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Courtroom Ethnography in the Context of Terrorism: A Multi-Level Approach

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Abstract

This paper addresses terrorism trials as sites of research and proposes an approach for the analysis of ethnographic data collected during these trials. The suggested approach offers multi-level analytical access, it centers around interactionist conceptions and knowledge discourses. The conceptual framework we suggest is spelled out in terms of how to observe and being sensitive of (re-)production of power structures inside the courtroom as well as in regard to relations imported into the courtroom. For this purpose, we integrate (i) the micro-level of courtroom interactions and (ii) (self-)presentation, (iii) the meso-level of knowledge (re)production and the establishment of knowledge orders and (iv) an intersectional perspective on gender, race, and class in knowledge discourses. By applying a multi-level approach, we open up new explanatory avenues to understand the constitution of terrorism as a socio-legal object. The methodical framework connects hitherto unconnected elements, that is, participants' interactions and negotiation, their (self-)representations, ascriptions and narrative performances, and knowledge (re-)production in order to establish or maintain political and social orders.

Introduction

The number of judicial proceedings in European courts against terrorist offences has substantially increased over the past 10 years (Eurojust, 2020, p. 6). Terrorism trials—for example, that of the far-right terror cell National Socialist Underground (NSU) in Germany or the Bataclan proceedings in France against the suspected perpetrators of a massacre inspired by jihadist ideology—have resuscitated international public interest and fed into discourses on terrorism and interconnected topics such as collective identity. They thus "form … a nexus between terrorist violence, law enforcement and public opinion" (Graaf & van der Heide, 2016, p. 10) and revolve around definitions of "we" and "the other" (Brunner, 2011, p. 28). Trials play an important role in the way that society deals with terrorism, yet research has scarcely looked into how terrorism is negotiated and dealt with by the courts (Weill, 2018, 2020).

In the field of terrorism studies, trials negotiating individual or collective engagement in terrorist organizations or dealing with specific offences have raised the interest of social science researchers, who contribute to critical socio-legal scholarship (Anwar, 2020; Klosterkamp, 2021a, 2021b; Weill, 2018, 2020), insofar as they understand the "materiality of courts" (Jeffrey, 2019; Scheffer, 2004) and the "making of law" (Latour, 2013) as not only legal, but also social processes that (re)produce social hierarchies and power relations (Bourdieu, 1987). From the framing of charges, through the narrative performances of prosecution and defense, to the interactions of participating parties in the courtroom, the development of criminal trials provides insights into social dynamics that are reproduced in relation to criminal norms within a highly institutionalized and codified micro-sociological setting

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([Flower, 2018](); [Hannken-Illjes et al., 2007](); [Scheffer et al., 2007]()). In regard to terrorism discourse and representations of the terrorist subject, scholarly literature on radicalization and terrorism has outlined the problem of polarization and stereotypes not only in the media and public debates, but also in academic literature ([Azeez, 2019](); [Martini, 2018](); [Nacos, 2005]()). Court proceedings juxtapose the ideational and narrative constructs of terrorist subjects and their imagined physical, psychological, and social attributes with the actual men and women who stand trial for engaging in terrorist activities and who rarely correspond to those imagined constructions. More often than not, their lives are embedded in rather inconspicuous social environments marked by family commitments and educational or professional activities.[1] As [Walenta (2020](), pp. 131, 134–135) emphasizes, however, both the parties performing in the court hearings and the media that report on trials, have substantial power to shape representations and thereby the public image of the defendants.

Argument for a Multi-Level Analytical Approach

In view of the symbolic and communicative character of terrorism and its connection to the negotiation of individual and collective identity, we argue that courtroom research needs to connect the different perspectives of current scholarship and engage with terrorism trials as a socially and culturally embedded phenomenon. Current scholarship focuses mostly on partial processes within the courtroom—narratives, argumentation, or interactions. A more comprehensive approach, linking processes within the courtroom to their embedding beyond it and their dialectical interaction, is as yet missing. To allow for such an approach, in this paper, we develop an integrated conceptual framework that accounts for inherent ascriptions of gender, body, class, and race (cf. [Spiegel, 2021](); [Ludewig et al., 2013]()). We provide a conceptual framework for a multi-level analytical approach to courtroom ethnography in far-right and jihadist terrorism trials that is interactionist and knowledge-discourse-centered. It aims to connect the micro-level, courtroom interactions and (self-)representations, with the meso-level, the (re)production of power and knowledge discourses within and outside the courtroom, and the macro-level, the structures of the social and legal institutions that negotiate and regulate violence. The question of whether or how intersectional discrimination is reproduced in court is central to our conceptual framework. Sentencing disparities are often based on factors that are not legitimized by law, such as gender, nationality, or personal well-being (cf. [Donnelly, 2022](); [Leuschner, 2021](); [Ludewig et al., 2013]()). Research on the roles that women of the far-right inhabit has shown that courts have a tendency to reproduce gender stereotypes where women engage in terrorism and violence, depicting their roles as those of apolitical followers or bystanders ([Forschungsnetzwerk Frauen & Rechtsextremismus, 2018]())—see the NSU trial and the role of Beate Zschäpe within the core trio.

