





**Figure 6.1** Waiting for the tram  
(Source: Eva Schneuwly / DWE)

*Democracy is a system that guarantees we will not be governed better than we deserve.*

Jacek Kuroń, the 'godfather of the Polish opposition', one of the political strategists of *Solidarność*

*Sometimes we drug ourselves with dreams of new ideas. The head will save us. The brain alone will set us free.*

*But there are no new ideas still waiting in the wings to save us ... There are only old and forgotten ones, new combinations, extrapolations and recognitions from within ourselves, along with the renewed courage to try them out.*

*For there are no new ideas. There are only new ways of making them felt.*

Audre Lorde, activist and poet, Berliner from 1984 to 1992

# THE RULE OF LAW IS HAVING A MIDLIFE CRISIS

Shadow and Difference

## 1

‘You won, ...’

I can hear the comma after ‘won’. I hope I can hold out. I tense the back of my throat and silently count to ten. I count in German, to stay prepared. He wants to finish but he’s resisting the conclusion.

‘... but it could be dangerous for the rule of law.’

I agree with him. Which is why I disagree with him. I wonder how I can pack this into a soundbite. Dry air teases my tonsils. It’s a quarter past ten; Berlin’s nightlife is just beginning. I stare at the bookshelf and notice my shadow falling across my legal literature.

‘Herr Steiner, the rule of law is having a midlife crisis. The rule of law must embrace its own contradictions.’

I put down the phone and cough my eyeballs out. This is the sixteenth interview I’ve given today, the day after DWE won its first referendum. Though, naturally, we don’t call it ‘the first referendum’ just yet. I am elated and exhausted.

This morning, I was the first patient in the doctor’s surgery. I have been sick for two weeks, and have been ignoring my sickness. For the last three months, it’s been all hands on deck. Because of the overwhelming media interest, I’ve joined the press team, and am serving temporarily as one of the DWE’s spokespeople. I went to bed at 3 a.m. I cannot speak. I must speak.

‘What’s the strongest cough suppressant available in Germany? Could I get that? In large quantities, please.’

The doctor shakes my hand as he hands me the prescription. ‘I voted yes,’ he smiles. ‘But can’t you take sick leave, the day after the revolution?’

‘Herr Doktor’ – I try to make my point, coughing – ‘I fear there is no such thing as the day after the revolution.’

‘True.’ Herr Doktor smiles, then gets serious. ‘But listen: cough linctus only suppresses the symptoms. It doesn’t deal with the cause. Go and do your thing now, and do it as well as you can. But next week, when the media moves on to another topic, you switch off the phone and listen to what your body is telling you. Otherwise it’ll only be a matter of time before your system collapses.’

## 2

While Deutsche Wohnen & Co. enteignen was pursuing its *radically legal* project of housing socialisation, a Berliner judge, Birgit Malsack-Winkemann, was fantasising about storming the Reichstag. Judge Malsack-Winkemann was not a mere day-dreamer. In August 2021, she toured the Reichstag with two ex-soldiers of the Special Forces Command, who could approach the matter strategically. As a former MP of the far-right populist party Alternative for Germany (AfD), Judge Malsack-Winkemann was permitted to enter the Reichstag at any time, with guests. She later testified that her commando friends were only visiting as tourists. And, as tourists do, they took a lot of photos – of the entrances to the Reichstag, the emergency exits, corridors, stairwells, the underground garage and the passage to the nearest metro station.

Judge Malsack-Winkemann’s main partner in crime was Heinrich XIII Prince Reuss. This 71-year-old real-estate broker is very attached to his royal title – even though royal privileges were abolished in Germany in 1919. Before that, the Reuss family ruled a small state in what is now Thuringia. In a 2019 lecture at the WorldWebForum in Zurich, Heinrich XIII was

strongly critical of modern democracy. Until the abolition of the aristocracy, he argued, ‘people were leading happy lives’, under a system that was fair for everyone – whereas now ‘the tax rates ... force you to work until September, October of each year’. He seems concerned about a failure of political representation: ‘If something was not going well, you approached the prince. Who are you supposed to turn [to] today? To your parliamentarian – local, federal, or EU level? Good luck!’<sup>1</sup>

Heinrich XIII and Judge Malsack-Winkemann were part of the *Reichsbürger* [Citizens of the Reich] movement. This revisionist group asserts that the German Reich still exists within its pre-Second World War borders, which extended well into modern-day Poland. They do not consider the Federal Republic of Germany a legitimate state, but ‘a limited liability company’ – a profit-driven enterprise imposed on the German Reich by the Allies. If the *Reichsbürger* were successful in storming the Reichstag, they would dissolve the Federal Republic of Germany and ‘reactivate’ the Reich.

In this new-old German Reich, Prince Reuss planned to install himself as head of state. The ministry of justice was reserved for Birgit Malsack-Winkemann. When she became a judge in Berlin’s regional court, she must have sworn to uphold the *Grundgesetz*. But you can’t make an omelette without breaking eggs, and so Judge Malsack-Winkemann had decided that, in order to make Germany ‘sovereign and just’ again, the *Grundgesetz* had to be overthrown.

