

# Policy Responses to the Radical Right in France and Germany

Based on research fieldwork conducted in France and Germany, this study seeks to explain how public actors have taken part in the regulation of the expression of right-wing radicalism.

The author compares these two neighbouring countries which have framed the struggle against right-wing radicalism differently. German political and state actors have constructed a public policy responding to political radicalism, whilst in France, the radical right is primarily handled in the political arena. The text evaluates how these two Western European democracies address the paradox of tolerance (i.e. the fact that liberal democracies may restrain rights they value, such as freedom of speech, in order to repress intolerant forces that threaten democracy).

This book is core reading for scholars and students interested in the spread of far-right politics in contemporary democracies.

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# **Policy Responses to the Radical Right in France and Germany**

Public Actors, Policy Frames,  
and Decision-Making

**Bénédicte Laumond**

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# Introduction

[Interviewer] How did you come up against the issue of right-wing radicalism when you became general prosecutor?

[Respondent] I began dealing with this issue in December 1993 as soon as I became the head of the prosecution department in Neuruppin. The former concentration camps Sachsenhausen and Ravensbrück are in this jurisdiction. There had already been incidents of this nature. It was very important for me to prosecute offences with a right-wing extremist motivation. And I put in much effort in developing a coherent enforcement strategy against right-wing extremism, with lists of persons who had repeatedly committed criminal offences so when they committed another offence, we reacted with harsher penalties. . . . And when I became general prosecutor in 1996, I thought, now we need to intensify the prosecution against right-wing extremists state-wide.

(Interview conducted with a German prosecutor, Germany)

[Interviewer] I am interested in knowing more about how the French and German states respond to what I call the radical right, what police officers often call the ultra-right and what prosecutors—

[Respondent] Do not call [anything].

(Interview conducted with a French prosecutor, France)

Actually, we [administrative judges] do not put a label on political cases. Therefore, one cannot say that we adjudicate cases concerning one particular political ideology. . . . If you look in the table of contents of the Lebon volumes [selected decisions of administrative courts], there is no section called ‘extreme right’.

(Interview conducted with a French administrative judge of the highest administrative jurisdiction, France)

These statements by three respondents interviewed for this book show two contrasting ways of addressing right-wing radicalism. Whereas the German prosecutor expressly names ‘right-wing extremism’ as an issue that he addresses, the two French magistrates, in contrast, do not apply a label to the central issue of this book. In fact, the French respondents unknowingly refer to a dilemma that

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has interested scholars of a variety of disciplines from philosophy to public law. Addressing state responses to right-wing radicalism is an issue that underpins one central problem: how can states characterised by a liberal and democratic system develop responses, including repressive ones, to a political phenomenon? This dilemma, the paradox of tolerance, was clarified by Popper (1945),<sup>1</sup> but the question of whether or not to tolerate the intolerant (Rawls, 1971) remains a sensitive and fiercely discussed issue in current policy-making. For instance, the discovery of the right-wing terror network “Nationalsozialistischer Untergrund” (NSU) in 2011 propelled the issue of right-wing terrorism to the centre of public and political interest in Germany. A thin connection with the right-wing extremist party “Nationaldemokratische Partei” (NPD) appeared, which triggered a large political discussion around the possibility of a second application to ban the party.<sup>2</sup> Whereas popular parties such as the Christian Democrats and the Social Democrats largely approved the application of the ban, other governing parties such as the Liberals and the Greens did not, either for pragmatic reasons or out of liberal considerations (Backes, 2018). In France, “Bastion Social”, a right-wing extremist social movement founded in 2017, made itself famous for squatting in abandoned buildings and for opening businesses (bars, tattoo shops, and so on) to establish a structured right-wing subculture in urban areas. Due to the violence of some of its activists, the movement was soon monitored by the intelligence service, and the question of whether Bastion Social should be proscribed arose. The movement was prosecuted for various criminal offences and eventually banned by the government in 2019. Although this event indicates that liberal democracies do formulate responses to various forms of political radicalism, their delimitation and limits are still debated. The most salient discussions in public discourse are often centred around militant measures, such as bans and prosecution, even though a variety of responses to political radicalism exists. The discussion that I present in this book is theoretically grounded in the idea that liberal democracies deal with this phenomenon in different ways (Pedahzur, 2001; Malkopoulou and Norman, 2018). Among the different kinds of political radicalism that may be targeted by liberal democracies, this study focuses on right-wing radicalism. Minkenberg provides a minimal definition of the radical right as a “political ideology revolving around the myth of a homogenous nation – a romantic and populist ultra-nationalism hostile to liberal, pluralistic democracy, with its underlying principles of individualism and universalism” (2013, p. 11). As the previous examples show, radical right actors may be divided into different organisational forms, political parties, social movements, and a subcultural milieu (Ibid.).<sup>3</sup>

### **Policy measures against right-wing radicalism**

In the French and German contexts, responses to the radical right encompass a myriad of public reactions emanating from different state and non-state actors. In both countries, trials of Holocaust deniers involve both the police and criminal justice and are widely covered by the media. A recent example in France is the

highly publicised prosecution of the stand-up comedian Dieudonné for repeated anti-Semitic statements. Similarly publicised are the bans on right-wing associations which are issued by the government but also involve administrative law judges in both France and Germany. Responses to the radical right also entail programmes developed jointly by public authorities and non-state organisations dedicated to preventing the spread of right-wing radical ideology. In short, there is a great variety of responses formulated and implemented by different policy actors: administrative or criminal judges, security authorities, political actors, non-governmental organisations, and non-repressive ministries. In many cases, each response requires the involvement of a range of actors before it can effectively be implemented. Given the diversity of responses and the various constellations of policy-makers, how do states use the different policy instruments at their disposal to establish a political order in liberal democracies?

This is an old question that has been rediscovered recently. The issue of policy responses to political radicalism was first addressed by the seminal work of German scholars who introduced and discussed the concept of militant democracy (Loewenstein, 1937; Mannheim, 1943), which was conceived as a means of preventing liberal democracies from anti-democratic attacks. Early research on militant democracy was developed in the context of European fascism and therefore aimed to produce democratic models that could be enforced during the reconstruction of European societies after the war. There is a renewed academic interest in militant democracy and more generally in responses to political radicalism (Capoccia, 2013) in the present context, which is characterised by the electoral success of radical right-wing parties that are still perceived by most Europeans as hostile to the liberal democratic order. This illustrates the acute tension between political tolerance and democratic self-defence. The question of how Western European states address the paradox of tolerance is of scientific interest, as finding answers to it can help illuminate the dynamics leading to the establishment of a political order in liberal democracies.

