Introduction

Small steps can be highly symbolic in the world of international diplomacy. On 21 September 1949, the first chancellor of the Federal Republic of Germany (FRG) Konrad Adenauer (1876–1967) took such a step. On this rainy day in Bonn, Adenauer went to see the Allied High Commissioners at the grand hotel on the Petersberg to receive the Occupation Statute. This document was meant to return some sovereign powers to the newly formed first West German government. Protocol demanded that Adenauer stop in the main hall in front of a carpet on which the three Western commissioners were waiting. It was here that he would be handed the legal document that validated and authorized his new government. Yet the symbolic politics carefully embedded in the protocol failed. When the French commissioner André Francois-Poncet (1887–1978) offered Adenauer his hand as a welcome, the West German chancellor seized the moment and stepped onto the carpet with the Allied representatives. With this small gesture, Adenauer had clearly signalled his intention to reclaim German sovereignty and meet the Allied powers on an equal footing.

Captured in a famous photograph (Figure 0.1), it was a historic moment. The statute returned legislative, judicial and executive powers to the new West German government.[1] It was also a crucial episode in an emerging legal confrontation between two nascent German states that would shape German history until 1989 and beyond. Less than a month later, on 7 October 1949, the German Democratic Republic (GDR) was established from what had been the Soviet Occupation Zone. In the years between the unconditional surrender of the Third Reich on 8 May 1945 and the founding of these two German states, in the midst of the first rudimentary reconstruction of housing, economic, social and political life, legal scholars and politicians in all four Allied occupation zones had formulated different legal frameworks for Germany's future. Rather than helping to give birth

Notes for this chapter begin on page 18.

Legal Entanglements
Law, Rights and the Battle for Legitimacy in Divided Germany, 1945-1989
Sebastian Gehrig
https://www.berghahnbooks.com/title/GehrigLegal

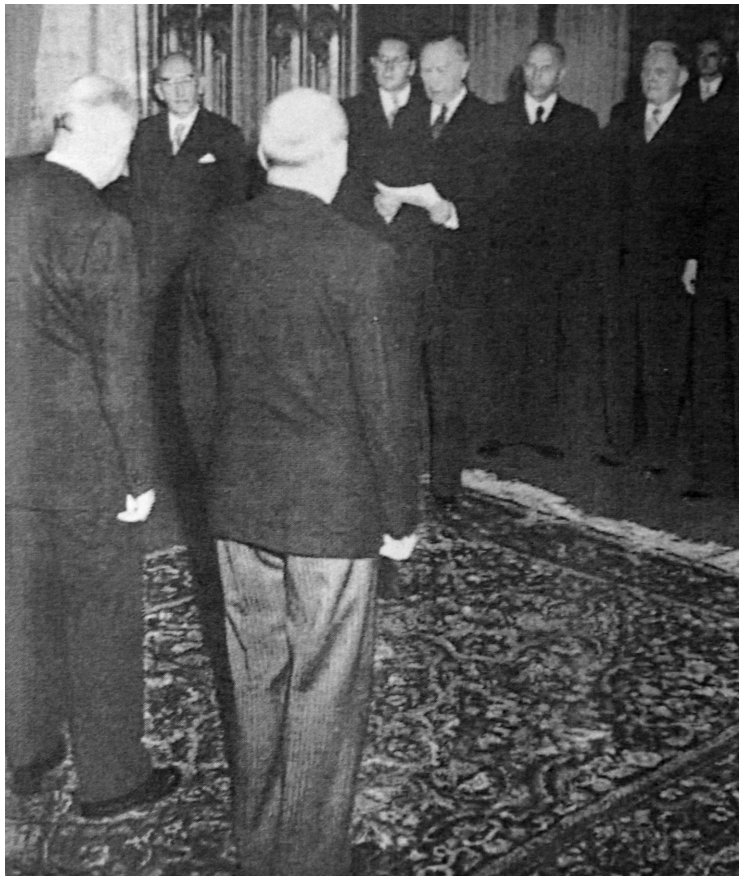

Figure 0.1. Chancellor Konrad Adenauer standing on the corner of the carpet addressing the Allied High Commissioners, Petersberg, Bonn, 1949. Photo: © Berto-Verlag, Bonn.

to two separate states, however, they entangled the constitutional laws governing postwar Germany and the rights of Germans in an ideological struggle over German sovereignty, law and rights.[2]

After the unification of Germany on 3 October 1990, attention for the entanglements of German legal frameworks, laws and rights and the legal Cold War to which they gave rise was superseded by controversies within and beyond the legal profession on the nature of the GDR's legal system. Transitional justice trials against former GDR political and military leaders as well as border guards epitomized the GDR's *Unrechtsstaat* (unlawful state).[3] After 1990, the East German socialist state, propped up by the Stasi's – its secret police – mass surveillance and intimidation of

political opponents, stood in stark contrast to the rule of law and legal security that the West German *Rechtsstaat* had developed after 1949 once Third Reich legacies in the legal sphere had been overcome.[4] With such post-unification comparisons of the East and West German legal systems, the parallel existence of two separate German states that had been based on ideologically competing and separate legal systems came to dominate public and scholarly perspectives on the history of law and rights during national division.[5]

However, this was not the perspective Adenauer took when he felt emboldened to take his symbolic step onto the carpet. Under his leadership, the Bonn government would exercise legal sovereignty over the whole of Germany, represent all Germans, and rebuild the *Rechtsstaat*. It was a legal vision that connected pre- and postwar Germany. The GDR, by contrast, was built on a different legal framework, one that emphasized a thorough break with the past. It nonetheless also laid claim to speaking for the whole of Germany. An anti-fascist Germany, the GDR's founders proclaimed, would emerge under their ideological leadership, protected by a people's constitution that secured the freedom and rights of its citizens, social and economic justice, and peace and friendship with all peoples. During the first decades of its existence, the GDR government declared that this legal vision was designed to lead the masses in the FRG to the revolution and secure the victory of socialism for all Germans.[6]

The two legal frameworks could not co-exist because each was premised on the demise of the other. Both the legal orders of the FRG and the GDR were constructed on the tenet that there was only one postwar German state, and that this one state would claim legal authority for the whole of Germany and all Germans. In this they agreed.[7] Yet government leaders in Bonn and East Berlin fundamentally disagreed over the legal mechanisms and sources of legitimacy that would enable them to represent Germany internationally and domestically. This would have a crucial impact on visions of law and actual rights granted to Germans east and west of the border. Both governments also disputed the territorial shape of this postwar Germany. Leading West German legal scholars argued that the Bonn government embodied the legal persona of the German Reich 'in its borders of 1937'. This formula postulated the prewar territorial shape of the German Reich as a starting point for legal reconstruction but excluded the period of the Third Reich's territorial expansion when the Nazis annexed Austria and the Sudetenland in 1938 before the outbreak of war in 1939. This strategic date retained claims to German territory, but complicated the condemnation of Nazi rule between 1933 and 1937.[8] In contrast, the GDR government accepted Germany's territorial losses in the East that the Allies had specified in the Potsdam Agreement. The East

German state was designed as the successor state of the German Reich that gained its legitimacy from the anti-fascist credentials of the socialist movement in Germany and socialist legality.[9] The two German states were thus at loggerheads over the very nature of law, the rights of Germans and the territorial shape of German sovereignty from their foundations in 1949 onwards.

Law and rights formed a crucial element of the global Cold War battle for legitimacy between the two German states as it played out in divided Germany, Europe and internationally.[10] At stake were the very foundations of rights and law. Until 1989, ideological conflicts over sovereignty, national self-determination, citizenship, basic rights and human rights frequently escalated between the two German governments. This book traces, first of all, how competing ideologies of law gave these legal terms different meanings and how conflicts between the two German states changed their meaning over time. As two German states claimed the same legal rights – yet based in fundamentally contradictory ideologies of law – for only one people, the competition over the legitimacy of different forms of law in divided Germany inevitably remained intertwined in a constant conflict over the question of which state could provide rights more legitimately. Beyond that, the book explores how the simultaneous existence of two German legal systems challenged the postwar international legal order, premised as it was on the assumption that one nation-state would represent one nationality, and how global conflicts over sovereignty and the right of self-determination of peoples in turn shaped ideas of rights and legal realities in the divided Germany.

The fortunes of the two German states in their legal confrontations rose and fell with the global struggles over legitimate claims to national self-determination, the impact of international law on nation-states, and the confrontations over competing ideological visions of universal human rights. Eric D. Weitz has argued that the struggles over individual and collective human rights cannot be disentangled from histories of the nation-state and citizenship. And that the same is true in reverse.[11] Both German governments therefore had to contend with the increasing impact of legal forces stemming from decolonization and the ideological struggle between Western legal traditions and socialist legality over human rights on their national legal frameworks after 1945.[12] Diplomatic histories on East and West German foreign policy have shown how both German governments vied for influence around the globe to bolster their legitimacy at home and against the other Germany.[13] This book expands this scholarship by asking how decolonization and the transition to an international system of nation-states during the Cold War impacted on German concepts of law, rights and statehood.

