

## 6. The Arab in the law of Berlin, or: ‘How does it feel to be a problem?’

### The figure of the Arab, or the case for Arabness

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How do you approach the question of “Arabness” or the figure of “the Arab” in Berlin? The case of Arabness arguably shows some similarities to the case of Blackness<sup>1</sup> or Latinx (Latinas/os)<sup>2</sup> in addressing the lived experience of Arabness. Like Blacks or Latinx, Arab diversities are based on their national origins, ideological, political, and religious similarities and differences, and the racialized consequences of diverse physical appearance and cultural and religious practice. At the same time, inner-Arab commonalities are derived from shared struggles with immigration and participation – not least as Arabs meet the “German gaze” that defines and, at times, obstructs their quest for equality in Berlin. Arabness engages with the multiple internal diversities while situating Arabs, like Blacks and Latinx, in the significant debates around domestic and global arguments around the right of a dignified life, free with equal opportunities. Exploring Arabness in this contribution is an attempt to reflect on the figure of the Arab in the context of Berlin’s state power. As presented in this chapter, the figure of “the Arab” emerges as a distinctly delineated subject, object, and agent of change.

This contribution discusses Arabness in relation to the law of the *Land* [the federal state of] Berlin, in as much as “the Arab” serves as a foil for the laws of Berlin, and those laws in turn impact the situation of Arabs in Berlin. The legal competences of the *Land* Berlin include public safety and order (*öffentliche Ordnung und Sicherheit*), schools and education (*Bildung und Erziehung*), as well as of culture,<sup>3</sup> all major stages

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- 1 Moten, Fred (2008) *The Case of Blackness, Criticism*, Vol. 50 (2) Spring, 177–218.
  - 2 Cf. *LatCrit* (2002) *Primer*, Vol. 1 (summer) (<https://latcrit.org/wp-content/uploads/2020/07/lcprimeri.pdf>).
  - 3 According to article 30 of the German constitution, the Länder are primarily responsible for legislation and thus also for administration in the areas of education, science, culture as well as public safety and order. The first area includes schools, technical colleges, universities, museums, theaters, libraries, and numerous scientific institutions, while the second includes the police and prison system.

for narrating what equal freedom should look like in Berlin. The *Länder* also play a role, as they bear responsibility for executing federal laws using their own authorities, institutions, and personnel.<sup>4</sup> For example, the *Land* Berlin establishes its own authority to pay (federal) social housing benefits and arrange for the accommodation of asylum seekers. It is free to decide regulatory details on payments for housing, allocating social housing units, issuing identity cards, regulating residency rights and naturalization, and deporting foreigners. Crucially, these are all acute contact points for Arabs with the law as enforced by Berlin authorities, at least at some moments in their lives.

It is through the figure of the Arab that Berlin's crucial transformations in the fields of il/liberalism, secularism, racism, and coloniality are reflected. "The Arab" is literally and metaphorically a figure to highlight erasures, breaks, and denials in Germany today, most notably through a system of surveillance, censorship, and exclusion, as will be shown. The figure of the Arab has therefore become visible as an object of transformation of Germany, most notably in the fields of migration and security. As a figure, and through an epistemological lens, "the Arab" highlights and reveals the logic of a changing liberal legal order that engages with racist, religious, and Orientalist tropes, stereotypes, and stigma. This figure lends itself as a cipher of the post-World War II liberal order, where societal, political, and legal transformations in Berlin can be highlighted against the backdrop of a figure that is both domestic and global, as well as familiar and foreign. Against the backdrop of Berlin's state laws and legal policies, the figure of "the Arab" appears in various ways – categorized, criminalized, and racialized, and on a sliding scale between invisible, visible, and hypervisible.

1. The Arab is invisible as a citizen and is indeed treated as not "citizenly" enough, not fit "yet" for a liberal democracy, to the point of being treated as a non-citizen or a stateless subject not even granted the rights of a lawful foreigner. 2. The Arab is visible as an unruly, stubborn being needing to be educated and civilized to please the sentiments of Germans. This imperative emerges in debates witnessed in Berlin state schools and on public streets, where the Arab is considered to require instruction in the forms of speech and comportment considered acceptable behavior in a liberal democracy. 3. The Arab is hypervisible in several subcategories as a "problem" and "danger" originating from outside Germany and needing to be policed and

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4 Article 83, German Constitution [Execution by the Länder]: "The Länder shall execute federal laws in their own right insofar as this Basic Law does not otherwise provide or permit." Article 84 German Constitution [Länder administration – Federal oversight] ([Länder administration – Federal oversight]: (1) Where the Länder execute federal laws in their own right, they shall provide for the establishment of the requisite authorities and regulate their administrative procedures. If federal laws provide otherwise, the Länder may enact derogating regulations.

surveilled. Potentially a member of a so-called “clan”, the Arab is profiled as engaging in crime, and therefore needs policing, including their raiding of their business.

The Arab is thus a crucial figure for categorizing, civilizing and policing through law.

