perfectly legal but unrealized possibilities of the Constitution, everything the prevailing constitutional order leaves to be desired, are discarded. The socio-political status quo in the interpretation of the present government claims constitutional dignity - and gets it by the Highest Constitutional Court's final appeal judgement on civil rights.

2 The court underlines, again, that perfectly correct and efficient job fulfillment will not be enough, but that the 'total conduct' of the person in question is under scrutiny and has to be taken as grounds for making employment decisions.

3 The court introduces the notion of 'moderation' as part of the 'total conduct' of the civil servant.

4 Not surprisingly, the reversal of the meaning of

'suitability clause' (Art. 33) is upheld and reaffirmed

5 The court states that although the state holds a monopoly of employment in vast areas, no claim to a right of employment can be made, linking that statement to the already developed and elaborately reaffirmed idea of 'doubt' and 'prognosis'.

6 Finally, the very Constitutional Court that by the Constitution is the only institution which can declare a political party to be unconstitutional scarcely attempts to justify the legitimacy of the administratively created and judicially upheld distinction between a constitutional party and a political party pursuing unconstitutional goals. 'The fact that the decision on the unconstitutionality of a political party, reserved to the Constitutional Court, as yet has not been passed, does not prevent the conviction that this political party pursues unconstitutional goals being gained and sustained.'

Ironically enough, the Constitutional Court, at the same time as denying a law student the right to enter his professional training on the grounds of his student movement affiliations, stresses two points in the May 1975 ruling.

(a) that student activities should not be part of the evaluation of the 'total conduct' of a person, because of their temporary nature and their transient influence on a person's personality

(b) that the state may not withhold from a person the chance to finish his/her education, including professional training, wherever the state holds the monopoly in that area.

It is futile to retrace the twisted arguments the Constitutional Court finds to state these rights and simultaneously deny them. Enough to state that again fundamental rights have been infringed upon with the highest possible legal sanction.

## Social science:

### the limits of freedom

(D) Ruling of the Highest Administrative Court of Berlin (June 1976)

Case: Wolfgang Levefre, theoretically influential within the student movement, contracts with the Free University for the position of an assistant; again the Land of Berlin does not accept the contract.

The court can by now take recourse to quite a lot of 'favourable' precedents. It proceeds, however, one step further, a step most decisive for the social sciences:

As already mentioned, Article 5 of the Constitution guarantees the freedom of teaching and research. The court establishes the following reasoning on

## 'Mental terrorism'

Postscript - November 1977

Recent events make it seem imperative to extend the above report, again without much of an in-depth analysis, and also without the by now obligatory assurance of one's distance from terrorists and terrorism. Is it necessary to distance oneself from what one never stood for?

After the murder of Siegfried Buback, the Federal general state attorney, in April 1977, a student at Göttingen wrote an article under the pseudonym of 'Mescalero', describing how, on hearing the news, he could not and did not want to conceal a certain furtive jubilation. He then went on to examine this immediate crude impulse in a long discussion which eventually led him to a clear and extensively grounded rejection of terrorism. At the

this: 'Science as such can never violate the liberal democratic fundamental order, even if it might lead to a prognosis on future social developments. The room for freedom, however, protected in Article 5, paragraph 3, of the Constitution, ends, where scientific knowledge is transferred into political reality and political activity is called for. The borderline between scientific theory and political goals is to be drawn, where knowledge generated in contemplation is turned into a framework of reasons for political activity. Scientists in disciplines concerned with politics, as is the case here, may move within the framework of Art. 5.3 when dealing with current political questions objectively (sachlich) and with careful consideration of the pro and contra. As soon as such a scientist touches on the political activity of the listener or the reader - irrespective of whether in or outside of regular teaching - or his remarks touch upon political propaganda, the sphere of freedom guaranteed in Art. 5.3 is overstepped.'

Social sciences are kept within the confines of total abstractness - or within the confines of the socio-political status quo as defined by those in power.