To examine divided Germany's legal history as an element of the Cold War opens up at least four analytical perspectives on the rise of law, rights concepts and legalist language in the international arena after 1945. First, it shows how the legal transition out of the Second World War and into the Cold War signalled a *Verrechtlichung von Politik*, in which law simultaneously became an object of the political conflict between the FRG and GDR and the means by which the two governments conducted their ideological struggle.[14] Second, we can trace how framing political demands in legal language allowed both German states in different moments not only to attack each other, but also to push back against the Allied powers and achieve more political leeway for independent policies. Third, it puts the puzzle piece of the competition between the two German states into the wider puzzle that was the transition from 'closed' sovereign states to more porous legal systems that reshaped national legal systems and the rights of citizens after 1945. Fourth, it demonstrates how the ideological battle over law and legality triggered the rise of human rights language and norms in divided Germany and connected the German conflicts over law to global rights debates.

By expanding the perspective from domestic and German-German frameworks to an entangled history of the two Germanys that also pays attention to their involvement in global rights debates, this book shows that both German states could no longer contain the evolution of foundational concepts of law and rights, law making, and the actual rights of Germans within closed domestic legal systems. Scholarship has illuminated how the governments in Bonn and East Berlin blamed each other for rights violations, shortcomings in prosecuting Nazi perpetrators, and used human rights language to discredit the other Germany.[15] These works have shown how rights activists and dissidents pushed for the translation of constitutional and human rights norms into everyday legal realities and how this activism had important consequences for domestic legal reform and jurisprudence.[16] Building on this scholarship, this book provides an entangled history of both German states and their relations with the wider world within and beyond their ideological alliances. It reveals how global currents of human rights and international law played a crucial role in the making of laws, rights and ideologies of law in divided Germany.

The Cold War in Germany was also made by laws and made law. Domestic and international law making produced legal structures that followed their own inherent logics within and beyond the divided Germany when the global ideological war over words turned into a war over legal concepts after 1945.[17] If we study the history of law and rights in divided Germany as the double dialectic between German-German conflicts over the transformation of German law after National Socialism and the simul-

taneous involvement of both German societies in the global conflicts between socialist legality and Western concepts of law that played out in confrontations over self-determination, sovereignty and human rights, we discover that the constant interplay between clashes within and between the two German states and their engagement with international politics had a crucial impact on legal policies, conceptual debates on law, and actual rights of Germans in both German states between 1949 and 1989.[18]

Out of War, Into War

To understand how Germany's legal Cold War began, we need to look at the doctrine dominating German legal debates on sovereignty before the Second World War. Legal scholars who were trained in the interwar period connected the postwar situation firmly to Germany's legal heritage, reaching back into the decades after the unification of the German Empire. Yet the existence of two German states questioned precisely this German tradition of thinking about the legal and temporal nature of the state and rights at its core. National division confounded the trinity of *Staat* (state), *Staatsgebiet* (territory) and *Staatsvolk* (people belonging to the state) that Georg Jellinek (1851–1911) had famously put forward as the remits of sovereignty in German *Staatsrecht* in 1895. Building on the work of the constitutionalists Friedrich Gerber (1823–1891) and Paul Laband (1838–1918), who had argued for a purely legal definition of the state, Jellinek divorced the social existence of the state from its legal perception and decisively shaped German legal thought for the following century.[19] In the twentieth-century, *Staatsrecht* became the supreme field in German legal scholarship as it dealt with the organization of the state and its institutions as well as basic rights of individuals.

Jellinek's doctrine made the legal survival of the state beyond catastrophic events such as Germany's defeat in the First World War and the foundation of the Weimar Republic possible. The Weimar Constitution of 1919 emphasized that it was the state that was sovereign to move beyond the tension between princely and popular sovereignty of the imperial era.[20] Throughout the Weimar period, influential legal scholars such as Hans Kelsen (1881–1973), Hermann Heller (1891–1933), Hans Nawiasky (1880–1961), Karl Loewenstein (1891–1973) and Carl Schmitt (1888–1985) argued over the legal nature of government, the legal safeguards of the political system, and the very nature of law.[21] While academic conflicts between proponents of natural law and advocates of a positivist approach to law raged until 1933 when the Nazis seized power, Jellinek's trinity defining German statehood remained unchallenged in German postwar debates

on legal reconstruction.[22] When the two German states were founded in 1949, legal scholars in the Western occupation zones had already prepared the grounds for the Bonn government to promote the assumption that the German Reich's state sovereignty had survived the end of the war in international law.[23] The judiciaries in both countries based their development of distinct legal systems – despite best attempts to conceal unwanted continuities from the Third Reich into the postwar era within both states – on this shared tradition of German legal doctrine to take on the mantle of Germany's legal existence.[24]

The resurrection of German legal sovereignty took place in an era of international rights languages and growing legal entanglements. The doctrinal connection of prewar, wartime and postwar Germany through law based on Jellinek's doctrine made divided Germany part of international legal conundrums that also haunted many other international debates surrounding decolonization.[25] How should the demise of empires and states be treated under international and domestic law? Could states exist outside of time and against territorial realities? And who could legitimately claim sovereignty after the downfall of a state? While many legal experts and officials at the UN fought hard to shape universal legal standards of international governance against the unequal legal heritage of the League of Nations, legal experts in both nascent German states initially joined colonial powers in rejecting the idea of new universal international legal norms. Instead, only established German legal traditions should structure Germany's legal reconstruction. Yet divided Germany soon marked the European Cold War front line of the fight between two legal universalisms: socialist legality and the rule of law.[26] This meant that before long both German governments had to position themselves towards global rights conflicts.

Strong continuities in legal careers from the Third Reich into the FRG ensured that the West German legalist language of political transition was formidable. Legal elites, strong in numbers and confident in their understanding of the mid-century international legal world, in which German lawyers had once before made bids for the recognition of sovereignty in the 1920s within the League of Nations, discovered the power of law as part of the Cold War long before their East German counterparts.[27] When the Western Allies handed denazification and democratization efforts to West German authorities in the late 1940s, civil servants and scholars quickly re-established their own traditions and emphasized continuity in German legal codes, judicial practice and administrative regulations beyond the new Basic Law and the most audacious Nazi laws that the Allied Control Council struck from German legal codes before cooperation between the four Allies broke down in 1947.[28] While legal and historical studies have

uncovered how the judiciary as a profession managed the transition into the FRG almost unscathed, many questions remain about the role these jurists and government officials played in maintaining many prewar and wartime legal policies and regulations.[29] Due to this continuity in doctrine and personnel, West German legal scholars were able to persist in their traditional approach to statehood and legal frameworks of sovereignty after 1945 and inscribed them into international legal debates.[30]

Unlike in West Germany, legal experts played no major role in the foundation of the new socialist state. Small in numbers, many of the scholars tasked with setting up the GDR's legal framework had specialized in other areas of law such as civil and public law before 1945.[31] But law was by no means unimportant in the early GDR, even if the leadership of the Sozialistische Einheitspartei Deutschlands (SED, Socialist Unity Party) had major reservations about the German legal tradition.[32] During the early 1950s, Hilde Benjamin (1902–1989) and other party leaders cleansed much of the legal elite of the new socialist state. This was done in the name and spirit of 'revolutionary legality', a process many East German communist exiles had experienced first-hand during the 1930s and 1940s in Moscow when numerous German communists who did not wholeheartedly support the Soviet party line fell victim to the Soviet secret police's paranoia.[33] At the same time, the SED leadership distanced itself from any responsibility for the crimes of the Third Reich by insisting on its anti-fascist heritage. Communist resistance to the Nazi regime turned into a fig leaf, which was meant to exculpate the GDR's whole society from any association with the Third Reich.[34] It was an important ideological argument that meant that SED leaders relinquished any political and legal responsibilities for the atrocities committed under the Nazi regime.[35] Yet this ideological separation from Third Reich legacies put the SED in an increasingly difficult political but also legal position: insisting on a fundamental break with the German fascist past in other areas of law made it much more difficult for the SED to legitimize its simultaneous claim of rightfully representing German sovereignty and citizenship in the succession of the German Reich. With the exodus of more and more East Germans to the West, SED legal scholars began to prepare the GDR's new legal foundations as a sovereign socialist state that drew on the rights language of anti-colonial movements to legitimize this new East German right of self-determination.[36]

Legal Sovereignty Contested

With the SED leadership's push to sever all legal ties to the German Reich's state sovereignty, the UN became an important legal battleground for the

two German states. By the 1960s, two fundamental shifts in international politics opened up a space for establishing independent GDR sovereignty. On the one hand, Western international relations scholars – chiefly Leo Gross (1903–1990) – established sovereign equality of states as the new basis for international politics. Facing growing pressure from anti-colonial movements to end the colonial era, Western scholars established the 'Westphalian myth', claiming that ever since the Peace Treaties of 1648, European states had developed a state system based on the equality of sovereign states.[37] Such a narrative that disguised hierarchy within the international system fit the American Cold War cause. But it was immediately condemned by a growing number of Third World liberation leaders attacking the unequal standards within the UN that colonial powers intended to uphold.[38]

