A Blue Wave's Limits

Accountability, Not Self-Governance

Anja Bossow & Moritz Schramm

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If we can still believe the pollsters, Democrats are headed for a very good night next Tuesday. Across the United States, candidates running as Democrats are either leading or running even with their Republican opponents. That the president's party loses ground in the midterms, often decisively, is one of the more reliable patterns in American politics. But if such a blue wave materializes, we should neither read it as voters' repudiation of the Republican Party, nor as an endorsement of the Democrats. It is better understood as evidence that American democracy can still deliver on some, if not all, of its promises.

Democracy is not only majority rule. It is also a system of accountability, meant to guarantee some degree of responsiveness between those who govern and those who are governed. On that measure, American democracy is alive and kicking. This is despite the manifold ongoing and strategic assaults on its electoral mechanics. And assaults, some of them successful, there are many. These include the Supreme Court's gutting of Section 2 of the Voting Rights Act of 1965 earlier this year, making it far harder to challenge maps that dilute minority votes; the Administration's attempts to change rules for mail in voting and voter registration, and, most recently, its frivolous lawsuits in California and Alaska. In California the Administration seeks to toss out roughly 20,000 votes. Up North in Alaska, in a rather bizarre twist, Democrats apparently managed to crowd the state's four-person ballot with an additional candidate sharing the Republican candidate's exact name, Dan Sullivan. Now, the Administration seeks to block potential certification of a Democratic winner because of potential mix-ups among Republican voters. Both lawsuits are unlikely to go anywhere, and legal scholars have dubbed them "preemptive election interfering" (a framing that arguably also fits the Dan Sullivan stunt).

President Trump returned to the White House on promises with appeal across ideological and party lines. To an electorate squeezed by rising living costs, concerned (whether justifiably or not) about "unregulated" immigration, and disillusioned with the neoliberal status quo, he offered lower prices, an end to foreign wars, and a secure southern border. America first, in short. Two years on, a record share of voters disapprove of Trump's handling of inflation and the violence with which untrained ICE agents brutalize immigrants and citizens alike. Gas prices are above $4 a gallon (3.8 liters), more than a dollar higher than a year ago. Trump has repeatedly said he doesn't care for affordability, all while maneuvering the country into yet another open-ended and extremely expensive war in Iran. Next week, voters appear poised to register their discontent and hold accountable those who promised to represent them and instead served the party line, or their own bottom line. After all, little has been done, overall, to ease the strain on a country whose workers put in some 1,800 hours a year (compared with roughly 1,340 in Germany) and still, increasingly, struggle to get by.

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We should not dismiss the significance of such electoral accountability. Yet it is only part of what democracy promises. The modern democratic bargain fundamentally rests on the concept of representation. Those we elect shall represent our interests. Our choices at the ballot box should shape what government actually does in a way that is responsive to our needs and demands. On this front, American democracy has arguably been failing for quite some time. Trump turned this failure of representation, whether perceived or real, into a winning electoral strategy, succinctly summarized in his promise to "drain the swamp."

Democrats in competitive races have learned from this. Many are campaigning on much the same populist message that carried Trump to victory two years ago. Freed from the complications that come with running the government, now it is the Democrats chastising the Trump administration for the high cost of living, and calling out corruption and the way in which elites – and especially the President and his family – undermine good governance on behalf of ordinary people. Abdul El-Sayed in Michigan, James Talarico in Texas, and Adam Hamilton in Kansas, a state that has not sent a Democrat to the Senate since 1932, all run some version of this pitch. It has worked well enough to make races in red and purple states intensely competitive.

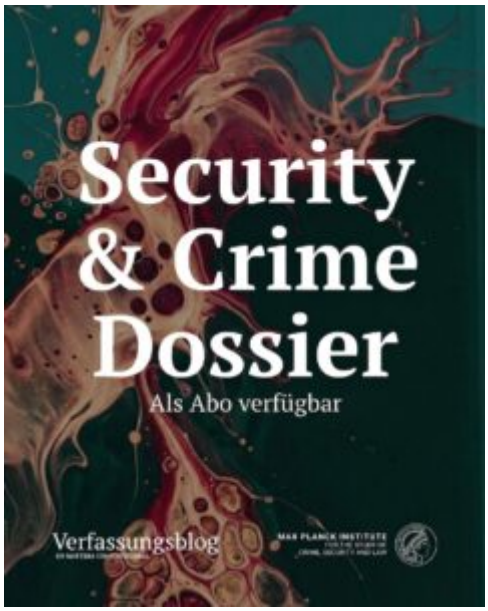
Yet despite their shared economic populist agendas, these candidates differ in important ways, both from each other and from their own party. Each has run less as a standard-bearer for the Democratic Party than against its perceived establishment. El-Sayed, a practicing Muslim, Rhodes Scholar, and son of Egyptian immigrants, ran as an unapologetic progressive, and won a bruising primary against a more established rival. Talarico, a state legislator and Christian pastor, talks about his faith as readily as about school funding and grocery bills, and has toured Texas under a slogan borrowed from a TV drama about small-town high-school football. Hamilton, a Methodist minister who founded the largest United Methodist congregation in the country, is courting a largely rural electorate unhappy with the administration's policies by leaning into a populism of "decency."

