Left-Wing Extremism and Cyber Activism: An Investigation into the Securitisation of linksunten.indymedia.org as a Space for Cyber Activism by Germany's Authorities

Protest in support of linksunten.indymedia.org in Berlin   *Source: tagesschau*

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Abstract

On 25 August 2017, the then German Minister of the Interior, Thomas de Maizière, announced at a press conference that the platform *linksunten.indymedia.org* had been declared illegal. The decision to ban a platform that described itself as a space for activism and citizen journalism, and which had been operating for almost a decade at that point, came as a shock to many and was met with both protests and legal challenges. This move by the German authorities was particularly notable at the time as it came rather abruptly, especially as the government had been monitoring the platform virtually since its inception in 2008. This thesis presents the findings of a study that sought to understand the process that led to this outcome. It did so by examining this process from a historical perspective and using securitisation theory as a theoretical framework. Furthermore, this thesis made use of a variety of different types of publicly digitally available sources and adopted a methodological approach based on explaining-outcome process tracing. The argument presented in this thesis is that the process that led to the banning of *linksunten.indymedia.org* can be seen not only as a process of securitisation that began in 2016, but also as a process that, in addition to being driven by political considerations and strategic timing, was significantly shaped by the broader context in which it unfolded that served the purpose of the facilitating conditions. This context was one in which online content deemed harmful and illegal, such as extremist content, was increasingly seen as problematic by both the public and policymakers, and there was a greater receptiveness to government intervention to address this phenomenon, which was a development that had only recently occurred following a series of events in Germany and beyond that brought the issue into the spotlight. In the midst of all this, the German government was able to successfully securitise the platform by framing it as a security threat, culminating in its criminalisation and shutdown. These findings, in turn, raise broader questions about the proportionality of the decision to ban the platform altogether and the potential instrumentalisation of the state's powers to combat extremism for political ends.

Keywords: linksunten.indymedia.org, securitisation theory, left-wing extremism, Germany, cyber-activism, and censorship

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Abbreviations

Abbreviation	Official Full Name	Name in English or Translation (If Applicable)
BMI	Bundesministerium des Innern und für Heimat	Federal Ministry of the Interior
BfV	Bundesamt für Verfassungsschutz	Federal Office for the Protection of the Constitution
BPK	Bundespressekonferenz	Federal Press Conference
IMC	Independent Media Center	
WTO	World Trade Organisation	
FRG	Federal Republic of Germany	
FDGO	Freiheitliche demokratische Grundordnung	Liberal democratic basic order
TMG	Telemediengesetz	Telemedia Act
Zugangserschwerungsgesetz	Gesetz zur Erschwerung des Zugangs zu kinderpornographischen Inhalten in Kommunikationsnetzen	Act to make it more difficult to access child pornographic content in communication networks
ICD	Information Control Division	
PWD	Psychological Warfare Division	
SHAEF	Supreme Headquarters Allied Expeditionary Force	
SBZ	Sowjetische Besatzungszone	Soviet occupation zone
SED	Sozialistische Einheitspartei Deutschlands	Socialist Unity Party of Germany
KPD	Kommunistische Partei Deutschlands	Communist Party of Germany
SRP	Sozialistische Reichspartei	Socialist Reich Party
BPjS	Bundesprüfstelle für jugendgefährdende Schriften	Federal Department for Works Harmful to Young Persons
GDR	German Democratic Republic	
BPjM	Bundesprüfstelle für jugendgefährdende Medien	Federal Review Board for Media Harmful to Minors
EA	Electronic Arts	
BKA	Bundeskriminalamt	Federal Criminal Police Office
NetzDG	Netzwerkdurchsetzungsgesetz	Network Enforcement Act
BMJ	Bundesministerium der Justiz	Federal Ministry of Justice and Consumer Protection
FDP	Freie Demokratische Partei	Free Democratic Party
PEGIDA	Patriotische Europäer gegen die Islamisierung des Abendlandes	Patriotic Europeans Against the Islamisation of the West
AfD	Alternative für Deutschland	Alternative for Germany
CSU	Christlich-Soziale Union	Christian Social Union
EDRi	European Digital Rights Initiative	
DKO	Deutsche Kommunistische Partei	German Communist Party

Contents

Introduction

On the 7th of June 2022, the German Federal Minister of the Interior and Community Ministry (BMI) Nancy Faeser and the President of the *Bundesamt für Verfassungsschutz* (BfV) Thomas Haldenwang presented at the *Bundespressekonferenz* (BPK) the annual BfV report for the year 2021.[1] At the BPK, Haldenwang announced that *de.indymedia.org* has been classified by the BfV as a left-wing extremist platform.[2] The decision to classify the platform as such was not a surprise in itself, as the service had declared the platform as a case of suspicion of extremist tendencies just two years earlier.[3] What is surprising, however, is that the BfV decided to publicly classify the platform as such after the rather self-evidently ineffective result of banning the platform's quasi-predecessor *linksunten.indymedia.org*.[4] This decision to force the closure of *linksunten.indymedia.org* in 2017 was not only highly controversial and legally complex, but also seemed to have no impact, given that in 2022 *de.indymedia.org* has arguably replaced the platform in all but name.[5] Naturally, it is understandable that the German authorities are concerned about alleged online extremist platforms and extremism in general, especially given the recent general trend towards increased activity emanating from all extremist milieus.[6] In the case of left-wing extremism, for example, in 2021, 10,131 crimes were committed by

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[1] *Verfassungsschutzbericht 2021: Präsentation Mit Bundesinnenministerin Nancy Faeser (SPD)*, 2022, https://youtu.be/J67g4Tr65js.

[2] *Verfassungsschutzbericht 2021*.

[3] 'Linksextremismus: Verfassungsschutz Stuft "de.Indymedia" Als Verdachtsfall Ein', *Zeit*, 9 July 2020, https://www.zeit.de/politik/deutschland/2020-07/linksextremismus-linksunten-indymedia-internet-plattform-verdachtsfall-verfassungsschutz.

[4] Frank Jansen, 'Indymedia-Verbot: De Maizières Schlag Gegen Die Linksextreme Szene', *Tagesspiegel*, 25 August 2017, https://www.tagesspiegel.de/politik/de-maizieres-schlag-gegen-die-linksextreme-szene-4535638.html.

[5] Jansen; '"linksunten.Indymedia": Reporter Ohne Grenzen Kritisieren Verbot', *Spiegel*, 28 August 2017, https://www.spiegel.de/politik/deutschland/linksunten-indymedia-reporter-ohne-grenzen-kritisieren-verbot-a-1164991.html; Matern Boeselager, 'Mit Dem Indymedia-Verbot Haben Sich Die Behörden Selbst Ins Bein Geschossen', *Vice*, 25 August 2017, https://www.vice.com/de/article/a334nj/mit-dem-indymedia-verbot-haben-sich-die-behorden-selbst-ins-bein-geschossen; 'Warum Solidarisiert Sich Grünen-Politikerin Bayram Mit Linksextremisten?', *Die B.Z.*, 29 August 2017, https://www.bz-berlin.de/archiv-artikel/verbot-linksunten-indymedia-warum-solidarisiert-sich-gruenen-abgeordnete-bayram-mit-linksextremisten; Michael Hanfeld, 'Urteil Gegen Portal: Linksunten', *Frankfurter Allgemeine*, 30 January 2020, https://www.faz.net/aktuell/feuilleton/urteil-gegen-linksunten-portal-zum-verbot-des-indymedia-vereins-16609034.html; Torben Lehning, 'Linksunten.Indymedia: Linksextremer Verein Oder Medium?', *Tagesschau*, 29 January 2020, https://www.tagesschau.de/inland/indymedia-verbot-101.html; Frank Jansen, 'Linksunten.Indymedia Bleibt Verboten: Extremistische Strukturen Regenerieren Sich Im Internet Schnell', *Tagesspiegel*, 30 January 2020, https://www.tagesspiegel.de/politik/extremistische-strukturen-regenerieren-sich-im-internet-schnell-4140061.html.

[6] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2021' (Bundesministerium des Innern, 7 June 2022); Bundesministerium des Innern und für Heimat and Bundeskriminalamt, 'Politisch Motivierte Kriminalität Im Jahr 2021: Bundesweite Fallzahlen', 10 May 2022, https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/nachrichten/2022/pmk2021-factsheets.pdf?__blob=publicationFile&v=1.

individuals with left-wing political motives, of which 1,213 involved violence against property and persons.[7]

However, while it is undisputed that *de.indymedia.org* is a platform used by Germany's activist and political left, it is rather unclear whether extremist content can be found on the platform, let alone its prevalence, as there is a lack of research and transparency from the authorities. For example, in its 2021 annual report, the BfV provides an explanation and some examples of why the platform is considered a threat to the constitutional democratic order in Germany.[8] The agency defines such a threat as one that seeks the direct overthrow of the German constitutional order, and it draws the line between radicalism and extremism by saying that while radicalism is opposed to the order and might call for change through legitimate means such as elections, it is extremism that calls for the overthrow of the foundation by any means necessary.[9] It is also interesting to note that the content mentioned in the legal documents justifying the banning *linksunten.indymedia.org* allegedly represented only 0.08% of the total content available on the platform.[10] In light of all this, it is curious that German Indymedia platforms have been singled out by the German authorities, when it is widely known there are countless other left-wing and anarchist sites and magazines online, not to mention the fact that even mainstream social media platforms struggle with moderating extremist content.[11] The

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[7] Bundesministerium des Innern und für Heimat and Bundeskriminalamt, 'Bundesweite Fallzahlen', 4 & 7.

[8] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2021', 162–64.

[9] Bundesamt für Verfassungsschutz, 'Glossar - Verfassungsfeindlich', Bundesamt für Verfassungsschutz, accessed 16 September 2022, http://www.verfassungsschutz.de/DE/service/glossar/glossar_node.html; Bundesamt für Verfassungsschutz, 'Verfassung Schützen.', Bundesamt für Verfassungsschutz, accessed 16 September 2022, http://www.verfassungsschutz.de/DE/verfassungsschutz/auftrag/verfassung-schuetzen/verfassung-schuetzen_node.html.

[10] Frank Jansen, 'Verbotenes Portal Wieder Im Netz: Wie Die Linksextreme Szene Den Staat Provoziert', *Tagesspiegel*, 21 January 2020, https://www.tagesspiegel.de/berlin/wie-die-linksextreme-szene-den-staat-provoziert-4137463.html.

[11] Vaishali U. Gongane, Mousami V. Munot, and Alwin D. Anuse, 'Detection and Moderation of Detrimental Content on Social Media Platforms: Current Status and Future Directions', *Social Network Analysis and Mining* 12, no. 1 (5 September 2022): 129, https://doi.org/10.1007/s13278-022-00951-3; Julia R. DeCook et al., 'Safe from "Harm": The Governance of Violence by Platforms', *Policy & Internet* 14, no. 1 (2022): 63–78, https://doi.org/10.1002/poi3.290; Alastair Reed and Adam Henschke, 'Who Should Regulate Extremist Content Online?', in *Counter-Terrorism, Ethics and Technology: Emerging Challenges at the Frontiers of Counter-Terrorism*, ed. Adam Henschke et al., Advanced Sciences and Technologies for Security Applications (Cham: Springer, 2021), 175–98, https://doi.org/10.1007/978-3-030-90221-6_11; Megan Squire, 'How Big Tech and Policymakers Miss the Mark When Fighting Online Extremism', Brookings, 7 August 2019, https://www.brookings.edu/blog/techtank/2019/08/07/how-big-tech-and-policymakers-miss-the-mark-when-fighting-online-extremism/; Bennett Clifford, 'Moderating Extremism: The State Of Online Terrorist Content Removal Policy in the United States', Program on Extremism (Washington D.C.: George Washington University, December 2021), https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/Moderating%20Extremism%20The%20State%20of%20Online%20Terrorist%20Content%20Removal%20Policy%20in%20the%20United%20States.pdf; Congressional Research Service, 'Social Media: Misinformation and Content Moderation Issues for Congress' (Washington D.C.: Congressional Research Service, 27 January 2021), https://crsreports.congress.gov/product/pdf/R/R46662.

purpose of this thesis is to provide insight into this process of singling out the Indymedia project in Germany by the country's authorities by examining the case of *linksunten.indymedia.org*. This will be done, as will be explained in more detail shortly, by examining this process through the lens of securitisation theory and from a historical perspective. Before proceeding with this introductory chapter, however, the next few paragraphs will first provide some necessary background and context on the origins of Indymedia both in general and in Germany.

The Independent Media Center (IMC), or more commonly known as Indymedia, is a global non-profit and open publishing network where activists and journalists can freely publish content, very much in the spirit of the slogan 'don't hate the media, become the media' that can be found nowadays on the front page of *de.indymedia.org* and some other Indymedia branches worldwide.[12] The origins of this network go back to the Seattle protests against the World Trade Organisation (WTO) and the Carnival Against Capital in 1999, all of which inspired the creation of a platform that could challenge the hegemonic instrumentalist role played by the mainstream media, which at the time was seen as highly critical by many in the anti-corporate globalisation and capitalist movement.[13] On a practical level, the idea was to use the power of the internet to empower citizen journalists and grassroots activists to organise and share information and news freely, without censorship or influence from big media or government.[14] All of this happened long before social media platforms played the dominant role in society that they do today, as MySpace, for example, did not even exist at the time. Accordingly, Indymedia was created as a platform where everyone could participate, and matters such as moderation and maintenance of the platform were based on consensus and volunteerism.[15] One author has even described Indymedia as having a kind of communal communication, drawing parallels with the English feudal commons, as Indymedia sought to emancipate itself from the global corporate media and become self-sufficient in reporting

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[12] James F Hamilton, 'Critical Celebrations of Independent Media Centers 20 Years On', *Media, Culture & Society* 42, no. 6 (September 2020): 1019–23, https://doi.org/10.1177/0163443720926048; de.indymedia.org, 'De.Indymedia.Org | Dont Hate the Media, Become the Media!', de.indymedia.org, accessed 16 September 2022, https://de.indymedia.org/; Dorothy Kidd, 'Indymedia and Standing Rock: Media-Historic Moments', *Journal of Alternative & Community Media* 6, no. 1 (1 April 2021): 13, https://doi.org/10.1386/joacm_00091_1.
[13] Hamilton, 'Independent Media Centers 20 Years On'; Natalie Fenton, 'Indymedia and the Long Story of Rebellion against Neoliberal Capitalism', *Media, Culture & Society* 42, no. 6 (September 2020): 1052–58, https://doi.org/10.1177/0163443720926039.
[14] Hamilton, 'Independent Media Centers 20 Years On'.
[15] Eva Giraud, 'Has Radical Participatory Online Media Really "Failed"? Indymedia and Its Legacies', *Convergence: The International Journal of Research into New Media Technologies* 20, no. 4 (November 2014): 419–37, https://doi.org/10.1177/1354856514541352; Virginie Mamadouh, 'Internet, Scale and the Global Grassroots: Geographies of the Indymedia Network of Independent Media Centres', *Tijdschrift Voor Economische En Sociale Geografie* 95, no. 5 (2004): 482–97, https://doi.org/10.1111/j.0040-747X.2004.00334.x.

events.[16] Initially, there was only one IMC, focused on the events of 1999, but soon after its creation, new IMCs sprang up in countries from Mexico to Belgium.[17]

In the case of Germany, however, it was *de.indymedia.org* and *linksunten.indymedia.org* that emerged as the two IMC platforms. Although *de.indymedia.org* was created in 2001, making it the oldest German variant of the platform, it was *linksunten.indymedia.org*, created in 2008, that was for a long time the most active and controversial of the two, until it was declared an extremist platform and banned in 2017.[18] This was, as mentioned, a rather controversial decision that caused considerable uproar as it raised a number of issues regarding freedom of speech and the press.[19] In the end, though, despite several legal challenges to the decision, and several recent court cases involving the association that operated *linksunten.media.org*, it appears that this decision will not be overturned, and only the archive of the platform remains.[20] Nevertheless, while the platform was still online, its self-described purpose was to serve as a weapon in the social struggle for emancipation and autonomy, especially freedom from the capitalist status quo.[21] In practice, it hoped to do this by being a platform that was subversive in nature, allowing for the dissemination of counter-narratives that challenged the hegemonic narratives of the day, or in other words, allowing for education from below.[22] In contrast, *de.indymedia.org* was founded in 2001 by a collective of activists who were inspired to create an Indymedia platform for Germany after their role in organising protests against a meeting of the International Monetary Fund and World Bank in

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[16] Dorothy Kidd, 'Indymedia.Org: A New Communication Commons', in *Cyberactivism: Online Activism in Theory and Practice*, ed. Martha McCaughey and Michael D. Ayers (New York: Routledge, 2003), 47–69.
[17] Robin Van Leeckwyck et al., 'Indymedia in Belgium: The Delicate Balance between Media Activism and Political Activism', *Media, Culture & Society* 42, no. 6 (September 2020): 1031–38, https://doi.org/10.1177/0163443720926047; Giraud, 'Has Radical Participatory Online Media Really "Failed"?'; Marc Garcelon, 'The `Indymedia' Experiment: The Internet as Movement Facilitator Against Institutional Control', *Convergence: The International Journal of Research into New Media Technologies* 12, no. 1 (February 2006): 55–82, https://doi.org/10.1177/1354856506061554.
[18] Susanne Högemann, 'Indymedia Deutschland: Vom Vielbeachteten Start Zum Unbeachteten Medium?' (Berlin, Technischen Universität Berlin, 2006), 47–56; Thomas Barisic and Arnd Reinhardt, 'Linksextremismus Im Internet', in *Extremismus in Deutschland. Erscheinungsformen Und Aktuelle Bestandsaufnahme* (Berlin: Bundesministerium des Innern, 2004), 236–52, http://dx.doi.org/10.15496/publikation-4266; Jansen, 'Indymedia-Verbot'; Jörg Diehl, '"linksunten.Indymedia": Innenministerium Verbietet Linksextreme Plattform', *Spiegel*, 25 August 2017, https://www.spiegel.de/politik/deutschland/linke-website-linksunten-indymedia-von-innenministerium-verboten-a-1164429.html.
[19] 'Reporter Ohne Grenzen Kritisieren Verbot'; Boeselager, 'Mit Dem Indymedia-Verbot Haben Sich Die Behörden Selbst Ins Bein Geschossen'.
[20] Hanfeld, 'Urteil Gegen Portal'; Lehning, 'Linksextremer Verein Oder Medium?'; Jansen, 'Linksunten.Indymedia Bleibt Verboten'; Jansen, 'Verbotenes Portal Wieder Im Netz'.
[21] 'Mission Statement | Linksunten Archiv', linksunten Archiv, accessed 30 April 2023, https://linksunten.indymedia.org/node/1/index.html.
[22] 'Mission Statement | Linksunten Archiv'.

Prague that year.[23] The platform was intended to serve as an umbrella space for the whole of Germany and, according to its own mission statement, in similar fashion to *linksunten.indymedia.*org, sees itself as a platform that serves an emancipatory purpose to challenge the status quo by providing a non-commercial means for activists and individuals to share news and information.[24] This mission was to be achieved by serving the practical purpose of a barrier-free and accessible conduit for a variety of different types of media for those who wish to spread their messages and those who wish to access them.[25] Having introduced Indymedia and, in particular, *linksunten.indymedia.org*, this introductory chapter will now turn to presenting the research question that guided the research project presented in this thesis.

Research Question

As indicated above, the aim of the research project, the results of which are presented in this thesis, was to examine how *linksunten.indymedia.org*, as a platform used by Germany's political left for cyber-activism and grassroots journalism, came to be targeted by the country's authorities. This was done by taking a historical perspective that included not only considering and examining events that occurred immediately around the time the platform was banned, but also those that occurred long before and after the banning of *linksunten.indymedia.org* in order to gain a full understanding. In this case, this meant that events that took place between 1945 and 2022 were considered and analysed as part of this investigation. Moreover, this study examined the process through which the platform was ultimately banned, using securitisation theory as a theoretical framework and a method based on explaining-outcome process tracing, but the theoretical framework and method will be described in more detail in the following chapter. Consequently, the overarching question that this research sought to answer was the following: *How can we understand the process that led to the banning of linksunten.indymedia.org by the German authorities as a process of securitisation?* In order to answer this question, the following research was carried out. For starters, it was examined how the balance between freedom of expression and censorship has evolved over time in post-war Germany. This was important because as an internet platform, especially one that describes itself as a platform for political activism and journalism, any intervention by the state would constitute an intervention in the realm of freedom of expression. Therefore, understanding how

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[23] Högemann, 'Indymedia Deutschland', 21.
[24] Högemann, 'Indymedia Deutschland'; Barisic and Reinhardt, 'Linksextremismus Im Internet'; 'Mission Statement | de.Indymedia.org', de.indymedia.org, accessed 17 September 2022, https://de.indymedia.org/mission-statement.
[25] 'Mission Statement | de.Indymedia.org'.

the balance between freedom of expression and censorship has evolved over time in the country provides much needed context. A further point of the research was to analyse what had changed in the period immediately prior to the targeting of *linksunten.indymedia.org* by the authorities. The reason for this is that it was clear to the author from the very beginning of the research process that, as the platform had been operating for almost a decade by the time it was banned in 2017, some turn of events must have either triggered the authorities' decision to crack down on the platform or enabled the authorities' to finally do so. Last but not least, the sequence of events that ultimately led to the banning of the platform was scrutinised as a process of securitisation.

Literature Review

The research presented in this thesis cuts across a number of areas of scholarship, one of which is of course the study of contemporary left-wing extremism in Germany as a whole. The state of scholarship on contemporary left-wing extremism in Germany, and in particular the way in which this phenomenon has manifested itself more recently since 2000, can only be described as seriously disappointing for a number of reasons. For one, it is a challenge to find academic publications on the phenomenon, as there are very few scholarly works available, and the available literature becomes even more sparse when looking for recent publications.[26] This point becomes even more problematic when one considers that certain authors have a considerable footprint when it comes to the study of contemporary left-wing extremism, such as Klaus Schroeder and Monika Deutz-Schroeder, who are arguably the most recent prolific

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[26] Udo Baron, 'Linksautonome Auf Dem Weg Zum Linksterrorismus? Das Gefahrenpotential Einer Neuen Form Sozialrevolutionärer Gewalt', in *Jahrbuch Für Extremismus- Und Terrorismusforschung 2013*, ed. Armin Pfahl-Traughber (Brühl: Fachhochschule des Bundes für öffentliche Verwaltung, 2013), 137–60, https://www.hsbund.de/SharedDocs/Downloads/2_Zentralbereich/20_Referat_W/Publikationen/20_Schriften_E xtremismus_Terrorismusforschung/band_07.pdf;jsessionid=A3AA8CD7F7603811B327A0302519C261.internet 1?__blob=publicationFile&v=3; Hans Helmuth Knütter and Stefan Winckler, eds., *Handbuch Des Linksextremismus: Die Unterschätzte Gefahr* (Graz: Leopold Stocker Verlag, 2002); Harald Bergsdorf and Rudolf van Hüllen, *Linksextrem-Deutschlands Unterschätzte Gefahr? Zwischen Brandanschlag Und Bundestagsmandat* (Paderborn: Schöningh, 2011); Viola Neu, 'Linksextremismus in Deutschland: Erscheinungsbild Und Wirkung Auf Jugendliche: Auswertung Einer Qualitativen Explorativen Studie' (Berlin: Konrad-Adenauer-Stiftung, 2012), https://www.kas.de/documents/252038/253252/7_dokument_dok_pdf_30042_1.pdf/47fa1cfe-a25c-865d-4be9-59adf3257799?version=1.0&t=1539657629901; Armin Pfahl-Traughber, *Linksextremismus in Deutschland: Eine Kritische Bestandsaufnahme* (Wiesbaden: Springer VS, 2014); Klaus Schroeder and Monika Deutz-Schroeder, *Gegen Staat Und Kapital, Für Die Revolution! Linksextremismus in Deutschland, Eine Empirische Studie*, Studien Des Forschungsverbundes SED-Staat an Der Freien Universität Berlin, Band 22 (Frankfurt am Main: Peter Lang Verlag, 2015); Monika Deutz-Schroeder and Klaus Schroeder, *Linksextreme Einstellungen und Feindbilder: Befragungen, Statistiken und Analysen*, Studien des Forschungsverbundes SED-Staat an der Freien Universität Berlin, Band 23 (Frankfurt am Main: Peter Lang Edition, 2016); Klaus Schroeder and Monika Deutz-Schroeder, *Der Kampf Ist Nicht Zu Ende: Geschichte Und Aktualität Linker Gewalt* (Freiburg: Herder, 2019).

writers on the subject with three publications.[27] Another problem is that virtually all recent publications, with a few exceptions, are only accessible to a German-speaking audience due to the fact that they are published exclusively in German, which is surprising given that for scholars interested in political violence, Germany is one of the few countries with a fairly active left-wing extremist scene.[28] Beyond the general state of the academic literature on the subject, it is also not helpful for the field that some scholars not only engage in endless nomenclature and definitional debates about what constitutes left-wing extremism, but also that some authors question both the validity of researching the phenomenon at all and whether it even exists.[29]

Despite this worrying state of affairs in the study of contemporary left-wing extremism in Germany, which is characterised in particular by a lack of academic publications, especially those that make an empirical contribution, it should be noted that there are a few works that have made a noteworthy effort to remedy this status quo.[30] An example of such a publication is one of the works by Klaus Schroeder and Monika Duetz-Schroeder *Gegen Staat und Kapital - Für die Revolution! Left-wing Extremism in Germany – Eine Empirische Studie*.[31] In addition to providing a comprehensive literature review and an overview of the phenomenon, the authors attempt to make an empirical contribution by means of extensive surveys and interviews and by introducing their own scale of left-wing extremism.[32] The aim was to determine the extent to which alleged left-wing extremist attitudes are shared by certain demographic groups and the extent to which such attitudes are tolerated by the wider population.[33] One of their findings was that, based on their results, 17% of the German population had the potential to develop left-wing extremist views.[34] Another recent work, although not of an empirical nature, is that of Armin Pfahl-Traughber *Linksextremismus in Deutschland: Eine Kritische Bestandsaufnahme*, in which the author provides a comprehensive

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[27] Schroeder and Deutz-Schroeder, *Gegen Staat Und Kapital, Für Die Revolution! Linksextremismus in Deutschland, Eine Empirische Studie*; Deutz-Schroeder and Schroeder, *Linksextreme Einstellungen und Feindbilder*; Schroeder and Deutz-Schroeder, *Der Kampf Ist Nicht Zu Ende*.

[28] Teun van Dongen, 'We Need to Talk About Left-Wing Extremism. Or Do We?', *International Centre for Counter-Terrorism*, 24 November 2021, https://icct.nl/publication/we-need-to-talk-about-left-wing-extremism-or-do-we/.

[29] Schroeder and Deutz-Schroeder, *Gegen Staat Und Kapital, Für Die Revolution! Linksextremismus in Deutschland, Eine Empirische Studie*, 1–95.

[30] Schroeder and Deutz-Schroeder, 1–91; Pfahl-Traughber, *Linksextremismus in Deutschland*, 1–13; Astrid Benda, *Linksextremismus in Deutschland: Eine Qualitative Studie* (Hamburg: Diplomica Verlag, 2021), 2.

[31] Schroeder and Deutz-Schroeder, *Gegen Staat Und Kapital, Für Die Revolution! Linksextremismus in Deutschland, Eine Empirische Studie*.

[32] Schroeder and Deutz-Schroeder.

[33] Schroeder and Deutz-Schroeder.