On the other hand, the acceleration of decolonization made the human right of self-determination the rallying cry of independence movements in Africa and Asia. The UN emerged in a world of international law conflicts in which the addressees of human rights – individuals or collective groups – and the question of whether rights originated with peoples or states were hotly contested. These global confrontations over human rights after 1945 allowed the GDR government to exploit the ambiguities of what a 'people' actually constituted under international law.[39] While the Bonn government insisted on the representation of state sovereignty in continuity with the Reich, the SED leadership now put the East German people at the heart of their legal agenda. The Final Communiqué of the Asian-African Conference of Bandung in 1955 had reinforced demands for independence and the recognition of territorial integrity of former colonies. From the mid-1960s, the SED leadership changed course in its international rights campaigning and demanded a right of self-determination for the East German people. This effort built on party-state initiatives to create a cultural sense of East German statehood to separate the GDR from West Germany.[40] As a de-facto sovereign state, the GDR government demanded the recognition of its sovereign equality and an end to the FRG's non-recognition policy that threatened third-party states with the immediate end of economic and diplomatic relations if they chose to recognize the GDR as a sovereign state.[41] East German diplomats and government-funded rights groups such as the League for Human Rights promoted the SED's support for UN racial anti-discrimination conventions to garner support among Third World liberation movements. In turn, the SED leadership hoped that newly decolonized states ascending to UN membership would support the GDR's claim to national independence.[42]

This East German shift in defining claims to national sovereignty in the rights language of Third World liberation challenged German phil-

osophical and legal traditions of state sovereignty and continuity that dominated West German legal discourse.[43] The GDR government could refer to a long tradition within the communist movement to advocate for a right of self-determination of the East German people. From its origins in the thought of Immanuel Kant (1724–1804) and Johann Gottlieb Fichte (1762–1814), self-determination left an imprint on Karl Marx's (1818–1883) ideas on the overcoming of the alienation of the individual. Via leading socialists of the epoch, among them Ferdinand Lassalle (1825–1864) and Jean Jaurès (1859–1914), self-determination took on a predominantly collective meaning until the Socialist International included an article on the 'self-determination for all peoples' in its programme in 1896.[44] Vladimir Lenin (1870–1924), influenced by Otto Bauer (1881–1938) and other Austro-Marxist thinkers, supported the principle of self-determination as a road to independence and sovereignty at the outbreak of the First World War.[45] When the Second World War ended, traditional Western concepts of sovereignty and rights as outlined by Lassa Oppenheim (1858–1919), Jellinek and others at the turn of the century had long come under pressure from anti-colonial movements and revolutionary socialist constitutionalism advocated by leading Soviet scholars such as Evgeny A. Korovin (1892–1964), Evgeny Pashukanis (1891–1937) and Andrey Vyshinsky (1883–1954) at the Soviet Institute of State and Law in the interwar period.[46] After 1945, anti-colonial leaders pushed for the transformation of the principle of self-determination into a human right that was finally implemented into the two UN human rights covenants from 1966.[47] This Third World pressure on international law presented the SED leadership with an alternative rights language to secure independence and territorial integrity against West German legal *Staatsrecht* frameworks.

The Legal Division of a People

After the building of the Berlin Wall in 1961, the SED leadership put ideology and socialist legality at the core of a new vision of an East German right of self-determination. The GDR government now finally fully embraced the Soviet-led return to socialist legality as a stabilizing tool of governance to manage de-Stalinization.[48] This went fundamentally against West German debates shaped by natural law and legal positivist traditions that saw codified law and rights rooted in ethical, moral and religious norms outside state institutions.[49] Socialist legality denoted a new system built on Marxist-Leninist ideology in which rights exclusively flew from the existence of the socialist state that safeguarded legality based on East Germans' duty to uphold and build socialist society in turn. Law at

once should serve as a set of clearly enumerated rights and duties and allow for the primacy of the party in transforming society.[50]

This shift put people at the heart of German-German legal entanglements. Since the turn of the century, nationality had formed the core of sovereignty and tied Germans to the German Reich as their state. When the SED leadership moved towards rights guaranteed through the existence of the socialist state as the new core for claims to self-determination, the nexus between nationality and sovereignty as the basis for claims to independence imploded in East German legal thinking. Until 1945, *Staatsrecht* doctrine had assumed that Germans belonged to the state and gained rights through ethnic belonging. This was expressed most clearly in the term *Staatsangehörigkeit* (belonging to the state) to denote legal citizenship. In 1949, both German governments had decreed that the Reich and Citizenship Law from 1913 that had first given legal language to German citizenship remained in force and struggled over the lawful representation of German *Staatsangehörigkeit*.[51] In 1967, an independent GDR citizenship law, pitting a new form of *DDR-Staatsbürgerschaft* (GDR citizenship) against German *Staatsangehörigkeit*, turned East Germans legally into GDR citizens. The term *Staatsbürgerschaft* emphasized active socialist rights of the citizen against the passive belonging to the state encapsulated in the term *Staatsangehörigkeit* that remained in use in the FRG. In turn, East Germans had a legal duty to engage in building socialism.[52] One year later, SED leaders commanded their citizens to discuss a new constitution in 1968, which eventually led to the proclamation of a socialist constitution in 1974 after the constitution of 1968 was once again amended.[53] East Germans had now been legally transformed into an independent people and their government renamed them *DDR-Bürger* (citizens of the GDR).

With the proclamation of the GDR citizenship law, SED leaders made the legal Cold War officially about people. Underneath this terminological shift that signalled more rights for the individual and was soon linked to human rights, however, East German law also remained a 'weapon' of political re-education as well as a tool to pressure the FRG into accepting the territorial integrity of the GDR. In the first half of the twentieth century, international lawyers had grappled with the dangers of statelessness for the individual.[54] The Nazi persecution of the European Jews had shown the global public to catastrophic ends that individuals needed a right to citizenship. In 1967, the GDR government reversed the danger of statelessness into a threat of forced naturalization.[55] The SED leadership did so by blurring the lines of what Dieter Gosewinkel has termed the 'outer' and 'inner dimension' of citizenship.[56] The new citizenship law backdated the emergence of a GDR citizenship to the foundation of the GDR in 1949. Release from citizenship could only be granted by the East German state.

This meant that Germans who had fled the GDR after 1949 and even their children born outside the GDR lived under the threat of being extradited to the GDR when they travelled within the Eastern bloc.[57] This regulation also applied even if they had become naturalized West Germans or citizens of another state. West German newspapers raged against this legal 'weapon' until the SED dismantled it again after the conclusion of Ostpolitik negotiations in 1972. When the two German states moved to détente, the German people were also legally divided.

The East German turn to anti-colonial rights rhetoric forced West German legal scholars, ministerial officials and diplomats to contemplate the relationship between international and domestic law. Viewed from a perspective of German-German conflicts over law, there was much more at stake in Ostpolitik negotiations than the recalibration of German-German diplomatic relations. West German chancellor Willy Brandt's (1913–1992) Ostpolitik has often rightly been described as a bold political agenda that forced West German society to confront the consequences of National Socialism and acknowledge the loss of territory in the East as a result of the Second World War. The East German push for new legal foundations of GDR sovereignty, however, also turned German-German diplomatic negotiations into a legal issue for the international community that intensified the global reverberations of Ostpolitik.[58] In the eyes of many international legal experts interested in preserving the nexus of nationality and sovereignty, the Bonn government openly contradicted established international legal standards by ratifying treaties with the Soviet, Polish and GDR governments. Many within the West German legal elite also fiercely pushed back against Ostpolitik to preserve *Staatsrecht* traditions and the formula of the 'German Reich in its borders of 1937' on which the FRG's legal foundations had been built since 1949.[59] What had begun as a legal competition over the question of which German state rightfully represented German sovereignty and citizenship in 1949 now turned into a complicated legal issue not just for the two German states and the four Allied powers, but for the international community at large.

The GDR government's assault on established concepts of international sovereignty tied the German-German struggle over law and rights to the fate of other 'divided nations' such as China, Korea and Vietnam (from decolonization until unification on 2 July 1976) in UN politics. The GDR's new legal foundations set up from 1967 to 1974 upset the legal norms produced by the UN. In turn, the UN legal bureaucracy fiercely defended the nexus of nationality and international sovereignty as the bedrock of the international system.[60] After 1945, UN representation of sovereignty still centred on 'nationality' in the tradition of the League of Nations as the core element of a right to national self-determination.[61] UN legal offi-

cials such as Secretary-General Thant's (1909–1974) legal counsel Konstantinos A. Stavropoulos (1905–1984) despaired over the GDR leadership's attack on UN procedural rules and regulations by pushing their way into UN politics when the FRG, which had acquired official UN observer status in 1952, still exclusively represented German nationality within UN affairs.[62] Yet Stavropoulos could do little about the appeal of the GDR's usage of legal rhetoric of self-determination as a human right to many African and Asian delegations at the time.[63]

The SED's turn to a new definition of independent GDR statehood rooted in the right of self-determination, socialist legality and human rights language prompted a wider fundamental question for UN legal experts and international law scholars as part of Ostpolitik that could no longer be avoided: could state sovereignty legitimately be divided? Especially the governments of other 'divided nations' therefore watched German-German negotiations with much unease.[64] When SED leaders suddenly claimed by the mid-1960s that they represented an 'East German people', Stavropoulos found an unlikely ally in the communist government in Beijing, which ardently pushed back against the GDR as it saw its own 'one China' policy threatened both by Brandt's rhetoric of 'two states in one nation' and the East German claim to the representation of a 'GDR nation'.[65] Soon after, US rapprochement with the People's Republic of China (PRC) and the shifting voting balance within the General Assembly towards a majority of Eastern bloc states and the Afro-Asian bloc caused the change in Chinese UN representation and reinforced the 'one China' paradigm when the PRC replaced the Republic of China (ROC) on Taiwan in 1971 within the UN.[66] This shift put pressure on the West German government to come to a new agreement with the GDR before the General Assembly might unilaterally acknowledge East German sovereignty.