From a methodological perspective, judicial trials allow the socio-legal constitution of terrorism to be studied with its inherent power structures at different scales. Its constitution as an object of security policy and law situates terrorism socially at the meso and macro levels, where it can be observed, for example, in institutional structures and public discourses. Within highly structured judicial proceedings, terrorism is as much constituted in legal practices that reflexively reproduce and stabilize it as a knowledge object, as it is incorporated as a point of reference into courtroom interactions and individual performances. Empirical research thus needs to take these tensions into consideration and integrate all three societal levels of the phenomenon. Taking judicial proceedings in Germany as our example, our suggested conceptual framework focuses on four central analytical perspectives on trials:

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   i. interactions and negotiation among parties to the hearings;

  ii. representations of self and others in court hearings and their media coverage; and

Meso-Level Analysis

 iii. knowledge (re)production and the establishment of knowledge orders within and through the trial;

 iv. an intersectional perspective on gender, race, and class in knowledge discourses.

We suggest that a combined and interlinked analysis from these four perspectives opens up new explanatory avenues to a critical socio-legal understanding of terrorism trials as a social field. In so doing, we also connect to debates on global and multi-sited ethnography ([Burawoy et al., 2000](); [Gille & Riain, 2002](); [Marcus, 1995]()) that constructively problematize the ethnography of complex social fields, systems, or political regimes.

In the following sections, we first frame criminal courts as a field of research using German courts as an example, then critically engage with scholarly contributions on courtroom ethnography, before, finally, developing a multi-level analytical approach that systematizes guiding concepts for field work and analysis, using data from ethnographic field protocols of court proceedings of two jihadist terrorism trials.[2]

Framing the Field—Courtrooms as Spaces of Social Negotiation

Law makes a great promise to society as a whole, namely, to contribute to peace and cohesion ([Baer, 2016]()). This is especially true for terrorism trials that negotiate ideologies that challenge the very foundations of the democratic order. Where trials address political ideologies, they also convey messages to a broader, more or less organized, network of people (e.g.,

white supremacists, ISIS). Therefore, courts have a high symbolic status as "paradigmatic places" and in this respect can be compared to theaters or cathedrals: they are overflowing with ideas, rituals, and artefacts (cf. Scheffer et al., 2009, p. 184). Law and statute represent a "special case of behavioral expectations" (Nöth, 1993, p. 14, p. 14)[3]; here, more clearly and formally than in other social subareas, the emergence, transmission, and application of values and norms in social action become apparent. In essence, judicial proceedings against terrorism are about the preservation of political and social order, conventions, and the distribution of power. Consequently, trial observations need to be sensitized to the concept of power and to differentiate between what can be seen on the spot or has happened in advance and things that constitute statutory necessities. Again, parties have a different awareness of these underlying mechanisms—while professionals will know about them, they will come as news to most defendants.

Court proceedings are "social systems, which, by virtue of their specific function, have to work out a unique, binding decision and are limited in duration from the outset" (Nöth, 1993, p. 47). Proceedings thus represent a particular form of conflict management, which is defined and limited by rules; the reconstruction of a crime/criminal case and the judicial assessment of the supposed perpetrator on the basis of criminal law are infused with social values and norms. Courts, as a result, are more than places of truth-finding, they also have the function of moralizing guilt directly or indirectly for their audience (cf. Scheffer et al., 2009). Courtroom settings, likewise, are not about the formalist "application of neutral law" (cf. Conley & O'Barr, 1990, p. 11).

With reference to Dupret et al. (2015, p. 1), Bens and Vetters (2018, p. 242) suggest that order in the courtroom is a "methodic achievement" which is produced through the activities of legal professionals and lay parties such as witnesses or court experts. The judicial process of a terrorism trial is ultimately a negotiation of (non)compliance with an existing political order among the parties involved consisting of: first, the public prosecutor, representing the state, who indicts the defendants and pleads for their conviction, suggesting they defied the political order through politically motivated actions (charges of terrorism); second, the defendants who are usually supported by a defense lawyer and who represent the network accused of having challenged the existing political order through their actions; and, third, the judge, who represents the law prohibiting terrorist activities and who is called to establish whether or not there is a case, that is, whether or not the constitution and free democratic order were challenged. "Criminal hearings are intertextually structured communicative events" (D'Hondt, 2009, p. 253), which means that any text—written, oral, visual, or audio—presented in support of or to contest the charges constitutes a reference to which the other parties may need to respond. The judge, by definition, needs to represent the values of the democratic order and is therefore biased, which is contrary to his/her role of neutrality

