Verfassungsblog
ON MATTERS CONSTITUTIONAL

Exit of the Bullshitter of the Century

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In the search for explanations for the phenomenon that is Donald Trump, many have sought inspiration over the last four years in a famous essay, originally published in 1986, by the Princeton philosopher Harry G. Frankfurt: "On Bullshit". The central point of this essay is the distinction between liar and bullshitter: A liar must at least refer to truth as he seeks to replace it by his lie, whereas a bullshitter needs no relation whatsoever to truth. Bullshit doesn't even have to be necessarily untrue. The truth has no place in it at all, not even ex negativo. That is why it is called bullshit: "Just as hot air is speech that has been emptied of all informative content, so excrement is matter from which everything nutritive has been removed"[1] Bullshit is speech that is not supposed to (mis)inform. The deception inherent in it does not refer to facts out there, but to the game the bullshitter plays by his very bullshitting. The bullshitter does not deceive about the facts, he deceives about himself, as a bullshitter. He bullshits the world dizzy to the extent that it doesn't even realize any more what unspeakable bullshit is being showered upon it along the way.

In October 2015 I was in New York and visited the constitutionalist Mattias Kumm, our longtime friend and supporter, who teaches half the year in Berlin and the other half at NYU. We went to a café near Washington Square, and soon came to talk about Trump, who a few weeks earlier had announced to run for the 2016 presidential election to the great amusement of most. Trump, Kumm said, was the paragon of a bullshitter, a fact known to everyone in the USA. Wrestling matches, beauty pageants, "the Apprentice", the man is pure, unfiltered bullshit in the shape of a celebrity, recognizable to everyone, highly successful at it and therefore attractive.

If Trump claims, against all evidence, that Barrack Obama was born in Kenya, there's no need for him to convince anyone. A liar would have to, but not him. All he has to is get away with it. He has to bullshit successfully. Then people love him.

That's what Trump has been doing also for those last four years, never mind how many untruths were detected in his speech by the fact-checkers of the New York Times. That's what he still does when he talks about vote rigging and claims that he and not Biden had won the election "by a lot". Only this time he is bullshitting against a collectively binding decision of the people of the USA. *We, the people*, in the dreadfully rusty and absurd and unequal, but nonetheless astonishingly robust procedure it has used to make these decisions since forever, has chosen Joe Biden as its president for the next four years. This is not just a truth which could be a matter of contestation. This is, first and foremost, a decision. Something has happened. Reality has been altered. An empowerment has taken place. Trump's bluff has been called. As of 20 January 2021, Biden is President of the United States of America. No ever so fantastic amount of bullshit will be able to change that.

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[1] Harry G. Frankfurt: On Bullshit, Princeton University Press 2005, p. 43f.

Of course, it would be hypocrisy to pretend that bullshit came into the world with Trump. There is much to suggest that it is the other way around. In the last few days I have picked up another book published before the Trump presidency, in 2013, which impressed me enormously back then, namely "The Unwinding" by George Packer. It traces the lives of a handful of very different Americans who have little more in common than being born in the 1960s and sharing the experience that the country at large and their lives within it were coming apart at the seams, no matter how hard they worked and how little they deserved it. (One of them is a man from Alabama who has devoted his whole life to the political career of Joe Biden, whose portrait in the book is less than flattering). Oh, the amount of bullshit these people had to listen to all their lives to justify why their lives had to be so hard, in stark contrast to the accumulation of fortunes in the liberal East and West Coast regions. Maybe that was Donald Trump's greatest trump: the joy of so many Americans that someone, in their collective name, was finally bullshitting back.

