Bavarian Krampf

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Dear Friends of Verfassungsblog,

I come, as some of you know, from Bavaria. I spent my childhood in a rural place near the Austrian border, right where the Alps begin. The first proper mountain you see from the highway travelling south towards Innsbruck and Italy is a summit of modest height called Wendelstein. My great-great-grandfather, a forestry entrepreneur, built a rack railway to the top of it 100 years ago for the use of tourists who wish to enjoy the view from up there. Which is stunning, with all the rippling hills and lakes and stuff. Generally, a lovely country. Ravishing scenery, and plenty of those crusty old Bavarian lederhosen guys who are always happy to oblige with the odd racist remark and other endearing showpieces of provincial backwardness.

One of the things I took with me from there is a word as wonderful as untranslatable: *Krampf*. Literally, that means "cramp". Bavarians use it mostly to denote a special sort of rubbish talk, though. *Krampf* is more than just plain nonsense, that would be *Schmarrn*. *Krampf* is a puffed-up, pretentious variety of *Schmarrn*. The strained, but transparent effort to make *Schmarrn* look like Non-*Schmarrn* even though everyone can clearly see that it is, in fact, *Schmarrn*: that's *Krampf*.

On 14 October, there will be regional parliamentary elections in Bavaria. There is a new guy on the throne in Munich, a fellow of staggering loathsomeness even for the markedly robust Bavarian standards named Markus Söder, whom even his predecessor and party chief Horst Seehofer publicly called untrustworthy but was forced to hand the reins over to him nonetheless. Söder's task will be to reestablish his party CSU as the single, basically unchallenged political representative of all things Bavarian it used to be back in the days of its erstwhile glory. Söder, whose energy cannot be denied, is prepared to go to untold lengths to get the popular majority, and that includes making the far-right competition of the AfD superfluous by out-AfDing them in every possible respect. My best hope for October, I have to say, is the often remarkably fine-tuned Bavarian sense for *Krampf*.

This week, Söder presented himself in the entry hall of his *Staatskanzlei* in Munich to hang a cross on the white-washed wall. On the same day, his cabinet had decreed that by July 1st all official buildings in Bavaria should be adorned with the symbol of Christianity. According to that cabinet decree, however, the cross is not a symbol of Christianity at all. It is instead a "visible avowal of the fundamental values of the legal and societal order in Bavaria and Germany". Now, part of these fundamental constitutional values, obviously, is the religious neutrality of the secular state. This is where I picture a burly traditional Bavarian voter, a delicate silver cross on a chain near her bosom, to wrinkle her forehead and curl her lips: Well, well. Look at that Söder chap. Visible avowal of fundamental values, indeed. Looks like a whole bunch of *Krampf* to me.

Enter Markus Blume, the smart new CSU general secretary, who posted this on Facebook: "No harsh word against the new anti-semitism from the multicultural corner, but vehemently attacking christian symbols in everyday life!" Whoa, goes our Bavarian voter. New anti-semitism, is it? How very practical. Such a brand new anti-semitism it is that it's all just for Arabs and Turks, is it? And not for Herr Blume of the CSU and all his dear old cross-wavers and fundamental-values-avowers, is it? So, why don't I cut one of those ready-made kippahs out of the *taz* newspaper for myself and slap it on my catholic head if that's all it takes to make a statement of solidarity and take a bold stance against anti-semitism, as it apparently doesn't matter one bit any more what symbolizes what as long as it makes refugees feel bad? You'd like that, Herr Blume, right? But it's all just a pile of *Krampf*, and you should go screw yourself.

Sorry, I got carried away a bit here. That Bavarian voter is just a product of my hope, of course. My hunch would be that Söder stands a fair chance to achieve that popular majority, and with that in his back, I could well imagine him and his CSU setting out to go down the Viktor Orbán road as far as German constitutional law lets them, as they unabashedly like and admire the Hungarian strongman so much anyway. Orbán used to present himself as the more reasonable alternative to those crazy hard-core Nazis from Jobbik, too. If you start throwing symbols around to exclude people it's hard to stop until you have excluded all you adversaries all the way and you occupy all the room on the right-wing end of the political spectrum yourself and leave those hard-core extremists no choice to switch places with you, which is what has happened in Hungary, with FIDESZ having out-jobbiked Jobbik in nearly all respects. No adversaries, all enemies. All on Soros's payroll. An abysmal nightmarish *Krampf*.