(the latter is explained in Hogh & Bögelein, 2021). The defendant, the prosecution, the observers, and other parties in the trial also contribute. Conley and O'Barr (1990, p. xi) see the method as an "ethnography of discourse"; trial observation reveals interactions, alliances, interpretations, patterns of orientation. Narratives play a crucial role in this context and are heavily influenced by Zeitgeist and constructions of normality (for the construction of womanhood in courtrooms see Nagy, 2014). Gathings and Parotta, (2013, p. 671) go as far as saying "narratives not only explain action, they are action." Moreover, some things happen in advance: Scheffer (2004, p. 371) refers in this context to courtroom proceedings as "planned situations" in a Goffmanian manner. Against this background, Ludwig-Mayerhofer (1997) concludes "the significance of court proceedings [is overestimated], because the outcome of cases that come to court is largely predetermined by the evidence prepared by the prosecution." Or, as Scheffer (2004, p. 371), following Goffman, states: "The court is … a discourse automat arranging the staging of cases in a standardized way."

This standard is spelled out here for trials in Germany, where the procedure is the same regardless of the type of offence being tried. Two fundamental principles characterize the main hearing (see Heinrich & Reinbacher, 2021): the principle of orality (section 261, Code of Criminal Procedure)—the final judgement may only include matters discussed during the main hearing—and the principle of publicity (section 169 Judicature Act) an audience must be admitted. Trials follow a six-step standardized procedure (see sections 243 ff. of the Code of Criminal Procedure): (1) the call to the case determines whether defendant, witnesses and experts are present. (2) The accused is interrogated as to her/his identity; (3) the public prosecutor reads the indictment which names the defendant, act, time, and place, the legal characteristics of the offence and the applicable criminal provisions. (4) The accused is interrogated on the case; (5) evidence is taken (the so-called "heart of the main hearing")—witnesses and experts are questioned by the presiding judge (and subsequently by prosecution and defense counsel), documents and other evidence are considered; the main hearing ends with (6) closing speeches (first by the public prosecutor than by the defense) and the last word goes to the defendant. The above offers a first rough template for observers to guide their observation process. The Code of Criminal Procedure forbids the main proceedings being paused for more than three weeks, which may lead to intermittent scheduling of sessions to suit formal requirements with no substantial presentation of evidence. In the case of terrorism trials, the taking of evidence may last from a few weeks to several years: the NSU trial lasted from June 2013 until July 2017, with sentences being finally passed in July 2018. This has an impact on the resources required for observation and necessitates close contact with the court public relations office so as to keep track of (re)scheduled sessions and the planned program (e.g., hearing of witnesses or expertise) so that

selected sessions can be observed where full coverage is not possible and travelling to sessions that are cancelled at short notice can be avoided.

Another line of orientation for researchers is to be aware of the jurisdiction involved. Where offences may endanger the democratic rule of law (sections 84–86, 87–90, 90a(3), and 90b Criminal Code), the panel of judges of either the Regional Court (sections 74, 74a Judicature Act) or the Higher Regional Court (section 120 Judicature Act 1) has jurisdiction owing to the special importance of the cases. The divisions of the regional courts are called criminal divisions. There are two kinds. One, the large criminal division (two to three professional judges and two lay judges) and, for crimes against the state ("Staatsschutzdelikte"), a (special) criminal division that is responsible for the entire district of the Higher Regional Court (section 74 Judicature Act). It is responsible in the first instance for trials and decisions in cases of violations of the ban on associations (section 129a, also in conjunction with 129b (1) Criminal Code) and offences under the International Criminal Code. Its panels of judges are called senates and are generally composed of three to five professional judges (section 122 (2) Judicature Act). When a jury court (crimes mentioned in section 74 (2) Judicature Act) has jurisdiction, so-called "special criminal chambers" act with the same composition and penal competence as the grand criminal chamber. However, it must be staffed with three professional judges (section 76 (2) Judicature Act).

Gaps in the Research

Courtroom ethnography can shed light on what cannot be seen from the outside. If researchers analyze court decisions only, they miss the "violent reductions it was subject to" (Lautmann, 2011, p. 29). What happens in a courtroom is that the categories defined in law are applied by legal practitioners. Yet, "law does not comprise a single discourse" (Conley & O'Barr, 1990, p. 1); it needs to be interpreted, which is not a neutral process (cf. Pohn-Weidinger, 2017, p. 283). This section outlines the gaps in current research in accordance with the four analytical perspectives mentioned above: impression management or interaction; the presentation of the self or narratives; courtrooms as places of discourse and knowledge production; and an intersectional perspective on gender, race, and class in knowledge discourses.

