

Shackled Liberties, or: How Security Came to Trump Everything Else

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Abstract

In this paper, the origins of the “security narrative” in contemporary German political discourse is traced back to the early modern conception of “natural law,” first emphasized by Thomas Hobbes. Underlying this conception is that individuals would – by acknowledgment of their inborn “natural law” – sacrifice their individual liberties for the sake of public security. It is shown that a conception of state based on such a metaphysical premise discounts the existence of any discontent as valid within a society, and allows for top-down coercive measures against anyone who does not buy into this narrative. Those measures, exemplified by political rhetoric in Germany and beyond in the wake of recent mass migration and “terrorist threat,” do quite often impair with even fundamental human rights and appear at odds with the simultaneous claim to represent a liberal-democratic constitution.

Keywords: Germany, natural law, security, mass migration, state-sponsored media, atmosphere, fear, human rights

On 19 December 2016, the Tunisian Anis Amri (Anīs al-‘Āmrī) steered a truck that he had hijacked earlier that day, into a crowd of people inside a Christmas Market in central Berlin, killing twelve and leaving 56 others injured. It soon transpired that the perpetrator was an affiliate of the *Islamic State of Iraq and the Levant* (ISIL) and drew at least inspiration for his violent action from there. As soon as his identity had been established with the persecuting authorities, a manhunt started that ended with Amri being shot dead by Italian police force in Milano less than a week later.

The Context

It makes quite some sense to look into the events that took place immediately after the attack, because they shed some light on the overarching societal constellations in Germany that would soon result in discussions very problematic from a human rights perspective. An eyewitness, reporting a tanned – presumably foreign – male jumping from the truck’s cabin and fleeing the scene,

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immediately chased the person he considered to be the perpetrator, leading to the instant arrest of a 23-year old Pakistani in a public location about one mile away from the crime scene. The young asylum seeker was kept in custody for almost a day, before being released as innocent: meanwhile, Amri's identity had been established as that of the offender.

The young Pakistani arrived in Germany around a time of massive immigration of refugees, following German Chancellor Angela Merkel's famous – though eventually controversial – statement on 31 August 2015 that Germany “can do it,” namely to welcome refugees as a humanitarian act. In the few months after Merkel's emblematic saying, Germany was lauded across the world for its so-called “welcome culture” (*Willkommenskultur*), especially in contrast to its rather stained and xenophobic history. While other self-acclaimed beacons of democracy, the USA, the UK and France, foreshadowed a turn towards chauvinistic culturalism – captured in the slogans accompanying the election campaigns of Donald P. Trump and Marine Le Pen, as well as the Brexit Referendum – the nation that many had still down as essentially the one responsible for the genocide of Jews and the military aggressions of the two World Wars has reinvented itself as a shining example of cultural tolerance and humanitarianism. The media images of crowds gathering at train stations to welcome the refugees became the aesthetic manifestation of that reinvention. All, however, collapsed on New Years Eve 2015, not even half a year after Merkel's statement.

On that night, a large number of young men, allegedly of North-African and Middle Eastern descent, were reported of sexual assaults on partying females in central Cologne. In the aftermath, over a thousand police reports were filed. Interestingly, national media reported these events only with a massive delay of four days, initially blaming staff shortage over the holidays for it. However, the fact that the *National News Agency* (DPA) rated this news with very low priority points¹ to a more sinister motive: the government's narrative regarding the recent mass migration was not to be impaired with. When the news finally transpired and a swing in the public mood towards migrants became manifest, the national media that was earlier so supportive of the humanitarian gestures towards refugees began now to frame them as sexual predators, thus sowing the seed of suspicion into the general appreciation of the admission of refugees into Germany. Only ten days into the new year, conservative *New York Times* columnist Ross Douhat, a supporter of many xenophobic points in Donald Trump's election manifesto, warned against ‘Angela Merkel's policy of mass asylum for refugees,

... a huge proportion of [whom] are teenage and twenty-something men.' Moreover, he hinted at above narrative of a changed Germany, yet with a certain twist, when he calls it a 'fond illusion that Germany's past sins can be absolved with a reckless humanitarianism in the present.'² It appears that leading government officials in Germany have indeed taken heed, perhaps in a strategic attempt to curb the increasing influence of the *Alternative für Deutschland* (AfD), Germany's own ultra-conservative culturalistic party. After all, the AfD, founded only in 2013, has taken a more radical course in March 2015 with the controversial so-called "Erfurt Declaration,"³ and has since the beginning of the mass migration of refugees to Germany emerged as a major voice of discontent. Attempts by major media outlets, first and foremost the state-sponsored ones, to ridicule the admittedly oftentimes outlandish positions of the AfD leadership backfired; the events in Cologne on New Year's Eve 2015 added fuel to the fire of the "patriotic" AfD rhetoric. Since then, the media coverage – and here I wish to confine my observations to the state-sponsored ones – has taken a drastic turn and, by and large,⁴ bought into the rhetoric of migration as a threat to public safety and security.