Minkenberg (2017) argues that the challenge of responding to right-wing radicalism traditionally spurred conflicts within German society and led to the juridification of political problems related to the radical right. One illustration of this is the renewed application to ban the right-wing extremist party NPD in 2013, which was rejected by the Constitutional Court in 2017. Party bans were often brought up in order to repress the most extremist expressions of right-wing radicalism. By defending a German militant democratic vision of democracy and rejecting negative republicanism,<sup>4</sup> constitutional judges rejected the possibility of proscribing an electorally and structurally weak party (Backes, 2018) and underlined that other types of measures were available for responding to the NPD. This suggests that there are conceptual logics, which evolve behind the use of measures against political radicalism. Moreover, this example invites us to explore the choices made by different policy-makers in order to assess the influence of historical, political, and institutional logics. In doing so, responses to right-wing radicalism can be considered as a policy field, which enables the use of the largely underused analytical tools of policy studies in the field of right-wing studies.

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Public policy can be defined as the process leading to public programmes, usually with explicit objectives (Muller and Surel, 1998). Policies are social constructions and the expression of the power of the state. In addition, a policy is not only a series of responses but rather a space constituted by interactions that goes beyond a legal framework; a policy is a “local order” (Friedberg, 1993). In order to understand this space, one must know not only the theoretical content of policy responses against right-wing radicalism but also the conditions under which they may be used, the role of policy-makers and of their constellations, and finally the implication of the target population in this process (in this case, the radical right). Certain questions follow from these remarks. First of all, how do the different policy actors who address the radical right frame the issue? By assessing the regulation of political radicalism through the perceptions and actions of policy actors, it is possible to explore how states have or have not depoliticised the regulation of political radicalism. Second, which factors influence the capacity of policy-makers to make decisions? How can one explain why some responses are used and others are not? This book aims to explore responses to right-wing radicalism through the prism of policy studies in order to understand the rationale behind the construction of a political order in France and Germany.

#### **A French-German scientific undertaking**

This book is the result of a French-German scientific undertaking. This fact entails certain theoretical and methodological choices that I have made to explore the regulation of right-wing radicalism in liberal democracies.

Policy studies in France have been influenced by a variety of approaches. First of all, in the 1980s, policy studies in France were strongly influenced by several attempts to investigate the state in action (*l'Etat en action*, Jobert and Muller, 1987) in a comparative way since these scholars assumed that public policies could only be understood comparatively (Boussaguet and Dupuy, 2014). This approach contrasted with the rest of French political science, where studies mostly focused on single case studies (Favre and Legavre, 1998). In addition, Jobert and Muller popularised the cognitive framework throughout the 1990s in which the ideas and perceptions of policy actors were reintroduced to explain changes in various policy fields. Second, a “body of research was initiated post-1968 by a group of critically oriented administrative lawyers” who developed “a sophisticated critical analysis of public administration, shaping the understanding of public policies” (Le Galès, 2011, p. 203 ff.). These studies underscored the political role of state actors in the development and implementation of policies. In this book, which explores how policy-makers regulate right-wing radicalism, the analysis has been influenced by this strand of literature. Third, these critical law and public policy scholars worked “on the activities of states, the concrete *dispositifs* of public policy” (Ibid.). Deriving from a Foucauldian approach in which law-making and the technical procedures of power are central elements, this strand of literature contributed to the development of the sociology of policy instruments. Policy instruments are technical apparatuses which carry a concrete

conception of the relationships between politics and society (Lascoumes, 2004). In this book, I will examine a series of instruments used to respond to the radical right. There are two groups of policy instruments to address right-wing radicalism: legislative and regulatory instruments (repressive measures) and agreement-based and incentive-based instruments (preventive measures) (Lascoumes and Le Galès, 2004, p. 361). In this book, I will inquire into how public actors strike a balance between these two approaches and will explain how political radicalism is regulated.<sup>5</sup> In sum, these three strands of literature, cognitive framework, critical analysis of public administration, and analysis of policy instruments, which shaped French political science, also influenced my research. French sociology has also had a substantial influence on my project. Empirical qualitative research has been strongly consolidated in the last few decades since field research became a central component of research in French social science (Corcuff, 2011). In this respect, the methodology that I have developed relies on this scientific tradition. Semi-structured interviews were conducted among public actors in charge of addressing right-wing radicalism. Their perceptions as well as their experiences were explored and will be considered in the analysis as knowledge objects and even research instruments (more details in Chapter 1).

This book was also shaped by German research in political science, of which I have identified three distinctive features. First, right-wing radical studies are an established sub-field of German political science. Since the 1980s, research questioning the relationship between democracy and extremism has thrived. As will be presented in Chapter 3, a controversy emerged on the ways to address right-wing radicalism. Broadly, there are two conflicting positions. On the one hand, two political scientists, Uwe Backes and Eckard Jesse (1989), conceptualised political extremism, which is *per se* in opposition to the democratic constitutional state (extremism theory) and should therefore be countered. This approach was vigorously criticised in the 1990s by other political scientists working on right-wing radicalism (e.g. Jaschke, 1991; Butterwegge, 1996; Neugebauer, 2001; Stöss, 2008) who advocated for stronger differentiation between different political families (mostly left-wing extremism and right-wing extremism) encompassed in the concept of extremism and pointed out the limits of a perspective which they believed fails at precisely determining which movements are extremist and which are not (Druwe and Mantino, 1996). Other scholars insisted that the rationale behind the actions of repressive actors such as the police, the intelligence service, and the justice system was not consistently explained and assessed (Minkenberg, 2005). This academic controversy led to growing interest in strategies against right-wing radicalism at both the federal and the local level. Additionally, there have been numerous exchanges between state authorities and scholars conducting studies on the responses implemented against right-wing radicalism, leading academia to play a non-negligible role in the responses enforced. This is in line with Foucault's argument (2007) that German universities have been a reservoir for public administration since the 18th century. With the development of cameral sciences, universities became centres for the production of knowledge, enabling the state to become more powerful (Laborier, 2011). This tradition is strong when

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it comes to radical right-wing studies; scholars have become influential in the evaluation of state programmes against right-wing radicalism. This book is built on this same scientific context: my primary objective was to transpose questions developed in the German academic context to my comparative research design and therefore compare – on the basis of the German experience – how two political systems with different socio-political features, but which remain comparable, have established a political order in which right-wing radicalism is framed as a political adversary.