## Categorizing the Arab

Berlin's state authorities enforce regulations around residency, naturalization, and the deportation of foreigners. In Berlin, about 4.25 percent of the resident population (160,344 people) have an Arab migrant background (i.e., are documented to be from the area of the Arab League).<sup>5</sup> Of these, approximately 35.5 percent are German citizens, most of whom live in the districts of Mitte, Neukölln, Tempelhof-Schöneberg, and Spandau. Of the 30,673 Berliners of Lebanese (or rather Palestinian) immigration background have German citizenship, thus approximately 72.8 percent. They mainly live in Neukölln, Mitte, Tempelhof-Schöneberg, and Friedrichshain-Kreuzberg.<sup>6</sup> Crucially, as even the Berlin police report states, there is imprecision in the population numbers due to many persons having been entered into the records as stateless subjects with no nationality or whose nationality is considered “unclear”.<sup>7</sup>

In their 2021 campaign, “Our voice counts” (*Unsere Stimme zählt!*), Arab residents of Berlin expressed their frustration with their lack of local rights and representation, pointing out that two-thirds of them had no local voting rights. Their manifesto states:

“We are part of society in schools, hospitals, as social workers, self-employed people, and much more. But when we look for work or housing, we are discriminated against because of our name and religion. Few people with a migration history are in important social positions. We finally demand equal access to all parts of society.”<sup>8</sup>

5 Amt für Statistik Berlin-Brandenburg (June 2021) Statistischer Bericht A I 5 – HJ 1/21 as cited by Polizei Berlin (LKA 734 ZAK BkS) (2021) Lagebild ‘Clankriminalität’ Berlin, 7–8. (<https://www.berlin.de/sen/inneres/presse/weitere-informationen/artikel.1203440.php>) (last accessed July 5, 2023).

6 Ibid.

7 Polizei Berlin (LKA 734 ZAK BkS) (2021) Lagebild ‘Clankriminalität’ Berlin, 7–8.

8 Unsere Stimme zählt! Für Teilhabe und Antirassismus, <https://unserestimmezaehlt.de/> (last accessed July 5, 2023).

Their campaign demands reflect key inadequacies in the lived experience of Arab Berlin. They call on the government to foster the Arabic language in schools<sup>9</sup>; to recognize Muslim religious communities; to destigmatize mosques; to build more Islamic graveyards; to include anti-colonialism as well as Arabic history and culture in the Berlin school curriculum; to respect international law and international legal courts, also with respect to Apartheid; to end the arms trade with the countries of the Middle East; and crucially, to obtain voting rights, at least at the communal level, to influence decisions in their immediate neighborhood.<sup>10</sup>

Instead, Arabs in Berlin even when they have Germany citizenship are treated as “minor citizens”,<sup>11</sup> a term coined by anthropologist Sultan Doughan<sup>12</sup> in researching and portraying people from the Middle East, including Arabs, in Berlin, as they accommodate in post-Shoa Berlin. She explains how German citizenship does not deliver on the promise of political equality but that “German citizens of Middle Eastern descent are continuously taken to task as not being integrated enough and (who) can be denied certain constitutional rights.” Doughan portrays the extent of imposed self-denial with respect to freedom of expression:

“Middle Easterners have to learn to accommodate German sentiments, affects and expectations. [...] Instead, they are asked to work on themselves in order to resemble the Christian-secularized majority in a range of issues, and specifically with regard to the figure of the Jew. On the other, their ethnic, legal, and class backgrounds predispose them to political experiences that cannot be easily folded into the ideals of liberal democracy. As minor citizens, they learn to manage external expectations in order to gain majoritarian approval; even if that means that certain injuries inflicted onto them have to be downplayed.”

The Arab turned German citizen is not granted the chance to act as a self-confident citizen but needs to manage the expectations of “the Arab” facing German society. Social citizenship is formal and conditional, just as is equality and belonging. German citizenship does not offer protection from the ongoing German gaze, the pro-

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9 Berlin in 2022 initiated one Arabic language hour in schools with at least twelve students, cf. Senatsverwaltung für Bildung, Jugend und Familie, <https://www.berlin.de/sen/bildung/unterricht/faecher-rahmenlehrplaene/sprachen/>, (last checked July 5, 2023).

10 Unsere Stimme zählt! Für Teilhabe und Antirassismus, <https://unserestimmezaehlt.de/> (last accessed July 5, 2023).

11 Doughan, Sultan (2022) Minor Citizens? Holocaust Memory and the Un/Making of Citizenship in Germany. RePLITO Feb. 2 <https://replito.pubpub.org/pub/7uzezjxz/release/1>, (last accessed July 5, 2023).

12 Doughan writes: “My use of minor citizens is inspired by Cathy Park Hong’s *Minor Feelings* (2021), where she describes the impossibility of Asian-American equality in the US. This impossibility is managed by Asian-Americans themselves, who learn to accommodate injuries inflicted upon them by playing along within racist imaginaries of Asians.”

jections of ongoing expectations towards the Arab either. Here, it might necessary to connect the fragility of social citizenship to Du Bois' concept of double consciousness as the internal conflict experienced by those subordinated in a dominant society. The concept of double consciousness originally captured the African American experience that "only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity."<sup>13</sup> In a similar vein, Arabs in Berlin are struggling to engage in confident citizenship and to confidently shape the course of German liberal democracy without fear of "social death":

"Voicing injury and making political demands, especially passionately, is perceived as aggressive, irrational, hateful, immature, and stemming from raw religious sentiments. But are Middle Easterners bound to remain minor citizens because uncomfortable political demands that differ from majoritarian views can only be understood as religiously rooted atavistic sentiments and therefore illegitimate?"<sup>14</sup>

It is in this regard that political subjecthood, often connected with questions of citizenship and demands for equality, will, in turn, be addressed as either an annoyance to be ignored or a threat to be criminalized.<sup>15</sup> Doughan alludes that despite the importance of formal citizenship, "moral citizenship"<sup>16</sup> and thus equality might not be attained.