The events covered appear to support this narrative. The atrocious attacks by young Muslim individuals in Paris on 13 November 2015, Brussels in March 2016 and Nizza three months later have set the stage; now they became complemented by individual attacks in Germany, most of them committed by young men who have been part of the latest wave of immigration. Outstanding was an attack of passengers on a commuters' train with an axe and a knife by the sixteen-year-old Afghan migrant "Muhammad Riaz" Khan Ahmadzai who would be shot by special forces when he started to attack them, too. Ahmadzai had until then been considered 'well integrated';⁵ he lived in a small Bavarian town in a foster family, was making good progress in acquiring the German language and was set to start job training in a local bakery soon.

Now, the political discourse shifted to the demand for "better integration," spearheaded by then President of the Federal Republic of Germany Joachim Gauck, he himself a former East German Lutheran minister.⁶ While his former profession and, even more so, his religious persuasion, should not be any issue here, I contend that, in fact they are. Gauck's humanism, same as that of daughter of a Luther pastor Angela Merkel and many of those who keep up the beliefs in the "welcome culture," is deeply rooted in a religious worldview that has formed an important undercurrent to the German Enlightenment project which, in turn, informs the societal arrangements in the "Republican Age."⁷ In fact, my contention is that

the devil it all began with is the concept of “natural law” as revised in early modern political philosophy, that is, a certain sense of justice is presupposed in all human beings that makes acting in accordance with the (positive, or state) law a somewhat metaphysically sustained criterion for citizenship, or societal belonging.

How Best to Make Sense of These Events? – Towards a Conceptual Explanation

Indeed, the might of the mentioned “natural law” figure as ultimate foundation of the modern state must not be underestimated. After all, since its first protagonist, Thomas Hobbes, the foundations laid by him have then been perpetuated in the history of political thought, increasingly transcending also cultural boundaries. Even though not every later theorist would, of course, agree with Hobbes’ conclusions, none of them, not even Anarchist theorists, dare to put the notion of “natural law” to the sword and try for a radically new fundament of socio-political association. As a result, the mere assumption that inside ourselves there is a definite benchmark for ethically and, by inference, politically commendable acts, epitomized in Kant’s “inner court of justice,”⁸ has shaped public discourse on a nearly universal scale makes it even more difficult to imagine any alternative model as – in principle – valid.

It has been suggested to me that the above narrative, introduced here as a “security narrative,” may in fact be only a sequence of ‘ordinary events of criminality and policing.’⁹ I would respond here that even the notion of “criminality” and concepts of “policing” are ultimately informed by political theories based on the early modern and modern concepts of “natural law,” in contrast to earlier ideas that allow for arbitrariness at the hands of those predestined to rule by divine grace or related metaphysical principles. By rejecting earlier political theories as arbitrary and irrational, those since early Modernity had to juxtapose themselves as consistent and rational;¹⁰ consequently, those who do not submit to the rule of reason cannot be anything else but irrational to the degree of insanity, or otherwise twisted. To invoke Kant here again: ‘From such crooked wood as man is made of, nothing perfectly straight can be built.’¹¹ Yet, what I content here is that the modern state – alongside all political theory that does accept it, alongside its foundations, as a given – reserves itself the right to rectify crookedness, and by it by physical force. Moreover, my argument is that the rationality claimed by the state to distinguish between those who submit to order and those who at least attempt to elude it is an illusion. Rather, I argue that the modern state acts every bit as arbitrary as pre-modern rulers, and uses first and foremost emotive rhetoric to sell its perspective as

rational and, consequently, valid. The “security narrative,” in my eyes, is just one of those rhetorical tools which is employed time and again rather successfully. Yet, other than the medieval landlord, who would not have considered himself in any way compelled to account for his actions to those of lower rank, the modern state clads its emotive rhetoric in a garb of rationality and, thus, intersubjectively agreeable validity. In order to disenchant this strategy, we need first to go a bit deeper into the philosophical foundations of the early modern and modern state, which, in my contention, is a revised idea of “natural law.” Only then we can turn to an investigation into the techniques employed by the state to maintain the imaginary of its systemacy and rationality, but may, in fact, be rather tools of arbitrariness and coercion. This approach will not only enable us to better assess its consequences for the constellation outlined above. Moreover, the aim is to contribute to a more abstract framework which would then allow to better identify similarities to the German case in other contexts.