I do hope Bavaria and Germany will be spared of that after October 14th.

Opportunities missed and seized

Of course, there is so much more to say about Söder's crucifix stunt from constitutional and other perspectives. Two articles by ALEXANDRA KEMMERER and STEFAN MAGEN are in preparation and, God willing, will be available here in the course of next week.

The European Court of Justice in Luxembourg has relaxed its case law on victims of torture who are to be deported to their home countries despite their traumatisation. NULA FREI acknowledges this, but still considers the decision a missed opportunity (German).

++++++++++*A Note from MPIL*++++++++++

Das Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht sucht zum nächstmöglichen Zeitpunkt eine/n studentische/n Mitarbeiter/in zur Unterstützung der Aktivitäten des Berliner Büros (7,5 Stunden/Woche). Die Ausschreibung richtet sich an Bachelor- und Masterstudierende. Bewerbungsfrist ist der 6. Mai. Mehr Informationen und die Ausschreibung finden sich unter folgendem Link: http://www.mpil.de/files/pdf5/Buero_Berlin_-_Ausschreibung_2018A.pdf

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The European Court of Human Rights in Strasbourg will be spared the damage the controversial draft for the Copenhagen Declaration of the ECHR member states originally had proposed to inflict. HELGA MOLBAEK-STEENSIG sheds light on the political background of **Danish** human rights scepticism.

The **EU** Commission held its second Digital Day in Brussels, and CHRISTIAN DJEFFAL finds the EU's strategy on artificial intelligence that has been announced on that occasion a rather seminal event.

The pesticide Glyphosate and its approval in the **EU** has caused a major political kerfuffle, but there are also constitutional concerns about the "politicization of science" in this affair, according to MARTA MORVILLO.

In **Portugal**, the Constitutional Court has passed a very important judgment on surrogacy motherhood and gamete donation, redefining its own role in relation to the legislator. TERESA VIOLANTE reports.

In **Serbia**, the government majority has obtained the right to control the composition of the judiciary with a constitutional amendment – in the opinion of VIOLETA BEŠIREVIĆ a highly alarming process.

In **Malaysia**, the parliamentary majority is tailoring electoral districts to their favour, and the judiciary finds no remedy for this. PIN LEAN LAU, who is doing research in Budapest, feels somewhat reminded of Hungarian conditions.

Elsewhere

STEVE PEERS finds much to like about the CJEU ruling on torture victims, too.

THOMAS PERROUD problematizes that local officials in **France** bear a lot of political responsibility through decentralization but are not held accountable by an elected parliament, and considers whether the EU infringement procedure could be a model to fix the problem (French).

ANDRÉS BOIX PALOP applies the criteria of Steven Levitsky and Daniel Ziblatt's bestseller "How Democracies Die" by to his country **Spain**, with partly worrying results (Spanish).

JESSICA VAN DER MEER examines a decision of the High Court of **England and Wales** that tackles the

right of authorities to ban people from using public places.

After the hearing on Trump's Travel Ban before the **US** Supreme Court, ILYA SOMIN is not convinced that the ban will be upheld. Further analyses by MARTY LEDERMAN and MICHAEL C. DORF.

MANUEL CASAS and ROLANDO SEIJAS report on the attempt of several judges of the Supreme Court of **Venezuela** who had fled abroad to organize a kind of exile court.

So much for this week. By the way, on Friday the **German** Federal Constitutional Court rather surprisingly published a big-time decision about stadium bans for violence-prone soccer fans which contains some quite fundamental things on discrimination in private law. We will return to this subject next week, as well.

All the best and have a good week!

Max Steinbeis

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