Yet, many Arabs in Berlin live without German citizenship, and worse yet, without formal lawful residency but rather with a temporary suspension of deportation, that can lead to deportation at any time (*Duldung*). Stateless Arab subjects in Berlin thus legally belong to a separate category, one that has gone unnoticed from German discourse for very long. Meanwhile, the situation of statelessness in Germany has risen, and it largely affects people from Arab countries. In 2022, around 29,500 people without nationality (*staatenlos*) and around 97,000 people with an unclear nationality (*ungeklärt*)<sup>17</sup> were registered in the Central Register of Foreigners in Ger-

13 Cf. Du Bois, 10–11.

14 Cf. Doughan, *Minor Citizens?* 2022.

15 Tzuberi, Hannah; Samour, Nahed (2/2022) *The German State and the Creation of Un/Desired Communities | Contending Modernities*, Feb. 22 (<https://contendingmodernities.nd.edu/the-orizing-modernities/the-german-state-and-the-creation-of-un-desired-communities/>).

16 On the shift in focus from formal to moral citizenship in Dutch national and local policy and the mixing of 'citizenship' with 'integration' that gives rise to a virtualization of citizenship cf. Schinkel, Willem (2010) *The Virtualization of Citizenship*. *Critical Sociology*, Vol. 36(2) 265–283.

17 According to the German Office of Statistics "The origin of the person in question is unknown and cannot be conclusively clarified. The legal situation in many European countries does

many – and the trend is rising.<sup>18</sup> This is because people who have already lived in other countries as stateless persons have come to Germany (e.g. Kurdish and Palestinian nationals who have previously lived in Syria, Lebanon or the Palestinian territories occupied by Israel).<sup>19</sup> Facing additional bureaucratic barriers to naturalization and being either stateless or having an unclear nationality means one is left societally disadvantaged and unable to exercise one's rights. Stateless people's rights, especially when they are granted only temporary suspension of deportation (*Duldung*), are limited in some contexts – such as in relation to education, healthcare, welfare benefits, and employment – contributing to prolonged poverty and other harm. Stateless people usually do not have the right to vote, hold political office, or participate fully in democratic processes.<sup>20</sup> The status of statelessness or unclear nationality is determined by an administrative procedure in the Foreigners' Registration Office (*Ausländerzentralregister*, AZR). So far, however, there is a lack of cohesive recognition and assessment procedures, and administrative practice is considered confusing, with varying procedures across the sixteen German *Länder*. Yet, the legal status determines the residence permit, which is then only granted for a limited period<sup>21</sup>, and can be extended over decades without maturing into a lawful residency, leaving the person legally and socio-economically precarious over a very long time, developing into structural problems, as the following passage shows.

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not allow a person with unclear citizenship to be naturalized, as it is assumed that citizenship already exists." <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Asylbewerberleistungen/Glossar/ungeklaerte-staatsangehoerigkeiten.html> (last accessed July 5, 2023). Local authorities do not apply the term "unclear nationality" uniformly.

- 18 Sachverständigenrat für Integration und Migration (2023) Ein Leben ohne Pass: Staatenlose und ihre Situation in Deutschland, March (<https://www.svr-migration.de/publikation/staatenlosigkeit-in-deutschland/>).
- 19 On the situation of Palestinians as stateless or unclear status in Germany, Wissenschaftlicher Dienst Bundestag (2018) Zur Staatenlosigkeit von Palästinensern und zur Anerkennung Palästinas und zur Anerkennung Palästinas und der von seinen Behörden ausgegebenen Reisedokumente, WD 2 – 3000 – 057/18 , May 7 (<https://www.bundestag.de/resource/blob/564214/ac302f4c6cadb2d7fd79bbcbad2841/WD-2-057-18-pdf-data.pdf>).
- 20 On barriers to naturalization and integration for stateless people, see European Network on Statelessness (2023) Naturalization and Integration (<https://www.statelessness.eu/sites/default/files/2023-01/Naturalisation%20primer%202.pdf>).
- 21 Sachverständigenrat für Integration und Migration (2023) Ein Leben ohne Pass. Die Situation staatenloser Menschen in Deutschland. SVR-Policy Brief 2023–1, 5 ([https://www.svr-migration.de/wp-content/uploads/2023/03/SVR-Policy\\_2023-1\\_Policy-Brief-Staatenlose\\_barrierefrei.pdf](https://www.svr-migration.de/wp-content/uploads/2023/03/SVR-Policy_2023-1_Policy-Brief-Staatenlose_barrierefrei.pdf)).

## Policing the Arab

According to their own account, the Berlin police apply the term “clans” and “clan criminality” only to Arabs.<sup>22</sup> According to the Berlin police, a focus is placed on the criminality of members of “ethnically isolated Arab structures whose ethnic roots can be traced back in particular to so-called Mhallami-Kurds, Lebanese and stateless Palestinians who immigrated to Germany from Lebanon as war refugees” (in the late 1970s/early 80s).<sup>23</sup> This naming policy has significant consequences. Profiling community members as belonging to a “clan”, assuming clan criminality, and raiding community businesses affect Arab families, neighborhoods and communities beyond those immediately implicated.<sup>24</sup> To be clear (and to state the obvious), some Arabs (in their various legal statuses as German citizens, refugees or else, to which the Berlin police makes no further reference) commit crime, sometimes together with family members. Rather than disputing this fact, the question here is why Berlin authorities opted to give this criminal activity its own, ethnicizing name instead of reverting to “organized crime” as an established legal category that has been in use for long by the Berlin authorities, including the police.<sup>25</sup>