Taken together, these candidates offer a version of American identity that is much more complex and diverse than that embraced by the Trump Administration. America is an immigrant society with a strong progressive streak in its cities. It is also a deeply religious, and specifically Christian, country. And it is utterly divided between urban and rural places whose interests and sensibilities often diverge. The Democratic candidates doing well this year are not papering over these differences. They speak to particular places on their own terms, campaigning on what they think is good for Michigan, or for Texas, or for Kansas. This multiplicity contrasts sharply with the identity (and otherings) offered by Trump in 2024 and many Republican House and Senate candidates today.

Trump's identity politics rests on a narrow ethnonationalist "we," tied to whiteness and grievance, coupled with a hyper-libertarian economic creed that materially rewards only those at the very top. The ethnonationalist movements of the last century at least understood that belonging had to be paid for, not only in social status but in jobs and benefits for the in-group. But the Trump administration sought to claim the electoral benefits of ethnonationalist identity politics, without delivering their – remarkably diverse – supporters a material return on their investment. Voters' change of course is not a rejection of white ethnonationalism as such. In 2024, many arguably voted Republican despite the party's embrace of white ethnonationalism, not because of it. If anything, the coalition's fraying shows that Trump squandered a chance to manifest future Republican majorities by building a socially conservative but ethnically diverse

coalition focused on economic relief in a country that will soon be majority non-white.

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But suppose these Democratic candidates win. Could they deliver on what they promise, and ease the malaise, grievance, and disillusionment that have long characterized the American experiment? Not if relief depends on legislation. If Democrats take only the House, they likely cannot legislate at all. The Senate filibuster lets 41 senators block almost any bill. Even if Democrats flipped the Senate, they would still face the presidential veto of any bill they shuffle through both chambers of Congress, and a Supreme Court with open contempt for progressive legislation. The realistic outcome is two years of hearings and stalemate rather than cheaper groceries or lower rents, followed by a 2028 presidential race about who is to blame.

However, for Democrats, gaining ground in the Senate now is essential to laying the groundwork for legislative success after 2028. Senators serve six-year terms, with a third of the chamber up every two years. This year's results will shape the Senate a potential future Democratic president would have to work with. The 2026 map initially looked unfavorable, with many of the seats up for election in heavily Republican states. But the toxic national environment for Republicans has turned it into a real opportunity, as the administration's low approval ratings now threaten Republican senators who were considered safe only months ago. That window may not reopen in 2028, when the map offers Democrats few plausible pickups and several competitive seats of their own to defend. So even if Democrats win the White House in 2028, governing with a comfortable majority will depend largely on gains made in the Senate this year.

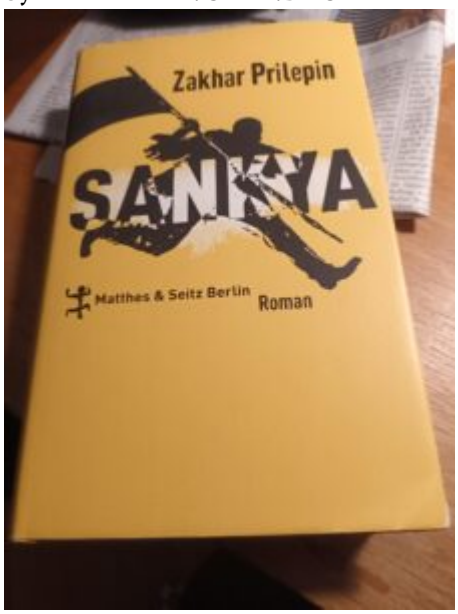
The local energy for change currently on display is real and meaningful. Yet it faces an old and intractable problem. Washington's sclerotic institutional design will likely absorb and stifle much of said energy's transformative potential over the next two years. For now, this leaves American voters in a bind. They can change who governs, but not really what government does. Elections continue to deliver voters the satisfaction of throwing someone out. Yet their capacity to facilitate policy change responsive to voters' needs remains weak.

Over time, this teaches voters a concerning lesson: casting a ballot is at best a form of protest, but not one of self-government. Mature democracies can decay – or rot, as Jack Balkin called it – this way, without any dramatic break, through a long series of elections that change who is in charge and leave much of the rest as is. A blue wave would show that Americans can still hold their government accountable. But whether the midterms will deliver much more – on policy, especially affordability and the Iran war, or in terms of restoring a broader sense of responsive government – remains doubtful.

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Editor's Pick

by MAXIMILIAN STEINBEIS



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Emmanuel Carrère led me to Eduard Limonov, and Limonov led me to *Sankya*, Zakhar Prilepin's thinly veiled autobiographical novel. Its hero is a young Russian in the 1990s whose fury at a rotten, corrupt state eventually tips him into terrorism. Prilepin himself now churns out anti-Ukrainian propaganda for Vladimir Putin and sits on the EU's sanctions list. And a small far-right press in Germany has just reissued the book. So why would anyone read it? Why spend time with a violent nationalist thug who has nothing but contempt for democracy and human rights, and who somehow gets under your skin anyway? Someone you start to understand, perhaps even to like? Would I feel the same if he were a neo-Nazi from Eisenhüttenstadt, in eastern Germany? I doubt it. But why not, actually?

