

Rule of Law as the Rights of the Volk: Human Rights, the Basic Law and the Far-Right since German Reunification

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Earlier this year at an event commemorating the 70th anniversary of the 17th of June Uprising in East Germany, the leader of the Thuringian branch of the Alternative for Germany, Björn Höcke ominously warned of threats to the rule of law. The leader of the far-right party, and previously head of its most extreme faction that was disbanded under pressure from the Office for the Protection of the Constitution, said that Germany was transforming from a *Rechtsstaat* – a state under the rule of law – into a *Gesinnungsstaat* – a state under the rule of a single ethos, a code from the far-right usually used to describe the ideological conformity of the former state socialist German Democratic Republic.¹ Such statements from the far right in Germany combining a rhetorical concern for the rule of law and constitutionalism alongside the invocation of Germany’s socialist past, have become the norm in recent years, but it was not always the case.

By definition, the far-right is understood to be an enemy of the German democratic constitutional order. According to the Office for the Protection of the Constitution, the belief that belonging to a specific nation or ethnic groups determines one’s value directly contravenes the free democratic order of Germany.² And many within the far-right would agree. The National Democratic Party, NPD, which has recently rebranded as the Heimat, had made it clear for years that they see Germany’s constitution – the Basic Law – as an illegitimate founding document. The Basic Law, originally created in 1949 as a temporary measure until German reunification, has been depicted as imposed upon the German people

¹ “Höcke zieht Rechtsstaatlichkeit Bundesrepublik in Zweifel,” *Süddeutsche Zeitung*, (June 17, 2023).

² Bundesamt für Verfassungsschutz, “Begriff und Erscheinungsformen,”

https://www.verfassungsschutz.de/DE/themen/rechtsextremismus/begriff-und-erscheinungsformen/begriff-und-erscheinungsformen_artikel.html

by the Allies and corrupted by cosmopolitan anti-nationalism. As an NPD brochure for political candidates explained: the Basic Law “was never approved by the German people in a referendum, the basic rights provisions are dripping with human rights bias and it de facto equates Germans with foreigners in their own country.”³ Such sentiments are hardly limited to internal communications. An NPD member of Saxony’s parliament Jürgen Gansel, decried that mass prosperity was the only thing holding together post-war German society, rather than the vaunted institutions of the Bundesrepublik such as “sacred basic law or fetish concepts such as human rights, Western community of values or civil society.”⁴ For the most extreme right, concepts such as the rule of law and human rights are merely window dressing for the hypocritical and false regime imposed on Germany by its victorious enemies more than 70 years ago. The primary goal of the far right is thus the undoing of this constitutional order and remaking Germany so that it is organized along the ideals of an ethnonational state centering those who are deemed to be part of the German Volk in politics and culture, rather than a country governed by a pluralistic democracy under the rule of law.⁵

Yet, in the past decades, this has begun to change. In the “gray areas” between far-right extremism and right-wing conservatism, a trend has been developing towards the embrace of rights, constitutionalism and the rule of law.⁶ Not understood as they are within the mainstream, but with the aim of obscuring and advancing the goals of the far-right. They have imagined an ethnonationalist or *völkisch Rechtsstaat* in which insiders ought to be provided the full protection of the law, while those outside of that community are implicitly

³ Broschüre der NPD “Argumente für Kandidaten und Funktionsträger - eine Handreichung für die öffentliche Auseinandersetzung” (2006). Cited in Felix Neuman, „Rechtsextremismus und das Grundgesetz” (<https://www.kas.de/en/web/extremismus/rechtsextremismus/rechtsextremismus-und-das-grundgesetz>)

⁴ Jürgen Gansel, *Deutsche Stimme* (1/2007). Cited in Fabian Virchow, „Was Denkt die NPD,“ (<https://www.bpb.de/themen/rechtsextremismus/dossier-rechtsextremismus/198941/was-denkt-die-npd/#footnote-target-19>)

⁵ On traditional far-right intellectual opposition to the German constitutional state, see Armin Pfahl-Traugher, *Konservative Revolution und Neue Rechte: Rechtsextremistische Intellektuelle gegen den demokratischen Verfassungsstaat* (Opladen: Leske + Budrich, 1998).