The Berlin police from 2019 to 2022 used this definition for “clan criminality”:

“Clan crime is the commission of criminal acts by members of ethnically segregated structures (“clans”). It is determined by kinship relations and/or a common ethnic origin and a high degree of segregation of the perpetrators, which encourages the commission of the crime or makes it more difficult to solve the crime. This goes hand in hand with their own set of values and the fundamental rejection of the German legal system. In this context, clan criminality may exhibit one or more of the following indicators:

a strong orientation toward the mostly patriarchal-hierarchical family structure; a lack of willingness to integrate with aspects of spatial concentration; provoking

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- 22 See p.1. of the introduction to Polizei Berlin (LKA 734 ZAK BkS) (2021) Lagebild Clankriminalität Berlin. <https://www.berlin.de/sen/inneres/presse/weitere-informationen/artikel.1203440.php>. The Berlin police in footnote 1 then refers to Arabs as persons whose ethnicity or migration background can be attributed to a state of the “Arab League”: Algeria, Bahrain, Egypt, Djibouti, Iraq, Jordan, Qatar, Comoros, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Palestinian territory, Yemen.
- 23 Polizei Berlin (LKA 734 ZAK BkS) (2021) op.cit., 7.
- 24 Jaraba, Mahmoud (2021) Arabische Großfamilien und die ‘Clankriminalität,’ Informations-Plattform für Journalistinnen und Journalisten zu den Themen Flucht, Migration und Diskriminierung. (<https://mediendienst-integration.de/artikel/arabische-grossfamilien-und-die-clankriminalitaet.html>).
- 25 Strafverfolgungsbehörden, Staatsanwaltschaft Berlin, <https://www.berlin.de/staatsanwaltschaft/aufgaben/organierte-kriminalitaet/#abt251> (last accessed July 5, 2023).

escalations even on trivial occasions or minor violations of the law; the exploitation of group-immanent mobilization and threat potentials.”<sup>26</sup>

This definition has met with criticism from criminologists and criminal law scholars as entailing blunt generalizations, blurring the lines of criminal and administrative laws (with respect to criminal law and administrative trade regulation law), and being in its application empirically imprecise and vastly exaggerated, as well as stirring “German Angst” – and eventually opening doors for discrimination.<sup>27</sup>

In July 2022, a national definition for all sixteen federal states was suggested by the newly established “federal-state initiative to combat clan crime (*Bund-Länder- Initiative zur Bekämpfung der Clankriminalität*, BLICK).<sup>28</sup> The definition considered and integrated suggestions from the federal states, the Federal Office of Crime (*Bundeskriminalamt*) and various research findings. The federal states had used different definitions for the reporting periods up to and including 2021. In the new two-stage definition of 2022, the term “clan” is first defined as “ethnically open, value-neutral and detached from crime”. In a second step, the context of the group-related form of crime is included. The new federal definition defines “clan” as “an informal social organization determined by a common understanding of the ancestry of its members. In particular, it is characterized by a hierarchical structure, a strong sense

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- 26 “Clankriminalität ist die Begehung von Straftaten durch Angehörige ethnisch abgeschotteter Strukturen (‘Clans’). Sie ist bestimmt von verwandtschaftlichen Beziehungen und/oder einer gemeinsamen ethnischen Herkunft und einem hohen Maß an Abschottung der Täter, wodurch die Tatbegehung gefördert oder die Aufklärung der Tat erschwert wird. Dies geht einher mit einer eigenen Werteordnung und der grundsätzlichen Ablehnung der deutschen Rechtsordnung. Dabei kann Clankriminalität einen oder mehrere der folgenden Indikatoren aufweisen: eine starke Ausrichtung auf die zumeist patriarchalisch-hierarchisch geprägte Familienstruktur; eine mangelnde Integrationsbereitschaft mit Aspekten einer räumlichen Konzentration; das Provozieren von Eskalationen auch bei nichtigen Anlässen oder geringfügigen; Rechtsverstößen die Ausnutzung gruppenimmanenter Mobilisierungs- und Bedrohungspotenziale“. Polizei Berlin (LKA 734 ZAK Bks) (2021) op.cit., 7 <https://www.berlin.de/sen/inneres/presse/weitere-informationen/artikel.1203440.php>, (last accessed July 5, 2023).
- 27 Feltes, Thomas; Rauls, Felix (2020) Clankriminalität und die “German Angst”: Rechtspolitische und kriminologische Anmerkungen zur Beschäftigung mit sogenannter Clankriminalität. *Sozial Extra* 44: 372–7; Reinhardt, K. (2021) Zum Begriff der Clankriminalität – eine kritische Einschätzung. Working Paper Eberhard-Karls-Universität Tübingen. Also see articles in Hunold, Daniela; Singelstein, Tobias (2022) (eds.) *Rassismus in der Polizei*.
- 28 Polizei Berlin (LKA 734 ZAK Bks) (2021) op.cit., 41, <https://www.berlin.de/sen/inneres/presse/weitere-informationen/artikel.1203440.php>, (last accessed July 5, 2023).

of belonging and a common understanding of norms and values."<sup>29</sup> "Clan crime" is now defined as follows:

"Clan crime encompasses the delinquent behavior of clan members. Clan affiliation represents a unifying component that promotes the commission of the crime or impedes its clarification, whereby one's own norms and values can be placed above the legal system applicable in Germany. The deeds must be individually or collectively significant to the phenomenon."<sup>30</sup>

