

TRANSFORMATIONS OF LIBERAL REASON: MIGRATION POLITICS AND
SHIFTS IN CULTURAL SELF-INTERPRETATION

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Transformations of Liberal Reason: Migration Politics and Shifts in Cultural Self-Interpretation

Abstract

In light of the current multiple crises, authoritarian movements gain new strength. Claiming that globalization and especially migration is endangering social cohesion and national sovereignty, without considering political-economic aspects, they call for a strong state. Along the lines of those claims, they revise what Helmut Dubiel called the “cultural selfinterpretation,” meaning the understanding of the political superstructure of their community. Doing that, liberal values and concepts are re-interpreted, as can be seen with the “rule of law” for example. From its intrinsic value of strengthening individual claims against the state’s rule, they turn it into a concept of state power, interpreting the “rule of law” as the rule of a mythical legitimized sovereign. Those re-interpretations — and legal constructs referring to them — will be analyzed in this essay. Authoritarian politics and their roots will be regarded in their contradictory relation to (neo-)liberalism as they appear as a critique towards it at first glance. Yet, taking into account early Critical Theory and its analysis of authoritarianism, the article aims to show that those tendencies emerge from liberal ideas and ideals. Seen from this perspective the article promotes the view that rather than a pure defense of liberalism, a materialist examination of liberalism’s inner contradictions is necessary to understand and criticize authoritarianism.

Political campaigning always moves in a conflicting field between facts and feeling, reason and emotion, within which the emotional side has recently been attracting more attention. It is not just the well-researched field of media that serves as a stage for this discourse, but even the well-established institutions of law that are commonly regarded as purely rational. An interesting instant of political campaigning that sheds light on law’s theatrical function in political discourse could be observed in recent German security policies in spring 2019. The Minister of the Interior, Horst Seehofer, presented the current crime statistics, showing that there is a decrease in crime. Yet at the same time, he tried to justify a higher budget for his ministry and higher investments into the security sector, paired with the justification of more rigid police laws that lately started to be introduced in Bavaria and some of the other federal states and an ever more rigid migration policy.¹ The question might arise: when there is a decrease in crime and the level of security is increasing in turn, how can one justify the politics of further securitization?

Seehofer presented a second study to support his claims. This study did amongst other things examine the “perceptions of insecurity,” addressing the emotions of the citizens.² In this study the outcome was the opposite: compared to a similar study that

was carried out five years before, the perceived level of insecurity slightly increased. This not the least points towards a disparity in facts and perception that not just addresses but can be found in the inner construction of legal concepts. Beyond that passive role — being the result of political discourse — and the supplementary one — framing what is a legitimate part of the discourse — law seems to be held apart from the struggle between fact-based and emotional discourses. It appears as the rational institution that surrounds those discourses and brings them back on a stable basis. Yet, I will argue that questions of the rule of law and struggles for rights are to be located in the very core of those tensions.

In the following I will show three critical perspectives, each starting from this conflict area and reflecting on the role of law, to get to a better vision of how law itself is fostering and (at least co-)producing these effects. To achieve this goal, I will examine how politics of fear and exclusion in current right-wing movements are developing a contradictory dispute with liberal visions of the society and the rule of law and how a critical perspective on law itself can provide insights in those paradoxical politics. In a first step, I will show how politics of securitization as mentioned above are catering an authoritarian reinterpretation of the ‘rule of law.’ I will then proceed to analyse how this call for a reinterpretation of the rule of law is bound to a problematic critique of liberalism and liberal values on the one hand, and how it is produced by liberalism itself on the other. My aim is to shed light on the intrinsic relation of liberalism and authoritarianism that is emerging from the separation of spheres such as politics, economics or the social and that is expressed in a pseudo-critique of (neo-)liberalism by current right-wing movements. Finally, I will unfold a critique of liberal reason from another angle, namely from a critical theory perspective that might provide a better base for understanding and tackling the authoritarian attacks and the immanent contradictions of the liberal rule of law. Engaging with the concept of “authoritarian liberalism,” this materialist analysis will point out that the populist critique of neo-liberalism rather aims to disarm subjective claims against state power and instead enforces state power to secure economic liberalism. I will conclude that by splitting up political and economic streams of liberal thought, the status quo is rather defended. The pseudo-critique, developed by right-wing populists, thusly is rather obfuscating than unfolding relations of domination.

Including examples like the one I started from, I do not aim at a full-fledged analysis of the particular instants of authoritarian stagings of politics, but rather use them as starting points for a theoretical reflection on inner contradictions of (neo-)liberalism. Intending to show that a narrative construction of insecurities and a discourse on control helps to channel resistance and critique from their causes to their symptoms, I will draw on insights of border regime studies to point out how migration becomes a key topic of a pseudo-critique of neoliberalism, that personalizes the crisis in the figure of the refugee. Those movements, I will argue, can be better understood by amending the approaches with a critical theory perspective in two ways: firstly, by shedding light on the economic entanglements or rather a critique of the disregard of economic pitfalls in the pseudo-critique as laid out by Herbert Marcuse; secondly, by drawing attention to the political-psychological effects of populist speech, that not only exploits, but even generates affects.

1_Rule of Law — Authoritarian

The current discourse is often related to feelings of insecurity on the one hand, and feelings of powerlessness and betrayal by ‘the political class’ on the other, and this is mostly led by populist movements all over Europe and the United States, focusing on migration and immigration politics. The above mentioned Minister of the Interior, Seehofer, commented on the German migration politics in 2016, when he was not yet in his current position but Prime Minister of Bavaria and head of the CSU,³ as follows: “Currently, we don’t have a state of law and order. There is a rule of injustice.”⁴ These drastic words, alluding to totalitarian regimes, were directed towards his colleagues in his parliamentary group, most directly towards the chancellor, Angela Merkel, who was supposed to have “opened” the borders for unprecedented refugee movements in 2015. Facing elections in Bavaria at that time and being attracted by relatively high-ranking survey values of the right-wing populist *Alternative für Deutschland* (AfD), Seehofer took over the populist language against his own group in the parliament.