⁶ Patrick Keßler, *Die “Neue Rechte” in der Grauzone zwischen Rechtsextremismus und Konservatismus?: Protagonisten, Programmatik und Positionierungsbewegungen* (Münster: LIT Verlag, 2018).

or explicitly denied their fundamental human rights. Among the intellectuals and academics in the orbit of the *Neue Rechte*, publications like *Junge Freiheit*, think tanks such as the Institut für Staatspolitik in Schnellroda and the ranks of the Alternative für Deutschland there is a new strategy: to reinvent the far right as the true defenders of the constitution in Germany, as the loyal advocates for the Basic Law, the lone defenders of pluralism and basic rights against the tyranny of the state, and even as the only genuine champions of human rights in German politics today.⁷ In contrast to the NPD, which openly flouted the norms of mainstream liberal democracy and made clear their hatred of the Basic Law and human rights, this new generation on the far right has sought to realize an agenda that is essentially indistinguishable from that of their ideological compatriots, but within the rhetorical and institutional framework of the liberal democratic basic order. Although not universal, elements of the far-right have come to embrace the outward trappings of the Rechtsstaat, Basic Law and human rights, while not sacrificing their core nationalistic and illiberal values.

The initial divisions within the right over the meaning of the Basic Law emerged in the 1980s. As Gideon Botsch has noted, the first effort of the far right to integrate basic rights and constitutionalism into its politics came with the infamous Heidelberg Manifesto in 1981. Written by a group of professors at the University of Heidelberg, including some known former Nazis, the manifesto denounced, the “the infiltration of the German people by the influx of many millions of foreigners and their families,” which has the effect of the “cultural alienation of our language, our culture and our national identity.” The solution was to return to the true principles of the Basic Law

The Basic Law of the Federal Republic of Germany does not emanate from the concept of ‘nation’ as the sum of all people within the state, [but] from the concept ‘Volk,’ in fact the German people [...]. Thus, the Basic Law demands the preservation of the German people. [...] The current immigration policy, which promotes the development towards a multiracial society, contradicts the Basic Law, which

⁷ On the Neue Rechte and this network of actors, see Volker Weiß, *Die autoritäre Revolte: Die Neue Rechte und der Untergang des Abendlandes* (Stuttgart: Klett-Cotta, 2017).

obliges all Germans [...] to preserve and defend the birth right of our people.⁸ Yet among far right legal experts, the Basic Law remained fundamentally unsound in the 1980s. If we look at the writing of constitutional experts affiliated with the *Neue Rechte* in this era, there are three main concepts that dominate the discussion of the German constitution: first, that instead of creating a legitimate constitutional order from a revolutionary act of the people – the *Volk* – West Germany was instead a country that was created from a top-down act of constitution-making. Second, this process had led to the loss of an intrinsic link between the people, the nation and the state as the Federal Republic was founded on “negative patriotism”. Third, the cultural revolution of 1968 had effectively hijacked the Basic Law and transformed it into a vehicle for progressive politics and third, the solution to these problems was the revival of a national consciousness around the ethos of the *Volk* and *Vaterland*.

One indicative writer on the subject is the law professor Josef Isensee, whose career straddled the line between the respectable conservative mainstream and the far right.⁹ In a volume published in 1986 by Armin Mohler, often referred to as the intellectual Godfather of the *Neue Rechte* in Germany, Isensee argued that one of the consequences of the defeat of Nazi Germany in the Second World War was that “The Germans, who have lost their national identity and whose relationship with the state is disturbed, are looking for their spiritual unity and the basis for their coexistence in the constitution. Everyone believes that their private rights are safe in their protection. The Basic Law is a weapon for the struggle of social interests and political debate.”¹⁰ Rather than returning to a state of national normalcy, since

⁸ Gideon Botsch, “Taking Nativism to the Streets: Historical Perspectives on Right-Wing Extremist Protest Campaigns against Immigration in Germany,” *Moving the Social* 66 (October 31, 2021): 54–55.