Zakhar Prilepin: Sankya, Matthes & Seitz 2012, 362 pages.

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

If you still have some holiday to use up before the end of the year, how about Norway? On Sunday, Trump crowned the Scandinavian country the latest "shit-house country" after he was, once again, denied the Nobel Peace Prize. Norway has responded with humour and promptly turned it into an advertising campaign for its – admittedly rather lovely – loos.

If you are less demanding about design, you could also travel to the US – or, if you happen to be a defeated, potentially corrupt presidential candidate: less than two days after the election, **Flávio Bolsonaro** left for the United States, in defiance of a court order suspending his passport and prohibiting him from leaving the country. THOMAS BUSTAMANTE and EMILIO PELUSO NEDER MEYER (ENG) trace how Lula managed to overturn a significant loss in the first round, above all due to the extraordinary mobilisation of civil society.

Democratic resistance was also decisive in the **Serbian elections**. On 25 October, the Student List won an absolute majority in parliament. Like Poland and Hungary, Serbia is one of the states whose courts and other key institutions have been captured by the ruling party. BOJAN SPAIĆ and M. VICTORIA KRISTAN (ENG) show what this election will allow Serbia to leave behind.

What Serbia is leaving behind may still lie ahead for **Canada**: founded in 2025, the "Restoring the Foundations of Judicial Power" project now wants to bring "*common good constitutionalism*" to Canada. It all sounds very good and very common, but according to DAVID DYZENHAUS (ENG), it is an anti-pluralist project – and he recognises in it the playbook Orbán and PiS used to build their illiberal democracies.

To prevent an illiberal democracy in Saxony-Anhalt, the CDU now plans to leave the chamber during the secret **election of the Minister-President**, so that no votes from its own ranks can go to the AfD candidate. Why are heads of government elected by secret ballot in the first place, asks MARKUS LEBER (GER) – and calls for the practice to be abolished.

Abolition is also on the agenda in France, where the target is **fossil fuel advertising**. The ban is already on the statute books. On 2 October, the Conseil d'État reminded the government that it must also give it practical effect, with a clear regulatory framework. MARTA TORRE-SCHAUB (ENG) explains what the

judgment means for the balance between climate protection, commercial freedom and the prevention of misleading environmental claims – and why it could set an example well beyond France.

Less resolute is the **UK**. It has approved the Jackdaw gas field in the North Sea – without any requirement to address the emissions from actually burning the gas. CHRIS HILSON (ENG) argues that the government waits where it should push, on scope 3 and scope 1 emissions alike.

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The Bundestag, by contrast, is done waiting. It is currently debating stricter rules in the **Associations Act** to keep out the influence of foreign states, or even terrorist organisations. PHILIPP OVERKAMP (GER) analyses the planned special rules for "foreign associations" and shows why they are legally problematic and do little for security.

A similar diagnosis applies to a new regulation in the north: with immediate effect, **Bremen** bans religious symbols and religiously connoted clothing in the police service. ADIL DEMIRKOL (GER) explains why the regulation is incompatible with federal law.

Incompatible with EU law, on the other hand, is the **General Equal Treatment Act**, which is no longer a teenager. Twenty years after its entry into force, it is finally to be reformed to protect those affected more effectively against discrimination. Yet the draft only partly lives up to that promise, concludes FABRIZIA VON STOSCH (GER).

This week, our symposium "**Thinking Machines, Thinking Lawyers"** (ENG) is drawing to a close. GAURAV MUKHERJEE and TUHIN CHAKRABARTY ask what it actually means to "think like a lawyer" – and what we lose when lawyers let LLMs do their writing for them. YOAN HERMSTRÜWER and ALICE MARGARIA argue that computational methods may facilitate a form of estrangement valuable to qualitative and, in particular, ethnographic inquiry: they can help make the familiar strange. JAKE GOLDENFEIN traces how AI firms have entered the contest over who gets to profit from information.

And another symposium: "**Reflexive Globalisation and the Law: Expanding and Deepening its Understanding**" (ENG) kicked off with the inaugural Sharifu Lecture of the RefLex Centre at HU Berlin, in which B. S. Chimni of Jindal Global Law School spoke about "Different Pasts, Multiple Presents: Towards a Materialist History of Imperialism and International Law". The first contribution comes from THEUNIS ROUX, who argues that globalisation did more than spread Western constitutionalism: it also transformed it into an open, experimental tradition.

Norwegian toilet architecture can pass for an open, experimental tradition, too. This specimen – all gold, soaring, with a red door – looks like something Trump might actually enjoy. Worth a trip after all?



“Golden toilet at Ersfjord, Senja”, photo: Harald Groven (2021), licence CC BY-SA 2.0.

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

Yours,

the Verfassungsblog Team

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