

Lüneburg Memorial Stone Between Narrow and Broad Interpretation

By
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1. There is a conflict dominating the public debate on the Lüneburg memorial stone dedicated to the 110.I.D. between a narrow interpretation and a broader one that takes into account the historical and contemporary contexts.

1.0. On the narrow interpretation:

1.1. The narrow interpretation predominantly focuses on the short epigram carved into the memorial stone, i.e., without integrally considering its other elements of design:

“Es sage keiner, dass unsere Gefallenen tot sind” [Nobody say that our fallen soldiers are dead].

1.1.1. The honoring reference that their memorial to the fallen soldiers made to an antique Greek hero and victim myth, which was intended and publicly declared by the initiators at the time, cannot be denied in cultural historical terms. It latches on to a custom that could be found in Germany and other European countries since the 19th century.

1.1.2. It is conceivable that an association was to be made to the misuse of fallen soldiers in an article by Goebbels from 1942 in the sense of a deliberately transferred ambiguity: In the face of strongly increasing losses, Goebbels had claimed in this pseudo-Hellenistic propaganda article that the fallen soldiers continue to have a spurring effect “in us and around us” and hadn’t surrendered their arms.

1.2. But in the case of this memorial stone, the narrow interpretation conceals this misuse that can be ascertained only when taking its entire context into account. For only by considering the overall context can the post-Nazi and rightwing-nationalistic value orientations visibly and invisibly connected to the memorial stone be established. They were a determining factor for a part of the political spectrum and public life in Lower Saxony and the Federal Republic in general after the war—including areas with a high percentage of refugees, displaced persons and repatriates. On the abusive manipulation of the Greek victim and hero myth during the time of National Socialism, see the text Weiss, “Thoughts on a Memorial Stone” from 03/03/2018, pp. 3 – 5.¹

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http://kunstraum.leuphana.de/Weiss_Thoughts_on_aMemorial_Stone_3_3_2018.pdf

1.3. But even if the memorial stone—as incorrectly alleged by the narrow interpretation—featured merely the short epigram and no further design elements, it would still be subject to criticism as the following model analogy demonstrates. What must be pointed out is the crucial difference which derives from the fact that in both cases the assignment of guilt or innocence is codetermined by the context:

1.3.1. In the case of the second epigram, the conceptually attendant assignment of guilt is directly evident.

1.3.2. In the case of the Lüneburg epigram, on the other hand, the assignment of innocence in accordance with the account, given by the division commander, the retired general Gilbert, was long valid, that the 110.I.D. always fought in a soldierly clean and brave manner. But due to the critical research results and the concrete assignment of guilt based on them, this is no longer sustainable.

1.3.3. The comparison simultaneously demonstrates that in the case of the Lüneburg epigram the claim of a “pure” commemoration of the fallen and dead made by the initiators of the memorial stone can no longer be made, even in the frame of a narrow interpretation. Its functional contribution to the suppression of what occurred thus becomes irrefutable.

On the model analogy:

1.4.1. In a municipality called Modelville, initiators erected a memorial stone similar in terms of material and format in the city park with the support of local politicians. It bears the epigram:

“Es sage keiner, dass unser gefallener Führer tot ist” [Nobody say that our fallen Führer is dead]

After public criticism sets in, the initiators—with arguments resembling those in the case of the Lüneburg memorial stone—refer to their intention of merely latching on to the model of a Hellenistic style of honoring the dead that had been a tradition since the 19th century. In this context, they additionally refer to the basic right to protection of their freedom of expression pursuant to Article 5 (1) of the Basic Law.

1.4.2. The local model prosecutor who is in charge dismisses a claim made to remove or conceal the memorial stone as unjustifiable in legal terms, since the epigram on display is ambiguous. A criminal prosecution is excluded based on Art. 5 (1) of the Basic Law (Basic Right to Freedom of Expression) already because of this ambiguity, regardless of a possible problematic context, since the claimed intention of commemoration, protected by Art. 5 (1) of the Basic Law, cannot be conclusively contested, despite critical interpretations that suggest themselves. The reasoning of the model prosecutor is guided by the publicly announced dismissals of claims by his

colleagues in Lüneburg in 2015 and 2017 in the context of the Lüneburg memorial stone.

