

This interview with a judge at the district court in Hamburg, under the pseudonym of Henriette Maier, addresses the metaphor of the state as a body, how the body itself relates to the state, and how social change affects the transformation of laws.

- NK Can you introduce yourself and your professional expertise to our readers? And why did you decide to become a judge and not a lawyer?
- HM I am a lawyer and have been working as a judge at the district court in Hamburg since 2020—with a break of one year for parental leave. The reason why I became a judge and not a lawyer is that I appreciate the responsibility one is given at the court right from the start. I am not subject to a hierarchy and can organize my appointments freely. It's also important to me to do something meaningful, and being a judge is part of the rule of law, part of a constitutional state. In this respect, I never have to ask myself whether my work actually has a purpose, which is a question I certainly would have asked myself as a lawyer.
- AD Is it because as a lawyer you sometimes have clients that you personally don't want to represent?
- HM It's difficult to generalize because the profession of a lawyer has very different profiles. For example, you can be a criminal defense lawyer, a lawyer in the banking sector, or a trademark lawyer—in any case, you usually are just providing a service, which means you work for someone. It can happen that you have to advocate for opinions that you don't have, but that you have to express and defend to the outside world. In the long run, the question is whether you can reflect your values in your work. And especially if you work for a larger law firm, it's often about capital. Sometimes you work *for the drawers* just to clarify preliminary legal issues that are not even relevant to your firm. Or there's a lot of money involved, which is certainly important for the people concerned, but for me as a person it's really irrelevant whether a firm that already has a lot of money gets even more money. Again, I don't want to generalize, you can do very useful things as a lawyer, but I certainly wouldn't have become a criminal defense lawyer. And even in this area, I would have problems representing all clients. As a judge, I am subject to the law, but I have the possibility to make decisions according to my own ideas.
- NK Was working directly in contact with people also a decisive factor in your decision to work as a judge?
- HM Yes. Before, I was a civil judge. Now I'm a criminal judge and I deal with different people every day. I'm in direct contact with and get to know different sides of society; there aren't only privileged people, but also a lot of people who, for example, had a difficult childhood or that have migration background. That's almost the standard for us.
- NK Do personal stories and pasts also play a role in your decisions? And what leeway and freedom of choice do you have in your decision-making?
- HM As a criminal judge, I have the opportunity to structure the evidence plan for my hearings myself. I can decide which witnesses I want to hear, I can decide whether I want to call in an expert witness, whether I want to hold an on-site examination, whether I need certain evidence that I will review during the hearing, or whether I want to exclude something. I can also influence the extent to which I entertain those present, meaning that both defense and prosecution have the right to speak, but I can give them this right or I can withdraw it. I decide how often I give them the opportunity to make a statement. It also matters how polite I am. Here, too, there are differences in how my colleagues handle this. You are a judge, who ultimately represents the court—but you're still a human being. And I think you can still remain friendly with your counterpart. Cases often repeat themselves, you can become almost indifferent and then perhaps you don't let the accused finish or don't take him or her seriously because you've heard the same thing a thousand times already. I try not to do that, but try to always listen and give the defendants enough opportunities to say something for themselves. There are rules for this too. For example, the defendants always have the right to a last word and are allowed to speak again at the end. This must also be granted, but there is a huge difference between saying something like "Well, you have the last word now, but you surely don't want to say anything" or taking a different approach, with different facial expressions, gestures, and words. Ultimately, you can do a lot within the framework provided by the law.
- AD To go back to the theme of the Magazine, Body, in your opinion, what is the relation between Body and State?
- HM Every single body is part of the State and the people as a whole are the State. Nevertheless, sometimes the State is also standing in opposition to you. For example, as a judge, as a part of the State, I meet my litigants in court and may even sometimes be perceived as an adversary, although I am not, because we are all part of the same State body.
- NK And in the metaphor of the State as a body, where, for example, the president is the head of state and the police is the arm of the law, which part of the body can you identify with your function as a judge?

HM The mouth would fit because you are talking about the judiciary—I am part of the judiciary and ultimately the judiciary itself. I pronounce the judgments. In the main hearing in a criminal trial, the principle of verballity and the principle of immediacy apply—everything has to be done orally. That applies to criminal law, not to civil law. But in our case, everything that happens in the main hearing is decisive. And at the end of the day, my verdict is delivered in the name of the people, which I announce and which I also speak out loud in the courtroom. In this respect, the mouth fits quite well.