[34] Schroeder and Deutz-Schroeder, 588.

yet concise summary of left-wing extremism in Germany, its history and the ideological currents and structures that underpin it.[35]

Another area of scholarship that is relevant to this study is that which examines the relationship between extremism and the internet. While left-wing extremism, particularly the German variety, is the most relevant, it is also the case that relatively little has been written by researchers on this phenomenon. Instead, scholars of political extremism have devoted a great deal of attention and effort to the ways in which right-wing extremists have used cyberspace to coordinate, connect with others, and spread their message.[36] One interesting example is a study that interviewed former right-wing extremists to identify the role of the internet in facilitating violent extremism.[37] In the study, the authors found that while the internet was often not the first initial means of exposure to right-wing extremist ideologies, it played a significant role in the process of violent radicalisation.[38] Another revealing study is one in which the authors examined the right-wing extremist platform Stormfront, a forum where right-wing extremists from around the world gather to communicate, by analysing posts and interviewing users.[39] Their findings seem to indicate that the forum is not only a platform for the exchange of messages and ideas, but also a kind of community and refuge for many of its users.[40] Studies such as the two above suggest that, in the case of right-wing extremism, online platforms undoubtedly play a role, at least to some extent, not only in the dissemination and acquisition

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[35] Pfahl-Traughber, *Linksextremismus in Deutschland*.

[36] Chris Atton, 'Far-Right Media on the Internet: Culture, Discourse and Power', *New Media & Society* 8, no. 4 (August 2006): 573–87, https://doi.org/10.1177/1461444806065653; Valentine Crosset, Samuel Tanner, and Aurélie Campana, 'Researching Far Right Groups on TWITTER: Methodological Challenges 2.0', *New Media & Society* 21, no. 4 (1 April 2019): 939–61, https://doi.org/10.1177/1461444818817306; Willem De Koster and Dick Houtman, '"STORMFRONT IS LIKE A SECOND HOME TO ME": On Virtual Community Formation by Right-Wing Extremists', *Information, Communication & Society* 11, no. 8 (December 2008): 1155–76, https://doi.org/10.1080/13691180802266665; Aleksandra Urman and Stefan Katz, 'What They Do in the Shadows: Examining the Far-Right Networks on Telegram', *Information, Communication & Society* 25, no. 7 (19 May 2022): 904–23, https://doi.org/10.1080/1369118X.2020.1803946; Stephane J. Baele, Lewys Brace, and Travis G. Coan, 'Uncovering the Far-Right Online Ecosystem: An Analytical Framework and Research Agenda', *Studies in Conflict & Terrorism*, 30 December 2020, 1–21, https://doi.org/10.1080/1057610X.2020.1862895; Caterina Froio and Bharath Ganesh, 'The Transnationalisation of Far Right Discourse on TWITTER: Issues and Actors That Cross Borders in Western European Democracies', *European Societies* 21, no. 4 (8 August 2019): 513–39, https://doi.org/10.1080/14616696.2018.1494295; Yannick Veilleux-Lepage and Emil Archambault, 'Mapping Transnational Extremist Networks: An Exploratory Study of the Soldiers of Odin's Facebook Network, Using Integrated Social Network Analysis', *Perspectives on Terrorism* 13, no. 2 (April 2019): 21–38; Tiana Gaudette, Ryan Scrivens, and Vivek Venkatesh, 'The Role of the Internet in Facilitating Violent Extremism: Insights from Former Right-Wing Extremists', *Terrorism and Political Violence*, 16 July 2020, 1–18, https://doi.org/10.1080/09546553.2020.1784147. Please see these for just some examples.

[37] Gaudette, Scrivens, and Venkatesh, 'The Role of the Internet in Facilitating Violent Extremism'.

[38] Gaudette, Scrivens, and Venkatesh.

[39] De Koster and Houtman, '"STORMFRONT IS LIKE A SECOND HOME TO ME"'.

[40] De Koster and Houtman.

of ideology and beliefs, but also as spaces for people with similar extremist beliefs to meet and form a virtual community.

However, as mentioned above, while there is not as much academic literature on left-wing extremism and the internet as there is on right-wing extremism, there are certainly some publications on the phenomenon that were directly relevant to this research. One of these is a quantitative study that sought to determine the impact of violence in images shared on social media on the spread of such content, using Twitter and the protests during the G20 summit in Hamburg in 2017 as a case study.[41] The study found no correlation between the presence of violence in an image tweet and its ultimate spread, but it did find that such tweets were shared at a much faster rate.[42] Another study, arguably the most relevant to this research, is a 2006 study by an author named Susanne Högemann, and is the only academic study the author of this thesis has been able to find that explicitly deals directly with one of the Indymedia portals in Germany, in this case *de.indymedia.org*.[43] This study was originally a dissertation and then published in 2012 by the German publisher *AV Akademikerverlag*.[44] In it, Högemann attempts to answer the question of why *de.indymedia.org*, after the initial excitement of its creation, suddenly faded into obscurity as a platform, especially in the eyes of the public.[45] Of course, in hindsight we now know that *de.indymedia.org* was far less active than *linksunten.indymedia.org* until the latter was banned, and reading the dissertation it becomes clear that at the time of Högemann's writing there was no concern about *de.indymedia.org* being a hotbed of extremism, as in the author's eyes it was clearly designed to serve the purpose of an activist and citizen journalist platform as originally intended by Indymedia's founders.[46] Consequently, Högemann's dissertation certainly provides a well-researched and written background to the origins of *de.indymedia.org*, which is something of considerable value, as the author was unable to find other academic resources on the origins and inner workings of the platform.[47] All of the above has clearly shown that while the relationship between the internet and political extremism in general is not unexplored territory in the case of right-wing

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[41] Luca Rossi et al., 'Measuring Violence: A Computational Analysis of Violence and Propagation of Image Tweets From Political Protest', *Social Science Computer Review*, 31 January 2022, 089443932110554, https://doi.org/10.1177/08944393211055429.
[42] Rossi et al.
[43] Högemann, 'Indymedia Deutschland'.
[44] Högemann; Susanne Högemann, *Indymedia Deutschland: Vom Vielbeachteten Start Zum Unbeachteten Medium* (Berlin: AV Akademikerverlag, 2012).
[45] Högemann, 'Indymedia Deutschland'.
[46] Högemann.
[47] Högemann.

extremism, it certainly is in the case of left-wing extremism, especially in the case of the phenomenon in contemporary Germany.

Finally, while Indymedia in Germany has certainly not been the subject of much academic study, the same is certainly not true of Indymedia as a phenomenon in general, nor of its platforms in other countries. Although none of these other studies have approached the platform from the perspective of it possibly being a breeding ground for left-wing radicals and extremists, or have used securitisation theory, they have examined the platform from many different perspectives, most notably as a tool for cyber-activism with an emancipatory mission and function, as originally intended by its founders.[48] Of most interest for the present purpose, however, are those works that have examined either the overall state of the IMC project globally, or those that have analysed the experience of Indymedia platforms in other contexts. One of these works presented the case of the Indymedia project in Belgium by interviewing people involved in the development of the project at different points in its existence.[49] The story that emerges is that, over time, the Belgian national project not only fractured but also slowly came to an end as a result of political and organisational disagreements, particularly over whether the platform should focus more on becoming a platform solely focused on supporting political activism or serve the utility of a free and independent media platform.[50] The emergence of alternative blogs and social media platforms also played a significant role in the decline of the Belgian Indymedia project.[51] Similar stories of decline are told by other authors about Indymedia projects in Australia and Vancouver.[52] Although this is by no means a universal trend, one author who attempted to examine the state of Indymedia projects worldwide also noted that while there has been a significant decline in IMCs and even some regions with no Indymedia projects at all, it is still the case that there are some highly active

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[48] Kidd, 'Indymedia.Org: A New Communication Commons'; Fenton, 'Indymedia and the Long Story of Rebellion against Neoliberal Capitalism'; Chris Robé and Todd Wolfson, 'Reflections on the Inheritances of Indymedia in the Age of Surveillance and Social Media', *Media, Culture & Society* 42, no. 6 (September 2020): 1024–30, https://doi.org/10.1177/0163443720926056; Victor W. Pickard, 'United Yet Autonomous: Indymedia and the Struggle to Sustain a Radical Democratic Network', *Media, Culture & Society* 28, no. 3 (May 2006): 315–36, https://doi.org/10.1177/0163443706061685; Garcelon, 'The `Indymedia' Experiment'. Please see these for examples.
[49] Van Leeckwyck et al., 'Indymedia in Belgium'.
[50] Van Leeckwyck et al.
[51] Van Leeckwyck et al.
[52] Valentina Baú, 'Open Publishing, Decentralisation, and the Rise of New Media Platforms: Reflecting on the Imc Experience of Australia', *Media, Culture & Society* 42, no. 6 (September 2020): 1039–43, https://doi.org/10.1177/0163443720926045; Scott Uzelman, 'Media Commons and the Sad Decline of Vancouver Indymedia', *The Communication Review* 14, no. 4 (October 2011): 279–99, https://doi.org/10.1080/10714421.2011.624011.

Indymedia projects, Germany being an example.[53] The reasons for this state of affairs seem to be similar in many cases, such as disagreements over political and organisational issues, as well as the replacement of Indymedia as a popular medium by newer social media platforms.[54] In the end, the above suggests that Indymedia in Germany is already a rather remarkable and fascinating example of IMC activity in one country, not only because it has managed to be one of the most enduring IMC projects worldwide, but also because it generally continues to operate despite incurring the wrath of the authorities.

Justification and Relevance

There are several reasons why the research presented in this thesis is of considerable academic and societal relevance. One reason is that it is undeniable that left-wing extremism and political activism is an under-researched phenomenon of significant impact, as shown earlier in this chapter. Of course, it must be stressed that the impact of left-wing inspired political violence is often directed against property and is far less lethal than the violence emanating from, for example, right-wing extremism and Islamic fundamentalism.[55] Nevertheless, the phenomenon should not be underestimated, especially in view of its potential for further destruction in the future, which is not so unlikely, given that the BfV, in its annual report for 2021, stated that extremism is spreading in all areas.[56] Accordingly, any project that attempts to fill the aforementioned research gap and improve our understanding of left-wing extremism and political activism in Germany is important. This thesis aims to be such an undertaking by attempting to advance our understanding of left-wing extremism and activism online by providing insight into how one of the most important online portals for the country's political and activist left was targeted and banned by the authorities.

Another reason why the research presented in this thesis is of considerable academic and societal relevance is that the topic of the research relates directly to the wider ongoing contentious debate about government intervention and censorship on the internet to address issues such as illegal and harmful content, which is important given the significant role that the internet plays as a space for the exchange of messages, ideas and information for both

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[53] Giraud, 'Has Radical Participatory Online Media Really "Failed"?'
[54] Giraud.
[55] Bundesministerium des Innern und für Heimat and Bundeskriminalamt, 'Bundesweite Fallzahlen'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2021'.
[56] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2021'.

legitimate and malign actors.[57] The fact that *linksunten.indymedia.org* was deemed an extremist platform and banned by the government based on the assessment of the BfV, with virtually no transparency, is deeply concerning for several reasons. One of the reasons why this is so concerning and problematic is that the banning of *linksunten.indymedia.org*, which describes itself as a platform for activism and grassroots journalism, should only be done with absolute transparency and well explained reasons in a democratic context. Moreover, the decision to declare the platform illegal has had virtually no impact, as *de.indymedia.org* replaced it almost immediately in all but name.

Furthermore, beyond the more philosophical question of whether speech of any kind should be censored, it is also questionable whether such intervention by state authorities was proportionate to the problem at hand in this case. For example, not only is it the case, as noted above, that even mainstream social media platforms are rife with harmful and outright illegal content of various kinds due to poor content moderation policies and a sheer inability to catch it all, but they are treated differently by not being threatened with being declared illegal. In addition, there is also the fundamental question of who gets to define content as illegal and what metrics should be used to determine when a platform has become too unacceptable to exist. Ultimately, while this paper will not resolve any of these concerns, let alone the overarching debate, it will attempt, through the example of *linksunten.indymedia.org*, to make a modest contribution to our understanding of how governments intervene in practice against platforms they deem unacceptable.

Structure

The way in which this thesis will unfold is as follows. In the first chapter following this introduction, the author will address several theoretical and methodological considerations. It will begin by outlining not only what is meant by securitisation theory, but also how this theory has been conceived and used in this research. In addition, the chapter will illustrate and reflect on the source material used throughout the research process and explain how the method of explaining-outcome process tracing was used in this endeavour. Then, in the next chapter, the

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[57] Jacob Mchangama, 'Europe's Freedom of Speech Fail', *Foreign Policy*, 7 July 2016, https://foreignpolicy.com/2016/07/07/europes-freedom-of-speech-fail/; Jacob Mchangama, 'The War on Free Speech', *Foreign Affairs*, 9 February 2022, https://www.foreignaffairs.com/articles/world/2022-02-09/war-free-speech-censorship; Akses Jerôme Bekiş and Peter Köles, 'The European Digital Services Act: The Future Towards a Safer Digital Space and Single Market?' (Bratislava: Slovak Security Policy Institute, January 2021), https://slovaksecurity.org/wp-content/uploads/2021/02/DSA_final.pdf. See the following examples of this debate, including a report co-authored by the author of this thesis on the then forthcoming Digital Services Act (DSA), which generated considerable debate on the subject.

thesis will provide much needed historical context by looking at how the delicate balancing act between freedom of expression and censorship was handled and developed in the new Federal Republic of Germany from the end of the Second World War until 2015. This chapter will not only explain and analyse how the constitutional order that emerged in the post-war period played a crucial role in providing the new German state with the means to intervene in the realm of expression within certain limits, but will also illustrate how the emphasis on intervening in certain forms of expression changed over time, as defined by the emergence of new trends and societal changes. At the end of this chapter, the emergence of the internet as a disruptive force that challenged previously accepted interventions that were part of the status quo regarding government intervention in the realm of free expression will be examined in more detail.

The next chapter will illustrate how, from 2015, the internet changed from a space in which any extraordinary state intervention was fully and effectively resisted to one that was increasingly seen as problematic in itself and in need of intervention. The chapter will do this by first outlining what national and international developments during this period contributed to this shift in attitudes, and then using the *Netzwerkdurchsetzungsgesetz* as an example of this change in action. The following and penultimate chapter will then deal directly with the way in which *linksunten.indymedia.org* was securitised by the authorities. It will first look at how the BfV framed left-wing extremist activity prior to the existence of either *de.indymedia.org* or *linksunten.indymedia.org*, and then analyse how the German Indymedia platforms were framed prior to the securitisation of *linksunten.indymedia.org*. The securitisation of *linksunten.indymedia.org* will then be described and analysed in considerable detail, including an examination of the resistance this process faced and the reasons for it. Lastly, the conclusion will, after recapitulating some of the key findings of this endeavour, provide an answer to the research question and offer the reader some reflections on the implications and limitations of the findings offered. In addition, the conclusion will also offer some possible avenues for further research.

Chapter 1: Theoretical Framework, Method, and Sources

Before proceeding, this chapter will first outline and reflect on some important theoretical and methodological aspects of this study, and it will do so in three parts. In the first part, this chapter will first introduce the theoretical framework, namely securitisation theory, by explaining its origins and some of the criticisms it has faced, and then go on to explain some of the technical nuances of the theory, as well as outlining how the theory has been applied in practice as part of the research presented in this thesis. The next part will introduce the methodology of explaining-outcome process tracing which was used in this research project. Finally, the last part will explain what kind of source material was used as part of this research process. However, this part will go beyond simply describing what type of sources were used by also taking a moment to mention how these sources were found and for what purpose they were consulted.

Theoretical Framework

This research project used securitisation theory as its theoretical framework. The term securitisation theory was originally coined by Ole Wæver and other scholars of the so-called Copenhagen School and is a theory that has gained considerable prominence among scholars in the fields of international relations and security studies over the years.[58] This has contributed to the development over time of a considerable and diverse literature on the theory.[59] At the heart of securitisation theory is the assertion that an issue becomes a security problem through the process of declaring it as such.[60] Therefore, an issue does not have to pose an objectively definable existential threat for it to be elevated from the realm of normal politics to that of security politics.[61] This elevation of an issue to the realm of security policy then in turn results in it being given special priority, which in turn allows for the enactment of extraordinary measures by the securitising actor, or rather the person or entity that declares something to be a security problem.[62] Accordingly, securitisation theory provides us with considerable explanatory power when it comes to understanding how and why the security agenda in many contexts has expanded considerably over the years into diverse areas such as the environment.[63]

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[58] Thierry Balzacq, ed., *Securitization Theory: How Security Problems Emerge and Dissolve* (Abingdon: Routledge, 2011), xii–xiv&1–30.

[59] Balzacq, xii–xiv&1–30.

[60] Balzacq, xii–xiv&1–30; Barry Buzan, Ole Wæver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder: Lynne Rienner Publishers, 1998), 1–20 & 21–48.

[61] Balzacq, *Securitization Theory*, xii–xiv&1–30; Buzan, Wæver, and Wilde, *Security*, 1–20 & 21–48.

[62] Balzacq, *Securitization Theory*, xii–xiv&1–30; Buzan, Wæver, and Wilde, *Security*, 1–20 & 21–48.

[63] Balzacq, *Securitization Theory*, xii–xiv&1–30; Buzan, Wæver, and Wilde, *Security*, 1–20 & 21–48.

Moreover, the theory has enabled us to better assess how security needs have evolved over time, which is particularly useful for research that takes a historical perspective. It is for these reasons that securitisation theory has been adopted by the author for this research project, as it is highly relevant and useful to the subject at hand, as the aim is to understand how the Indymedia project in Germany, and in particular *linksunten.indymedia.org*, came to be seen as a security threat by the German authorities over time.

However, despite the accumulation of a considerable body of literature on securitisation theory over time, it is also the case that not only has the theory been subject to criticism, but different schools of thought have also emerged. For example, some scholars have taken a more philosophical approach to securitisation, while others have argued for a more sociological approach to the theory.[64] In the case of the philosophical approach, this means a more traditional application of the theory as outlined by the Copenhagen School, while the sociological approach is associated with scholars such as Thierry Balzacq.[65] In practice, the difference between these two approaches is best illustrated by Balzacq's criticism of the use of speech acts in the theory, calling instead for the use of so-called pragmatic acts in order to give the theory more overall explanatory power.[66] Moreover, some authors in recent years have gone so far as to speak of a second generation of securitisation theory after the Copenhagen School, arguing that the framework presented by the Copenhagen scholars underestimates the 'much greater empirical complexity of actual processes of securitization.'[67] However, this research project has adopted the traditional philosophical approach to securitisation theory as originally introduced by the Copenhagen School.[68] The reason for this is that the aim of this research in relation to the use of securitisation theory was to examine how exactly the *linksunten.indymedia.org* became securitised in Germany. As such, engaging in such conceptual debates around the theory is of relatively little use to the task at hand and may even distract from the core objective of this endeavour. Consequently, this thesis will use and understand securitisation theory as outlined in 1998 by Barry Buzan, Ole Wæver and Jaap de Wilde in *Security: A New Framework for Analysis*, and hence from now on, when the author

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[64] Balzacq, *Securitization Theory*, xii–xiv&1–30; Thierry Balzacq, 'The Three Faces of Securitization: Political Agency, Audience and Context', *European Journal of International Relations* 11, no. 2 (1 June 2005): 171–201, https://doi.org/10.1177/1354066105052960.
[65] Balzacq, *Securitization Theory*, xii–xiv&1–30; Balzacq, 'The Three Faces of Securitization'.
[66] Balzacq, *Securitization Theory*, xii–xiv&1–30; Balzacq, 'The Three Faces of Securitization'.
[67] Holger Stritzel and Sean C Chang, 'Securitization and Counter-Securitization in Afghanistan', *Security Dialogue* 46, no. 6 (December 2015): 550, https://doi.org/10.1177/0967010615588725.
[68] Balzacq, *Securitization Theory*, xii–xiv&1–30; Buzan, Wæver, and Wilde, *Security*.

refers to either the Copenhagen School or securitisation theory in this paper, it is precisely this understanding that is meant.[69]

The way the Copenhagen School explains securitisation as a process is that this process involves a securitising actor invoking, through a speech act, a referent object that is allegedly under existential threat.[70] It is the speech act in particular that requires further explanation in order to fully understand the securitisation process.[71] The speech act is the act by which the securitising actor, the person or entity initiating the securitisation process, declares that a referent object, the thing that is threatened and in need of protection, is existentially threatened.[72] It is this speech act, if successful, that leads to the successful implementation of a securitisation process and results in the elevation of the threat from the realm of normal politics to that of security politics, which in turn allows the securitising actor to invoke extraordinary measures that would not otherwise be possible.[73] For a speech act to be successful, however, it must meet facilitating conditions that fall into two categories, namely language and society.[74] On the one hand, in the case of the former, a speech act must, among other things, 'follow the security form, grammar of security, and construct a plot that includes existential threat, point of no return, and a possible way out.'[75] On the other hand, in the case of the latter, a necessary condition is 'the social capital of the enunciator, the securitising actor, who must be in a position of authority, although it should not be defined as official authority.'[76] The reason for this is that for a speech act to be successful in achieving securitisation, it has to be enunciated in an appropriate form by someone who has the ability to be heard and ultimately to have influence.

Furthermore, it is critical to note that the audience to which the speech act is directed by the securitising actor need not necessarily be the general population, since who constitutes the audience depends entirely on who the securitising actor needs to convince.[77] For example, in an autocratic context it may be sufficient for a dictator to convince only his inner circle, whereas in the case of Germany, for example, politicians within the ruling coalition would

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[69] Buzan, Wæver, and Wilde, *Security*, 1–20 & 21–48.
[70] Buzan, Wæver, and Wilde, 1–48.
[71] Buzan, Wæver, and Wilde, 21–48.
[72] Buzan, Wæver, and Wilde, 21–48.
[73] Buzan, Wæver, and Wilde, 21–48.
[74] Buzan, Wæver, and Wilde, 21–48.
[75] Buzan, Wæver, and Wilde, 33.
[76] Buzan, Wæver, and Wilde, 33.
[77] Buzan, Wæver, and Wilde, 21–48.

simply have to obtain the consent of their fellow politicians.[78] Consequently, it makes sense that 'successful securitisation is not decided by the securitiser but by the audience of the security speech act.'[79] Last but not least, it should be emphasised that the extraordinary measures that are ultimately adopted at the end of a successful securitisation process do not need to meet any specific criteria to qualify as such, the only exception being that these measures break with conventional wisdom and practice and would otherwise not have been implemented without the securitisation process.[80]

Last but not least, the practical operationalisation of securitisation theory as part of this research project requires some further elaboration. The explicit purpose of using securitisation theory as part of this undertaking was to understand and analyse the process by which *linksunten.indymedia.org* gradually came to be seen as a security threat by the German government, which ultimately justified the use of extraordinary measures, in this case the criminalisation of the platform. In this sense, the German government, in particular the *Bundesamt für Verfassungsschutz* (BfV), the Ministry of the Interior and the cabinet, were defined as the securitising actors, with the country's democratic constitutional order as the referent object, since, as will be shown, this was what the government and the officials claimed to be defending at the time. In order to identify the ways in which these securitising actors attempted to securitise *linksunten.indymedia.org*, the primary source material was searched for the securitising moves, the speech acts, through which the government attempted to place the platform on the security agenda and to convince the audience that *linksunten.indymedia.org* was indeed a threat and that action was warranted. The audience in this case were other policymakers and the wider public, although the former was far more important than the latter, who had to be persuaded by speech acts.

This audience has to be made receptive to the securitising moves of the authorities and convinced that there is an interest to be defended against the alleged threat. This process of making the public receptive to the government's securitising moves was possible, as will be shown later, largely as a result of a rather favourable context in which key facilitating conditions were present, most significant of which was that online content deemed harmful and illegal was seen as an acute problem requiring action at the time. Therefore, although this project uses securitisation theory as a theoretical framework to understand and analyse how

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[78] Buzan, Wæver, and Wilde, 21–48.
[79] Buzan, Wæver, and Wilde, 31.
[80] Buzan, Wæver, and Wilde, 21–48.

linksunten.indymedia.org was ultimately securitised, it also takes a historical perspective because, as will be shown throughout this thesis, this favourable context was the result of a gradual process that occurred over time. For this reason, the method which was based on explaining-outcome process tracing and was at the heart of this project will be expanded upon next.

Method

While securitisation theory serves as the theoretical framework for understanding the process through which *linksunten.indymedia.org* was ultimately banned, this investigation is still very much a historical analysis because, as this thesis will show, the securitisation of the platform was itself the result of a historical process. Accordingly, the overarching methodology deployed by the author can best be described as one inspired by and based on process tracing. The method of process tracing is quite popular and widely used by many scholars in the field of history and beyond.[81] However, the practical application of process tracing, both in historical analysis and in the social sciences in general, is often plagued by a certain lack of transparency and explicitness in its execution by many scholars.[82] There is also the problem that process tracing as a methodology is too often poorly understood by many, especially when valid conclusions can be drawn from process tracing.[83] All of this is further complicated by the fact that coherent frameworks and guidelines for the method are relatively scarce and there is considerable variation in the way in which scholars execute process tracing as a method.[84] In essence, then, process tracing can be seen as a method that is liked and adopted by many, but rarely is well understood and clearly explained. Therefore, in this part of the chapter, the author will not illustrate and examine process tracing as a method in general, but will instead highlight directly how the author adopted and operationalised process tracing as a method in this research project in order to avoid, or at least make a modest attempt to avoid, the aforementioned pitfalls.

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[81] James Mahoney, 'Process Tracing and Historical Explanation', *Security Studies* 24, no. 2 (3 April 2015): 200–218, https://doi.org/10.1080/09636412.2015.1036610; James Mahoney, Erin Kimball, and Kendra L. Koivu, 'The Logic of Historical Explanation in the Social Sciences', *Comparative Political Studies* 42, no. 1 (January 2009): 114–46, https://doi.org/10.1177/0010414008325433; Derek Beach and Rasmus Brun Pedersen, *Process-Tracing Methods: Foundations and Guidelines* (Ann Arbor: University of Michigan Press, 2013), 1–8.

[82] Mahoney, 'Process Tracing and Historical Explanation'.

[83] Jacob I. Ricks and Amy H. Liu, 'Process-Tracing Research Designs: A Practical Guide', *PS: Political Science & Politics* 51, no. 4 (October 2018): 842–46, https://doi.org/10.1017/S1049096518000975.

[84] Beach and Pedersen, *Process-Tracing Methods*, 2013, 1–8; Derek Beach, 'Process Tracing Methods in the Social Sciences', in *Oxford Research Encyclopedia of Politics*, by Derek Beach (Oxford University Press, 2017), https://doi.org/10.1093/acrefore/9780190228637.013.176.

To begin with, it is important to first illustrate out which parts of the research used the method in order to contextualise and justify the way in which the author developed and applied the method. As mentioned above, the aim of the project was to understand how *linksunten.indymedia.org* was ultimately banned, which was achieved through the securitisation of the platform by the German government. In order to explain this process of securitisation, process tracing seemed to be an appropriate method, as this thesis focuses on a single case. The process tracing methodology used by the author can be described as one that is case-centred and can be called explaining-outcome process tracing, rather than one that is theory-centred and seeks to either build or test an existing theory.[85] Although in practice the boundaries between the different types of process tracing are at times rather blurred when it comes to execution, there are certain advantages to adopting a method based on explaining-outcome process tracing.[86] One of these advantages is that this type of process tracing is characterised by the aim of seeking to explain a specific outcome or development in a single case, rather than drawing generalisable inferences about the application of an existing theory or developing an entirely new theory, as is the case with theory testing and building process tracing.[87] Moreover, explaining-outcome process tracing allows the author a degree of flexibility in the application of any theoretical framework.[88] For example, even though, as will become clear later in this thesis, all the elements of securitisation were present in this particular case, it was the facilitating conditions in particular that played a key role in the success, and perhaps even the occurrence, of this securitisation process. It is also because of the importance of these facilitating conditions that a significant part of this thesis deals with the historical process that led to the emergence of these very conditions, rather than simply the period in which the securitisation process itself unfolded.