However, things have since calmed and Seehofer became Minister of the Interior in Merkel’s fourth cabinet from 2018 onwards, where he introduced or proposed several acts of tightening the asylum law.⁵ Yet, the question remains why there is this feeling or notion of a “rule of injustice” in populist movements and why it is especially connected to the field of migration politics, so that Seehofer now tries to cope with their

complaints in this field. How do those political movements see the law infringed through humanitarian refugee politics?

The issue at stake here, I would propose, is less a clear conception of the rule of law or formal legal procedures, but a perceived intrusion on sovereignty. Law is viewed less in its procedural ways but more in terms of control, not least the control over the definition who belongs to the people and who does not. Taking the invocation of control and security as key concepts to understand the critique of progressing neoliberalization and globalized structures, a certain notion of critique can be detected in the played out formula of an alleged “rule of injustice.” As Zygmunt Bauman points out, in cases like this the “public concerns and the outlets for individual anxiety [are shifted] away from the economic and social roots of trouble and towards concerns for personal (bodily) safety.”⁶ In other words, instead of analyzing the production of insecurity, its symptoms are projected to personalized figures that display one of its effects. Security becomes an issue, then, that can be policed in those figures that stand *pars pro toto* for the crisis.

To provide the basis for this projection, the struggles are carried into a narrative arena that is concerned with the co-construction of the (self-)imagination of the community and that of dangerous others as its counterpart.⁷ Wendy Brown has provided a valuable study to understand those tendencies already in her 2010 book, *Walled States, Waning Sovereignty*, where she sketched the theatrical or symbolic value of walls and the fortification of borders for those who see their sovereignty waning. Brown writes, “The detachment of sovereign powers from nation-states (...) threatens an imaginary of individual and national identity dependent upon perceivable horizons and the containment they offer.”⁸ While the subjects are feeling powerless, due to e.g. the transnationalization of border regimes, walls or fences seem to restore the national sovereignty at least symbolically, they seem to demarcate a clear line between the people and the other and emblemize the power of the people to define itself. This is what Brown calls the theatrical function of walls: they are projections of power, where it is waning, as they are staging “sovereign jurisdiction and an aura of sovereign power and awe.”⁹

In the German context, such symbolic policies seem more difficult to implement. Being a state in the center of the Schengen-Area, Germany cannot easily wall or fence its borders. So, Brown’s analysis seems to apply more to those states with borders towards Non-Schengen-members. Indeed, her analysis can be easily related to current politics in such countries as Hungary, where the border towards Serbia is shut down

with a fence. Yet, the German discourse is to some extent affected by Hungarian politics, not the least through Seehofer and his CSU. Without literally fencing the German border, strategies of exclusion as developed in the Hungarian border regime are reconsidered in the German discourse as well. There is a legal construction at play in Hungary that is aimed at preventing effective applications for asylum: the idea of a transit center, where refugees are effectively detained until their application is processed. Although the center is open towards Serbia, by leaving it, the application would expire. This idea was taken up by Seehofer and others, as Max Pichl writes, in order to fulfill similar functions as walls do in Brown's approach: the "Orbanization" (referring to Victor Orbán, the current Hungarian prime minister) of European migration politics is aimed at constructing the "fiction of sovereignty" — nota bene: not European, but national sovereignty.¹⁰ While fences or walls work as material symbols of "regaining control" or "producing security," different modes of bordering can serve the same intentions — such as the construction of border spaces that transcend the figure of the border as a clear line.¹¹ To understand the theoretical background of this "Orbanization" it is worthwhile looking for the foundations of the feeling of powerlessness and the longing for a restoration of national sovereignty.

2_Cultural Self-Interpretation and the Exclusion of Others

Brown herself proposes an explanation of those feelings. There is indeed an intrusion into national sovereignty by the global flows of people, but no less of ideas, goods, and capital. Furthermore, national sovereignty, which is considered less frequently in the discourse,

has been undercut [...] by neoliberal rationality, which recognizes no sovereign apart from entrepreneurial decision makers (large and small), which displaces legal and political principles (especially liberal commitments to universal inclusion, equality, liberty, and the rule of law) with market criteria, and which demotes the political sovereign to managerial status.¹²

The accentuation of the movement of people beyond borders as the ultimate threat to national sovereignty refers to the logic of walling: staging instants of sovereignty by personalizing or individualizing contradictory social relations. This "fiction of sovereignty"¹³ turns out more comprehensible if one views the dialectical relation of those populist movements to (neo-)liberalism.

Already in the 1930s, Frankfurt School Critical Theory was concerned with the dialectical relation of authoritarianism and liberalism — for good reasons of course. Observing the refusal of liberal values in the name of irrationalistic and organicistic views of society, analyzing those dialectical tensions was one of the foremost goals of the Frankfurt *Institute for Social Research* and the so-called Horkheimer circle. Herbert Marcuse tried to systematically map major strands of this dialectical relation in an essay on totalitarian concepts of the state and their struggle against liberalism. As Helmut Dubiel summarizes the essay, the main problem that Marcuse discovers in authoritarian movements of the 1930s is that its critique of liberalism “essentially was restricted to a critique of the liberal ‘superstructure,’ that is, the cultural selfinterpretation [sic] of liberalism. Fascism understood itself as an alternative to this cultural self-portrait.”¹⁴

Marcuse presents how authoritarian, or in his time: openly fascist, movements developed a critique of liberal rationalism and rational justification in favor of self-legitimization through “natural” features. While it challenged the abstraction of a human nature that played an intrinsic role in liberal constructions of the society, it installed naturalizations of “mythical originality” of a people.¹⁵