On 7 December 2022, German federal police arrested Birgit Malsack-Winkemann and Heinrich Reuss, along with twenty-three other people, and charged them with planning a coup. It was the biggest police raid in the history of the Federal Republic. The officers stormed over 150 locations, securing 382 firearms, 50 kilograms of gold and €420,000 in cash. The paper trail suggests that a significant quantity of weapons still remains hidden in unidentified locations. In December 2023, the federal prosecutor charged sixty-nine people with terrorism. The suspects include businessmen, lawyers, a retired paratrooper, a tenor, a top chef – and a fortune teller, whom Judge Malsack-Winkemann had

hired, on a public salary, as her assistant in the Bundestag. The fortune teller didn't see the police raid coming.

The liberal public likes to laugh at the *Reichsbürger*, as it does at Donald Trump, Jarosław Kaczyński and even Vladimir Putin. The liberal public also likes to laugh at their supporters. They are often dismissed as *irrational*, implying greater rationality on the part of whoever is criticising them. This laughter makes the liberal public feel better about themselves – until, one day, the liberal public realises that the 'liberal democratic basic order', as the *Grundgesetz* calls it, is about to be dismantled.

As I write these paragraphs, in January 2024, political analysts are predicting that the AfD – the far-right anti-immigrant party of which Judge Malsack-Winkemann was a member – is currently polling around 32 per cent in the run-up to this year's local elections in the federal states of Brandenburg, Saxony and Thuringia. If these predictions prove true, it might be impossible to form a government without them.

The AfD was launched in 2013 by a group of academic economists in reaction to a European crisis: they were opposed to Germany financing the bailouts of poorer southern European countries. Soon afterwards – and not without some internal party struggles – the AfD switched strategy: it started fuelling populist anger, directing it at refugees and migrants in particular.

The AfD's usual argument goes like this: how come the government is spending money on foreigners when Frau Müller – an honest German woman who worked hard as a nurse her entire life – can barely afford to pay her rent?

Frau Müller is not a rhetorical example. She is my friend's neighbour, a real person. She votes for the AfD.

Of course, Frau Müller's Syrian neighbour is not the real source of her problems. But launching into a passionate polemic with Frau Müller is unlikely to work, because it fails to address the most important point, which is: this argument only ever works if the *emotional* aspect is real. Frau Müller *really* was overwhelmed with fear when she first read a letter about the rent increase. And she *really* was angry. 'Is it fair,' she asked my friend, who had criticised her political choice, 'that, after a lifetime of work those

people [i.e. the government] had the nerve to call “essential”, I’m afraid I’ll lose my home in my retirement?’

People’s anger always *starts* with something real: a loss they have suffered, or an unmet need. If the loss is processed, if the need is met in time, the anger abates of its own accord. But if people’s losses are not properly acknowledged, if their needs remain unmet for a long time, the anger grows. Once it passes a certain threshold, the anger becomes detached from its original cause, and righteous anger transforms into ‘free-floating rage’.<sup>2</sup>

Free-floating rage is diffuse, boundless, and available for cynical appropriation and manipulation. This is because rage is painful. It creates tension in the body that has to be released, because otherwise it becomes unbearable for the person experiencing it. The easiest way to release the tension of rage is to externalise it, by projecting it onto someone or something else. This is why people in a rage are often violent. Another way to alleviate rage is for people to feel they are seen and embraced by a community. No matter what the cause, anger is born of perceived injustice. It turns into free-floating rage only when the original injustice is not repaired, or at least properly acknowledged by others.

Rage escalates from a sense that one’s suffering is not being taken seriously. Because humans are neurobiologically wired for connection, a sense of community is far more important for healing anger than analytical accuracy in naming its causes. In any case, these causes might be unclear from the start. Anger does not arise in the body with a ready-made explanation of where it has come from. It takes emotional work to fully understand the sources of one’s own anger. Because a raging person seeks an immediate release of tension, a semblance of analysis is usually good enough – as long as it comes with an acknowledgement of the suffering, or a promise of relief.<sup>3</sup>

While the psychology of rage-driven populism has been long understood, social scientists have sought to explain the geographical patterns of the AfD’s success. Its leadership is predominantly West German, but the AfD has been most overwhelmingly



popular in the former East. *Reichsbürger* are also a predominantly East German phenomenon. This suggests that populist leaders are tapping into a larger reserve of free-floating rage that exists in these regions in particular. What are the origins of such rage?

We will never have analytical certainty about this. Because free-floating rage is detached from its original causes, we cannot depend on raging voters to give a credible account of its sources. However, research suggests that one important trigger may be the East German version of economic ‘shock therapy’. The *Treuhandanstalt* in particular – a Western-led, top-down privatisation agency – has been recognised as an ‘emotional bad bank’ in the former East. The mere mention of the *Treuhandanstalt* provokes ‘strong emotional and outstandingly negative reactions’. Easterners’ anger about privatisation is still present, ‘like a smoldering fire beneath the surface’.<sup>4</sup>

But East Germany does not have the monopoly on social anger. ‘The AfD is no longer an eastern phenomenon, but has become a major all-German party. So we have arrived.’ These were the words of Alice Weidel, the AfD’s coleader, celebrating the election results in the state of Hesse in 2023. The AfD came second, securing 18.4 per cent of the vote. Hesse is a West German powerhouse state that includes Frankfurt, the financial hub of Europe. Alice Weidel has a PhD in international development. She previously worked for Goldman Sachs and the Bank of China. It’s much harder to laugh at Alice Weidel, or dismiss her as *irrational*. She looks like she knows exactly what she’s doing.