⁹ Friedemann Schmidt, *Die Neue Rechte und die Berliner Republik: Parallel laufende Wege im Normalisierungsdiskurs* (Wiesbaden: Springer, 2013), 199–200. Götz Kubitschek also places Isensee as a key intellectual ally of Mohler rather than a happenstance academic collaborator (<https://sezession.de/67364/armin-mohler-und-die-siemens-stiftung>)

¹⁰ Josef Isensee, “Grundrechte Und Demokratie: Die Polare Legitimation Im Grundgesetzlichen Gemeinwesen,” *Der Staat* 20, no. 2 (1981), 161.

the war Germans had been left only with the impoverished and ultimately divisive option of constitutional patriotism or *Verfassungspatriotismus*. As a result, “The Basic Law was ‘repurposed’ for the neo- or paleo-Marxist, to the radical emancipatory or anarchist program. Democracy and civil liberties were seen as legitimizing violence in the service of progress. In the name of the constitution a political culture of disobedience arose against the norms and institutions of the Federal Republic.”¹¹

Yet with the revolution in the GDR in 1989 and the prospect of reunification via the terms of the Basic Law, experts like Isensee changed their tune. “Now that the Germans of the GDR are demanding and exercising their rights as a people, it becomes clear that they are not a people [Volk], but a forcibly separated part of the German people [Volk]. The development of the revolution in its democratic as well as its national dimension becomes clear in the sequence of its mottos: ‘We are the people’ [Wir sind das Volk]– ‘We are one people’ [Wir sind ein Volk] - ‘Germany United fatherland.’ [Deutschland einig Vaterland]”.¹² The process of unification would thus essentially ratify the Basic Law and legitimize it on the basis of its universal acceptability to the German Volk. “With the accession of the GDR, the legitimacy of the Basic Law was completed by the German people, who gradually achieved free self-determination via the Basic Law. In the language of the preamble to the Basic Law: The unity and freedom of Germany are now complete.”¹³

Such a position was primarily held by legal experts on the right and the populist right, primarily embodied by the *Republikaner* party continued to challenge the validity of the Basic Law as a national document, as well as reunification, which they thought should go beyond the GDR to incorporate the territory of the German Reich of 1937 (namely Silesia

¹¹ Josef Isensee, “Die Verfassung als Vaterland. Zur Staatsverdrängung der Deutschen,” Armin Mohler (ed.), *Wirklichkeit als Tabu: Anmerkungen zur Lage* (Munich: R. Oldenbourg, 1986). 30.

¹² Josef Isensee, “Verfassungsrechtliche Wege Zur Deutschen Einheit,” *Zeitschrift Für Parlamentsfragen* 21, no. 2 (1990), 311.

¹³ Isensee, 328.

and East Prussia). However, 1989 and reunification would continue to play a decisive role in reorienting elements of the far right towards the embrace of the Basic Law in the coming decades.

The recent surge of Far Right *Rechtsstaatlichkeit*

In recent years, there has been a double pivot from large elements of the far right towards the embrace of the Basic Law and constitutional rights in tandem with a shift in historical narrativization from the humiliation of defeat in 1945 to 1989 as an “unfinished revolution.”¹⁴ This dual turn has not shifted the content of far right politics but rather repackaged it in a form more palatable to the mainstream and less in conflict with the Office for the Protection of the Constitution. The German far right’s vision of rights is also remains distinctly particular and ethnonationalist with an explicit rejection of all forms of liberal universalism. The specific turn to constitutional basic rights diverges from the conservative European norm that tends to view human rights as simultaneously Western, universal and natural.¹⁵ At the same time, it is a direct challenge to mainstream German memory culture, which celebrates 1989 as a culmination of the transnational human rights movement and in turn a beacon towards other human rights struggles around the world.

In 2004, the 55th anniversary of the Basic Law set off a debate among competing factions of the far right as to its meaning. At this time, the NPD had entered the parliament of Saxony while their equally far right competitor, the German People’s Union (DVU) had just gained seats in Brandenburg in addition to their representation in Saxony-Anhalt and Bremen. While the NPD spoke of placing the Federal Republic on the “garbage heap of

¹⁴ On this broader narrative in post-socialist Europe, see James Mark, *The Unfinished Revolution: Making Sense of the Communist Past in Central-Eastern Europe* (New Haven: Yale University Press, 2010).