Yet, while critical reason and liberal values such as the open society and the preponderance of the individual before the community are challenged, this touches just what Dubiel called in simplistic terms the superstructure. As Brown pointed out for today’s sovereignists a lack of thematizing economic structures and movements of capital, Marcuse hinted to a reluctance to develop a full-fledged critique of liberalism in the 1930s. On the contrary: the economic strand of liberalism, its baseline, which Marcuse identified as the security of property and capitalistic market relations, was defended by its authoritarian critics. There might well have been anti-capitalist rhetoric, but this was limited to personalized attacks to the type of ‘greedy merchant,’¹⁶ which is all too well known from anti-semitic stereotypes and their function as scapegoats.¹⁷

Disentangling the superstructure from the base,¹⁸ authoritarian movements identify the solution to their perceived states of crisis of a drifting apart of the society not in an intensification of economic contradictions but in a state that is too weak, according to their analysis. They shift the perspective from social or economic causes of problems, such as precarity, to a projected other, so that the conflict is externalized and appears as a mere matter of policing. The constructed other, constitutive for forming the imagined in-group is polarized in the figure of the “illegal refugee,” which makes migration

a key issue to understand the misled critique.¹⁹ This vision, and the strategy to shift the perspective from the causes to the symptoms, stems from a “political existentialism,” as Marcuse calls it, alluding to the destined belonging to a certain community and the god-like sovereign, that is in charge of securing social cohesion: “the state takes over the political integration of society.”²⁰ Without simply equating rising fascism in the 1930s with today’s authoritarian populism — which would be a fatal relativization, at least some commonalities can be found between what Marcuse analyzed and current studies on authoritarian movements. Already in Brown’s analysis there can be found the call for national sovereignty and a strong state, the appellation of symbolic restorations of sovereignty paired with naturalizing concepts of the people. Not just the sovereign is defined by its ability to exclude others, the inner circle as well is defined by those means of exclusion. The ‘we’ of ‘we, the people’ — ‘we, the sovereign’ — stands against those who supposedly threaten the society. In the new preface to the German edition of her book, Brown quotes the pertinent *paroles* that signify the rise of those politics in current Europe and the US: “Vote Leave! Take [back] Control!”²¹ as a slogan of the Brexiteers, and “Make America Great Again! Build a Wall!” as the slogan for Trump’s campaign; and in the light of the naturalized vision one might add the other famous guideline of Trump’s politics: “America First!”

Putting the “own” national community first, taking back control (from the influence of international organizations, without considering the impossible withdrawal from globalized economic structures of course) through strengthening the state is the proposed solution. Thusly, borderfences become the “metaphor” for seizing or taking back control and providing security.²² The results are amongst others a revival or re-intensification of racist attacks in the US or attacks on foreign people such as Polish workers in the UK, and many more examples could be named all over Europe.²³ Although there can be found a harsh critique of liberalism or the liberalist superstructure in those movements, it is crucial to understand that those attacks are already founded in the liberal conception, as Marcuse points out and others, like currently Christoph Menke, insist.

3_The Grammar of Rights

For Marcuse, the base of exclusion in authoritarianism, that can be found in liberal conceptions of state and society, lies in their contradictory perception of rationality. While liberal theory itself was constructed based on the principles of rationality and

held the idea of rational justification, in praxis, rationality in liberal societies is privatized.²⁴ The goal of a rational organization of the society is left to its citizens who are enabled, yet cannot be forced to act rationally. As soon as the predicted rational organization does not automatically emerge — through the free play of market forces, as the narrative goes — the theory is facing problems. It allows, according to Marcuse, for inequalities that emerge from this free play and justifies them on irrationalistic terms to explain, how the predicted harmony does not come into play. Reasons are then the talent or natural ability of some to lead, which is not at all seen as incompatible with the idea of harmony. He concludes: “The idea of the charismatic, authoritarian leader is already preformed in the liberalist celebration of the gifted economic leader, the ‘born’ executive.”²⁵

An even broader link of liberalism and authoritarianism is identified by Max Horkheimer. Directly focusing on the liberal idea of the rule of law and constitutionalism, he finds that liberal and authoritarian rule do not reciprocally preclude each other. Rather he explicates them as different stages of capitalism relating to the interest of the powerful: liberal, if the free market serves them best, authoritarian as soon as the free market is transformed into a domination of monopolies. “The millions below learn through their experience from childhood on that the various phases of capitalism belong to one and the same system,” Horkheimer writes, and: “Authoritarian or liberal, society for them means hunger, police control and the draft.”²⁶ They might desire a constitution that through its generality and universalism secures them to some extent at least. Yet, “it has been through constitutions that the European bourgeoisie kept the government under control and secured its property.”²⁷

Beyond the thesis of class domination through law, Horkheimer here develops the thesis of discipline through law, one could say. For the poor, it means being controlled, being exploited, and still being obliged to serve. More obvious he points out the contradictions in the poor’s desire for law in another essay, where he writes that their longing for security follows a mode of racketeering. They buy security with conformity.²⁸ Brown’s analysis supports this view in that she writes about the two-sided effect of walling: to the outside it promises security, to the inside it fosters control.²⁹ Beyond the scope of Critical Theory that focused on class relations in first place, a similar structure can be found in relation to discrimination by race. However, in both relations of discrimination — class and race, as well as others — this notion of buying security is not

the only way. Abolitionist claims that have found more attention recently, not the least through the Black Lives Matter movement and the worldwide protests after the violent death of George Floyd, point in another direction: security, here, is not equated with state institutions, but the danger of those structures for some is highlighted.³⁰

The claim of security, thus, is vastly based on a narrative that can be presented in different ways. The strength of early critical theory is to see that on the same level as the economic analysis. A purely economic thesis would by far not grasp the whole complex. Rather an investigation of the political-psychological pitfalls of the security discourse has to be viewed. Leo Löwenthal and Norbert Guterman examine the rhetoric of demagogues that appears as protest while channeling the energies rather towards conserving the status quo than to its transformation. Key to this figure is the fact that feelings of being isolated, left behind or overwhelmed in the current situation are not analyzed but escapes in the form of tangible outlets are created. “Since this pseudo-protest never produces a genuine solution, it merely leads the audience to seek permanent relief from a permanent predicament by means of irrational outbursts.”³¹