### 3

When Poland’s ‘Law and Justice’ (*Prawo i Sprawiedliwość*, PiS) government first started dismantling the Constitutional Tribunal in 2015, the international media published photos of public protests in Warsaw. The tiny dot of my head must be somewhere in those photos. The liberal Polish press, however, decried the fact that, in a country of 40 million, only a few thousand educated, middle-class people rallied to condemn the political attack on the rule of

law. I was not surprised. Around that time, I was writing up my analysis of the ‘Reprivatisationgate’ scandal I described earlier in this book. I had spoken to many tenants who had lost their homes to fraudulent businessmen in judicial proceedings that were portrayed to the public as ‘historical justice’. These former tenants did not regard the judicial system as a neutral dispenser of justice.

Many of those people supported PiS – in part because PiS politicians were among the first to publicly address the injustice of reprivatisation. Back then, the PiS was an opposition party, so to some extent this might have been a purely tactical move. However, the ‘Law and Justice Party’, in accordance with its name, has long campaigned on a promise to renew the rule of law, which appeared to have been broken by the behind-closed-doors politics of liberal judges. For the PiS, ‘Reprivatisationgate’ offered proof that the rule of law had never been apolitical: the party used it as an excuse to impose its own politics on the rule of law and disregard all democratic procedures.

Both Poland’s two largest parties, the PO (Civic Platform) and the PiS, are the products of an internal split in *Solidarność*. The Civic Platform consists of liberals who first endorsed the shock therapy, then consistently denied its downsides. In its early years, the PiS spelled out what liberals knew but feared to admit: that, for the majority of the population, shock therapy failed to deliver much of what was promised – and often caused a palpable loss in social and economic status. In more recent years, the PiS has mostly switched to fuelling populist rage with anti-immigrant and anti-European sentiments.

According to the sociologist David Ost, the steep rise of right-wing populism in Poland can be traced back to long-dismissed anger at the economic injustice of the shock therapy. I never voted for the PiS, but I, too, am angry at politicians who continue to deny the impoverishment and dispossession that the shock therapy unleashed in my city, and which also caused my family to suffer.

*Solidarność* was launched as a democratic movement when the workers from the Gdańsk shipyard responded with solidarity to the anger of the tram driver Henryka Krzywonos. And it

collapsed as a democratic movement when its representatives refused to acknowledge the legitimate reasons for people's anger. Few politicians had the courage to admit that they were ashamed they had abandoned solidarity as a core value of the movement. Jacek Kuroń was a prominent exception. Many others covered up their abandonment of solidarity with a superficial appeal to other important values – notably: freedom and the rule of law.

Today, whenever the liberal public deploy the ideas of freedom and the rule of law to shame the raging masses, I cannot help but think that *they do not do the rule of law justice*. People's belief in the justice of the rule of law can only be sustained if they trust that they will be treated like its supposed protagonists: as free, equal and dignified subjects.

*Why has the rule of law become so fragile?* I don't think that the rule of law has *become* fragile. I think the rule of law has *always* been fragile. This fragility comes from its foundational paradox, which binds together law and politics. It's a marvellous paradox; scholars are constantly unpeeling new layers of it. It concerns legitimation.

According to systems theory, this paradox is in fact a structural coupling of two paradoxes. Firstly: law operates according to a binary code of legal/illegal, yet law cannot legitimise itself simply by declaring itself legal. Unlike the fabled Baron Munchhausen, we cannot pull ourselves out of a mire by our own hair. Politics finds itself in a similar predicament. If the sovereign – whether a king or a people – truly is sovereign, what forces them to observe their own rules? To save each other from these crises of legitimation, law and politics externalise their paradoxes and project them onto each other. The result is state constitution: politics legitimates law, while law legitimates politics.<sup>5</sup>

Because of its paradoxical origins, the rule of law holds different, conflicting truths together. The first contradiction of law relates to violence. Law is the opposite of violence, because it replaces the 'wild' and potentially endless violence of retribution with a rules-based order.<sup>6</sup> Yet law can only do this by becoming, in the words of Walter Benjamin, the ultimate 'mythical'

violence.<sup>7</sup> When a judge interpreted the law in a way that allowed me to stay in my apartment, my landlord experienced it as violence – because he knew that the state had the tools to force him to comply. When a tenant is legally evicted because they cannot afford the rent, she experiences it as violence. In the everyday, peaceful operations of the law, violence is always present, if only as a threat.