One has to be careful, however, not to confuse bullshit with the object of one's own rationalized dislikes. Which, by the way, even Harry G. Frankfurt seems not to be entirely immune to, if I follow his at times remarkably thin argument to its end. "On Bullshit" concludes with an indictment of certain ",antirealist' doctrines" who don't believe in objectively ascertainable truth and preach sincerity as an ideal instead, which in Frankfurt's eyes qualifies them as a "deeper source" of the contemporary proliferation of bullshit.[2] My translation of this: Bullshit is what the French do, i.e. not analytical philosophy. The latter's hallmark seems to me to be most of all its authoritarian insistence that one may only seek truth beneath the lantern of one's own binary distinctions. But what do I know. I'm not an expert. And the conviction "that it is the responsibility of a citizen in a democracy to have opinions about everything" is, according to Frankfurt[3], one of the most terrible sources of bullshit of all, and so I'd rather stop before the Princeton professor gets mad at me.

The week on Verfassungsblog

What distinguishes the **United Kingdom** from the United States is not so much the love of truth of its respective heads of government as the presence of a large and powerful public broadcaster that can keep the public sphere from drifting apart into right- and left-wing bullshit bubbles. RICHARD DANBURY shows how precarious the situation of the press is in the British constitutional structure in general, and all the more so under Boris Johnson, and what all this has to do with Henry VIII and his Star Chamber.

The election in the **USA** is over, Donald Trump and the Republicans are defeated, or so it seems. But are they? KIM LANE SCHEPPELE describes the damage that the President could do on his way out, in conjunction with the US Supreme Court, the Senate and the Republican majorities at the state level.

In **Estonia**, the former model student of democracy in Central and Eastern Europe, a Trumpist party has been part of a government coalition since 2019 and, in horror at Joe Biden's election victory, has lost sight of the Baltic state's most profound diplomatic interests. MARIA MÄLKSOO comments.

In **Hungary**, the Orbán regime has again used the Corona crisis to implement a range of highly toxic constitutional and electoral changes. VIKTOR KAZAI explains how these changes would cement Hungary's future of electoral authoritarianism.

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Vernetzungsworkshop – "Open Access und Wandel der Publikationskultur in der Rechtswissenschaft"

[2] loc.cit., p. 64
[3] loc.cit.

Auch in den Rechtswissenschaften gewinnt ***Open Access*** *zusehends an Bedeutung. Einher geht die Öffnung akademischer Wissensbestände mit der Ausdifferenzierung der disziplinären Publikationskultur, wie gerade der Erfolg juristischer Wissenschaftsblogs dokumentiert. Um diese Prozesse auszuloten und zugleich für die Herausforderung der Entwicklung neuer Geschäftsmodelle zu sensibilisieren, laden OABB und FID <intR>² ein zu einem* ***Vernetzungsworkshop für Forschende und Bibliotheksangehörige****.*

Der Online-Workshop findet am ***10.12.2020 von 10 bis 15 Uhr*** *statt. Hier finden sich alle weiteren Informationen.*

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The abortion ruling of the "**Polish** Constitutional Tribunal" proves once again for many people its lack of independence from PiS. For KAROLINA KOCEMBA and MICHAŁ STAMBULSKI, on the other hand, it is the logical consequence of a Catholic-influenced and right-wing constitutional discourse that has guided the court's jurisprudence for 30 years. Also for EWA ŁĘTOWSKA, former judge at the Polish Constitutional Tribunal at a time when it still deserved that name, the abortion verdict is proof of how far the country has gone down the path towards religious and moral fundamentalism. The Constitutional Tribunal behaves as a tool of the ruling party. The ruling creates legal uncertainty for women and doctors, even in the few cases where abortion would still be legal.

For years the **Hungarian and Polish** governments have been undermining the foundations of the transnational European legal order. In any case, in order for it to be able to respond better to the democratic threats, more than small-scale institutional and procedural improvements are needed, says TOMASZ TADEUSZ KONCEWICZ.

This week's **rule-of-law podcast** deals with criminal law, the penal system and the European arrest warrant. LAURE BAUDRIHAYE-GÉRARD, JAMES McGUILL and KÁROLY BARD are our guests, LENNART KOKOTT is the moderator.

