Verfassungsblog
ON MATTERS CONSTITUTIONAL

A Letter from Minneapolis

From the Periphery to the Center

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I write from Minneapolis, where the distance between constitutional debate and a strained constitutional life has become impossible to ignore. This is not a metaphor. As I revise this text an overstuffed bag of baby clothes sits beside my chair, to be delivered to a family now too afraid to venture outside.

Over the past several weeks, federal immigration enforcement has intensified across the city, culminating in the fatal shootings of Renée Macklin Good and Alex Pretti by federal agents amid a sustained campaign of interior enforcement that has unsettled neighborhoods, workplaces, and public life. What is unfolding is not simply a localized emergency. It is a constitutional arrangement—one that reveals where power now coheres, how security is being reworked, and who bears the cost of that reconfiguration.

Early last year, after Donald Trump's second inauguration, constitutional law scholars debated whether the United States had entered "constitutional crisis" or even "collapse," often locating the question in institutional friction: an Article II Executive straining against Article III Courts. From where I write, that debate now feels curiously unreal. Some assumed danger would announce itself through rupture rather than alignment, through defiance rather than normalization. They mistook constitutional argument for diagnosis.

For many commentators, the present moment in Minneapolis appears as rupture. But for those who have long experienced constitutional "normalcy" as a site of vulnerability rather than protection, naming the moment as crisis was already beside the point. What is newly visible to some through Operation Metro Surge has long been lived by others. The elasticity of constitutional standards and the racialized logics that structure immigration enforcement are not new. What is newly stark is not the logic of enforcement—which has long treated non-White populations as presumptively suspect and constitutional protections as negotiable—but the expansion of its effects from the margins to the center, now claiming two White American citizens as collateral within a matter of weeks.

Whether this period qualifies as a constitutional crisis is therefore the wrong question, or at least an incomplete one. What matters is that the harms now visible on the ground are not inexplicable ruptures, but rather feasible outcomes of either crisis and non-crisis constitutional arrangements. Fixating on naming the tipping point occludes how constitutional governance can continue to function while producing results that feel, to those subjected to them, indistinguishable from breakdown.

The last two months in Minneapolis make this dynamic legible. As immigration enforcement surged, state and municipal officials have challenged that escalation. Courts have been asked to intervene. Civil society has mobilized in response to violence and impunity. From inside the city, these developments are not experienced as discrete silos, but as a single condition governing our lives; where constitutional protections are neither formally withdrawn nor meaningfully secured.

This has prompted familiar constitutional frames. Minnesota and the cities of Minneapolis and St. Paul have argued that the surge exceeds federal authority and unlawfully intrudes on local governance, raising serious Tenth Amendment questions about federalism, commandeering, and consent. But from the ground, the most revealing constitutional crisis is arguably not vertical, but doctrinal. Its site is the Fourth Amendment.

The Fourth Amendment governs the most routine and coercive point of contact between the state and

public: encounters with law enforcement. Its core commitments are well known: stops must be supported by individualized, articulable suspicion; arrests by probable cause; and entry into the home presumptively requires a warrant issued by a neutral magistrate. Yet it is precisely here that constitutional continuity has been converted into permission for expansive dragnet enforcement.

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The Supreme Court's recent handling of *Noem v. Vasquez Perdomo* marks the inflection point. Formally, the Court issued an emergency stay. Substantively, Justice Kavanaugh's concurrence articulated a vision of Fourth Amendment reasonableness that has already been operationalized on the ground. In it, one's apparent ethnicity, language or accent, location, and type of work are reframed as permissible justifications to conduct immigration stops far from any border.

This is not merely an interpretive gloss. It is a constitutional mechanism. For decades, the Supreme Court maintained a fragile compromise: even while it insulated policing discretion, it treated one's race as an impermissible justification to support a stop—though it could be laundered through pretext. Kavanaugh claims precedent for his position in *Brignoni-Ponce*; deeply compromised as it was, however, it treated reliance on one's apparent ancestry to generate suspicion as narrowly constrained and tethered to border proximity.