Every single paragraph of the rulings referred to would deserve an analysis in itself. The specific historical continuity of an authoritarian state, the corresponding structure and particular definition of the public sector, the re-emergence of notions and phrases first coined under fascism (politische Treuepflicht: the duty of loyalty), the totalitarian erosion of the liberal bourgeois separation of private conviction and public conduct (inner commitment) (see Carl Schmitt, prime authority on law in the Third Reich, in his 'Leviathan'), the easy dismissal of fundamental civil rights guaranteed in the Constitution, the voluntary 'Gleichschaltung' (co-ordination) of political organisations and courts and state action, and so on. A more detailed analysis would be needed of the specific historical reasons for the rise of political repression and its function in the socio-economic process. Also, a more comprehensive account of the extent of political repression in different social spheres, the different forms it takes and the kind of resistance it meets, would be highly desirable. However, neither of these can be achieved within the scope of this article, which in itself does not aim at more than giving a bit of information and hopefully enlarging the watchful, potentially active interest in contemporary and future developments in West Germany.

(June 1977)

beginning of May, legal action was taken against the student union which published the article in its journal; five weeks after publication, the student union's office and a bookshop were raided, without warrant, by seventeen policemen armed with machine guns. (At the same time, various articles in neo-fascist papers openly approving the murder of the 'Judensau' (Jewish pig) Buback escaped public prosecution, if not public attention, and have until now remained unchallenged.) While 'suitable' extracts from the Mescalero article, most notoriously the now famous introductory quote, are cited time and time again as 'proof' of its 'glorification of violence', the authorities are busy repressing attempts to republish the whole of the article, thus giving the repression of anti-terrorism the guise of anti-terrorist repression. Other student unions which have reprinted the article have found themselves either prosecuted or threatened with



prosecution. Eventually, in June, forty-eight professors, in view of the 'event' into which the article had been made and the way in which this was being used, republished the Mescalero article in conjunction with an article against terrorism by Rosa Luxembourg. The 48 were threatened with disciplinary proceedings (the only way to get rid of a tenured professor); in the state of Niedersachsen, the Minister of Culture forced eleven professors to sign a special declaration of distance from violence and active allegiance to the state, worded in the most submissive and humiliating manner.

The whole 'affair' has been accompanied (i.e. actually made) by a most unprecedented outcry from politicians, and an alarmingly, voluntarily synchronised press campaign against 'sympathisers' with terrorism, whose 'breeding ground' is located in literature and the critical social sciences. The standard argument and charge: these people understand, i.e. justify, i.e. are for terrorism. (A principle which is in no way applied to the highly disturbing current wave of publications and films on Hitler, Goebbels, etc.) Attempting to comprehend the possibility and actuality of terrorism is strictly identified with support for terrorists. Further questioning into the social and political conditions for such actions and into the repressive use that is being made of them is simply disregarded and can be persecuted as 'mental-terrorist attacks on the state'. In other words, any attempt on the left or liberal side of the political spectrum to resist terrorism, to theoretically and practically oppose it by an investigation of its conditions of possibility, is publicly twisted into support for terrorism.

Peter Bruckner, professor of social psychology at Hannover, published an analysis of the Mescalero article and the articles and political statements commenting on it. He was suspended from his post, and shortly afterwards banned from entering the university grounds.

## The hour of the search

Meanwhile, Schleyer, the President of the German Employers Association, is kidnapped and held hostage for the release of eleven imprisoned Red Army Faction members; the German government adopts a hard line; an aeroplane full of tourists is hijacked, apparently by Arab terrorists in conjunction with the Red Army Faction; the plane is liberated by a special German anti-terrorist squad at Mogadishu in Somalia; the leaders of the Red Army Faction die under as yet totally obscure circumstances which call for public debate on the supposition of their suicide (in which the voicing of doubts is again already identified with taking the side of the terrorists: the father of Gudrun Ensslin, a liberal Protestant priest, is prosecuted for the public utterance of his doubts); Schleyer is found killed; an unprecedented wave of raids immediately begins, with machine-gun carrying police all over the streets, loudspeaker-cars urge the population to report anything unusual or suspicious (communes are given special mention), thousands of people are checked and entered in police files, an unknown number of raids are carried out on flats and houses (long prepared, as the government press secretary proudly proclaims), once again with no warrants, 'immediate danger' being the 'reason', or, as the less diplomatic policemen will say not without pride, because 'we don't need any'. The result: no success in matters of terrorism. But, says the press secretary, we did not expect any, this was necessary to show the flag, the