1.4.3. Assessment of the further development of this model analogy: The central anchoring argument of the model prosecutor stating that the epigram is to be regarded in the frame of a criminal evaluation without considering the context will presumably be corrected in further appeal proceedings. Higher prosecution authorities could refer to a verdict of the Federal Constitutional Court dated 01/18/2018 – **BVerfG.24.01.2018 – 1 BvR 2465/13** – with which a violation of a basic right, albeit in a different situation, was corrected precisely because the political context of a free expression was not taken into account.

1.3.4. The model analogy, with which the significance of the attendant assignment of guilt has become clear for both cases, will now be left again: For the reason that this verdict of the Federal Constitutional Court **has factually existed since 01/18/2018**, an adequately initiated legal assessment is required as to whether it could have the effect of a guideline against the dismissal of a claim by the Lüneburg prosecutor to date.

2.0. On the broad interpretation:

The broad interpretation does not only take the epigram into account, but all elements of the memorial stone in their interconnected entirety and comprehensively embeds them in the history of the war, in contemporary history and with regard to the motives of the initiators and other supporters. In the following, the memorial stone will be analyzed and decoded from top to bottom along these lines.

On the Viking symbol as troop insignia (carved out at the top):

2.1. As the troop insignia, the Viking symbol corresponds with a soldierly mission that had existed from the onset in the frame of the preparation (formation of the 110th I.D. from December 1940 onward) and actual conducting of a **war of aggression and destruction as a crime committed by National Socialist Germany**. (Note on the bold type: This clarifying terminology is legally and politically binding for any public dealing with the matter, e.g., through the re-resolution of the Plenary Session of the German Bundestag from 05/17/1997 – Drucksache 13/7669 (neu), Ziffer 1).

2.1.1. In the understanding of the Nazi ideology at the time, the Viking symbol in a doubly compact manner brings together the alleged superiority of rule of the Germanic-Nordic race in general and the alleged historically justified Germanic rule of the “lebensraum” populated by the East Slavs (e.g., Rosenberg’s Viking-Varangian theory). Reference is made to this in Weiss “Thoughts on a Memorial Stone”, p. 5.²

² op. cit.

2.1.2. Other division symbols from Lower Saxony's military history would have been available or a new one could have been designed, but it was no coincidence that the decision was made in favor of the ideologically clearly charged, armed Viking ship as a symbol of aggression. A symbolic break was even consciously taken into account, since the 110.I.D. did not maneuver by ship, but on foot, on horseback or in motorized vehicles.

2.1.3. With the positioning of the Viking symbol **above** the epigram, the memorial stone establishes its **paramount** connection to the special Nazi-ideological mission of the 110.I.D. This ideal connection would not have been necessary to adequately honor the fallen soldiers. Not only does it not call the Nazi-ideological mission of the division into question, it even signals the perception of the "correct-ness" of the special soldierly mission at the time in an intellectual-ideal continuity.

2.1.4. In accordance with this, the memorial stone lacks any critical signal against this aggressive and criminal mission, although this would have suggested itself for the survivors in the face of their terrible war experiences and the ethical condemnation of the war of aggression, which had become binding through its ban pursuant to Article 26 of the Basic Law for the initiators and other supporters of the memorial stone since May 23, 1949, at the latest.

2.1.6 After the conceptual guidelines for the memorial stone given by the former division commander Gilbert in 1958, no alternative design proposal without the ideologically charged division symbol was therefore made, e.g., with a formulation merely commemorating the fallen soldiers of the 110.I.D. (Note: On the right-wing nationalistic political background informing the proposal of the retired general Gilbert, see Weiss "Thoughts on a Memorial Stone", p. 3).

On the abuse of the Hellenistic value orientation of the epigram:

2.2. The paramount adherence of the initiators of the memorial stone to the Viking symbol, which is at least dubious in primary ethical and constitutional terms, as a mission orientation for aggressive military action relativizes the secondary virtues of soldierly actions employed to this end, e.g., bravery, perseverance and self-sacrifice, partially as instruments of an illegal, often even criminal unleashing of military operations.

2.2.1. At the same time, and against the own experiences of the war, this suppresses the systematically experienced misuse of such secondary virtues by the National Socialist system, tolerating or perhaps even accepting it years after the German catastrophe.

2.2.2. The National Socialists' ideologically deliberate destruction of the value correlation, which was crucial for the original Hellenistic myth, between primary

virtues (e.g., the justifiable waging of war supported by the gods) and the mentioned soldierly secondary virtues (e.g., the bravery of the Spartans at the Thermopylae), is critically addressed neither with words nor with an appropriate symbolism.