The second contradiction in the rule of law concerns its supposed neutrality. Legal interpretation, although bound by internal rules, can never fully escape politics. If there were a single, ‘objective’ way of interpreting the law, there would be no legal disputes. Ultimately, ‘any version of what it means for courts to be non-political must come from politics’.<sup>8</sup>

The third contradiction in the rule of law derives from the legal fiction of the ‘free and equal subject’. This fiction masks material inequalities, between capital and labour, for example, thereby structurally entangling law with capitalism.<sup>9</sup> However, because maintaining this fiction is necessary for the law to legitimise itself, law also becomes a tool of social emancipation. This is why E. P. Thomson (not uncontroversially) called the rule of law ‘an unqualified, universal good’.<sup>10</sup>

What makes the rule of law universal is indeed its paradoxical nature. A paradox is a tension field within which it becomes possible to transgress the limitations of each opposing pole. Yet the tension of holding conflicting truths together can become explosive if an equitable balance is not maintained. This is why, throughout history, the rule of law has repeatedly fallen into crisis. These crises are genuinely dangerous. What is at stake in them is not even the rule of law – which persists in some form even under authoritarianism – but something more delicate and important. It is something indispensable that, according to the legal sociologist Gunther Teubner, ‘legal sociology has no idea of’ – justice.<sup>11</sup>

Nothing can guarantee that the rule of law will provide justice. Justice is ‘the legal system’s *memento mori*, a reminder of its own limitations’.<sup>12</sup> And because society is a dynamic process, there will never be an ultimate definition of justice. Yet if a

political community doesn't *feel* that the legal system *works* towards justice, the rule of law loses its legitimacy.

#### 4

When I tell the journalist Herr Steiner that the rule of law is undergoing a 'midlife crisis', it is, of course, a metaphor. But I find this metaphor *clinically* useful.<sup>13</sup> Because the rule of law is similar to the way Jungian psychology describes human nature: a paradoxical whole driven by opposing tendencies. And while the rule of law is not a person, capable of transforming themselves to escape from crisis, the people who uphold it – lawyers, politicians and us, members of the democratic society – are just that: people.

According to Jung, a midlife crisis results from the excess tension that arises from suppressing some of our qualities into our 'shadow' in order to preserve our 'persona', an ego-ideal that we choose to display in public. But the more we repress something, the greater the power with which it strikes back. The force of repression distorts the original content. Ultimately, what bites us back is a monstrous version of everything we had hoped to get rid of.

The ego-ideal of liberal democracy is 'a government of laws, not men': a sealed-off system immune to external influences and maintained by neutral experts. Of course, no one really believes in that; people do not *experience* the rule of law this way. But governments and jurists often (and usually for *political* reasons) become overly invested in maintaining the image of law as wholly apolitical. The politics inherent in the law – the spirit of written laws, the uneven power relations within a political system, the room for legal interpretation – is suppressed into the rule of law's dark shadow. Sooner or later, politics strikes back at the law in monstrous form: the 'Law and Justice' party dismantles the Constitutional Tribunal, and a judge makes plans to storm the Reichstag.

The paradoxical nature of the rule of law is not a 'problem' that we can 'solve'. It is a tension field that we need to manage.

Jung calls the management of this tension field ‘shadow-work’, because it assumes that we are letting the shadow in, and learning to narrate and manage it as an official part of who we are. In doing that, shadow-work reduces the tension of suppression. This allows us consciously (or, within a political community, democratically) to negotiate the terms on which the shadow inhabits the system. Such transparent, public negotiations of the terms on which politics inhabits the law are, in my opinion, one of the most important features of the political strategy of *Deutsche Wohnen & Co. enteignen*.

As a Berliner, I support DWE’s project of socialising housing. As a scholar-activist, I have written this book with a much broader purpose: I want to postulate *radically legal politics* as a path for deepening our democracies and renewing the rule of law. I believe that this type of democratic engagement with the law – prototyped by DWE – could effectively protect the structural fragility of the rule of law from being exploited by authoritarian populism.

DWE’s *radically legal politics* is premised on shadow-work being done on two levels: emotional shadow-work performed within the political system; and political shadow-work within the legal system.

The first level of shadow-work embraces the emotions of a population affected by a systemic injustice – like the fear and anger of tenants affected by the housing crisis. These emotions are usually suppressed by the mainstream political parties, and often don’t appear in the political sphere until much too late, after the original anger has transformed into free-floating rage and can no longer be grasped analytically – yet is ripe for manipulation.

Using the techniques of community organising, DWE works to embrace the tenants’ anger directly, at its original source. Yet even when confronted with misdirected rage – during door-to-door campaigning, for example – DWE’s activists do not engage in political polemics, or dismiss their interlocutor’s worldview. This is considered disrespectful, and lacking in curiosity as to how people have arrived at their set of convictions. The purpose of DWE’s campaigning is much humbler: it aims to trace the element of anger related to housing injustice back to its root cause.

When DWE works with people to diagnose the roots of their anger, the diagnosis is specific, preceded by analysis. The reason for Frau Müller's anger – and for her rent increase – is not narrated as a conspiracy of 'corrupt elites', or even as a large and abstract cause such as 'capitalism': rather, it is the subsumption of specific parts of the housing sector under the profit-driven logic of the financial sector. In the process, people's raw anger can be transformed into what Martha Nussbaum calls 'Transition-Anger' – a constructive anger aimed at improving overall social welfare, rather than at retribution. DWE's vision of a new housing system proves Nussbaum's point that Transition-Anger is 'very important in thinking about political institutions'.