Beyond a strictly economic reading of those instants, Löwenthal and Guterman take up a thesis developed by Horkheimer and Adorno in their *Dialectic of Enlightenment*. In their chapter on culture industry, they develop the argument that today’s society not only exploits the needs and affective energies of its subjects, but it directs them.³² In reference to the example that this text was introduced with, one could even say, the demagogues’ technique is to produce (or at least co-produce) the feelings — here: of insecurity — and this framing of the discourse then finds its way in the dominant narrative, when even government officials such as Seehofer take up the speech of an alleged “rule of injustice” that displays the channeling of vague fears and precarity towards a perceived external threat in the figure of the refugee that is even more depicted in the terminology of a natural catastrophe as their underlying narrative uses terms like that of an uncontrollable wave of refugees. That way, the problem of social insecurities is projected and externalized so that nothing in the existing society has to be changed, but the task rather seems to be to preserve the status quo by walling the states.

Now, mentioned critical movements point to the fact of insecurity of often invisibilized minorities in the rather hegemonous imaginations of Europe, that go along with experiences of violence through state institutions e.g. in forms of “racial profiling” and that pursue the causes of those insecurities in the colonial past.³³ Therefore, the vision

of “more security” in the sense of stricter police laws or enforced (or enlarged) border regimes is strongly challenged as an alleged solution towards the problems of insecurity. Of course, they are often invoking the law to fight for more equal rights and against forms of oppression; yet, they are conscious of the problematics and see law and rights as part of the regime that restricts their lives.

In the authoritarian movements, however, we can find a contrasting shift in how law and rights are addressed in the light of waning national sovereignty. As stated above, if authoritarian populists are talking about the rule of law, they rather mean sovereignty or control than individual rights. Pichl shows alongside current examples in Germany what this shift implies: While the “rule of law” was fought for by liberal movements to hold an efficient control of the state’s monopoly of violence, to ensure at least basic security for the weak, as Horkheimer had it, it now turns into a case of enforcing this monopoly of violence.³⁴ This can be observed in the field of migration politics when the imprisonment of refugees is justified with the argument that the rule of law dictates proper enforcement of deportations.³⁵

Again, this is not a discourse completely external to the liberal concepts. Although, as Pichl writes, the idea of defense-rights against the state, which is implied in the concept of the rule of law, is subverted, this development can be observed as evolving out of liberalism’s own terms, its grammar of rights. Adorno and Horkheimer relate this structure of rights and the understanding of equality within them back to their economic basis. As the universal law of exchange, present in capitalist societies, merges into what Dubiel called “cultural selfinterpretation,” moments of potential violence can be detected. Aspects of identification and exclusion as described in Brown’s book are at play here. Within the realm of what is recognized as the “own” community equality is granted, while those who are seen as outsiders or non-equals have to be excluded. As Adorno and Horkheimer frame it: “The horde (...)”, as they mark the exclusive community, that draws their identity from irrational myth, which is what Marcuse depicted for authoritarian movements, “is not a relapse into the old barbarism but the triumph of repressive égalité, the degeneration of the equality of rights into the wrong inflicted by equals.”³⁶

In his latest take on modern law, Christoph Menke subdivides two problematic features that lie in the given contradiction. What is special about modern law is, according to his account, that it provides a particular realization of equality: equality (in the form)

of rights.³⁷ Subjective rights, to him, are the core of modern law, that assigns it distinct from former legal ideas. Now, through subjective rights, the citizens or the addressees of those rights are authorized and at the same time set free; they are authorized to act according to their own will (in the limits of a given frame), and they are set free from justification.³⁸ That is what Marcuse already pointed to: ratio (and ethics) are privatized and thus depoliticized. In conclusion, Menke sees two forms of domination in or through law emerging from this depoliticization: On the one hand, there is, what Marx criticized, exploitation through formally equal rights in private law, where e.g. the employer and the employee sign a contract both out of free will, whereas the one has a choice to employ anyone, the other is depending on the income.³⁹ On the other hand, Menke demonstrates this in public law — not among the citizens but vertically between subject and state, where another form of domination is arising that he characterizes as normalization. Referring to Foucault, he shows that by being authorized in a distinct way, by being granted participatory rights, there is institutional domination as well.⁴⁰ In authoritarian populist movements, both strands are fortified in a certain way, as they strongly interpellate the state, claiming to be the voice of the people and thus authorized by and to sovereignty. On the other hand, as pointed out above, they do not touch the horizontal level of rights insofar as they grant the authorization to “equal” economic activity. What they attack is a universal account of equality by claiming the exclusive sovereign power to define who is seen as an equal for themselves. Circumventing the liberal claim of rational justification, they provide and promote mythical answers — naturalized categories — for the definition. Therefore, the struggle is translated into terms of the definition of the community, the identity, or as Dubiel puts it: the “cultural self-interpretation.”

This holds true first and foremost for the right-wing discourse and one has to differentiate. As various writers have pointed out, it would be of no use to just equate the current right-wing movements with conservative politics and even less to draw an unbroken parallel from today to rising fascism or nationalsocialism in the 1920s and 1930s.⁴¹ But beyond identifying what is different and has to be analyzed in its specific ways, this paper aims to show, how the right-wing discourse is normalized and entering the hegemonic discourse, so that effects are clearly reflected in the legal field. They succeed in constructing a certain framing of the discussion, as lately could be observed within the field of migration politics, where — especially from 2015 on — right-wing

parties and movements pretty successfully combined migration with a notion of threat.⁴² Furthermore, the whole discourse was spun around identitarian terms, so that they constructed a dichotomic narrative of “us” and “them,” depicting their xenophobia in the rhetoric of a defense of civilization, not the least of law and order. So, with their aggravation in the authoritarian discourse, one could say, both forms of legal domination are merged into a third one: exclusionary violence. The ideologies at play behind this will be addressed in the following.