This two-step definition has been in force for the Berlin police since January 1, 2022, replacing the older definition of May 2, 2019. Despite the separate definition of clan and clan crime, and the alleged "openness" to all kinds of ethnicities, the Berlin police concede that they "continue to carry out the fight against clan crime and focus on the criminality of delinquent clans of Arab origin."<sup>31</sup> Ethnicizing crime, instead of reverting to the established category of "organized crime", implicating Arabs as such and entire families through their family name, remains a focal point of criticism, as it identifies established stereotypes and stigma in the work of the police. Using these categories in police work, political speech, and the media underlines surveillance as a racializing process, entailing embodied effects of surveillance.<sup>32</sup> This affects Arabs and everyone else visiting Arab restaurants, corner stores, and Shisha bars in areas frequented not only by Arabs but also by other people of color. It is no coincidence that the racist murder of people of color in Hanau took place in a Shisha bar, garnering much attention as a space where people of color spend their time and can thus be easily targeted, and killed. The laws on "dangerous localities" (*kriminalitätsbelastete Orte*, §§ 21, 34, 35 ASOG, Berlin law of general security and order) can thus turn into

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29 Ibid., 41: "Clan: Ein Clan ist eine informelle soziale Organisation, die durch ein gemeinsames Abstammungsverständnis ihrer Angehörigen bestimmt ist. Sie zeichnet sich insbesondere durch eine hierarchische Struktur, ein ausgeprägtes Zugehörigkeitsgefühl und ein gemeinsames Normen- und Werteverständnis aus."

30 "Clankriminalität umfasst das delinquente Verhalten von Clanangehörigen. Die Clanzugehörigkeit stellt dabei eine verbindende, die Tatbegehung fördernde oder die Aufklärung der Tat hindernde Komponente dar, wobei die eigenen Normen und Werte über die in Deutschland geltende Rechtsordnung gestellt werden können. Die Taten müssen im Einzelnen oder in ihrer Gesamtheit für das Phänomen von Bedeutung sein." Ibid., 41.

31 Ibid., 41.

32 Browne, Simone (2019) Dark Matters: On the Surveillance of Blackness; Jaraba, Mahmood (2021) Arabische Großfamilien und die 'Clankriminalität,' Informations-Plattform für Journalistinnen und Journalisten zu den Themen Flucht, Migration und Diskriminierung (<https://mediendienst-integration.de/artikel/arabische-grossfamilien-und-die-clankriminalitaet.html>); Özvatan, Özgür; Neuhauser, Bastian; Yurdakul, Gökce (2023) The 'Arab Clans' Discourse: Narrating Racialization, Kinship, and Crime in the German Media. *Social Sciences* 12: 104.

“endangered localities” were fatal racial profiling attacks can, and does, occur.<sup>33</sup> Race and racism, especially anti-Arab racism (in its inevitable overlap with anti-Muslim racism, anti-Black racism, and anti-Roma racism), seems to be significantly heightened when public figures and media portray some ethnicities as particularly prone to crime and in offensive violation of “our values”.

In fact, Berlin public authorities, next to establishing the term “clan-criminality”, have used trade law (*Gewerberecht*) as a door opener<sup>34</sup> and trade inspections as an alibi for “clan raids”, despite heightened doubts about their legality. In a concerted effort, Berlin police and district offices, tax and customs authorities, have been inspecting Arab shisha bars, cafes, restaurants, barber shops, travel agencies, and corner stores, often sensationally accompanied by large numbers of journalists, with photo ops for politicians making sweeping political statements after the spectacle.<sup>35</sup> Images of hundreds of police officers raiding shisha bars, Arab supermarkets, or arcades in Berlin districts such as Neukölln, Tempelhof, or Wedding regularly make headlines nationwide.<sup>36</sup> Police officers often arrive at these operations with a large contingent, accompanied by customs, tax, or health authorities, particularly during the COVID-19 pandemic.

At the end of 2020, the Berlin Senate Department for Economic Affairs, Energy and Public Enterprises commissioned the Berlin School of Economics and Law (*Hochschule für Wirtschaft und Recht*) to conduct a study to investigate the so-called trade surveillance (*Gewerbeüberwachung*),<sup>37</sup> the category assigned to the official visits to Arab stores in Berlin. Legally, trade surveillance falls under the competence of the State Office of Criminal Investigation (*Landeskriminalamt, LKA*) in Berlin and, according to their state officers, it entails monitoring those businesses authorized as commercial enterprises for consumer protection and compliance with hygiene regulations, as well as fighting illegal gambling. Reference is also made to integrating trade surveillance into the fight against clan crime.<sup>38</sup> The study points out severe le-

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33 For a list of expert opinions on racial profiling and dangerous places, Berliner Kampagne: Ban! Racial Profiling – Gefährliche Orte abschaffen!, <https://kop-berlin.de/beitrag/die-berliner-kampagne-ban-racial-profiling-gefahrliche-orte-abschaffen> (last accessed July 5, 2023).

34 Leuschner 16.

35 E.g., Andreas Geisel, former Berlin Senator for Interior Affairs (<https://andreas-geisel.de/zuden-razzien-in-mitte-und-neukoelln/>).

36 These kinds of raids also take place in other federal states such as Lower Saxony or North Rhine-Westphalia.

37 Leuschner, Vincent; Schönrock, Sabrina; Janßen, Sebastian; Görs, Philipp (2022) Struktur und Praxis der Gewerbeüberwachung im Land Berlin. Abschlussbericht zur Organisationsuntersuchung (<https://www.berlin.de/sen/wirtschaft/wirtschaftsrecht/gewerberecht/gewerbeueberwachung/>),

38 *Ibid.*, 15.

gal deficits in connection with trade surveillance and fundamentally questions the alleged link to the battle against so-called clan crime.