After 1973, a new German legal exceptionalism formed when the UN admitted both German states simultaneously as full UN member states. The accession of both German states became possible after UN legal experts acknowledged that the different historical trajectories that had led to German and Chinese division in 1949 should form the basis for the UN's unequal legal treatment of divided Germany and China. While Germany was divided after a lost war and occupation, China ended up separated after years of civil war. In accepting Beijing's 'one China' paradigm and still permitting membership of both German states, the UN quietly and without an official discussion gave silent consent to the GDR's legal concept of sovereignty that replaced nationality with ideology as the basis for a legitimate claim to self-determination. Until 1989, the two German states thus remained the only officially recognized sovereign states that had originated from a 'divided nation' in UN legal affairs.

Separated Rights Universes

The separation of German legal sovereignty and citizenship until 1974 when the GDR proclaimed a new socialist constitution formed part of major shifts in international law and rights debates of the postwar era. The ability of states to brush aside international legal standards decreased from the 1960s onwards. This also had to do with the rise of international courts, but was driven by fundamental ideological disagreements over the nature of law and the impact of decolonization.[67] From the 1970s onwards, international politics of law forced legal experts both in West and East Germany to contemplate the relationship of international law and domestic legal systems anew. In the legal entanglements between the two German states, as in many other legal spheres around the world, international rights norms now entered national jurisprudence and law making and transformed the rights of citizens.

East German legal concepts of self-determination framed as a human right accelerated the pressure on West German jurists to engage with new international legal norms growing out of the decolonization process and UN legal disputes. If we see the rise of new international rights languages in the context of the legal Cold War, we discover that German jurists and governmental legal officials could no longer contain their legal struggle in a German-German framework by the 1960s. This book contributes to the vibrant field of human rights historiography by emphasizing the wider Cold War logics in which the rise of human rights both as a political language and law took place.[68]

When the SED leadership detached the East German legal sphere from the FRG both in bilateral as well as international relations between 1967 and 1974, SED ideologues confidently deployed their new legal vision of socialist legality to contest the basic rights-centred West German legal system and introduced UN human rights norms to East German law making.[69] Soon after the conclusion of Ostpolitik, the Helsinki Accords of 1975 affirmed East German sovereignty, territorial integrity and the existence of GDR citizenship both as political and legal categories in the new Cold War security architecture. In the eyes of SED leaders, the turn to socialist law and international rights languages played a major role in this success. The inclusion of human rights in the Helsinki Accords occurred at a time of heightened legal reform across the socialist bloc, culminating in the new Soviet constitution of 1977. Party leaderships staged rights talk campaigns and let their citizens debate their new constitutions in countless town hall meetings.[70] The GDR leadership took part in these legal education efforts across the Eastern bloc and confidently equipped its population with knowledge about socialist law and human rights as

the territorial integrity of the GDR finally seemed secured in the Helsinki agreement.[71]

Yet socialist constitutionalism could only claim legitimacy in the logics of party doctrine if it appeared to be grounded in popular consent of the masses.[72] If we take the SED's efforts to build socialist legality seriously, despite its heavy emphasis on social control within the GDR and push-back against human rights norms within state institutions from the late 1970s onwards, we see that the adoption of human rights language in the GDR – also by dissidents – first happened not as a post-Helsinki Western import but in the remits of a language provided by the state itself.[73] Socialist legality promoted a 'rules consciousness' rooted in social and economic rights and in what T.H. Marshall called 'social citizenship'.[74] 'Rights consciousness' of civil and political rights in the GDR first also developed in a preconfigured legal universe shaped by socialist law.[75] Only when the economic crisis of the GDR worsened in the early 1980s, dissidents were able to subvert this state-endorsed language of constitutionalism, citizenship and human rights and the SED returned to strengthening political justice and domestic criminal law against the state's own human rights rhetoric.[76]

In contrast, West German courts, government officials and legal scholars grappled with the inclusion of international rights norms in their basic rights framework for a long time.[77] Against collective human rights norms emanating from the Eastern bloc and Global South, the US administration under Jimmy Carter (b. 1924) eventually promoted individual human rights rooted in liberal thought. This was in many ways a response to socialist and Third World advances in global human rights and international legal politics.[78] In the course of this shift, the Bonn government at first had great difficulty in capitalizing on the new American emphasis on human rights. When the Helsinki Accords were signed in 1975, there certainly was no immediate 'Helsinki effect' reshaping the German-German legal conflict.[79] The West German legal sphere held onto its initial legal frameworks rooted in German concepts of state sovereignty, citizenship and basic rights for as long as possible as it guaranteed East German refugees immediate access to West German citizenship if they managed to escape the GDR.[80]

Rights of citizens and their foundation in competing ideologies of law now overtook the issue of sovereignty in the clashes between the two German states. This occurred at a time when domestic debates on new forms of state–society relations and citizens' rights captivated West German confrontations over the reform of legal codes and calls for less rigid social norms.[81] Following student protests raging in West German streets around 1968, tectonic shifts in state–society relations crystallized in West German politics of law when the social-liberal coalition under Brandt ac-

celerated the reform of West German legal codes in 1969.[82] This domestic focus on legal policies led to the professionalization of legal politics within the major West German political parties from the 1970s onwards. Older ideas of government, centred on a strong state bureaucracy, now came under political pressure.[83] Brandt's vision of 'daring more democracy' that headlined his first address as chancellor in the West German parliament in 1969 captured this demand amidst radical left-wing opposition to the West German state.[84] Calls for more legal rights of the *mündige Bürger* (mature citizen), especially for women, encapsulated many demands for reform that shaped domestic politics of law in the 1970s and 1980s and promoted human rights norms within the West German public.[85]

Ostpolitik gave rise to the acknowledgement of the evolution of a distinctly West German legal culture after 1949. West German society began to debate new notions of the West German state after the international recognition of the GDR's sovereignty had discredited the idea that the German Reich 'in its borders of 1937' continued to exist under international law.[86] Acknowledging the existence of the two separate German legal systems, Dolf Sternberger's (1907–1989) notion of constitutional patriotism, first noticed by a wider public in 1979, gave language to a focus on constitutional rights within West German politics of law in the 1980s. Constitutional patriotism, a concept later driven by Jürgen Habermas (b. 1929), marked a departure from legal principles and frameworks that had negated German national division after 1949.[87] A new generation of high court judges, governmental legal officials and legal scholars now finally departed from the complicated heritage of the immediate postwar period and concentrated firmly on the West German legal system. In the 1980s, both German states therefore largely accepted the existence of the other state's legal system as part of the separate ideological universes of the Cold War.

Organization of the Book

This book traces German-German legal entanglements during the Cold War by connecting files from the UN archives, the archive of the Academy for State and Legal Sciences in Babelsberg, the Foreign Office Archives, the archives of West German political parties, as well as archival holdings detailing SED legal policies and the role of the GDR High Court from the German federal archives and the Berlin-Brandenburg Academy of Science. West German Cold War legal policies are recorded in the files of governmental ministries, court verdicts and private papers of leading judges, as well as archival materials of the West German constitutional court. These

documents permit fresh insights into seemingly familiar episodes such as *Deutschlandpolitik* and Ostpolitik. But their relevance only becomes fully apparent when they are connected to the court cases of ordinary Germans which, though equally remarkable and influential, have gone unnoticed even though these individuals became embroiled in larger debates they could barely understand at the time and that sometimes even had ramifications beyond German-German borders. The work of government officials at local, regional and national levels as well as diplomats working in embassies around the world or lobbying in UN corridors were the glue between high-level national and international politics and district court cases, in which the lives of ordinary Germans were directly affected by the fallout of the legal Cold War. Taken together, these materials show how ideas of law and rights shifted in both German states under the ideological pressures of the Cold War and decolonization and created the legal worlds on which the contemporary Germany is built.

