

# When Björn Höcke Consults His People

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A new state parliament will be elected in Thuringia on 1 September 2024, possibly earlier. In the polls, the AfD, led by right-wing extremist Björn Höcke, has been stable in first place for months. Around a third of Thuringians would currently vote AfD.

An AfD with a third or more of the seats in the state parliament could block all decisions that require a two-thirds majority. This includes constitutional amendments in particular. If the upcoming elections fulfil what the polls promise, this would mean that the Thuringian state constitution can no longer be amended without the consent of the AfD.

It is still possible, at least mathematically, to prepare the state constitution for the stormy times ahead. The democratic parties in the Thuringian state parliament can still decide to patch at least some of the most gaping holes – including the regulation on the election of the Prime Minister, which continues to be fatally ambiguous as to whether and how a candidate without a majority in the state parliament can be elected to head a minority government.

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In this case, the constitution stipulates that the person who receives „the most votes“ in the third round of voting is elected Prime Minister. If incumbent Bodo Ramelow (Left) runs unopposed in the third round of voting, he will probably receive more „no“ votes and abstentions than „yes“ votes. Will he then have received „the most votes“? The answer to this question will have to be given by the newly elected president of the state parliament, who will determine the result of the election. According to the rules of procedure of the state parliament, the right to nominate candidates for this key position lies with the strongest parliamentary group. As things stand at present, this is the AfD.

The state constitution is ambiguous. So far, the coalition parties and the CDU have not succeeded in agreeing on a wording that clarifies the constitution on this issue, which is essential for democracy in Thuringia. More important than the question of what is agreed upon is that an agreement is reached at all. Otherwise, there is likely to be a lengthy, risky and controversial trial before the state constitutional court. The constitutional crisis that occurs in the meantime will feed the AfD's narrative that democracy is not working in Thuringia and that the „old parties“ are not getting anything done, not even forming a government.

Both possible readings of the state constitution have their pros and cons, but both are better than the current state of limbo. The [President of the Thuringian Constitutional Court, Klaus von der Weiden](#), recently emphasised this in no uncertain terms. In the current situation, it is not primarily a matter of gaining constitutional ground for the respective policy preferences, but of averting damage to democracy. All parties that distinguish themselves as „democratic“ must be able to agree on this.

