



By: Jan-Werner Mueller

Has US-style culture-war politics come to Germany?



Something just broke in Germany. A highly respected jurist whom the governing Social Democratic Party (SPD) nominated to sit on the country's constitutional court has **withdrawn** herself from consideration after a relentless smear campaign by right-wing journalists and politicians.

Worse, it was the SPD's own coalition partner, the center-right Christian Democratic Union (CDU), that suddenly shifted from supporting Frauke Brosius-Gersdorf's candidacy to deeming her unacceptable.

This sabotage of a hitherto consensual procedure is a test run for bringing US-style culture-war politics to Germany.

The goal is to peel away ever more members of the center right that former Chancellor Angela Merkel once led, and to move toward the arrangement that already was put in place in some other European democracies: an alliance of the center right and the populist far right.

True, Germany's constitutional court, though one of the world's most respected and influential, has not always been above controversy.

In the mid-1990s, it drew conservatives' ire when it **ruled** that Bavarian non-denominational schools may not display crucifixes on their walls.

But the process of appointing judges has always been spared from the spectacle that is all too familiar from the United States.

Rather than holding highly publicized, televised, and reliably polarizing hearings, parties meet behind closed doors to propose a balanced ticket of nominees, each of whom then must win super-majority support in the lower house.

The AfD has been demanding its "own judge"

As with so much else in European politics, this

process has been complicated by the success of far-right populists.

The Alternative for Germany (AfD), now the second-largest group in parliament, has been demanding its "own judge," objecting to the fact that smaller German parties – the pro-market Free Democrats and the Greens – hold the right to nominate members of the court.

In one federal state, Thuringia, where the AfD won the last elections, the party has effectively **blocked** the appointment of new judges as a protest against what it sees as its unjustified exclusion.

Brosius-Gersdorf faced a wider campaign of criticism

But it was not primarily the far right that brought down Brosius-Gersdorf.

Rather, she faced a wider campaign of criticism that sought to paint her as a left-wing radical who supposedly wants to liberalize abortion completely and introduce mandatory COVID-19 vaccinations.

Not only did a fellow law professor alter her Wikipedia entry to make her look like an "activist," but the archbishop of Bamberg attacked her in a sermon – only to admit, after a personal conversation with the candidate, that he had been "misinformed."

The populist talking point

Germany has never had the equivalent of Fox News (whereas France now has **CNews**, one of whose leading journalists even stood as a prominent candidate for the French presidency in 2022).

However, relatively small far-right startups – claiming to be "the voice of the majority" – have increasingly gained influence within the CDU.

One CDU member recently declared, in effect, that anyone not subscribing to natural-law

doctrines cannot serve as a judge.

Suddenly, the supposed mainstream is echoing the populist talking point that courts should primarily “represent the people” (as opposed to upholding the constitution).

The CDU has been in an intellectual crisis for some time. Hardly anyone can today **articulate** the party’s core principles.

True, like the Conservatives in the United Kingdom, German Christian Democrats long prided themselves on their pragmatism, cultivating an image as the competent default party of government.

Natural-law thinking was prominent among Christian Democrats in the postwar period

Moreover, natural-law thinking was indeed **prominent** among Christian Democrats in the postwar period.

But precisely because they were interested in power, Christian Democrats – like British Tories – carefully adapted to a changing society.

The ironic result is that they are now maligning as “radical” a jurist who actually does seem to represent “the people” – insofar as she generally holds views that command majority support.

Christian Democrats traditionally pursued a political strategy of seeking to **mediate** among different groups and interests, pursuing what Catholic social doctrine had long held out as a vision of social harmony.

In this sense, Merkel – always eager to balance and compromise – was still practicing the traditional model.

Polarization entrepreneurs

But today’s right-wing culture **warriors** are

polarization entrepreneurs.

Often armed with disinformation, they seek to sharpen conflicts and divide constituencies into friends and enemies, and this has led them to target the center right’s weak point.

Feeling pressure from the far right, Christian Democrats think they must prove to their constituencies that they are still genuinely conservative – unlike the supposedly über-liberal Merkel, who eventually even went along with **reforms** like same-sex marriage.



Despite CDU leaders’ claims to be democracy’s last defense against the rising far right, the party is falling into the culture-war traps the far right has set for them – Friedrich Merz

While the archbishop of Bamberg was willing to speak with the nominee directly, CDU members of parliament apparently refused to do so.

Such behavior represents a stark deviation from the culture of compromise and moderation that has **prevented** the US-style politicization of Germany’s highest court.

The CDU’s norm-breaking is analogous to US Republicans’ refusal even to consider Barack Obama’s Supreme Court nominee in 2016.

Despite CDU leaders’ claims to be democracy’s last defense against the rising far right, the party is falling into the culture-war traps the far right has set for them.

It is not inevitable that the last major country with a firewall to contain the far right **will** go the way so many other European democracies

have gone already. But that scenario is becoming more realistic.

Jan-Werner Mueller is a Professor of Politics at Princeton University.