Micro-Level Analysis

Impression Management, or Interaction. One focus of Goffmanian approaches is on the emotional and bodily elements of actors' performances, specifically those given in the interest of defendants. As Walenta (2020, p. 136) emphasizes: "[s]taged emotional outbursts ... and unscripted displays of frustration ... and friendship ... matter .... They constitute a counter to the widely held belief that courts are neutral sites." Flower (2018, p. 226) deals in this context with the topic of defense lawyers'

loyalty to their clients or colleagues that is established by "face-saving strategies," that "reproduce and reinforce the emotional regime of the courtroom." Similarly, Bens (2020, p. 272) suggests that relations between the actors in the courtroom be conceptualized as "an affective arrangement of bodies" in order to catch both the emotional and rational effects of actions on the other parties: "[o]ne rather tries to sketch out in a more exploratory way how the relational dynamics between bodies might affect what happens in court" (2020, p. 274).

Presentation of the Self, or Narratives. Gathings and Parrotta (2013, p. 670) build on Goffman's work on labelling theory—and the corresponding field—to start their ethnographic research in courtrooms from the perspective that identity is a matter of negotiation. They thus speak of "identity talk." They find that defense lawyers apply gendered narratives in the courtroom in order to obtain lighter sentences rather than contesting the defendant's guilt. Yet, "[t]he construction and reconstruction of stories does not happen mechanically; lawyers and juries have a desire to create typical, exemplary narratives that resonate with their understanding of the world" (Grunewald, 2013, p. 366). From a sociolinguistic angle on storytelling, Grunewald (2013, p. 388) emphasizes (a) the human search for a "'logic' of conversation," and (b) a "narrative desire" embedded in human "biases and prejudices" (Grunewald, 2013, p. 383). These mechanisms are not applied by courts alone; defendants are aware and make use of these expectations by framing their presentation of themselves accordingly. For example, studies focusing on gender biases in European court systems (Strømmen, 2017; Alexander & Turkington, 2018) shed light on how the gendered understanding of Western female combatants has an impact on judicial processes. Yet very little research to date applies an intersectional approach to study the impact of gender, race, or class, among other things, on interactions in the courtroom (cf. Faria et al., 2020; exception Van Cleve, 2020).

Meso-Level Analysis

Knowledge Production and Intersectionality. Current scholarship on knowledge production and discourses in judicial proceedings is mostly anchored in social anthropological, constructivist, or (post)structuralist schools of thought and addresses the interconnection of socio-legal contexts—and their implicit or explicit knowledge paradigms—with the 'speaking of the law'. Analysis of knowledge production in court inherently takes social and cultural norms, institutions and structure, and status and power into account. But intersectional perspectives on social inequality, gender, race, and class in judicial case work and trials are seldom addressed.

Vetters and Foblets (2016, p. 289) argue that culture-sensitive methodical approaches necessitate a "collaborating ethnography" which makes "judicial decision-makers' practical cultural analysis and reflection visible." Similarly,

Dequen (2013) analyzes how references to social norms and "common sense" as culturally embedded terms lead to the intersubjective negotiation and construction of the "refugee figure" in French administrative proceedings. With a perspective on the interconnection of gender rights and justice, Enright and colleagues (2016) argue for the situatedness of gender in criminal justice practices by rewriting judgments concerning (violence against) women in Ireland from a feminist perspective. They demonstrate that judicial knowledge about cases is much influenced by socio-cultural perspectives on both violence and gender.[4] Similarly, Eppert and Roth (2021) analyze gendered constructions of agency in EU terrorism norms and their reproduction in defendants' narratives and judicial case work on trials.

Carter (2020) identifies an intersectional bias against Muslim defendants in U.S. indictments for terrorism as a result of counter-terrorism policies. Where terrorism trials are concerned, social norms are assessed in the framework of political ideology and (support for) violence. In this context, Klosterkamp and Reuber (2017, p. 256) are interested in the discursive construction of the "legal subject of a 'terrorist'" by the interconnection of courtroom-based discourses with national and global (security) discourses on terror. They identify terrorism (trials) with the transnational practice of judges and argue in favor of a multidimensional approach. Weill (2020, p. 33) further emphasizes the transnational role of national courts in trials where the accused face charges of Jihadist terrorism in the context of the Islamic State in Syria and Iraq and outlines the political situatedness of terrorism trials as objects of geopolitics and international relations in which all the actors involved are entangled. Further research on what Weill (2020, p. 33) calls the "mobilization of criminal judges … in the global War on Terror" is missing so far. However, the observation that, in the case of terrorism, courtroom-based negotiations and discourse are deeply entangled with a global political issue and thus need to be researched using a multilevel approach, is a shared one in current scholarship.