Second, the literature evidences a methodological divide in German comparative politics between “classical comparison” and “culturalistic comparison” (Beichelt, 2005). The two methods exist concurrently even though comparative politics are dominated by classical comparisons. The classical approach generally presents large-*n* comparative designs. This kind of research primarily focusses on building models, which are generalisable, and posits that contexts are stable and that the variables are comparable across country cases. By contrast, the culturalistic approach promotes the exploration of cultural and contextual features in order to build comparability between a few cases. Concerning policy responses to right-wing radicalism, adopting a culturalistic approach means asking questions such as: how can one compare repression of right-wing radicalism by judges given that justice actors are assigned varying importance in the repression of political radicalism in each country? The culturalistic approach posits that repression through justice can be fruitfully compared only if the specificities of justice systems are taken into account; the comparison relies on cases rather than models. In so doing, the culturalistic approach can thoroughly explain changes or outcomes, which may be the consequence of complex mechanisms that require analytical depth. In sum, this approach focusses on what cannot be explained by the regression models of classical comparisons (Ibid.). Culturalistic approaches in Germany are influenced by cultural studies and are likely to integrate symbols and their interpretation by actors in the research design. The methodological choices made for the present research have been influenced by the culturalistic approach.

Third, German policy studies were influenced by American political science, which contributed to the rapid development of this sub-field of political science in Germany (Giraud, 2002). In particular, the *Steuerungstheorie* (governance theory), promoted by the work of Renate Mayntz and Fritz Scharpf, played a significant role in German political science. *Steuerungstheorie* focusses on the regulation powers of policy actors, on their strategies, on the constellations of actors, and finally on their institutional constraints in order to identify the conditions of good governance (Giraud, 2001). Scharpf (1994) developed the notion of systems of negotiation, the capacity of interdependent actors to coordinate their actions, at a time when state institutions were in decline in Germany. Policy studies progressively questioned the regulation powers, or lack thereof, of states towards social and economic actors, and integrated non-state actors into the analysis of policy-making. Political scientists assumed that power was divided among actors from different social groups, which led them to explore how actors with different perspectives impacted the policy process. As suggested by Giraud (2009),

Table 0.1 Arbitration between French and German academic features (in bold)

|  | <i>French tradition</i>  | <i>German tradition</i>  |
|--|--|--|
| <b>Right-wing studies</b>  | Right-wing radicalism investigated mostly with tools of political party research | <b>Studies on right-wing radicalism as an established sub-field of political science</b>       |
| <b>Methodological approach</b>   | <b>Empirical research</b>  | Classical approach in comparative politics (dominant)<br><b>Culturalistic approach (minor)</b> |
| <b>Policy studies</b>  | <b>Critical political science / Cognitive framework / Policy instruments</b>     | <b>Influence of the control theory</b>   |
| <b>Expected contribution of this research to the field of right-wing studies</b>   |  |  |
| <ul style="list-style-type: none"> <li>- <b>Reconcile right-wing studies with policy studies</b></li> <li>- <b>Assess how the well-researched German case can inform the understudied French case</b></li> <li>- <b>Combine elements of the rational-choice theory with a constructivist approach</b></li> </ul> |  |  |

this innovative approach encouraged the combination of traditional theoretical approaches such as the rational-choice theory with more constructivist perspectives. Combining apparently opposing theoretical approaches in this manner seemed very suitable for my research, as it allows for a productive combination of French and German scientific traditions (Table 0.1).

### **Comparative character of the study**

What is the added value of comparative policy studies? Several criticisms have been made of comparative approaches. To begin with, some comparisons are criticised for interpreting empirical evidence that is partial to the hypotheses in hand. Another pitfall observed is artificial comparison, whereby national cases are conveniently accumulated without having been properly constructed prior to the comparative analysis (Boussaguet and Dupuy, 2014). In order to avoid these shortcomings, this section explains how comparability between the chosen cases was established. This research can be understood as a comparative case-oriented analysis where each case study is defined as an in-depth study of a single unit (Gerring, 2007). Selecting cases that would make for a fruitful comparison was of crucial importance. I chose two European countries, France and Germany, and followed the method of agreements (Mill, 1843), which consists of comparing cases having in common a target phenomenon as well as a shared set of causal factors, although they may vary in other ways that might have seemed causally relevant (Skocpol, 1979, p. 36). Here, the target phenomenon to be explained is the regulation of right-wing radicalism: both countries face right-wing radicalism and seek to regulate this political phenomenon.

I have chosen country cases that are broadly comparable across time. Marc Bloch (1928, p. 19) underlines the relevance of comparing neighbouring countries:

## 8 Introduction

“this is to make a parallel study of societies that are at once neighbouring and contemporary, exercising a constant mutual influence, exposed throughout their development to the action of the same broad causes just because they are close and contemporaneous, and owing their existence in part at least to a common origin”. Both France and Germany are stable liberal democracies and share a legal framework as EU member states. Besides these general traits, France and Germany both belong to conservative corporatist legal models, which ensures further comparability of the two cases. Finally, both states are rather interventionist. When responding to the radical right, the French and German states have comparable militant democratic tools at their disposal, such as criminal proceedings or association bans (see a classification of responses in Chapter 1) and both freely make use of them. Yet, there are also diverging factors between France and Germany which affect the regulation of right-wing radicalism: the characteristics of the radical right, political and institutional features, and, finally, different treatments of an authoritarian past.