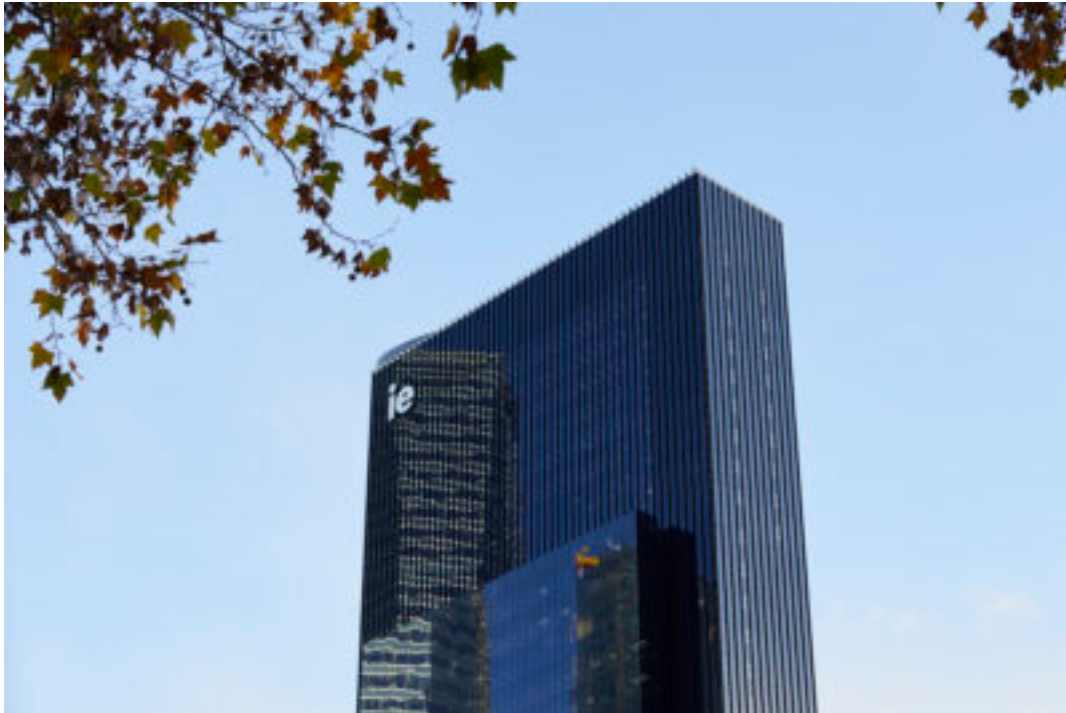
## Fixing the „will of the people“

A majority to amend the constitution is also necessary to close another loophole that has hardly been discussed to date: the possibility of introducing and organising popular consultations.

The Thuringian constitution provides for the people to realise their will through the election of the state parliament and through legislation by means of *Volksbegehren* (popular legislative initiative) and *Volksentscheid* (the ensuing referendum). Both are procedures of direct democracy: they are a means for the people to make their voices heard and exert influence on the government.

Popular consultations, on the other hand, have nothing to do with direct democracy at all. They are a tool of the government, not of the people. They are a tool in the hands of the government to bypass democratic institutions and procedures in order to create the appearance of greater legitimacy for its intentions and actions. Precisely because they are not legally binding and therefore do not oblige to anything concrete, the government can interpret the result as it sees fit. They are extremely susceptible to abuse and manipulation. And that is precisely why they are the dream of every authoritarian populist government.

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The master of using this tool is Viktor Orbán, the Hungarian Prime Minister. Hungarians are pelted with „national consultations“ every few months or so, with highly suggestive questions from the government. [For example](#): „Do You agree with the Hungarian government that instead of immigration, it is necessary to support Hungarian families and children to be born?“ With this kind of instrument, the government can delegitimise any constitutional or democratic resistance it encounters with its policies. Anyone who disagrees – be it the EU, the Constitutional Court or political opponents – is opposing the „will of the people“ – a popular will that the government itself can create and shape according to its own ideas. Authoritarian populism in its purest form.

The AfD has long recognised how attractive such an instrument would be for its policies should it one day come to power. In March 2023, the AfD parliamentary group in the *Bundestag* called for an amendment to the federal constitution. According to their [motion](#), Article 62a should be included in the constitution, authorising the federal government to „submit issues to the people to determine the will of the people“.

At state level, in Thuringia, it could take the position that a constitutional amendment is not even necessary – in other words, popular consultations could be introduced with a simple majority. For one thing, the state constitution, unlike the federal one, expressly provides for direct participation rights for citizens between elections. Although the constitution does not explicitly mention popular consultations, it does not rule them out either. And secondly: Who would want to deny Prime Minister Björn Höcke the right to consult his people? It is „only“ a matter of simple consultations, not legally binding referendums.

Parliament must put a cork in this bottle while it is still possible. The expected debate that the „old parties“ only want to gag the people again should be led and won by these parties together with the democratic public and civil society: The fact that it is not the people who are empowered by such an instrument, but the government, is not hard to understand and explain. A clarification in the constitution that the direct democracy elements provided for in that constitution are exclusive is not difficult to formulate and would not come at any political cost: After all, nothing would be abolished and taken away from anyone, only prevented from being introduced.

It should be possible to reach an agreement on this, if and as long as there is the political will and thus the necessary majorities in the state parliament. This would make democracy in Thuringia considerably more resilient – at no significant cost. That is definitely a worthwhile goal in these times.

*The German version of this text was first published on [SPIEGEL Online](#).*

## The week on Verfassungsblog

... summarised by MAXIMILIAN STEINBEIS:

The Federal Constitutional Court has struck 60 billion euros of funding for climate protection projects off the Government's budget to protect the **debt brake** from being by-passed. [TILL VALENTIN MEICKMANN](#) sees this as „the end of the Federal Constitutional Court's generosity in public debt law“. [DAVID SCHWARZ](#) welcomes the clarification „that far-reaching social conflicts cannot be patched up with cash register tricks – there is no way around dealing with them.“

The wind is currently shifting massively to the right and filling the sails of the AfD to an unprecedented extent. [JULIA LESER's](#) post, feeding insights from political anthropology on the „**micropolitics of the shift to the right**“ into the debate, is an outcome of our [Thuringia project](#). Right-wing populist parties are elected not despite, but because of their misanthropic, racist content, and ethnographic research on the „comfort zones of the right“ can help to understand how this comes about and how it can be.