4 Conclusion: Authoritarian (Neo-)Liberalism — Exclusionary Equality

Bringing together the arguments developed here, it can be seen that the discourse about migration triggers a rethinking of “cultural self-interpretation.” Seen from a historical perspective, (the discourse on) migration has played an outstanding role at various points in time, when it served as outlet for social tensions. Especially from 2015 onwards, we can observe a new prominent task of invocations of the dangerous migrant in the rise of authoritarian movements and parties. For the demagogues, this field is so appealing, as it can serve in their narrative to personalize the crisis, frame it as “refugee crises,” when they actually mean their crisis of control. It appears as the flipside of politics of liberalization in Europe e.g. with the construction of the Schengen area and the freedom of movement within its borders. Especially with the breakdown of the Dublin-System in 2015 that allocates migrants to the state they first entered, authoritarian movements saw a “dilemma of control” that they framed as a dilemma of security, as a threat to the irrationalistically defined community.⁴³ That is to say, the superstructure of current societies is drawn into a new dispute, a struggle for interpretation that is mostly detached from other relevant areas such as economic contradictions. This violent and exclusive discourse is not new and is not external to liberal or neoliberal concepts, but is evolving out of them. The argumentation should have shown that law and rights are not just a medium, a secondary or supplementary instance dealing with rising populism, but that, at least to some extent, it can be analyzed as one source of this emerging discourse. For instance, the rule of law, based on individual rights, is being reinterpreted as an instrument of law and order politics might sound structurally familiar from what Adorno and Horkheimer called the “Dialectic of Enlightenment,” where the aim of overcoming domination introduces new structures of repression.⁴⁴

The argument this paper presents is largely based on a discourse carried out by Critical Theorists in the face of emerging fascism in Germany in the first half of the 20th century. With Wendy Brown and other examples brought forth by Max Pichl, the relevance of those arguments today has been touched. Still, there is scope for further analysis, as the arguments developed by Marcuse and Horkheimer correspond to a certain social, political and economic situation that is not simply to equate with today's situation — first of all, as the importance of including the economic and political structures has been demonstrated. Therefore, we need to consider further that Fordism as prevalent mode of production has been superseded in the post-war era, as well as the current situation cannot be identified as an era of pure liberalism (if that ever existed) or of modes of state capitalism that Horkheimer and Marcuse saw arising. Hence, one must ask what this analysis can tell us for Post-Fordist neoliberal societies. On the other hand, ideologies have changed. The mythical, irrational foundation authoritarian movements base their theory on might show parallels to the spirit of earlier forms of authoritarianism, yet, there are elaborate concepts in the current discourse that offer forms of identification in particular ways, that have to be taken into consideration. All of this can only be sketched in reference to the ideas that are focused on here, so that this study can provide no more than some groundwork for another analysis to come.

If we look at the political situation, the main difference of course between the time of the analyses of Horkheimer and Marcuse and today is that there is a fragmentation of sovereignty, especially in the European Union, which this paper has explored. While “authoritarian liberalism,” a term coined by Hermann Heller, that signifies the twofold treatment of liberalism by authoritarian movements in the 1930s — blind towards economic liberalism, critical towards the liberal superstructure — by promoting an authoritarian state, directly catered the liberal-economic needs, today's authoritarianism appears at least partly as reaction to neoliberal rule. The neoliberal decrease of the welfare state and “the weakening of national, state-centered economic sovereignty”⁴⁵ seems to be what authoritarian movements want to respond to. Yet, the economic strand is just part of the construction of the problem, not of its solution, which is fantasized in a simple way back to the nation-state, disregarding the global economic entanglements that have evolved. In the post-war era and in some states even from the early 20th century onwards, there could be observed a development that might be signified by an increase in the politics of welfare state in many nations, that was subverted in the 1970s

and 1980s. While at first the status of the political was enhanced and it apparently gained control over the economic field, the neoliberal turn brought a decrease in the “state-centered organization of social life.”⁴⁶ Again, the feelings of atomization, precarization, or loss of control are, at least with some right, attributed to the neoliberal rule, as they were to liberalism in the 1930s. And although the economic situation got much more complex, the response seems to be the same: a turn back towards identification in the national community, an abstention from effective economic policies, and the demand for a strong state to foster the integration and social cohesion. So, instead of bridging the gap in the social analysis, and viewing the different dimensions together, the gap is rather intensified. A lack of material analysis and the disregard of economic and structural problems is ascribing even more weight to the cultural part or the struggle about self-definition.

On the ideological level, we can find this idea of re-nationalization in a particular way. Here some kind of re-culturalization of social conflicts can be observed that might be traced back to efforts of new right-wing movements to use the political-economic cracks that are broadening for a re-interpretation of the self-description of the society. Not the liberal, open values of society build the framework for identification here, but a narrative of the national community as a community by destiny. In their own self-description, these movements play with both, the liberal and the mythic parts of identification. They claim not to be racist or exclusionary but refer to “naturally” given situations where peoples have to be sovereign and to be this, they have to be steady. Peoples here are defined ethnically, not politically, and in their narrative, those movements describe themselves not as xenophobic, but as tolerant in the sense that they accept all peoples in their allegedly “natural” place. As Étienne Balibar puts it: “It is a racism whose dominant theme is not biological heredity, but the insurmountability of cultural differences, a racism which, at first sight, does not postulate the superiority of certain groups or peoples in relation to others but ‘only’ the harmfulness of abolishing frontiers.”⁴⁷ New right-wing movements coined a term for this pseudo-defensive form of racism that shows their contradictory relation to liberalism. Calling the aim of their theory “ethnopluralism,” they hide their racist views behind liberal terms such as tolerance or directly: pluralism.⁴⁸ Next to the concrete political-economic relations, a

closer look to those ideological conceptions would be necessary to stabilize the presented argumentation in their power to explain current developments in the reinterpretation of (neo-)liberal reason and its violent effects.

