Italian Conditions

Maximilian Steinbeis

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Italy has been something of a experimental laboratory for Europe for the last 25 years. What problem that seems to rack democracies all over Europe nowadays hasn't been tried and tested there first? The collapse of the bipolar party system, the rise of charismatic movement leaders in its place, separatist withdrawal of solidarity in the economically luckier parts of the country, snap elections all the time, parliamentary majorities increasingly difficult to establish, and in order to change that, attempts to fiddle with the electoral law until the Constitutional Court intervenes…

On this Sunday, Italy is electing a new parliament, and from a German perspective there is more than just one reason to be vividly interested in this process. There is a lot a German observer can relate with: A jumble of middle and small parties hardly allowing for any plebiscitarian interpretation of the election outcome, a rather complicated electoral system combining majoritarian and proportional elements, the border between system-compliant parties and extremist and bleah is totally blurred, all sorts of coalition variations are conceivable in theory, and hardly any is workable in practice. Is that our future, too? Quite possible. Could even be our present.

On this Sunday, we will also learn at last whether or not the German Social Democrats are willing to enter what is still and against all evidence called a "Grand Coalition". The *No* campaign, primarily driven by a party youth concerned about still having a party to pursue their political careers in when they come of age, reminds me in some respect of the Italian *Cinque Stelle* and other blocking bolts of parliamentary majority forming, in the way they paint the opposition role as an opportunity to remain uncorrupted and uncompromised and true to their beliefs and values, as if matching what doesn't match and forging compromises between totally divergent interests wasn't empathically what political parties are there for in a pluralistic democracy. Rather not govern at all than govern wrongly, is what Christian Lindner's FDP said when they quit the conservative/liberal/green "Jamaica" negotiations, and if *No* carries the day in the SPD, it will be for the same reason: We haven't been offered a large enough measure of power to stay identical with ourselves if we take it. And staying true to ourselves is what matters most. We'd rather do nothing than compromising our identity.

++++++++++++++ *A Note from King's College London* ++++++++++++++++

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Unlike the CDU/CSU, the SPD has never been a club of chancellor electors which will rally behind anyone who credibly claims to lead it to power and is content to find out afterwards which purpose that power will be used to (that's why CDU and CSU both carry the word ‚Union' in their names: reconciling the contradictory is their trade mark). The SPD, on the other hand, is of a much more programmatic mind, it appreciates and demands a certain level of programmatic consistency and concretion, it wants power in order to do something specific with it, under whoever's leadership (and is ready to make its leader's life very uncomfortable if it gets crossed with what they want). This sort of programmatic consistency may not be as easy to keep up in these complicated times as it used to be. But that is the SPD's own problem, and she can't expect anyone to be understanding and patient if she wants to take four years off to go on a soul-searching trip while things fall apart the way they do right now. Why in the world should anyone vote for a party that, first thing after an unsuccessful election, checks herself into a burnout recovery retreat? Out of pity, perhaps?

Italian conditions, in which we already seem to be up to our knees, are no fun. *Vaffanculo* screamers, populists, racists and sexists thrive in them, and so do leering cynics who get elected on the promise to deliver at least a good show while they expectedly enrich themselves. Against such competition, "programmatic renewal" is of little avail. People that take responsibility are. Decent, hard-working Ministers of Foreign Affairs, Finance, Social Affairs, Justice, Family and Environment who get stuff done and achieve progress, less than they'd wish but still a lot more than they'd get otherwise. People who put their shoulders to the wheel. That's what Social Democrats do. And that's how you strike a stark contrast to those jeering buffoons who content themselves with the cheap seats in the opposition ranks.

Neutral Servants of the State

This has been an extraordinarily eventful week on Verfassungsblog; we had a hard time to keep up with the uploading of the articles. DANA SCHIRWON and JANWILLEM VAN DE LOO take a stance on the SPD member poll, which some have found constitutionally problematic, and come to the conclusion that these concerns are utterly unfounded (German).

From a **German** perspective, the highlight of the week was undoubtedly the ruling by the Federal Constitutional Court on the highly topical question to which extent a member of the Federal Government is allowed to engage in rhetorical fisticuffs with the far-right opposition buffoons of the AfD. According to the Karlsruhe court, the constitution imposes a rather strict duty of neutrality on the government, to keep it from throwing the state's weight behind their own party at the expense of all others. KLAUS FERDINAND GÄRDITZ reminds us and the Court that federal ministers are politicians, too, and that the problem of a federal government using state funds to distort party competition can also be tackled by other constitutional means than with such a rigid and unpolitical duty of neutrality (German).

Meanwhile in **Poland**: WOJCIECH SADURSKI describes what the PiS government in Warsaw has come up with to prevent the supposedly neutral election supervisors from causing any trouble in terms of election manipulation from now on. MARCIN MATCZAK reports how the PiS, after its capture by the National Judicial Council, has now filled this body with people of its own taste.