AD And how is the body protected by the law?

HM In the classical sense, through prohibitions. For example, bodily harm is a criminal offense. This means that you are not allowed to injure a body, you are not allowed to do violence to anyone or cause injury. The same applies to manslaughter, murder, and sexual offenses.

AD At the same time, there is also the fundamental right to physical integrity which, for me, has a positive connotation in contrast to the word *ban*.

HM Exactly, there are prohibitions; one person is not allowed to do something that crosses another person's personal and physical sphere. This is offset by the other person's fundamental right to physical integrity. And this is achieved by the criminal prohibition of bodily harm or homicide or something similar, which ultimately protects the physical integrity of the other person. The same applies to human dignity, as the supreme fundamental right that protects human dignity and prevents the body from becoming an object. I can think of an example of a case where people of small stature held events and had themselves thrown—this is called the Zwergenweitwurf (little person toss). The people had done this voluntarily, but then there was a court ruling that the body was turned into an object at these events and that this was not compatible with human dignity according to the rulings of the Federal Constitutional Court. The state has a protective function here and decides against the will of the individual in such cases.

NK In principle, the body of an individual is also protected from itself.

HM Exactly, and it is the same with consent. For example, even killing on demand is punishable in Germany—euthanasia was also punishable for a long time, but that is currently changing. Certain basic rights cannot be waived. At least not in Germany.

AD What about suicide? Isn't it legal in Germany, while in other countries it is forbidden?

HM Yes, but it's also a gray area and legally complicated. My colleague recently had a case involving murder on request. A grandson killed his grandmother because she was seriously ill and she really wanted to be killed. They did it with heroin. And the grandson wanted to kill himself afterwards. But he didn't succeed, and he was charged with this murder on request. In the end, he was acquitted because he was no longer considered culpable. In other words, he was so caught up in this suicidal thought of doing what his grandmother had said that the expert found that the defendant was no longer capable of controlling himself, that he no longer knew what he was doing. And that he could not have been dissuaded from doing so by rational thought. He was simply no longer himself and therefore not culpable. To make a connection, this case is also an example of protecting the body, because culpability is called into question when someone is so physically impaired that they no longer know what they are doing. But this has to be determined by experts, usually psychiatrists. Here you are protected from yourself. Another way in which the law protects the body is through the prohibition of drugs in Germany because of the high potential danger of drug dealing and drug use. Possession is punishable, even possession for personal use. It depends on the type of drug. Cannabis is now legalised in certain quantities and from a certain age. But hard drugs are strictly forbidden in Germany, and consumption and dealing are severely punished. I find this interesting because, on the one hand, people want to use drugs and, on the other hand, the state has a duty to protect the bodies of these people and the general public by preventing drugs from getting into circulation.

NK Now I'm thinking about the obligation to provide first aid. I've read that you're obliged to do so if you see an unconscious person on the street, for example. In my neighborhood there are a lot of homeless people, and open drug and alcohol consumption. Sometimes it's difficult to tell whether a person is perhaps just sleeping and whether they even want any help. Where does the law stand on this?

HM You have a duty to help, but you also have to be able to recognise when a person needs help. With homeless people it is often not so easy to tell because they may be sleeping. But in principle you are obliged to act, otherwise it is a failure to assist. That is a criminal offence, and you can also commit assault by omission. But then you have to be a guarantor. So, for example, if I personally hit someone with my car and then I get out and I see that person lying on the road and then I decide not to help, then that is not only a failure to render assistance, but in the worst case it is manslaughter by omission. Because I have the guarantor status of having put the person in that situation. And in that respect it goes even further. And then the range of punishment is completely different from that for failure to render assistance.

AD Can you think of examples where the state or the law has a direct impact on the body and regulates the body? Personally, I think of how the police physically intervene in demonstrations, possibly overstepping boundaries and abusing their power, so to speak.

