

Law, morality and the *Rechtsstaat* in post-war West Germany

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The paper:

The paper explores the key components of the political project of post-war West Germany and the role of the *Rechtsstaat* within it. It argues that the post-war German state developed a specific reading of the rule of law as an order based on supra-legal values, which had to be defended even against democratic government. Contrary to common conception and the self-understanding of post-war legal theorists this did not signify a departure from the constitutional theory of the Weimar period. Rather, this paper argues, the decisive innovations in constitutional thought stem from the legal and theoretical challenges the Weimar state faced in its own time. As such the German *Rechtsstaat*, which is so strongly associated with the renewal of German democracy, carries with it a tradition of legal thought, which systematically and successfully expanded the reach of the judiciary within the political system to the detriment of the legislative and democratic action.