The book consists of three parts, each of which approaches German-German legal entanglements from a different perspective. Part I concentrates on the legal transition from the Second World War to the Cold War and the establishment of two competing legal systems from the mid-1940s to the late 1950s in a shared framework of German sovereignty. Chapter 1 analyses the politics of sovereignty that laid the groundwork for Cold War confrontations over law. Chapter 2 focuses on the ensuing ideological struggle over rights of Germans in both states. Part II explores how the German states took their legal battle into the international arena in the 1960s and 1970s. Chapter 3 focuses on the legal struggle at the UN and explores how the GDR government employed human rights language from the mid-1960s onwards to garner support for an East German right of self-determination. Chapter 4 shifts perspective and traces how the GDR's legal policies of separating the East German legal system from all-German frameworks of sovereignty turned into a struggle over people and citizenship. Part III analyses the evolution of two separated legal universes that shaped new domestic legal cultures in the 1970s and 1980s: West Germany's *Rechtsstaat* with its emphasis on basic rights, and socialist constitutionalism in the GDR. Chapter 5 traces how the separation of German legal spheres forced legal experts of both states into the international arena to strengthen transnational legal cooperation. Chapter 6 turns to the development of new domestic legal cultures in both German states and shows how in the 1980s both German legal systems finally departed from the prewar and wartime legal frameworks that once had inevitably intertwined them and forced them into a Cold War over law.

The book's three parts operate on a parallel temporal register.[88] The chapters of each part are designed to show how German-German legal

entanglements played out simultaneously in domestic East and West German contexts, German-German confrontations, and in international affairs. The chapters of each part thus trace developments that happened alongside each other in many different legal arenas, sometimes directly affecting each other, sometimes influencing each other more indirectly and over time. Yet it is this complexity of the German-German struggle over law, rights and legitimacy and how it played out at the same time in courtrooms, ministerial offices, the UN and other international networks that allows us more insight into the interplay of international legal norms, new rights languages, and how they were appropriated by two ideologically competing states. It was this complex web of legal interactions that fundamentally transformed a once unified legal system into two separate legal cultures. Ultimately, this book shows how law as politics – or in Dieter Grimm's words as *geronnene Politik* – shaped concepts of law and actual rights of Germans in both German states during a time when rights languages became a central part and mode of international politics at large.[89]

Notes

1. Benz, *Auftrag Demokratie*, 465.
2. Rückert, 'Die Beseitigung des Deutschen Reiches'; Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*, 25–84; Hacker, *Der Rechtsstatus Deutschlands*, 78–115.
3. Research so far estimates 140 deaths of people killed at the German-German border. See: Hertle and Nooke, *Die Todesopfer an der Berliner Mauer*.
4. For Nazi legacies and the SED's consolidation of power, see: Müller, *Furchtbare Juristen*; Perels, *Das juristische Erbe des 'Dritten Reiches'*; von Miquel, *Ahnden oder amnestieren?*; Friedrich, *Freispruch für die Nazi-Justiz*; Friedrich, *Die kalte Amnestie*; Rottleuthner, *Karrieren und Kontinuitäten*; Günther, 'Vom "Rising Star" zum Sündenbock'; Görtemaker and Safferling, *Die Akte Rosenburg*; Frei, *Vergangenheitspolitik*; Frei, *Karrieren im Zwielicht*; Stolleis, *The Law under the Swastika*; Requate, *Der Kampf um die Demokratisierung*.
5. Most studies published after 1990 remained restricted to comparative perspectives rather than focusing on entanglements and legal competition between the two German states. This is also the case in the path-breaking studies on postwar legal history by Diestelkamp and Stolleis. See: Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*; Stolleis, *Geschichte des Öffentlichen Rechts in Deutschland, Bd. 4*. For recent conceptual debates within legal scholarship on entangled history, see: Duve, *Entanglements in Legal History.* There exist comparative studies such as Markovits, 'Socialist vs. Bourgeois Rights' or Hacker, *Der Rechtsstatus Deutschlands* conducted during the Cold War that pointed to legal connections, but entangled legal histories of the divided Germany have been largely absent from historical scholarship since German unification in 1990. In the aftermath of unification, scholars argued over the question of whether the GDR should be labelled an *Unrechtsstaat* (unlawful state) and represented a totalitarian system. Some critics suggested that such frameworks unjustly equated the GDR with the Third Reich, while oth-

ers supported these analytical concepts and frameworks. For the controversy over the issue of the *Unrechtsstaat* after German unification in 1990, see: Schöneburg, 'Recht im nazifaschistischen und im "realsozialistischen" deutschen Staat'; Müller, 'Die DDR – ein Unrechtsstaat?'; Joseph, 'Der "DDR-Unrechtsstaat"'; Rottleuthner, 'Das Ende der Fassadenforschung'; Sendler, 'Die DDR – ein Unrechtsstaat'. The politically charged debates of the immediate phase after German unification have in the meantime given way to a more nuanced treatment of GDR legal history. While the GDR government had little regard for civil law and the protection of individual rights against the state, it was not a 'lawless' state. For a more nuanced treatment of GDR legal history and a call for social and cultural perspectives, see: Markovits, *Justice in Lüritz*; Betts, 'Property, Peace and Honour'; Betts, 'Socialism, Social Rights, Human Rights'; Westen and Schleider, *Zivilrecht im Systemvergleich*; Göhring, 'Ohne pauschale Verdammnis und Nostalgie'; Westen, 'Das Menschenbild der ZGB der DDR'; Schröter, *Ostdeutsche Ehen vor Gericht*; Günther, 'Autonomie im Recht der DDR'; and Schneider, 'Kommentar zu Frieder Günther'.

6. For the drafting of the GDR constitution, see: Amos, *Die Entstehung der Verfassung*.
7. The prefaces to both constitutions embodied these legal visions. The 1949 GDR constitution opened with the following preface: 'The German People, imbued with the desire to safeguard human liberty and rights, to reshape collective and economic life in accordance with the principles of social justice, to serve social progress, and to promote a secure peace and amity with all peoples, have adopted this Constitution'. The Basic Law preface stated: 'Conscious of its responsibility before God and mankind, filled with the resolve to preserve its national and political unity and to serve world peace as an equal partner in a united Europe, the German people in the Länder Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden and Württemberg-Hohenzollern has, by virtue of its constituent power, enacted this Basic Law of the Federal Republic of Germany to give a new order to political life for a transitional period'.
8. Gehrig, 'Recht im Kalten Krieg', 66–70. For West German perspectives on Germany's postwar legal status, see: Rückert, 'Die Beseitigung des Deutschen Reiches'; Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*, 25–84.
9. For a summary of GDR legal debates on the legal nature and impact of the Potsdam Agreement on both German states, see: Hacker, *Der Rechtsstatus Deutschlands*, 284–91. Hacker's conclusions are coloured by the ongoing Cold War confrontation between the two German states at the time of publication in 1974. For the Soviet roots of socialist legality, see: Newton, *Law and the Making of the Soviet World*.
10. There exists a wealth of studies on the ideological dimensions of German division and the formation of ideological alliances as part of the Cold War. For some of the leading paradigms of postwar German history, see: Jarausch and Siegrist, *Amerikanisierung und Sowjetisierung in Deutschland*; Doering-Manteuffel, *Wie westlich sind die Deutschen?*; Herbert, 'Liberalisierung als Lernprozess'; Schildt, *Zwischen Abendland und Amerika*; Gassert, 'Amerikanismus, Antiamerikanismus, Amerikanisierung'; Bauerkämper, Jarausch and Payk, *Demokratiewunder*. These studies used comparative or entangled approaches to investigate social, cultural and political change after 1945. For debates on methodologies, see: Kleßmann, 'Verflechtung und Abgrenzung'; Bauerkämper, Sabrow and Stöver, 'Die doppelte deutsche Zeitgeschichte'; Jarausch, 'Divided, Yet Reunited'; Wengst and Wentker, 'Einleitung'; Möller and Mählert, *Abgrenzung und Verflechtung*; Doering-Manteuffel, 'Die deutsche Geschichte in den Zeitbögen des 20. Jahrhunderts'. Scholarship has concentrated on the transformations of the notion of the German nation in the attempt to regain postwar political legitimacy. For some instructive examples, see: Roth, *Die Idee der Nation im politischen Diskurs*; Hacke, *Die Bundesrepublik als Idee*; Müller, *Verfassungspatriotismus*; Kronenberg, *Patriotismus in Deutschland*; Bergem, *Identitätsformationen in Deutschland*; Moses, *German Intellectuals and the Nazi Past*; Langguth, *Die Intellektuellen*

und die nationale Frage; Geppert and Hacke, *Streit um den Staat*; Hacke, *Philosophie der Bürgerlichkeit*; Müller, *Another Country*; Müller, *German Ideologies since 1945*; Nolte, *Die Ordnung der deutschen Gesellschaft*; Loth, 'Die Deutschen und die Deutsche Frage'; Jarausch, *After Hitler*; Jarausch, *After Unity*; Jarausch, 'Die Postnationale Nation'. For comparative studies, see: Herf, *Divided Memory*; Fulbrook, *German National Identity after the Holocaust*.