Governments have many ways to weaken the independence of judges – even without taking legislative action. One especially effective move is to make sure that the "right" judges get the important cases. The practice of case allocation in the **Hungarian** Kúria is a cause for concern, as it does not meet international standards. Especially the newly elected president András Zsolt Varga abuses his power, claim the Hungarian judges VIKTOR VADÁSZ and ANDRÁS GYÖRGY KOVÁCS.

In **Austria**, shortly after the terrorist attack in Vienna, Chancellor Sebastian has announced plans to make "political Islam" a punishable offence, whatever that is supposed to mean, and all sorts of other unconstitutional madness more. ALOIS BIRKLBAUER takes a close look at the planned measures and their devastating effect on fundamental rights.

In **Germany**, a Coronavirus demonstration in Leipzig has gotten out of hand in a way that has earned a lot of criticism not only for the Saxon police but also for the Saxon Higher Administrative Court which had green-lighted the demonstration. THOMAS FELTES is shocked and thinks it is conceivable that Germany is currently possibly in the process of losing its balance, not only politically, but also the equally important balance between the legislative, executive and judiciary. After the publication of the reasons for the decision, ROMAN HENSEL defends the administrative judges and warns against overly abstract institutional criticism that argues for solutions that are as simple and universal as possible, while remaining blind to the very specific legal and factual issues that are always at stake in individual court decisions. ANDREAS GUTMANN and TORE VETTER, on the other hand, think that the Saxon Higher Administrative Court has indeed mishandled the case, while the executive branch of government in Saxonia is in no position to point fingers, either. Whether Saxon Coronavirus regulation and the way it deals with freedom of assembly is compatible with the Basic Law is, in their opinion, questionable anyway.

Speaking of **Covid-19 protests**: Not only in Germany people take to the streets against the pandemic measures. Since the number of corona infections in Europe has been rising again and new lockdown measures have been imposed, violent protests are increasing in many countries. JOELLE GROGAN

explains what governments and legislators must do to gain acceptance for these drastic limitations of fundamental rights.

German politicians have stirred some alarm by emphasizing that monitoring of discipline in the pandemic should not stop at the doorstep of private homes. SEBASTIAN KLUCKERT examines how this relates to the fundamental right to inviolability of the home.

Meanwhile, SEBASTIAN WOLF tracks down numerous "(quasi-)sacralized phenomena in the secular corona society".

In **Ireland**, a judge of the Supreme Court is involved in a scandal ("golfgate") that has already caused some members of the government to resign. However, he himself sees no reason to vacate his seat. Forcing him to do so is legally extremely difficult and could have serious long-term consequences for judicial independence, says CIARÁN BURKE.

Postcolonial and intersectional studies as apologists for Islamist terrorism – that is how some in science and politics in **France** see it lately. Since the government is in the process of reforming the university system anyway, there are plans to make academic freedom dependent from being exercised "in accordance with the values of the Republic. THOMAS PERROUD considers such a norm to be unconstitutional, dangerous and, on top of that, utterly unsuitable to achieve its alleged goal.

In the French city of Nantes, an exhibition on the Mongol ruler Genghis Khan had to be postponed because the **Chinese** government did not find the narrative sufficiently Chinese. MARINA BÁN places the event in the context of other authoritarian efforts to manhandle historical truth.

So much for the fruits of our work this week. Work it was, quite a lot of it, although it is of course our pleasure to do it for you. But we cannot live on pure pleasure. That is why we ask you to open your wallet and support us to the extent you can afford and deem appropriate. If you use our service on a regular basis, we recommend the Steady platform. If you do so only from time to time, a one-off payment by Paypal (paypal@verfassungsblog.de) or bank transfer (IBAN DE41 1001 0010 0923 7441 03, BIC PBNKDEFF) will be perfectly sufficient. Many thanks and all the best to you,

Max Steinbeis

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