From the perspective of argumentation theory, Hannken-Illjes (2015, p. 298) offers conceptual observations on the application of (micro-level, everyday) narrative research to the particular case of the courtroom and understands renarration in the context of the latter as the "actualization and stabilization of a macro-level story," which, as a meta-narrative (cf. Lynch & Bogen, 1996), aims at summarizing the case in question in German verdicts. Hannken-Illjes shows how methods of questioning witnesses serve the purpose of achieving congruence in written and oral statements or creating new case knowledge, and what the typical reactions are to renarrations of testimony given in court, particularly when a witness is not able to reproduce his or her written statement.

Some courtroom researchers focus on *materialities*. An important example of this kind of work is Latour's *The making of law* Latour, B. (2013), an empirical application of his actor-network theory. The theory lays the conceptual basis for studying the role of materialities in judicial proceedings.

Anwar (2020, p. 385) uses Latour's notion of "folding objects" and asks "what makes an object act like a *legal object*?" to show how defendants' social media activity has been turned into evidence in the courtroom and thereby become a "legal object," "construct[ing] and authoriz[ing law] through its materiality" (Anwar, 2020, p. 385). Anwar (2020, p. 396) also shows how the social spheres or fields of security knowledge, reading terrorism and law, and ruling in court have become intertwined through the introduction of that new form of evidence. Scheffer (2004, p. 350) looks at trials against the background of Goffman's "planned situation" and frames them—following Durkheim—as social facts. He aims at empirically capturing materialities for discourse analysis. This needs to be done: they are often fugitive elements (e.g., looks, gestures), though they can also be solid phenomena (the courtroom, files), while the courtroom itself can be understood as an arena constituted by orders of speakers and parties to the process (Scheffer, 2004, p. 357).

So far, courtroom ethnography has not engaged in an integrated analysis of the different levels outlined above nor situated (terrorism) trials as complex and embedded sites of research. As we have outlined above, the field of terrorism studies demands that the world outside the courtroom be considered as part of what is going on within it. Our conceptual framework for an integrated analysis of terrorism trials is informed by how power structures and processes that (re)produce them can be analyzed using ethnographic data.

A Methodological Approach to Multi-Level Ethnographic Research in Courtrooms

From a theoretical perspective, we suggest that interactions in the courtroom, that is, the narratives and performances delivered by engaged actors, produce identities and corpuses of knowledge that are stabilized within and by knowledge discourses. Similarly, knowledge discourses inform and shape the cognitive frames for courtroom interactions. Court proceedings constitute a place where the micro, meso, and macro social levels of the negotiation of terrorism and knowledge production regarding it intersect (Foucault, 1979: 215ff., Berger & Luckmann, 2013 [1969]).

Micro-Level Analysis

Impression Management, or Interaction in Court Proceedings. We assume that the deep structure of a society is reflected in interactions, and we conceive of a trial as a specific form of interaction. A court hearing is understood as a stage on which past events are narrated and visualized, and 'the normal' as well as 'the criminal' and 'deviant' are negotiated, presented, and (re)produced. Notions of law-abidingness and conformity function as a blueprint against which the defendant's individual guilt is judged. The defendant's statement in court is also morally evaluated. The function of courts is to directly or indirectly moralize guilt for the public, that is, the people in

whose name the verdict is pronounced (cf. Scheffer et al., 2009). Moralization means the evaluation of a behavior, which is the basis for establishing failure (cf. Vogd, 2014). The trial of a case involving far-right terrorism can be framed as a negotiation between political groups: The person accused of being radical challenges the existing political order by following a far-right ideology. The judge defends what has been established as the constitutional order or the norm ('free democratic basic order'). In essence, this is about political order, conventions, status preservation, and the distribution of power.

