Verfassungsblog
ON MATTERS CONSTITUTIONAL

Where is the Pulse of Europe when it's needed?

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Remember spring? When we danced across the squares of Germany, a few hundred at first, more and more every Sunday, the blue yellow-starred flag wrapped around our shoulders, singing our joyful hearts out celebrating the beautiful daughter of Elysium, and at the same time serious, even gloomy, because the Dutch were about to take to the polls, and later the French, and seemed to understand so much less than us how important Europe is. I don't want to ridicule that sentiment, not least because I shared it, too. It felt awfully good, though, didn't it?

It's autumn now. We had our own elections in Germany. We had a candidate named Merkel who didn't have much more to tell us than "You know me" which we did and do. We had another candidate, Mr Schulz, who used to be a big shot in Brussels and could have said a great deal about Europe but chose not to for whatever reason. We had a liberal poster boy popular among those who tie their support for Europe to the degree the whole thing pays off for us Germans, now probably our next Minister of Finance. We had a far-right AfD that wants Germany to quit the Euro, out-euroscepticizing even Marine Le Pen, not that anyone cared much over the xenophobic and populist vitriol they kept sputtering throughout their campaign. We had a whole election campaign with six competing parties, and none of them seemingly giving as much as a flying fruitcake about the one big task before us that our grandchildren will remember and judge our era for: whether or not we will manage to rebuild Europe.

And now, as that tasked is being tackled – it has to, it can't go on like this, can it? – we approach it with a ramshackle four-party coalition, held together by gaffer tape and a short supply of goodwill, if anything. Meanwhile, over in Paris Emmanuel Macron draws fine distinctions between red lines and horizons. And the whole world knows exactly who stands for one and who stands for the other. Isn't that embarrassing? Did you see the Economist cover? How could that happen so fast? Who would have thought?

Seriously: It is time to mobilise civil society. What the election campaign did not manage to achieve, must now happen after the election: send a Pulse of Europe through Germany. Now it's time to unwrap the blue yellow-starred flags again and take to the streets. The emerging federal government will need us – as support, as a corrective, depending on the situation.

Never mind the spotlight. This is not about who gets to take over the vacant "leader of the free world" throne, the Frenchman or the German lady – to think like that is deeply un-European. But Macron had run on a ticket that promised his constituency that he would revitalise Europe. And he's taking on that task now, at the highest political risk. No one has promised us Germans anything of that sort, and we have allowed ourselves to acquiesce in that failure. But we have made a promise ourselves: to fight for Europe. Remember spring? In the autumn, we deliver.

Or not.

Great expectations

Macron's grand vision contains a remarkable wealth of more or less concrete reform plans for the euro zone and the European Union. FRANZ MAYER's thoughtful and enlightening commentary explains what these are, what their prospects of success look like and what they mean for Germany in particular (in German).

After the Bundestag elections, I asked some of our German-speaking authors living and working abroad to comment on the election results from the perspective of their respective home countries. FRANCESCO PALERMO responded to this request from an Italian point of view and outlines the reactions of Italian politicians and public opinion, which are composed of

fear, scepticism and distanced respect. I hope for one or two more contributions in the next days.

+++*A Notice from Prof. Dr. James Fawkes and Dr. Michaela Hailbronner, WWU Münster*+++

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In **Spain**, the conflict over the announced independence referendum in Catalonia on Sunday has become a red-hot issue of incalculable consequences over the last week – the damage to Spain's constitutional culture, no matter how it ends, is already immense. In order to disentangle the threads of what has led to where and who is to blame for what, some reading effort is unavoidable. Fortunately, ANDRÉS BOIX PALOP is there to guide you through the maze in a three-part series: Part 1 explains how the knot was tied and by whom, Part 2 explains its critical consequences for the Spanish constitution, and Part 3 is devoted to the Spanish central government's countermeasures, which give in their turn reason for the utmost constitutional concern.

In **Poland**, President Duda has meanwhile revealed his plans to reform the country's judiciary after having blocked the blatantly unconstitutional plans of the PiS government, much to the applause of the international community of rule-of-law-abiding states. MARCIN MATCZAK explains why Duda's own plans are by no means less unconstitutional and effective in dismantling the separation of powers than the PiS ones. TOMASZ KONCEWICZ makes an overarching attempt to interpret the PiS constitutional policy as a "policy of resentment", and ROBERT GRZESZCZAK and IRENEUSZ PAWEL KAROLEWSKI reiterate that the EU hardly finds anything effective in its toolbox to check rule of law violations by its member states apart from infringement proceedings (in German).

In Turkey, the secular constitution is still nominally in force, and whoever claims that it has been turned into some Sunni version of Iran-style theocracy is is wildly exaggerating. Nevertheless, CEM TECIMER lists a number of indicators that a creeping islamicization of the constitution seems indeed to be happening.

Not just Spain, but also Iraq is facing a situation where a part of the population wants to unilaterally secede and tries to achieve that aim by holding a referendum. An overwhelming majority of the Iraqi Kurds have voted for independence. ILKER GÖZHAN SEN examines whether the referendum is legitimate under constitutional and international law and concludes it is not.

Elsewhere

FREDERIK FERREAU walks us through the options provided by the *Grundgesetz* in the event of a difficult or failed parliamentary majority (in German).

JEAN-PHILIPPE DEROSIER shows how the Senate, the second chamber in which Macron's *En Marche* Party has no majority, keeps the possibility of effective opposition in France alive (in French).

ROSELINE LETTERON criticises the operator of the academic blog platform *hypothèses.org* for pulling the rug under political scientist Jacques Sapir's *RussEurope* blog as allegedly too political for a scientific discourse platform (in French).

GABRIELE CONTI is concerned about the repression of the Catalan independence movement (in Italian), and JOSÉ M. DE AREILZA points out that the costs of a Catalan secession would dwarf those of Brexit.

THOMAS FLEINER analyses the latest plebiscite in Switzerland, including the introduction of a constitutional right to food.

MENAKA GURUSWAMY once again underlines the epochal importance of the decision of the Supreme Court of India to grant Indians a fundamental right to privacy in these times of Hindu nationalist expansion of power.

MILENA STERIO investigates whether the Kurds in Iraq have a right to self-determination and/or secession.

Lastly, there is something I would like to ask you: as every constitutionalist knows, constitutional issues are not only relevant for constitutionalists. That is what makes them constitutional issues. So if you have friends, colleagues, acquaintances or other contacts who might be interested in getting involved in the

discussion on Verfassungsblog, please do forward this letter to them. And, as always, the possibility to subscribe – in German or English – can be found here.

All the best, and take care,
Max Steinbeis

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Maximilian Steinbeis is a legal journalist and writer and the founder and director of Verfassungsblog.

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