11. Weitz, *A World Divided*, 5; see also Weitz, 'Self-Determination'. For the impact of human rights on European concepts of citizenship, see: Gosewinkel, *Schutz und Freiheit*, 346–518. Weitz's argument echoes Hannah Arendt's claim that people needed the 'right to have rights' and thus the UDHR's claim to universality failed to account for the need of people to belong to a political community that secured their rights. See: Arendt, 'Rights of Man', 37. For a recent summary of trends in human rights history that highlights the importance of studying competing visions of human rights that rivalled for hegemony rather than following an evolutionary narrative of human rights, see: Burke, Duranti and Moses, 'Introduction: Human Rights, Empire, and After'.
12. There exist studies on the history of human rights in either West or East Germany, but no entangled history of the Cold War competition over human rights. See: Wildenthal, *The Language of Human Rights*; Richardson-Little, *The Human Rights Dictatorship*.
13. So far, scholarship has mostly concentrated on only one German state and its international relations. For leading accounts, see: Wentker, *Außenpolitik in engen Grenzen*; Kilian, *Die Hallstein-Doktrin*; Fink and Schaefer, *Ostpolitik 1969–1974*; Gray, *Germany's Cold War*; Sarotte, *Dealing with the Devil*. For a rare exception of a study on German-German diplomacy at the UN, see: Stein, *Der Konflikt um die Alleinvertretung*.
14. Bernhard Diestelkamp has used this concept to describe the political usage of law by West German politicians and legal scholars to carve out agency for the developing FRG against the occupation powers until 1949. See: Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*, 49. German lawyers and diplomats had already once before tried to lobby the international legal world for the reinstatement of the German Reich's sovereign rights after they had been curtailed in the Versailles Treaty. See: Pederson, *The Guardians*, 195–204.
15. Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland*; Wildenthal, *The Language of Human Rights*, 45–62; Gehrig, 'Reaching Out to the Third World'.
16. Betts, 'Socialism, Social Rights, Human Rights'; Richardson-Little, *The Human Rights Dictatorship*, 138–221; Wildenthal, *The Language of Human Rights*, 61–166. For a broader perspective of the impact of a socialist framework of human rights on global politics, see: Betts, 'Socialism, Solidarity and Decolonization'.
17. Legal language became another form of political languages in the postwar era. See: Steinmetz, 'New Perspectives'.
18. Despite the fact that recent historiography, especially on the formation of the German-German border, has challenged writing German postwar history as the parallel history of two states in the tradition of Christoph Kleßmann's call for writing German postwar history highlighting entanglements and delineations, legal histories of the two German states have remained focused on the FRG and GDR as closed legal entities. For the debate on how to write postwar German history, see: Kleßmann, 'Verflechtung und Abgrenzung'; Kleßmann, *Die doppelte Staatsgründung*; Kleßmann, *Zwei Staaten, eine Nation*. Konrad Jarausch has called for putting this agenda into practice in Jarausch, 'Divided, Yet Reunited'. See also: Möller and Mählert, *Abgrenzung und Verflechtung*; Hochscherf, Laucht and Plowman, *Divided, But Not Disconnected*. Edith Sheffer's social history of the German border paved the way for putting Kleßmann's call for German-German histories into practice. See: Sheffer, *Burned Bridge*. In Frank Bösch's recent volume on German-German history since the 1970s, law as a theme is still largely absent. See: Bösch, *A History Shared and Divided*. The recent history of the East and West German Ministries of the Interior makes a first foray into entangled institutional histories of postwar Germany. See: Bösch and Wirsching, *Hüter der Ordnung*. Older accounts such as Peter Graf Kiel-

mansegg's *Das geteilte Land* also write in a German-German perspective, though Kielmansegg does not consider the GDR a valuable political alternative in German history. Others have described postwar Germany in parallel histories, e.g. Bender, *Deutschlands Wiederkehr*. For broader European perspectives integrating East and West, see: Major and Mitter, *Across the Blocs*; Vowinckel, Payk and Lindenberger, *Cold War Cultures*; Mikkonen and Koivunen, *Beyond the Divide*.

19. Jellinek, *Allgemeine Staatslehre*. For a concise overview of the European genealogy of the idea of sovereignty with a special emphasis on the holistic, indivisible nature of ideas of sovereignty, see: Bartelson, 'On the Indivisibility of Sovereignty'.
20. Stolleis, *Geschichte des Öffentlichen Rechts in Deutschland, Bd. 3*, 77–79.
21. For a recent history of the Weimar constitutional crisis and its impact on postwar West German constitutional consensus, see: Strote, *Lions and Lambs*, 23–45 and 151–74.
22. For Weimar-era intellectual debates on law, the legal system and *streitbare Demokratie*, see Greenberg, *Weimar Century*; Strote, *Lion and Lambs*. For Schmitt's intellectual trajectory, see: Müller, *A Dangerous Mind*. Jellinek's hegemonic view was also not challenged when Kelsen introduced a temporal dimension into his thinking about the state and proclaimed the primacy of international law in thinking about the state and sovereignty. Kelsen developed this view after being the prime drafter of the Austrian post-First World War constitution to explain and account for the legal demise of the Austrian-Hungarian Empire and the transition into the interwar order. See: Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* and *Allgemeine Staatslehre*. Natasha Wheatley's work on legal debates around the demise of the Austrian-Hungarian Empire promises to shed further light on Kelsen's impact on international legal debates.
23. Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*, 25–84.
24. This becomes especially apparent in the continuous use of legal codes despite changes in political systems in 1918/19, 1933 and 1945/49. Legal codes such as the Civil Code, Criminal Code and Family Code as well as the citizenship law remained in use since their development from the late nineteenth century onwards. For their nineteenth-century origins, see: Crosby, *The Making of a German Constitution.*
25. Frieder Günther has shown how interwar legal concepts of statehood and governance survived into the 1960s in the FRG. See: Günther, 'Ordnen, gestalten, bewahren'; Günther, *Denken vom Staat her*; Günther, 'Vom "Rising Star" zum Sündenbock'; see also: Stolleis, *Geschichte des Öffentlichen Rechts, Bd. 4*, 76–82 and 82–87; Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*, 25–66.
26. There exists a wealth of studies on various aspects of postwar legal history. For a comparative landmark study of the GDR and FRG, see: Stolleis, *Geschichte des Öffentlichen Rechts, Bd. 4*. On the development of legal thought in the FRG, see: Günther, *Denken vom Staat her*. For a perspective spanning from the Weimar period into the early FRG, see: Kutscher, *Politisierung oder Verrechtlichung?* For scholarship on the GDR and socialist legality, see: Mollnau, 'Sozialistische Gesetzlichkeit in der DDR'; Heuer, *Die Rechtsordnung der DDR*, 42–58; Dreier et al., *Rechtswissenschaft in der DDR 1949–1971;* Engelmann and Vollnhals, *Justiz im Dienste der Parteiherrschaft*; Stolleis, *Sozialistische Gesetzlichkeit*; Sieveking, *Die Entwicklung des sozialistischen Rechtsstaatsbegriffs in der DDR*; Glaeßner, *Herrschaft durch Kader*; Mohnhaupt, 'Europäische Rechtsgeschichte als Zeitgeschichte'; Mollnau, 'Die staatsanwaltliche Gesetzlichkeitsaufsicht in der DDR'; Schröder, 'Die Juristenausbildung in der DDR'; Mollnau, *Deutsche Demokratische Republik (1958-1989)*, 2 vols; Sperlich, *The East German Social Courts*; Schröder, *Zivilrechtskultur der DDR*, 4 vols. For the SED's takeover of the legal profession, see: Güpping, *Die Bedeutung der 'Babelsberger Konferenz'*; Eckart, *Die Babelsberger Konferenz vom 2./3. April 1958*. For the use of political criminal justice under the early SED government, see: Fricke and Engelmann, *'Konzentrierte Schläge'*. For studies on transitional justice, see: Priemel, *The Betrayal*; Weinke, *Gewalt, Geschichte, Gerechtigkeit*; Weckel and Wolfrum, *'Bestien' und 'Befehlsemp-*

fänger'; von Lingen, 'Defining Crimes against Humanity'. For a landmark legal study discussing Ostpolitik, see: Grigoleit, *Bundesverfassungsgericht und deutsche Frage*.