All the different types of process tracing methods have the ultimate goal of determining why and how a given event led to a given outcome, or in other words, to identify the dynamics, the so-called casual mechanisms, that link the given event and the outcome.[89] In the case of explaining-outcome process tracing one is confronted with an 'iterative research strategy'

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[85] Beach, 'Process Tracing Methods in the Social Sciences'; Mahoney, 'Process Tracing and Historical Explanation'; Ricks and Liu, 'Process-Tracing Research Designs'; Derek Beach and Rasmus Brun Pedersen, *Process-Tracing Methods: Foundations and Guidelines*, 2nd Edition (Ann Arbor: University of Michigan Press, 2019).
[86] Beach, 'Process Tracing Methods in the Social Sciences'; Beach and Pedersen, *Process-Tracing Methods*, 2019.
[87] Beach and Pedersen, *Process-Tracing Methods*, 2019, 1–27 & 281–88.
[88] Beach and Pedersen, 1–27 & 281–88.
[89] Beach and Pedersen, 1–27.

which is based on the logic of abduction and leaves room for pragmatism in order to gradually come to the best possible explanation.[90] Therefore, the implementation of the method can vary considerably depending on a wide range of factors.[91] For example, one might conduct one's study by adopting a theory-first approach to process tracing, which would in fact be quite similar to the theory-testing process tracing method, while others might begin by assessing the empirical evidence and facts first.[92] Accordingly, it is crucial to outline, at least briefly, how the author operationalised and carried out the method in question for this research project. As mentioned above, the event and outcome in question were well known and specified at the very beginning of the research process, and the ultimate goal was to understand how and why *linksunten.indymedia.org* was banned. Based on an early preliminary examination of the timeline and evidence, the author assumed that the platform was likely the target of a government-initiated securitisation process. Although the author was obviously open to discovering that this might not have been the case, or that the securitisation theory might not be able to fully explain what had happened, the author began and continued with the view that a securitisation process might have served the purpose of a casual mechanism in this case which by no means was a novel idea.[93] From this starting point, the author proceeded throughout the research process in accordance with the steps commonly associated with best practice in terms of explaining-outcome process tracing to come to the best possible explanation.[94]

Last but not least, there are two important points that should be considered, at least briefly, in relation to the method used by the author, before the next section outlines what kind of primary source material was consulted and used as part of this project. On the one hand, there is the question of what impact, if any, the decision to adopt a method based on explaining-outcome process tracing has had on the selection and interpretation of primary source material as part of this study. The way in which primary source material is examined in the case of process tracing is that the material is searched for so-called empirical fingerprints that provide mechanistic evidence, which can be described as the 'observational evidence' left behind by the casual mechanisms under investigation.[95] It is also this search for mechanistic evidence of

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[90] Beach and Pedersen, 11 & 286.
[91] Beach and Pedersen, 1–27 & 281–88.
[92] Beach and Pedersen, 1–27 & 281–88.
[93] Stefano Guzzini, 'Securitization as a Causal Mechanism', *Security Dialogue* 42, no. 4–5 (August 2011): 329–41, https://doi.org/10.1177/0967010611419000. For an example of a discussion of securitisation as an casual mechanism.
[94] Beach and Pedersen, *Process-Tracing Methods*, 2019. It was in particular explaining-outcome process tracing as outline by Derek Beach and Rasmus Brun Pedersen in the second edition of their book Process-Tracing Methods: Foundations and Guidelines that was followed.
[95] Beach and Pedersen, 4, 1–27 & 155–244.

the traces left by a potential casual mechanism that gives rise to the name process tracing.[96] In practice, then, a 'Bayesian-inspired' framework and logic is followed when dealing with sources, which involves evaluating the evidence on both a theoretical and an empirical level.[97] At the theoretical level, one begins by speculating about what kind of fingerprints might be found in the evidence, while at the empirical level, in addition to critically reflecting on the credibility of the source, one ultimately examines whether fingerprints are actually present.[98] On the other hand, there is the question of how the findings and conclusions of this thesis should be perceived, because, as mentioned above, an inherent aspect of the explaining-outcome process tracing method is that one gradually arrives at the best possible explanation, which certainly does not correspond to a description of causality in the traditional sense.[99] In fact, causality in the traditional sense does not apply here, as instead an explanation is presented that meets the standard of 'minimally sufficient.'[100] What is meant by a minimally sufficient explanation is one that 'accounts for all of the important aspects of an outcome with no redundant parts being present.'[101] This is also quite similar to the way in which causes are understood in more traditional historical analysis, where causes are often given different descriptors in relation to their role in an event, such as sufficient and necessary causes.[102]

Sources

This research project collected and used a considerable number of different types of primary source material to answer the research question at hand. The most significant and numerous types of source material used were resources that originated from news publications. These included sources ranging from news articles available on the publication's website to videos of news reports on the publication's YouTube channel. This type of source material also included footage of German government events such as conferences, which was often recorded and uploaded by a given news outlet. The main reason for choosing to use such sources, and the reason why they feature so prominently in this thesis, is that the topic in question took place in what could be described as the recent past. Therefore, recourse to news publications and their published material is a very simple and highly effective means of acquiring information

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[96] Beach and Pedersen, 1–27 & 155–244.
[97] Beach and Pedersen, 155, 1–27 & 155–244.
[98] Beach and Pedersen, 155–244.
[99] Beach and Pedersen, 281–88.
[100] Beach and Pedersen, 284 & 281–88.
[101] Beach and Pedersen, 282.
[102] Beach and Pedersen, 281–88; Mahoney, Kimball, and Koivu, 'The Logic of Historical Explanation in the Social Sciences'.

and gaining perspective on events. The way in which these sources were located was mainly through the use of Google's advanced search functionality and direct searches on YouTube, but the author also made use of some material from LexisNexis. Most of the material used came from well known publications that are generally considered to be reputable, such as *Der Spiegel* and the *Süddeutsche Zeitung*. In addition, whenever possible, the information contained in a particular report or video was validated by cross-referencing it with another source containing the same information, which is also reflected in the references at several points throughout this thesis.

Another type of source material used in this research project was that which came directly from the government. In this case, speeches given in the German parliament, which can be found directly on the official website of the *Bundestag*, and the annual reports published by the BfV were consulted and used. These sources were particularly relevant to the third and fourth chapters of this thesis and were used to gain insight into the position of the government and policymakers where necessary. The last major type of source material sought was online resources such as the websites of specific organisations or individuals such as NGOs, again to gain insight into the position of the organisation in question. A concrete example of this can be found, for example, in the third chapter of the thesis, where Reporters Without Borders is mentioned and quoted as one of the civil society organisations that opposed the *Netzwerkdurchsetzungsgesetz*. Finally, it should be explicitly noted that the way in which source material was handled and consulted was driven by two, not always mutually exclusive, objectives: the objective of obtaining context about what happened, especially relevant when secondary literature was lacking, and the objective of interpreting the position and actions of a particular individual or entity, especially government and policy makers.

Conclusion

This chapter has provided insight into several important theoretical and methodological aspects of this study. It began by introducing securitisation theory as the theoretical framework, by highlighting not only the origins and core aspects of the theory, but also how and why it was applied in this study. The chapter then presented the underlying methodology used in this study, which is based on explaining-outcome process tracing. This included not only an introduction to the method with many of its key aspects, but also how it was applied here. This was followed in the final part by an explanation of which types of primary source material were consulted and why. Now that these important considerations have been outlined, the next

chapter of this thesis turns to providing a historical context of the evolution of the delicate balancing act between freedom of expression and censorship in Germany after the end of the Second World War.

Chapter 2: A History of the Emergence of the Federal German Republic and of the Balancing Act between Free Speech and Censorship 1945-2015

In this chapter the history of the delicate balancing act between freedom of expression and censorship in post-war Germany will be traced from the end of the Second World War in 1945 to 2015. Accordingly, although the chapter will also recount the political development of the country as a nation-state after the end of the Second World War, it will do so only to a limited extent, as the main focus will be on illustrating the way in which the subsequent political order after the collapse of the Nazi regime dealt with both freedom of expression and censorship. This undertaking is important because not only is it necessary to provide the relevant historical context in order to situate the topic in time and space, but also, as will become clear in the course of this chapter, this context played a considerable role in shaping the subsequent events that will be closely examined in this thesis.

This chapter will unfold in three parts. The first part of the chapter will focus on the immediate post-war period 1945-1949, beginning with a brief description of the state of post-war Germany. It will then explain how Germany was divided among the Allied Powers and how these Allies initiated a campaign of de-Nazification in their respective zones of occupation. It then looks at how freedom of speech and expression, particularly in the cultural sphere, and censorship were dealt with during the occupation, using the American and Soviet zones of occupation as examples. The second part of this chapter examines the emergence of the Federal Republic of Germany (FRG) in 1949 and the subsequent political order until German reunification in 1990. This part will begin with an account of how the FRG came into being and the constitutional order that emerged as a result, with particular emphasis on the nature and core values that formed part of this order, such as the *freiheitliche demokratische Grundordnung* (FDGO). It then examines how freedom of expression and censorship were dealt with in this new German state. The third part examines the reunification of Germany in 1990 and whether this event has had an impact on the way in which freedom of expression and censorship have been dealt with in the FRG. In particular, it will examine the challenges posed by the emergence of the internet as a new medium for the exchange of information, and the reaction of the government at the time to this development. This will be achieved by first an illustration of the emergence of the *Telemediengesetz* (TMG) as the primary piece of legislation governing the internet in 2007, and then be followed by an in-depth examination of the *Gesetz zur Erschwerung des Zugangs zu kinderpornographischen Inhalten in Kommunikationsnetzen*

(*Zugangserschwerungsgesetz*) as a case study which will reveal that the internet at the time of the law's passing was a highly contested space for government intervention.

Finally, before beginning this chapter, it should be noted that the term censorship is used frequently throughout the chapter. The author is aware that the term censorship is generally associated with rather negative connotations that are often inappropriate in a democratic context, especially when the so-called censorship is carried out with democratic legitimacy and in accordance with established law. Nevertheless, with this in mind, the term censorship will be used here to refer simply to the act of the state and its institutions intervening in the realm of freedom of expression, regardless of the nature of the censored expression, without any value judgement on the part of the author.

The Immediate Post-War Period 1945-1949: The Occupation Years

On 8 May 1945, the Second World War in Europe came to an end with the unconditional surrender of Nazi Germany and the capture of Berlin by Allied forces.[103] After some six years of fighting, what was left of Nazi Germany lay in ruins and the country's future was far from certain. Such was the devastation and destruction of the former Nazi Germany that many contemporaries referred to this moment in German history as *Stunde Null* (Hour Zero), as the entire country had to be rebuilt in basically every sense.[104] The responsibility for rebuilding the country fell to the Allies, who were not only responsible for the physical reconstruction of the country's infrastructure, but also, as the occupying powers, had to decide the fate of the future post-Nazi Germany as a nation and its culture. This process began with the division of former Nazi Germany into four zones, each to be administered by one of the Allies, who would co-ordinate their rule over the country through the Allied Control Council.[105] The Allies also agreed, at least in principle, that not only should Nazism and all its remnants be eradicated, but that Germany should become a democratic state.[106] To achieve this, the Allies had to intervene and agree on policies in many areas which in practice entailed measures such as prosecuting Nazi officials and encouraging the formation of new democratic political actors.[107] These efforts became part of a policy and process known as de-Nazification, a process

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[103] Frederick Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (London: Bloomsbury, 2012), 79–110; Paul Roland, *Life after the Third Reich* (London: Arcturus Publishing, 2018), 1–18.
[104] Giles MacDonogh, *After the Reich: The Brutal History of the Allied Occupation* (New York: Basic Books, 2007), 1–24.
[105] MacDonogh, 199–335.
[106] MacDonogh, 471–95.
[107] MacDonogh, 199–335 & 471–95.

that was applied by all Allied occupying powers in the country, albeit with considerable variations and some inconsistencies.[108]

This process of de-Nazification was initially agreed by all the Allies as part of the Potsdam Agreement of 1945, alongside other key objectives such as the demilitarisation and democratisation of Germany.[109] The ultimate aim of the de-Nazification process was to eradicate Nazism in Germany in all its forms from the post-war German order, which meant intervening in all spheres of German life.[110] One of the most important undertakings in this process was to punish and remove former Nazis from positions of power.[111] However, another rather important undertaking, closely linked to the de-Nazification process, were the Allied efforts to 'psychologically' disarm Germany through the control and influence of free speech and culture, driven by the overarching goal of achieving a democratic and peaceful post-war Germany, and accordingly these efforts continued until the formation of the Federal Republic of Germany and the German Democratic Republic in 1949.[112] The Americans and Soviets took the lead in these efforts, with the British coordinating closely with the Americans through the British Information Service Division and the French not particularly involved on this front.[113] On the American side, the Information Control Division (ICD) was formed on 12 May 1945 from the Psychological Warfare Division (PWD), which had been part of the Supreme Headquarters Allied Expeditionary Force (SHAEF) but was disbanded after the surrender of Germany.[114] The ICD was headed by Brigadier General Robert A. McClure and its overall mission was as follows:

> to provide the Germans with information, which will influence them to understand and accept the United States programme of occupation, and to establish for themselves a stable, peaceful, and acceptable government. Such information will impress upon the Germans the totality of their military defeat, the impossibility of rearmament, the responsibility of the individual German for war and atrocities, the disastrous effects of the structure and system of National Socialism on Germany and the world, and the

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[108] MacDonogh, 199–335; Roland, *Life after the Third Reich*, 113–36.
[109] MacDonogh, *After the Reich*, 471–95.
[110] MacDonogh, *After the Reich*; Taylor, *Exorcising Hitler*; Roland, *Life after the Third Reich*.
[111] Taylor, *Exorcising Hitler*, 248–76.
[112] Erwin J. Warkentin, *The History of U.S. Information Control in Post-War Germany: The Past Imperfect* (Cambridge: Cambridge Scholars Publishing, 2016), 1–22 & 41–233.
[113] Warkentin, 6–22.
[114] Larry Hartenian, 'The Role of Media in Democratizing Germany: United States Occupation Policy 1945-1949', *Central European History* 20, no. 2 (1987): 145–90.

possibility that through work and cooperation Germany may again be accepted into the family of nations.[115]

This mission was to be carried out in three phases during the occupation, which consisted of the first shutting down of all forms of public expression in Germany, followed by the establishment of ICD-controlled media of public information, and finally the return and revival of pro-democracy, German-controlled media.[116] This meant that the ICD had control over all kinds of different media and sources of cultural production, from the press and radio to written publications such as books and theatre performances.[117] In practice, the ICD exercised this authority not only by directly controlling what kind of material could be published, but also by creating its own publishing media.[118] Two examples of such media were *Die Neue Zeitung* and *Radio Stuttgart*, which were a newspaper and a radio station respectively directly controlled by the ICD.[119] However, while the initial intention behind this control of public expression and the media in Germany was clearly to de-Nazify and reform Germany, by 1947 the Americans had already begun to instrumentalise the ICD's control of the media in Germany for the purpose of disseminating anti-Communist messages in line with new Cold War priorities.[120] An example of this in action was a series of talks on another ICD-controlled radio station, *Radio Frankfurt*, called 'The American View', which denounced communism even more virulently than Nazism.[121] Eventually, in 1949, despite the continuation of a more anti-communist conservative line, the Americans handed over full control to the Germans.[122]

In contrast, the Soviet approach to censorship in the Soviet Occupied Zone (SBZ) was quite different, as there were initially a number of different bodies throughout the zone responsible for managing and censoring information and cultural material.[123]   Two such organisations were the *Kulturbund zur demokratischen Erneuerung Deutschlands* and the

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[115] Hartenian, 23–40; Robert R. Shandley, 'Dismantling the Dream Factory: The Film Industry in Berubbled Germany', *South Central Review* 16, no. 2/3 (1999): 106, https://doi.org/10.2307/3190192.

[116] Earl F. Ziemke, *The U.S. Army in the Occupation of Germany, 1944-1946* (Washington, D.C.: Center of Military History United States Army, 1975), 367–79, https://history.army.mil/html/books/030/30-6/cmhPub_30-6.pdf.

[117] Warkentin, *The History of U.S. Information Control in Post-War Germany*, 23–40.

[118] Warkentin, *The History of U.S. Information Control in Post-War Germany*.

[119] Hartenian, 'The Role of Media in Democratizing Germany'; Mandy Tröger, 'Critical Communication History| What Makes "Free" Radio? U.S. Media Policy Discussions in Post-War Germany 1945–1947', *International Journal of Communication* 7, no. 0 (30 August 2013): 20.

[120] Hartenian, 'The Role of Media in Democratizing Germany'.

[121] Hartenian.

[122] Warkentin, *The History of U.S. Information Control in Post-War Germany*.

[123] MacDonogh, *After the Reich*, 201–26; David Pike, *The Politics of Culture in Soviet-Occupied Germany, 1945-1949* (Stanford: Stanford University Press, 1992); Norman M. Naimark, *The Russians in Germany: A History of the Soviet Zone of Occupation, 1945-1949* (Cambridge: Harvard University Press, 1995), 398–464.

Deutsche Verwaltung für Volksbildung.[124] Moreover, unlike in the American zone, Germans, most of them former Nazi exiles, played a significant role in shaping the cultural scene in the SBZ almost from the beginning.[125] One of these Germans was Johannes R. Becher, who became the leading German figure in shaping the SBZ cultural scene in the immediate post-war period.[126] Becher, who had spent considerable time in Moscow and was a close associate of high-ranking *Sozialistische Einheitspartei Deutschlands* (SED) cadres, was put in charge of the *Kulturbund zur demokratischen Erneuerung Deutschlands*.[127] However, it was not only former anti-Nazi exiles and socialist-leaning individuals who were given a significant role in the SBZ, as de-Nazification, at least in the realm of culture, was not taken seriously at all, as several former writers with strong Nazi ties were allowed to return and publish their work in the SBZ.[128] One such artist was Wilhelm Furtwängler, who was flown in by the Soviets and given his old position at the Berlin Philharmonic, despite considerable initial protest from the Allies, including the head of the ICD, General McClure.[129]

Nevertheless, despite taking on a more permissive approach to the arts and culture at the very outset of the SBZ when compared to the Americans, it must be emphasised that virtually from the start of the occupation the Soviets were heavily involved in propaganda, as winning over the Germans to the socialist cause was a top priority.[130] To this end, not only were productions such as films often heavily censored, but the selection of available material was also carefully controlled.[131] Moreover, as early as 1946, the attitude towards Western newspapers and other forms of publication was seen as a considerable threat to the status quo in the SBZ, and private citizens were at times threatened not to consume such alleged reactionary material.[132] However, it was in 1947 that all pretence and remaining tolerance was dropped as censorship was officially introduced and all forms of art, culture and information dissemination began to be instrumentalised for the sole purpose of portraying the USSR in a positive light and vilifying the West, which, as mentioned earlier, also roughly coincided with the point at which the ICD did the same in the American zone.[133]

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[124] MacDonogh, *After the Reich*, 201–26; Pike, *The Politics of Culture in Soviet-Occupied Germany, 1945-1949*; Naimark, *The Russians in Germany*, 398–464.
[125] MacDonogh, *After the Reich*, 201–26.
[126] MacDonogh, 201–26; Naimark, *The Russians in Germany*, 398–464.
[127] Naimark, *The Russians in Germany*, 398–464.
[128] MacDonogh, *After the Reich*, 201–26; Naimark, *The Russians in Germany*, 398–464.
[129] MacDonogh, *After the Reich*, 201–26; Naimark, *The Russians in Germany*, 398–464.
[130] MacDonogh, *After the Reich*, 201–26; Naimark, *The Russians in Germany*, 398–464.
[131] Naimark, *The Russians in Germany*, 398–464.
[132] Naimark, 353–97 & 398–464.
[133] MacDonogh, *After the Reich*, 201–26; Pike, *The Politics of Culture in Soviet-Occupied Germany, 1945-1949*.

The Post-War Period 1949-1990: The Creation of the FRG

On 23 May 1949, the Federal Republic of Germany (FRG) came into being with the enactment of the *Grundgesetz* (Basic Law), the constitution of the FRG.[134] This new German state was the first of the two post-war states.[135] The territory of this new German state was created from the zones of occupation previously controlled by the United States, Great Britain and France, and its capital ended up being the city of Bonn in the west of the country.[136] This new country came into being through a gradual process. First, in January 1947, the British and American Zones were merged to form the so-called Bizone.[137] Following this integration of the American and British zones, in 1948 the French zone joined the Bizone, which then became the Trizone.[138] It was this sequence of events, together with the worsening Cold War context of the period, as evidenced by the Berlin Blockade, that paved the way for the creation of the FRG in 1949.[139] But before the FRG could emerge as the first new post-war German state, the question of its nature and identity, to be determined by its new constitution, had to be resolved. It was at the London Conference in 1948 that the Western Allies and the Benelux countries formally agreed to the establishment of a West German state based on democratic principles.[140] Following the conference, its conclusions, known as the London Recommendations, led the Allied powers to submit their recommendations to the minister-presidents of the then West German states, asking them to proceed with the needed steps for the creation of a West German State, which entailed the formation of a constitutional assembly to draft the constitution of this new German state.[141]

One concern at the time about the task of drafting a constitution was that, in their eyes, a final constitution would have meant a permanent break and separation from the then East German zone.[142] This problem was eventually mitigated by an agreement with the Western

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[134] Mary Fulbrook, *A Concise History of Germany*, 3rd Edition, Cambridge Concise Histories (Cambridge: Cambridge University Press, 2019), 209–49; Helmut Walser Smith, ed., *The Oxford Handbook of Modern German History* (Oxford: Oxford University Press, 2015), 593–752.

[135] Fulbrook, *A Concise History of Germany*, 209–49; Smith, *Handbook of Modern German History*, 593–752.

[136] Fulbrook, *A Concise History of Germany*, 209–49; Smith, *Handbook of Modern German History*, 593–752.

[137] MacDonogh, *After the Reich*, 274–546; Thomas Alan Schwartz, *America's Germany: John J. McCloy and the Federal Republic of Germany* (Cambridge, Massachusetts: Harvard University Press, 1991); Fulbrook, *A Concise History of Germany*, 205–49.

[138] MacDonogh, *After the Reich*, 274–546; Schwartz, *America's Germany*; Fulbrook, *A Concise History of Germany*, 205–49.

[139] MacDonogh, *After the Reich*, 274–546.

[140] MacDonogh, 496–546; Schwartz, *America's Germany*, 29–56; Hubert Kleinert, *Das Geteilte Deutschland: Die Geschichte 1945-1990* (Wiesbaden: Springer, 2019), 28.

[141] MacDonogh, *After the Reich*, 517–46; Kleinert, *Das Geteilte Deutschland*, 28–41.

[142] Kleinert, *Das Geteilte Deutschland*, 35–40; Fulbrook, *A Concise History of Germany*, 205–49.

Allies to call the constitution the *Grundgesetz* (Basic Law) rather than a constitution per se, and to leave room for the future self-determination and reunification of Germany.[143] At the heart of this Basic Law, which came into being with the FRG on 23 May 1949, was a country with a political order that could be described as a democratic federal parliamentary republic.[144] Nevertheless, the FRG was designed from the outset as a state with significant safeguards against a return to dictatorship and against the spread of extremism in the country, which meant that at the core of this new nation-state there would always be at least some friction between the right to free expression and censorship.[145] This has been achieved in particular through certain aspects of the country's new Basic Law, which is designed to guarantee and protect the FRG's liberal democratic basic order, the *freiheitliche demokratische Grundordnung* (FDGO), which is not only a core concept defining the FRG's constitutional order, but also the concept by which interventions by the state that would be otherwise prohibited in a liberal democracy are justified.[146] Therefore, in order to fully comprehend the delicate balance between freedom of expression and censorship that this order has created in the FRG, it is crucial to understand the peculiarities that have shaped this order in the first place.

One of these particularities of the constitution is the fact that the Basic Law is designed to make the FRG, by its very nature, a militant or defensive democracy.[147] The concept of a defensive democracy refers to a democratic state in which measures are taken to protect the very existence of the state and its democratic order, often including the suspension of otherwise inalienable rights and freedoms under certain circumstances.[148] In the case of the FRG, it is not

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[143] Kleinert, *Das Geteilte Deutschland*, 35–40; Fulbrook, *A Concise History of Germany*, 205–49.

[144] Kleinert, *Das Geteilte Deutschland*, 35–40; Fulbrook, *A Concise History of Germany*, 205–49; Donald P. Kommers and Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 3rd Edition (Durham: Duke University Press, 2012).

[145] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300.

[146] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*; Sarah Schulz, *Die Freiheitliche Demokratische Grundordnung: Ergebnis Und Folgen Eines Historisch-Politischen Prozesses* (Weilerswist: Velbrück Wissenschaft, 2019); Sarah Schulz, 'Die Freiheitliche Demokratische Grundordnung – Strafrechtliche Anwendbarkeit Statt Demokratischer Minimalkonsens', *KJ Kritische Justiz* 48, no. 3 (12 August 2015): 288–303, https://doi.org/10.5771/0023-4834-2015-3-288; Pierre Thielbörger, 'Freiheitliche Demokratische Grundordnung', in *Handwörterbuch Des Politischen Systems Der Bundesrepublik Deutschland*, ed. Uwe Andersen et al. (Wiesbaden: Springer, 2021), 322–25, https://doi.org/10.1007/978-3-658-23666-3_50.

[147] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300; Ronald Krotoszynski, 'A Comparative Perspective on the First Amendment: Free Speech, Militant Democracy, and the Primacy of Dignity as a Preferred Constitutional Value in Germany', *Tul. L. Rev.* 78 (1 January 2003): 1549; Karl Loewenstein, 'Militant Democracy and Fundamental Rights, I', *The American Political Science Review* 31, no. 3 (1937): 417–32, https://doi.org/10.2307/1948164; Miller A. Russell, 'Comparative Law and Germany's Militant Democracy', in *US National Security, Intelligence and Democracy: From the Church Committee to the War on Terror*, ed. Miller A. Russell (Abingdon: Routledge, 2008), 229–51.

[148] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300; Krotoszynski, 'A Comparative Perspective on the First Amendment'; Loewenstein, 'Militant Democracy and Fundamental Rights, I'; Russell, 'Comparative Law and Germany's Militant Democracy'.

only legislation that achieves this goal, but the Basic Law itself enshrines the nature of the state as a defensive democracy.[149] There are several articles in the constitution that enable the state to protect the FDGO. For example, Article 1 of the Basic Law states that the dignity of the individual is inalienable, which is immediately followed by other articles guaranteeing fundamental rights ranging from freedom of expression to equality before the law.[150] These articles could, of course, be merely symbolic, as is the case in many autocratic states, but they can be defended because of certain mechanisms built into the constitution. One of these mechanisms are the rights and powers given to the German Constitutional Court.[151] In other countries, such as the United States, the Supreme Court is not only the highest court of appeal, it also decides on the constitutionality of laws and court decisions.[152] In the case of the German Constitutional Court, however, this institution does not have the function of an appellate court, but focuses primarily on the interpretation of the Basic Law and any constitutional issues, and as such it has the power to decide whether both individuals and certain associations, such as political parties, are to be considered a threat to the FDGO.[153] In the case of political parties, for example, the court can dissolve these organisations, while in the case of individuals, the court can suspend a person's otherwise protected freedoms.[154] Another means by which the state protects the FDGO and actively pursues potential enemies is through the existence of domestic intelligence agencies at federal and state level, which were created through Article 73 of the Basic Law for the sole purpose of protecting the FDGO.[155] Although these agencies

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[149] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*; Krotoszynski, 'A Comparative Perspective on the First Amendment'; Loewenstein, 'Militant Democracy and Fundamental Rights, I'; Russell, 'Comparative Law and Germany's Militant Democracy'.