Vasquez Perdomo breaks with these constraints. Where earlier doctrine worked to exclude racial and ethnic profiling from the objective reasonableness inquiry, the concurrence reclassifies this as objectively permissible—indeed, as "common sense." Individualized conduct recedes. In its place emerges a dragnet, one that authorizes broad, programmatic stops untethered from particularized evidence other than skin and accent.

Of course, doctrine supplies the machinery, but enforcement gives it motion. Without agents on the ground, doctrine sits inert. And without doctrine, enforcement strains, fragments, and invites contestation. *Vasquez Perdomo* matters because it renders force governable, capable of being administered as ordinary law rather than exceptional violence.

This doctrinal shift is visible on the street, driving expansive enforcement. Once suspicion is generalized, other rights—free speech, due process, access to counsel—are more easily picked-off in its wake, and force is more readily narrated as reasonable, even necessary. The shootings of Good and Pretti were not mandated by the Constitution. But they were made possible, legible, defensible, and even absorbable, by a constitutional order more comfortable debating its limits than enforcing them.

From Minneapolis, this surge is not experienced as doctrinal abstraction but as anxious anticipation: who will be stopped, who will be questioned, who must prepare to justify their presence. I witness this not only as a legal academic, but as a U.S. citizen born in Mexico, formally secure yet read as suspect. It is an experience that makes visible how constitutional

change is absorbed in everyday life long before it can be litigated.

Traditional remedies struggle to keep pace. Suppression doctrines operate retrospectively and reach only a fraction of encounters. Civil litigation is slow and often foreclosed by immunity. The gap between constitutional promise and practice is a chasm. That space has become visible even to institutional actors typically oriented toward procedural restraint. This week, faculty at my institution issued an open letter (written in individual capacities) describing ICE and CBP presence as involving repeated violations of fundamental constitutional guarantees. Its significance lies less in the force of its claims than in what it signals more broadly: that silence has become indefensible, and familiar forms of professional caution cannot meet the moment.

At the same time, dissent has not disappeared; it has been temporally displaced. Courts and institutions speak after the fact, in opinions, injunctions, and appeals. People in Minneapolis—aware that by the time commentators achieve consensus on the arrival of constitutional crisis the material damage will already be done—are acting earlier: documenting encounters, caring for neighbors, and refusing isolation. There is no vindication in winning a constitutional battle after our communities have been trampled, neighbors disappeared, and ordinary life reorganized around fear.

What is remarkable here is timing: people moving at and ahead of enforcement, where traditional checks and balances long ceded that responsibility. This letter is offered in that spirit. Not to declare collapse, but to refuse the terms of debate that arrives too late. Federal power is settling against those already vulnerable and moving inward. Whether law regains its footing will depend on whether legal actors are willing to see these dynamics clearly and to contest—rather than accommodate—the constitutional order taking shape. In Minneapolis, we are not awaiting the conclusion before rejecting its premise.

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Editor's Pick

by EVA MARIA BREDLER



I first fell in love with Rebecca Solnit's writing when I read "A Field Guide To Getting Lost" while moving to England. It taught me get lost in the best possible way – the kind that leads you home to yourself. Her words inspire hope in the dark. All the more reason to be grateful for her weekly newsletter, "Meditations in an Emergency", which does exactly what its title promises. Interweaving her firm political stance, environmental activism, a wealth of literary references and an unshakeable faith in the collective power, I recommend this for everyone despairing over the current political climate (that is: everyone). In last week's edition, she quoted from W.H. Auden's review of J.R.R. Tolkien's final *Lord of the Rings* book: "Evil, that is, has every advantage but one – it is inferior in imagination."

Reflecting on the US government, she writes:

"[T]hey do not understand the powers of civil society and the power of nonviolent resistance and noncooperation. […] Like Sauron they suffer from failure of imagination. The thing they cannot imagine is us."

Thank you, dear Rebecca Solnit, for sharing your imagination with us.