As for the organisation of the radical right, Germany is characterised by a high level of militancy in small subcultural groups (Minkenberg, 1998; further details in Chapter 2). However, radical right-wing parties were rather unsuccessful at the national scale, even if they periodically won seats in several German states, until the recent emergence of the party Alternative für Deutschland. Another peculiarity of the German radical right is its violence. The disclosure of the German terrorist group NSU in 2011 and the more recent assassination of the CDU politician Walter Lübcke reflect the existence of well-structured underground right-wing violent networks that pose a challenge to state regulation and repression of the radical right. By comparison, the French case is marked by a strong, successful, and well-implanted radical right party, the Rassemblement National (RN, formerly Front National) (Birenbaum, 1992; Mayer and Perrineau, 1996; Dézé, 2012). The RN quickly absorbed several right-wing groups which originally belonged to the right-wing subculture. Therefore, the cultural scene is not well developed in France, and political violence is less meaningful than in Germany (Minkenberg, 1998, see Table 0.2). As for the place of the RN within the political arena, mainstream political parties have established a *cordon sanitaire* strategy<sup>6</sup> and have refused to make alliances with the party, at least at the national level. Locally though, political alliances are (rarely) concluded between the Conservative Party and the radical right (Camus, 2009).

Table 0.2 French-German structural differences

|   | <i>Unitary government</i> | <i>Federal government</i> |
|---|---------------------------|---------------------------|
| <b>Strong sub-cultural milieu and (historically) weaker political party</b> | Sweden                    | Germany                   |
| <b>Strong party from the radical right and weaker sub-cultural milieu</b>   | France                    | Austria                   |

Regarding political and institutional features, the French state is centrally organised with a unitary government, whereas German federalism is a historical feature and has given birth to 17 Parliaments with specific powers. Therefore, German federalism is characterised by its policy diversity between *Länder* (Schmidt, 2016). In contrast, France has a state-centric character (Cole, 2008, p. 27) which “emphasises the organisational pre-eminence and legitimacy of the state” (Cole, 2005, p. 113). Despite a series of decentralisation reforms which devolved more power to regional assemblies, French local authorities still do not have major powers in any repressive policy area (Table 0.2). The federal/unitary difference generates a second level of differences regarding German and French policy-making. German policy-making is characterised by a political organisation with vertical and horizontal divisions of power (Giraud, 2004). Moreover, organised social groups tend to be associated with policy regulation. High political power-sharing is materialised in Germany by “negotiations in party coalitions, amongst state and federal administrations as well as in bicameral legislative processes, and between administrative departments and societal interest associations” (Czada, 2009, p. 75). Similarly, political actors are mostly understood as actors providing a framework enabling organised social actors to express their capabilities of auto-regulation (Giraud, 2004). In this book, I will discuss the role and the integration of different policy-makers in the regulation of right-wing radicalism. In France, state and political actors play an overriding role in policy-making, relatively independently from social forces. Comparative political scientists highlight the traditional autonomy and grip of state and political actors over French society (Kriesi, 1994; Roth and Rucht, 2008), which is strengthened by the unitary government and majoritarian system (Lijphart, 1999). In case of a government and a president of the same party, which is usual in France, political opposition and opponents from civil society are reduced to impotence within institutions (Giraud, 2004). They can only express themselves outside of institutions, mostly under the form of protest movements, which starkly contrasts with the German case (Cole, 2008).<sup>7</sup>

Finally, the historical background of France and Germany is an additional difference in the state responses to political radicalism. On the one hand, Germany experienced an authoritarian past with the National Socialist regime and the German Democratic Republic. The state was rebuilt in the post-war period, leading to the drafting of a new Constitution and a process of coming to terms with the past (*Vergangenheitsbewältigung*). On the other hand, the French state is usually not seen as a country case strongly influenced by an authoritarian past. However, this is a misconception. In the post-war period, Charles De Gaulle legitimised the myth that most French people resisted Nazi occupation (Rouso, 1987). The official version of history constructed after World War II long hid the reality of the legacy of the authoritarian Vichy regime that ruled over France between 1940 and 1944.<sup>8</sup> In addition, French colonial history, characterised by racist and authoritarian regimes and wars of decolonisation, still has not been satisfactorily processed in French society (Bancel, Blanchard and Lemaire, 2005). Policy actors hardly perceive this authoritarian past as part of the state legacy. For all these reasons, the mere dichotomy between the authoritarian and non-authoritarian past cannot be taken as

a discriminating factor in the French-German comparison. However, state actors' perceptions of the past authoritarian experiences are indeed different in France and Germany. Downs (2012) observes that historical memory strongly affects the arsenal of responses to political radicalism. In countries such as Germany, where democracy was once compromised and where the salience of historical memory is high, militant responses to radicalism are likely to ensue. In fact, fighting political radicalism is one historical policy area in Germany, which is one of the most accomplished examples of institutionalised militant democracy (Pedahzur, 2004). In contrast, country cases such as France, where democracy remained unchallenged and/or where the salience of historical memory is low, responses to radicalism are likely to be more permissive, according to Downs. Without arguing that France is more permissive of right-wing radicalism than Germany, one can safely say that fighting right-wing radicalism has not been a clearly defined policy issue in France, as the excerpts at the beginning of this introduction suggest.

In sum, the comparison presents two liberal democracies with comparable legal frameworks, both of which are interventionist states, and right-wing radicalism is present in the two cases. However, structural differences (expressions of the radical right, type of government) and cognitive differences (treatment of the authoritarian past) might play a role in the regulation of right-wing radicalism. In this book, I intend to assess the role of these differences on the regulation of right-wing radicalism, and more generally on how these two democracies deal with the paradox of tolerance.

### **The structure of the book**

This book is structured around a central, two-part question: how have French and German public actors produced their own approaches towards political radicalism, in particular right-wing radicalism, and how has this approach shaped the way in which they deal with the paradox of tolerance? This research question was operationalised by an approach anchored in policy studies, which addresses the role played by actors, their ideas, and their interactions.