[150] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300; Donald Kommers, 'The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany', *Journal Articles*, 1 January 1980, https://scholarship.law.nd.edu/law_faculty_scholarship/592.

[151] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300; Gunter Kisker, 'The West German Federal Constitutional Court as Guardian of the Federal System', *Publius* 19, no. 4 (1989): 35–52.

[152] Kisker, 'The West German Federal Constitutional Court as Guardian of the Federal System'; Kommers, 'The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany'.

[153] Kisker, 'The West German Federal Constitutional Court as Guardian of the Federal System'; Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300; Kommers, 'The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany'.

[154] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300; Kommers, 'The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany'; Russell, 'Comparative Law and Germany's Militant Democracy'.

[155] Russell, 'Comparative Law and Germany's Militant Democracy'; Hans-Georg Maaßen, 'Aufgaben Und Befugnisse Des Verfassungsschutzes', in *Liber Amicorum Makoto Arai*, ed. Dagmar Coester-Waltjen, Volker Lipp, and Donovan W.M. Waters (Nomos, 2015), 517–34, https://doi.org/10.5771/9783845262017-517; Hans-Georg Maaßen, 'Terrorismus, Extremismus, Spionage: Der Bundesverfassungsschutz Vor Den Herausforderungen Einer Globalisierten Welt', *Zeitschrift Für Außen- Und Sicherheitspolitik* 10, no. 4 (1 December 2017): 429–39, https://doi.org/10.1007/s12399-017-0673-6; Matthias Schütte, 'Bundesamt Für Verfassungsschutz', in *Wörterbuch Zur Inneren Sicherheit*, ed. Hans-Jürgen Lange and Matthias Gasch

have no executive powers, they collect information on any individuals, organisations or social movements that may pose a threat to the FDGO, and this information can in turn be used by law enforcement agencies and the government to prosecute these entities through existing legal means.[156]

The other special feature of the Basic Law that guarantees the maintenance of the FDGO is the so-called eternity clause in the Basic Law, which also ensures that the FRG remains a defensive democracy.[157] The concept of an eternity clause refers to the existence of a constitution in which either all or some of the provisions of a constitution are unchangeable or only changeable under very specific circumstances.[158] In the case of the Basic Law of the FRG, the eternity clause is enshrined in Article 79, which states that several articles of the Basic Law may not be amended.[159] In particular, this clause affects Articles 1 to 20, which set out most of the basic values of the FRG. One of these is indeed Article 1, which, as mentioned above, guarantees the inalienability of human dignity.[160] The clear effect of the eternity clause in relation to these articles of the Basic Law is that they carry more than just symbolic weight,

(Wiesbaden: VS Verlag für Sozialwissenschaften, 2006), 22–26, https://doi.org/10.1007/978-3-531-90596-9_7; Bundesminister der Justiz, 'Grundgesetz Für Die Bundesrepublik Deutschland Art 73', Gesetze im Internet, accessed 18 May 2023, https://www.gesetze-im-internet.de/gg/art_73.html.

[156] Russell, 'Comparative Law and Germany's Militant Democracy'; Maaßen, 'Aufgaben Und Befugnisse Des Verfassungsschutzes'; Maaßen, 'Terrorismus, Extremismus, Spionage'; Schütte, 'Bundesamt Für Verfassungsschutz'.

[157] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 42–78; Hauke Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision: Eine Untersuchung Zu Art. 79 Abs. 3 GG Und Zur Verfassungsgebenden Gewalt Nach Dem Grundgesetz*, 948 (Berlin: dissertation.de - Verlag im Internet, 2004); Otto Ernst Kempen, 'Historische Und Aktuelle Bedeutung Der „Ewigkeitsklausel" Des Art. 79 Abs. 3 GG. Überlegungen Zur Begrenzten Verfassungsautonomie Der Bundesrepublik', *Zeitschrift Für Parlamentsfragen* 21, no. 2 (1990): 354–66; Tom Mannewitz and Wolfgang Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes', in *Das Politische System Der Bundesrepublik Deutschland*, ed. Tom Mannewitz and Wolfgang Rudzio (Wiesbaden: Springer Fachmedien, 2022), 27–48, https://doi.org/10.1007/978-3-658-39078-5_2.

[158] Kommers, 'The Jurisprudence of Free Speech in the United States and the Federal Republic of Germany', 42–78; Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Kempen, 'Historische Und Aktuelle Bedeutung Der „Ewigkeitsklausel" Des Art. 79 Abs. 3 GG. Überlegungen Zur Begrenzten Verfassungsautonomie Der Bundesrepublik'; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'.

[159] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 42–78; Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Kempen, 'Historische Und Aktuelle Bedeutung Der „Ewigkeitsklausel" Des Art. 79 Abs. 3 GG. Überlegungen Zur Begrenzten Verfassungsautonomie Der Bundesrepublik'; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'.

[160] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 42–78; Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Kempen, 'Historische Und Aktuelle Bedeutung Der „Ewigkeitsklausel" Des Art. 79 Abs. 3 GG. Überlegungen Zur Begrenzten Verfassungsautonomie Der Bundesrepublik'; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'.

as they are essentially binding and unchangeable.[161] In addition to guaranteeing fundamental rights and freedoms, the eternity clause also protects the very nature of the state that is the FRG, such as the separation of powers and the democratic nature of government in Article 20, which deals with these aspects.[162] However, there are two possibilities in the Basic Law under which even articles protected by the eternity clause can be changed. One is that the wording of the articles protected by the eternity clause may be changed, but this change may only include changes that preserve the original meaning of the articles as determined by the Constitutional Court.[163] This was done, for example, with Article 20, when the right of citizens to resist, as a last resort, any entity or action that might threaten the FDGO was added.[164] Another way in which these protected articles can be changed is by removing or amending them through the introduction of an entirely new constitution, a right enshrined in Article 146 of the Basic Law.[165] However, for a new constitution to be introduced, it would have to be approved by a majority of the German people in a democratic referendum.[166]

In practice, the constitutional reality of the FRG described above clearly provides ample opportunity for the authorities to take action against any organisation, person or material deemed to pose a threat to the FDGO. In particular, the Cold War and the rise of anti-communism throughout the Western Hemisphere not only provided a greater impetus for such action, but was also the underlying motivation for it, as between 1945 and 1990 the primary

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[161] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 42–78; Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Kempen, 'Historische Und Aktuelle Bedeutung Der „Ewigkeitsklausel" Des Art. 79 Abs. 3 GG. Überlegungen Zur Begrenzten Verfassungsautonomie Der Bundesrepublik'; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'.

[162] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 42–78; Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Kempen, 'Historische Und Aktuelle Bedeutung Der „Ewigkeitsklausel" Des Art. 79 Abs. 3 GG. Überlegungen Zur Begrenzten Verfassungsautonomie Der Bundesrepublik'; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'.

[163] Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 42–78; Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*.

[164] Josef Isensee, 'Widerstandsrecht Im Grundgesetz', in *Handbuch Politische Gewalt: Formen - Ursachen - Legitimation - Begrenzung*, ed. Birgit Enzmann (Wiesbaden: Springer, 2013), 143–62, https://doi.org/10.1007/978-3-531-18958-1_7; Bundesminister der Justiz, 'Grundgesetz Für Die Bundesrepublik Deutschland Art 20', Gesetze im Internet, accessed 18 May 2023, https://www.gesetze-im-internet.de/gg/art_20.html.

[165] Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'; Isensee, 'Widerstandsrecht Im Grundgesetz'; Bundesminister der Justiz, 'Grundgesetz Für Die Bundesrepublik Deutschland Art 146', Gesetze im Internet, 146, accessed 18 May 2023, https://www.gesetze-im-internet.de/gg/art_146.html.

[166] Möller, *Die Verfassungsgebende Gewalt Des Volkes Und Die Schranken Der Verfassungsrevision*; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'; Isensee, 'Widerstandsrecht Im Grundgesetz'; Bundesminister der Justiz, 'Grundgesetz Für Die Bundesrepublik Deutschland Art 146'.

adversary of the FDGO was for the most part seen as communism.[167] In the Federal Republic of Germany, for example, there was the *Interministerieller Ausschuß für Ost-West-Filmfragen*, a body set up in 1951 that was officially responsible for considering the admissibility of foreign films in the Federal Republic.[168] In practice, however, the committee was solely responsible for banning the import and screening of more than one hundred films, most of them from Communist countries, particularly East Germany.[169] Nevertheless, one film from Austria, *Franz Schubert - Ein Leben in zwei Sätzen*, released in 1953, was banned for the sole reason that it had been financed by the Soviet Military Bank in Vienna.[170] In addition, the *Kommunistische Partei Deutschlands* (KPD) was banned in the FRG in 1959 by a decision of the Constitutional Court in response to the threat the KPD posed to the FDGO.[171] The ban of the KPD was the only other successful ban of a political party, the other being the *Sozialistische Reichspartei* (SRP), a neo-Nazi party.[172] Last but not least, another example of censorship driven by anti-communism and Cold War related concerns was the so-called Spiegel Affair in 1962, which was a high-profile example of attempted press censorship by cracking down on the *Spiegel Magazine*.[173] In this affair, the German magazine *Der Spiegel* published a report on the military readiness of the German armed forces after an exercise in which that readiness was criticised.[174] In response to the article, not only was the *Spiegel* office searched by police, but several reporters were arrested and charged with high treason.[175] Eventually the charges were

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[167] Stephan Buchloh, *»Pervers, Jugendgefährdend, Staatsfeindlich«: Zensur in Der Ära Adenauer Als Spiegel Des Gesellschaftlichen Klimas* (Frankfurt: Campus Verlag, 2002), 287–314.
[168] Andreas Kötzing, '"Not Approved for Screening": Political Film Censorship in West Germany by the Interministerieller Ausschuss Für Ost/West-Filmfragen', *Research in Film and History*, no. New Approaches (1 July 2020): 1–11, https://doi.org/10.25969/mediarep/14816; Stefan Volk, 'Verbotene Filme: Geheime Zensur Im Dienst Der Bundesregierung', *Spiegel*, 7 July 2014, https://www.spiegel.de/geschichte/verbotene-filme-geheime-zensur-im-dienst-der-bundesregierung-a-973414.html.
[169] Kötzing, '"Not Approved for Screening"'; Volk, 'Verbotene Filme'.
[170] Buchloh, *Pervers, Jugendgefährdend, Staatsfeindlich*, 183–286.
[171] Krotoszynski, 'A Comparative Perspective on the First Amendment'; Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300.
[172] Krotoszynski, 'A Comparative Perspective on the First Amendment'; Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 285–300.
[173] Ronald F. Bunn, 'The Spiegel Affair and the West German Press: The Initial Phase', *Public Opinion Quarterly* 30, no. 1 (1966): 54, https://doi.org/10.1086/267381; Taylor, *Exorcising Hitler*, 345–84; Smith, *Handbook of Modern German History*, 593–752; Thomas Birkner and Sebastian Mallek, 'The Spiegel Affair, 1962: The Incident That Changed German Journalism History and Mediatized Politics', in *Critical Incidents in Journalism* (Routledge, 2020).
[174] Bunn, 'The Spiegel Affair and the West German Press'; Taylor, *Exorcising Hitler*, 345–84; Smith, *Handbook of Modern German History*, 395–752; Birkner and Mallek, 'The Spiegel Affair, 1962'.
[175] Bunn, 'The Spiegel Affair and the West German Press'; Taylor, *Exorcising Hitler*, 345–84; Smith, *Handbook of Modern German History*, 395–752; Birkner and Mallek, 'The Spiegel Affair, 1962'.

dropped, but this affair is yet another example of the lengths to which the FRG was prepared to go in its pursuit of anti-communism.[176]

However, the FRG's ability to censor cultural material, such as literary works and films, in the period 1949-1990 went beyond material that directly threatened the FDGO. In particular, socially and culturally sensitive topics such as material relating to the Nazi past and pornography were not infrequently sanctioned by the government during this period. For example, in the so-called Mephisto decision of 1971, the Constitutional Court ruled that certain fundamental freedoms, such as the right to free artistic expression, could be restricted in practice if they conflicted with or violated other fundamental rights.[177] The case concerned an author's constitutional complaint to the Constitutional Court against an earlier decision banning the publication of his book Mephisto.[178] The book loosely depicted, under a pseudonym, the life of Gustaf Gründgens, an actor who, during the Nazi regime, had a very close relationship with the government and cultivated this relationship in order to further his own career.[179] The actor's adopted son then sued the author on the grounds that the book defamed the actor's image and dignity, and the Constitutional Court, despite dissenting opinions, ultimately agreed.[180] In addition to being a rather important and high-profile case that touches on core constitutional values, it also shows that cultural expression in the Federal Republic of Germany has been restricted or outright censored if, for example, it violated either other existing norms or laws.

Furthermore, when certain works were deemed to be a threat to the general welfare of society, particularly the welfare of young people, they could also be sanctioned.[181] It is for this reason alone, that the *Bundesprüfstelle für jugendgefährdende Schriften* (BPjS) existed in the Federal Republic of Germany as an authority with the power either to restrict the distribution and advertising of certain material by means of legally binding age restrictions or to ban the

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[176] Bunn, 'The Spiegel Affair and the West German Press'; Taylor, *Exorcising Hitler*, 345–84; Smith, *Handbook of Modern German History*, 395–752; Birkner and Mallek, 'The Spiegel Affair, 1962'.
[177] Krotoszynski, 'A Comparative Perspective on the First Amendment'.
[178] Krotoszynski.
[179] Krotoszynski.
[180] Krotoszynski.
[181] It should be noted that although this paragraph describes this type of sanctioning in relation to the period 1949-1990 and as such refers to everything described in the past tense, the procedure and the institution described in the paragraph still exists today, despite some changes. For example, the Bundesprüfstelle für jugendgefährdende Schriften (BPjS) is now known as the Bundeszentrale für Kinder- und Jugendmedienschutz (BzKJ).

work altogether.[182] This was accomplished by the authority through a process often referred to as indexing, whereby if the authority or another authority with the right to report to the BPjS felt that a work needed to be examined, if it was deemed potentially harmful, it would be placed on a particular list which would either restrict the work or initiate a process to ban it outright.[183] However, even if a work is only indexed and restricted in such a way that it can still be accessed by adults, this can still have enormous negative consequences for a work and its chances of success, as such works, for example, are subject to considerable restrictions on advertising.[184] Moreover, in the case of books, for instance, such a work may only be sold under very restrictive conditions, such as the book being accessible only over the counter through a shop assistant, rather than being on open display in a shop.[185] These consequences have the indirect effect of restricting the circulation of cultural productions intended exclusively for adults.[186] Another way in which material can be banned in the FRG is either through civil proceedings, as in the case of Mephisto, or through the filing of an application by a public prosecutor. An example of the latter was the book Opus Pistorum by the American author Henry Miller, which was declared illegal in 1986 and about 700 police officers confiscated copies of the book on the grounds of pornographic content, a measure that was later overturned but was a rather high-profile incident at the time.[187] The example of Opus Pistorum is just one of many, as in the

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[182] P. C. Mayer-Tasch, 'Zur Frage Der Verfassungswidrigkeit Der Bundesprüfstelle Für Jugendgefährdende Schriften', *JuristenZeitung* 24, no. 9 (1969): 284–87; Achim Barsch, 'Literaturtheoretische Implikationen des rechtlichen Jugendmedienschutzes in der Indizierungspraxis der Bundesprüfstelle für jugendgefährdende Schriften unter Berücksichtigung der Medienwirkungsforschung' 21, no. 1 (1 January 1996): 128–65, https://doi.org/10.1515/iasl.1996.21.1.128; Jörg Einecke, 'Über Die Tätigkeit Der Bundesprüfstelle Für Jugendgefährdende Schriften. Eine Untersuchung Unter Dem Aspekt Des Kunstschutzes', *Zeitschrift Für Literaturwissenschaft Und Linguistik* 2, no. 6 (1 January 1972): 45–63; Michael Custodis, 'Tadel Verpflichtet. Indizierung von Musik Und Ihre Wirkung', in *No Time for Losers: Charts, Listen Und Andere Kanonisierungen in Der Populären Musik*, ed. Dietrich Helms and Thomas Phleps (Bielefeld: transcript Verlag, 2008), 161–72, https://doi.org/10.1515/9783839409831-011.

[183] Mayer-Tasch, 'Zur Frage Der Verfassungswidrigkeit Der Bundesprüfstelle Für Jugendgefährdende Schriften'; Barsch, 'Literaturtheoretische Implikationen des rechtlichen Jugendmedienschutzes in der Indizierungspraxis der Bundesprüfstelle für jugendgefährdende Schriften unter Berücksichtigung der Medienwirkungsforschung'; Einecke, 'Über Die Tätigkeit Der Bundesprüfstelle Für Jugendgefährdende Schriften. Eine Untersuchung Unter Dem Aspekt Des Kunstschutzes'; Custodis, 'Tadel Verpflichtet. Indizierung von Musik Und Ihre Wirkung'.

[184] Barsch, 'Literaturtheoretische Implikationen des rechtlichen Jugendmedienschutzes in der Indizierungspraxis der Bundesprüfstelle für jugendgefährdende Schriften unter Berücksichtigung der Medienwirkungsforschung'; Custodis, 'Tadel Verpflichtet. Indizierung von Musik Und Ihre Wirkung'.

[185] Barsch, 'Literaturtheoretische Implikationen des rechtlichen Jugendmedienschutzes in der Indizierungspraxis der Bundesprüfstelle für jugendgefährdende Schriften unter Berücksichtigung der Medienwirkungsforschung'.

[186] Barsch; Custodis, 'Tadel Verpflichtet. Indizierung von Musik Und Ihre Wirkung'.

[187] 'Erotische Groteske', *Spiegel*, 15 February 1987, https://www.spiegel.de/kultur/erotische-groteske-a-bcf2785a-0002-0001-0000-000013522544.

period 1949-1990 material containing erotic and pornographic material was often subject to restrictions and bans.[188]

Post Re-Unification 1990-2015: Contemporary Germany and the Emergence of the Internet

Following the creation of the FRG on 23 May 1949, the German Democratic Republic (GDR) was created from the Soviet Occupation Zone on 7 October 1949.[189] The creation of the latter German state created a status quo that effectively divided Germany into western and eastern halves until the end of the Cold War, with a more liberal democratic government in the western state and a Soviet communist state in the eastern state.[190] However, this arrangement finally came to an end at the end of the Cold War when the GDR was dissolved on 3 October 1990 and the states of the GDR joined the FRG, thus reuniting Germany as one state.[191] Rather than creating a new third state, the GDR was simply absorbed into the FRG, and there were no major changes to the political or constitutional order of the reunited FRG.[192] The only significant change to the German constitution was the repeal of Article 23, by which the reunification process was ultimately implemented, after the completion of reunification, as this not only made it clear that Germany had been fully reunited, but also served to reassure other European powers that there would be no future territorial claims by Germany.[193]

The fact that the reunification of Germany in 1990 did not lead to any significant changes in the country's constitutional order meant that not much changed in respect to the balancing act of free expression and censorship, despite the emergence of new trends. One such new trend was an increase in the number of right-wing and Nazi rock bands from the 1990s onwards.[194] One notorious band was Landser, a neo-Nazi extreme right-wing rock band that

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[188] Peter Stolle, 'Die Harke Im Garten Der Lüste', *Der Spiegel*, 9 February 1986, https://www.spiegel.de/kultur/die-harke-im-garten-der-lueste-a-4813eef1-0002-0001-0000-000013517357.

[189] Kleinert, *Das Geteilte Deutschland*, 1–46; Fulbrook, *A Concise History of Germany*, 205–49; MacDonogh, *After the Reich*, 596–546; Smith, *Handbook of Modern German History*, 593–639.

[190] Kleinert, *Das Geteilte Deutschland*, 1–46; Fulbrook, *A Concise History of Germany*, 205–49; MacDonogh, *After the Reich*, 596–546; Smith, *Handbook of Modern German History*, 593–639.

[191] Kleinert, *Das Geteilte Deutschland*, 519–90; Fulbrook, *A Concise History of Germany*, 250–69; Smith, *Handbook of Modern German History*, 753–74.

[192] Kleinert, *Das Geteilte Deutschland*, 519–90; Fulbrook, *A Concise History of Germany*, 250–69; Smith, *Handbook of Modern German History*, 753–74.

[193] Smith, *Handbook of Modern German History*, 753–74; Kommers and Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 622–712; Mannewitz and Rudzio, 'Die Antitotalitäre Demokratie Des Grundgesetzes'.

[194] Uwe Klußmann, '»Die Sind Total Gestört«', *Der Spiegel*, 20 July 1997, https://www.spiegel.de/politik/die-sind-total-gestoert-a-0362056a-0002-0001-0000-000008745274; Martin Langebach and Jan Raabe, 'Zwischen Freizeit, Politik Und Partei: RechtsRock', in *Strategien Der Extremen Rechten: Hintergründe – Analysen – Antworten*, ed. Stephan Braun, Alexander Geisler, and Martin Gerster (Wiesbaden: Springer VS, 2009), 163–88, https://doi.org/10.1007/978-3-531-91708-5_10; Thomas Naumann, *Rechtsrock Im Wandel: Eine Textanalyse von Rechtsrock-Bands* (Hamburg: Diplomica Verl, 2009), 12–42.

glorified Nazism and associated individuals in the majority of its songs, as well as making racist references to minority groups.[195] For this reason, the authorities declared the group a threat to the FDGO and not only declared the band an illegal organisation, thereby outlawing it, but also one of its members received a prison sentence.[196] This was the first time in the history of the FRG that a band had been declared illegal.[197] However, despite such cases of hateful and harmful cultural production, the intervention of the German state and its authorities in the case of other cultural media has resumed in a manner similar to that before reunification, when either certain norms or laws are deemed to have been violated, with the only difference that now different forms of cultural expression were more frequently sanctioned. For example, the BPjS and its later successor, the *Bundesprüfstelle für jugendgefährdende Medien* (BPjM), resumed indexing films deemed too violent and songs by other artists, particularly rap artists are frequently targeted.[198] However, one new cultural medium that emerged after reunification and whose subject to monitoring and censorship caused considerable societal discussion and controversy were video games.[199] This issue even led the some game publisher such as Electronic Arts (EA) to sue the BPjM for indexing a sequel to its strategy game franchise Command and Conquer in 2003.[200] Interestingly, the example of the indexing of the Command and Conquer game in 2003 demonstrates once again how the sanctioning of cultural expression was highly dependent on the social and cultural sensitivities of the time, as the game was primarily indexed for allegedly glorifying war because it featured contemporary warfare and

[195] Naumann, *Rechtsrock Im Wandel*, 70–87; Langebach and Raabe, 'Zwischen Freizeit, Politik Und Partei'; Christian Dornbusch and Jan Raabe, 'RechtsRock Das Modernisierungsmoment Der Extremen Rechten', in *Rechte Netzwerke — Eine Gefahr*, ed. Stephan Braun and Daniel Hörsch (Wiesbaden: VS Verlag für Sozialwissenschaften, 2004), 123–31, https://doi.org/10.1007/978-3-322-81009-0_11.

[196] Langebach and Raabe, 'Zwischen Freizeit, Politik Und Partei'; Dornbusch and Raabe, 'RechtsRock Das Modernisierungsmoment Der Extremen Rechten'.

[197] 'Prozess Gegen Neonazi-Rocker', *Spiegel*, 25 May 2003, https://www.spiegel.de/politik/prozess-gegen-neonazi-rocker-a-e0f8ec8c-0002-0001-0000-000027232440; Süddeutsche Zeitung, 'Neonazi-Band "Landser" Verurteilt', *Süddeutsche Zeitung*, 17 May 2010, https://www.sueddeutsche.de/politik/volksverhetzung-neonazi-band-landser-verurteilt-1.779593.

[198] Custodis, 'Tadel Verpflichtet. Indizierung von Musik Und Ihre Wirkung'; Daniel Hajok, 'Musik Im Leben Jugendlicher Und Die Perspektive Des Jugendmedienschutzes', *Jugend Medien Schutz-Report* 36, no. 1 (2013): 2–6, https://doi.org/10.5771/0170-5067-2013-1-2.

[199] Daniel Hajok, Sven Jöckel, and Jan Lukas Neuerburg, 'Computerspiele Im Spiegel Der Zeit. Gesellschaftliche Diskurse Und Handeln Des Jugendmedienschutzes', *Jugend Medien Schutz-Report* 40, no. 4 (2017): 2–6, https://doi.org/10.5771/0170-5067-2017-4-2; Sven Jöckel, *Computerspiele: Nutzung, Wirkung Und Bedeutung*, Medienwissen Kompakt (Wiesbaden: Springer VS, 2018); Olaf Zimmermann and Theo Geissler, eds., *Streitfall Computerspiele: Computerspiele Zwischen Kultureller Bildung, Kunstfreiheit Und Jugendschutz* (Berlin: Deutscher Kulturrat, 2008).

[200] 'Spieß Umgedreht: EA Klagt Gegen "Generals"-Indizierung', *Stern.De*, 5 May 2003, https://www.stern.de/digital/computer/computerspiele-spiess-umgedreht--ea-klagt-gegen--generals--indizierung-3351246.html.

terrorists in the game, which was too provocative for BPjM officials given the context of the Iraq war and recent terrorism-related events at the time.[201]

However, while the emergence of new media of expression such as video games certainly presented its own challenges, the emergence of the internet after German reunification as an entirely new channel for the exchange and dissemination of information was undoubtedly by far the greatest challenge of the time. The rationale for this is that in the early years of the internet's mass adoption, most previously existing mechanisms and institutions for monitoring and regulating expression were either inadequate or simply unable to deal with the presence of illegal content on the internet for in hindsight rather evident reasons. For example, it is quite difficult to effectively prohibit or block access to illegal content on the internet on a mass scale. Furthermore, it is often the case that information and content on the internet is stored on servers outside of the country, which made it even more difficult to take action. Moreover, even in cases where it was possible to take action in the early days of the internet, another reality of the internet is that information and content on the internet is rapidly duplicated, so that even if the original source of the problematic content in question is taken down, it may already be present on other platforms far beyond the reach of the German authorities. Last but not least, while there were already laws in place, albeit difficult to apply, for illegal content such as incitement to violence, there was also a great deal of uncertainty at the time as to what, if anything, should be done about content deemed harmful, such as misinformation.

The emergence of the internet, with its many challenges for government, has also been a tricky issue for policymakers and regulators, as the legislation governing the internet in Germany has had to change several times over the last few decades. Initially, until 2007, the *Teledienstegesetz*, the *Teledienstedatenschutzgesetz* and the *Mediendienste-Staatsvertrag* provided the basic legislation for most of the legal rules and definitions relating to the internet.[202] These laws and agreements, along with a few others, were responsible for defining and regulating all matters relating to the internet that were not already, or at least not sufficiently, covered by pre-existing legislation.[203] One of the reasons for such a complex

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[201] 'Spieß Umgedreht'.

[202] Gerald Spindler, 'Das Neue Telemediengesetz – Konvergenz in Sachten Schritten', *Computer Und Recht* 23, no. 4 (1 April 2007): 239–45, https://doi.org/10.9785/ovs-cr-2007-239; Stefan Mückl, 'Die Konvergenz Der Medien Im Lichte Des Neuen Telemediengesetzes', *JuristenZeitung* 62, no. 22 (2007): 1077–84; Stephanie Iraschko-Luscher, 'Das Neue Telemediengesetz', *Datenschutz Und Datensicherheit - DuD* 31, no. 8 (1 July 2007): 608–10, https://doi.org/10.1007/s11623-007-0203-0.