Also, next to a legal analysis, the study includes interviews with officers who oversee trade surveillance in Berlin. Some of the employees report their dissatisfaction and skepticism about Berlin's strategy of battling the supposed "clan" structures. In the study, for example, two employees express anger at the way migrant small businesses are placed under general suspicion.<sup>39</sup> In the interviews, one of the anonymous employees describes the situation in connection with a travel agency that offers pilgrimages to Mecca as an example:

"And when it suited them, because now clan structures have to be broken up – it's more of a police concern – we'd get orders: 'Oh, now go check there, they do Hajj travel!' So we were supposed to charge these travel agencies. You'd like to know what you can actually oversee in travel agencies according to 38 (§ 38 GewO, note by the author). It was all sort of crazy. Then we were allowed to take notes on what the police are now allowed to surveil in travel agencies. But they only wanted to get in [...] to get at the clans or whoever."<sup>40</sup>

The study is full of reports constructing excuses for what amounts to raids on barbershops, late-night shops, or takeaways – in the hope of finding something. High-ranking LKA employees are quoted as saying that they doubt that the legally significant principle of proportionality is being respected in the battle on "clan criminality":

"It's basically the recurring idea of the Trojan horse, that you come riding up with a 'Hello, let's do a trade inspection' and, strictly speaking, act ahead of a really profound suspicion that could explain a search measure. Of course, this is a legal issue that can also be viewed critically."<sup>41</sup>

39 Ibid., 15.

40 "Und wenn es denen aber dann passte, weil jetzt müssen gerade Clanstrukturen zerschlagen werden, also eher so ein Polizeianliegen, dann kriegten wir Aufträge, 'Oh, jetzt muss man auch noch hier – gibt's Hajj-Reisen', plötzlich möchte man in Reisebüros einreiten, möchte dann da mal wissen, was kann man denn nach 38 (§ 38 GewO, Anmerk. d. V.) in Reisebüros eigentlich kontrollieren. Und es war alles irgendwie so verkehrtrüm. Dann durften wir Vermerke schreiben, was darf denn jetzt die Polizei gewerbeüberwachungsmäßig in Reisebüros kontrollieren. Dann wollten sie aber nur rein, weil sie irgendwie – ist ja auch ein hehres Anliegen, weil sie den [Clans, Anonymisierung d. V.] oder wem auch immer ans Leder wollten, ja. Und das ist halt dieses und das ist ja das, weswegen die Polizei bisher auch irgendwie so [...]. Aber das ist eben das, weswegen sie so'n Interesse noch dran haben, als Türöffner dieses Gewerberecht zu haben. Und wir haben irgendwann gesagt 'Ja, und wir sitzen aber da und haben irgendwo- das darf man nicht laut sagen, es gibt aber Vollzugsprobleme im Gewerberecht, (Int1\_SenWiEnBe, Pos. 108)', Leuschner et al. (2022) 16–17.

41 Ibid., 17.

In recent years, several voices have spoken out in the Berlin House of Representatives, in the districts and on the part of the tradespeople concerned, taking a legally critical view of this practice. The question arises as to why the authorities in Berlin invest so many resources in these staged operations. An insider gives a sober answer: "In the end, we achieve nothing. You have to put it that way, it's sold differently in the press."<sup>42</sup> In fact, only a few journalists ask about the exact reasons for and results of these "visitations". There are cases in which a quantities of unpaid duty on hookah tobacco were confiscated. Yet, the biggest legal concern remains that these operations lack proportionality. According to the study, the officers often find nothing at all during the joint operations and the entourage has to leave without results.<sup>43</sup> The researchers commissioned with the study are also critical of the joint operations: "The prosecution of criminal offenses must be strictly separated from the regulatory tasks in commercial matters".<sup>44</sup> Accordingly, the "Trojan horse" method described is illegal, as pretended trade surveillance serves as a bridge to unsuspected prosecution. Trade law cannot be used as a door opener for the preventive control of criminal offenses. In practice, however, the Senate, LKA, and districts do not seem to adhere to this legal principle. Instead, the political leaders in the districts play a decisive role as they push their administrations to carry out field operations in large groups. A person responsible in a district office bluntly describes the intention behind this strategy: "We just try to conduct our proceedings in a way that is externally effective or in a media-effective manner. It's not that we go out and say, 'oh man, that's not so nice', and you get a fine for a smaller amount a week later. Instead, we issue a hefty fine notice as part of educational measures."<sup>45</sup>

Teaching Arabs a lesson, disciplining Arabs, no matter what the rule of law requires, seems to be the clear message that even the acting officers could not help but realize. Policing Arabs is considered an educational matter. It goes hand in hand with assuring the German citizen that the state is protected from Arabness, from Arabness taking over. This image of "Arabs taking over" is a recurring theme of anti-Arab and anti-Muslim racism, one that depicts violence and lack of inherent loyalty to the law as an Arab characteristic, assuming Arabs to be powerful enough to undermine German law and legal culture. Given that Arabs compromise around 160.000 people in Berlin, a city of almost four million people, it shows that the Arab take-over reflects a "German Angst" from the Oriental other, and is not grounded in reality. The task of all law enforcement authorities is to ensure that the law is respected by everyone alike, and not to stir anxieties that can subsequently be exploited by political actors for political capital.

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42 Ibid., 17.