In Chapter 1, I present and justify the theoretical framework of this study and the methodological approach. The argument is that responses to the radical right should be examined as a policy matter with the help of the analytical tools developed by policy studies. The theoretical framework developed for conducting the analysis is based on a combination of actor-centred institutionalism and of frame analysis. This approach will allow for the exploration of the ideas and interactions of policy actors in addressing right-wing radicalism. This empirical study is based on semi-structured qualitative interviews conducted in France and Germany with state and non-state actors involved in the formulation and implementation of policy responses to the radical right: actors from the Parliaments, from security authorities (police, gendarmerie, domestic intelligence service), from the justice system (prosecutors, judges), from non-repressive ministries, and from NGOs fighting right-wing radicalism. Eighty interviews were conducted between 2013 and 2017. Besides these interviews, legal and administrative literature and

information from public sources were collected and complemented the analysis of interviews. Chapter 2 portrays the various state responses formulated against the radical right over the last half-century in France and Germany and retraces the different expressions of right-wing radical parties, social movements, and sub-culture. This chapter also provides the reader with basic knowledge of the French and German historical and political contexts, which is necessary for the rest of the analysis. A central challenge of this study is to grasp how right-wing radicalism is regulated and by whom. Chapter 3 identifies a pattern of responses in each national case: in order to do so, I explore the development of legal frameworks in the last half-century, paying particular attention to the role of the different state actors involved in policy-making. I also assess how policy responses to the radical right are perceived and formulated by policymakers and, finally, explain why responses against right-wing radicalism were constructed as a policy in Germany but not in France. Chapter 4 probes the ideas of policy actors in the context of an institutional setting: how do actors involved in the regulation of the radical right frame this phenomenon and what do they believe are the appropriate responses to right-wing radicalism? In addressing this question, I map a series of policy frames, which are present among state and non-state actors, addressing right-wing radicalism. Policy frames are a combination of individual interests, the institutional setting, and normative aspirations (further details in Chapters 1 and 4). A central premise is that despite the existence of a broad national framework in France and Germany, there is a variety of policy frames within each country case. This would both suggest that there are several ways of perceiving and responding to the radical right even within a national framework, and that despite French-German differences, there are common policy frames in both countries. Chapters 5 and 6 focus on the process leading to actual policy measures against the radical right. I explore how and when policy actors use policy instruments to regulate the radical right. In Chapter 5, I evaluate the role of interactions between policy actors with different frames on decision-making and show who really matters in the policy-making process. I eventually determine the result of comparing a country case where political radicalism is defined as a policy matter with another where it is treated as a political matter. In Chapter 6, I conduct a micro-level analysis to explain when the proscription of right-wing associations succeeds and fails. The use of a policy instrument, the association ban, by state actors will be examined in four empirical cases. The objective is to retrace the policy process with the use of the process tracing method and to evaluate the role of actors' motivations and of institutional constraints in the banning process, in order to eventually identify how policy measures are instrumentalised. In Chapters 5 and 6, I will unravel the distribution of power between the different actors involved. Not only will I emphasise French and German differences in the regulation of right-wing radicalism, but I will also determine which variables account the most for these different modes of regulation.

The leading idea of the book is that the radical right is a political target in both countries but is regulated differently at the policy level. If France and Germany use similar instruments in order to repress right-wing radicalism, I show, by using a multi-level approach, that the policy-making process strongly differs. I first

argue that an essential feature of German democracy is a state doctrine preventing the democratic order from experiencing extremist threats, which has been constructed over the last 50 years by political and state actors. In France, right-wing radicalism is treated as a political matter and, as such, it first and foremost concerns the political arena. As a result, according to French public actors, right-wing radicalism should not be addressed in policy terms unless the groups are violent or express racist opinions.

A meso-level analysis of the perceptions that French and German policy-makers have of right-wing radicalism and of the appropriate responses to formulate against this phenomenon questions the assumption that there is one broad policy frame to address right-wing radicalism in each country. Indeed, this research shows that national policy actors are not an aggregate actor but consist rather of a multiplicity of actors evolving in various institutional settings and with different normative judgments and interests. I identify the existence of similar frames in France and Germany despite these two countries' different historical trajectories. Consequently, I argue that actors' perceptions alone cannot account for French-German differences. Exploring how actors with different frames interact along the policy process allows me to argue that interactions are essential to understanding national specificities. Three main factors determine how policy actors interact and make a decision when responding to right-wing radicalism: whether right-wing radicalism is framed as a policy issue, the openness of policy-making to civil society, and the impact of each category of actors on decision-making. The implications of this finding on the French-German comparison are that policy-making in Germany is shared among a diffuse range of actors with different frames who all contribute to decision-making, which explain the recent diversification of the policy mix. In contrast, French decision-making is more compartmentalised and remains dominated by political actors.

Finally, a micro-level analysis conducted on bans against right-wing groups confirms the differences in the policy-making process and shows that bans are mainly used as a political tool by government actors in France, whereas bans are embedded in a wider repressive policy in Germany. In sum, this book, which addresses public responses to the radical right with a policy approach, shows that the ideational factor, namely, how the authoritarian past has been processed by liberal democracies, and the place given to debates around the protection of the democratic order, play an overriding role in the regulation of right-wing radicalism. Taking into account both the type of government and the ideational component is required to explain how the paradox of tolerance is handled by different democratic countries. I finally suggest that the influence of the structure of the radical right on the regulation of right-wing radicalism is, quite surprisingly, of secondary importance.

## Notes

- 1 "Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them. In this formulation, I do not imply, for instance, that we should

always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by public opinion; suppression would certainly be most unwise. But we should claim the *right* to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument, but begin by denouncing all argument; they may forbid their followers to listen to rational argument, because it is deceptive, and teach them to answer arguments by the use of their fists or pistols. We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant. We should claim that any movement preaching intolerance places itself outside the law, and we should consider incitement to intolerance and persecution as criminal, in the same way as we should consider incitement to murder, or to kidnapping, or to the revival of the slave trade, as criminal” (Popper, 1945, p. 265).