Parallel to the emotional shadow-work that deals with anger, DWE also does the shadow-work within the rule of law – by finding and publicly narrating the *political* opportunities offered by the legal system. A political cause of alleviating a systemic injustice is therefore provided with a precise and achievable legal solution. DWE found such a solution in Article 15, and followed up with a proposition for embedding this solution into the existing system.

On the political ground, the law lends the cause systemic credibility, and directs energy from general deliberations towards very concrete tasks on which the legal process is premised. This legal credibility has an emotional effect – people *feel* that the injustice they have suffered is being taken seriously, by the legal system as well. The sense of community created through organising transforms anger into joy, and redirects the need for agency from retribution to constituting the future. And ultimately this sense of agency spreads from the activists to the general population, as people can finally *do* something (add their signature, vote, put up a poster) with a credible expectation that it will impact the system.

When the legal argument works politically in the public sphere, the two types of shadow-work reinforce each other like interlocking cogs: the emotional energy fuels the legal work, and the legal work fuels the enthusiasm. Consequently, *radically legal*

*politics* can be impressively effective. It is also very demanding, as it relies on many different skills: working with emotions, organising a political campaign, legal engineering, and building relationships within the broader political system. Radically legal politics is therefore premised on the internal diversity of the group: it is *radically democratic*.

## 5

What does it mean to be *radically democratic*? To me, it means the willingness to work with people we otherwise disagree with – and to use our differences as a resource for learning, rather than as a pretext to destroy one another. But liberal democracy has an ego ideal too. Regardless of whether we call it a ‘melting pot’ or a ‘tossed salad’, it assumes that our differences will be consumable and easy to digest. In reality, negotiating those differences – and our freedoms – usually entails both wins and losses.

Democracy is not the peaceful coexistence of multitudes. In the best case scenario, it is a well-managed conflict. The same is true of a democratic movement. Any diverse group is a social forcefield in which all the problems of wider society will eventually resurface. The success of a democratic movement is therefore equally dependent on its political or legal strategy and on its capacity to manage internal conflicts. This is not easy: activists are people too, and each carries their individual shadow.

DWE came closest to an internal split in the summer of 2021, when – just as we had secured all the signatures needed for the referendum – a female activist reported an incident of sexual harassment by an older male activist. As so often in cases like these, with no witnesses, there was no way to prove or disprove either the claim or the rebuttal. In the midst of an already demanding campaign, the movement was thrown headfirst into all the emotional complexity of #MeToo.

We weren’t prepared for this. The law couldn’t help: the gulf between the legalistic unprovability of such cases and their sociological prevalence is at the heart of the ongoing public controversy. There were no pre-agreed procedures, and no



course of action would be neutral. Some people took upon themselves the authority to act quickly. Others resented their actions.

The conflict quickly spilled over from the affected parties to the whole DWE body, manifesting especially strongly across generational divides. For some, the situation reactivated memories of past trauma. Others felt they were suffering new and unmerited injustices in the present. People's intense emotional reactions reduced their capacity to express their positions empathetically.

To alleviate the emotional after-effects of the conflict, DWE's Coordination Circle authorised R. and me to organise two sessions of conflict mediation with external facilitators. By then, both parties involved had left the movement: the meetings were intended for anyone else who felt emotionally affected. About forty people attended the meetings. It is hard objectively to assess their impact: I can only legitimately speak of how these meetings affected my own perceptions of the conflict.

The facilitators' interventions helped me to see how our opposing positions all upheld values that were important for the whole group, such as empathy, or lawfulness. Also, it was a relief to be able to express suppressed emotions, or even to see them escalate in a safe environment. None of this made conflicted people suddenly agree with one another – but in some cases it did enable them to *see* one another. Of course, two meetings alone are not going to work magic. Some people still decided to leave the movement in the aftermath, which I consider a loss. Overall, though, as a movement, we have survived – and we have learnt from it.

As the movement grows and develops, DWE activists are learning on the job how to manage different kinds of tension that are also present in general society. Often, it is hard to differentiate between the overlapping sources of these conflicts: concrete situations always exist within a social context, and empathy often competes with exhaustion.

T. recalls a situation when he was already suffering from severe burnout, having been working very long hours for the movement in several capacities. T. is male, non-German and a

member of the Right to the City working group. He and others put a great deal of effort into designing procedures that would actively include people marginalised by a lack of German language skills and/or citizenship. When B., a German activist of Turkish origin, referred to the Right to the City working group as a bunch of white migrants who weren't serious about their activism, T. felt that she had dismissed the group's efforts without knowing much about it. He flew into rage.

As the incident unfolded, other activists present made an effort to work through the tension of the conflict together. C. spoke empathetically about everyone's nerves being frayed from the pre-referendum stress. Over the days that followed, she took action to mediate the conflict. F. called T. the next day to discuss the situation and how to fix it. T. welcomed this intervention, but he tells me that he is still resentful, and feels his objections to B.'s statement were not taken seriously enough. Nonetheless, he remains a committed member of DWE. He says he is gradually learning to manage his workload to forestall another burnout.

A. recalls how strongly she felt about the conflict over the collection of signatures. DWE agreed that, in order to make a political statement, we would also collect the (legally invalid) signatures of non-German Berliners. The question was whether to collect them on the same list or a separate one. A., like many other migrants, was invested in the idea of a separate list. But, after a long and heated discussion, the general assembly decided otherwise. 'I think that what I've learnt in DWE,' A. tells me, 'is to lose with grace. To lose and still keep going.'