43 Ibid., 51.

44 Ibid., 165.

45 Ibid., 54.

By concentrating on staged “clan crime” in conjunction with the lack of personnel, other (White) businesses in the city would “not be monitored at all.”<sup>46</sup> Policing Arab businesses also means that other businesses are being less monitored, so that the personnel and resources put into “clan criminality” benefit other sectors in the city. As a consequence, public safety in Berlin is not being shared equally. Those affected by these inspections point out that being placed under general suspicion (*Generalverdacht*) is unfair and racially motivated, even when in their annual reports, Berlin police are adamant to stress that “no ‘general suspicion’ against fellow citizens of Arab migration background is intended”.<sup>47</sup>

Many of those affected have now joined together in initiatives to draw attention to their situation. State agencies encounter frustrated tradespeople who often cannot be proven to have committed a specific crime, but who are under continuous state surveillance. In an open letter, trade people, with political initiatives such as “Unsere Stimme zählt!”, and those working against discrimination and unlawful police violence, have stated: “Our neighbors are unsettled by this approach, the guests stay away. We perceive this to be harassment. The findings that are made now and then, do not justify the extent or the aggressive style of these inspections.”<sup>48</sup> The open letter also laments the public prejudice created by such spectacularized controls: The trade people understand that trade must be controlled, “but we don’t want to be prejudged and presented as criminals without evidence.” The businessmen would like to have a dialogue with the district and the interior administration on how inspections can be carried out “proportionately, without discrimination, and without weapons being drawn. “We are convinced that we can move forward if we talk to each other”.<sup>49</sup>

## Civilizing the Arab

Schools are a further space of state surveillance. For students (children or youth), this can entail their personal data being transferred outside of school to other public authorities, including police and possibly intelligence. While ethnic ascription and religion can be easily conflated, it becomes apparent how religion is used to get at the students regarding political questions. One such example is the project

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46 Ibid., 59.

47 Polizei Berlin (LKA 734 ZAK Bks) (2021) op.cit., 7 (<https://www.berlin.de/sen/inneres/presse/weitere-informationen/artikel.1203440.php>).

48 Respekt und Dialog für Neuköllner Gewerbetreibende. Eine Initiative von Neuköllner Gewerbetreibenden, unterstützt von: Kein Generalverdacht, KOP Berlin, Unsere Stimme zählt, Initiative Hermannplatz, (<https://www.facebook.com/photo/?fbid=291863896389188&set=cb.291864079722503>).

49 Ibid.

“Confrontational Expression of Religion”<sup>50</sup> a project of the private association DeVi (Democracy and Diversity) supported by the mayor of Neukölln (Social Democratic Party). In the survey DEVI conducted with ten schools in Neukölln and presented to the district office (*Bezirksamt*) of Neukölln, the private association demands a local office that documents “confrontational religious practice”, an expression that is not defined anywhere. Therefore, it remains unclear what exactly is meant by this. According to DEVI, religious conflicts are increasing in many schools, and educators are being left alone with these problems. The association would like to set up a contact point that documents such conflicts and offers help to schools; however, by transferring the personal data of school pupils to unspecified authorities outside of the school. The project has met with a wide range of criticism. Some schools are dealing with problems related to religion in school, probably because teachers are still largely homogeneously white, with few Muslim teachers, as especially until 2023 the Berlin Senate for Education was adamant in its unconstitutional perspective in preventing female Muslim teachers from wearing headscarves.<sup>51</sup>

To address conflicts that arise between students of different faiths, there is no need for a registry office that lists and reports Muslims and saves their personal data, but for a pedagogical approach to children and their parents. The survey lacks engagement with the children and the parents and has collected only information from selected teachers. It is problematic to frame problems as “religious” bullying or to assume signs of an Islamist conviction, especially if it has not been considered first a pubescent posturing or a cry for attention which is quite age- typical for children and youth. The attempt to officially register students’ bullying behavior is problematic in that it attributes non-religious conflicts to the realm of religion. For example, the rudimentary survey on p. 13 lists the line-up in football being based on ethnic lines: “Only Arabs are allowed to play in football. Only Turks are allowed into the bushes.”<sup>52</sup> This behavior is not uncommon for children and youth and needs to be addressed by teachers, but it is problematic to list it as a form of bullying, and obviously religion does not play a role in it, as there is no mentioning of religion or religious denominations.

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50 DEVI, Anlauf- und Dokumentationsstelle konfrontative Religionsbekundung, ([https://demokratieundvielfalt.de/wp-content/uploads/2021/12/DEVI\\_Broschuere\\_Anlauf\\_und\\_Dokumentationsstelle\\_konfrontative\\_Religionsbekundung\\_A4\\_ICv2\\_03c-doppelseiten.pdf](https://demokratieundvielfalt.de/wp-content/uploads/2021/12/DEVI_Broschuere_Anlauf_und_Dokumentationsstelle_konfrontative_Religionsbekundung_A4_ICv2_03c-doppelseiten.pdf)).

51 Legal Tribunal Online (LTO) (2023) BVerfG zu Kopftuch: BAG-Urteil bleibt bestehen (lto.de) Feb. 2 (<https://www.lto.de/recht/nachrichten/n/bverfg-1bvr1661-21-verfassungsbeschwerde-land-berlin-neutralitaetsgesetz-kopftuch-nicht-angenommen/>).