27. See: Pederson, *The Guardians*, 195–204.
28. Etzel, *Die Aufhebung von nationalsozialistischen Gesetzen*. The conflicts between the West German Parliamentary Council and the Western Allies over the wording of the Basic Law's preface showcased Allied concerns over the West German legal framework. See: Benz, *Auftrag Demokratie*, 325–419.
29. See: Hirsch, Majer and Meinck, *Recht, Verwaltung und Justiz im Nationalsozialismus*; Görtemaker and Safferling, *Die Akte Rosenburg*. Michael Stolleis estimates that 80–90 per cent of all local judges in the early FRG had been members of the Nazi Party. See: Stolleis, *Law under the Swastika*, 176. The continued influence of Hitler's 'crown jurist' Carl Schmitt on intellectual and legal life in the FRG is well established. See: Müller, *A Dangerous Mind*; van Laak, *Gespräche in der Sicherheit des Schweigens*; Günther, *Denken vom Staat her.*
30. Diestelkamp, *Rechtsgeschichte als Zeitgeschichte*, 25–66.
31. See: Hacker, *Der Rechtsstatus Deutschlands*, 78–104; Stolleis, *Geschichte des Öffentlichen Rechts in Deutschland, Bd. 4*, 96–114.
32. Peter C. Caldwell has highlighted the conflicts over law in the context of state planning in the 1950s. See: Caldwell, *Dictatorship, State Planning, and Social Theory*, 57–96.
33. Benjamin recalled years later how this cleansing of judicial elites and the change of the entire curriculum at law faculties also drove away many aspiring law students who 'ended up in the camp of the class enemy'. See: Benjamin, *Zur Geschichte der Rechtspflege*, 127.
34. For the developing East German memory culture after 1945, see: Herf, *Divided Memory*; Fulbrook, *German National Identity after the Holocaust*.
35. One of the SED's aims was disassociating their state from any compensation claims by victims of the Nazi regime. See: Meining, 'Zwischen Nichtbeziehung, Feindschaft und später Annäherung', 176; Goschler, *Schuld und Schulden*, 361–411.
36. Hacker, *Der Rechtsstatus Deutschlands*, 116–53; Gehrig, 'Reaching Out to the Third World'.
37. See: Osiander, 'Sovereignty, International Relations, and the Westphalian Myth'; Stirk, 'The Westphalian Model and Sovereign Equality'.
38. Getachew, *Worldmaking after Empire*, 98–99. For the unequal institutional make-up of the UN, see: Mazower, *No Enchanted Palace*.
39. For the ambiguity of 'people' as a category of international law, see: Fisch, *The Right of Self-Determination*. For ideological clashes over the nature of the new international system of governance, see: Mazower, *Governing the World*, 191–405; Normand and Zaidi, *Human Rights at the UN*. For Western dominance in international law making until the mid-twentieth century, see: Koskenniemi, *The Gentle Civilizer of Nations*. For alternative visions for modes of global governance originating in Africa in the 1960s, see: Getachew, *Worldmaking after Empire*. For the Soviet influence on international law, see: Quigley, *Soviet Legal Innovation*.
40. Palmowski, *Inventing a Socialist Nation*; Palmowski, 'Citizenship, Identity, and Community'.
41. For the West German foreign policy campaign of non-recognition, see: Kilian, *Die Hallstein-Doktrin*.
42. Gehrig, 'Reaching Out to the Third World'; Horn, 'Die Deutsche Liga für die Vereinten Nationen (LVN) in der WFUNA'; Richardson-Little, *The Human Rights Dictatorship*, 97–137.
43. For West German conflicts over the legal nature of the state after 1949, see: Günther, *Denken vom Staat her*.
44. Weitz, 'Self-Determination', 469f. and 482.
45. Lenin, 'The Right of Nations to Self-Determination'. Woodrow Wilson only reacted to Lenin's advocacy at the end of the First World War. See: Fisch, *The Right of Self-Determination*, 129–37.

46. Oppenheim described sovereignty of states as legal personas under international law as follows: 'Sovereignty is supreme authority, an authority that is independent of any other earthly authority. Sovereignty in the strict and narrowest sense of the term includes, therefore, independence all around, within and without the borders of the country'. Oppenheim, *International Law*, 101. For Oppenheim's approach to international law and its lasting impact over the last century, see: Kinsbury, 'Legal Positivism as Normative Politics'; Schmoeckel, 'The Story of Success'. The Soviet Union offered an alternative legal universe of rights after the revolution in 1917; see: Weitz, *A World Divided*, 281–319; Newton, *Law and the Making of the Soviet World*. For the impact of Soviet legal theory on international law, see: Quigley, *Soviet Legal Innovation*.
47. For anti-colonial mobilization around self-determination, see: Manela, *The Wilsonian Moment*; Fisch, *The Right of Self-Determination*, 190–217; Getachew, *Worldmaking after Empire*, 71–106.
48. For the Soviet return to socialist legality, see: Moyal, 'Did Law Matter?'. See also: Heuer, *Die Rechtsordnung der DDR*, 58–71. For the SED's attack on the legal sphere at the Babelsberg Conference in 1958, see: Güpping, *Die Bedeutung der 'Babelsberger Konferenz'*; and Caldwell, *Dictatorship, State Planning, and Social Theory*, 57–96.
49. See: Requate, *Der Kampf um die Demokratisierung*, 43–55.
50. For Soviet legal origins, see: Newton, *Law and the Making of the Soviet World*. For the organization of East German legal scholarship, research institutions and legal training, see: Stolleis, *Sozialistische Gesetzlichkeit*.
51. For the origins of the 1913 law, see: Sargent, 'Diasporic Citizens'.
52. This shift had been prepared for a long time with new ideological patterns explaining the social and political role of GDR citizens in a socialist society. See: Palmowski, 'Citizenship, Identity, and Community'; Betts, 'Socialism, Social Rights, Human Rights'.
53. Richardson-Little, 'Erkämpft das Menschenrecht'. This campaign was based in Soviet traditions of rights talk. See: Nathans, 'Soviet Rights-Talk in the Post-Stalin Era'.
54. See: Siegelberg, *Statelessness*.
55. The Soviet legal system had pioneered such a state-controlled system of citizenship since the October Revolution. See: Lohr, *Russian Citizenship*, 132–76.
56. Gosewinkel distinguishes between an 'outer dimension' (the membership of a state that includes citizens and excludes foreigners from rights) and an 'inner dimension' (the rights of citizens within the state). See: Gosewinkel, *Schutz und Freiheit?*, 12–30.
57. After the SED had ordered targeted kidnappings of former Nazis and opponents of the East German state in the late 1940s and early 1950s, the GDR government 'legalized' threats to former citizens in the 1960s. See: Gehrig, 'Cold War Identities'.
58. Fink and Schaefer, *Ostpolitik 1969–1974*; von Dannenberg, *The Foundations of Ostpolitik*; Sarotte, *Dealing with the Devil*. This fundamental shift in West German politics is underlined by conservative pushback against Ostpolitik. See: Grau, *Gegen den Strom*. Klaus Grigoleit has provided a fascinating and detailed legal study of Ostpolitik's implications for West German jurisprudence, but has not placed the legal transformations that accompanied Ostpolitik in their German-German and international legal contexts. See: Grigoleit, *Das Bundesverfassungsgericht und deutsche Frage*, 271–89.
59. Grigoleit, *Das Bundesverfassungsgericht und deutsche Frage*, 180–301.
60. Even anti-colonial assaults on colonial powers using the right of self-determination operated in the logics of dominant ethnic groups as deciding factors for nationality after independence. See: Fisch, *The Right of Self-Determination*, 190–217.
61. Against 'nationality' as the dominant legal norm, the League of Nations set out to protect minority rights, but was repeatedly curtailed by its member states. For the German interwar context, see: Salzborn, '"Volksgruppenrecht"'.
62. International law scholars firmly believed in the indivisibility of sovereignty in the international arena at the end of the Second World War. When the UN was born in the

mid-century disjuncture of 1945, the basic mantra of international representation became 'one nation, one seat' when the founding members took their seats in the General Assembly. This remained the case despite the fact that the Soviet Union undermined this principle from the outset by managing to increase its UN representation against a Western voting majority to three votes by seating the Soviet Republics of Belarus and Ukraine as independent UN delegations within the General Assembly. For a leading American scholarly voice of the immediate postwar years, see: Morgenthau, 'The Problem of Sovereignty Reconsidered', 344. For a contemporary perspective, see: Zürn and Deitelhoff, 'Internationalization and the State', 193–217. See also: Sheehan, 'The Problem of Sovereignty in European History'.

63. Gehrig, 'Reaching Out to the Third World'. For GDR foreign policy and exchange programmes with African states, see: Winrow, *The Foreign Policy of the GDR in Africa*; van der Heyden, *GDR Development Policy in Africa*; Stevens, 'Bloke Modisane in East Germany'. This diplomatic race for support from Afro-Asian states was underpinned by a growing involvement of both German governments in development aid initiatives. See: Büschel, *Hilfe zur Selbsthilfe*; and Hong, *Cold War Germany*. Until this point, the FRG was able to defend its position, but the period between 1968 and 1971 saw an upsurge of support for the GDR among the Afro-Asian bloc in the UN. See: Gray, *Germany's Cold War*. This race was accompanied by media diplomacy of both states. See: Gißibl, 'Deutsch-deutsche Nachrichtenwelten'. For a conceptual approach to cultural diplomacy of the two German states, see: Paulmann, 'Auswärtige Repräsentation nach 1945'.
64. For a diplomatic history of German-German UN politics until 1973, see: Stein, *Der Konflikt um die Alleinvertretung*.
65. See: Chiang, *The One-China Policy*; Forster, 'Threatened by Peace'. Bernd Schaefer has shown the PRC's diplomatic manoeuvring to upset Ostpolitik negotiations. See: Schaefer, 'Ostpolitik, "Fernostpolitik," and Sino-Soviet Rivalry'. There is a wealth of scholarship on the Hallstein-Doctrine. The campaigns of both German states to maintain or break the West German isolation of the GDR focused on Africa and Asia by the 1960s. See: Gray, *Germany's Cold War*; Stein, *Der Konflikt um Alleinvertretung*; Das Gupta, *Handel, Hilfe, Hallstein-Doktrin*; Engel and Schleicher, *Die beiden deutschen Staaten in Afrika*; Troche, *Ulbricht und die Dritte Welt*; Döring, *'Es geht um unsere Existenz'*; Hein, *Die Westdeutschen und die Dritte Welt*; Jetzlsperger, 'Die Emanzipation der Entwicklungspolitik von der Hallstein-Doktrin'. Earlier scholarship had explored Ostpolitik in the framework of the two German states and the four Allied powers.
66. For the PRC UN campaign, see: Forster, 'Threatened by Peace'.
67. Antony Anghie has argued that the origins of international law and 'sovereignty doctrine' can only be understood if we acknowledge its roots as 'the attempt to create a legal system that could account for relations between Europeans and non-European worlds in the colonial confrontation'. See: Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 3. Decolonizing states' attack on this unequal system created the pressure at the UN and elsewhere to reconfigure concepts of sovereignty that also impacted the German-German legal battle after 1949. See: Pahuja, *Decolonising International Law*; Normand and Zaidi, *Human Rights at the UN*, 243–315.
68. Starting with Samuel Moyn's landmark study on human rights, a vibrant debate within human rights historiography has emerged over the historical moment of a 'human rights revolution' and its intellectual and ideological nature. See: Moyn, *The Last Utopia*; Hoffmann, *Human Rights in the Twentieth Century*; Eckel, *Die Ambivalenz des Guten*. Against Moyn's argument of a human rights revolution taking place in the late 1970s, others have pointed to the importance of Third World legal campaigns during the 1960s. See: Burke, *Decolonization and the Evolution of International Human Rights*; Jensen, *The Making of International Human Rights*; Thompson, 'Tehran 1968 and Reform of the UN Human Rights System'. See also: Eslava, Fakhri and Nesiah, *Bandung, Global History, and International*

