Now you see it, now you don't

Maximilian Steinbeis

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Have you watched the video yet? You definitely should. Alexei Navalny's film about Putin's palace is a masterpiece of investigative research, a masterpiece of cinematic storytelling, a masterpiece of political propaganda, and tremendously entertaining too. You don't get to see something like that every day.

A palace is actually supposed to be something public: It is how the prince displays his oneness with the state. Louis XIV is a public person from dusk till dawn, the supreme state actor does hardly anything else all day than embodying this oneness in a quite literal sense. Versailles is the stage on which his play is performed. In front of an audience, of course.

The Russian president in his trashy plastic Versailles on the Black Sea does nothing of the sort. If at least he'd stand up, like his rival on the Bosporus, and say: Look here, everyone! *My name is Vladimir Vladimirovich, czar of czars! Look on my works, ye mighty, and despair!* But none of that. It's all private. Just for him and his friends. To even see his palace, you need a drone at least. Nothing at all is put on display by Putin, not the alleged palace, not its splendor, not his power. On the contrary, no one must see, no one must even know that it is his. Completely hidden and private, the would-be prince sips fine wines and lolls on Italian designer beds and watches his giant TV and magnificent sunsets. His existence in his so-called palace is to princely power what watching YouPorn is to sex, aroused by the imagined identification with the actors' and actresses' interaction and, precisely because of this, becoming ever more desperately remote from the imagined. And now, to his misfortune, he gets filmed himself in the process. Now he stands there with his pants down, the skinny blond little man from Leningrad, exposed to our gaze in all his nakedness, and it is we who are excitedly watching.

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Call for tenders: Consultancy in the area of justice reform in Eastern Europe

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Within the framework of the projects implemented by the Division for Legal Co-operation, the Council of Europe is looking for providers of **international consultancy services in the area of justice reform**. For more details, please consult the Terms of Reference and the Act of Engagement.

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Questions should be sent one week before the deadline, and exclusively to the following address: DGI.Justice.Reform.Unit1@coe.int.

Deadline for submission of applications: **7 February 2021**.

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In general, this week was full of sensational spectacles on the border between public and private. The private contract between the EU and AstraZeneca for the supply of Covid-19 vaccine has been published, albeit with large parts of it obscured. According to sec. 5.1 the British-Swedish pharmaceutical company owes

its production capacities "within the EU" to the EU, while in sec. 5.4 it is stated that the EU *includes* the UK, but "for the purposes of Section 5.4 only", and what AstraZeneca in turn sold to the UK would be in another private and so-far unpublished contract, according to the British government for reasons of "national security". So, what did AstraZeneca sell to whom? Now you see it! Now you don't!

Another thing which was published this week was the first set of decisions of the so-called Oversight Board, in the service of the private property of Facebook founder Mark Zuckerberg and his co-shareholders. This body of adjudication, staffed by respected constitutional lawyers, has been empowered by Zuckerberg to review Facebook's private decisions against its private community standards. In four of the six cases, the panel has overruled Facebook decisions to remove certain content and, moreover, has made recommendations on how to amend substantive law, i.e., the previously supposedly private community standards. What is it that is emerging there? Public law, perhaps? That will be very exciting to watch.

The greatest show, however, was undoubtedly put on by Wall Street this week: legions of teeming private investors, armed with the Robinhood app (advertising slogan: "We are all Investors!") and coordinated on Reddit forums, drove the stock of an obscure video game retailer called GameStop to dizzying heights, purposefully and deliberately bankrupting hedge fund titans who had bet on falling prices for this stock by shorting it. Far too often, such deals work as a self-fulfilling prophecy: hedge-fund-behemoth says stock is overvalued, price falls, hedge-fund-behemoth wins the bet with hardly any risk. Not this time, said the Reddit investors, setting in motion a reverse sequence of self-fulfilling prophecies at the end of which the hedge fund was bled dry and its capital passed into the hands of many others. Who would have thought? Capitalism, it seems, is good for redistribution of fortune after all! Ordinary, hard-working people (or as the Economist calls it: the "mob") who depend on the stock market for their pensions and their children's college tuition, put an end to the manipulations of the rich and powerful!