Freedom is the Insight into Necessity

While Thomas Hobbes needs indeed to be credited with radically reinterpreting the notion of “natural law,” its introduction did, of course, precede the Englishman by centuries. Already philosophers of Antiquity had a concept of *ius naturalis*, as a metaphysically charged universal law. Early metamorphoses of the concepts were attributed to Heraklit, for example, and would eventually resurface more matured in Plato’s Theory of Forms: *physis* and *nomos* are joined in the *logos*, the divine union of the laws of nature and laws of reason.¹² Yet, Plato allowed for the possibility to not seek “the truth,” that is the insight into the reality of a superior order, and as such, he conceded human beings some degree of freedom of choice.¹³

Aristotle, well known for not following his teacher in most aspects of his philosophy, spun the thread further and enriched it with elements of the radical position of the Sophists, another rather unloved specimen among the philosophers for Aristotle. The *logos* now became an entity that the gods shared with mortals; it relocated the driver for humanities quest for a truthful life into the human being itself and added a *telos* to it.¹⁴ It is this synthesis of a voluntaristic with a deterministic model that made it perhaps more easily adaptable for the representatives of monotheistic creeds: For St Augustine, absolute freedom of choice was – in line with apostle Paulus – God’s prerogative; yet His revealed law (*lex æterna*), the ethical benchmark, is – *qua* creation – reflected in the natural consciousness of humanity as well as in the positive law.¹⁵

Hobbes would eventually follow this thread, yet by seriously downplaying the role of God in this mélange; else he would have

found it difficult to derive the notion of a natural state of 'war ... of every man, against every man'¹⁶ from his empirical observations of civil war England without entering into a serious theological discussion on theodicy. It is rationality that leads each individual human to seek his or her personal benefit, though at the cost of all others. It is the very same rationality, though, that leads each individual also to the insight that security is an objectively greater good than maximizing one's own benefits, as in a state of constant war one may not have an opportunity to actually enjoy these benefits. It is here that, for the first time, the idea surfaces that the individuals relinquish – in free choice – their liberty and have them transferred onto an ultimate sovereign whose task it is to use his (or, even though only hypothetically, her) accumulated liberties to provide security and common wealth.¹⁷

This appears to be the beginning of the "security narrative" that would always lie right under the surface of the new kind of polity that emerged from this and related political philosophies. The idea that security is indeed the highest common good leads in consequence to the subordination of any other task of the sovereign to this; welfare and common wealth appear in consequence as luxuries that a polity can only afford if security is sufficiently guaranteed. There is, however, a dilemma in the Hobbesian utopia of total Order, with a capital "O": more recent Hobbes Studies have put an emphasis on the fact that the divestiture of individual liberty for the sake of security does not eradicate the self-interest of each individual under the Leviathan. As such, the sovereign, as long as he (or, potentially, she) is not able to satisfy the self-interest of each of his individual subjects – and this appears to be a logically impossible task – the individual desire to rebel against the Order is never eradicated.¹⁸ Here, political philosophers whose works have strongly impacted the way how contemporary states understand themselves frame such malcontents as acting against the "natural law" which would reasonably make them to submit to the "sovereign" (Hobbes), the "volonté général" (Rousseau), the "ethical state" (Hegel), or other conceptions of by and large the same totalitarian entity. Because of this projection as unreasonable, the state – acting in the interest of a common good that is supposed to be identical with the individual good of each citizen – confers upon itself the mandate to sanction such malcontents. Here, biologicistic arguments, demanding to cure the people's body by removing its sick parts,¹⁹ are never far away and indicate how easily a line is crossed that denies malcontents their humanity, and, thus, their human rights.