An interactionist analysis of court proceedings is interested in their connection to the world outside: Does the societal macro-level—the power, interest, and politics (presented in the constitutional order) show itself in court? On a meso-level it addresses the interaction of state-representing parties (judge, prosecutor etc.) with the defendant and his or her lawyer. To what extent is the ideology itself shaping this interaction? On a micro-level, we focus here on the self-presentation of defendants. How do they want to be seen? What narratives do they use to justify what they are accused of? How do they remain self-efficient? From an interactionist point of view, the courtroom is a social setting in which individuals position themselves in relation to each other through their physical presence. Social interaction practices inside the courtroom are shaped not only by different positions of power and status associated with the formal roles of judge (representing mainstream society), defense, and defendant (representative of a terror organization), but also by the different positions associated with informal societal roles (e.g., being a parent, belonging to a certain gender, being read as White). There are three analytical elements in interactions (cf. Smaus, 1986): (1) Communication, which presupposes shared knowledge among participants, which consists usually in everyday knowledge and theories. Actors continuously carry their everyday knowledge—such as interpretive patterns—which entails past, present, and future experiences into any kind of social practice, and therefore also into courtroom hearings. (2) Power, since participants can exert varying degrees of influence on the outcome of the interaction, see formal roles as stated above. And finally, (3) moral relations; where moral norms are not reasoned about, only stated—as is generally the case in trials. In a trial, all participating social actors usually behave in a way that preserves the image of the agent(s) as well as that of the interaction partner(s): "This kind of mutual acceptance seems to be a basic structural feature of interaction, especially the interaction of face-to-face talk" (Goffman, 1967, p. 11). Against this background, courtroom observation is guided by observational categories deriving from the above-mentioned interactionist approach and includes categories such as communication, power, moral relations; face-work and presentation of the self; functions and contents of actions; proceedings.

Representations of Self and Others in Court Hearings and Their Media Coverage

Situated within a broader critical neo-orientalist perspective (Kerboua, 2016) on the public negotiation of male and female perpetratorship in cases of jihadist terrorism, the analysis of representations addresses the following overarching questions: How do terrorists (re)negotiate and (re)construct their concepts of self in German courts? Are male and female perpetratorship negotiated differently in court? Does media coverage of trials reconstruct the perpetration of an offence in a gendered manner?

The analytical focus is on operations of identity, gender, and agency in interpersonal facework *within* the courtroom. In order to uncover the practices of performative facework in court, the ethnographic fieldwork is guided by observational categories deriving from Goffman's (1967) theorization of face and Butler's (1990) critical post-structural theory of performativity, both of which provide complementary insights into the "doing" and "undoing" of identity (Smith, 2010, p. 172f.). Butler (1990, 1993) theorises gender identity as performative since it is created and sustained through the citation, repetition and circulation of discursive and bodily acts, or (non)verbal communication practices (Butler, 1993, p. 95ff.). In order to uncover the practices of performative facework in court, the ethnographic fieldwork is guided by observational categories deriving from these two concepts incorporated in performative face theory (PFT, Moore, 2017): First, Goffman's toolkit of dramaturgical concepts serves to describe what facework strategies male and female defendants employ in court interactions (with judges, prosecutors, and the defense) and why certain facework strategies are effective for their identity management. Face is defined as "the positive social value a person effectively claims for himself [or herself]" (Goffman, 1967, p. 5). The court hearing is regarded as a public stage; in the awareness of the real audience present in the court room and the imagined general public, the defendants' testimonies and self-presentations are face-saving practices. Second, Butler (1990, 1993) theorizes gender identity as performative since it is created and sustained through the citation, repetition, and circulation of discursive and bodily acts, or (non)verbal communication practices (Butler, 1993, pp. 95ff.). Butler's concept of performativity offers the possibility of capturing gendered inscriptions of the self and others at different levels: (a) schemes of action that signify belonging to a gender (e.g., postures, gestures, and facial expressions, adopted during the court proceedings); (b) the perception of how one applies gender schemes to oneself and to others (e.g., ironically, critically, or subversively); and (c) the practical knowledge required to be able to relate to and evaluate the gendered actions of others (e.g., whether a person is behaving gender-(in)appropriately). The following example which is an extract from our field protocols, illustrates the multi-layering of observations. The sequence documents an interrogatory interaction between the presiding male judge and the female defendant regarding her motives for travelling to ISIS territory in Syria with her children. The sequence allows for insights into topics of gender-appropriate behavior, self-presentation, identity narratives and others. It also illustrates the relevance of plausibility in judicial case work and the

need to establish knowledge not only in view of evidence but also in regard to self-consciousness and reflexivity of the defendant.

> Judge: "Were you eager to travel to the Caliphate? As a faithful Muslim woman? Was that due to your eagerness?" Defendant: "I just wanted to leave, make hijra, wear the burqa without attracting attention" (B04, p. 2). The defendant describes how she debated for weeks with her husband about whether or not they ought to leave to Syria. She makes further statements, claiming that "many people liked ISIS" and "I wanted to live by Sharia … live according to Islam and Sharia" (B04, p. 2-3). In the course of the questioning, the judge states that he does not think her explanations plausible for she could have chosen any other Muslim country, for example Tunisia, to live according to Islamic law and not travel to a war zone. At a later point in the questioning, the defendant states "It was the first time in my entire life that I planned something all by myself. […] What do you want me to say? […] It was a bad decision." (B04, p. 5).