Law. After a prolonged debate on the periodization of a human rights 'breakthrough', recent scholarship called attention to the competition between different visions of human rights. See the exchange between Stefan-Ludwig Hoffmann, Samuel Moyn and Lynn Hunt in *Past & Present* 232, 2 (2016) 233, 1 (2016); Burke, Duranti and Moses, 'Introduction: Human Rights, Empire, and After'. Samuel Moyn's recent return to a focus on inequality and social and economic human rights also does not engage more deeply with socialist legal traditions as an important driver of Cold War debate about human rights and the law. See: Moyn, *Not Enough*. Scholars such as Roland Burke and recently Steven L.B. Jensen have argued for the Third World origins of human rights. See: Burke, *Decolonization and the Evolution of International Human Rights*; Jensen, *The Making of International Human Rights*. Lydia Liu meanwhile has questioned the exclusively Western origins of the Universal Declaration of Human Rights, while Paul Betts has drawn out the importance of the early Cold War's ideological and religious battle for the framing of the European Convention on Human Rights. See: Liu, 'Shadows of Universalism'; Betts, 'Religion, Science, and Cold War Anticommunism'.

69. The socialist bloc's contribution has remained largely absent from these debates on the history of human rights. Rare exceptions for the GDR context are: Betts, 'Socialism, Social Rights, Human Rights'; Gehrig, 'Reaching Out to the Third World'; Richardson-Little, *The Human Rights Dictatorship*. For a broader perspective, see: Betts, 'Socialism, Solidarity and Decolonization'.
70. Benjamin Nathans has traced the evolution of state-sponsored rights talk in the Soviet Union from the 1930s onwards. See: Nathans, 'Soviet Rights-Talk in the Post-Stalin Era'.
71. Jennifer Altehenger has reflected on this necessity for legal education and law propaganda under socialism from the state's perspective in the case of the PRC and exposed its unintended consequences for the CCP government. See: Altehenger, *Legal Lessons*.
72. It was this facade of socialist law that Charter 77 called 'virtual apartheid' in 1977 and Vaclav Havel attacked in 1978 usurping the language provided by socialist legality. In Havel's attack on the legal systems under socialist governance, he concentrates on the socialist legal system's deficiencies using the terminology of the state to undermine the authority of socialist legality. See: Havel, 'The Power of the Powerless'.
73. Markovits, 'Law or Order', 525–30; Gehrig, 'Reaching Out to the Third World'; Richardson-Little, *The Human Rights Dictatorship*.
74. See: Marshall, *Citizenship and Social Class and Other Essays*. Scholars of late socialism and popular protest under communist governments such as Paul Betts and Elizabeth Perry have cautioned against interpretations of direct imports of Western rights understandings into socialist contexts during the late Cold War. Rights protests that spread across the socialist bloc in the late 1980s first developed very much 'with the state'. See: Betts, 'Property, Peace and Honour', 252. Elizabeth Perry has argued that in the specific case of the PRC, popular protests are framed in a century-old cultural tradition of the responsibility of the ruler or the state to provide for the economic needs of the Chinese people. See: Perry, 'Chinese Conceptions of "Rights"', 45–47. Beyond her analysis of the particular Chinese cultural and political traditions, her notion of 'rules consciousness' sharpens the analysis of legal cultures in socialist states in Eastern Europe.
75. For a broader perspective on alternative socialist geographies of human rights, see: Betts, 'Socialism, Solidarity and Decolonization'.
76. The shift in popular understandings of rights and citizens' active attempts to claim rights became visible by the early 1980s. See: Markovits, 'Socialist vs. Bourgeois Rights', 635f.; Betts, 'Property, Peace and Honour'; Richardson-Little, *The Human Rights Dictatorship*, 180–221.
77. Lora Wildenthal has shown various forms of human rights activism in the FRG ranging from calls for a right to homeland to humanist initiatives and Amnesty International as

well as women's activism. See: Wildenthal, *The Language of Human Rights*. These initiatives had only limited effects on law making and jurisprudence until the 1970s.

78. The historical significance and role of the American turn to human rights in the 1970s has resulted in much conflict within human rights historiography. For the different positions, see: Moyn, *The Last Utopia*; Keys, *Reclaiming American Virtue*; Bradley, *The World Reimagined*; Snyder, *Human Rights Activism and the End of the Cold War*; Slaughter, 'Hijacking Human Rights'; Franczak, 'Human Rights and Basic Needs'.
79. Thomas, *The Helsinki Effect*. See also: Romano, *From Détente in Europe to European Détente*; Bange and Neidhardt, *Helsinki 1975 and the Transformation of Europe*. Sarah Snyder has argued for the direct transformative role of the Helsinki Final Act through the coordinated work of rights activist groups across the Iron Curtain. See: Snyder, *Human Rights Activism and the End of the Cold War*.
80. In the late 1940s and 1950s, lawyer associations that served as Cold War front organizations to attack rights violations of the other Germany first used the language of human rights. See: Heitzer, *Die Kampfgruppe gegen Unmenschlichkeit*; Stöver, 'Politik der Befreiung?'; Fricke and Engelmann, *'Konzentrierte Schläge'*. Yet, beyond this early Cold War propaganda rhetoric, human rights remained on the margins of legal and public debate for a long time. See: Wildenthal, *The Language of Human Rights*; and Richardson-Little, *The Human Rights Dictatorship*.
81. Liberalization of legal practice took root within West German jurisprudence during the 1960s, but also met with resistance and returned the question of the function of law for social transformation and the provision of welfare rights to West German legal debates in the 1970s; see Chapter 5 of this book. For the 1950s West German intellectual and judicial controversies over welfare rights and provisions for citizens, see: Caldwell, *Democracy, Capitalism, and the Welfare State*, 46–70. For the conflicts over a democratization of the judiciary that went alongside these debates in the 1960s and 1970s, see: Requate, *Der Kampf um die Demokratisierung*.
82. Pekelder, 'Towards Another Concept of the State'; Friedrich-Ebert-Stiftung, *Archiv für Sozialgeschichte, Bd. 44*. For studies highlighting the broader historical shifts of the 1970s, see: Ferguson et al., *The Shock of the Global*; Raphael and Doering-Manteuffel, *Nach dem Boom*; Jarausch, *Das Ende der Zuversicht*. For shifts in understandings of citizenship, see: Gosewinkel, *Schutz und Freiheit?*, 346–518.
83. Günther, *Denken vom Staat her*.
84. There is a wealth of literature on '1968' protests in the FRG. I only cite the recent study by Timothy Brown that has tied together the results of previous scholarship and expanded them in a global framework. See: Brown, *West Germany and the Global Sixties*.
85. See: Knoch, '"Mündige Bürger"'.
86. The 1970s saw a mobilization of conservative milieus against the social-liberal reform agenda. See: Schildt, '"Die Kräfte der Gegenreform sind auf breiter Front angetreten"'; Wehrs, *Protest der Professoren*; Koischwitz, *Der Bund Freiheit der Wissenschaften*; Geyer, 'War Over Words' and 'Die Gegenwart der Vergangenheit'.
87. Constitutional patriotism remains a contested focus of German debates on national identity. See: Müller, *Verfassungspatriotismus*. See also: Bergem, *Identitätsformationen in Deutschland*, 155–75; Kronenberg, *Patriotismus in Deutschland*, 182–206; Hacke, *Die Bundesrepublik als Idee*.
88. I take inspiration for this term from Joachim Häberlen's phrase 'consciously dissonant temporal registers'. See: Häberlen, *The Emotional Politics of the Alternative Left*, 33.
89. Dieter Grimm famously highlighted the political nature of law in the context of debates over a liberalization of West German legal codes in the late 1960s by labelling it *geronnene Politik*. See: Grimm, 'Recht und Politik'.