- 2 A first attempt to ban the NPD failed in 2003 when the Federal Constitutional Court dismissed the application of the incumbent federal government.
- 3 Further considerations on the radical right and the perception of the phenomenon by state actors are to be found in Chapter 1.
- 4 Negative republicanism refers to “the concrete negation of historical wrongs in the name of democracy” (Niesen, 2002). In the German case, the result of negative republicanism would be to ban an extremist party, whose ideological proximity to National Socialism would be proven as a historical obligation because of the negative legacy of National Socialism on German society.
- 5 I will discuss the classification of the various responses to the radical right in Chapter 1.
- 6 The *cordon sanitaire*, or political containment, designates a collective strategy defined by traditional parties and/or media and is aimed at isolating a pariah party whose democratic credentials appear dubious (Downs, 2012, p. 155).
- 7 Alistair Cole (2008, p. 210) explains that “the traditional German social-market economy was one that relied on fairly tight cooperation between social partners and the state that together comprised neo-corporatism, relying on coordination by networks. The French model was the one where traditionally most emphasis was placed on state mechanisms of coordination”.
- 8 The publication of *Vichy France: Old Guard and New Order* by Robert O. Paxton in 1972 triggered a wide debate in France regarding the historiography of collaboration in France. The book, along with the Marcel Ophüls’ film *The Sorrow and the Pity*, challenged the heroic myth of resistant France during World War II and progressively led to the reconsideration of the French authoritarian past.

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- 1 Governmentality is a form of power allowed by an “ensemble formed by the institutions, procedures, analyses, and reflections, the calculations and tactics” that target a population in order to ensure the maintenance of a well-ordered society. The result of governmentality is the development of “specific governmental apparatuses and a whole complex of *savoirs* (‘knowledge of all the processes related to population in its larger sense’)” (Foucault in Burchell, Gordon and Miller, 1991, p. 93ff.).
- 2 For a comprehensive overview of the different categories of neo-institutionalism, see Hall and Taylor, 1996.
- 3 In Kelsen’s *Verteidigung der Demokratie* (1932), it reads that “a democracy that seeks to act against the will of the majority, that has even tried to act by force, has ceased to be a democracy” (p. 237).
- 4 Downs refers to “pariah parties” and defines them as parties deemed too extreme by the existing political establishment.
- 5 There is a wide range of anti-fascist sources in Germany, which will be discussed in Chapter 4. Regarding the precautions that should be taken, see Miller-Idriss, 2017, p. 212f.
- 6 In France the law defines matters classified as *secret défense*. Even the internal organisation of the domestic intelligence service is classified as such.
- 7 This also concerns MPs chairing in parliamentary committees as well as administrative departments from the home office working directly with intelligence service.
- 8 In 2000 around 7% of the civil servants had a Dr. title in France (Ministère de l’Éducation Nationale, 2001). In Germany, Hartmann (2004, p. 13) underlines that almost half of senior civil servants and judges have the Dr. title (in addition to academics working for universities), a peculiarity of Germany compared to other Western European countries.
- 9 Out of 80 interviews, 10 were held with female actors (three in France and seven in Germany).
  - 1 “Established party” is understood here as a party that has existed for longer and that has structured the French party system.
  - 2 The ban also concerned Front d’Action Nationale, Phalange Française, and Parti Patriote Révolutionnaire.
  - 3 The French strategy of giving amnesty to the members of the OAS was initiated by De Gaulle and continued under the mandate of Mitterrand. The generals involved in the highest ranks of the OAS all received amnesty between 1966 and 1968.
  - 4 “Occident” was created in 1964 and chose a confrontation course with left-wing groups. From 1964 onwards, their propensity for violence has been identified as a problem by French security authorities: see Algazy, 1989. However, the authorities chose not to ban the movement because the case was too weak and waited for another opportunity.
  - 5 This mainly refers to the traditional old conservative radical right (e.g. members from Poujadist movements and supporters from French Algeria).
  - 6 Between January 1971 and May 1973, Ordre Nouveau was involved in 82 violent acts (statistics from the police in Lebourg *et al.*, 2014).
  - 7 In the French language, a *raton* is a young rat. However, this term was taken over in the context of decolonisation in order to designate persons from North Africa. The word *ratonnade* was hence coined to describe violence committed against persons with a migration background, usually a North African one.
  - 8 “Groupe Charles Martel” was a radical right-wing armed organisation carrying out attacks specifically targeting Algerian persons and institutions. Their activities started in 1973 and lasted until the middle of the 1990s.
  - 9 Étienne Balibar rather describes this new rhetoric as the “euphemisation of exclusion”.
- 10 On 6th September 1983 in Dreux, Georges Marchais asked the voters to elect political opposition to the FN: “I know the FN and I know its leader, the former fractious one from the OAS, Le Pen. The FN openly represents the most hideous racism, violent deeds and words against democracy, hysteria against communism”.

- 11 Evidence of the xenophobic character of crimes must be provided in order to be reported in the data from the Ministry of the Interior. This data must be interpreted with caution as a significant number of attacks remain unreported or unsolved.
- 12 “Contrary to what some observers have implied, the desecration of the Jewish cemetery in the town of Carpentras took place after the Gayssot bill was officially under consideration and thus was not itself a spur to getting anti-racism on the agenda” (Bleich, 2003, p. 157).
- 13 For some of its opponents, despite a fundamental rejection of Holocaust denial, it is not a state prerogative to impose an official version of history. Public figures such as René Rémond or Simone Veil took position against the bill. Unsurprisingly, the FN also was a major opponent of the project and kept on demanding the abolition of the Gayssot Act around the 1990s.
- 14 In 2019, a parliamentary inquiry committee was launched on the initiative of the left-wing radical fraction “La France Insoumise” in order to investigate the state responses to right-wing extremist groups in contemporary France. Similar criticisms were made to the committee chaired by a MP from La France Insoumise, and eventually, some Conservative representatives refused to endorse the conclusions made in the final report.
- 15 Between 140,000 and 250,000 people demonstrated in Paris for the usual May Day march in 2017: and among these demonstrators some advocated for Macron, while others refused both candidates qualified for the second round.
- 16 For more information on Dieudonné’s trajectory: see Jobard, 2017.
- 17 In 2019, a series of right-wing radical extremist groups were also banned by the government: this concerns Bastion Social and six other related associations.
- 18 Assaults against residential buildings inhabited by families with migration background occurred in Solingen (North-Rhine Westphalia) in 1993 and in Mölln (Schleswig-Holstein) a year later.
- 19 The communist regime in the GDR established working contracts with citizens from allied countries, mainly Poland and the Czech Republic, but also with allies outside of Europe (e.g. Vietnam, Mozambique, or Angola).
- 20 Despite this, Stöss (2010) underlines that radical right-wing attitudes have been higher in West Germany than in East Germany until the late 1990s.
- 21 Fourteen bans were imposed between 1990 and 1999. Five bans were effective at the federal level. Amongst the nine bans formulated by Ministers of the Interior in *Länder*, only two occurred in the new *Bundesländer*, both in Brandenburg.
- 22 Not all Eastern states have implemented comprehensive programmes against the radical right. In fact, there has been a high degree of heterogeneity in how each state has handled right-wing radicalism. Saxony in particular has been reluctant to invest in prevention against right-wing radicalism.
- 23 The name of this victim of right-wing violence was given to a foundation, which has focused its work on promoting civic rights and the development of a democratic culture since 1998.
- 24 It appeared, eventually, that the perpetrators were two young Arabic men who wanted to protest against Israeli occupation policy in Gaza.
- 25 In addition to these murders, the NSU also carried out two bomb attacks and 14 bank robberies.
- 26 See the final report of the federal parliamentary committee (2013) on the deeds of the NSU: pp. 76–81.
- 27 In German: “*auf dem rechten Auge blind sein*”. This expression remains controversial, especially among conservative circles and the security authorities. It has first been used by radical left movements before being more widely used after the NSU murders had been revealed.