Examining relational identity work within the courtroom allows us to uncover "taken-for-granted knowledge claims about identities" (Moore, 2017, p. 262) in general and attributions of jihadist masculinity and femininity (e.g., their different roles in jihad and the spheres of action assigned to them by ideology) in particular. This is particularly important in light of the research which indicates that women involved in terrorist activities tend to be assessed differently, both in society (Gentry & Sjoberg, 2015; Pearson & Winterbotham, 2017) and in the criminal justice system (Strømmen, 2017; Alexander & Turkington, 2018). Women deviate from the social norm in three ways: first, by breaking the law; second, by deviating from the social gender norms that define how a woman should behave; and third, by joining violent patriarchal structures despite their socialization in democratic societies.

Meso-Level Analysis

Knowledge Discourse and the Production of the "Other" in Terrorism Trials. Through discourse analysis we integrate a perspective of scale into our methodological approach that allows us to analyze the dynamics of knowledge (re)production and its stabilization at the macro and micro levels, respectively. More specifically, analysis of knowledge production allows us to uncover where and how terrorism is stabilized as an object of knowledge *within* the court and where and how the (re)production of knowledge of terrorism diffuses from *inside* the court to the *outside*, and vice versa. In terms of methods, so as to document the production of knowledge in the courtroom, empirical research needs to focus on two areas of interest.

The first concerns the materiality of knowledge production in court, that is, the practices and techniques used to stabilize what is legally "knowable", or plausible (cf. Goede & de Graaf, 2013). Courts may call upon experts to provide

contextual or technical knowledge that serves the construction of credibility, plausibility and speaker positions (cf. Rowden & Wallace, 2019, p. 701). The argumentative process between experts and defendants follows a dialectic of the plausibilization and exclusion of knowledge that, at times, happens in the instant of their presentation before the court. What is legally "knowable" or plausible thus also depends on how knowledge is mediated, that is, on the argumentative, audio, and visual practices and techniques that are used to materially produce and discursively stabilize knowledge (cf. Goede & de Graaf, 2013). The extract of a field protocol below illustrates TV- and internet-based audio-visual material presented as evidence is "folded" (Anwar, 2020) into knowledge production before the courts, thereby connecting judicial knowledge discourses to public media discourses in a mediated process in which multiple actors are involved.

> In one observed session of the trial of a female defendant, the court screened an ISIS propaganda video of child soldiers in training featuring children aged from four to thirteen or older, as well as an ARTE TV documentary on ISIS child recruitment. The display of the visual documents was then cross-referenced with testimony from the defendant on her son's participation in a training camp and commented on by a court expert called upon in that session. One of the aims of the session was to establish whether or not the defendant could have been in a position to know that her son, whom she had brought to Syria, ran the risk of being recruited. In terms of methods and analytical levels, the establishment of knowledge as to what the defendant might have known of the risks she was running on behalf of her children, in addition to her own testimony, converges with media documentation on the specific war-related issue of child recruitment, and is plausibilized by the court expert present in that session.

In view of the integration of public media evidence into trial procedures, the documentation and analysis of the same therefore needs to be integrated into the research design.

The second area of interest in empirical research into knowledge production concerns the discursive embedding of knowledge in the wider epistemic fields of security and law. While knowledge techniques used in court, such as taking the testimony of technical experts or psychologists, provide insights into the construction of credibility, plausibility, and speaker positions (cf. Rowden & Wallace, 2019, p. 701), the documentation of testimony and accounts given in the reconstruction of crimes allows emerging tropes and their stabilization in knowledge discourses to be traced.

Defendants charged with terrorism are subject to a double process of "*securitization*" (Buzan et al., 1998). They are, first, presented as existential threats—as terrorists—and, second, located in a public discourse on jihadism and violent conflict in Syria and Iraq that reiterates hegemonic narratives opposing East and West, secular and religious, democratic and theocratic. Anwar (2021, p. 5) argues that terrorism trials are situated at a politicized intersection of the epistemic fields of

"security" and "law" and are consequently subject to tensions that have to do with inherent and juxtaposed knowledge practices from the two fields. While security sector agencies align actions and decisions toward managing the future through pre-emption and intervention and therefore work with undisclosed data and knowledge, legal reasoning is oriented towards reconstructing past events in a plausible and legally sound manner and therefore aims to disclose and deliberate on the quality of case-related knowledge. In practice, trials may therefore be impacted by security sector agencies' interest in withholding classified information and preventing the hearing of witnesses so as not to put at risk ongoing investigations that may be related to the wider context of the case. Due to the social interconnectedness of, for example, German supporters of jihadism in Syria and Iraq, witnesses may serve in different trials. Similarly, knowledge established in one trial may feed directly into another.