¹⁵ Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford: Oxford University Press, 2017). See also the French *Nouvelle Droite* which also bases its human rights revisionism on universalist Catholic doctrine. For example, Gregor Puppinck, *Les droits de l’homme dénaturés* (Paris: Editions du Cerf, 2018).

history,” the head of the DVU, publisher Gerhard Frey, took the opposite tack. “The constitution of 1949, the Basic Law, is not an enemy, but a friend [...] So don’t get rid of the Basic Law, instead: More Basic Law!”¹⁶ Yet the DVU’s popularity went into decline and it merged with the NPD in 2011; Frey died two years later. Although the NPD did decry a supposed shift from the *Rechtsstaat* to the *Gesinnungsstaat* in its party programme in 2010, it never came around to embracing the rhetoric of constitutionality.¹⁷

While the NPD continues to exist, the energy on the far right has been captured by the Alternative for Germany (Alternative für Deutschland, AfD). Founded in 2013 as a right-wing Eurosceptic party, it turned towards more populist, anti-Islamic and xenophobic messaging in 2015 during the “refugee crisis” and built from the popularity of mass populist movements such as PEGIDA (Patriotic Europeans against the Islamization of the Occident). It has since become the main vehicle for mainstreaming the ideology of the German far right and identarian movements. Entering the Bundestag in 2017 and is represented in every federal provincial parliament. It is today polling second nationwide and first in three federal provinces.

In 2019, as it contested several elections in Eastern German federal provinces, the double anniversary of the Basic Law (70 years) and the peaceful revolution in the GDR (30 years), provided an opportunity to realize the double pivot in electoral politics. The AfD framed its agenda as a return to normalcy driven by popular mobilization in line with the history of German democratic movements. The election slogan “Complete the Turn” referring to the *Wende* of 1989 was used to claim that the current state resembles the dictatorship of the GDR. At the same time, the AfD promised the “restoration” of a German ethnonationalist constitutional state that would finally realize the demands of those in Leipzig: “Wir sind das

¹⁶ “Erst die Grundgesetzfeier, dann die Revolution,“ *Junge Freiheit* (1.Okt.2004) (<https://jungefreiheit.de/politik/2004/erst-die-grundgesetzfeier-dann-die-revolution/>)

¹⁷ Cited in Felix Neuman, „Rechtsextremismus und das Grundgesetz“ (<https://www.kas.de/en/web/extremismus/rechtsextremismus/rechtsextremismus-und-das-grundgesetz>)

Volk!”¹⁸ The leader of the AfD in Thuringia, Björn Höcke – head of the most extreme right wing of the party, Der Flügel - went farther in historical vision, reaching back to antiquity:

Think of Arminius' struggle for freedom (...) the peasant uprising in the 16th century, the wars of liberation against Napoleon, the patriotic resistance against Hitler, the national uprising on June 17th against the Soviet occupying power, the German autumn 1989 just mentioned, and today the citizens' protests against immigration policy - all of this speaks to a basic feature of our national character.¹⁹

The far-right agenda is thus framed as one more element in a glorious history of democratic progress, understood as the realization of the sovereignty of the German Volk.

In contrast with the NPD, however, the AfD has been fulsome in its praise of the Basic Law, which it positioned as the culmination of German constitutional history.

The Basic Law is the best constitution we Germans have ever had. It was the cornerstone for West Germany's rise after the war. It made reunification possible after the peaceful revolution in the east of our fatherland. It protects every German - left and right, social and liberal, great and small - from arbitrariness, totalitarianism and extremism. It is therefore a duty of every German to protect the Basic Law. But we must be vigilant **because it is ever more threatened.**²⁰

Among the different strands of the far right, such a sentiment is also more widely spread among the intellectuals of the Neue Rechte. One of the key basic rights targeted as “under threat” due to these influences is the right to free speech. The first issue of *Faktum* in 2020, the main publication of the AfD sponsored Desiderius-Erasmus-Stiftung, was devoted to the topic of “Meinungsfreiheit: Anspruch des Grundgesetzes und politische Realität.” In the forward to the issue by Karlheinz Weißmann, a historian and “new right” intellectual, he

¹⁸ On the public contestation of the GDR past by the AfD and the far right, see Sabine Volk, “‘Wir Sind Das Volk!’ Representative Claim-Making and Populist Style in the PEGIDA Movement’s Discourse,” *German Politics* 29, no. 4 (2020): 599–616; Ned Richardson-Little and Samuel Merrill, “Who Is the Volk? PEGIDA and the Contested Memory of 1989 on Social Media,” in *Social Movements, Cultural Memory and Digital Media: Mobilising Mediated Remembrance*, ed. Samuel Merrill, Emily Keightley, and Priska Daphi, Palgrave Macmillan Memory Studies (Cham: Springer International Publishing, 2020), 59–84; Ned Richardson-Little, Samuel Merrill, and Leah Arlaud, “Far-Right Anniversary Politics and Social Media: The Alternative for Germany’s Contestation of the East German Past on Twitter,” *Memory Studies* 15, no. 6 (2022): 1360–77.

