

# Leading German newspaper's conference hears call for dismantling democracy

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In view of the global financial crisis, democratic decision-making processes have become too inefficient and time consuming; therefore, some areas of policy-making should perhaps be considered “exempt from democracy”.

This was the view urged by Cologne's professor of constitutional law and legal philosophy, Otto Depenheuer, at a “change of course conference” that was organised by the *Frankfurter Allgemeine Zeitung* (FAZ) newspaper in Berlin three weeks ago. The conference was titled “Capitalism and Democracy in Crisis”.

According to a report by Reinhard Müller in the November 20 edition of FAZ, Depenheuer pithily summarised his appeal by perverting Willy Brandt's election slogan of 1969, “Dare more democracy”, into its opposite, “Dare less democracy”.

Depenheuer has propagated extremely right-wing, anti-democratic views on contemporary political issues for years. Unfortunately, the brief FAZ report fails to provide any more details about the professor's remarks. But his publications over recent years show what he means by “exempt from democracy”.

In 2007, Depenheuer published a book titled *Self-assertion of the Rule of Law* that appeared as part of the series “On Law and the State”, published by Schöningh academic publishers. In his book, Depenheuer draws explicitly on the political and legal conceptions of Professor Carl Schmitt, who had sympathized with the Nazis 80 years ago. From his position as “crown jurist”, Schmitt drafted a legal justification of the Nazi dictatorship in a form easily digestible for the academic bourgeoisie.

Like Schmitt, Depenheuer decidedly rejects the concept of the state proposed in the era of the Enlightenment and rationalism, claiming it was based far too rigidly on individual rights. According to Depenheuer, the relationship between citizen and state is not determined by fundamental rights, but by fundamental obligations of the individual vis à vis the state. The state and the order guaranteed by its power after all constituted the basic existential pre-requisite of all individuals. Whoever refused to recognise and, instead,

opposed this state and its legal system was an “enemy hors de la loi” (an outlaw).

On the basis of such a theory of the state, Depenheuer argues (p. 63ff.), in Germany an institution Guantanamo for the preventive detention of “enemies” could be justified as well. Depenheuer merely conceded that—in contrast to the US procedures—courts should decide about the enemy status and the disenfranchisement associated with before detainees are incarcerated there.

In Depenheuer's view, the state in the course of its own self-defence even has the right to order loyal citizens to sacrifice their lives. Such a self-sacrifice belongs to the duties of a citizen during any state of emergency or “serious situation” prescribed and declared by the sovereign state.

Based on this argument, Depenheuer used his book to attack the Federal Supreme Court's ruling of February 15, 2006. The Karlsruhe court had declared unconstitutional certain sections of the “law on air safety”, adopted by the Social Democratic Party-Green coalition. These passages allowed and regulated the Federal Army's shooting down of a civilian airplane and thus the killing of civilians in cases of an actual or perceived terrorist attack.

The court based its decision on the overriding principle of respect for the human dignity of the innocent and defenceless passengers and their right to life. Opposing this, Depenheuer contends that the ultimate dignity of human beings resides in their readiness to sacrifice their lives for the sake of the state community. He argues that innocent passengers in the hands of terrorists would be deprived of this last remaining dignity by the Supreme Court, namely “the right to sacrifice themselves for the community”, or to allow themselves to be sacrificed.

“In the society of recent decades, addicted to a hedonistic, multi-cultural, fun- and thrill-seeking attitude towards life”, Depenheuer wrote, “basic state political categories” such as “state power as the basis of order”, “the citizen's basic duty to make sacrifices”, “sacrifice of one's own life”, “enemy” and “substantive enemy law” had been suppressed and forgotten.

He complained that constitutional doctrine and the courts had ignored, tabooed or “disposed of” these categories. By refusing to work with such notions, they had developed a kind of “constitutional autism”. In view of “the danger posed by Islamic fundamentalism” in today’s “era of terrorism”, these taboos would have to be broken.

Following the publication of Depenheuer’s book, Former Interior Minister and current Finance Minister Wolfgang Schäuble recommended it as an inspiration in the “fight against Islamic terrorism” and confessed that it belonged to his bedtime reading.

The fact that the FAZ offered its meeting to Depenheuer as a stage for the propagation of his ideas is a sure indication that this recommendation did not fall on deaf ears in circles of the political elite, opinion leaders and government consultants.

Invitations to the meeting were organised by Günther Nonnenmacher, one of the publishers of the *Frankfurter Allgemeine Zeitung*, Andreas Rödder, a history professor from Mainz and constitutional expert and former Federal Judge at the Constitutional Court, Udo di Fabio from Cologne. Among the participants were leading politicians, banking and industrial managers, media representatives and academics.

The report in the FAZ makes no mention of any great protest or indignation in response to Depenheuer’s presentation. Placing restrictions on democracy was obviously considered a subject “open for discourse” and a legitimate political option. The brief report on the response of other conference participants, quoted in the FAZ article, suggests that their views could well be in line with Depenheuer’s concepts or, at least, not in irreconcilable contradiction to them.

Even Werner Plumpe, history professor in Frankfurt on Main and chairman of the Association of German Historians, apparently saw no reason to pose any vigorous opposition to Depenheuer’s views.

Plumpe could have recalled the lessons of the tragic history of Germany at the end of the Weimar Republic when not only Carl Schmitt, but large sections of the academic middle class followed similar anti-democratic concepts and on that basis either openly supported the Nazi regime or cravenly bowed down to it.

Instead, Plumpe located the causes of German and European public debt in the social policies pursued since the late 1960s—and not in the enrichment of the financial aristocracy and the plundering of state coffers through the lowering of corporate and estate taxation. According to Plumpe, the incurring of ever more debt was never seen as a problem, but was unscrupulously used to finance social reforms.

Plumpe argues in a similar vein in his book *Crises—Past and Present*, published in the spring of this year. There he writes: “The Greeks have simply been living beyond their means”. This sounds similar to the reactionary critique of Depenheuer who sees the root of all evil in “the attitude and lifestyles of the self-indulgent, hedonistic, fun-seeking society drunken with prosperity”. According to the professor of constitutional law, this is where the axe should be applied to secure the necessary “change of course”.

Ex-Federal Environment Minister Norbert Röttgen (Christian Democratic Union) revealed the cynicism with which Germany’s political elite is again ready to summarily jettison democratic rights when they become a hindrance to the government. Questioned on whether, “climate change policy (was) an issue requiring decisions taken by a majority”, he replied: “That depends on how the majority decides”.

Hans-Werner Sinn, chairman of the Munich-based Ifo (Institute for Economic Research), also spoke at the FAZ conference. Sinn is known for his nationalist criticism of the German government’s Europe policy and his resolute rejection of any support for other European states.

The authoritarian response to “the crisis of capitalism and democracy” presented at the FAZ-conference failed to provoke any subsequent protests or detailed commentaries, not even in the FAZ itself. Some 80 years after Hitler’s assumption of power in Germany, the audacity with which the establishment of authoritarian forms of rule is again debated and advocated encounters no opposition from the media, government advisors or decision makers in the business world, political circles or universities.

In view of the deepening global financial crisis and recession, these affluent layers are determined to defend their wealth and their profit system by enforcing a radical “change of course”, i.e., by eradicating the social and democratic reforms and concessions, won by the working class through centuries of struggle. Only a dictatorship engaged in wide scale repression is able to fulfill such a reactionary agenda.



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