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

As EMMANUEL MAULEÓN described so movingly in his editorial, people in Minneapolis – and elsewhere – are no longer waiting for institutions. They are acting before state power, in empathy, care, and solidarity.

What is troubling, however, is that institutions increasingly seem not only to speak after the fact, but not to speak at all. When the **Trump** administration captured Maduro, it even skipped perfunctory legal justification. Orwell once noted that even hypocrisy needs a code. SOPHIE DUROY and LUCA TRENTA (ENG) explain why, without such a code, international law's binding force crumbles.

The EU is also struggling with a rule-of-law crisis. As it navigates both external geopolitical instability and internal constitutional challenges, the Commission's **Rule of Law Reports** have become a central component of the EU's architecture: more than two-thirds of the recommendations have been implemented. Yet the crisis persists. For GULAY ICOZ (ENG), this reveals a deeper reality: the Reports matter only when mediated by domestic political will – and when politics allows them to matter at all.

One of the EU's most pressing external challenges is Russia's geopolitical threat and the war against Ukraine. ANDREW DUFF (ENG) argues that **Ukraine** cannot wait for the EU's slow accession process, and advocates for fast-tracking membership as a security imperative, rethinking the Copenhagen criteria, enlargement rules, and EU decision-making to anchor Ukraine now.

Geopolitics depend on geoeconomics, which in turn depend on natural resources. Despite science and law converging against fossil fuels, States are still approving new **fossil fuel projects**. ELIZABETH DONGER (ENG) argues that authorising new extraction is fundamentally incompatible with States' climate and human rights duties.

States' climate and human rights duties may also come into conflict with the rapidly expanding use of AI. Yet, the European Commission is watering down AI regulation and data protection rules as part of the **Digital Omnibus** to avoid missing out on AI developments. FELIX BIEKER and KATHERINE NOLAN (ENG) warn that this AI "FOMO" risks sidelining fundamental rights.

All of this lends new urgency to the question of the EU's competences. With this question in mind, INÊS QUADROS (ENG) critically examines the **minimum wage ruling** and argues it disregards retained national competences on "pay" under the Treaties.

Competence questions in the ***Egenberger*** saga are beginning to feel like Groundhog Day: every week, the judgment greets us anew. This week, CHRISTIAN WALTER and KATHRIN TREMML (GER) argue that unresolved questions of EU fundamental rights protection mean the Federal Labour Court has no choice but to send the case back to the CJEU – again.

Who wields constitutional power is a much more consequential question in **Thailand**, where voters will soon decide whether their country should get a new constitution, without seeing a single draft. Beneath the promise of participation, LASSE SCHULDT (ENG) detects a familiar pattern of "anti-popular constitutionalism," where formal democracy conceals enduring control from above.

Formal democracy and state control most visibly conflict during demonstrations. In Germany, the famous *Brokdorf* decision from 1985 strengthened the right to protest; since then, **freedom of assembly** has been regarded as "one of the most important human rights of all." TRISTAN WIßGOTT (GER) worries that this paradigm might now reach its limits and shows that the very principles that once made *Brokdorf* strong are failing today.

Meanwhile, **Egypt**'s courts have developed a troubling practice in the 2025/26 election: barring candidates for life due to prior exclusion from military service, often tied to family politics. AHMED ELBASYOUNY (ENG) explains how legal procedure is turned into a loyalty test.

The **German State of Hesse** is also under the public eye for its election practices. Shortly before the local elections, the Hessian State Court declared a change to the Local Elections Act unconstitutional. At

first sight, the judgment appears to be a win for smaller parties – but MATTHIAS FRIEHE (GER) warns that the electoral threshold could now work against them.

The nitty-gritty details of local elections or demonstrations may seem peripheral compared to larger atrocities. But they can also be read as another "constitutional arrangement", as MAULEÓN calls it, containing the complex relationship between power and the people – and holding the potential for its democratic reconfiguration.

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That's it for this week. Take care and all the best!

Yours,

the Verfassungsblog Team

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