¹⁹ Björn Höcke, *Nie zweimal in denselben Fluss* (Lüdinghausen: Manuscriptum, 2018), 214.

²⁰ AfD-Kusel, „Helfen Sie mit, Unser Grundgesetz zu Schützen,” (<https://www.afd-kusel.de/2019/11/11/helfen-sie-mit-unser-grundgesetz-zu-schuetzen/>)

extended this framing of the rights of Germans counterposed against foreigners. Citing a study that he claimed demonstrated that “In Germany, no one is allowed to say bad things about foreigners because otherwise you would be considered a racist.” Accordingly, the Erasmus Foundation sought only “to bring to life the final sentence of Article 5 of the Basic Law: “Censorship will not take place.”²¹ The article brought no evidence of state interference in the right to free speech on only specifically mentioned efforts by theaters to prevent performances by the far-right. Since the COVID-19 Pandemic began, the efforts of the AfD to position itself as the defenders of legal personal liberty only proliferated as it sought to capitalize on populist resistance to lockdowns and vaccine mandates.²²

The constitutional turn by the far right is not universal, however, and the debate is still playing out through the internal politics of the AfD and the competing intellectual institutions of the Neue Rechte. On the one side, there are still those such as Josef Schüßlburner, a former civil servant with a legal background who regularly writes for the Institute for State Politics in Schnellroda on the evils of the Office of the Protection of the Constitution.²³ In a recent work of his on how the AfD should deal with threats of being declared unconstitutional, Schüßlburner essentially argued that the question is not one of finding a legal case, but undoing the constitutional basic order itself that empowers such agencies to police the political boundaries of Germany’s democracy. In response, however, Ulrich Vosgerau, a University of Cologne jurist with close ties to the AfD’s Erasmus Foundation, argued that Schüßlburner’s politics were terribly misguided. Like with the Greens, the AfD had to sideline its ideological purists and act pragmatically. The constitutional order did not need to

²¹ Karlheinz Weißmann, “Vorwort, Kongress „Meinungsfreiheit“ am 15. Juni 2019 in Berlin,” *Faktum, Desiderius-Erasmus-Stiftung*, (Iss. 1, Vol.1 2020), 3-4.

²² Marcel Lewandowsky, “Germany: The Alternative for Germany in the COVID-19 Pandemic,” in *Populists and the Pandemic* (London: Routledge, 2022).

²³ Some examples include, „*Verfassungsschutz, Gedankenpolizei, Staatsschutz, Grundgesetzpolizei – was ist die Lösung?*“ *Konsensdemokratie die Kosten der politischen “Mitte,”* (Schnellroda: Ed. Antaios, 2010); “*Verfassungsschutz*”: *der Extremismus der politischen Mitte*, Institut für Staatspolitik (Steigra: Institut für Staatspolitik, 2016).

be overthrown, merely recreated from within. “The Basic Law is excellent, and if you still don't like it, you just have to interpret it better[.]”²⁴ While in the 1980s, the Basic Law had been perverted by the 1968ers, in the 2020s, Vosgerau argued that it had been remade in the 1990s. Although it is not said explicitly, the disappointments of reunification and its failure to usher in an era of nationalist politics pervade much of this writing. Chronologically, the dying days of the Bonn Republic in the 1980s have been remade into the golden era of the true Basic Law that need to be returned to, to overcome the new deviances of the Green Party or the Angela Merkel-run Christian Democrats (CDU/CSU).

Although the AfD and its allies generally aim to co-opt rather than fully reject most of the discourse of democratic liberalism, the language of human rights as part of this constitutional order also remains deeply controversial. For Björn Höcke, this loss of distinction between the rights of Germans and foreigners is part of the imposition of human rights norms: “We are supposed to become abstract, pure humans, equipped with universal human rights - if possible without being polluted by any sense of belonging to a Volk and national traditions.”²⁵ Possessing human rights is not a universal guarantee of basic human dignity, but the promise of the universal dispossession of connection to the nation, which allows for real democratic sovereignty Höcke’s vision of the Basic Law and the German polity seeks to creation a form of liberal nationalist constitutionalism – it aims to advance the illiberal agenda of eliminating pluralism and replacing it with a narrow body politic endowed with democratic rights on the basis of an ethnonationalist understanding of the Volk.