How does the state assert and maintain its monopoly of security provision? The answer to this appears to be rather bleak: by

establishing as comprehensive as possible control over its subjects by administrative measures. What scholars like Max Weber have still lauded as expression of modernity and progress at the turn to the twentieth century is,²⁰ in fact, a tool of “dehumanization”. In the course of establishing administration over complex and, therefore, ambiguous individuals, the machinery of the state translated them into figures and problematic binaries, expressed in the numerous forms that do not allow for the expression of individual personality.²¹ In the digital age, this development has become excessive: individuals are required to fill in all sorts of online forms – based on mere binary codes – that ultimately level social complexities into a convenient illusion of ultimate state control. Franz Kafka’s *Der Process* (*The Trial*), first published in 1925, is therefore less absurd than one may initially think.

Yet, while in the empirical reality we all are more or less comprehensively disciplined by administration, none of us has ever been asked to explicitly enter into a security arrangement with the state. Rather, with the moment of our birth the state’s administration takes over: the birth certificate is the first formal restriction of one’s personality to data; all later registrations of our self is based upon this document.²² Hence, it seems that in reality we do not have a choice right from the beginning. The foundational belief in a “natural law,” however, does actually not necessitate an explicit acknowledgement of the state one is born into by formal contract. It is this innate “natural law” that aligns us, right from the moment of our birth, with the interest of the state: ‘The whole body of the citizens, whether citizens by birth, by adoption or by enfranchisement (for these are the three ways in which citizen rights are acquired) when subjected to the single sovereign power of one or more rulers, constitutes a commonwealth.’²³ The state, it seems, does not require our explicit individual endorsement; by assuming administrative powers right from the moment of our birth it presupposes a tacit subordination under its order, codified in positive law.

Reality, however, defies this total control of the state as projected by early modern political philosophers. Moreover, the individual is by no means as stunned and passive as would logically follow from such conceptions. Rather, it maintains quite a degree of autonomy, which manifests itself in its ability to disagree, all the way to openly confront the Order. This dilemma was seen already by Hobbes, yet it was theoretically hardly ever solved other than by casting such individual as “irrational” and mentally disturbed.²⁴ Such a rather unsophisticated attempt to come to terms with awkward aspects of socio-political reality, however, appears to still inform the way how states deal with severe discontent. On the other hand, the

state – as sovereign – is aware of the potential discontent by any of its citizens; it therefore requires – if only to maintain the façade of representing the common good – some kind of general consent from an as large as possible number of citizens. To put it succinctly: when malcontents threaten the security of the polity severely, the oftentimes drastic measures of the state require a more vocal endorsement by a majority of the population, which, at the same time, is a tacit approval of the state in itself. How is this to be achieved, bearing in mind that, on the ground, the majority of the population has little personal investment in the state and is therefore half-loyal at best?

Here, the state- sponsored media, to which I shall confine my argument here, play a vital role.

An Atmosphere of Fear and Anxiety, and the Promise of Security

‘Atmosphere [*Stimmung*] is the currency of politics,’²⁵ claims German sociologist Heinz Bude. The term “*Stimmung*” itself is complex and difficult to translate into other European languages; in English it splits its meaning into “mood,” “attunement” and “atmosphere.” If Bude is correct, and I am much inclined to buy into his argument, then politics thrives on the evocation of strong emotions, much in line with the reading of Hobbes’s political philosophy as a theory of “author–actor–audience,” where the game of politics resembles that of the theatre. Here, the “actor” is authorized by the “authors” to represent them, turning them into an “audience” in the process.²⁶ The emotion evoked by actors invested in politics with the inevitable help of the media in constellations like the ones under review here is “anxiety,” which eventually lapses into “fear.” Fear, in turn, has historically been one of the ultimate theatrical tools for bringing an audience together – here one is almost reminded of Nietzsche’s arguments in *Die Geburt der Tragödie* (*The Birth of Tragedy*)²⁷–; the related bodily sensations, moreover, transcending time and space.²⁸ Thus, while the audience in pre-modern times was numerically smaller and socio-economically more elitist, the pattern of getting people lined up for a cause remained by and large the same: ‘In the audience it is preparing what finds relief in the mass,’²⁹ states Bude, in reference to Gabriel Tarde, presumably the first sociologist who paid due attention to the role of public emotions. The moment in which the audience becomes a mass is critical: individuality is smoothened out in the mass, the different fission directed in one single direction and towards a common object of wrath.³⁰