This ability – to lose with grace and still keep going, without wanting to destroy one's opponent – is demonstrably lacking in contemporary politics. Ultimately, it allowed DWE to maintain its energy after the government deliberately ignored the results of the first referendum. We are angry about this. But we have channelled this anger into writing a law for the second referendum. We are not storming the Reichstag.

Because I say 'we' are angry – and because I am a scholar-activist – you might wonder whether I am neutral in my research.

Let me assure you that I am not. I care about democracy and the ability of humans to thrive. This has never been a neutral position. But mainstream academia still preserves an ego-ideal of the hyperrational scientist, devoid of values and feelings. Yet this ideal has long since been scientifically disproved.

Research in neuroscience shows that no rationality is possible without feelings. Patients with damage to brain areas responsible for processing emotions are unable to take even simple decisions – even though their intelligence remains intact. If they have to choose between different options, they can correctly describe the factual differences between those options, but they lack the capacity to evaluate them. For patients like these, even choosing what to eat for lunch is a struggle. A difference only makes a difference if you can *feel* it.

Emotions are an integral part of our rationality. They serve as rapid processing systems to evaluate options and help us arrive at decisions. Just as thoughts appear in the head, feelings manifest themselves in the body to provide us with crucial information. And just like thoughts, emotions are not always correct or adequate to cope with the situation.

The methodology of social sciences has long relied on the skill of critical thinking: the ability to discern information and weigh evidence, while also establishing distance from one's own assumptions in order to consider different perspectives. The neuroscientist Rolf Reber postulates that this skillset should be complemented with 'critical feeling'. A critical feeler uses emotions as a source of information – but is also able to see their own emotions from a critical distance, assess reasons behind their own emotional responses and gather information to check whether they are adequate to the situation. Once we gather new information, our feelings – just like thoughts – often adapt to the new knowledge.<sup>14</sup>

We cannot escape from feelings – all we can do is think critically about their sources. In a similar vein, we often *feel* that a statement is not right well before we can analytically grasp why. By narrating my personal engagement openly, I hope to provide you with more data rather than less, namely: what

I have found out through my research, but also why and how I have been seeking answers.

As a scholarly narrator, I don't want to pretend any longer that I am omniscient and neutral. I would rather be critical and tender.<sup>15</sup> And I believe that constantly moving between theory and practice has made me a better scholar. In the words of Kurt Lewin, who first coined the term 'action research': 'You cannot understand the system until you try to change it.'<sup>16</sup>

## 6

Sometimes, trying both to change the system and to understand it puts me in a contradictory position. One of the aspects of research I most enjoy is exploring such contradictions and using them as opportunities for learning. This was why I invited Peter Kadas, a global financier and the sponsor of the Nine Dots Prize, to a High Table dinner at King's College, Cambridge. As I donned my black academic gown – the obligatory apparel for such dinners – I really felt like Batwoman about to enter Gotham.

If I make a checklist of all the things I have ever criticised in my research, Peter has done them all. Firstly, he built his fortune on privatising eastern Europe. Born and raised in socialist Hungary, he defected to Canada in the 1980s, where he got a business degree. Because of his familiarity with both the context and the language, in 1990, an investment bank sent him back to eastern Europe and tasked him with 'figuring things out'. By figuring it out, Peter became very successful. 'You remember the Polish chocolate you ate as a child?' he asks me, at pre-dinner drinks. 'We privatised it!'

Two decades later – around the time I was facing my landlord in court – Peter acquired 'a portfolio of 10,000 apartments' in Berlin. A fund co-founded by Peter only saw one of these apartments, and he can't quite remember where they were located ('mostly East Berlin, I think'). In the summer of 2011, the fund lost the apartments to the bank. He is no longer sure quite what happened, but he remembers it as the apartments being 'effectively stolen' from him. Probably – Peter winks at me – it

had something to do with some tenancy regulations. But wait – let’s savour the appetizers before rushing straight to the dessert.

Meeting on the foreign territory of British politeness, Peter and I instantly connect through our homespun eastern European humour. Our obvious conflict of interest becomes a whetstone on which to sharpen our wits. And so, having passed the butter to the biologist on my left, we go on to dissect the elephant right there on High Table. We agree that, on some higher spiritual plane, karma has given us what we wanted. Peter conceived the Nine Dots Prize to promote ideas that, because they are innovative, might seem controversial – so he can’t complain if my idea is controversial *to him*. For my part, the publishing contract gives me total freedom in how I choose to write this book. This is the kind of freedom I crave: it allows me to write about my research without using academic jargon – a powerful reader repellent.

As the Polish (of course she is!) waitress serves us the main course, I enquire further about Peter’s Berlin apartments. Since he can’t remember all the details, he promises to connect me with his colleagues in Canada. And a week later, I hear the familiar story told from the other side of the looking-glass. Characteristically, they rarely use the word ‘apartments’; it’s either ‘the assets’ or simply ‘the portfolio’.