[203] Spindler, 'Das Neue Telemediengesetz – Konvergenz in Sachten Schritten'; Mückl, 'Die Konvergenz Der Medien Im Lichte Des Neuen Telemediengesetzes'; Iraschko-Luscher, 'Das Neue Telemediengesetz'.

policy arrangement was the fact that in Germany certain parts of media and telecommunications regulation are the responsibility of the Länder, while others are regulated by the federal government.[204] However, it was in 2007 that most of the legislation relating to the internet was consolidated with the *Telemediengesetz* (TMG), which came into force that year, replacing the three aforementioned pieces of legislation and resolving some of the issues with the previous legislative status quo.[205] One particular problem with the previous regime was that there was considerable confusion in legal disputes as to which medium or service on the internet was to be classified as a teleservice or a media service, which was complicated by the fact that there was a separate law for each.[206] Therefore, the TMG, in combination with the aforementioned laws, made the law easier to apply in practice.[207] Nevertheless, whereas the TMG certainly simplified and improved things on some fronts, the TMG was still considerably insufficient in some other areas. One example of this was the at the time considerable presence of Nazi and extreme right-wring material on platforms such as YouTube which companies such as YouTube were meant to take down as per the TMG, but in practice was a requirement that could not be entirely fulfilled.[208]

However, one particular issue that attracted considerable public attention at the time was the presence of child pornography and exploitation material on the internet, which led to an initiative to amend the TMG.[209] This initiative was the first real attempt by the German government to take an extraordinary measure to tackle the problem of illegal content, in this

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[204] Spindler, 'Das Neue Telemediengesetz – Konvergenz in Sachten Schritten'.
[205] Spindler; Mückl, 'Die Konvergenz Der Medien Im Lichte Des Neuen Telemediengesetzes'; Iraschko-Luscher, 'Das Neue Telemediengesetz'.
[206] Spindler, 'Das Neue Telemediengesetz – Konvergenz in Sachten Schritten'; Mückl, 'Die Konvergenz Der Medien Im Lichte Des Neuen Telemediengesetzes'; Iraschko-Luscher, 'Das Neue Telemediengesetz'.
[207] Spindler, 'Das Neue Telemediengesetz – Konvergenz in Sachten Schritten'; Mückl, 'Die Konvergenz Der Medien Im Lichte Des Neuen Telemediengesetzes'; Iraschko-Luscher, 'Das Neue Telemediengesetz'.
[208] Benedikt von Imhoff, 'Nazi-Videos Auf YouTube; Jugendschützer Oft Machtlos', *Stuttgarter Nachrichten*, 29 August 2007, Nexis Uni; 'Jugendschützer Oft Machtlos: Nazi-Videos Auf Youtube Entdeckt', *Handelsblatt*, accessed 25 February 2023, https://www.handelsblatt.com/technik/it-internet/jugendschuetzer-oft-machtlos-nazi-videos-auf-youtube-entdeckt/2854420.html; Kurt Sagatz, 'Riefenstahl Und Rechtsrock; Die Videoplattform Youtube Bekommt Rechte Propaganda Nicht in Den Griff', *Tagesspiegel*, 21 November 2007, Nexis Uni.
[209] Jörg Lessing, 'Gequält Und Gefoltert: Im Netz von Perversen; Familienministerin von Der Leyen Will Kinderporno-Seiten Im Internet Schließen Lassen', *Stuttgarter Nachrichten*, 21 November 2008, Nexis Uni; Christian Rath, 'Stoppschild Im Netz Kommt; Ministerin von Der Leyen Konkretisiert Ihre Pläne Gegen Kinderpornografie. Schon Melden Sich Innenpolitiker Mit Dem Wunsch Zu Wort, Die Sperrung von Seiten Auch Auf Andere Bereiche Wie Glücksspiele Oder Rassistische Inhalte Auszuweiten', *Tagesspiegel*, 2 February 2009, Nexis Uni; Oberhessische Zeitung, 'Stopp-Schild Statt Kinder-Pornos; Leyen Plant Filter Im Internet - Eindeutige Suche in Deutschland Bereits Strafbar', *Oberhessische Zeitung*, 16 January 2009, Nexis Uni; Cordula Eubel, Kurt Sagatz, and Juliane Schäuble, 'Bis Zur Sperre; Ministerin von Der Leyen Will Gegen Kinderpornografie Im Internet Vorgehen. Wie Sinnvoll Sind Ihre Vorschläge?', *Tagesspiegel*, 17 January 2009, Nexis Uni; Agence France Presse, 'FDP Kritisiert Gesetzentwurf Zur Sperrung von Kinderporno-Seiten; - Piltz Sieht Gefahr Genereller Zensur Im Internet', *Agence France Presse*, 9 April 2009, Nexis Uni.

case child pornography, on the internet, beyond the means offered by existing laws such as seeking prosecution of individual hosting or access such material. Nonetheless, in addition to being the first extraordinary effort by the German government to intervene on the internet, and in relation to the purpose of this chapter, this effort and the opposition it faced also illustrates that the internet was a highly contested space at the time, where both existing and new measures that could be seen as censorship were met with considerable resistance. At first the plan was to execute this initiative by directly making the given amendments to the TMG that would curb the circulation of and access to child pornography on the internet by blocking access to internet platforms containing such material.[210] Nevertheless, following considerable concern and opposition, the decision was made to instead accomplish this objective by introducing instead a separate law named the *Gesetz zur Erschwerung des Zugangs zu kinderpornographischen Inhalten in Kommunikationsnetzen*, commonly referred to as the *Zugangserschwerungsgesetz*.[211] This effort was spearheaded by Ursula von der Leyen, who was the Federal Minister for Family Affairs at that time.[212] The *Zugangserschwerungsgesetz* itself was drafted and passed by the Bundestag in 2009, and the law was justified and framed on the basis of being a solution to the problem of child pornography on the internet.[213] In practice, the law enabled the *Bundeskriminalamt* (BKA) to index and block access to platforms

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[210] Agence France Presse, 'FDP Kritisiert Gesetzentwurf Zur Sperrung von Kinderporno-Seiten; - Piltz Sieht Gefahr Genereller Zensur Im Internet'.

[211] Dieter Frey and Matthias Rudolph, 'Zugangserschwerungsgesetz: Schnellschuss Mit Risiken Und Nebenwirkungen', *Computer Und Recht* 25, no. 10 (1 October 2009): 644–51, https://doi.org/10.9785/ovs-cr-2009-644; Patrick Beuth, 'Eigenes Gesetz Für Kinderporno-Sperren; Nach Kritik von Netzaktivisten Ändern SPD Und Union Ihre Pläne Für Blockaden Im Internet', *Frankfurter Rundschau*, 17 June 2009, Nexis Uni; Felix Berth, 'Sperrstunde Im Internet; Ein Neues Gesetz Erschwert Den Zugang Zu Kinderpornographie - Die Hürden Sind Aber Leicht Zu Umgehen', *Süddeutsche Zeitung*, 18 June 2009, Nexis Uni; Aachener Zeitung, 'Jetzt Kommt Das „Zugangserschwerungsgesetz"; So Heißt Die Neue Waffe Im Kampf Gegen Kinderpornografie Im Internet. Koalition Einigt Sich.', *Aachener Zeitung*, 17 June 2009, Nexis Uni; Christian Rath, 'Erst Das Gesetz, Dann Der Protest; INTERNET Der Bundestag Wird Die Netzsperren Morgen Beschließen. Die von 130.000 Kritikern Eingereichte Petition Berät Das Parlament Dagegen Erst Nach Der Wahl', *Tageszeitung*, 17 June 2009, Nexis Uni; Christian Rath, 'Sperrlisten Werden Kommen; KINDERPORNOSEITEN Die Große Koalition Verständigt Sich Auf Ein Unabhängiges Kontrollgremium Beim Datenschutzbeauftragten, Das BKA-Sperrlisten Regelmäßig Prüfen Soll. Zensurgegner Erhalten Ihre Kritik Aufrecht Und Lehnen Das Gesetz Weiterhin Ab', *Tageszeitung*, 15 June 2009, Nexis Uni.

[212] Frey and Rudolph, 'Zugangserschwerungsgesetz'; Lessing, 'Gequält Und Gefoltert: Im Netz von Perversen; Familienministerin von Der Leyen Will Kinderporno-Seiten Im Internet Schließen Lassen'; Rath, 'Stoppschild Im Netz Kommt; Ministerin von Der Leyen Konkretisiert Ihre Pläne Gegen Kinderpornografie. Schon Melden Sich Innenpolitiker Mit Dem Wunsch Zu Wort, Die Sperrung von Seiten Auch Auf Andere Bereiche Wie Glücksspiele Oder Rassistische Inhalte Auszuweiten'; Oberhessische Zeitung, 'Stopp-Schild Statt Kinder-Pornos; Leyen Plant Filter Im Internet - Eindeutige Suche in Deutschland Bereits Strafbar'; Eubel, Sagatz, and Schäuble, 'Bis Zur Sperre; Ministerin von Der Leyen Will Gegen Kinderpornografie Im Internet Vorgehen. Wie Sinnvoll Sind Ihre Vorschläge?'

[213] Frey and Rudolph, 'Zugangserschwerungsgesetz'; Marie-Theres Tinnefeld, 'Stopp-Schilder Im Internet', *Datenschutz Und Datensicherheit - DuD* 34, no. 1 (1 January 2010): 15–19, https://doi.org/10.1007/s11623-010-0005-7.

hosting such content, if these platforms did not remove the content within a given timeframe.[214] In the event of such a block, the link to the platform would redirect users to a warning page from the BKA, informing users that the site had been blocked by the government due to the presence of child pornography on the platform.[215]

Despite being framed and justified as a means of tackling the serious problem of child pornography on the internet, the law received an overwhelmingly negative response from virtually all quarters. To start with, the scientific research service of the *Bundestag*, described the proposed law in 2009 as constitutionally questionable, one of the reasons for which was the fact that the intervention proposed by the law was considered to be unjustified because it was disproportionate in its practical application.[216] However, the criticism from civil society was no less severe, as there were several serious concerns with the proposed law. For example, the law was seen by many within civil society as nothing more than a virtue-signalling exercise by the government of the day to pretend that something serious was being done to address the problem, without actually doing anything meaningful.[217] This criticism was also echoed at the time by members from the opposition one of which even called the initiative as a 'populistic.'[218] In fact, some even accused the government of enabling further exploitation of children, as simply blocking websites does not solve the problem and by not actively pursuing the complete

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[214] Frey and Rudolph, 'Zugangserschwerungsgesetz'; Tinnefeld, 'Stopp-Schilder Im Internet'.

[215] Frey and Rudolph, 'Zugangserschwerungsgesetz'; Tinnefeld, 'Stopp-Schilder Im Internet'.

[216] Günter Pursch and Verena Bär, 'Sperrverfügung Gegen Internet-Provider' (Wissenschaftliche Dienste des Deutschen Bundestages, 27 January 2009), https://web.archive.org/web/20090219093928/http://www.ccc.de/press/releases/2009/20090212/bundestag_filter-gutachten.pdf; Christiane Schulzki-Haddouti, 'Gutachten: Rechtliche Bedenken Gegen Internet-Sperren', *Heise Online*, 8 February 2009, https://www.heise.de/newsticker/meldung/Gutachten-Rechtliche-Bedenken-gegen-Internet-Sperren-206459.html.

[217] Marc Heckert, 'Sperrlisten Stoßen Auf Proteste; Harsche Kritik an Einführung von Internetfiltern Gegen Kinderpornografie: Wirkungslos, Lückenhaft, Grundgesetzwidrig. Bürgerrechtler Warnen Vor Staatlicher Überwachung. Bundestags-Petition.', *Aachener Zeitung*, 5 May 2009, Nexis Uni; Marc Heckert, 'Aufruhr Und Zensurvorwürfe; Die Große Koalition Einigt Sich Auf Einen Gesetzentwurf Zu Internetsperren Gegen Kinderpornoseiten. Im World Wide Web Gibt Es Wütende Reaktionen. Kritiker Sprechen von Alibipolitik Im Wahlkampfjahr.', *Aachener Nachrichten*, 17 June 2009, Nexis Uni; Alvar Freude, 'Verfolgen Sie Die Täter, Nicht Das Internet!', Arbeitskreis gegen Internet-Sperren und Zensur (AK Zensur), 25 March 2009, https://ak-zensur.de/2009/03/fitug-pm-taeter-verfolgen.html; Alvar Freude, 'Löschen Statt Verstecken: Es Funktioniert!', Arbeitskreis gegen Internet-Sperren und Zensur (AK Zensur), 27 May 2009, https://ak-zensur.de/2009/05/loeschen-funktioniert.html; Alvar Freude, 'Kinderporno-Server Abschalten - Internetsperren Sind Wirkungsloser Aktivismus', Arbeitskreis gegen Internet-Sperren und Zensur (AK Zensur), 16 April 2009, https://ak-zensur.de/2009/04/kinderporno-server-abschalten.html; Alvar Freude, 'AK Zensur Fordert: Täter Verfolgen Statt Grundrechte Beugen - Arbeitskreis Gegen Internet-Sperren Und Zensur (AK Zensur)', Arbeitskreis gegen Internet-Sperren und Zensur (AK Zensur), 22 April 2009, https://ak-zensur.de/2009/04/taeter-verfolgen.html; Trotz Allem e.V., 'Löschen Statt Sperren -Trotz Allem e.V.', Trotz Allem e.V., 8 January 2010, https://web.archive.org/web/20100108082304/http://www.trotzallem.de/loeschen-statt-sperren.html.

[218] Schweizerische Depeschenagentur AG, 'Deutsche Opposition Kritisiert Gesetz Gegen Kinderporno- Seiten', 4 May 2009, Nexis Uni.

removal of such platforms and improved prosecution of individuals involved, nothing of substance is being done.[219] Ultimately, some of this criticism proved to be justified, as even the German interior minister, Wolfgang Schäuble, later admitted in 2009 that the law had at least in part been used to instrumentalise the fight against child pornography for electoral purposes.[220]

Another major concern was that in practice the law would create the infrastructure and legal precedent for significant censorship on the internet in the future, especially as the law was rather vaguely worded in its proposed form and essentially gave the BKA the executive power to place even potentially non-compliant websites on its block list without any oversight.[221] This was a particular concern of the *Freie Demokratische Partei* (FDP), which was particularly worried about the fact that the law was anchored in the existing TMG framework rather than being introduced as a stand-alone law.[222] As noted above, the government attempted to address this concern by introducing the *Zugangserschwerungsgesetz* as a stand-alone piece of legislation focused exclusively on the issue of child pornography, but even this change in strategy did not in itself mean that the law could not technically have been extended to other areas at a later date.[223] These concerns by opponents to the law essentially amounted to active fears that the law would not only violate several constitutionally protected freedoms, such as Article 5, which refers to freedom of information, but essentially create the foundations for an internet filter mechanism that could be utilised in the future for more widespread censorship.[224] Such was the concern of many in civil society that not only a case filed with the Constitutional

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[219] Heckert, 'Aufruhr Und Zensurvorwürfe'; Freude, 'Verfolgen Sie Die Täter, Nicht Das Internet!'; Freude, 'Löschen Statt Verstecken: Es Funktioniert!'; Freude, 'Kinderporno-Server Abschalten - Internetsperren Sind Wirkungsloser Aktivismus'; Freude, 'AK Zensur Fordert: Täter Verfolgen Statt Grundrechte Beugen - Arbeitskreis Gegen Internet-Sperren Und Zensur (AK Zensur)'; Trotz Allem e.V., 'Löschen Statt Sperren -Trotz Allem e.V.'; 'Politiker-Pläne: Heftige Proteste Gegen Sperrungen Im Internet', *NDR*, accessed 26 February 2023, https://www.ndr.de/fernsehen/sendungen/zapp/leyen134.html.

[220] Ole Reißmann, 'FDP-Sieg Bei Bürgerrechten: Stoppschild Für Zensursula', *Spiegel*, 16 October 2009, https://www.spiegel.de/netzwelt/netzpolitik/fdp-sieg-bei-buergerrechten-stoppschild-fuer-zensursula-a-655565.html; 'Stoppschilder Im Internet: Schäuble Räumt Fehler Bei Netzsperren Ein', *Spiegel*, 10 October 2009, https://www.spiegel.de/netzwelt/netzpolitik/stoppschilder-im-internet-schaeuble-raeumt-fehler-bei-netzsperren-ein-a-654424.html.

[221] 'Politiker-Pläne'; Stefan Krempl, 'Familienministerin Kämpft an Allen Fronten Für Kinderporno-Sperren', *Heise Online*, 12 February 2009, https://www.heise.de/newsticker/meldung/Familienministerin-kaempft-an-allen-Fronten-fuer-Kinderporno-Sperren-195180.html.

[222] Agence France Presse, 'FDP Kritisiert Gesetzentwurf Zur Sperrung von Kinderporno-Seiten; - Piltz Sieht Gefahr Genereller Zensur Im Internet'.

[223] Rath, 'Sperrlisten Werden Kommen; KINDERPORNOSEITEN Die Große Koalition Verständigt Sich Auf Ein Unabhängiges Kontrollgremium Beim Datenschutzbeauftragten, Das BKA-Sperrlisten Regelmäßig Prüfen Soll. Zensurgegner Erhalten Ihre Kritik Aufrecht Und Lehnen Das Gesetz Weiterhin Ab'; Rath, 'Erst Das Gesetz, Dann Der Protest; INTERNET Der Bundestag Wird Die Netzsperren Morgen Beschließen. Die von 130.000 Kritikern Eingereichte Petition Berät Das Parlament Dagegen Erst Nach Der Wahl'.

[224] Schulzki-Haddouti, 'Gutachten'.

Court, but an online petition to the Bundestag was created, which gathered over one hundred thousand signatures and is in fact still the second most signed online petition submitted to German Parliament to date.[225] However, despite considerable opposition, including even initial reluctance from the Federal President to sign the *Zugangserschwerungsgesetz* into law, the law was eventually passed and adopted.[226] At first, the law was to be reviewed and possibly allowed to expire in 2012, but shortly after the law was passed, the BKA was instructed not to create the required blocking lists, thus preventing the law from being applied.[227] Ultimately, the law was repealed in 2011 and the new coalition government decided to focus its efforts on removing and deleting rather than blocking such content.[228]

Conclusion

This chapter has provided an overview of the history of the delicate balancing act between freedom of expression and censorship in post-war Germany. It has done so by tracing the emergence of the current order in the way interventions in freedom of expression have been handled in Germany since the end of the Second World War in 1945. Following the collapse of Nazi Germany, the first coordinated intervention in the realm of freedom of expression in post-war Germany was undertaken by the Allied powers occupying the defeated country as part of a wider effort to de-Nazify the country and eradicate all remnants of Nazism. During this period, until the creation of the Federal Republic of Germany in 1949, each of the Allied powers pursued this goal differently. The American military administration, for example, retained direct control over public expression in its zone of control through an agency called the Information Control Division (ICD). Later, when it was decided to create a new sovereign democratic German state out of the Western zones of occupation, it was decided that this new

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[225] 'Verfassungsbeschwerde: Sperrlisten-Gegner Rufen Höchstes Gericht An', *Spiegel*, 23 February 2011, https://www.spiegel.de/netzwelt/netzpolitik/verfassungsbeschwerde-sperrlisten-gegner-rufen-hoechstes-gericht-an-a-747222.html; Bundestag, 'Keine Indizierung Und Sperrung von Internetseiten Vom 22.04.2009', Deutscher Bundestag, accessed 26 February 2023, https://epetitionen.bundestag.de/petitionen/_2009/_04/_22/Petition_3860.nc.html.

[226] 'Köhler Verweigert Unterschrift Fürs Internetsperren-Gesetz', *Spiegel*, 28 November 2009, https://www.spiegel.de/spiegel/vorab/a-663991.html; 'Köhler Unterzeichnet Gesetz Zur Internetsperre', *Zeit*, 17 February 2010, https://www.zeit.de/digital/internet/2010-02/kinderporno-sperren-gesetz-koehler.

[227] Christian Rath, 'Innenministerium Stoppt Gesetz Über Internetsperren - Die Geplanten Sperrlisten Für Kinderporno-Seiten Sind Vom Tisch / Statt Dessen Sollen Die Seiten Gelöscht Werden - Märkische Allgemeine - Nachrichten Für Das Land Brandenburg', 2 June 2010, https://web.archive.org/web/20100602134746/http://www.maerkischeallgemeine.de/cms/beitrag/11737009/492531/Die-geplanten-Sperrlisten-fuer-Kinderporno-Seiten-sind-vom.html; Frey and Rudolph, 'Zugangserschwerungsgesetz'.

[228] dpa, 'Bundesregierung Hebt Sperrgesetz Gegen Kinderpornos Auf', *Zeit*, 25 May 2011, https://www.zeit.de/politik/deutschland/2011-05/streichung-kinderpornosperre; Bundestag, 'Deutscher Bundestag - SPD Will Das Zugangserschwerungsgesetz Aufheben', Deutscher Bundestag, accessed 16 February 2023, https://www.bundestag.de/webarchiv/textarchiv/2011/33099134_kw03_sp_zugangserschwerung-204370.

nation state, the FRG, should have strong safeguards to ensure that no dictatorial or extremist regime could emerge in the country in the future. To achieve this, two features were enshrined at the heart of the FRG's constitutional order. One is that the nature of democracy in the FRG can be described as a defensive democracy, which means that the country's constitution contains provisions that make it possible to track and take action against elements that pose a threat to the country's democratic order, known as the liberal democratic basic order (FDGO). The other peculiarity is that the constitution contains an eternity clause that protects several provisions in the country's constitution that guarantee the FDGO and can only be changed under very specific circumstances. This arrangement has enabled the FRG government to act decisively against forces perceived to threaten the FDGO. During the Cold War, for example, communism in particular was seen as an acute threat, and action was often taken against communist forces such as the KPD and communist-sympathetic cultural expressions such as films from behind the Iron Curtain. Beyond the constitutional order of the new German state, however, it was also possible for the authorities to take action against various forms of expression that were deemed to violate either certain norms or laws. It is precisely this kind of state intervention in the realm of expression that has shown considerable variation over time. During the Cold War, for example, pornographic content was seen as a major problem, whereas more recently it has been violence in video games and certain genres of music, such as rap, that have been seen as problematic. Finally, the emergence of the internet as a new medium for communication and information exchange posed a new set of challenges for policymakers and society at large, leading not only to uncertainty about how best to intervene on the internet, but also to tense debates about the limits of government intervention and censorship in this new digital space.

However, besides providing the necessary historical context, this chapter has also yielded some relevant insights. One of these is that political and cultural sensitivities have played a significant role in the determination to pursue certain forms of expression more vehemently than others at different points in Germany's contemporary history. For example, whereas during the Cold War it was anti-communism and pornographic content that attracted the attention of the authorities, after German reunification it was media depicting violence, such as video games, and other forms of extremism, such as right-wing extremism, that came to the fore. Another finding of this chapter is that the success of this often contentious balancing act between the fundamental right to freedom of expression and the protection of the FDGO in the FRG has been rather mixed. While this balance between censorship and freedom of

expression has more often than not resulted in successful counter-measures against extremism and hate, it has also been arguably subject to occasional excesses and abuses by both the state and third parties, not to mention the frequent inconsistency with which certain mechanisms, such as the indexing of certain cultural products in the name of protecting the youth, have been applied. The final takeaway from this chapter is that it is clear that the emergence of the internet posed significant challenges for the government and policymakers, not only because it was evidently a completely new medium for the dissemination of information, but also because it created a situation in which extraordinary interventions were met with considerable resistance, as the example of the *Zugangserschwerungsgesetz* shows. This law, which was passed in the *Bundestag* at the very end of a legislative period, despite considerable opposition, served as an impetus to revive the debate about what is considered a proportionate and acceptable intervention by the state on the internet, which was seen by many as a space that should remain a bastion of free and interrupted expression. In fact, given the overwhelming opposition, much of which was driven by fears of possible more widespread censorship of the internet in the future, it could even be argued that the internet was seen by many as a space that should not be subject to censorship under any circumstances. All of this made the internet not just a contested space, but an open battlefield, where not only new interventions were fiercely resisted, but also existing state interventions that had been largely accepted in other arenas were actively questioned. Now that the necessary historical context has been provided and the context in which the internet emerged as a rather contested space has been introduced, this thesis will turn in the next chapter to an analysis of the *Netzwerkdurchsetzungsgesetz* (NetzDG). The NetzDG was essentially the German government's next significant extraordinary intervention on the internet after the *Zugangserschwerungsgesetz*, in the name of combating illegal and harmful content on social media platforms, and played a significant role in creating the context in which the Indymedia project became subject to securitisation by the authorities in Germany.

Chapter 3: The Netzwerkdurchsetzungsgesetz (NetzDG)

The previous chapter used the example of the *Zugangserschwerungsgesetz* to show that, until around 2010, the internet was a highly contested space in which any extraordinary intervention by the German government met with considerable and effective resistance by a broad spectrum of actors from within politics and civil society. However, this began to change gradually from 2015, following a number of national and international developments, most notably the political and social polarisation in Germany and the election of Donald Trump as president in the United States. These developments contributed to the creation of a more receptive context that emboldened the government to intervene and take exceptional measures on the internet through legislation. One such piece of legislation is the *Netzwerkdurchsetzungsgesetz* (NetzDG), which was passed by the *Bundestag* on 30 June 2017 and came into force in early 2018.[229] It was an initiative led by the Federal Ministry of Justice and Consumer Protection (BMJ) and its Minister Heiko Maas with the aim of achieving better compliance by social media platforms in the fight against illegal and harmful content on these very platforms, which at the time was increasingly seen as a serious problem.[230]

Prior to the NetzDG, the legal regime governing compliance by social media companies can best be described as one driven by cooperation and voluntary efforts between the government and the social media giants such as Facebook.[231] However, this status quo proved unsustainable according to the government and it gradually became clear to policymakers, especially those in the government coalition around 2015, that the ongoing efforts were insufficient to address their concerns about the phenomenon of illegal and harmful content on these platforms.[232] To remedy this situation, the core aim of the NetzDG was therefore to

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[229] Thomas Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online: The German Network Enforcement Act 2017', in *Fundamental Rights Protection Online*, ed. Bilyana Petkova and Tuomas Ojanen (Edward Elgar Publishing, 2020), 28–56, https://www.elgaronline.com/display/edcoll/9781788976671/9781788976671.00012.xml; Robert Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance: The Case of the German NetzDG', *Telecommunications Policy*, Norm entrepreneurship in Internet Governance, 45, no. 6 (1 July 2021): 102145, https://doi.org/10.1016/j.telpol.2021.102145; Rachel Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media: The Case of Germany's Netzdg', *Telecommunications Policy* 46, no. 9 (1 October 2022): 102411, https://doi.org/10.1016/j.telpol.2022.102411.

[230] Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'; Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'.

[231] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

[232] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

essentially force social media platforms to comply with the law when it came to dealing with illegal and harmful content.[233] The law attempted to achieve this goal through a number of provisions, such as requiring the relevant platforms to act within a certain timeframe upon receiving reports of the presence of illegal and harmful content on their sites.[234] It would also require such social media platforms to create a publicly accessible reporting mechanism on their site to allow users to report such content and to notify users of the outcome of their reports.[235] Failure to comply with the above and other provisions of the NetzDG would expose these platforms to record-breaking fines at the time ranging in the millions.[236]

Consequently, the purpose of this chapter is to illustrate how the issue of illegal and harmful content on the internet became a top priority for policymakers from 2015 onwards, leading to the adoption of the NetzDG in 2017 as an extraordinary government intervention despite considerable opposition from within civil society and politics. This, in turn, will reveal in detail the creation of the environment that constituted the facilitating conditions under which the Indymedia project was securitised in Germany. This chapter will unfold in two parts. The first part will examine in more detail the context that began to emerge from 2015 that played a role in elevating the political issue that the NetzDG was intended to address to such a high priority. This will include an examination of the national and international political and societal developments around 2015 that raised the concerns of many regarding the issue of illegal and harmful content on social media platforms. In the second part, the process by which the NetzDG came into being and the problem it was intended to address will be illustrated and analysed in detail. This task will be accomplished by taking a top-down perspective by analysing especially how Minister Heiko Maas, both justified and framed both the issue and subsequently the NetzDG itself from the publication of its first draft to its ultimate adoption. In addition, this part of the chapter will also examine the opposition to the NetzDG at the time and the way in which Maas and the government addressed this opposition.