- 28 An example of this is the project between a series of non-governmental associations and the representatives of local authorities in the small town of Halbe. In this locality, there is a war cemetery that has become a commemoration place for neo-Nazis. The purpose of the project was to formulate a concept in order to clarify the historical significance of the place and to debunk the myth constructed by extremist groups around the cemetery. For further details, see Morsch, 2009.
- 29 After Chancellor Angela Merkel pursued a liberal asylum policy in 2014 and 2015, she eventually hardened the course of German migration policy under the pressure of part of the CDU and the CSU. This move was illustrated by the refugee deal between the EU and Turkey, aimed at reducing refugees' arrivals in Europe.
  - 1 In the post-war period the German civil service, which encompasses universities, was purged of 200,000 employees. In Hessen, no less than 75 per cent of the civil servants lost their jobs (Rigoll, 2013, p. 37).
  - 2 Concerning the civil service in general, Rigoll (2013) reports that the Allies were quickly confronted with areas where only very few civil servants had not collaborated with the National Socialist regime. In such cases, they strived to place uncontaminated civil servants in the most sensible positions (judges, heads of administrative departments). However, Rigoll underlines that this strategy has not been successful everywhere (in particular in the police).
  - 3 Translation into English: Müller, 2012, p. 1259.
  - 4 Due to the federal structure of the German Republic, there are 17 Offices for the Protection of the Constitution: 16 have been under the authority of *Länder*; and one has been under the leadership of the federal government. Remarkably, the police letter in 1949 did not oblige state administrations to separate the police and the intelligence service. Yet, all Offices for the Protection of the Constitution enforced the separation rule – including the “new” state after reunification. There could be several reasons: on the one hand, new states extricated themselves from 45 years of authoritarian rules where state security had cumulated intelligence and police powers to the detriment of its population. On the other hand, legal cooperation was set up after reunification between “old” and “new” states. Unsurprisingly, the new states took up the same administration organisation.
  - 5 Yet, the parliamentary inquiry committees investigating the responsibilities of security authorities in the failure to prosecute the NSU terrorist group in 2012–2013 (see Chapter 2) showed the structural weaknesses of the parliamentary control which highlighted the actual limits of the state architecture to repress anti-democratic threats (further details in Laumond, 2015).
  - 6 The issue is particularly discussed amongst the military, in which 199 right-wing extremists were identified between 2008 and 2018.
  - 7 This perception was not identified among political actors from left-wing parties such as Die Linke and Die Grünen. However, these respondents referred to this model, underlining the significant influence it has had on German politics.
  - 8 For an exhaustive review of these criticisms, see Falter, 2019.
  - 9 See Law Aiming at Strengthening Sentences against Offences with a Racist, Anti-Semitic, or Xenophobic Motive (03/02/2003). Parliamentarians enacted new legislation on the grounds of growing racist and anti-Semitic violence that was pointed out by the yearly report of the CNC DH in 2002.
- 10 See the audiovisual archive of the INA where the President of the NGO SOS Racisme regrets a light sentence: INA (16/05/1998).
  - 1 In Chapter 3, I presented the non-governmental organisations delivering preventive responses against the radical right. Whilst the German case is characterised by the great variety of non-state actors involved in policy-making, the preventive policy against right-wing radicalism in France relies on a more limited number of non-state actors. The interviews conducted in Germany showed that not only was the diversity of

preventive actions remarkable, but so was the variety of methods deployed against the radical right. This is why I will elaborate more extensively on the German case than on the French case in this section.

