Thank God I am not like other People

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When I was at the movies the other day, I saw a commercial that left me agape with incredulity: A young woman enters a butcher's shop with a dusty neon sign saying "Internet" above its door. The interior is filled with dim, yellowish light, the display of bulging sausages is abuzz with flies, and behind the counter stands a blond giant with wild hair and crazy eyes and a cleaver in the hand. At a stand-up table, an shabby-looking skinny guy with humungous glasses slurps something brownish from a spoon and then sets out to trim his nose hair. "What's that?" asks the woman as the butcher offers her a lump of grease. "Hate," he says. "Would you like a little more?" Nah, the woman says, whereupon butcher and nose hair guy break out in moronic laughter and the horrified customer flees from the scene.

The message of this commercial by the newspaper *taz* is fairly obvious: Stay clear of all that online filth and read a good old newspaper instead. The *taz* – the lowercase spelling is very much intentional, as this newspaper is a product of 1968 left-wing counterculture and written and read mostly by middle-aged ironic liberals like myself, the sort you'll find stirring their soy-milk moccachinos in Berlin Prenzlauer Berg, Cologne Südstadt and Hamburg Altona – the *taz* wouldn't be the *taz* if it didn't explain the deeper meaning of this little gem of cinematography on its corporate blog: The intention of this commercial is to "make palpable an Internet discourse encoded only by hatred and demarcation". And what a resounding success it is by that measure, thank you very much indeed. It becomes extremely palpable how the discourse on hatred and demarcation is encoded by hatred and demarcation. While I watched the commercial, I imagined for a moment how my Uckermark neighbours would feel if they were sitting next to me in the cinema, with this curled-lip, grossed-out Prenzlauer Berg gaze on themselves, on their cheap clothes, their bad teeth, their eating habits and their income situation.

I certainly belong to the target group of this campaign, especially as I invest a considerable part of my life and work time in dealing with hate, demarcation and internet discourse. At that, I need such a wink of smug consensus among *taz*-reading distinction gainers like I need a hole in my head. To separate yourself from the other along social stratification and to mark this boundary by *physical repulsiveness* – friends, seriously, are you out of your f…ing mind?

Parties and power

Enough of that, and on to the topics of the week – above all, of course, the coalition agreement in Germany. It has met with much disdain so far, too vapid, too vague, too little visionary, too many compromise formulas, as if we had ever been promised anything else than an emergency alliance of three parties who do not much like or trust each other and all take an existential risk with this coalition. But that sort of comment is quickly made if you are one of those silverback op-ed writers enthroned on the commander's hill of transatlantic punditry, because the observation that this government is not exactly exuding victoriousness is as obvious as its undeniably true. Others may long for Gerhard Schröder's chest-thumping style of politics; I am reasonably confident that the task of easing European policy out of the austerity/transfer-union clamp along with Macron is not in all that bad hands with the quartet of Merkel, Altmaier, ~~Schulz~~ Gabriel and Scholz, in all their unsightliness. (All this provided that the SPD does not completely implode before the coalition even starts.)

In any case, to see the coalition get off the ground we will still have to wait until 4 March on which day the SPD will announce the result of its member vote on whether or not the party base accepts the coalition

agreement. Some see this vote as a constitutional problem, among them the inevitable former President of the Federal Constitutional Court Hans-Jürgen Papier, who since his retirement has been reliably quicker than anyone else to get his finger up when it comes to find something unconstitutional. The government, the argument goes, is elected by the Members of Parliament and not by the parties, and if the party base gets to vote on what happens with the government this impairs the free mandate of the deputies. Politically, the urge of party leaders to outsource their responsibility to their base may be open to criticism for good reasons. But legally? In any case, there is no legal obligation for Members to comply with the decision of the party base. The coalition agreement is not a state act committed to the common good, nor is it an act of Members committed to their conscience, but it is concluded by parties which bundle highly selfish political interests, and it serves the function to define sufficient common ground and quid pro quo compromises in order to ensure the mutual belief that one will vote for the other's candidates and legislative drafts. Whether or not this belief is sufficiently ensured is for the parties to decide. And the procedure in which they do so is up to them.

One of the curiosities of the coalition agreement is the new office of a "home minister" (minister of *Heimat*, a rather untranslatable term with a distinct trace of weirdly nostalgic, folksy romanticism), as which CSU leader Horst Seehofer intends to head the federal interior department in the future. "Home is where the Horst is", mocked the aforementioned *taz* on Twitter (they *can* be funny, I have to give it to them). But this innovation strikes me as curious above all because it was precisely the Bavarian state's rights guardians of the CSU that pushed it through. To take care of *Heimat*, the feeling of being at home, the conservation of the regional culture and landscape, of traditional costume, cuisine and country fairs – this, one should think, is decidedly the domain of the regional and municipal entities within the Federal Republic of Germany. And to watch over the federal order of competences and to strike alarm if Berlin reaches out to matters of being at home in Hassfurt, Deggendorf and Dinkelsbühl – that, one should think, would actually be the noblest task of the Christian Social Union. Well, one might think that, but it's wrong nevertheless because what the Söder Markus practises so successfully in Munich, the Seehofer Horst wants to have in Berlin as well, as the CSU is certainly enough of a selfish and power-conscious party to distinguish *who* it is that holds federal power over *Heimat* in Bavaria and elsewhere.