HM My first association is the law regarding abortion. That concept familiarly exists in English: My Body, My Choice. Here the body is really regulated, or in other words, the body is interfered with and the decision about the body is made whether you are pregnant or not. If you want to have an abortion, this is not so easy in Germany under certain circumstances, because abortion is still

prohibited by law. An abortion is not prosecuted if the twelfth week of pregnancy is not reached and if the person seeks advice from a pregnancy counseling center, after which a reflection period of three days must have passed before the abortion. In addition, the costs of the procedure must be borne by the person themselves, unless the person was raped, or the pregnancy poses a mental or physical risk. But of course, what you are describing is the police as the executive force of the state, which also intervenes physically. However, if the intervention is not proportionate, it is an overstepping of their own authority. This is also a criminal offense on the part of the police officers. That certainly happens, and unfortunately not too rarely. But on the other hand, I know from my trials that a lot of violence is also used against the police. There are both sides—one must not forget that. And that's why it's difficult to determine where the line has been crossed and where the intervention is still within the law. In addition to abortion, we could also talk about surrogacy at this point. This is illegal in Germany. And I'm thinking more of these examples, because this is a clear regulation of the body when you say: "But I want to use my body to carry a child for another person." And you're not allowed to do that in Germany, where your own body is regulated.

NK What is the justification for surrogacy being illegal in German law?

HM It is illegal because the woman becomes an object in order to carry the child. And because surrogacy is based on payment, the status of the individual as a person no longer plays a role. That is why it is considered to be a violation of human dignity in the current situation in Germany.

NK Couldn't this argument also be applied to prostitution, which is now under certain circumstances legal?

HM Exactly. Prostitution used to be illegal. This is a good example of how social change affects legislation. As the debate about the legalisation of cannabis in Germany shows, change is taking place because cannabis is now viewed differently in society. The same applies to prostitution. Since 2002, with the introduction of the Prostitution Act, prostitution is no longer considered immoral if it is practised voluntarily and by a person of legal age. This was also done with the idea of helping those affected by giving them recognition, rights, and the right to work. Ultimately, it was hoped that this regulation would lead to more dignity for sex workers. But it could also be argued that women become objects because they and their time are bought. In this respect, fundamental rights are a matter of interpretation. It is therefore possible that surrogacy will eventually be allowed in Germany. The embryo law, on the other hand, is relatively strict in Germany. There are whole legal frameworks that regulate artificial insemination, how many eggs can be used at what stage and whether the gender can be determined in advance. The legal situation in Germany is relatively strict by international standards. But when it comes to prostitution, Germany is known for its permissiveness. So, something like this is always a matter of judgement, nothing is set in stone and can change legally as society changes.

AD But fundamental rights remain inviolable, don't they?

HM Yes, fundamental rights are in the constitution and cannot be changed. The constitution can be amended in principle, with a two-thirds majority, but the fundamental rights remain. At most, new ones can be added. The previous government, for example, had set itself the goal of enshrining children's rights in the Constitution, but then failed to achieve a two-thirds majority. So new basic laws can be added, as was the intention with children's rights, but you can't simply abolish human dignity, because the constitution is based on it.

NK The TSG, the Transsexuals Act of 1981, is still based on a dual gender system. Until 2009, a change of gender in documents required sterilisation. What other changes do you think would be necessary to bring the law up to date?

HM The current government wants to make it easier for people to apply to the authorities to change their gender. In principle, this is to be made easier. And the medical examination is also to be abolished. That sounds like a step in the right direction. But I find it difficult if it doesn't affect me personally. I can't really say too much about it because it's a very sensitive area and not my area of expertise.

AD How is the body regulated by the law in terms of gender?

HM Prostitution is an example of how the body is regulated by the law, although this is not necessarily gender-specific, but rather in a way that affects a particular group, such as the law on surrogacy. From a feminist perspective, the law as it stands is also inadequate when it comes to abortion. Another example of change is the question of whether marital rape should be punished. Of course it is now, but only since 1977, which is not so long ago. Historically, you can see that laws are made by men, but they are also reformed as a result of social change. However, there are still many areas that focus on the male body, such as the positioning of airbags in cars. Although there are female and male dummies for test driving, only the latter are used. Due to differences in body weight and bone structure, women are exposed to more risks in road traffic. In the same way, many drugs in medicine are designed for the male body because they are tested on male volunteers, even though women sometimes react differently to different active ingredients.