- 2 Interviews were conducted in French or German. Original excerpts were translated into English for the purpose of this book.
- 3 The funding of these NGOs has been highly problematic in the last decade as they have only been funded on a project basis (i.e. over the short term). Finished projects cannot be renewed (even if successful) unless a new application is submitted and contains substantial innovations. Therefore, the news has regularly reported on organisations at risk of losing their financial public support. For instance, the umbrella organisations in charge of managing the organisation of local associations helping victims of right-wing violence as well as exit initiatives in Germany learned in July 2019 that they could not be supported any longer by the federal state. Structures that have contributed to the professionalisation of the third sector in the enforcement of programmes against right-wing radicalism have been hit especially hard. The reason is the legal impossibility of structural funding in opposition to project funding, which is in line with the new public management reforms introduced in Germany in the 1990s. However, the difficulties caused on the field are real and acknowledged by state actors. The reform of these rules has been discussed since 2014 but has not yet been reviewed.
- 4 Insiders are “a group who is ascribed legitimate status by government and is accordingly involved in meaningful consultation on a regular basis” (Maloney, Grant and McLaughlin, 1994, p. 18).
- 5 Outsiders are a “group who is unable to achieve such a favorable status position and does not become engaged in consultation processes” (Ibid.).
- 6 This organisation does not receive funding from the French state and is mostly funded by private donations. However, the European Commission and the Foundation Open Society have subsidised the CCIF.
- 7 *Le Parti des Indigènes de la République* is a controversial anti-racist movement that has “encouraged anti-democratic and essentialising tendencies” (Zobel, 2010).
- 8 These last three political actors are famous in France for having used racist language even though they are/were members of mainstream political parties.
- 9 In Germany an exception is the party ban, which is decided by the Federal Constitutional Court.
- 10 In the French Conseil d’Etat, “judges” are actually executive civil servants and do not enjoy the same independent status as criminal judges. In practice, however, judges from the Conseil d’Etat have not been dismissed by political actors.
- 11 *Recueil Lebon* is a compendium summarising the most significant decisions made by administrative justice.
- 12 *Le Monde* (11/01/2014).
  - 1 This yearly demonstration has taken place since 1973; however, in 2016, the party’s leader, Marine Le Pen, announced that this tradition would be abandoned.
  - 2 This considerable difference between 2013 and 2015 is explained by a mass influx of refugees and migrants in Germany.
  - 3 Hoffmann-Riem (2010) listed, between 2000 and 2010, complaints of radical right-wing organisations before the Constitutional Court against demonstration bans, which were on average ten times as numerous as other complaints.
  - 4 Gewerkschaft der Polizei is the most influential police trade union in Germany and belongs to the Deutsche Gewerkschaftsbund, a federation of eight significant trade unions from different professional branches.
  - 5 Position Paper of the Gewerkschaft der Polizei – Bundesvorstand (01/01/2012, p. 4).
  - 6 In 2001, a series of radical right-wing slogans were forbidden during a march in North-Rhine Westphalia. The Federal Constitutional Court (19/12/2007) condemned this limitation to the freedom of assembly.

- 7 The full version of the intelligence service's report explaining why the AfD's youth organisation and the grouping "Der Flügel" are going to be monitored is available at <https://netzpolitik.org/2019/wir-veroeffentlichen-das-verfassungsschutz-gutachten-zur-afd/>, last accessed on 30.09.2019.
- 8 It is noteworthy that after 2011 the sub-cultural radical right did not disappear in the area (François, 2011). On the contrary, a right-wing radical group, the "Nationalistes Autonomes Picards", was established in the area. In addition, the département remains a popular place for the sub-cultural French radical right (François, 2014).
- 9 In this respect, Parliamentary Committees of Inquiry were set up at the federal level and in several *Länder* after the disclosure of the NSU network. Even in this context where security authorities were subjected to considerable political and media pressure, parliamentarians encountered difficulty getting information from the intelligence service and the State Protection Office.
- 10 This statement must be tempered somewhat, as the French state has devolved part of its traditional competences to non-state organisations in certain areas (e.g. for asylum seekers).
- 11 The title refers to the racist riots that took place in the small city of Hoyerswerda in 1991. These were the first right-wing motivated riots after reunification.
- 12 Constituency work is a very important part of French parliamentary practices compared to other European countries (e.g. Rozenberg et al., 2011). Some MPs launched initiatives against the radical right, starting with their own constituency (Chapter 2).
- 13 An advocacy coalition is constituted of "people from a variety of positions (elected and agency officials, interest group leaders, researchers) who share a particular belief system (i.e. a set of basic values, causal assumptions, and problem perceptions) and who show a non-trivial degree of coordinated activity over time" (Sabatier, 1988, p. 139).
- 14 See the website which presents the exhibition: [www.opfer-rechter-gewalt.de/](http://www.opfer-rechter-gewalt.de/), last accessed on 28.09.2019.
- 15 *Rechtsextremismus? Nicht mit mir! Grundwissen und Handwerkszeug für Demokratie in Norddeutschland*, URL: <https://library.fes.de/pdf-files/dialog/09600.pdf>, last accessed on 28.09.2019.
- 1 In this chapter, *extremist* is mostly used when referring to associations that were proscribed because the ideology they promote can be classified as "extreme right" (see classification established in Chapter 1).
- 2 For a comparative overview of the variations in party ban practices in Europe, see Bourne and Casal Bértoa, 2017.
- 3 *Envie de Rêver*, *Troisième Voie*, *Jeunesses Nationalistes Révolutionnaires*, *Jeunesses Nationalistes*, and *L'Œuvre Française*.
- 4 *Nationaler Widerstand Dortmund*, *Kameradschaft Hamm*, and *Kameradschaft Aachener Land*. A focus will be set on the interdiction of the first association.
- 5 In France, two-thirds of right-wing extremist associations outlawed between 1990 and 2016 appealed the administrative decision in Court.
- 6 For an extensive version of the communiqué, see *Ministre de l'Intérieur (12/27/2013)*.
- 7 The rule was changed in 2016 as a result of the *Dieudonné* case. It is now possible for administrative law judges to form a panel of three judges to rule in *référé* complex procedures.
- 8 See *Conseil d'Etat (10/01/2014)*.
- 9 See *Conseil d'Etat (11/01/2014)*.
- 10 In 2012, there was no radical right party represented in Brandenburg Parliament.
- 11 See *Higher Administrative Court of Münster (30/12/2014)*.
- 12 See *Federal Administrative Court (07/07/2015)*.
- 13 Circular letters in France are usually issued by ministries to their administration and strongly influence the practices of civil servants on account of administrative hierarchy; see Koubi, 2003.

- 14 In the cases under investigation, the drafting process took three full months. In some other cases, the duration can be significantly longer.
- 15 For more information, see the detailed programme: URL: [www.land.nrw.de/pressemittelung/nrw-verschaerft-den-kampf-gegen-rechtsextremismus-minister-jaeger-stellt-acht](http://www.land.nrw.de/pressemittelung/nrw-verschaerft-den-kampf-gegen-rechtsextremismus-minister-jaeger-stellt-acht), last accessed on 20.09.2019.
- 1 Luhmann, “a political system becomes legitimate if it can explain itself as legitimate, and if it can confer plausibility on the policies and laws to which it gives rise” (King and Thornhill, 2003, p. 74). Luhmann further argues “that the legitimacy of the political system hinges on its capacity to *re-present* broader principles of validity – *values* – in order to facilitate the ‘continual business’ of obtaining legitimacy” (Ibid., p. 93).
- 2 See Chapter 2 for a presentation of these political parties.
- 3 Regarding the study of responses to the radical right from a European perspective, see, for instance, Norman, 2017.
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