

**ABSTRACT: KEYNOTE ADDRESS BY PROF. DR. ANDREAS WIRSCHING,
DIRECTOR OF THE LEIBNIZ INSTITUTE FOR CONTEMPORARY HISTORY,
MUNICH, ON (TRANS)NATIONAL NARRATIVES OF INJUSTICE**

German and European history of the 20th century have been shaped significantly by the experience of the loss of justice, which is deeply rooted in the collective memory. The constitution and the German legal culture have underlined both the importance and fragility of the rule of law. But their political and social acceptance is not a given – the rule of law must prove its worth and its practice must be put to the test again and again. The voices of the victims of past injustice can still be heard today while destructive tendencies are on the rise again in German and Europe.

The 1943 manifesto **“The Principles of Reorganization”** by the **Kreisau Circle** resistance group in Nazi Germany is an impressive document that testifies to what happens when law disappears. Fundamental rights, due process, the independence of the judiciary, law-shaped jurisdiction – all these principles were trampled under the Nazi dictatorship and perverted into a rogue state. The second German dictatorship, the GDR, also failed to restore the principles postulated by the Kreisau Circle but forced a communist system upon the people. After the collapse of communism, for a moment, it seemed as if a new, stable, liberal world and peace order based on democracy, human rights and the rule of law could prevail. The **1990 Charter of Paris** and the **1993 Copenhagen Criteria** bear witness to the optimism of that time.

The history of the rule of law does not follow a linear, progressive development. The history of democracy and the rule of law is time and again a “trouble generator story”: A constructive approach to problem-solving often brings about new problems and conflicts that await political and legal settlement. Law and the rule of law are historically susceptible to change. They are subject to the influences of their time. A current **example** is the recent decision of the German Federal Constitutional Court on the **Climate Change Act**. Such verdict would have been unimaginable ten years ago.

The enforcement of universal human right does not only fail because of the lack of sufficient means of power but also because of cultural differences or inherent contradictions, as shown by history and illustrated by the dilemma of law regarding the refugee boat crisis in the Mediterranean Sea, a scandalous and intolerable situation, unworthy of a civilized Europe, so the vast majority agrees. **But does the law give us the necessary means to act?** Which law applies around the Italian coast – general human rights, national Italian law, international maritime law, European law? Even if we were to agree upon one legal title, **how can the European states deal with political divergences, problems, and antinomies? Likewise, how can Europe – as a peace power – participate in humanitarian intervention?**

How should we approach the rule of law when shaping the profile of the “Forum Recht”?

It would be misleading to present the rule of law as a mere story of progress, and it is easy to fall into the trap of teleology, which seeks to measure history by the standards of the present. Perversions and the loss of law in dictatorship must be clearly named. Law and the rule of law must be put on display as something worthy of preservation and protection for a functioning democracy – they are co-dependent and indispensable for a liberal, pluralistic society.

We need to show how hard it is to restore the rule of law after it has been lost and to bring to people’s awareness how many millionfold victims this has already cost in the past and is costing again today. We should refrain from simple answers: While pointing out the dichotomy of unconstitutional states vs. the rule of law and making it tangible by teaching about the experience of injustice, we must not forget to enhance the ambivalences and contradictions of a law-conform legal practice on a national, trans- and international level.

Questions for discussion: Do we expect too much of the law in our complex and highly individualized society today? Do political decisions call for juridification all too soon, thereby causing new tension and dysfunctions between individual rights and public interest?