AD I thought of Fassbinder's 1974 film *Martha*, in which a man legally quits his wife's job on her behalf and takes practically everything from her.

HM Family law, as a branch of civil law, regulates legal relationships in marriage, parentage, and kinship. However, it was not until 1977 that family law was reformed to abolish housewifery and, for the first time, to allow women to decide whether and how to work. However, the current division of assets on divorce—i.e. sharing everything earned during the marriage—is based on the idea that in a marriage one person works and one person does the housework and care.

- NK In 1957, the Equal Rights for Women and Men Act came into force in the Federal Republic of Germany. This gave women the right to open their own bank accounts and decide how to spend their money. What new laws do we need today to ensure greater equality?
- HM Well, there are certainly a thousand things to work on—but it really all starts with the language. German legal texts are not gendered. It bothers me when only the masculine article *der* is used. So, *der* means ‘the’, and is used only for the male gender. *Die* is used for the female article ‘the’, and *das* is the neutral version. And in Germany, all these words in legal contexts are only in the masculine version. Such as *der* (the) defence lawyer, *der* (the) witness, *der* (the) expert, *der* (the) social worker, which are classically masculine and do not include other genders. I think that language has an impact on society and making legal texts more inclusive would be a start. We could also talk about quotas and whether there should be provisions for part-time work, so as not to limit the career opportunities of people who work and care at the same time. A lot could be changed when it comes to parental leave. I think it would be a good idea to oblige both parents to take parental leave. In Sweden it is a legal requirement that one year is shared and that each parent spends six months with the child. I see this as an opportunity to change traditional roles so that the man is not penalised for taking care of the child.
- AD Collective agreements would also be a way of ensuring greater equality. It is still the case that women sometimes earn less than men.
- HM Exactly, the gender pay gap. It doesn’t matter in my job because how much we earn is fixed. But in the private sector, it’s a big problem.
- AD For instance, there is still a gender gap in German television, and actresses are paid, for the same role, less than their male colleagues.
- HM In many different sectors there are trade unions campaigning for equal rights. But a lot happens behind the scenes. Especially when it’s not about the minimum wage, but about salaries on a completely different scale, there is a lot of room for negotiation. Once salaries are negotiated at a higher level, men often manage to earn significantly more because they may have started at a higher salary. Parental leave is often seen as a career break, so women often earn less. Personally, I don’t see it that way, but in the private sector it is often perceived that way. Equality also starts somewhere else. Working hours could be made more family-friendly. A lot of career-related things happen outside the traditional workplace, at networking events and so on. A lot more could be done in the mornings so that women who feel responsible as mothers and caregivers can attend these meetings. When it comes to equality, we should also focus on the menstrual cycle, which has not been taken into account, so far. For example, you could get sick days for the time you are unable to work because of your cycle.
- NK Society mostly focuses on male bodies.
- HM And the female body is just not like that at all. This brings us full circle to what I said at the beginning about why I chose my profession. It wasn’t my first choice, but by being able to plan my schedule, I’ve been able to schedule difficult procedures at times when I’m more productive. The human body is not a machine and doesn’t always work in the same way.
- AD That’s probably an important point, especially in your profession, to be in good physical condition to be able to deal with the fates you experience. You have to be mentally detached from what you experience every day. How do you deal with that?
- HM There is the workload on the one hand and the importance of the task on the other. It’s a special sense of responsibility that I don’t take lightly. I am aware that it is a very important role that I have. And that responsibility can be stressful. Fortunately, we have the opportunity to take advantage of supervision groups and psychological counselling if we wish. You have to make time for that. And that brings us back to taking care of ourselves as early as possible.
- AD Now we are coming to the end of this interview. How would you like to conclude, and is there a question we haven’t asked yet?
- HM An interesting question you haven’t asked yet is how becoming a mother has changed my work as a judge. I can say that being a mother grounds me and brings me closer to the people I am dealing with in my hearings since many of them are parents themselves. Being a mother is a good reminder that even if I represent the state in my professional role, I am still a human being in a human body. It is not always easy to combine those two roles, but as I said at the beginning, we all have different roles within the State. And just like the human body, the system of a State is complex and fragile; it depends on each one of us. I think those are good words to conclude this interview.