The European Commission's proposal to label what happened in Poland a "serious risk" for the rule of law in the Union has found much support in the European Parliament, but in the Council, in which a four-fifths majority is required to make that statement happen, there seems to be still a fair amount of tarrying. KIM LANE SCHEPPELE and LAURENT PECH have put together a ten-part series of questions and answers on everything there is to ask, know and consider about this so-called Article 7 procedure. The

first parts have appeared, and the remainder will continue to accompany us over the next week.

Not only the Commission, but also the European Court of Justice is preparing to take action against Poland, and has taken a remarkably robust approach to shaping the necessary legal framework for that endeavour. In a rather inconspicuous decision on judge's salaries in Portugal, the Luxembourg Court has radically broadened its options for attending to rule of law problems in member states even if they don't fall within the sphere of European law in the strict sense. MICHAL OVÁDEK analyses how this is done and what follows from it.

Another verdict from Luxembourg with far-reaching consequences concerns the question of whether the EU can conclude a fisheries agreement with Morocco which applies to the territory of Western Sahara, unlawfully occupied by Morocco under international law. JORIS LARIK examines the outcome.

The Court of Human Rights in Strasbourg did not stand idle in this extraordinarily productive week of constitutional adjudication and delivered its verdict in the case of a Ukrainian student who had the audacity to fry a panful of eggs on the eternal flame of the Tomb of the Unknown Soldier in Kiew to protest against the neglect of veterans of war. The majority of the Strasbourg judges didn't find that stunt funny at all and denied to the irreverent fry cook protection of her freedom of expression. My critique is here (German).

In terms of Brexit, the EU Commission's draft withdrawal agreement is on the table, much to the dismay of the British government. At least, according to DIMITRY KOCHENOV, it does not contain a word about the dreadful idea of reserving some sort of associate Union citizenship for the *post brexitum* Brits. Kochenov doesn't mince words in lambasting this proposal by Guy Verhofstadt and others as a betrayal of British and European democracy and everything that makes Union citizenship valuable.

ANDREW DUFF, in his turn, is displeased with Council President Donald Tusk and his skills of clubbing sensitive EU constitutional issues into the long grass, from the *Spitzenkandidaten* process to the shrinkage of the Commission and transnational lists for the 2019 EP elections.

Angela Merkel's proposal to spur on the Višegrad countries' readiness to take in refugees by a redistribution of structural funds has also somewhat ended up in the long grass for the time being. J. OLAF KLEIST considers the proposal to be not a bad idea at all, though.

The issue of financial market regulation is back on the global stage, thanks to the Bitcoin bubble, which has long since squeezed out of its niche of technical nerdiness and ballooned into a problem of possibly system-destabilizing proportions. MATTHIAS GOLDMANN and GRYGORIY PUSTOVIT describe how remarkably successful the G20 countries have so far been in deflating that monster by mere announcements and considerations and thinking loudly, and wonder if we are witnessing the birth of a completely new regulatory approach.

A constitutional drama of a very special kind has taken place in **Peru** in recent weeks, where the incumbent president Pedro Pablo Kuczynski, threatened with impeachment due to corruption charges, has pardoned the blood-stained former dictator Alberto Fujimori, whereupon the son of the latter helped stopping the President's impeachment with his vote in the House of Representatives. The Peruvian Constitutional Court judge Carlos Ramos Núñez gave a lecture on this process and its constitutional implications last week at the Max Planck Institute for Legal History in Frankfurt, which I had the honour to attend. AGUSTÍN CASAGRANDE reports.

Elsewhere

MEHRDAD PAYANDEH attests to the AfD and its *Bundestag* motion to "disapprove" of the journalist Deniz Yücel an understanding of the parliament's role in relation to the press which is "based on highly dubious, not to say disturbing, constitutional notions" (German).

MARKUS W. GEHRING is somewhat unhappy about the decision of the European Court of Justice in Western Sahara.

PÄIVI LEINO and DANIEL WYATT report on the state of affairs regarding the EU-Turkey deal before the European Court of Justice.

STEVE PEERS offers a proposal to the Brexit negotiators on how to resolve the dilemma surrounding the Northern Irish border.

MATHIAS CHAUCHAT describes the heated debate about the forthcoming referendum on the independence of New Caledonia from France.

BETHANY SHINER wonders whether the rules on campaign regulation in the UK are still sufficient to deal with phenomena like micro-targeting.

RENÁTA UITZ examines the global trend to abuse the instrument of a vote of no confidence for opaque party-political purposes.

MONICA FERIA-TINTA analyses the opinion of the Inter-American Court of Human Rights on the right to a healthy environment, and so does GIOVANNY VEGA-BARBOSA. ELENA ABRUSCI shows that the decision of the same Court on marriage for all could have rather negative effects on LGBTI rights in Costa Rica in the end. NICOLÁS CARILLO-SANTARELLI sheds light on the political background of both spectacular judgments.

So much for now. Have a successful week, all the best, and take care!

Max Steinbeis

ABOUT THE AUTHOR

Maximilian Steinbeis

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

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