When, after the events in Cologne on New Year’s Eve 2015, *Bild*, Germany’s most widely read broadsheet, titled their coverage ‘Sex Mob of Cologne: Are the Culprits really Refugees?’ and asked

whether ‘our police cannot protect us, or whether she does not want to?’,³¹ they helped proactively to create the markedly chilled-down atmosphere in Germany with regard to the refugees that had earlier been welcomed so warmly. The right wing of the AfD leadership was quick to exploit the event politically, asking on their Facebook pages rhetorical questions like ‘After this wave of criminal offenses and sexual assaults, is Germany now “cosmopolitan and colorful” enough, Ms Merkel?,’ or ‘Merkel is to be blamed for the assaults of women by migrant mobs in Cologne and other German cities.’³² Soon enough, other right-wing movements, such as the *Patriotic Europeans against the Islamization of the Occident* (PEGIDA), staged public protest against the – as they called them – “rapefugees.”

One may well argue that these statements are too blunt to have any serious impact. Yet, the AfD gained considerable support from an increasing number of meanwhile anxious German citizens—across the entire demographic—making it into the representative assemblies of four states of the Federal Republic. While the AfD party manifesto appears still far too outlandish to be a practicable political roadmap, religiously justified attacks against civilian targets across Europe contributed to the increase of anxiety in the population, and anxiety that had morphed into widespread fear at least since the Berlin Attack in December 2016.³³

A major element in fuelling the popular anxiety, I contend, was the increasingly use of the term “Gefährder” (roughly translatable as *endangerer*) in the state-sponsored media, including prominently its two TV channels. The term is critical: it has no legal relevance at all, and appears to have initially been used only by police forces as a loosely operational term for internal use.³⁴ Yet, its massive avail in media coverage and frequent public use by leading politicians helped to objectify the term without clarifying its scope and meaning to the “audience.” Especially conservative politicians, characterized by their advocacy of a “strong state,” seem to use the term “endangerer” deliberately, in order to create a public atmosphere that allows to rescind concessions to individual liberties and bring back the “strong state,” that is a state with an absolute monopoly of coercive force. That-time Minister of Interior Wolfgang Schäuble, for instance, he himself a victim of left-wing militancy, had plead already in 2007 to apply the Law of War for “endangerers” and detain them similar to the inmates at Guantánamo Bay Detention Camp, or to even relax the regulations for targeted killings.³⁵ Whether or not he meant it only rhetorically has no bearings on the grave implication of his proposal for fundamental human rights and the concept of justice. After all, according to German law, such a general suspicion is in gross conflict with the legal principle of presumption of innocence (*in dubio pro reo*)³⁶ that needs also to be upheld in media coverage;³⁷ it

criminalizes individuals on the basis of the mere assumption that thoughts and even utterances lead inevitably to their corresponding practical realization.

After the Berlin Attack, Ministers of Interior and Justice Thomas de Maizière and Heiko Maas were quick to demand electronic shackles to be worn by “endangerers” 24/7 as a preventive measure.³⁸ In all this, the two German politicians seem not to be alone: in fact, in all European countries where ISIL-inspired atrocities have taken place, similar demands have been publically made by leading politicians, and these demands become more radical and emphatic after every new attack.³⁹ What makes the matter more complicated is that such calls for seriously coercive security measures by state actors are accompanied with demands to explicitly redefine the set of cultural and political values that every subject *on the territory* of these states has to abide by. Britain’s decision to leave the European Union – “to get our country back” – is equally informed by those culturalistic considerations as Thomas de Maizière’s Ten-Point-Catalogue of values that he considers basic representations of distinct German values.

It pays off to take a closer look into this Catalogue, and to read it together with other suggestions made by the German Minister of Interior. First, the publication platform is remarkable: de Maizière’s guest contribution appeared in the weekend edition of *Bild*, the very broadsheet that covered the Cologne incidents in such a populist manner that it served the creation of an atmosphere of anxiety in the German population. It is perhaps not a coincidence that de Maizière chose the same platform for the publication of his views on what he wants to be understood as “German cultural paradigm” (*Leitkultur*), because only those ‘who are sure about their culture are strong.’⁴⁰ Among the ten points proposed by him figure comprehensive education, the achievement principle, “enlightened patriotism” and certain forms of social behavior: ‘In Germany, we shake hands, we show our face and we tell our name. We are not burka.’⁴¹ Clearly, de Maizière has joined the bandwagon of the AfD, even though he would most probably firmly reject that as an unfounded allegation. This, however, makes matters much worse. While his own *Christian Democratic Party* had long abandoned a distinctly conservative and hegemonic Christian element in its political conceptions – and I am not speaking of Merkel’s or Gauck’s above mentioned humanism here – it seems that it had only laid dormant under a rather thin cover of neutrality to religious creeds or distinct worldviews. In this there are strong parallels to British Prime Minister Theresa May, again a daughter to a church minister, who openly refers to the Christian creed as cultural basis of the British society.⁴² What such