people were simply expecting us to do something spectacular. The night Schleyer was found, the solemn words in Bonn were: 'this is the hour of the search'. The subsequent days were therefore days of denunciation, intimidation, fear, self-righteousness; citizens of Stuttgart fought fiercely against Baader, Raspe and Ensslin being buried in their cemetery; 'scatter the ashes down the drain', or worse, was suggested. The police became weary of following up useless, malicious tip-offs - but, in the debate on terrorism in parliament: 'The population is firmly supporting us, a new spirit of loyalty is sweeping the country, let us preserve it for the surely hard times, politically and economically, ahead.' New legislation is introduced: even further curtailment of the rights of lawyers, of the right to demonstrate, further legal facilities for arrest without evidence - the suspicion of the administration is sufficient; re-arrest of released prisoners on the grounds of suspected potential political danger; centralised police forces; and so on. The CDU calls for a new law of national emergency, modelled explicitly on the notorious paragraph 48 of the Weimar Republic, which releases government from any control by Parliament or the rule of law. Reference to the Constitution is dropped, the State becomes the central focus.

Whatever seems necessary and effective for strengthening the security of the state should be considered and put into execution. The one sentence most often repeated in the debate: 'We must make use of the favourableness of the hour.'

The favourableness of the hour. The new spirit of 'togetherness'. What is most alarming, apart from the notorious administrative practice of familiarising people with the non-respectance of basic civil rights and rendering suspect those who claim them (a lawyer is prosecuted for comparing the police who raid his flat at 5 am with no warrant, no uniforms, but guns, to 'a band of rockers'), what is most alarming in addition to this is just the 'spirit' which the public authorities take such pains to foster.

## The new togetherness

The Mescalero affair is a horrifying example of equating debate and attempts at comprehension with approval of the subject-matter in question, and doing so with the repressive means of the state apparatus. Social sciences, as well as the media, are manoeuvred into hailing the immediate socio-political status quo. The academy, the so-called 'breeding ground' of terrorism, is charged with trying to understand that which all 'decent human beings' simply do not understand but rather close ranks against, that which is declared to stand outside the laws of human society. Consequently, the language employed moves in the dimension of pathology, madness, monsters, eradication. The vocabulary is taken from the realm not of human beings but of beasts, beasts to be dealt with in a strictly repressive way. Die Welt comments on the 48 professors' publication: 'inferiors want to fraternise with inferiors'. Quite logically, the equation of terrorism with any kind of critical opinion and the attempt, in allegedly fighting the former, to eliminate the latter, calls for further repression, and expansion of the repressive forces. After all, one can never be sure when and where those who have been silenced might raise their ugly heads again.

'Positive' feelings are highly commended. Dozens of critical films, plays and lectures are cancelled,

continued on p45

## BOOKS RECEIVED

- E Balibar, On the Dictatorship of the Proletariat, London, NLB, 1977, £6.50 hc  
 L C Becker, Property Rights, London, RKP, £4.95 hc  
 R Blackburn (ed.), Revolution and Class Struggle, London, Fontana/Collins, 1977, £1.95 pb  
 S C Brown (ed.) Reason and Religion, Ithaca and London, Cornell UP, 1977, £11.25 hc/£4.50 pb  
 M Canovan, The Political Thought of Hannah Arendt, London, Methuen, 1977, £1.95 pb  
 E Cobb, The Ecology of Imagination in Childhood, London, RKP, 1977, £5.75 hc  
 R Coward and J Ellis, Language and Materialism, London, RKP, 1977, £4.50 hc/£2.25 pb  
 A Cutler, B Hindess, P Q Hirst, A Hussain, Marx's Capital and Capitalism Today, London, RKP, 1977, £6.50 hc/£3.25 pb  
 M Foucault, Discipline and Punish, London, Allen Lane, 1977, £7.50 hc  
 G P Frantsov, Philosophy and Sociology, Moscow, Progress, 1977, £4.50 hc  
 L Goldmann, Lukacs and Heidegger, London, RKP, 1977, £3.50 pb  
 L Goldmann, Towards a Sociology of the Novel, London, Tavistock, 1977, £2.95 pb  
 K Graham, J L Austin, Hassocks, Harvester, 1977, £8.50 hc  
 B Hindess, Philosophy and Methodology in the Social Sciences, Hassocks, Harvester, £9.95 hc  
 R Jacoby, Social Amnesia, Hassocks, Harvester, 1977, £8.95 hc/£3.50 pb  
 M Howarth-Williams, R D Laing: his work and its relevance for Sociology, London, RKP, 1977, £4.50 pb  
 L Laudan, Progress and its Problems, London, RKP, 1977, £5.95 hc  
 D Lecourt, Proletarian Science? The case of Lysenko, London, NLB, 1977, £5.75 hc  
 A Lemaire, Jacques Lacan, London, RKP, 1977, £7.25 hc  
 C Maclean, The Wolf Children, London, Allen Lane, 1977, £4.95 hc  
 Marxist-Leninist Organisation of Britain, From Revolution through Counter Revolution to the consolidated rule of the national capitalist class in China, M-LOB, 1977 (pamphlet)  
 L Michail, The Theory of Permanent Revolution: A Critique, London, CPGB Trotskyism Study Group, 1977, 50p  
 G H R Parkinson, Georg Lukacs, London, RKP, 1977, £4.95 hc

