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conditions of imprisonment, they have resigned themselves to the coming about of their unfitness to stand trial."¹⁰⁷

III. CONCLUSION

Thus, the circle of absurdity is completed: what started out as a demonstration that the much vaunted "constitutional state" (*Rechtsstaat*), of which post-war Germany had reason to be proud, was able to deal in a constitutional manner with even the grossest kind of provocation, ends with a trial from much of which all the defendants, and from all of which most of the counsel of their choice, are excluded.

It remains to be seen whether the pendulum will continue to swing toward the repressive end of the spectrum, or whether it will return to rest in the constitutional middle. The death of Ulrike Meinhof, the most prominent of the "terrorists," could have this effect, or it could merely convince the authorities of the success of their hard line. The new-found independence of the Communist parties of Italy and France could relieve West Germany's anti-Communist hysteria; on the other hand, the prospect of Communist participation in the French and Italian governments could lead to stronger measures to prevent a similar development in Germany.

Whatever the future may hold, it seems that the institutionalization of repression—in legislation, in the practice of police and intelligence agencies and in the jurisprudence—has gone quite far in the last several years and that the notion of the *Rechtsstaat* has undergone a profound change, from one of the state as governed by law to one of the state, rather than of the constitution or the people, as the sole source of law.

107. *Id.*

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