The portfolio, which I receive as an Excel spreadsheet, is a smorgasbord of 12,781 properties. Looking through the list, I get a sense of how hard it is, at this volume, to remember what one ‘owns’ (and of course Peter never owned these apartments directly, as a person, they were owned by the fund). In fact, ‘only’ 3,673 apartments from Peter’s portfolio were in Berlin – but this would still qualify for DWE’s socialisation plan (my turn to wink!). Contrary to what Peter recalled, the Berlin apartments were not prefab blocks in the former East. These ‘assets’ were mostly early twentieth-century high-ceilinged tenements, and were scattered all across the city. The rest of the portfolio was in North Rhine-Westphalia, with two commercial properties in Poland thrown into the mix.

How did Peter ‘lose’ his Berlin apartments? His colleague, who referred to it as ‘the accident’, guided me through what

happened. But wait – the cheese platter has just arrived at High Table. For discretion, in describing ‘the accident’, I’ll replace companies’ names with cheeses.

In early 2010, Camembert – one of the fund’s many companies – bought Danablu, an indebted company listed in Denmark. Danablu owned the portfolio (the apartments in Berlin and elsewhere) through Limburger, a German limited liability company. In order to buy Limburger, Danablu had borrowed several chunks of money (financial tranches) from various German and Danish lenders. When buying Danablu, Camembert switched the loans from variable interest rates to fixed ones using a financial tool called swaps. By swapping the variable rates for fixed ones, Danablu ensured that the interest rates on Limburger’s loans would remain steady and predictable, making it easier for them to calculate future expenses. However, as a result of the change, the loans appeared to have lost value, because market interest rates were very low at the time.

According to Peter’s colleague, the essence of ‘the accident’ was this. In 2011, Berlin Hyp – one of the German lenders – terminated the swap agreement without communicating properly with Danablu. A big lump sum payment fell due. Danablu couldn’t pay this unexpected bill, so one chunk of the loan went into default. Because these chunks of money (financial tranches) were interconnected, the problem spread to two others, meaning that these were now also due for repayment. Danablu was forced to declare bankruptcy for all the financial tranches affected. In other words: the handling of the loans by Berlin Hyp meant Limburger turned into a stinking deal.

Peter’s business lost €15 million in equity as a result of ‘the accident’. When I ask his colleague if this is unusual, he describes it as ‘annoying’, but also ‘part of the risk in acquiring highly leveraged companies with the expectation of making an outsized return in a market that was pretty dislocated at the time’.<sup>17</sup> Fair enough. In any case, their bankruptcy had nothing to do with housing regulations, only with how the financial institutions acted, or, as Peter’s colleague put it, ‘the incompetence and over-confidence of the bank’. (As a researcher, I must

point out that this is a one-sided account: Berlin Hyp would presumably see it differently.) Finally, I ask what impact this loss had on Peter's overall business position. 'No impact,' his colleague replies.

Laughing with Peter across High Table, I certainly get the impression that, having lost 3,673 Berlin apartments, he recovered better than most people who only lose one. And, as I laugh, I suddenly remember what DWE's conflict facilitators taught us: that laughter, even genuine, often serves as a psychological coping mechanism to release the tension of an underlying conflict. Certainly, thinking back to when I couldn't afford to rent an apartment in Warsaw, I laugh less.

By the end of our conversation, Peter is willing to make some concessions. 'I will give it to you,' he says, 'that finance's impact on housing has got a bit out of control. Not even successful professionals can afford to buy an apartment any more!' However, he still thinks socialisation would set a dangerous precedent: 'If we socialise apartments today, wouldn't people want to socialise shoe factories tomorrow?'

*Benedicto benedicatur*: Let a blessing be given by the blessed one. The Provost of King's College brings the dinner to a close with the customary grace, and Peter and I agree to continue our discussion next time. As I walk him to his taxi, Peter issues a final threat: he might buy up the entire print run of this book to stop my ideas from spreading. I smile back and say nothing; I wouldn't want to spoil such a friendly joke. This book is under a Creative Commons license. It is available to everyone, for free.

## 7

This book is like one of those modern theatre plays: the public will decide how the story ends (Figure 6.1). I close my laptop. I water the plants in my Berlin home. I look at the clock: I have to leave soon. At the last full stop of this story, the story will pick me up and carry me on.

As I leave my study, I pause for a moment in the hallway of my apartment. Rain was pouring from the skies of Berlin when

I first came here in 2007 – and as I entered, I immediately felt at home. But it wasn't yet my home, back then; I was only there for an interview. Max, Thorsten and Carla explained to me this was neither a 'cuddly flat-share' like the one on the *Friends* TV show, nor an unsociable apartment-sharing arrangement just to split the rent. 'We eat some meals together, and we respect each other's freedom,' said Max.

The next day, Max called me to say that they had chosen someone else. They liked me, he said, but there had been so many likeable candidates. I said I understood, and slowly sank into a puddle of sadness. But Max didn't hang up. I started to feel irritated that, after this news, he still expected me to go on making small talk. A full five minutes later, he told me he had been joking. I had got the room – and thereafter became a regular victim of Max's practical jokes.

I peek into the room I first moved into. It's now my daughter's room. A brass hook shaped like a horse is still on the inside of the door. It belonged to one of the many roommates who lived here before me. Wondering if the horse was Regina's, or maybe Annika's, I enter the living room. This used to be Lisa's room – and it was me who got to choose Lisa as a flatmate. But I wasn't cool enough to play Max's joke on her: I liked her so much that I invited her to move in straight away.