What can already be said, concluding from the developments analyzed here, is that re-emphasizing the political content of liberalism, the formal and rational aspects against the mythic narratives of populist movements might be valuable to condemn certain developments of rising violence and exclusion in the contradictory field of current political discourses. It might help to defend rights, even in their problematic form that fosters moments of domination as pointed out above. Adorno points towards this from his experience, when he says that anyone who

has had experience of what the world looks like when this element of formal equality is removed – from the legal system, let us say – in favor of specific substantive values that are asserted in an a priori fashion, he will know from his own experience, or at the very least from his own fear, just how much of humane value resides in this concept of the formal.⁴⁹

Yet, at the same time, a critique of liberalism that provides the base for these discourses to emerge is also necessary. Especially in the field of migration politics that triggered or at least gave a massive raise to the authoritarian movements, one can assess how a shift in the “cultural selfinterpretation” of the society is developed or how liberal concepts such as the rule of law are re-interpreted. Showing how this limitation to the effects of the ‘superstructure’ constructs scapegoats instead of analyzing the political-economic foundations of the social problems can be perceived as the task, a critical theory, as conceptualized by Horkheimer in the early 1930s, demands.

5_Different Claims of Insecurity

I am returning to what I started from: German real politics. After the violent death of George Floyd in a police operation in May 2020, a new wave of protests and abolitionist claims developed not only in the US but worldwide. As well in Germany the discussion about “racial profiling” and police violence gained new strength, claiming that marginalized groups and especially People of Color face insecurity that cannot be remedied by more police or stricter laws, but that points towards structures making those institutions part of the problem. After activists and even prominent figures in the governing parties and in government — like the Minister of Justice, Christine Lambrecht — promoted the idea of carrying out a study about the problem of “racial profiling,”

said Minister of the Interior, Horst Seehofer claimed that a study like this would not be necessary.⁵⁰

Summing up: This paper does not argue that Seehofer is part of the extreme right-wing new authoritarians that promote concepts such as “ethnopluralism” and it is far from aiming at identifying the current resurge of authoritarianism with German fascism in the 1930s. But, as laid out, it seeks to keep track of the role that law and liberal arguments play in the stabilization of authoritarian claims and vice versa, how those claims find legal expression. Paramount to those trajectories in the social and legal structure are moments of the “cultural selfinterpretation” that Dubiel described referring to Marcuse. And there, one can see how the right-wing advances find their way into the dominant discourse, which role migration politics play in the narrative and in the material legal procedures, the production of the “other” and a channeling of discontent into ways that reproduce and not challenge the status quo. The diverging treatment — appraisal of some “perceptions of insecurity,” while there is a demotion of others — has to be regarded in relation to the inner contradictions of liberalism set out above. Where they do provide a basis for stabilizing the status quo and strengthening the institutions — project sovereignty — they are taken serious. Where they call for fundamental change, they are privatized as singular concerns that are not even worth researching. The reflections in this paper might indicate why and how this imbalance in the weighing of insecurities is structurally bound to the (neo-)liberal discourse.

Appearing as a critique of neoliberalism, the right-wing discourse basically is limited to shifting the perspective. While insecurities produced by cutting back social welfare politics, by privatizing structures and by defending the latter with an ever growing security sector, the pseudo-rebellion unveils itself as being part of the neo-liberal agenda. At least it takes part in its stabilization by fighting some (selected) symptoms and not the causes by prioritizing security. In an analogy, Löwenthal and Guterman invoke the picture of a skin eruption: while a doctor would try to find its causes, the first intention might be to scratch the skin, which would even further irritate the wound and stabilize the problem. For today’s demagogues the same would be true as what Löwenthal and Guterman diagnosed for their time: “The agitator says: keep scratching.”⁵¹

Endnotes

- ¹ Anna Sauerbrey, “Erst die Angst herbeireden, dann sie beklagen,” in *Tagesspiegel*, April 3, 2019, accessed July 7, 2020, <<https://www.tagesspiegel.de/politik/der-doppelte-seehofer-erst-die-angst-herbeireden-dann-sie-beklagen/24173516.html>>.
- ² Christoph Birkel et al., eds., “First Findings of the German Victimisation Survey 2017,” (2018), 39-56. Accessible at the homepage of the German Bundeskriminalamt (Federal Criminal Police Office), <<https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/Publikationsreihen/Forschungsergebnisse/2019ersteErgebnisseDVS2017EN.html>>.
- ³ CSU stands for *Christlich-Soziale Union*, which translates to *Christian-Social Union*, and is the conservative party of the federal state of Bavaria. Unlike all other federal states in Germany, there is no section of the CDU, the *Christian-Democratic Union* in Bavaria, which is the party of the German Chancellor, Angela Merkel. Yet, CDU and CSU have agreed on a steady cooperation, so that they will work together on the national level and are part of the same parliamentary group in the German Parliament.
- ⁴ Seehofer in an Interview in *Passauer Neue Presse*, see: “Seehofer unterstellt Merkel ‘Herrschaft des Unrechts,’” accessed July 7, 2020, <https://www.pnp.de/nachrichten/bayern/1958889_Seehofer-unterstellt-Merkel-Herrschaft-des-Unrechts.html> (my translation). In German, Seehofer said: “Es ist eine Herrschaft des Unrechts;” which alludes to totalitarian regimes.
- ⁵ Amongst other initiatives, the ministry reintroduced border controls between Germany and Austria and lately sketched an attempt to detain refugees or migrants, who are facing deportation in regular prisons, in order to organize “ordered returns,” as the initiative is titled “Geordnete-Rückkehr-Gesetz” / “ordered-return-law.”
- ⁶ Zygmunt Bauman, *Wasted Lives. Modernity and its Outcasts* (Cambridge: Polity Press, 2004), 8.
- ⁷ Cf. Daniel Keil, “Identitätsfragen: Nationale und europäische Identität in der Krise,” in *Staatsprojekt Europa: eine staatsrechtliche Perspektive auf die Europäische Union*, eds. Daniel Keil and Jens Wissel (Baden-Baden: Nomos, 2019), 183–204, here: 188-189.
- ⁸ Wendy Brown, *Walled States, Waning Sovereignty* (New York: Zone Books, 2010), 26.
- ⁹ Brown, *Walled states*, 26.
- ¹⁰ Cf. Max Pichl, “Die Fiktion der Souveränität in Transitzentren – Was ist eigentlich mit der Orbánisierung Europas gemeint?,” accessed July 7, 2020, <<https://verfassungsblog.de/die-fiktion-der-souveraenitaet-in-transitzentren-was-ist-eigentlich-mit-der-orbanisierung-europas-gemeint/>>.