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[233] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.
[234] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.
[235] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.
[236] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

It is undeniable, if not self-evident to any contemporary observer, that the NetzDG was not just a force itself that shaped its context at the time, but also at least in part also a product of its own time. This fact has already been examined and acknowledged by a number of authors and has been attributed to the reason for its emergence.[237] The context in question is one of considerable polarisation, which emerged around 2015 as a result of a number of partly interrelated national and international developments, which placed the issue of illegal and harmful content, and in the case of the latter, misinformation on the internet, in particular on social media platforms, at the top of the German political agenda as an acute concern.[238] These developments will be further explored in this section in order to not only contextualise the process through which the NetzDG came about, but also to gain a deeper understanding of the underlying dynamics that drove this context in the first place. The developments that will be examined in more detail can, for the purposes of this paper, be broadly divided into two distinct categories, namely national and international, which will be discussed in turn next.

On the one hand, there was the domestic development in Germany at the time of a rise in political and social polarisation, manifested in particular by a rise in right-wing populism and extremism that was unprecedented in the country's post-war history and was accompanied and driven by several events.[239] The one event that served as a catalyst for this development, according to many, was the so-called refugee crisis of 2015.[240] This crisis itself was largely driven by the Syrian civil war that began in 2011, which led to a significant number of refugees seeking asylum in the European Union, but Germany in particular was one of the countries that received one of the largest numbers of asylum seekers.[241] According to official statistics, more than one million asylum seekers arrived in Germany in 2015 alone, forty per cent of whom

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[237] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

[238] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'.

[239] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

[240] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

[241] Pew Research Center, 'Number of Refugees to Europe Surges to Record 1.3 Million in 2015', Pew Research Center's Global Attitudes Project, 2 August 2016, https://www.pewresearch.org/global/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/.

were of Syrian origin.[242] One of the reasons for such a significant influx of refugees into Germany was the government's decision to suspend the Dublin agreement and allow any Syrian refugee reaching Germany to apply for asylum, rather than having to apply for asylum in the first country of arrival.[243] A significant proportion of the German population actually welcomed the country's decision to openly welcome those fleeing war, and even to provide direct assistance to new arrivals in the country.[244] For example, according to one study, over sixty percent of respondents were involved in some form of direct support and around thirty percent were involved in more than one form of direct support, such as donating and protesting in support of refugees.[245]

However, despite considerable widespread support, there was also considerable concern and opposition to the decision in some parts of German society.[246] The reasons for such concern and opposition to the decision were many and varied, ranging from people simply worrying about the potential fiscal consequences of accepting such a large number of refugees to people worrying about a potential rise in crime as a result of this development.[247] A certain segment of German society also became increasingly fearful of the alleged Islamisation of Germany.[248] It was precisely this fear that led a number of grassroots far-right movements, such as PEGIDA and Generation Identity, to mobilise this segment of society to oppose the government's refugee policy, for example by organising protests.[249] This polarisation in turn

[242] Cynthia Kroet, 'Germany: 1.1 Million Refugee Arrivals in 2015', *POLITICO*, 6 January 2016, https://www.politico.eu/article/germany-1-1-million-refugee-arrivals-in-2015/.

[243] 'Germany Suspends "Dublin Rules" for Syrians', *Deutsche Welle*, 25 August 2015, https://www.dw.com/en/germany-suspends-dublin-rules-for-syrians/a-18671698; Andrea Dernbach, 'Germany Suspends Dublin Agreement for Syrian Refugees', *Euractiv*, 26 August 2015, https://www.euractiv.com/section/economy-jobs/news/germany-suspends-dublin-agreement-for-syrian-refugees/.

[244] Lucas G. Drouhot et al., 'Who Supports Refugees? Diversity Assent and Pro-Refugee Engagement in Germany', *Comparative Migration Studies* 11, no. 1 (3 March 2023): 4, https://doi.org/10.1186/s40878-023-00327-2.

[245] Drouhot et al.

[246] Pew Research Center, 'Number of Refugees to Europe Surges to Record 1.3 Million in 2015'; Forschungsgruppe Wahlen, 'Politbarometer 2015 > Oktober I 2015', Forschungsgruppe Wahlen, 2015, https://www.forschungsgruppe.de/Umfragen/Politbarometer/Archiv/Politbarometer_2015/Oktober_I_2015/.

[247] Richard Wike, 'Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs', Pew Research Center's Global Attitudes Project, 11 July 2016, https://www.pewresearch.org/global/2016/07/11/europeans-fear-wave-of-refugees-will-mean-more-terrorism-fewer-jobs/; Forschungsgruppe Wahlen, 'Politbarometer 2015'.

[248] 'Pegida-Umfrage: Angst Vor Islamisierung? Übertrieben, Meinen Die Meisten', *Zeit*, 1 January 2015, https://www.zeit.de/politik/deutschland/2015-01/umfrage-islamisierung-pegida-afd?page=37.

[249] Nicholas Paul De Genova, 'In the Land of the Setting Sun:: Reflections on "Islamization" and "Patriotic Europeanism"', *Movements: Journal Für Kritische Migrations- Und Grenzregimeforschung* 1, no. 2 (2015), https://kclpure.kcl.ac.uk/portal/en/publications/in-the-land-of-the-setting-sun(af3ee268-ab0b-4cb5-9384-859630b075f6).html; Malte Thran and Lukas Boehnke, 'The Value-Based Nationalism of Pegida', *Journal for Deradicalization*, no. 3 (27 June 2015): 178–209; Andreas Önnerfors, '"Retrotopia" as a Retrogressive Force in

was accompanied by an increase in hate crimes, in particular violence against refugees and the institutions that support them, such as the burning of asylum centres.[250] However, it was the emergence of the political party *Alternative für Deutschland* (AfD) as a credible political force of the far-right opposition at the time that worried many at the time, especially with federal elections in 2017 on the horizon.[251] The AfD, which was originally established in 2013 as more of a Eurosceptic party, at that time completely pivoted towards promoting a political position diametrically opposed to the supposedly liberal immigration policy of the government of the day, thus capitalising on the sentiments of the time by adopting a far-right position.[252] The reason why this development worried many in Germany and beyond is that no far-right party had ever entered the German parliament after the end of the Second World War.[253]

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the German PEGIDA-Movement', in *Nostalgia and Hope: Intersections between Politics of Culture, Welfare, and Migration in Europe*, ed. Ov Cristian Norocel, Anders Hellström, and Martin Bak Jørgensen, IMISCOE Research Series (Cham: Springer, 2020), 135–49, https://doi.org/10.1007/978-3-030-41694-2_9; Ralf Havertz, *Radical Right Populism in Germany: AfD, Pegida, and the Identitarian Movement*, Routledge Studies in Fascism and the Far Right (Abingdon: Routledge, 2021); Imogen Richards, 'A Philosophical and Historical Analysis of "Generation Identity": Fascism, Online Media, and the European New Right', *Terrorism and Political Violence* 34, no. 1 (2 January 2022): 28–47, https://doi.org/10.1080/09546553.2019.1662403; Fredrik Wilhelmsen, 'Heroic Pasts and Anticipated Futures: A Comparative Analysis of the Conceptions of History of the Nordic Resistance Movement and Generation Identity', *Politics, Religion & Ideology* 22, no. 3–4 (2 October 2021): 277–301, https://doi.org/10.1080/21567689.2021.1968842; Anita Nissen, 'The Trans-European Mobilization of "Generation Identity"', in *Nostalgia and Hope: Intersections between Politics of Culture, Welfare, and Migration in Europe*, ed. Ov Cristian Norocel, Anders Hellström, and Martin Bak Jørgensen, IMISCOE Research Series (Cham: Springer, 2020), 85–100, https://doi.org/10.1007/978-3-030-41694-2_6.

[250] Paul Blickle et al., 'Gewalt Gegen Flüchtlinge: Es Brennt in Deutschland', *Zeit*, 3 December 2015, https://www.zeit.de/politik/deutschland/2015-11/rechtsextremismus-fluechtlingsunterkuenfte-gewalt-gegen-fluechtlinge-justiz-taeter-urteile; 'Fremdenhass: Bundeskriminalamt Warnt Vor Schwerer Rechter Gewalt', *Zeit*, 22 October 2015, https://www.zeit.de/politik/deutschland/2015-10/bka-fluechtlinge-rechte-gewalt-warnung.

[251] Melissa Eddy, 'Berlin Election Deals Angela Merkel's Party Another Blow', *New York Times*, 18 September 2016, https://www.nytimes.com/2016/09/19/world/europe/nationalist-partys-challenge-to-merkel-moves-to-berlin-state-elections.html; Melissa Eddy and Steven Erlanger, 'Far-Right German Party Is Poised to Break Postwar Taboo', *New York Times*, 21 September 2017, https://www.nytimes.com/2017/09/21/world/europe/far-right-german-party-poised-to-break-postwar-taboo.html; Amanda Taub and Max Fisher, 'Germany's Extreme Right Challenges Guilt Over Nazi Past', *New York Times*, 18 January 2017, https://www.nytimes.com/2017/01/18/world/europe/germany-afd-alternative-bjorn-hocke.html; Amanda Taub, 'Germany's Taboos, Once a Bulwark Against the Far Right, May Now Be Enabling It', *New York Times*, 17 February 2017, https://www.nytimes.com/2017/02/17/world/europe/germany-far-right-politics-afd.html. Some articles capturing the sentiments towards the AfD around that period.

[252] 'Alternative Für Deutschland: SPD Und Linke Rücken AfD in Nähe von Nazis', *Handelsblatt*, accessed 1 April 2023, https://www.handelsblatt.com/politik/deutschland/alternative-fuer-deutschland-spd-und-linke-ruecken-afd-in-naehe-von-nazis/12489334.html; 'Vizevorsitzender Der AfD Sieht in Den Flüchtlingen Ein', *Süddeutsche Zeitung*, 12 December 2015, https://www.sueddeutsche.de/politik/alternative-fuer-deutschland-afd-vize-gauland-nennt-fluechtlingskrise-geschenk-fuer-seine-partei-1.2780079; 'Parteien in Deutschland: AfD Gewinnt Rund 4000 Mitglieder Hinzu', *Tagesspiegel*, accessed 1 April 2023, https://www.tagesspiegel.de/politik/afd-gewinnt-rund-4000-mitglieder-hinzu-5487856.html; Havertz, *Radical Right Populism in Germany*; Kai Arzheimer and Carl C. Berning, 'How the Alternative for Germany (AfD) And Their Voters Veered to the Radical Right, 2013–2017', *Electoral Studies* 60 (August 2019): 2013–2017, https://doi.org/10.1016/j.electstud.2019.04.004.

[253] Eddy, 'Berlin Election Deals Angela Merkel's Party Another Blow'; Eddy and Erlanger, 'Far-Right German Party Is Poised to Break Postwar Taboo'; Taub and Fisher, 'Germany's Extreme Right Challenges Guilt Over Nazi Past'; Taub, 'Germany's Taboos, Once a Bulwark Against the Far Right, May Now Be Enabling It'.

The way in which this polarisation in Germany and the events described above have drawn considerable attention to the phenomenon of harmful and illegal content on the internet and social media is that these mediums of information exchange played a significant role in the growth of this very polarisation. The critical role that the internet plays for the right-wing milieu, particularly the extreme right, as a medium for communication and organisation is a well-studied phenomenon, as shown earlier in this thesis.[254] However, particularly in the case of Germany, research has shown that social media has played a crucial role for right-wing social movements such as PEGIDA and political parties such as the AfD during this period in terms of message dissemination and influence.[255] In the case of PEGIDA, for example, some argue that its very existence was 'contingent' on its presence on Facebook for communication and coordination.[256] Furthermore, one study even claims to have found a causal link between anti-refugee posts on Facebook and violent hate crimes against refugees.[257] Accordingly, it becomes apparent that social media and the internet in general were not only a tool that at the time facilitated political and societal polarisation in the country, but were actually at the centre of that polarisation, directly enabling it and possibly contributing to its worst manifestation, namely the commission of hate crimes. It is precisely this potential manifestation of hate speech on the internet into hate crimes that reveals, in a sense, a circular relationship between polarisation and hate speech on the internet, as polarisation led to more hate speech, which in turn led to more polarisation. In the light of all this, it is quite clear why the presence of hate

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[254] Gaudette, Scrivens, and Venkatesh, 'The Role of the Internet in Facilitating Violent Extremism'; Wiktor Soral, Michał Bilewicz, and Mikołaj Winiewski, 'Exposure to Hate Speech Increases Prejudice through Desensitization', *Aggressive Behavior* 44, no. 2 (2018): 136–46, https://doi.org/10.1002/ab.21737; Thomas J. Holt, Joshua D. Freilich, and Steven M. Chermak, 'Examining the Online Expression of Ideology among Far-Right Extremist Forum Users', *Terrorism and Political Violence* 34, no. 2 (17 February 2022): 364–84, https://doi.org/10.1080/09546553.2019.1701446; Jessie Daniels, 'The Algorithmic Rise of the "Alt-Right"', *Contexts* 17, no. 1 (1 February 2018): 60–65, https://doi.org/10.1177/1536504218766547. Please see for examples.

[255] Sebastian Stier et al., 'When Populists Become Popular: Comparing Facebook Use by the Right-Wing Movement Pegida and German Political Parties', *Information, Communication & Society* 20, no. 9 (2 September 2017): 1365–88, https://doi.org/10.1080/1369118X.2017.1328519; Cornelius Puschmann, Julian Ausserhofer, and Josef Šlerka, 'Converging on a Nativist Core? Comparing Issues on the Facebook Pages of the Pegida Movement and the Alternative for Germany', *European Journal of Communication* 35, no. 3 (1 June 2020): 230–48, https://doi.org/10.1177/0267323120922068; Carsten Schwemmer, 'The Limited Influence of Right-Wing Movements on Social Media User Engagement', *Social Media + Society* 7, no. 3 (July 2021): 205630512110416, https://doi.org/10.1177/20563051211041650; Karsten Müller and Carlo Schwarz, 'Fanning the Flames of Hate: Social Media and Hate Crime', SSRN Scholarly Paper (Rochester, New York, 5 June 2020), https://doi.org/10.2139/ssrn.3082972; Richards, 'A Philosophical and Historical Analysis of "Generation Identity"'.

[256] Puschmann, Ausserhofer, and Šlerka, 'Converging on a Nativist Core?'

[257] Müller and Schwarz, 'Fanning the Flames of Hate'.

speech on social media became such a major issue of public debate at the time and subsequently a high priority for the government of the day.[258]

On the other hand, in addition to the domestic polarisation in Germany, there was also the development at the time that increasing misinformation and fake news on social media and the internet in general were seen as a significant problem because of the threat these phenomena were seen to pose to domestic stability and the integrity of elections.[259] The origins of this development were more international in nature, as the fears associated with this problem began to raise concerns in Germany at the time following one key trigger event in particular.[260] This event was the 2016 presidential election in the United States, which resulted in the election of Donald Trump as president.[261] Even before election day in November 2016, concerns had been raised in the United States by national security officials and in the media about possible foreign interference in the election by other countries, such as Russia.[262] However, as the election campaigns progressed and election day was on the horizon, it was one incident in particular that sparked considerable public debate on the issue: namely the leak of a series of hacked emails published by Wikileaks in 2016.[263] These emails suggested, amongst other things, a coordinated effort by the Clinton campaign and the Democratic National Committee to actively

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[258] Anetta Kahane, 'Hasskommentare: Im Internet Tobt Der Abwehrkampf Gegen Die Moderne', *Tagesspiegel*, 4 November 2015, https://www.tagesspiegel.de/gesellschaft/medien/im-internet-tobt-der-abwehrkampf-gegen-die-moderne-5651464.html; Dietmar Reiche, 'Studie Zu Hass Im Internet - Ein Gesamtgesellschaftliches Problem', *Deutschlandfunk*, 23 June 2016, https://www.deutschlandfunk.de/studie-zu-hass-im-internet-ein-gesamtgesellschaftliches-100.html; 'Hasskommentare Im Netz: Achtung, Hier Kommt Das Bundestrollamt', *Spiegel*, 22 July 2016, https://www.spiegel.de/netzwelt/netzpolitik/hasskommentare-im-netz-neue-kampagne-setzt-auf-meme-baukasten-a-1104119.html.

[259] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'; 'Fake News Might Affect 2017 Election: Maas', *Deutsche Welle*, 28 November 2016, https://www.dw.com/en/german-justice-minister-heiko-maas-worried-fake-news-might-affect-2017-election/a-36546276; Caroline Copley, 'Merkel Fears Social Bots May Manipulate German Election', *Reuters*, 24 November 2016, https://www.reuters.com/article/us-germany-merkel-socialbots-idUSKBN13J1V0.

[260] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'.

[261] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'.

[262] Dustin Volz and Mark Hosenball, 'Hackers Target Presidential Campaigns: U.S. Spy Chief', *Reuters*, 18 May 2016, https://www.reuters.com/article/us-usa-election-hackers-idUSKCN0Y929G; Rebecca Kaplan, 'James Clapper: Hackers Targeting 2016 Presidential Candidates', *CBS News*, 18 May 2016, https://www.cbsnews.com/news/intelligence-official-hackers-targeting-2016-presidential-candidates/; Jim Miklaszewski and Halimah Abdullah, 'NSA Chief: Potential Russian Hacking of U.S. Elections a Concern', *NBC News*, 13 September 2016, https://www.nbcnews.com/politics/politics-news/nsa-chief-potential-russian-hacking-u-s-elections-concern-n647491.

[263] Paul Musgrave, 'Why Would Russia Interfere in the U.S. Election? Because It Sometimes Works.', *Washington Post*, 6 October 2021, https://www.washingtonpost.com/posteverything/wp/2016/07/26/why-would-russia-interfere-in-the-u-s-election-because-it-usually-works/; Cynthia McFadden et al., 'Red Alert? Hackers Target Election Systems in 20 States', *NBC News*, 29 September 2016, https://www.nbcnews.com/news/us-news/red-alert-election-systems-20-states-targeted-hackers-n657036.

undermine Bernie Sanders during the primaries for the Democratic Party nomination.[264] Following this leak, and claims by some in the US government that the emails were hacked by Russia and leaked to WikiLeaks with the aim of helping Trump win the election, there were fears not only of election interference by Russia, but also that fake emails might be leaked alongside genuine messages to increase the desired effect of swaying the election.[265] Nevertheless, it was not only Russia's alleged interference at the time that raised serious concerns about the spread of misinformation, but the 2016 American presidential election also saw an unprecedented level of false claims and misinformation spread directly by the candidates, particularly Donald Trump, in speeches and through social media posts through partisan accounts, which also played a large role in raising fears about the spread of misinformation.[266]

These developments in the United States, combined with the eventual election victory of Donald Trump, caused considerable concern in Germany at the time.[267] This was particularly the case as, following the outcome of the election in the United States at the end of 2016, the German federal elections in 2017 were just looming on the horizon.[268] As early as November 2016, Maas shared his view that fake news and misinformation online could have an impact on the upcoming elections in Germany.[269] The issue was considered such a concern by the incumbent government that not only Maas called on the judicial authorities in December of that year to crack down on the phenomenon using Germany's existing defamation and libel laws, but Angela Merkel, who was serving as chancellor at the time, also took an interest in the

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[264] Sarah Wheaton and Kyle Cheney, 'The Most Revealing Clinton Campaign Emails in Wikileaks Release', *POLITICO*, 7 October 2016, https://www.politico.com/story/2016/10/john-podesta-wikileaks-hacked-emails-229304; Zack Beauchamp, 'Russia Has Weaponized the American Press', *Vox*, 17 October 2016, https://www.vox.com/world/2016/10/17/13245200/russia-wikileaks-american-press-democracy.

[265] Musgrave, 'Why Would Russia Interfere in the U.S. Election?'; McFadden et al., 'Red Alert?'

[266] Darren Samuelsohn, 'A Guide to Donald Trump's "Rigged" Election', *POLITICO*, 25 October 2016, https://www.politico.com/story/2016/10/donald-trump-rigged-election-guide-230302; Craig Silverman et al., 'Hyperpartisan Facebook Pages Are Publishing False And Misleading Information At An Alarming Rate', *BuzzFeed News*, 20 October 2016, https://www.buzzfeednews.com/article/craigsilverman/partisan-fb-pages-analysis; Antonio García Martínez, 'How Trump Conquered Facebook Without Russian Ads', *Wired*, 23 February 2018, sec. tags, https://www.wired.com/story/how-trump-conquered-facebookwithout-russian-ads/; Issie Lapowsky, 'This Is How Facebook Actually Won Trump the Presidency', *Wired*, 15 November 2016, sec. tags, https://www.wired.com/2016/11/facebook-won-trump-election-not-just-fake-news/.

[267] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'.

[268] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'; Griffin, 'New School Speech Regulation as a Regulatory Strategy against Hate Speech on Social Media'.

[269] 'Fake News Might Affect 2017 Election'.

matter.[270] Merkel both spoke publicly about the issue in parliament and called for regulation to deal with the phenomenon.[271] However, it was primarily fears that the then nascent AfD would make extensive use of social media for electoral purposes that seem to have prompted the incumbent government to see fake news and misinformation as an acute problem.[272] In particular, the use of so-called social bots was seen as particularly problematic, as these could be used to increase the reach of such content on social media platforms by generating fake engagement.[273] All of this shows that a significant amount of concern about the presence of fake news and misinformation on social media was driven by electoral concerns. However, this very reality also shows that, while it was a stand-alone phenomenon, it was also closely intertwined with the wider development of right-wing polarisation in Germany and the emergence of new actors seeking to change, if not overthrow, the existing status quo. The above, in turn, shows how these developments created a fertile context at the time that encouraged the government to take unprecedented action to control public discourse on the internet.

The Adoption of NetzDG: Intervening Against Illegal and Harmful Content on the Internet

In the midst of the context described above, the NetzDG began to take shape, which as other authors have already noted, was an initiative spearheaded by Minister Maas, who served as part of the third Merkel coalition government between 2013 and 2018.[274] As part of his ministerial portfolio, Maas took an early interest in internet issues and the problematic role of tech giants such as Google, as evidenced by his public engagement on these issues as early as 2014.[275] For example, during a conference in Berlin in February 2014, Maas stressed the importance of adequate privacy and data protection safeguards and shared his intention to allow consumer protection authorities to take legal action on behalf of consumers against those

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[270] Reuters, 'German Courts Should Tackle Fake News Now, Says Justice Minister', *Guardian*, 18 December 2016, https://www.theguardian.com/world/2016/dec/18/german-courts-should-tackle-fake-news-now-says-minister; 'Fake News Might Affect 2017 Election'; Copley, 'Fears Social Bots May Manipulate German Election'.

[271] Copley, 'Fears Social Bots May Manipulate German Election'.

[272] 'Fake News Might Affect 2017 Election'; Copley, 'Fears Social Bots May Manipulate German Election'; 'Social Bots Expert to Brief German MPs', *Deutsche Welle*, 25 November 2016, https://www.dw.com/en/german-social-bots-expert-to-brief-mps-on-fake-news-threat/a-36517391.

[273] 'Social Bots Expert to Brief German MPs'.

[274] Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'.

[275] *Safer Internet Day: Rede von Heiko Maas Am 11.02.2014*, 2014, https://www.youtube.com/watch?v=0BsGri479ZU; Jeevan Vasagar, 'Transcript of Interview with Heiko Maas, German Justice Minister', *Financial Times*, 15 September 2014, https://www.ft.com/content/766b6116-3cf7-11e4-a2ab-00144feabdc0.

organisations that violate these very safeguards.[276] It was not until 2015, however, that the government's and the minister's attention began to shift to the issue of illegal and harmful content on the internet, particularly on social media platforms.

In several public appearances, Maas described the status quo at the time as unacceptable, as in his opinion and that of the government at the time, too little was being done to combat illegal and harmful content on social media platforms such as Facebook.[277] The minister also emphasised that the aim was to remove such content more effectively and quickly in practice.[278] As part of the minister's assessment, a task force was set up, including representatives of social media companies and members of civil society, to improve enforcement and compliance with the removal of problematic content through voluntary cooperation.[279] However, as early as the second half of 2016, Maas already stressed that more needed to be done and that if further improvements were not achieved, the introduction of regulation would be an option.[280] The latter ultimately proved to be the case, as an evaluation of the task force's initiative concluded that it was not achieving the intended results and that it would be futile to continue to tackle the problem in the same way.[281]

Following the abandonment of the task force and the decision to move away from the status quo of self-regulation, the focus shifted to creating legislation to address the situation. The result of this strategic shift was the publication of the first draft of the NetzDG on 14 March 2017.[282] Right before the publication of the first draft of the NetzDG, Maas already embarked on a public relations campaign to promote and justify the government's decision to tackle the

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[276] *Safer Internet Day*.
[277] 'German Justice Minister Takes Aim At Facebook over Racist Posts', *Reuters*, 27 August 2015, https://www.reuters.com/article/us-facebook-germany-racism-idUSKCN0QW1SG20150827; *Meinungsfreiheit: Heiko Maas Zur Bekämpfung von Hasskriminalität Im Internet Am 14.09.2015*, 2015, https://www.youtube.com/watch?v=y5Oi0z7sUVo; Martin Krauss, '»Null Toleranz Bei Hassparolen«', *Jüdische Allgemeine*, 22 September 2015, https://www.juedische-allgemeine.de/politik/null-toleranz-bei-hassparolen/.
[278] Krauss, '»Null Toleranz Bei Hassparolen«'; *Meinungsfreiheit*.
[279] Krauss, '»Null Toleranz Bei Hassparolen«'; *Meinungsfreiheit*; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'; Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'.
[280] *Hasskriminalität Im Internet: Statement von Heiko Maas Am 26.09.2016*, 2016, https://www.youtube.com/watch?v=bVygx2vksWE; 'German Justice Minister Tells Facebook to Curb Hate Speech', *Deutsche Welle*, 18 April 2016, https://www.dw.com/en/german-justice-minister-tells-facebook-to-curb-hate-speech/a-19406616; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'; Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'.
[281] *Hasskriminalität Im Internet*; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'; Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'.
[282] Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'; Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'.

issue of illegal and harmful content on social media platforms by introducing legislation.[283] In several public appearances, ranging from interviews and speeches to talk show appearances during this period, Maas sought to justify the government's intervention on the basis of the following reasons.[284] One of these reasons, which the minister often emphasised, was that what is illegal offline should also be illegal online. Therefore, according to Maas the NetzDG initiative in essence had merely the ambition to create a much needed policy instrument that would ensure that the aforementioned expectation becomes a reality.[285] Beyond simply stating that what is illegal offline should also be illegal online, it also evoked a significant symbolism that characterised the online space as a space of lawlessness where the rule of law was not fully enforced.[286] In this sense, the NetzDG can be seen as an attempt to restore the rule of law. Nevertheless, even before the law entered the public debate, in the early stages of trying to get voluntary cooperation from social media companies, Maas emphasised that the aim was to achieve better compliance, as impunity was rampant on these platforms.[287] It is therefore clear that the government at the time sought to justify its intervention in this space to a considerable extent on the basis of restoring, if not creating, the rule of law on social media platforms and, ultimately, on the internet.

Another of the minister's reasons for the NetzDG was his assessment that violence begins in the mind and that allowing harmful and illegal content, such as hate speech, on social media platforms would ultimately lead to violence beyond the internet in the form of hate crimes.[288] This justification was often cited by Maas both before and after the adoption of the

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[283] Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'; Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance'.