leading politicians perpetuate here is nothing less than a strongly chauvinistic cultural conviction that denies people *on the territory* of their states the basic choice of whether or not to base one's values on religious precepts, who you greet with a handshake and who you would tell your name in an introduction. To be absolutely plain here: I myself would reserve the supreme right to shake or not shake someone's hand. With regard to the many new arrivals to Germany from war-ridden regions of the world, many of them Muslims, for de Maizière "welcome culture" entails very distinct central European and Christian values and forms of behavior that even a refugee has to embrace. Here, the question remains why a war refugee, who has left her or his country because of fear for their physical integrity, would have to integrate into a host society at all. In the current atmosphere, the boundaries between labor migrants and refugees have become completely blurred, and the debate consequently moved towards an "us and them" binary, in the process even throwing into the mix those German citizens who have been born to nationals of different countries.

Sure, de Maizière ties here into a much more long-standing public debate over how to consider German passport holders – most of them not naturalized, like in the United Kingdom, but rather being born on German territory – whose ability to speak the German language is significantly less than, for instance, Turkish or Arabic. Are they indeed creating a "parallel society," as suggested once again by leading politicians and their various state-sponsored media outlets? Are they posing a threat to an imagined cultural homogeneity by adhering openly to a religion other than the two major Christian denominations and Judaism? Especially when bearing in mind that the reappraisal of the latter as integral part of "German culture" seemed only possible after the almost successful attempt to wipe Jews entirely off the face of Germany, with the explicit or even tacit endorsement by a majority of the German population? We may want to consider the political constellation that made the Holocaust possible as the Hobbesian state in its most radical form – this, at least, is how Hobbes was appraised by Carl Schmitt, one of the chief architects of the National Socialist jurisprudence.⁴³ Indeed, we may want to bear in mind the constitution of the Third Reich to be better able to make sense of de Maizière's political positions.

The political conservatism that he appears to have embraced seems to reflect a current in the de Maizière family, represented by the military and jurisprudence. Thomas de Maizière himself explicitly refers to his father – a former officer in three German armies between 1931 and his honorable discharge as a four-star general in 1972 – as a role-model when it came to making decisions

even in the playground.⁴⁴ It thus seems that there is a family history of appreciation strong and centralized command structures, now reflected in the persistent endeavor of the German Minister of Interior to centralize all German intelligence agencies by dissolving their fairly autonomous offices in the various German states and bringing them all into one central federal agency in Berlin. What was presumably inspired by the creation of the *National Security Agency* (NSA) in the USA in response to the Islamist attacks in New York and Washington DC on 11 September 2001 is, in fact, a clear violation of the principle of federalism enshrined in the German *Grundgesetz*.⁴⁵ The levelling of individuality in decision making processes – part of the exercise proposed by de Maizière – is a feature of Hobbes's conception of the state and, more troublesome still, of Carl Schmitt's, for whom the state is 'a supra-individual, not an inter-individual instance that derives its dignity not from the elevation of the shields by individuals, but stands against it with original authority,' and whose 'impressive achievement ... is that the organization of factual forces remains above all subjectivity.'⁴⁶ It is perhaps not an accident that de Maizière himself is a representative of conservative German jurisprudence. As such, he may share with Schmitt the conviction that "the law" is supra-individual, and that the function of the state – 'the sole subject of the legal ethos'⁴⁷ – is to coerce all individuals into compliance with "the law." In a state of emergency, and as such we may interpret the current angst-ridden situation in Germany and other European nation states impacted by mass immigration and individual violent attacks, the state has the right to enact emergency legislation that could – at least for the time being – override other legal precepts, including human rights:

"The Führer protects the Law from the worst possible abuse when, in the moment of danger, he, as supreme legal authority thanks to his leadership, creates immediate law,'⁴⁸ wrote Schmitt in defense of Adolf Hitler's order to purge his own SA during the "Night of the Long Knives."