In terms of interpretative process, we that suggest Foucault's (1990) genealogical approach allows us to deconstruct the process of intersubjective reconstruction of the cases before the court in accordance with social and legal criteria (e.g., those of plausibility and objectivity) and their historical-temporal alignment. Based on field protocols and supplementary data, it enables the terrorism discourse to be established as a 'discourse of discourses' in which knowledge is constituted through speakers and power structures, in institutional practices and technologies (e.g., with regard to the integration of scientific expertise, witnesses, or the display of audio or visual evidence). It allows where and how lines of argumentation have been verified, falsified, or discontinued to be outlined, where information and evaluations are subject to culturalization, and how, subsequently, knowledge has been stabilized or discarded. While each trial constitutes an object of research in its own right, for the purposes of terrorism as an epistemic field, the genealogical, discourse-centered approach suggests that its constitution can be stabilized beyond the singular event. For instance, expertise on case contexts gained in individual trials may feed into institutional knowledge and practices and is likely to impact other ongoing and future proceedings.

An Intersectional Perspective on Gender, Race, and Class in Knowledge Discourses

Applying perspectives of intersectionality and 'othering', this analytical focus touches on questions of the stigmatization of particular social groups while others are overlooked against the background of a racialized understanding of terrorism: how do gender, race, and class act as categories of difference in main proceedings heard in German courts, reproducing social inequalities; how is the "interactive and mutually constituting nature of the race/gender/class/sexuality/nation nexus" (Cho et al., 2013) connected to the person who is described as a terrorist before the court?

An intersectional research perspective is central here to investigating power relations with regard to the central structural categories of race, gender, class, sexuality and nation in the (re)production of power hierarchies in collected data–observation protocols and newspaper articles. We understand the power relations underlying the legitimization of those inequalities as processes of social negotiation based on markers of difference. According to Hill Collins (2000), power relations can be located in four 'domains' of a 'matrix of domination': structural (social institutions/the law), disciplinary (bureaucracy), hegemonic (ideology/culture), and interpersonal (everyday interactions). A second research perspective is informed by postcolonial approaches to the study of processes of "othering" (Spivak, 1985). We operationalize the analysis of hegemonic ideologies as analysis of discourse. In order to do so, we suggest applying Keller's (2011) sociology of knowledge approach to discourse analysis (SKAD), which allows us to make statements about the social processes involved in the (re)production and institutionalization of knowledge and the power relations within these processes. Informed by Bourdieu's (2009) reflections on a theory of practice, Keller points in this context to the "emphasis on the active and interpretative efforts of social actors in the (re-)production and transformation of symbolic orders in discourses" (Keller, 2011, p. 36). SKAD aims at capturing "contested social reservoirs of knowledge," in contrast to subjective sense-making and the "inter-discursive context," in contrast to at the "closed ... semantic structures of text-based approaches" (ibid., p. 78)."

Conclusion

In this paper, we have spelled out a conceptual framework for a multi-level approach to courtroom observation. We have turned to courts as sites of research and to ethnography as a methodological approach after conducting substantial research in the field of terrorism. Terrorism research in general deals with fluid concepts and contested definitions in a highly politicized discursive space. By turning to courtroom observations, the indictment, the norms, and the straightforwardness that form part of a trial provide points of reference by means of which the construction of both radicalization and terrorism can be understood in an evolving way. Nevertheless, from closer to, it becomes apparent that trials are anything but unambiguous and the concepts on which they are based are anything but unproblematic. By suggesting this approach, we therefore hope to contribute to the academic field and to advance discussion of courtroom research. Despite any shortcomings and pitfalls relating to courtroom ethnography, there is something unique to trials: all parties that have interest in the matter are (usually) present, some in more, others in less formal roles. That is why courtroom researchers have the singular opportunity to see 'in a nutshell' how—in the case of

terrorism—a symbolically, politically, and security-related 'hot topic' is negotiated.

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Notes

1. For an insight into the biographies of [former] members of far-right groups, see Meier et al. (2021).
2. At the time of writing, empirical data from observed trials cover two sets of closed proceedings involving charges of jihadist terrorism against two female defendants who travelled from Germany to Syria with their children and spent time in territories held by the organization Islamic State of Iraq and Syria (ISIS). Ethnographic field work on trials involving far-right terrorism is pending and therefore not included here.
3. All non-English original quotes are translated by the authors.
4. The criminological literature on gender and perpetratorship is vast and does not fall within the scope of this paper. For an overview of the discussion and numbers, see Leuschner (2020).

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