[284] *Hasskommentare in Sozialen Netzwerken Und Fakenews: Rede von Heiko Maas Am 14.03.2017*, 2017, https://www.youtube.com/watch?v=cnA8sJOotWE; *Netzwerkdurchsetzungsgesetz: Statement von Heiko Maas Am 05.04.2017*, 2017, https://www.youtube.com/watch?v=X2WxMQj4Uh8; *Heiko Maas, Bundesjustizminister*, 2017, https://www.youtube.com/watch?v=prUJMxeZLeI.

[285] *Hasskommentare in Sozialen Netzwerken Und Fakenews*; *Statement von Heiko Maas Am 05.04.2017*; *Heiko Maas, Bundesjustizminister*; *Netzwerkdurchsetzungsgesetz*, accessed 7 January 2023, https://www.bundestag.de/mediathek?videoid=7125793#url=L21lZGlhdGhla292ZXJsYXk/dmlkZW9pZD03M TI1Nzkz&mod=mediathek; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*, 2017, https://www.youtube.com/watch?v=Hdjxe7GxwA8.

[286] *Hasskommentare in Sozialen Netzwerken Und Fakenews*; *Statement von Heiko Maas Am 05.04.2017*; *Heiko Maas, Bundesjustizminister*; Wischmeyer, 'What Is Illegal Offline Is Also Illegal Online'.

[287] *Meinungsfreiheit*; *Hasskriminalität Im Internet*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*.

[288] *Hasskommentare in Sozialen Netzwerken Und Fakenews*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*; *Interview Mit Heiko Maas (SPD) | Ein Mann, Eine Wahl | ProSieben*, 2017, https://www.youtube.com/watch?v=RAXG3-O7UVE.

NetzDG, with reference to a rise in hate crimes at the time.[289] As mentioned earlier in this chapter, it is true that at the time hate crimes, especially the violent variety, were not only seen as a growing problem, but were also on the rise. At the same time, however, it appears that Maas and the government instrumentalised this reality, at least in part, to justify the need for the NetzDG by publicly asserting a causal relationship between hateful comments on social media and an increase in hate crimes. Additionally, by framing the problem posed by the existence of illegal and harmful content on social media platforms as one of an acute security threat that could manifest itself in greater violence, if no action is taken, the minister quite openly sought to underline the seriousness of the issue by tapping into the public's consciousness and desire for security, which is a similarly strong appeal as associating alleged impunity on social media with a lack of rule of law that implies disorder.

Last but not least, Maas also evoked a far more significant symbolism and meaning as a reason and the necessity for the NetzDG, underlining the importance of the law by equating it to a fundamental component in preserving not only free speech itself, but also democracy at large.[290] Maas's rationale was that bad actors in the online space crowd out and alienate the silent majority from participating in democratic exchanges on social media.[291] This in turn poses a threat to both freedom of expression and the notion of a tolerant and pluralistic democratic society because, if left unchecked, these malicious actors and hateful messages would, according to Maas, undermine values that form a core part of the German FDGO.[292] In order to prevent such a turn of events, therefore, extraordinary and decisive action is required in the form of the NetzDG.[293] The minister's assertion that the NetzDG was a much-needed intervention to address a problem that he believes poses a significant threat to society, without further substantiation, illustrates once again an apparent attempt by Maas and the government to convince the public at large by any means necessary that action is urgently needed to address the problem. Ultimately, it is quite clear that the minister and the government on whose behalf he was acting at the time sought to justify the need for decisive action against harmful and illegal content on social media platforms through the NetzDG by conveying to the public that

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[289] *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*; *Interview Mit Heiko Maas (SPD) | Ein Mann, Eine Wahl | ProSieben*.

[290] *Statement von Heiko Maas Am 05.04.2017*; *Netzwerkdurchsetzungsgesetz*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*.

[291] *Statement von Heiko Maas Am 05.04.2017*; *Netzwerkdurchsetzungsgesetz*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*.

[292] *Statement von Heiko Maas Am 05.04.2017*; *Netzwerkdurchsetzungsgesetz*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*.

[293] *Statement von Heiko Maas Am 05.04.2017*; *Netzwerkdurchsetzungsgesetz*; *Heiko Maas (Justizminister) Über Hate Speech Und Das Netzwerkdurchsetzungsgesetz*.

three distinct issues were at risk, if no action was taken: the rule of law, physical security, and core democratic values such as freedom of speech and democratic pluralism.

Although Maas and the government at the time provided a number of justifications for the NetzDG and the need to act more decisively against content deemed harmful and illegal on social media platforms, there was a broad range of opposition and criticism directed at the NetzDG initiative. In fact, the NetzDG triggered an almost universal wave of criticism from across society.[294] This criticism came from a wide range of actors from the public, the media, civil society, and politics.[295] At the heart of the criticism was the fear that the law would ultimately threaten freedom of expression, not only because the law itself was seen as a hastily executed effort, but also because it essentially delegated the responsibility for identifying content that violates the law to the online platform.[296] The latter point was even a criticism that Maas was frequently forced to address in public appearances, and which he tried to deflect by simply stating that the existing law already provided for such a regulation.[297] Nevertheless, it is remarkable how broad the coalition of opposition to the government's initiative was at the time, with civil society and even industry united in their opposition.[298] Additionally, the NetzDG was heavily criticised before and after its adoption by a wide range of political actors, from opposition parties such as the FDP to even some individual politicians who were part of the grand coalition at the time.[299] An example of such opposition from within the governing coalition at the time came from Dorothee Bär, a member of the *Christlich-Soziale Union* (CSU) who served as Parliamentary State Secretary for Transport and Digital Infrastructure, who criticised the law as a hasty endeavour that could threaten any social media posts that might be deemed inconvenient in the future.[300]

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[294] 'Deklaration Für Die Meinungsfreiheit', accessed 8 January 2023, https://deklaration-fuer-meinungsfreiheit.de/; Markus Reuter, 'Hate-Speech-Gesetz: Neuer Entwurf Gefährdet Weiterhin Die Meinungsfreiheit', *Netzpolitik.Org*, 26 June 2017, https://netzpolitik.org/2017/hate-speech-gesetz-neuer-entwurf-gefaehrdet-weiterhin-die-meinungsfreiheit/; Timo Conraths, 'Was Regelt Das Neue Gesetz Gegen Hasskommentare?', *Tagesschau*, 1 October 2017, https://www.tagesschau.de/inland/faq-hasskommentare-101.html.

[295] Conraths, 'Was Regelt Das Neue Gesetz Gegen Hasskommentare?'; Markus Reuter, 'Gegenwind Für Hate-Speech-Gesetz Aus Der CSU', *Netzpolitik.Org*, 5 May 2017, https://netzpolitik.org/2017/gegenwind-fuer-hate-speech-gesetz-aus-der-csu/; *NetzDG: FDP Kritisiert Justizminister Maas Scharf*, 2018, https://www.youtube.com/watch?v=tnAO56gYpZ8.

[296] Conraths, 'Was Regelt Das Neue Gesetz Gegen Hasskommentare?'; Reuter, 'Gegenwind Für Hate-Speech-Gesetz Aus Der CSU'; *NetzDG*.

[297] *Heiko Maas, Bundesjustizminister*.

[298] 'Deklaration Für Die Meinungsfreiheit'; Reuter, 'Hate-Speech-Gesetz'; Conraths, 'Was Regelt Das Neue Gesetz Gegen Hasskommentare?'

[299] *NetzDG*; Reuter, 'Gegenwind Für Hate-Speech-Gesetz Aus Der CSU'.

[300] Reuter, 'Gegenwind Für Hate-Speech-Gesetz Aus Der CSU'.

In addition to opposition and criticism from within Germany, there was also considerable concern about the NetzDG from abroad. One source of concern came from David Kaye, who at the time was the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.[301] Kaye was so concerned that the law would threaten and ultimately violate human rights that he wrote a letter to the German government at the time expressing his concerns.[302] One of these concerns was that the law would essentially create a regulatory environment in which violations are defined rather vaguely, and that social media platforms would be incentivised to potentially over-regulate their own platforms, with no judicial oversight to determine whether the content being removed was, in most cases, actually in breach of German law.[303] Another organisation that was highly critical was Reporters Without Borders, particularly its German branch, which published several statements on its views of the NetzDG.[304] In particular, the organisation feared that the law would have a negative impact on both freedom of expression and freedom of the press.[305] For example, Reporters Without Borders was also critical of the fact that social media companies would ultimately be the arbiters of what is against the law, rather than a judicial body as would otherwise be the case.[306] Last but not least, there were also concerns at the time that the NetzDG might actually contravene European law.[307] It was the *Digitale Gesellschaft e.V.*, an association representing consumer interests on the internet and a member of the European Digital Rights

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[301] David Kaye, 'Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (OHCHR, 1 June 2017), https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/Legislation/OL-DEU-1-2017.pdf; Hauke Gierow, 'Zensur: Netzwerkdurchsetzungsgesetz Verstößt Gegen Menschenrechte - Golem.De', *Golem.De*, 9 June 2017, https://www.golem.de/news/zensur-netzwerkdurchsetzungsgesetz-verstoesst-gegen-menschenrechte-1706-128290.html.

[302] Kaye, 'Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression'; Gierow, 'Zensur'.

[303] Kaye, 'Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression'; Gierow, 'Zensur'.

[304] Reporter ohne Grenzen e.V, 'Gesetzentwurf Bedroht Pressefreiheit', Reporter ohne Grenzen für Informationsfreiheit, accessed 10 January 2023, https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/gesetzentwurf-bedroht-pressefreiheit; Reporter ohne Grenzen, 'NetzDG: Breites Bündnis Appelliert an Politik', Reporter ohne Grenzen, 18 May 2017, https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/netzdg-breites-buendnis-appelliert-an-politik; Reporter ohne Grenzen, 'NetzDG Bleibt Trotz Nachbesserung Problematisch', Reporter ohne Grenzen, 26 June 2017, https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/netzdg-bleibt-trotz-nachbesserung-problematisch.

[305] Reporter ohne Grenzen e.V, 'Gesetzentwurf Bedroht Pressefreiheit'; Reporter ohne Grenzen, 'NetzDG: Breites Bündnis Appelliert an Politik'; Reporter ohne Grenzen, 'NetzDG Bleibt Trotz Nachbesserung Problematisch'.

[306] Reporter ohne Grenzen e.V, 'Gesetzentwurf Bedroht Pressefreiheit'.

[307] Elke Steven, 'Verstoß Gegen EU-Recht: Bundestag Verabschiedet NetzDG – Digitale Gesellschaft', 30 June 2017, https://digitalegesellschaft.de/2017/06/netzdg-verabschiedet/.

Initiative (EDRi), which sent a letter to the European Commission expressing its concerns.[308] One of the concerns that the association tried to raise with the Commission was that the NetzDG would likely violate the country of origin principle, which states that digital businesses must comply with the rules and regulations of the country in which they are established, rather than having to adapt to each of the different countries with which they do business.[309] However, despite these concerns, the European Commission ultimately decided not to stand in the way of the NetzDG.[310]

In the end, on 30 June 2017, the NetzDG was put to a vote in the German parliament, which also meant that a final parliamentary debate took place before the vote on the law. During this final debate, it was Maas who began his speech by justifying and explaining to his fellow lawmakers why the law was necessary.[311] Maas began his speech by once again mentioning the drastic increase in hate crimes at the time, and then emphasised once more that the NetzDG was absolutely necessary to ensure the rule of law on the internet.[312] Maas also reiterated the need for the NetzDG to protect the freedom of speech of all participants on the internet, as the presence of insults and hate speech on social media platforms often crowds out others and prevents free discourse.[313] The remainder of the parliamentary debate featured speakers from both the ruling coalition and the opposition, although the ruling coalition speakers outnumbered those from the opposition.[314] In the case of the opposition, an interesting contribution came from Renate Künast, who criticised not only the lack of transparency and public debate in the conception of the NetzDG, but also the fact that it did not do much to actually tackle the problem in a productive way, as it simplistically reduced the problem of hateful and illegal content to the issue of compliance and enforcement by fining social media platforms.[315] Künast,

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[308] Steven; Digitale Gesellschaft, 'Idee – Digitale Gesellschaft', Digitale Gesellschaft, accessed 29 March 2023, https://digitalegesellschaft.de/uber-uns/idee/; Digitale Gesellschaft, 'Stellungnahme Des Digitale Gesellschaft e.V. Zur TRIS-Notifizierung Des Entwurfs Für Ein Gesetz Zur Verbesserung Der Rechtsdurchsetzung in Sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG)' (Digitale Gesellschaft, 7 April 2017), https://digitalegesellschaft.de/wp-content/uploads/2017/04/Stellungnahme_TRIS_NetzDG_DigiGes.pdf.
[309] Digitale Gesellschaft, 'Stellungnahme Des Digitale Gesellschaft e.V. Zur TRIS-Notifizierung Des Entwurfs Für Ein Gesetz Zur Verbesserung Der Rechtsdurchsetzung in Sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG)'.
[310] Hauke Gierow, 'NetzDG: EU-Kommission Will Hate-Speech-Gesetz Nicht Stoppen', *Golem.De*, 10 June 2017, https://www.golem.de/news/netzdg-eu-kommission-will-hate-speech-gesetz-nicht-stoppen-1706-128305.html.
[311] Bundestag, 'Deutscher Bundestag - Bundestag Beschließt Gesetz Gegen Strafbare Inhalte Im Internet', Deutscher Bundestag, accessed 30 March 2023, https://www.bundestag.de/dokumente/textarchiv/2017/kw26-de-netzwerkdurchsetzungsgesetz-513398.
[312] Bundestag.
[313] Bundestag.
[314] Bundestag.
[315] Bundestag.

on behalf of the Greens, also stressed that there seemed to be a greater desire to focus on removal rather than upholding freedom of expression. She also feared that the NetzDG could set a dangerous precedent for future regulation of free speech on the internet worldwide, as other countries, including dictatorial regimes, could use the NetzDG as a blueprint for their own efforts to control speech on the internet.[316] However, despite these concerns, as mentioned earlier in this chapter, the NetzDG was ultimately passed by Parliament on the same day without further debate.[317]

Conclusion

This chapter has shown how the issue of illegal and harmful content on social media and the internet became a top political priority for policymakers in Germany from 2015 onwards, which then led to the adoption of an extraordinary government intervention in the face of considerable opposition, namely the NetzDG. This was achieved firstly by an in-depth examination of events that raised concerns about the issue of illegal and harmful content on social media platforms and the internet in general. One of these events was the domestic social and political polarisation in Germany following the refugee crisis of 2015, which was largely driven by forces on the political right. In particular, the way in which these forces used social media and the internet to their advantage raised significant concerns, as a noticeable rise in hate crime coincided with this polarisation, which some studies even suggest can be directly attributed to this very rise in crime. The other event that put the issue of illegal and harmful content on social media and the internet on the political map was the 2016 American presidential election, which resulted in the election of Donald Trump. The reason for this was that during this election, the issue of misinformation and fake news gradually came to be seen as a threat to domestic stability and the integrity of elections, following both allegations of foreign interference, possibly involving the spread of false information in the form of leaked emails, and the spread of false information by presidential candidates, particularly Trump. These events were of considerable concern to policymakers in Berlin, not only because the phenomenon was seen as a potential problem within Germany, but also because at the time the 2017 federal elections were just around the corner.

Although the issue of illegal and harmful content on social media and the internet was seen as a unique and problematic phenomenon in its own right, it was also very much

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[316] Bundestag.
[317] Bundestag.

intertwined with the social and political polarisation of the time mentioned above, as it was feared that the far-right AfD would use the spread of misinformation and fake news to its advantage in the upcoming elections. After having illuminated this context, this chapter has analysed how the NetzDG was adopted as an extraordinary intervention to address the problem of illegal and harmful content on social media. This analysis revealed not only the way in which the NetzDG took shape and was adopted, and the opposition it faced, but also how its necessity was framed at the time by the minister spearheading the legislation. The way in which Maas framed the need for the law was particularly interesting, as he justified the need for the NetzDG on the basis that it was needed to ensure the rule of law on the internet, to protect freedom of speech and to prevent further hate crime and violence beyond the internet. The reason why this is so interesting is that even though election integrity was clearly one reason why the issue of harmful and illegal content became such a top priority for policymakers, it was not one of the main reasons articulated by Maas for the need for the NetzDG.

In the end, as the example of the NetzDG illustrates, it is clear that around 2015 a seismic shift occurred with regard to the ability of the German government to intervene on the internet in order to tackle illegal and harmful content. In particular, this shift was the result of the context of the time, in which the issue of harmful and illegal content became a major concern for the public and policymakers alike due to the polarisation observed and concerns about the impact of fake news and misinformation on democracy. This is why the NetzDG, unlike the *Zugangserschwerungsgesetz*, eventually became the law of the land, despite also facing opposition, and why the NetzDG is such a vivid example of the different context at the time. Now that the context has been explained, this thesis will turn in the penultimate chapter to the securitisation of the Indymedia project in Germany, which, as will be shown, was a process that began and coincided with this change in context around 2015, and which, as will be argued, ultimately constituted the facilitating conditions of that very securitisation.

Chapter 4: The Securitisation of linksunten.indymedia.org in Germany

The previous chapter showed how, from 2015 onwards, the issue of illegal and harmful content on the internet attracted considerable public attention and was seen by the government of the day as a high priority issue to be tackled. This was mainly the result of a number of national and international developments during this period, two of which stand out. On the one hand, in the wake of the so-called refugee crisis in 2015, Germany experienced a sharp increase not only in hate speech and extremist content on social media and the internet, but also in hate crimes. On the other hand, there was the election of Donald Trump to the American presidency in 2016, which raised global concerns about the phenomenon of fake news and misinformation on the internet and its ability to potentially undermine the integrity of democratic elections. This was of particular concern to German politicians at the time, as the 2017 federal elections were just around the corner and, for the first time in Germany's post-war history, a far-right political party emerged as a possible political challenger. All of this created a significant impetus for lawmakers to act on the issue of content deemed harmful and illegal on social media platforms and the internet in general, which eventually materialised in the *Netzwerkdurchsetzungsgesetz* (NetzDG). The NetzDG, as a rather extraordinary intervention in the internet by the German government, illustrates a significant shift both in the willingness of the government to push through such legislation despite considerable opposition, and in the context of a broader public acceptance of such interventions, which is particularly evident when comparing the NetzDG with the *Zugangserschwerungsgesetz*, which was an earlier extraordinary attempt by the government to intervene in this area, but which ultimately failed.

This chapter will look at how *linksunten.indymedia.org*, from hereinafter referred to simply as *linksunten*, came to be securitised by the German government, and it will do so in two parts. The first part will illustrate how the government, through the *Bundesamt für Verfassungsschutz* (BfV), monitored and framed both *linksunten* and Indymedia in general prior to the former's securitisation. The first part will begin with a brief description of how the BfV began reporting on left-wing extremist internet activity before Indymedia emerged, and then focus on how Indymedia was framed and reported on by the BfV, and how this changed over the course of the years prior to the securitisation of *linksunten*. The second part will then examine the securitisation of *linksunten*, which, as will be shown, was a process that began in 2016 with the publication of the BfV report for 2015 and essentially culminated in 2017. However, this part will not only examine the ways in which the framing of the platform

changed in 2016 and the securitisation of *linksunten* unfolded, but will also analyse and reflect on the reactions to this securitisation and the likely reasons for it.

Last but not least, this chapter is largely based on the annual reports of the BfV and the press conferences held by the President of the BfV together with the then Minister of the Interior at the time. The reason for this is that in Germany, as mentioned earlier in this thesis, the BfV, as the domestic counter-intelligence service under the jurisdiction of the Ministry of the Interior, is responsible for monitoring extremist elements in the country. Therefore, it is the BfV, in conjunction with the Ministry of the Interior, that would be the governmental authorities to report upon and take action against any suspected extremist elements, and since the BfV as a counter-intelligence service releases only limited material, the BfV's annual reports and press conferences constitute the very little source material that is available from the service to the public and researchers.

The Framing of Indymedia Pre-Securitisation

Although the first mention of Indymedia by the BfV would not occur until the 2001 BfV report, it was the 1995 report that first mentioned the internet as a communication channel for left-wing extremists.[318] At that time, it was the use of a mailbox platform called *SpinnenNetz* by left-wing extremists for the purpose of communication and coordination that was regarded as a cause for concern.[319] This did not last long though, as from 1996 onwards, *SpinnenNetz* began already to lose its significance in the eyes of the BfV, as not only were more mainstream commercial mailbox platforms reportedly being used more frequently by left-wing extremists, but many organisations and magazines also began to set up their own websites and platforms. Some examples of such organisations were the *Autonome Antifa (M)* in Göttingen and the *Deutsche Kommunistische Partei* (DKP).[320] However, it was the *nadir* information platforms in particular that received special attention from the BfV from 1997 onwards.[321] In spite of the fact that the BfV mentioned several platforms by name during this period, it refrained from labelling any of the listed platforms as extremist, often simply stating that a platform was run by an extremist organisation or that a platform such as *nadir* contained links to extremist

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[318] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2001' (Bundesministerium des Innern, August 2002); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1995' (Bundesministerium des Innern, May 1996).
[319] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1995'.
[320] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1996' (Bundesministerium des Innern, May 1997); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1997' (Bundesministerium des Innern, May 1998).
[321] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1997'.

material.[322] Furthermore, until 1999, the BfV described the phenomenon of left-wing extremism on the internet in rather abstract terms, almost as a stand-alone phenomenon, as it was only after 1999 that the agency began to use evidence such as quotes from the internet in its reports to describe wider developments in the left-wing extremist scene in Germany.[323]

In the first mention of Indymedia by the BfV in the report for 2001 the platform is briefly introduced and described as a media collective operated by 'left-wing extremists' without further elaboration being provided.[324] In the first few years that followed, Indymedia continued to receive only marginal attention, as other left-wing outlets such as *nadir* and *DIE LINKE SEITE* were mentioned far more frequently and given far greater importance.[325] In the BfV's 2003 report, for example, both *nadir* and *DIE LINKE SEITE* are cited as examples of established platforms that serve the purpose of acting as the go-to places on the internet for a wide range of information relevant to the left-wing extremist scene.[326] In that very same spirit in the period from 2001 to 2005 Indymedia resumed to be referred for the most part to as a platform that was simply being operated or used by left-wing extremists with no further elaboration.[327] For example, while in some years, such as the 2005 report, Indymedia was not mentioned at all by the BfV, in other years, such as the previous year's report, Indymedia was not only once again presented as a platform increasingly used by left-wing extremists, but was also actually described in more neutral terms as a media platform.[328] All of the above shows

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[322] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1995'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1996'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1997'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1998' (Bundesministerium des Innern, May 1999); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1999' (Bundesministerium des Innern, June 2000); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2000' (Bundesministerium des Innern, May 2001).
[323] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1995'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1996'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1997'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1998'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 1999'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2000'.
[324] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2001', 189.
[325] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2001'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2002' (Bundesministerium des Innern, September 2003); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2003' (Bundesministerium des Innern, April 2004); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2004' (Bundesministerium des Innern, April 2005); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2005' (Bundesministerium des Innern, April 2006).
[326] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2003', 155.
[327] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2001'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2002'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2003'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2004'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2005'.
[328] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2005'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2004', 180–81.

that in the period leading up to 2006 the Indymedia project in Germany was in general seen by the BfV with not much concern.

It was in 2006 that the above began to gradually change as Indymedia was step by step seen as more of a significant platform for Germany's left-wing extremist community. This is best exemplified by the fact that from 2006 onward posts published on Indymedia were more frequently cited in the BfV reports.[329] These posts were cited for the purpose of not illustrating per se a point in relationship to the platform itself, but rather to underline the attitudes of left-wing extremist groups and other wider developments in respect to the phenomenon of left-wing extremism in general. One example of such a cited post can be found in the 2006 report by the BfV where a post by a Berlin chapter of socialist youth group is quoted.[330] The reason for quoting this post was because in it the group made its opposition to parliamentary politics abundantly clear which illustrates essentially the group's opposition to the FDGO.[331] Another example of a cited post is to be found in the report for the year 2010 in which as part of a wider effort to explain the activities in the anti-fascist movement a post calling for a protest on Indymedia was referenced.[332] This post was cited to illustrate the way in which left-wing extremists who are members of the anti-fascist movement justify their opposition to the FDGO.[333] This opposition was articulated by the authors in the post through essentially arguing that any violence directed against the state and its agents is justified on the grounds that the political and economic status quo is rooted in repression and driven by racism and nationalism.[334] Consequently, what these examples reveal is that during this period that even though the BfV did not see Indymedia directly as an extremist platform, it certainly did see the posts published on the platform by extremist elements as authoritative and reflective enough in order to base and justify their assessments on them.

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[329] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2006' (Bundesministerium des Innern, 2007); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2007' (Bundesministerium des Innern, 2008); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2008' (Bundesministerium des Innern, 2009); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2009' (Bundesministerium des Innern, 2010); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2010' (Bundesministerium des Innern, 2011); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2011' (Bundesministerium des Innern, 2012); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012' (Bundesministerium des Innern, 2013); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2013' (Bundesministerium des Innern, 2014); Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2014' (Bundesministerium des Innern, 2015).
[330] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2006', 164.
[331] Bundesamt für Verfassungsschutz, 164.
[332] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2010', 193.
[333] Bundesamt für Verfassungsschutz, 193.
[334] Bundesamt für Verfassungsschutz, 193.

However, in addition to using Indymedia content to underline the position of particular left-wing extremist groups and to explain wider developments in the left-wing extremist scene, the BfV frequently referred to Indymedia content during this period in the context of describing the willingness of left-wing extremists to implement their ideology through direct action.[335] The direct action referred to included not only vandalism and protests, but also direct violence against perceived enemies.[336] An example of such a post cited by the BfV can be found in the 2012 report, which discusses and reports in detail on violence by left-wing extremists against law enforcement.[337] In particular, the report quotes posts exclusively from Indymedia celebrating violence against the police and calling for more of the same.[338] What is remarkable, however, is that the BfV report only quotes posts from the platform that essentially glorify such violence, while at the same time stating that only a few small groups tolerate violence against the police that results in injuries.[339] All in all, the above seems to indicate that the BfV not only considered the material published on the Indymedia platforms to be a reliable source of information on the attitudes of certain left-wing extremist groups and on wider developments in the movement, but also saw a direct link between the posts on the platform and mobilisation on the streets.