One should note, however, that those constructions are not only legal constructs, but that they are as well challenged in the legal and political realm. Just recently, the European Court of Justice declared part of the transit zone practice illegal and Hungary had to change the structures. Cf. Judgement of May 14, 2020, Joint Cases C-924/19 PPU und C-925/19 PPU, ECLI:EU:C:2020:367. Furthermore, it should be added that “European approaches,” in the sense of transnational concepts of migration management might transcend the national framework e.g. in aiming at a distribution of asylum-seekers, are no less depending on the idea of reducing migration and enforcing border regimes. They only do so on a different level, as they are promoting a European border regime. Cf.

- David Niebauer, “(Un-)Ordnungen der Kontrolle: Politische Auseinandersetzungen um das Asylsystem der Europäischen Union nach der Krise des Grenzregimes 2015,” in *Geographien der Grenzen: Räume – Grenzen – Hybriditäten*, eds. Florian Weber et al. (Wiesbaden: Springer, 2020), 225–245, here: 239.
- ¹¹ Cf. Sven Chojnacki and Lisa Paping, “Migration im Spannungsfeld von Raumwandel, Kontrolle und Gewalt: Herausforderungen für eine kritische Friedensforschung,” in *Sicherheit und Frieden* 34.1 (2016), 20–28, here: 24 (my translation).
- ¹² Brown, *Walled states*, 22.
- ¹³ Pichl, *Fiktion*.
- ¹⁴ Helmut Dubiel, *Theory and Politics: Studies in the Development of Critical Theory* (Cambridge/London: MIT Press, 1985), 22.
- ¹⁵ Cf. Herbert Marcuse, “The struggle against liberalism in the totalitarian view of the state,” in *Negations: Essays in Critical Theory*, Herbert Marcuse (London: Mayflybooks, 2009), 1–30, here: 3.
- ¹⁶ Cf. Marcuse, *Liberalism*, 6.
- ¹⁷ Cf. Thesis III in the *Elements of Anti-Semitism*, Cf. Theodor W. Adorno and Max Horkheimer, *Dialectic of Enlightenment* (Stanford: Stanford University Press, 2002), 141–144.
- ¹⁸ Those terms are used instrumentally here, in the consciousness that they are reducing the complexity of the interrelation of different spheres such as law, politics, culture, psyche, and economy. It was a great effort of Critical Theory to overcome those ideas of a direct deduction of culture, consciousness and politics from the ‘economic base’ and to take those so-called phenomena of superstructure more serious.
- ¹⁹ Cf. Keil, *Identitätsfragen*, 191.
- ²⁰ Marcuse, *Liberalism*, 25.
- ²¹ Brown quotes: “Vote Leave! Take Control!” which is the slogan of the Campaign. In the section “Why Vote Leave?” on their website, they specify: “Vote Leave, take back control”. The word ‘back’, here points to the idea of the thread of transnational control that could easily be re-transformed to national control. See http://www.voteleavetakecontrol.org/why_vote_leave.html.
- ²² Cf. Chojnacki and Paping, *Spannungsfeld*, 24.
- ²³ See for example: “Report to the Nation: Hate Crimes Rise in U.S. Cities and Counties in Time of Division and Foreign Interference,” Center for the Study of Hate and Extremism, California State University, accessed July 7, 2020, <https://www.csusb.edu/sites/default/files/2018%20Hate%20Final%20Report%205-14.pdf>; Christian Davies, “‘Everything changed in 2016’: Poles in UK since Brexit,” in *The Guardian Online*, January 27, 2019, accessed July 7, 2020, <https://www.theguardian.com/politics/2019/jan/27/everything-changed-in-2016-poles-in-uk-struggle-with-brexit>.
- ²⁴ In the very roots of liberal thought e.g. in the Lockean sense, it was to a big part law that played the constitutive role for a free society in the double sense that on the one hand it provided a ‘neutral’ pattern of social cohesion in leaving great arbitrariness to the individuals but still guaranteeing social compatibility and on the other hand it aimed at granting security from arbitrary state-rule to the individuals and thus installing defense rights against the state and drawing on rational government. Cf. John Locke, *Two treatises of government* (Cambridge: Cambridge University Press, 2005).
- ²⁵ Marcuse, *Liberalism*, 12.
- ²⁶ Max Horkheimer, “Authoritarian State,” in *The Essential Frankfurt School Reader*, eds. Andrew Arato and Eike Gebhardt (New York: Continuum, 1982), 95–117, here: 104.