Similarly, the calls for electronic shackles for – legally – non-criminals and for the centralization of all intelligence agencies in physical vicinity of the Ministry of Interior, coupled with the rhetoric of cultural belonging and its negation to those who's personally held values are not identical with those administered by the state, suggests a disturbingly similar take on the socio-political reality in contemporary Germany. Moreover, I propose that the fact that such problematic public proclamations by leading conservative politicians as the ones cited above can not legitimately be excused with pending General Elections. If threats to override fundamental human rights, such as the right to live in physical integrity, to freedom of

movement and freedom of thought, can justly be employed in elections campaigns, then there seems something fundamentally wrong. Threats, anxieties and fears have always existed in human society⁴⁹ same as discontent;⁵⁰ to respond top-down with the imposition of coercive measures based on the “natural law”-argument is as arbitrary as a feudal landlord’s abuse of those he considered his serfs.

Notes:

¹ Interestingly, a search on the official website of the DPA in June 2017 yielded no single relevant entry.

² Douhat, *Germany on the Brink*.

³ For the text of the declaration, see Der Flügel, *Erfurter Resolution*.

⁴ Exceptions do, however, exist. Perhaps the most prominent one is TV journalist Dunja Hayali (b. 1974), herself the daughter of Iraqi migrants to Germany. The fact, however, that Hayali is widely attacked by nationalist and conspiracy-theory-inclined citizens indicates that her perspectives do not necessarily represent the mainstream opinion anymore.

⁵ Issig, *Attentäter Riaz A*.

⁶ See n.n. (3).

⁷ This term, I adapt from Eric Hobsbawm’s book series on Euro-American history between the eighteenth and twentieth centuries, because republicanism, represented in the effective concept of “parliamentary democracy” appears to me the political paradigm since the Enlightenment movements, transported – by way of colonial administration – also into the countries of the so-called “Global South.”

⁸ See Kant, ‘Metaphysik der Sitten (1797).’ In *Werkausgabe*, VIII/572-5.

⁹ Anonymous referee of the first submitted draft of this article, in email from the RHR-editor, 6 July 2017.

¹⁰ See prominently Locke, *Two Treatises*.

¹¹ Kant, ‘Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht (1784).’ In *Werkausgabe*, XI/33-50, here 41 (trans. Lewis White Beck). In a most pointed response, alternative rockband *Therapy?* from Belfast concludes its song “Crooked Timber” (from the same-named album, released in 2009) with the lines: ‘Crooked timber that we can’t make straight – *My shade will comfort you*’ (emphasis mine), thus indicating the general possibility for a radically different approach to that of the Prussian Enlightenment philosopher.

¹² See Heraklit, *Perí physeos*, in: Diehls, *Fragmente*, 66-83, esp. 66f.

¹³ See Plato, ‘Politeía.’ In *Platonis Opera*, 369 St and esp. 434d St: ‘we supposed that, if we found some larger thing that contained justice and viewed it there, we should more easily discover its nature in the individual man [εἰ ἐν μέζοντι τινὶ τῶν ἐκχόντων δίκαιος ὕνῃ προτέρων ἔει ἐκεί ἐπικηρῆσαι μὲν θεῶσασθαι, ῥαὸν ἂν ἐν ἡνὶ ἀνθρώπῳ κατεῖν ἦεν ἐστίν].’ (trans. Paul Shorey).

¹⁴ See Aristotle, e.g. *Ethica Nikomachea*, 1134b: ‘Of political justice part is natural, part legal [τὸ δὲ πολιτικὸν δίκαιον τὸ μὲν φυσικόν ἐστὶ τὸ δὲ νομικόν], natural, that which everywhere has the same force and does not exist by people’s thinking this or that; legal, that which is originally

indifferent, but when it has been laid down is not indifferent; ...' (trans. W.D. Ross).

¹⁵ See Augustinus, 'De civitate Dei.' In *Corpus Augustinianum*, XIX/15.

¹⁶ Hobbes, 'Leviathan (1651).' In *Collected English Works*, III: 113.

¹⁷ See *ibid.*, 157f.

¹⁸ See Thomä, *Puer Robustus*, 50-5.