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Speaking of the shift to the right: in **Italy**, head of government Meloni is revealing her post-fascist cards now that her patient chalking-up strategy in terms of foreign and European policy has born the expected fruits and helped her to a cosy place at the heart of the European community of leaders: The government is seeking to amend the constitution and nudge the system of government in a decidedly plebiscitary populist direction, with a direct election of the head of government by the people and enshrining an election-winner's bonus of 55% of the seats in parliament for the governing coalition directly in the constitution. [CARLO FUSARO](#) and [STEFANO CIVITARESE MATTEUCCI](#) provide detailed and critical analyses of what the planned changes imply in detail and what problematic consequences they would entail. [ANDREA DE PETRIS](#) explains why the comparison with the German constructive vote of no confidence is completely off the mark, unlike the comparison with the American storming of the Capitol.

The Italian Prime Minister has announced yet another plan: Italy has signed an agreement with Albania to accommodate refugees rescued by Italian ships in the Mediterranean. [LORENZO PICCOLI](#) considers the plan to be neither legal nor practicable.

The British plan to relocate **refugees to Rwanda** has been declared illegal by the Supreme Court. [ALICE DONALD and JOELLE GROGAN](#) explain what this is about and what the UK government's immediate response implies.

In France, President Macron wants to enshrine the **right to abortion** in the constitution. Not a good idea, warns [BAPTISTE CHARVIN](#): the constitution threatens to become an inventory of things that can just as well be guaranteed by ordinary legislation, with the intention of putting these out of its reach. „Ultimately, the Constitution is stripped of its privilege: in attempting to revitalise it, the constituent power may inadvertently extinguish it.“

The **Online Safety Act** has come into force in the United Kingdom. [BEATRIZ KIRA and LAURA SCHERTEL MENDES](#) analyse what the future holds for platform regulation in the UK.

In **Turkey**, the Court of Cassation refuses to release opposition politician Can Atalay, even though the Constitutional Court had declared his imprisonment unconstitutional – and accuses the court, which monitors compliance with the constitution, of violating that very constitution and acting ultra vires. An intrajudicial constitutional crisis, in other words, and probably another sign that the AKP government now wants to get rid of constitutional court control, or what is left of it, for good, say [GÜLCIN BALAMIR COSKUN and ERTUG TOMBUS](#). [DORUK ERHAN](#) disagrees with the diagnosis of a constitutional crisis as far as that term presupposes a constitution that still has binding force, which has not been the case in Turkey for some time.

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In **Australia**, the constitutional referendum that was supposed to give indigenous Australians a „voice“ in the system of government has failed. [ANNE TWOMEY](#) investigates how the success of the No campaign came about.

[LUKAS GRAUTE](#) takes a closer look at the destruction wreaked on the constitution by the „world’s coolest dictator“ Nayib Bukele, President of **El Salvador**, and is blatantly unconstitutional announcement to seek reelection.

[NATHALIE A. SMUHA](#) takes US President Biden’s announcement to push ahead with the regulation of artificial intelligence as an opportunity to reflect on the emerging **international law on AI**.

The German government wants to enable the **Federal Office for the Protection of the Constitution** to inform private individuals – say, landlords or employers – that a person is under its observation. [MARYAM KAMIL ABDULSALAM](#) and [TOBIAS ROSS](#) consider this piece of legislation both badly crafted and constitutionally dubious.

[TILL HENDLMEIER](#), [CHRISTOPH SCHUCH](#) and [LAURA SCHWARZ](#) summarise what assembly laws have to offer in order to prevent **anti-Semitic demonstrations** in Germany.

The CDU in the German Bundestag has called for a **prohibition of buying sexual services**. Not a good idea, finds [TERESA KATHARINA HARRER](#).

The **Max Planck Institute for Comparative Public Law and International Law** is turning 100 – to mark the occasion, we crosspost an article by [PHILIPP GLAHÉ](#) and [ALEXANDRA KEMMERER](#) on this topic and send our warmest congratulations.

That’s all for this week. All the best!

Max Steinbeis