ANALISIS: Cuadernos de Investigacion No.1 Enero-Marzo 1977

Rochabrun - Acerca del capitalismo en el Peru  
 Spalding - Clases sociales en los Andes peruanos  
 Portocarrero - El pensamiento politico de Haya de la Torre

Itoh - La teoria de la crisis en Marx

Sulmont/Germana - Notas, debates, libros

Confidencial: 1931 - Entrevista de Haya de la Torre y el embajador norte-americano

Analisis, apartado 11093, Correo Santa Beatriz, Lima 1, Peru

Analisis resume el esfuerzo de un grupo de profesores de diversas universidades animados en le comun tarea de impulsar, debatir y publicar los avances de la investigacion cientifica en el pais.

G Pitcher, Berkeley, London, RKP, 1977, £7.50 hc

D-H Ruben, Marxism and Materialism, Hassocks, Harvester, 1977, £10.50 hc

L Spurling, Phenomenology and the social world, London, RKP, 1977, £6.95 hc

A Tolson, The Limits of Masculinity, London, Tavistock, 1977, £1.95 hc

M Wartofsky, Feuerbach, London, Cambridge UP, 1977, £17.50 hc

A Weale, Equality and Social Policy, London, RKP, 1977, £4.94 hc/£2.50 pb

## JOURNALS RECEIVED

Analisis: Cuadernos de Investigacion No.1, Enero-Marzo 1977, Lima, Peru

Cine-Tracts, vol.1, no.2, Special issue:

'Theoretical perspectives in cinema'

Das Argument, No.104, July-August 1977

No.105, September-October 1977

Economy and Society, Vol.6, No.4, Nov 1977

Ideology and Consciousness, No.2, September 1977

MERIP Reports, Nos.58 and 60, Middle East

Research and Information Project

New Left Review, No.104, July-August 1977

No.105, Sept-October 1977

Philosophy Today, Vol.21, nos.1-4

Science for the People, Vol.9, nos.2,3 and 4

Working Papers: Studies in the discourses of sex, subjectivity and power (formerly 'Working papers in sex science and culture') No.3, August 1977

- this positiveness is all too familiar in German history; so also is a state apparatus recruiting highly emotionalised, blind support for whatever it does, and threatening with repressive means the mere naming of conflicts and sources of conflict. The re-emergence of a strong state, dressed up in the theory that 'only a strong state can be a liberal state' (such is the title of the declaration on terrorism of the Protestant (!) church of West Germany), and the legitimacy recruited for the wholesale submission to the demands of that strong state, abdicating civil rights and liberal freedoms, which is precisely the aim of the daily progressing repression; all this will have to be confronted by opposition both from within West Germany and from outside, if West Germany and Western Europe do not want to be faced with an economically and politically strong state making abusive use of both of these strengths.

## WEST GERMANY continued

as inappropriate to these troubled times and days. We concentrated far too much on basic rights rather than on basic values, says the administrative (alas!) media chorus, making use of and preserving the 'favourableness of the hour'. Pleading the Constitution has become suspect, like pleading the Fifth Amendment. Brückner is prosecuted not for lack of allegiance to the Constitution, but for alleged lack of allegiance and positive loyalty to the state.

This positiveness that allows for nothing but the administratively-prescribed results of thinking and feeling - the Mescalero affair started off an incredible, anxious rush to give public proof of positive and, where necessary, negative feelings of the most unambivalent, solid, unwavering kind