¹⁹ The rhetoric of "social hygiene," prominent throughout the industrial nations of Europe and North America in the nineteenth and early twentieth century, fed well into the later concept of "racial hygiene," prominently espoused by authors like the Comte Arthur de Gobineau (d. 1832) and, eventually, Adolf Hitler, with the known practical consequences of the latter's thought. See, for example, Gobineau, *Essai*, I: 36-57; Hitler, *Mein Kampf*, 435-49. Indeed, this troubling nexus of Enlightenment thought and chauvinistic self-elevation of human beings has been at the core of Adorno and Horkheimer, *Dialektik der Aufklärung*.

²⁰ See Weber, *Wirtschaft und Gesellschaft*, 125-30 and 815-68.

²¹ David Graeber tells an interesting anecdote in the regard, where the traffic authorities of New York insisted on his name being "Daïd Grueber," as this was what they had on their computer system. Clearly, clerical errors do not much figure as a possibility in the administrative mind; the fault is not in the system, but, whenever in doubt, in the empirical individual. See Graeber, 'Dead Zones of the Imagination.' In *The Utopia of Rules*, 45-103, here 48f.

²² In fact, my own surname is owed to a clerical error in my father's birth certificate: while the rest of his family carries the name "Harttung" – with a double "t" – the error in his birth certificate has turn my father into someone somehow detached from them by name.

²³ Bodin, *Les six livres*, 52 (trans. M.J. Tooley).

²⁴ See Hobbes, *Collected English Works*, III: 61-70.

²⁵ Bude, *Das Gefühl der Welt*, 74 (trans. mine).

²⁶ See Thomä, *Puer Robustus*, 56-68; compare Hobbes, *Collected English Works*, III: 147f.

²⁷ See Nietzsche, 'Die Geburt der Tragödie (1872).' In *Kritische Studienausgabe*, I: 52-75.

²⁸ See Bourke, *Fear*, 6-9.

²⁹ Bude, *Das Gefühl der Welt*, 54 (trans. mine).

³⁰ See Tarde, *l'Opinion et la foule*, 1-62.

³¹ See Karheck, *Sex-Mob von Köln*.

³² Cited in Weiland, *Rechte Hetze* (trans. mine).

³³ We need, however, to acknowledge that a growing number of citizens, predominantly of the younger generations, is increasingly weary of the potential to be a target to terrorist attacks at mass events, and is therefore not any longer willing to be deterred by it. I would still content that this is not the case for a majority of the civilian population in European countries.

³⁴ See Neskovic, *Rechtsgrundlage*, 6.

³⁵ See Blechschmidt and Maier-Albang, *Schäuble will Gesetz*.

³⁶ See UN General Assembly: *Universal Declaration of Human Rights* (Resolution 217A, 1948), Art. 11 §2; Council of Europe: *Convention for the Protection of Human Rights and Fundamental Freedoms* (ETS No. 005, 1953),

Art. 6 §2; *Grundgesetz der Bundesrepublik Deutschland*, Art. 20 §3 and Art. 28 §1.

³⁷ See German Press Council, *German Press Code*.

³⁸ See, e.g., n.n. (1).

³⁹ Exemplary in this regard is the demand by British Prime Minister Theresa May after the attack on civilians on London Bridge on 5 June 2017 to dealing out more severe prison sentences to who she calls “terrorists,” and promising to bring about new laws to facilitate this. See n.n. (2).

⁴⁰ Maizière, *Leitkultur für Deutschland*.

⁴¹ Ibid.

⁴² See Bloom, *Theresa May*.

⁴³ See Schmitt, *Wert*, 84-110; idem: ‘Der Staat als Mechanismus bei Hobbes und Descartes (1935).’ In *Staat, Großraum, Nomos*, 139-51.

⁴⁴ See Maizière and Braun: *Damit der Staat*, 22-6.

⁴⁵ See *Grundgesetz der Bundesrepublik Deutschland*, Art. 20. Interestingly, §4 of this Article concedes that ‘All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.’ (trans. Ch. Tomushat and D.P. Currie).

⁴⁶ Schmitt, *Wert*, 85 (trans. mine).

⁴⁷ Ibid. (trans. mine).

⁴⁸ Idem, *Der Führer*, 946 (trans. mine).

⁴⁹ See, e.g., Bourke, *Fear*.

⁵⁰ See Thomä, *Puer Robustus*, 11-5.

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