2.2.3. Hence, the wording of the epigram—since it is presented without such a critical correction—is positioned apart from the original Hellenistic correlation of values and is to be related to the aggressive symbolism of the division insignia in the overall context of the memorial stone, alongside a purely institutional commemoration of the fallen soldiers of the division.

2.2.4. This simultaneously implies that the commemoration of the fallen soldiers—expressed as the purpose of the memorial stone by the epigram—was heavily burdened by this ideal connection from the onset, i.e., already **before** the concrete military historical context, which became known much later and derives from the view to the war crimes committed in the frame of the operations of the 110.I.D.

Observation on the support material of the memorial stone:

2.3. The work on the memorial stone, which was inaugurated on October 9, 1960, was commissioned to the stonemason firm M. Walter in Bad Segeberg.

2.4. Through the selected support material and its placement in urban space, the speech act and symbolic act on the memorial stone became a public affair, i.e., more than merely a linguistic expression.

2.4.1. No documents—if they even still exist at the building department of Lüneburg—on the required aesthetic planning and technical implementation of the stone-mason works as well as on technical issues of its placement have been assessed to date. Especially the technique of carving and the chosen font were probably decided upon together with the City of Lüneburg and could be of interest for the analysis.

2.4.2. The same is true of the support material itself: It can be assumed that the raw stone, a so-called “light Swedish granite” (source: LZ, 01/02/1967, p. 4, as well as VdK statement) was chosen deliberately and in agreement with the city. It is possible that this granite was to make reference to the Swedish-Nordic region of origin of the Vikings/Varangians.

2.4.3. In this respect, the impression of a thoughtful aesthetic coherence between support material and Viking symbol suggests itself. But this must also be verified based on documents.

2.5. The distinction made under 2.4. between a public “speech act” constituted by the memorial stone in its context and a mere linguistic expression has an effect—also through the support material—on the degree of protection to be granted to the

attendant expression pursuant to Article 5 (1) of the Basic Law. Just to make this clear: If someone familiar with the Greek heroic sagas walks through the forest and constantly repeats the second epigram, this expression would be protected differently than the same words on the memorial stone/support material in Modelville.

2.6. Finally, it would have to be clarified in the context of the meaning lent to the memorial stone whether a document was possibly inserted in the stone itself or in its fundament that sheds light on the historical and political thoughts behind the memorial stone.

3.0. Observations and questions on the legitimization of the memorial stone:

3.1. With the Viking Symbol and the troop identifier 110.I.D., it is made clear twice on the memorial stone that the epigram is a public act of a large military unit of the Wehrmacht.

3.2. This message is problematic because the division no longer existed, while suggesting its continuing influence materially and ideally in the sense of a Hellenistic abuse. Just to make this clear: Neither a stone with merely a symbol and a troop identifier nor an epigram without these two components would give rise to this suggestion.

3.3. Furthermore, this form of a comprehensive, organizational-institutional commemoration co-opts the former members of the division, who might have had opposing views, without their consent.

3.4. What could have been carried out instead of this institutionally comprehensive, public act that was, moreover, determined in an authoritarian manner, is a differentiating commemorative act taking alternative positions into account, e.g., "From the survivors in commemoration of the fallen soldiers of the 110.I.D."

3.5. This variant would still have been a collective act of commemoration, i.e., without an individual commemoration made possible by naming the fallen soldiers, but a memorial stone in this form would hardly or never have become the subject of public criticism.

3.6. Above all, the right of the former members of the division to a possible alternative position would have been respected. Such a position is also protected by Article 5 (1) of the Basic Law. But this gives rise to the next analytical problem.

4.0. On the freedom of expression in the context of the memorial stone:

4.1. What plays a decisive role in the legal argument of the prosecutor in the current dismissal of a claim against the Lüneburg memorial stone is, among others, the high protection of the basic right to free expression pursuant to Art. 5 (1) of the Basic Law. This leads to the question of whose basic right is actually and concretely meant.

4.2. In the case of a connection to the 110.I.D. as an overall unit, the question must be raised as to whether a then no longer existing military organization could be legitimized in the first place to perform a public act of commemoration described in 3.0. in such a way that a right to protection pursuant to Art. 5 of the Basic Law could even be attributed to it.