In Lisa's room, we spent long hours discussing legal strategies. This was in 2012, when Herr Meier first wanted us out. Housing prices were already rising in Berlin, but tenant protection laws make it difficult to raise the rent within an existing contract. Herr Meier knew that if he got rid of us, he could charge more.

The original rental contract was signed in 1999 by four German students, who were all given the status of a contract party (*Hauptmieter*). Each time someone moved out, the new flatmate had to go to Herr Becker – Herr Meier's building manager – to sign an appendix to the original contract. My appendix states that I was entering into the contract in place of Regina.

Each time there was an exchange of flatmates, Herr Becker made tea and asked us about the condition of the apartment.



When Max moved out, Herr Becker allocated some money for sanding the floorboards in his room (it was high time, he suggested). Herr Becker always asked the new tenants what music they liked. He had grown up in East Germany, and would often talk about his favourite concerts at the Leipzig Opera.

Just before Lisa moved in, Herr Meier fired Herr Becker. He then refused to prepare the usual appendix, or add Lisa to the contract. It was clear that he hoped to dissolve our flatshare. A colleague from university advised me to join a tenants' union. I did, and together with Lisa we attended free consultations with several of the union's lawyers. They all came up with similar diagnoses of our problem, but they each proposed a slightly different solution. It was clear that, written laws notwithstanding, our future depended on their legal interpretation.

I still live here. Evidently, the law has protected me well enough. But like many real-life victories, mine was preceded by some serious losses. When Lisa and I first explained our case to the lawyers, they all agreed that it was a legal grey zone. On the one hand, there was no written law that protected tenant exchange within a multi-party tenancy agreement. On the other, this was very typical practice with Berlin flatshares. And, unlike many others, we had a well-preserved paper trail of more than twenty tenant-exchange appendices.

Our case could set a precedent. Herr Wolf, a lawyer-activist, was genuinely excited. In the folder with our appendices – greasy from being stored in the communal kitchen – he saw legal gold. But there was a catch: Herr Meier had refused to add Lisa to the tenancy agreement *before* I joined the tenants' union, so their insurance didn't cover it.

'If we win' – Herr Wolf laid out the options for us – 'Herr Meier will have to pay all your legal fees, and you may end up contributing to the future security of all Berlin flatshares. But if we lose,' he continued, 'there will probably be a sizeable bill. You would then need to cover all the costs, including those of Herr Meier's lawyer.' The risk was on us.

We didn't go for it. With no legal insurance and no back-up money, we feared being saddled with huge debts. We didn't take

Herr Meier to court; we negotiated with him informally instead. As a result, in early 2013, my two existing roommates and I signed a completely new rental contract with our landlord. This new contract stipulated higher rent, which would be indexed every two years to inflation (this was not the case before). It did not include Lisa as a contract party, and foreclosed the path to any future exchange of tenants within the contract.

The terms of the new contract were significantly worse than those of the original one. Why did we sign it? Legally speaking, we signed it *freely*. From the lawyers we consulted, I knew that Herr Meier had no legal way of forcing us to terminate the old contract. But we still needed a new flatmate, and I had already promised Lisa that she could move in. Without taking him to court, we could not force Herr Meier to add Lisa to the old contract. What we ended up doing – signing a separate sublet contract with Lisa, with Herr Meier’s agreement – was our legal right.

Herr Meier had initially denied us this right. A sublet requires the owner’s agreement. This is usually just a formality; the owner must give serious and specific legal reasons for denying it. Herr Meier had no valid reasons – but to prove it, we would have to go to court. In this case, losing was not a serious risk: the right to sublet has a solid basis in written laws *and* well-established precedents. Practically, though, it would mean that Lisa could not move in until the court case was over. It would probably take a year. By then, it wasn’t just a question of sharing costs – Lisa had become my best friend.

A year later, she got a scholarship at the University of Frankfurt. When Lisa moved out, Herr Meier again refused to let the new flatmate move in. He also tried to increase the rent, in several different ways. Now, though, we were covered by the legal insurance. Four times I took Herr Meier to court to enforce the rights afforded to me by written laws – and I was only able to do it thanks to the support of the tenant union. Each time, I won.

Meanwhile, Herr Wolf has won a precedent-setting case almost identical to ours – Lisa and I read about it at breakfast

one morning, in the tenant union's bulletin. So we could have won. But that's the nature of risk: you might also lose. The new contract indexes my rent to inflation, and in the last few years especially, there has been a sharp increase. I don't pay one of those mythically cheap old Berlin rents, or a crazily expensive one, like those demanded in Prenzlauer Berg today. On the Berlin spectrum, I sit in the middle that, for now, appears to be safe.

*Oh dear, I shall be late!* I have to make it to DWE's special plenary. Today we're discussing our procedure for working with the law firm that's drafting the socialisation law for the second referendum. As I pass the kitchen, I grab the half-eaten Berliner Mira has left on the table. I run down the stairs to the tram stop. The tram is late; it should be here already. This is annoying, but not unusual. Ultimately, it always comes.

