On Dreams and Nightmares

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Dear Friends of Verfassungsblog,

As the "Eurocrat's Dream" has ended, what have we woken up to? Since the very noteworthy collection of essays under the title "The End of the Eurocrat's Dream", edited by CHRISTIAN JOERGES, DAMIEN CHALMERS and MARCUS JACHTENFUCHS, has appeared this spring, the waking-life reality in Europe and beyond has taken on a decidedly nightmarish character. I am very grateful to Christian Joerges for taking the initiative and to Julia Slupska for organising a debate on Verfassungsblog that convenes some of the best minds in EU law and politics, with an introduction by RICHARD BELLAMY. What should be done? How to we fix what is broken without throwing out the baby of European integration with the admittedly extremely dirty and abundant bath-water, asks MAURIZIO FERRERA? Kill the Fiscal Compact, recommends BOJAN BUGARIC. Turn to fundamental rights, says ELISE MUIR. Find a way of getting rid of the EMU, ponders KARL-HEINZ LADEUR. Make EU policies more contestable, demand MARK DAWSON and FLORIS DE WITTE. Put more emphasis on the redistributive effects of EU policy, suggests DANIEL INNERARITY. Create a democratic counter-paradigm to the current managerial trajectory of the Union, proposes POUL KJAER.

On the member state level, this week has been dominated by debates about surveillance and the intrusive powers of intelligence services: PAUL BERNAL points to what he calls the "most invasive surveillance law in democratic history", the so-called Snooper's Charta about to be enacted in the United Kingdom. In Germany, the Federal Constitutional Court has decided that the enquiry committee of the Bundestag is not entitled to the government's cooperation in looking into the US intelligence service NSA's surveillance methods. JELENA VON ACHENBACH and WOLFGANG NESKOVIC excoriate the decision as "dwarfing of the Parliament", whereas MARIUS DANNE finds the Court has got it exactly right: it is for Parliament, not for its enquiry committee, to hold government accountable (both in German). The Federal Supreme Court in its turn has buttressed the enquiry committee's position to demand a hearing for Edward Snowden in Germany, but that decision, according to MATTHIAS ROSSBACH's analysis (in German), goes only so far.

Scotland, Catalonia, South Africa

Brexit is coming, and most Scots want no part of it. What can they do? NIKOS SKOUTARIS explains why a new Indyref might be the only way out of the ensuing constitutional stalemate. Which, by the way, in some ways reminds of what Spain has seen with respect to Catalan independentism. The Spanish Constitutional Court has found itself in a very special kind of predicament as the Spanish legislator has entrusted it with the competence to enforce its judgments against the stubborn Catalans and to suspend their regional authorities if they defy its judgments. Is that even constitutional? The Court has dodged out of its responsibility to answer that question, criticizes MIGUEL AZPITARTE.

South Africa's decision to withdraw from the International Criminal Court is another token of a weakening international legal order. According to JUHA TUOVINEN, that step might be found problematic under domestic constitutional law, though.

Elsewhere

- On the occasion of the upcoming constitutional referendum in Italy, MANUEL MÜLLER compares the cumbersome "perfect bicameralism" in Italy to the institutional setup of the EU, with some surprising results (in German),

- JACK SHELDON and MEG RUSSELL of the UCL Constitution Unit ask what an English Parliament could look like,
- JEFF KING and NICK BARBER continue the debate on the Miller decision of the High Court of England and Wales on Brexit and Art. 50 TEU, and so do GAVIN PHILLIPSON and MARK ELLIOT.
- ELLEN DESMET reports on a recent ECtHR decision that gives asylum seekers a right to a timely decision on their case,
- DAVID BAMFORD tells the long and winding story of constitutional recognition for Australia's indigenous people,
- TOM GINSBURG gives an overview on the havoc Donald Trump could wreak on the US constitution.
- The best hope to rein in the Trump administration with respect to torture does not lie in Congress or the courts, but in the military, and the irony in that is not lost on DEBORAH PEARLSTEIN,
- JOSEPH FISHKIN is looking at the different forms of Health Care Apocalypse that might engulf the US now,
- LAWRENCE LESSIG's calls on the Electoral College to vote for the winner of the popular vote, which is by a margin of some 2 million Hillary Clinton, whereas ORIN KERR thinks that electors should stick to the rules in practice for decades.
- FIONNUALA NÍ AOLÁIN, in the face of Donald Trump conflict of interest issues, proposes ten steps to avoid becoming a tin pot cleptocracy,
- QUINTA JURECIC asks what the oath of office means in times of an upcoming "LOL nothing matters" presidency.

This is just a quick selection. There are zillions of extremely noteworthy articles on all matters of Trump right now, particularly on Balkinization, Volokh Conspiracy, Just Security, Lawfare and Opinio Juris. There are so many angles from which this presidency is constitutionally terrible, you wouldn't know where to begin.

Finally, I want to take the opportunity to introduce our amazing new team of associate editors on Verfassungsblog: HANNAH BIRKENKÖTTER, MICHAELA HAILBRONNER, MATHIAS HONG, KATHARINA MANGOLD, WALTHER MICHL, ANNA VON NOTZ, BENJAMIN RUSTEBERG, DANA SCHMALZ, ALEX TISCHBIREK, THOMAS WISCHMEYER and JOHANNA WOLFF are very active bringing up ideas and shaping the schedule of the blog, and as each of them has forgotten more in their respective fields of research than I will ever know, I hope with this team Verfassungsblog will make a big leap forward in terms of scope and depth of coverage.

All best, and take care,

Max Steinbeis

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