- 27 Horkheimer, *Authoritarian State*, 105.
- 28 Max Horkheimer, “Der Geist und die Rackets,” in *Gesammelte Schriften*. Vol. 12, *Max Horkheimer*, (Frankfurt: Fischer, 1985), 287-291.
- 29 Cf. Brown, *Walled states*, 25.
- 30 Cf. Paul Gilroy, “In Conversation with Ruth Wilson Gilmore”, Sarah Parker Remond Centre, June 7, 2020, accessed July 7, 2020, <<https://www.ucl.ac.uk/racism-racialisation/transcript-conversation-ruth-wilson-gilmore>>.
- 31 Leo Löwenthal and Norbert Guterman, *Prophets of Deceit: A Study of the Technique of the American Agitator* (New York: Harper and Brothers, 1949), 15.
- 32 Philipp Lenhard, “Zur Aktualität der Demagogiestudien von Leo Löwenthal und Norbert Guterman,” in *Autoritarismus: Kritische Theorie und psychanalytische Praxis*, eds. Oliver Decker and Christoph Türcke (Gießen: Psychosozial-Verlag, 2019), 91–111, here: 92.
- Here should be mentioned that a purely economic analysis would fall short of explanatory force – even for its own field of explanation. The economic interest of dominant actors in the field might be better secured by liberal politics and stable institutions than by authoritarian pseudo-rebellion. However, this cannot easily be drawn apart. It is by the promotion of authoritarian politics that (economic) liberalism tries to conserve itself in times of crisis, as Marcuse points to when quoting a letter by Gentile to Mussolini. Here Gentile writes: “As a liberal by deepest conviction, I could not help being convinced (...) that liberalism as I understand it, the liberalism of freedom through law and therefore through a strong state, through the state as ethical reality, is represented in Italy today not by the liberals, who are more or less openly your opponents, but to the contrary by you yourself.” (quoted after Marcuse, *Liberalism*, 6-7) The shortcoming of purely economic analyses in this field becomes even more obvious in regard to antisemitism, where not just an “other” is constructed, but the “absolute other,” that serves as channel for destructive energies and projects social problems to the demonized other.
- 33 Fatima El-Tayeb, “‘The Birth of a European Public’: Migration, Postnationality, and Race in the Uniting of Europe,” in *American Quarterly* 60.3 (2008), 649-670.
- 34 Cf. Max Pichl, “Gefährliche Rede vom ‚Rechtsstaat‘,” *Legal Tribune Online*, February 27, 2019, accessed on May 27, 2019, <<https://www.lto.de/recht/justiz/j/rechtsstaat-sicherheit-gewaltmonopol-polizei-begriff-bedeutung/>>.
- 35 „Geordnete-Rückkehr-Gesetz tritt heute in Kraft,” Press release of the Federal Ministry of the Interior, August 21, 2019, Online. Accessed July 7, 2020, <<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2019/08/geg-geordnete-rueckkehr-gesetz.html>>.
- 36 Adorno and Horkheimer, *Dialectic of Enlightenment*, 9.
- 37 Cf. Christoph Menke, *Kritik der Rechte* (Berlin: Suhrkamp, 2015), 7.
- 38 Cf. Menke, *Kritik der Rechte*, 177–225.
- 39 Cf. Menke, *Kritik der Rechte* 272-281, see also Oskar Negt, „10 Thesen zur marxistischen Rechtstheorie,” in *Probleme der marxistischen Rechtstheorie*, ed. Hubert Rottleuthner, (Frankfurt am Main: Suhrkamp, 1975), 10–71, here: 46-54; Karl Marx, “Capital, Volume I”, in *Collected Works*, Vol. 35, Karl Marx and Frederick Engels, (London: Lawrence and Wishart Ltd, 1996), 95; as well as: Karl Marx, “Capital, Volume III,” in *Collected Works*, Vol. 37, Karl Marx and Frederick Engels (London: Lawrence and Wishart Ltd., 1998), 337-338.
- 40 Cf. Menke, *Kritik der Rechte*, 290-291; Michel Foucault, *History of Sexuality, Volume I: An Introduction* (New York: Pantheon Books, 1978), 133–159.

- 41 Cf. Jan Gerber, “The End of the World as we know it: Populismus, Faschismus und historische Erfahrung,” in *Konformistische Rebellen: Zur Aktualität des autoritären Charakters*, Katrin Henkelmann et al., eds. (Berlin: Verbrecher Verlag, 2020), 231–248.
- 42 Cf. Keil, *Identitätsfragen*, 198.
- 43 Cf. Niebauer, *(Un-)Ordnungen*, 229 (my translation).
- 44 Cf. Adorno and Horkheimer, *Dialectic of Enlightenment*.
- 45 Moishe Postone, “Theorizing the contemporary world: Robert Brenner, Giovanni Arrighi, David Harvey,” in *Political Economy and Global Capitalism: The 21st Century, Present and Future*, eds. Robert Albritton, Bob Jessop and Richard Westra (London/ New York/ Delhi: Anthem Press, 2010), 7.
- 46 Postone, *Contemporary world*. 8.
- 47 Étienne Balibar, “Is there a ‘Neo-Racism’?,” in *Race, Nation, Class: Ambiguous Identities*, Étienne Balibar and Immanuel Wallerstein (London/ New York: Verso, 1991), 17–28, here: 21.
- 48 Judith Goetz and Alexander Winkler, “‘Identitäre Grenzziehungen’: Bedeutung und Funktion von Identitätsangeboten im modernisierten Rechtsextremismus (am Beispiel der Identitären),” in *Psychologie & Gesellschaftskritik* 41.3/4 (2017), 63-86, here: 70-71.
- 49 Theodor W. Adorno, *History and Freedom: Lectures 1964-1965* (Cambridge: Polity Press, 2006), 253.
- 50 Hannes Leitlin, “Bundesinnenministerium sagt Studie zu Rassismus bei der Polizei ab,” in *Die Zeit*, July 4, 2020, accessed July 7, 2020 <<https://www.zeit.de/gesellschaft/zeitgeschehen/2020-07/racial-profiling-studie-polizei-abgesagt-justizministerium-horst-seehofer>>.
- 51 Löwenthal and Guterman, *Prophets*, 16.