52 Bestandsaufnahme Konfrontative Religionsbekundungen in Neukölln Vorabversion vorgelegt für das Bezirksamt Neukölln, Dezember 2021, [https://demokratieundvielfalt.de/wp-content/uploads/2022/01/DEVI\\_Bestandsaufnahme-Konfrontative-Religionsbekundung-Neuk%C3%B6lln-Dez.21.pdf](https://demokratieundvielfalt.de/wp-content/uploads/2022/01/DEVI_Bestandsaufnahme-Konfrontative-Religionsbekundung-Neuk%C3%B6lln-Dez.21.pdf) (last accessed July 5, 2023), p.13.

Another example mentioned is that children want to cut the map of Israel out of the atlas or paint over it.<sup>53</sup> This might point to the decades-long problem of Israel in its handling of Palestinians, and in particular in not granting a Palestinian state whilst insisting on only one state, Israel, to exist. The act mentioned is not religious, but if this is considered a political act and children are taken as bearers of fundamental rights, any legal consideration would need to include the freedom of expression. Instead of falling into the trap of adultism (not granting children the right to the learning process), it is a missed opportunity to discuss how to achieve a situation of dignity, freedom, and equality for all inhabitants in respective territory. This example instead could be discussed as one of universal human rights, a self-declared pillar of Germany's post World War II foreign policy. The non-defined scope of concepts such as "confrontational religious expression", their potential to undermine freedom of religion, the reporting practices that might violate data protection law and the right to informational self-determination, as well as its discriminatory effect it might have on a vulnerable group such as children and youth,<sup>54</sup> has not stopped the Berlin Senate of Education to consider commissioning a larger study, keeping the state's disciplining focus on Muslim, Arab and Middle Eastern children and youth in the schools of Berlin despite a consultative educational landscape of NGO's dealing with conflicts at school already in place.

## Conclusion

In this contribution, I highlighted that the Berlin state, its laws and applications are themselves engaging in producing racist laws and practices against Arabs, be they German citizens, refugees, stateless subjects, school students or else. The Arab is constructed as a figure for the Berlin state to demonstrate it is serious about law and order, to protect German values against the violent, uncivilized Arab whether or not German citizen. It is here where Arabs as "Arabs" echoes in contemporary Berlin.

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53 Ibid.

54 Schiffauer, Werner (2022) Zur DEVI-Studie: Bestandsaufnahme Konfrontative Religionsbekundungen in Neukölln. <https://rat-fuer-migration.de/2022/01/26/stellungnahme-von-werner-schiffauer-zur-devi-studie-bestandsaufnahme-konfrontative-religionsbekundungen-in-neukoelln/>. See also the criticism coming from academic, civil society, teachers and politicians concerning the DEVI survey, Stellungnahme zum erneuten Vorstoß zur Einrichtung einer "Anlauf- und Dokumentationsstelle für konfrontative Religionsbekundung" – Anti diskriminierungsverband Deutschland (2022).

It is here where Du Bois famous question “How does it feel to be a problem?”<sup>55</sup> echoes in contemporary Berlin.<sup>56</sup> First, Du Bois is referring to race relations as a social problem to be solved by policymakers. Second, he refers to the inner struggle experienced by African Americans as they strive for self-awareness and an identity on their own terms. Du Bois contends that “the real problem of humanity today is the problem of the color line – the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea.”<sup>57</sup> For Du Bois, part of this “problem” was a pressing social, existential one. Aspects of the experience included such things as unstable legal residency, poor working conditions, crowded housing, and many other stressors. Writing in 1903, Du Bois called race relations the “problem” of the present and the future. In addition to the stress exerted by Berlin state laws on the figure of “the Arab”, the private market adds stress to the lives of many Arabs, from getting adequate health services to finding housing or work.<sup>58</sup> A large-scale experiment in 2017 by Bayerischer Rundfunk and Der Spiegel showed that in 27 percent of cases, Arabs were not invited to visit apartments being offered for rent.<sup>59</sup> The poll showed that this discrimination was based solely on the candidate’s name, rather than nationality, place of birth, language skills, level of education, or profession. Men were shown to face more discrimination than women. Berlin fared slightly better than the cities of Munich and Frankfurt, the explanation being that more housing is in public rather than private ownership.

W.E.B. Du Bois, who studied at Humboldt University Berlin from 1892–1894,<sup>60</sup> wrote “The Souls of Black Folk” to help people understand the nature of this very problem, the condition of the African American in the USA as a key question of in/equality. Using his approach to ask the Arab in Berlin, “How does it feel to be a problem?” can also serve as an inspiration to understand the prevailing legal, social, and economic conditions and the emancipatory forces growing to overcome the figure of the Arab in Berlin as “a problem”.

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55 Du Bois, W. E. B. (1903/1994) *The Souls of Black Folk*. New York: Dover Thrift.

56 On the echoes of this question also with respect to Arabs and Muslim in the USA, see Bayoumi, Moustafa (2008), *How Does It Feel To Be A Problem?*, Penguin Press.

57 Du Bois, W.E.B 1903, 15.

58 See also Expert\*innenkommission gegen antimuslimischen Rassismus, Berlin 2022. Berlin is the first/only state to commission an expert committee on anti-Muslim racism.

59 “Hanna und Ismail” (2017) Umfrage des Datenjournalismus von BR und DER SPIEGEL (<https://interaktiv.br.de/hanna-und-ismail/>), Studie: Ausländischer Name mindert Chance auf Mietwohnung (migazin.de).

60 W. E. B. Du Bois, Soziologe – Bürgerrechtler – Panafrikanist, <https://www.hu-berlin.de/de/ueberblick/geschichte/persoennlichkeiten/w-e-b-du-bois/>, (last accessed July 5, 2023).

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