4.3. In the case of a connection to the then existing association of comrades, its legal capacity at the time must be assessed as to whether such a right to protection was basically applicable and, if so, since when, and whether it is still valid today, as the association of comrades no longer exists. Especially problematic in this regard is that such an association of comrades as the actual actor of commemoration is mentioned not even indirectly on the memorial stone. (An example of an indirect reference would be: "The surviving comrades in commemoration of the fallen soldiers of the 110.I.D.")

4.4. In the case of connecting the right to protection only to individual, concrete survivors of the division, the problems of legitimization outlined above would probably only become greater, for no individual reference is made on the memorial stone, and this was deliberate.

4.5. However, should the legal foundation of the memorial stone indeed be assessed in such a way that the City of Lüneburg has taken on the position of the abovementioned possibilities in every respect, it would have to define its own stance toward the memorial stone in formal and content-related respect in the frame of a broad interpretation according to 2.0. In this context, it must also consider possible consequences of the stance toward commemoration that it may now advocate. This derives not only from its obligation to balanced public action, but foremost from the resolution of the German Bundestag, mentioned in 2.1., that is binding for municipalities as well.

4.5.1. In regard to possible consequences, this would have to take place in a way that sufficiently guarantees the public peace and above all neither damages nor disparages the still living victims of the military actions of the 110.I.D., who must be directly taken into consideration.

4.5.2. Whether the City of Lüneburg itself as a public institution can lay claim to the right to protection pursuant to Article 5 of the Basic Law when taking the historically

grown situation into account, must be newly assessed in the light of the broad interpretation (Note: This refers to a partially questionable expert opinion by the city's then cultural officer from 2016.) At any rate, a weaker right to protection than in the case of a private linguistic expression must be assumed (see 2.5.).

4.6. What must be separated from this is the question of a criminal assessment of the current conduct of the City of Lüneburg as a consequence of an already existing action for removing or concealing the memorial stone. In this regard, only the possibility of disparagement pursuant to § 189 of the Criminal Code is weighed in 5.0., although Lüneburg's prosecutor has already excluded this.

5.0. On the problem of disparagement through the memorial stone

5.1. The problem of a possible disparagement of individual persons or groups of persons through the memorial stone was categorically excluded by the Lüneburg prosecutor in 2015 and 2017. The argument was that not subjective sentiments are relevant for the criminal assessment of the memorial stone or actions (or non-actions) connected with it, but an objectifiable horizon of perception and simultaneously—also with regard to the memorial stone—the taking into account of a high basic right to protection pursuant to Article 5 (1) of the Basic Law.

5.2. In the frame of a penal systematics, this is basically correct. However, it requires maintaining a narrow interpretation as laid out in 1.0. and at the same time the fending off of critical status questions on "legitimization" addressed in 3.0. and "freedom of expression" addressed in 4.0.

5.3. This line of argument seems to underestimate the procedural possibilities that could lead to a broader interpretation according to 2.0. asserting itself in further procedural steps, on the one hand, and to a horizon of perception required for a criminal assessment actually becoming objectifiable through appropriate scenarios, on the other.

5.4. From an array of conceivable scenarios, the following possibility is to be outlined: A group of contemporary witnesses still alive today in Belarus, who as children had to experience the war crimes committed near Ozarichi by units of the 110.I.D., among others, and who cannot be denied a priori an "objectifiable horizon of perception" in connection with the memorial stone, files a claim in Lüneburg alleging the disparagement of their personal experience, above all of the victims and their remembrance pursuant to §189 of the Criminal Code. Such a claim need not be formulated here, because it is obvious.

5.5. Even if such a claim were also dismissed despite its special impact potential, it would be sensible in view of further ethical clarifications of the public discourse. The contextual background of the memorial stone and its embedment in past suppressions

would at least attract broader public attention and thus anchor the necessary critical work more widely in society and politics.

6.0. On the position of the City of Lüneburg after the considerations elaborated in 1.0. to 5.0:

6.1. Lüneburg must quickly abandon its much too defensive line, so that the reputation of the city is not uncontrollably damaged in an age of accelerated media coverage and interconnectedness.

6.2. The already existing demand made to the private foundation to update the informational context of the memorial stone in both the "long version" on the web-site and the "short version" on the info panel next to the stone must be quickly implemented. Due to 6.1., this should not be postponed until the remembrance forum is held in autumn.

6.3. A more active self-presentation of the city should provide a politically relevant and positive frame for these and other measures on the path to the remembrance forum, as it would be possible with the "Lüneburger Declaration," for example.

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