Ultimately, the way in which the Indymedia project was framed by the BfV in Germany evolved considerably over the years, from the first mention of the platform in 2001 to the securitisation of *linksunten*. Although the way in which the internet was being used by left-wing extremists was of concern to the agency as early as 1995, it would be many years before Indymedia received any significant attention, even after its first mention in the 2001 annual BfV report. This happened in 2006, and in the following years Indymedia and the articles found on the platform were gradually given more and more attention by the BfV, with many of them being directly quoted as sources to explain not only developments in the left-wing extremist movement in Germany, but also the motivation for direct action. This would seem to indicate that the BfV not only considered the material available on Indymedia to be reliable enough to draw conclusions from, but also that they were under the impression that there seemed to be a

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[335] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2007', 142–43; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2010', 195; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012', 177–80.
[336] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2007', 142–43; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2010', 195; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012', 177–80.
[337] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012', 178–80.
[338] Bundesamt für Verfassungsschutz, 178–80.
[339] Bundesamt für Verfassungsschutz, 178–80.

link between the posts on the platform and direct action on the streets. However, even though the BfV arguably considered Indymedia to be a reliable source of information on which it increasingly relied over the years, paradoxically, until 2015, the BfV never once considered the platform itself to be an inherently extremist platform. Finally, it should also be noted that the BfV was generally rather vague in its references to Indymedia during most of the period under review. For example, between 2002 and 2005, the BfV explicitly referred to Indymedia Germany in its annual reports, that is the portal with the current domain *de.indymedia.org*, but from 2006 to 2011, the BfV only referred to Indymedia in general in its reports, without specifying whether *de.indymedia.org* or *linksunten* was meant.[340] It was only after 2012, with the publication of the report for 2011, that the BfV began to refer explicitly to *linksunten*, with very few and minor mentions of *de.indymedia.org* occurring.[341]

The Securitisation of linksunten.indymedia.org

It was in the 2015 report that the BfV's framing of *linksunten*, would itself change, as the report published for that year for the first time referred to the platform itself as a left-wing extremist platform.[342] On the one hand, this change in the BfV's framing occurred without any additional information or justification, as no explanation for this change was given in either the report or the press conference held as part of the report's publication.[343] On the other hand, this change was extremely sudden and drastic, which is best illustrated by the fact that there was no mention of Indymedia as a platform in the 2014 report, as only a few posts from *linksunten* were quoted by the BfV in the report. In fact, it was only in the previous year's report for 2013 that the BfV went so far as to explicitly describe both *linksunten* and *de.indymedia.org* as group independent internet platforms.[344] Overall, this development and its sudden nature is quite interesting because, as mentioned above, over time the BfV began to refer primarily only to

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[340] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2001'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2002'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2003'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2004'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2005'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2006'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2007'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2008'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2009'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2010'.
[341] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2011'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2013'; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2014'.
[342] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2015' (Bundesministerium des Innern, 2016), 106.
[343] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2014'; 'Verfassungsschutzbericht 2015: Thomas de Maiziere Und Hans-Georg Maaßen Am 28.06.2016', accessed 22 April 2023, https://www.youtube.com/watch?v=9JVkpemRtCY.
[344] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2013', 56.

the two Indymedia platforms, while mentions of other left-wing extremist platforms by name gradually decreased. For example, while the 2001 report still mentioned *nadir* and *DIE LINKE SEITE* as other platforms of note, by 2012 only one other platform was mentioned by name, *directactionde.ucrony*.[345] Therefore, given that the two Indymedia platforms have received considerable attention from the BfV over time, the sudden change in the BfV's framing without explanation in the 2015 report is all the more surprising.

Following this initial framing of *linksunten* as an extremist platform in the 2015 report, the BfV doubled down the following year, devoting almost an entire section of its report to the role of the internet and social media in relation to left-wing extremism.[346] It described *linksunten* in the report as the most important platform for violent left-wing extremists.[347] Furthermore, the BfV not only described *linksunten* as a platform where the most dangerous left-wing extremists met and exchanged news, but also used this very platform to promote and facilitate violent actions, for example by publishing lists of suspected right-wing extremists containing sensitive personal information.[348] While the publication of lists outing targets can certainly be considered incitement to violence by any reasonable standard, it is still unclear, in the absence of any additional explanation from the BfV, how any of the other alleged facets of the platform was new or different from what had been taking place on the platform for a considerable period of time. As shown earlier in this chapter, the BfV had openly acknowledged for several years that *linksunten* was being used by left-wing extremists, with activities ranging from extreme views to the glorification of violence, such as that directed against law enforcement. It is therefore rather puzzling what prompted the BfV to label *linksunten* directly as an extremist platform, instead of one used by extremists alongside regular grassroots left-wing activists and citizen journalists, as it had done in the past.

It is clear that this sudden change in framing, which began first subtly in 2016 with the publication of the report for 2015 and then continued in 2017, marked the beginning of a securitisation process directed at the platform, with the aim of clearly framing the platform as a security threat by describing it as the most important left-wing extremist platform. This, in turn, was meant to imply that the platform posed a threat to the liberal democratic basic order

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[345] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2001', 189 & 190; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012', 222; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2018' (Bundesministerium des Innern, 2019), 138 & 140.

[346] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2015', 106; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2016' (Bundesministerium des Innern, 2017), 115–18.

[347] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2016', 115–18.

[348] Bundesamt für Verfassungsschutz, 115–18.

(FDGO) by being an important vector for left-wing extremism in the country. The implication that the platform is extremist in nature and a security threat to the FDGO is a prerequisite for the government to be able to justify and take extraordinary measures against the platform. The reason for this, as explained earlier in this thesis, is that in Germany, in order for the government to intervene in the realm of public expression, either existing laws must have been violated or the speech and the entity in question must be considered a threat to the FDGO. This is particularly important in the case of *linksunten* because, as the BfV pointed out, the platform describes itself as an independent media outlet, which means that any government intervention would have to be well-founded in order not to potentially violate the constitutional principle of press freedom in the country.[349] Therefore, the designation of *linksunten* as an extremist platform was a crucial step for the government to securitise and ultimately take action against the platform.

It was in 2017 that this process of securitisation of *linksunten* reached its culmination. In August of that year, just four weeks before the federal elections, the then German Interior Minister Thomas de Maizière announced at a press conference that the platform and the alleged association behind it would be banned.[350] During the conference, de Maizière described *linksunten* not only as extremist, but also as the most important platform for violent left-wing extremists, which he said was used for illegal purposes, such as calling for attacks on people and property, and whose continued operation threatened Germany's constitutional order.[351] The minister also described the platform's operators as clear opponents of the country's constitutional order and the rule of law, and that the government would take all necessary measures to shut it down.[352] The following year, with the publication of the BfV's report for 2017, the decision is further explained in written form and framed in very similar terms to the reasons given by de Maizière the year before.[353] The platform itself is not only accused of being an extremist platform, but also of being one of the most important tools instrumentalised by violent left-wing extremists in the country.[354] The report also stresses that much of this had

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[349] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2011', 200–201; Bundesminister der Justiz, 'Grundgesetz Für Die Bundesrepublik Deutschland Art 5', Gesetze im Internet, accessed 18 May 2023, https://www.gesetze-im-internet.de/gg/art_5.html.
[350] *Thomas de Maizière Zum Verbot von 'Linksunten.Indymedia' Am 25.08.17*, 2017, https://www.youtube.com/watch?v=s2tmaByw8g8.
[351] *Thomas de Maizière Zum Verbot von 'Linksunten.Indymedia' Am 25.08.17*.
[352] *Thomas de Maizière Zum Verbot von 'Linksunten.Indymedia' Am 25.08.17*.
[353] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2017' (Bundesministerium des Innern, 2018), 133–36.
[354] Bundesamt für Verfassungsschutz, 133–36.

been going on for years before the decision to ban the platform was taken.[355] Once again, however, there is no explanation as to why the decision to take action against the platform and ban it was taken at this point in time, despite the fact that the BfV itself admits that *linksunten* had been hosting extremist content for a long time.[356]

However, apart from the fact that it is unclear why the BfV and the German government decided to securitise *linksunten* rather quickly from 2015 onwards, even though most, if not all, of the listed problems with the platform had already existed for many years, the measure used by the government to effectively ban the platform was also extraordinary in itself. This measure was that the government unanimously decided to legally classify *linksunten* and the individuals involved in the platform as an association. This designation of *linksunten* and its organisers as an association then in turn enabled the government to utilise existing law to outlaw that association and in consequence the platform itself. The decision to outlaw an association is in itself a complex legal undertaking, as certain criteria must be met, given that associations are constitutionally protected entities, and as such the outlawing of an association has only occurred a few times in Germany's history, and has usually involved entities that either violated the law or posed a threat to the FDGO.[357] But this is especially the case with *linksunten*, which, as explained in the introductory chapter of this thesis, is by and large a consensus-based platform, meaning that it is run by a large number of people who vote on decisions, and many of the contributions to the platform are made anonymously. It is therefore not surprising that this decision would be challenged in court for several years and would not be definitively settled until recently at which point the challenge was dismissed by the judiciary.[358]

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[355] Bundesamt für Verfassungsschutz, 133–36.

[356] Bundesamt für Verfassungsschutz, 133–36.

[357] Bundesminister der Justiz, 'Grundgesetz Für Die Bundesrepublik Deutschland Art 9', Gesetze im Internet, accessed 18 May 2023, https://www.gesetze-im-internet.de/gg/art_9.html; Bundesministerium des Innern und für Heimat, 'Vereins-verbote: Einen Schwerpunkt Der Maßnahmen Des Bundesministeriums Des Innern Und Für Heimat Bei Der Bekämpfung Des Extremismus Bilden Die Sogenannten Vereinsverbote.', Bundesministerium des Innern und für Heimat, accessed 18 May 2023, https://www.bmi.bund.de/DE/themen/sicherheit/extremismus/vereinsverbote/vereinsverbote-artikel.html?nn=9391476.

[358] *Entscheidung Über Verbot von Linksunten.Indymedia*, 2020, https://www.youtube.com/watch?v=jUOT4YSB-d0; *Felix Zimmermann Zum Verbot Der Internetplattform Linksunten.Indymedia Am 29.01.20*, 2020, https://www.youtube.com/watch?v=pIaBqrayWAE; Henrik Merker, 'Durfte Der Staat Linksunten.Indymedia Verbieten?', *Zeit*, 29 January 2020, https://www.zeit.de/digital/internet/2020-01/indymedia-linksunten-verbot-bundesverwaltungsgericht-website; 'Linksunten.Indymedia: Bundesgericht Bestätigt Verbot von Linksradikalem Internetportal', *Welt*, accessed 20 January 2023, https://www.welt.de/politik/deutschland/article205455939/Linksunten-Indymedia-Bundesgericht-bestaetigt-Verbot-von-linksradikalem-Internetportal.html; Jansen, 'Linksunten.Indymedia Bleibt Verboten';

Given that illegal and harmful content was an issue of considerable public and political attention at the time, and that the securitisation of Indymedia coincided directly with the passing of the NetzDG, it is surprising that no other route was taken to effectively take action against the platform. The most likely reason for the government's decision is that it was probably the only ready means available at the time to take the site offline as quickly as possible in the face of an upcoming election. This means that political considerations were most likely at the forefront of this rather quick securitisation process, made possible by a rather permissive context at the time that saw harmful and illegal content on the internet as a problem that needed to be addressed. It is also this assessment that was shared by journalists and observers at the time, following the announcement of the government's decision to ban *linksunten*, that this was a strategically timed manoeuvre seemingly aimed at reducing any potential political opposition to the securitisation move and the eventual banning of the platform, as no political actor would want to be seen as defending left-wing extremism so close to an election.[359] Such an assessment is even more credible in retrospect when one considers that in 2020, as a result of the at the time ongoing legal proceedings relating to the banning of the platform, it became known that apparently the posts cited in the legal justification for the ban represented only about 0.08 percent of all posts on the platform.[360]

Nevertheless, there was considerable opposition to the securitisation and subsequent banning of *linksunten*, even though in the end it had little effect. This opposition manifested itself, among other things, in protests against the banning of the platform in several German cities at the time.[361] However, in addition to the opposition of users and direct supporters of the

Volker Kronenberg Zum Verbot von 'Linksunten.Indymedia' Am 25.08.17, 2017, https://www.youtube.com/watch?v=26QmGeTy1t8; 'Linksradikale Plattform: Bundesverfassungsgericht Lehnt Klage Gegen Indymedia-Verbot Ab', *Spiegel*, 10 March 2023, https://www.spiegel.de/politik/deutschland/linksunten-indymedia-bundesverfassungsgericht-lehnt-klage-gegen-verbot-linksradikaler-plattform-ab-a-7c3221a2-717c-4088-bfa3-5eea402be409.

[359] *Thomas de Maizière Zum Verbot von 'Linksunten.Indymedia' Am 25.08.17*; *Volker Kronenberg Zum Verbot von 'Linksunten.Indymedia' Am 25.08.17*; Markus Reuter, 'Wahlkampfmanöver: Innenminister Verbietet Linksunten.Indymedia.Org', *Netzpolitik.Org*, 25 August 2017, https://netzpolitik.org/2017/wahlkampfmanoever-innenminister-verbietet-linksunten-indymedia-org/; Markus Decker, 'Bundesinnenminister: Thomas De Maizière Gerät Nach Verbot von Linksunten.Indymedia.Org in Die Kritik', *Mitteldeutsche Zeitung*, 28 August 2017, https://www.mz.de/deutschland-und-welt/politik/bundesinnenminister-thomas-de-maiziere-gerat-nach-verbot-von-linksunten-indymedia-org-in-die-kritik-1350616; Markus Decker, 'Kritik an de Maizière Nach Linksunten-Verbot', *Frankfurter Rundschau*, 28 August 2017, https://www.fr.de/politik/kritik-maizire-nach-linksunten-verbot-11024028.html.

[360] Jansen, 'Verbotenes Portal Wieder Im Netz'.

[361] *Ausschreitungen Bei Indymedia-Demonstration in Leipzig*, 2020, https://www.youtube.com/watch?v=i8EzwNHTSlo; '"Indymedia": 200 Linke Demonstrieren in Freiburg', *Zeit*, 26 August 2017, 2, https://www.zeit.de/gesellschaft/zeitgeschehen/2017-08/indymedia-freiburg-demonstration-rueckkehr-angekuendigt-linksextremismus?utm_referrer=https%3A%2F%2Fwww.google.com%2F; Markus

platform, civil society, the media and some sections of German politics also expressed considerable concern about the ban. On the one hand, in the case of civil society, the German chapter of Reporters Without Borders in particular expressed concern not only about the constitutionality of the decision to ban *linksunten*, but also about the proportionality of this decision, since the entire platform was declared illegal because of only some of the content that it contained was considered extremist.[362] Moreover, concerns were occasionally expressed in the media at the time about the possible negative impact on press freedom of the authorities' move to securitise *linksuten*, which, despite its activist nature, was still a platform that promoted itself as a place for grassroots journalism.[363] On the other hand, political criticism and concern over the banning of the platform came mainly from the opposition, with politicians from the *Linke* and *Grünen* political parties in particular voicing their concerns.[364] These concerns were largely echoed by those of civil society organisations such as Reporters Without Borders, as these politicians argued that the decision undermined freedom of speech and the press, and could constitute not only censorship, but also an overly generous application of the law in terms of the use of the law on associations in order to outlaw the platform.[365] However, there were also explicit concerns that the whole exercise was simply a political manoeuvre for electoral purposes, with some politicians from the *Grünen*, for example, saying it was highly questionable that the platform and its members could be classified as an association in the first place.[366]

Wehner, 'Solidarität Mit „linksunten": Der Linksextreme Zweck Heiligt Die Mittel', *Frankfurter Allgemeine*, 31 August 2017, https://www.faz.net/aktuell/politik/inland/linksextreme-website-jusos-und-gruene-jugend-solidarisieren-sich-15177600.html.

[362] Reporters Without Borders, 'Rsf Criticizes Germany's Ban of Leftist Website as Constitutionally Questionable', Reporters Without Borders, 31 August 2017, https://rsf.org/en/rsf-criticizes-germany-s-ban-leftist-website-constitutionally-questionable; Markus Reuter, 'Reporter Ohne Grenzen Kritisiert Verbot von Linker Plattform', *Netzpolitik.Org*, 28 August 2017, https://netzpolitik.org/2017/reporter-ohne-grenzen-kritisiert-verbot-von-linker-plattform/.

[363] Merker, 'Durfte Der Staat Linksunten.Indymedia Verbieten?'; *Felix Zimmermann Zum Verbot Der Internetplattform Linksunten.Indymedia Am 29.01.20*; Reuter, 'Reporter Ohne Grenzen Kritisiert Verbot von Linker Plattform'.

[364] Reuter, 'Wahlkampfmanöver'; Ulla Jelpke, 'Indymedia-Verbot Ist Willkürliche Zensur', Ulla Jelpke - Mitglied des Deutschen Bundestages, 25 August 2017, https://www.ulla-jelpke.de/2017/08/indymedia-verbot-ist-willkuerliche-zensur/; Norbert Wallet, 'Verbot von „linksunten": Schlag Gegen Gewaltbereite Linksextremisten', *Stuttgarter Nachrichten*, 25 August 2017, https://www.stuttgarter-nachrichten.de/inhalt.verbot-von-linksunten-schlag-gegen-gewaltbereite-linksextremisten.65837c67-c245-42c2-9eeb-90c0bda36a1f.html; Decker, 'Kritik an de Maizière Nach Linksunten-Verbot'; Wehner, 'Solidarität Mit „linksunten"'.

[365] Reuter, 'Wahlkampfmanöver'; Jelpke, 'Indymedia-Verbot Ist Willkürliche Zensur'; Wallet, 'Verbot von „linksunten"'; Decker, 'Kritik an de Maizière Nach Linksunten-Verbot'; Wehner, 'Solidarität Mit „linksunten"'.

[366] Reuter, 'Wahlkampfmanöver'; Jelpke, 'Indymedia-Verbot Ist Willkürliche Zensur'; Wallet, 'Verbot von „linksunten"'; Decker, 'Kritik an de Maizière Nach Linksunten-Verbot'; Wehner, 'Solidarität Mit „linksunten"'.

Conclusion

This chapter has shown how *linksunten* was securitised and ultimately banned by the German government. It began by showing that as early as 1995 the government, through the BfV, was paying attention to the way left-wing extremists in the country were using the internet. It was in 2001 that the Indymedia project was first mentioned, initially focusing on *de.indymedia.org* as it was the first of two German Indymedia platforms to be created. Over the years, however, it was *linksunten* that was almost exclusively mentioned by the BfV in its annual reports as one of the main online platforms used by left-wing extremists when referring to Indymedia. Although *linksunten* was often cited in the BfV's annual reports during this period, it was never presented as an extremist platform in itself, nor was its existence problematised. This changed rather abruptly, however, when it finally became subject to securitisation by the German government, a process characterised by the remarkable speed with which it unfolded. After observing the platform for several years, the government went from suddenly labelling it as an extremist platform in 2016 with the publication of the BfV's annual report for 2015 to taking the extraordinary step of banning it a year later in 2017, in the space of about a year.

This swift process of securitisation took place in a context in which political and strategic considerations, with a federal election on the horizon, played a key role, as contemporary observers noted at the time, and, more generally and importantly, a broader context had emerged in which there was a desire on the part of policymakers to take rapid action against content on the internet that was deemed harmful and illegal. In particular, it was the latter broader context, in which government intervention against online content that was deemed to be harmful and illegal was seen as more permissible, that served as the key facilitating condition in this process. In turn, it was in this context that the authorities were able to securitise the platform by framing it as a security threat through their securitising moves, with reference to several referent objects, such as the FDGO, which were supposedly threatened by *linksunten* and its continued instrumentalisation by left-wing extremists. Ultimately, it was the declaration of the platform as illegal that marked the end of this very process of securitisation, as it was the extraordinary measure that was successfuly implemented in this case.

At this point, it is clear that *linksunten* has been subjected to an archetypal example of securitisation by the government, characterised especially in this particular case by its sudden

and swift nature. There was opposition to this process from several quarters in Germany, not to mention the fact that the government's decision to ban the platform was challenged in court. However, despite the opposition, the government was ultimately able to successfully securitise the platform and take the extraordinary step of banning it. This was largely due to the combination of three factors. First, the securitisation of *linksunten* took place in a context in which not only left-wing extremism was already a highly securitised issue, but also harmful and illegal content on the internet was becoming an issue with a high public profile. This context also coincided with the beginning of the securitisation of the platform, both of which began in 2015. Second, the authorities were able to effectively frame the platform not only as an extremist platform in itself, but also as one that posed an urgent and credible security threat because of the implications of the content available on *linksunten*. These implications related to the potential harm that the content available on the platform might cause, such as its role in encouraging violence and opposition to the FDGO, because as noted above, the BfV frequently pointed out in its annual reports that the platform was being used by left-wing extremists to declare extremist actions and encourage violence. More specifically, this could be seen, for instance, in the previously highlighted examples of the agency pointing to posts on the platform that called for violence against law enforcement and contained lists of individuals who were considered legitimate targets for violence.[367] Thirdly, it appears that the government's decision to take action against *linksunten* in the country was also based on strategic timing, as the platform was declared illegal just weeks before an election, which was probably aimed at avoiding excessive parliamentary opposition to its securitisation. This use of strategic timing was also seen in the passing of the NetzDG law at the end of the same legislative period, which helped the government to pass the initiative despite much stronger opposition.

In the end, while it is certainly possible that concerns regarding left-wing extremism played a role in the decision to outlaw *linksunten*, it is the context during which the platform's securitisation unfolded that played a far more significant role in shaping that very process and especially its outcome. At the heart of this context was not only an upcoming federal election, but also an environment in which government intervention in the realm of online expression was largely accepted, especially when that intervention was aimed at combating forms of expression or content deemed harmful and illegal, such as extremist content. However, it is unclear whether, prior to this change in context, the authorities had ever considered taking

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[367] Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2012', 178–80; Bundesamt für Verfassungsschutz, 'Verfassungsschutzbericht 2016', 115–18.

action against any of the Indymedia platforms in the country, or whether the authorities may have shied away from such an undertaking due to the potential backlash without a more receptive context. This question, along with others such as why only the country's Indymedia platform was targeted by the authorities and no other left-wing platforms were subject to securitisation, remains unanswered and certainly worthy of further research.

Conclusion

This thesis has examined the process that led to *linksunten.indymedia.org* being banned by the German authorities, which it has done by taking a historical perspective on the event, using securitisation theory as its theoretical framework and a method based on explaining-outcome process tracing. It did so by first providing, in the second chapter of this thesis, an overview of the historical development of the delicate balancing act between freedom of expression and censorship in Germany after the end of the Second World War. This, in turn, showed that the order that emerged in the post-war period was one that weighed freedom of expression against the threat that this very freedom, in its worst manifestation, could pose to the emerging democratic order and to the most vulnerable members of society, such as the youth. Accordingly, a status quo was established in which the government was generally able to be quite effective in restricting and, if necessary, cracking down on forms of expression in any area that threatened that very order or violated existing laws. With the spread of the internet, however, this status quo was challenged and state intervention on the internet was strongly and effectively opposed, as the example of the failure of the *Zugangserschwerungsgesetz* which was passed in 2009 shows.

In the subsequent and third chapter of this thesis, it was then shown that this resistance to government intervention on the internet began to become less effective and resilient from 2015 onwards. This was the result of the emergence of both national and international developments around this time that made the issue of content deemed harmful and illegal on social media and the internet in general one of considerable concern to both policymakers and the wider public. In response to this growing concern about harmful and illegal content on social media and the internet, such as extremist content and misinformation, the government decided to seize the moment by once again attempting an extraordinary intervention on the internet in the form of legislation, namely the *Netzwerkdurchsetzungsgesetz* (NetzDG). However, unlike the *Zugangserschwerungsgesetz*, the NetzDG was eventually passed by the German parliament in 2017 and implemented, although it still faced considerable opposition from some quarters. The successful introduction of the NetzDG demonstrated that a significant shift had taken place regarding the possibility of government intervention on the internet, which had previously been a space where any intervention was seriously resisted.

Subsequently, in the last main chapter, it was the process through which *linksunten.indymedia.org* was ultimately banned by the German government in 2017 that was

examined, which as has been shown, can indeed be seen as an example of successful securitisation. This securitisation process was characterised in particular by the suddenness and speed with which it unfolded, as the platform went from being framed by the authorities as an extremist platform and threat to being banned in the space of about a year. The way in which this securitisation process unfolded is all the more remarkable given that *linksunten.indymedia.org*, and indeed the Indymedia project in Germany as a whole, had been monitored and reported on by German authorities such as the *Bundesamt für Verfassungsschutz* (BfV) since 2001. The reasons for the way this process unfolded were the result of both the favourable facilitating conditions that emerged at that time, namely a more receptive context towards government intervention against online content deemed harmful and illegal, and strategic political considerations in the face of an upcoming federal election. These facilitating conditions in turn played a key role in the success of the securitising moves by the authorities, which entailed framing *linksunten.indymedia.org* as a platform that posed a security threat, with reference to several referent objects, one of which was the liberal democratic basic order (FDGO), which were allegedly threatened by the platform and its continued operation. Ultimately, it was the government's banning of the platform that marked the culmination and success of this very securitisation process, as it was the extraordinary measure that was implemented in this case.

Therefore, the answer to the research question of this thesis can be that it is indeed the case that the process that led to the banning of *linksunten.indymedia.org* by the German authorities can be seen as a process of securitisation. In light of this answer, this study and its findings have, at least in part, some larger implications. One of these is that, to the best of the author's knowledge, this is the first academic attempt to understand how and why *linksunten.indymedia.org* became a target of the German authorities not just from a historical perspective, but also in general. Therefore, notwithstanding the possible limitations and shortcomings of this study, this thesis represents a first and modest attempt to understand this important event in German contemporary history and the study of left-wing extremism in the country. Another implication and contribution of this study is that it raises significant questions about government overreach and proportionality in relation to the securitisation of *linksunten.indymedia.org*. This is because, as this thesis has shown, the German government's decision appears to have been driven, at least in part, by political considerations that seem to point to an instrumentalisation of the state's ability to intervene in the realm of free expression.

This is certainly something that deserves much more investigation, especially given the recent relevance of the online censorship debate, but more on that in a moment.

The relevance of the findings presented in this thesis goes far beyond providing insight into a previously unexplored event that is relevant to the study of left-wing extremism and contemporary German history. This study and its findings are particularly relevant to the broader debate about how to deal with forms of expression that are considered harmful and illegal, such as hate speech and misinformation on the internet, without compromising freedom of expression. This is because the case of *linksunten.indymedia.org* is an example of how an intervention in the area of freedom of expression in the name of combating harmful and illegal content can play out in practice. This is particularly interesting in this case as the platform was one that promoted itself as a space for grassroots activism and journalism and was banned in a relatively short period of time, after several years of operation, without any detailed justification provided by the authorities. All of this makes this study relevant, as it is important to reflect on and take stock of such cases, not only to prevent excesses in the future, but also perhaps to make any subsequent interventions more effective.

Nevertheless, this study and its findings, despite being of considerable relevance and potentially having some wider implications, certainly have some limitations. One of these limitations is the fact that this study is based on a rather peculiar and specific case study that is unique and the findings of this study cannot be generalised. This is compounded by another limitation, that of the method used, which is based on explaining-outcome process tracing, which is not only geared towards explaining the reason for the outcome of a single event, but also does not offer the possibility, even from a theoretical point of view, of larger generalisable findings. Another significant limitation is the fact that, although this study has included a considerable amount of different types of sources, it could certainly have included and consulted more material to provide more perspectives. For example, the author was rather limited in his ability to gather government sources to provide a more detailed perspective on this event, especially in relation to the reason why it happened from the perspective of the government and its agents. This could have been achieved, for example, by conducting interviews with the politicians and officials involved in the process of making the decision to designate the platform as extremist and to ban it. Unfortunately, it was not possible to conduct such interviews as part of this study.

Despite these limitations, it is probably fair to conclude that this research has made a sincere attempt to understand the banning of *linksunten.indymedia.org* by approaching the issue from a historical perspective, which has undoubtedly yielded at least some noteworthy insights. However, beyond its contributions, the author also hopes that this thesis will at least have inspired others to conduct further research, not only into the case of *linksunten.indymedia.org*, but also more broadly into the issues of government censorship and freedom of expression, as there is still plenty of room for further research. One example of potential further research could be to address a limitation of this project by undertaking a research project that seeks to gain a deeper understanding of the process that led to the banning of the platform by examining more closely the rationale for the government's decision to pursue the platform. Such an undertaking could then include interviews with politicians and officials who were involved in the process at the time, which in turn could not only shed more light on the process itself, but also potentially provide insight into the security culture of the German authorities when it comes to deciding to take action against online platforms. Another possible avenue for further research could be to examine the extent to which *linksunten.indymedia.org* actually contained extremist content by conducting an in-depth analysis of the types of content available on the platform using the publicly available archive. This type of analysis could provide more insight into the proportionality of the government's decision to ban the platform. This, in turn, could, depending on the outcome of the analysis, reveal how powers within the government that are supposed to protect the FDGO are, at least on occasion, instrumentalised by political interests, and could stimulate a discussion on how to prevent this from happening in the future.

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