Memory wars

That was a great deal about Germany now, while elsewhere there have also been quite some remarkable things going on – in Brussels, for example, where the **EU** Commission and Parliament are gearing up to once again push through the so-called *Spitzenkandidaten* process for the next European elections in 2019: namely, that the European parties will enter the race with specific candidates for the office of President of the Commission, which, they claim, would oblige the Council of Member States to nominate the winner. That whole business is very much a struggle for power, not between parties, but between European constitutional institutions, and then again between parties as well, as the established conservative, socialist and liberal EU parties on the one hand are as much in favour of the *Spitzenkandidaten* (which would keep the office reserved to one of their own) as newcomers such as Emmanuel Macron's *En Marche* or Andrej Babiš's ANO are against it.

In **Poland**, President Duda has officially signed the controversial law to penalize statements on Polish collaboration with Nazi crimes and other historical atrocities, and at the same time has submitted it to the Constitutional Court for review – a manoeuvre that MARCIN MATCZAK is not ready to accept as proof of the PiS president's respect for the rule of law and freedom of speech. ALINA CHERVIATSOVA delineates the dangerous dynamics that are building up in the memory wars between Poland and its eastern neighbour Ukraine.

In **Ireland**, women who want to terminate their pregnancy and doctors who help them do it are under a massiv risk of going to jail, and the Constitution has

made sure it stays that way for 35 years. But change might come to Ireland after all, as the government has announced a new constitutional referendum on the issue. FERGUS RYAN reports.

The **German** Network Enforcement Act (NetzDG), which obliges social media to delete hate posts, has so far received almost universal criticism. STEFAN THEIL, however, jumps to the defense of the legislator and considers the law as a step in the right direction. NATALIE ALKIVIADOU criticises the approach to hate speech regulation in European and international law for establishing a "hierarchy of hate" that protects some addressees of hate less than others.

HEIKO SAUER comments on the ongoing dispute over whether the majority in the **German** Parliament can refuse the far-right AfD the election of its candidates for parliamentary offices and proposes a compromise between the right of all members of parliament to participate in parliamentary work and their right to decide on internal personnel matters (in German).

In the **German** state of Hesse, the CDU/Green coalition is preparing a reform of the internal security and intelligence service, including the introduction of a "Hessian Trojan". RALF POSCHER and BENJAMIN RUSTEBERG analyse the draft law from a constitutional point of view.

Elsewhere

KLAUS FERDINAND GÄRDITZ agrees with my "project waterproof" proposal to screen the German Basic Law for leaky spots on the occasion of developments in Poland, Hungary, etc., and calls for a "constitutional safeguard of the functional conditions of a politically independent BVerfG" (in German).

MARCO MEYER and LUCAS TOMIAK likewise do not think much of the argument that the SPD member's vote on the coalition agreement stands in the way of the free exercise of mandates of the deputies of the German Bundestag (in German).

GARETH DAVIES analyses the state of the debate on the rights of Britons in the EU and EU citizens in the UK post-brexit. RONAN McCREA reports on a reference by a Dutch court to the ECJ on this subject and hopes that Luxembourg will not admit it.

MICHEL WAELBROECK and PETER OLIVER examine the EU's options to enforce the rule of law in Poland and Hungary and lament the fact that the Commission is usually late when it finally decides to takes action.

JEAN-PHILIPPE DEROSIER warns France against ignoring the victorious autonomists' insistence on anchoring Corsica in the constitution and thereby stirring up the storm of regional secessionism (in French).

JULIE-ENNI ZASTROW and ANDREAS ZIMMERMANN analyse the decision of the Council of Europe's Committee of Ministers to initiate for the first time an infringement procedure against a member state – Azerbaijan, in this case – for stubbornly refusing to implement an ECtHR judgment.

Entertainment and constitutional law are less unlikely to overlap in the United Kingdom than elsewhere, so I would like to end by recommending to your attention the very serious reflections of BOB MORRIS on what the Netflix drama "The Crown" and Prince Harry's celebrity wedding imply for the development of the British monarchy.

That's all for today. Have a good week and, depending on your *Heimat*, have fun celebrating or ignoring carnival!

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