Others, however, have sought to challenge the affinity of the Basic Law with universalistic liberal values, while still preserving a claim to representing human rights.

²⁴ Ulrich Vosgerau, “AfD und Verfassungsschutz: Falsche Schuldzuweisung,” *Junge Freiheit*, (21.02.2021) <https://jungefreiheit.de/kultur/literatur/2021/afd-und-verfassungsschutz/> Similar sentiments can be found in Thor v. Waldstein, *Wer schützt die Verfassung vor Karlsruhe?*, (Schnellrode: Institut für Staatspolitik, 2017), 20.

²⁵ Björn Höcke, *Nie zweimal in denselben Fluss*, 203

According to Maximilian Krah, a lawyer and recently the AfD's leading candidate for European election,

The Basic Law assumes a link between the legal concept of the people - people of citizens - with the ethnic concept of people - the community of ethnic Germans. This connection was constitutional standard interpretation until the 1990s, but is now today a sign of a *völkisch* attitude.²⁶

For Krah, only the *Volk* can provide the social coherence needed for a state that allows for democracy and solidarity. As such, any effort to undermine the Volk is a blow against sovereignty and ultimately a step towards a globalist, technocratic imperial system. He is careful to root this analysis as a problem of constitutionalism gone awry through the failure to center the German within the law since reunification.

So they no longer differentiate between citizens and foreigners, as the Basic Law still does, but grant everyone who reaches German territory full basic rights. While the Basic Law, for example, only guarantees the Germans the freedom of assembly, the freedom of association or the free movement of persons, in practice no distinction is made between Germans and foreigners.²⁷

Only by returning to what they claim are the affinities of the original Basic Law and *völkisch* nationalism, can Germany remain a sovereign nation.

In a recent election Manifesto as leading candidate of the AfD for the European elections, Krah has gone even further to invoke human rights in addition to basic rights.²⁸

The political right must not only push for a decentralized interpretation of human rights, but also highlight the incompleteness of the concept by pointing to their own rights of other levels of organization between the individual and humanity: the rights of the family, the local community, the Volk. Human rights are not absolute, but must be defined in the context of society.²⁹

Ironically, Krah's line of reasoning has brought the thinking of the far right back to that of the GDR from a radically opposing ideological position. For East German state socialists human

²⁶ Maximilian Krah, "Volk – Volkssouveränität – Verfassung," *Sezession*, 88 (February 2019), 28.

²⁷ *Ibid.*, 30.

²⁸ Krah's manifesto has met with severe criticism even within his own party. Deputy Chair of the AfD in the Bundestag Norbert Kleinwächter attacked it as "anti-conservative, anti-liberal, anti-freedom, anti-bourgeois, anti-intellectual, anti-Christian, anti-individual, anti-rule of law, anti- international law, anti-ethical and anti-sovereignist, but above all anti-Anglo-Saxon and anti-Western." In "Krahs „Politik von rechts“ und die Antidemokratie Chinas," (<https://norbert-kleinwaechter.de/wp-content/uploads/2023/07/Krahs-Politik-von-rechts-und-die-Antidemokratie-Chinas.pdf>)

²⁹ Maximilian Krah, *Politik von Rechts: Ein Manifest* (Schnellroda: Verlag Antaios, 2023), 125.

rights were not universal, but the products of the socio-economic order in which they were produced. While they looked to Marxism-Leninism and stages of historical development to explain disparities in human rights systems, Kraus has borrowed from China and other actors from the Global South in asserting a deep relativism of human rights grounded in local cultural norms, thus allowing for a uniquely German nationalist understanding of the concept grounded in the values of the Volk.

Conclusion

In West Germany, far right intellectuals who had seen reunification as a distant utopia were taken by surprise by the rapid decline of the GDR. Rather than using this as a chance to pursue a revolution against the German constitutional state, they turned to Basic Law as a means of rapidly realizing national reunification. This set the stage for the integration of the Basic Law and the Rechtsstaat into the ideological worldview of the German far right. Today, we are once again seeing a phase of imagining a non-liberal, anti-liberal or illiberal Rechtsstaat, depending on the exact actor involved. The conceptual boundaries of what a Rechtsstaat can mean are being pushed to the limit by those seeking to use it towards ideological ends. The far-right does not aim to revoke or eliminate the rule of law, but rather to appropriate, reimagine, instrumentalize and weaponize constitutionalism towards the goal of ethnonationalism and the end of democratic pluralism.