That is undoubtedly a powerful and magnificent narrative, whose beauty however suffers a bit when one considers who else has made and will make a handsome profit in the whole spectacle. How will the pyramid scheme, which is what we are ultimately once again dealing with here, end and who will be left to pick up the bill? The anger of the Reddit masses with their Robinhood apps is directed primarily against the fact that they always end up as the manipulated and never as the manipulators, but not so much against the manipulation itself. Even if money has now been temporarily pumped in the other direction, they are all driving the same flywheel and keep the pumping going, and their rage is perhaps to some extent to the wealth of the Greenwich billionaires what the rage of the MAGA capitol-stormers is to the power of the GOP strategists. Many a poor sucker is going to lose his money / go to jail, but to impeach Donald Trump ("I'll be there with you!") would, in the eyes of the latter, be unconstitutional: he is, after all, now just a private citizen.

This week on Verfassungsblog

Facebook's **Oversight Board** has now also accepted the Trump case for decision. DIPAYAN GHOSH and JUSTIN HENDRIX analyze the possible outcomes of the case and its potential for the future of Facebook law.

Trump's "**deplatforming**" would not be censorship under U.S. law. ALEKSANDRA KUCZERAWY examines the online platforms' decision from a European perspective: what would the European Convention on Human Rights say about deplatforming, and what are the implications for the upcoming Digital Services Act at the EU level?

In Germany, on January 26 and 27, 2021, a hearing should actually have taken place before the Federal Constitutional Court, on the increase of the cap on partial **state funding of political parties** from just over 165 million Euros to 190 million Euros. The hearing was cancelled because of Coronavirus, but the question of whether the constitution really contains

an absolute ceiling that democratic lawmakers may not exceed remains topical. CHRISTOFER LENZ and SIMON GOLLASCH think the better arguments are against it.

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HEC Paris recruits in law, AI and data analytics

The law department of HEC Paris, first-ranked school of management located in France, recruits one **tenure-track faculty position (assistant professor)** effective 1st September 2021 to undertake research **combining law, IA and data analytics** (including Regulation of IA, Smart Law, Blockchain, Smart Contracts, Predictive Justice, LegalTech, Ethics of IA, Privacy and Data for Good) and teach the same subjects in the school's programs, including masters, the MBA and Executive Education.

For further information click here.

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The German far-right AfD party is suing against its observation by the Office for the Protection of the Constitution, and the law firm representing it includes as of-counsel none other than former President of said Office, now a prominent right-wing critic of the Merkel government, Hans-Georg Maaßen. Is that even legal? No, says MATHIAS GOLDMANN, which is why the law firm immediately parted company with Maaßen.

Last week, the CDU MP HERIBERT HIRTE had stirred a lot of unrest with a tweet about **constitutional lawyers and Covid-19 deniers**. Now he has spoken up himself and sees himself misinterpreted and silenced while insisting, however, on an interpretation of his own statement which I, for one, don't find convincing at all.

In **Thuringia**, a new state parliament will be elected in September, and a special law is planned to guarantee a pandemic-compatible election. According to ROMAN KAISER, there is still some work to be done in two respects: compulsory postal vote and distance between party members at the nomination convention.

In **Berlin**, the senator for integration wants to ensure by law that in future applicants for the civil service with a migration background will be given preference if they are equally qualified, as long as people of migrant origin are rarer in city offices than elsewhere in the city. This so-called migration quota is hotly contested constitutionally. In the latest episode of our crisis podcast, I discuss the matter with EMILIA ROIG.

The Coronavirus had highlighted the fragility of **EU free movement rules** and raised questions about power, solidarity and trust in the system.The fear of COVID-19 also had an impact on the application of two principles of EU free movement law: the principles of proportionality and precaution, explains IRIS GOLDNER LANG.

The **EU-UK trade and cooperation agreement** was concluded as an "EU-only" agreement, involving only the EU and not also the member states as contracting parties. DANIEL THYM argues that legal doubts about the chosen legal basis are unfounded, however, because the agreement is an association agreement.

Despite travel restrictions, Boris Johnson visited **Scotland** this week to campaign for the benefits of the British Union. His visit was likely triggered by the 11-point "roadmap" for another independence referendum unveiled Sunday by the Scottish National Party (SNP). The United Kingdom is at a critical juncture, CATRIONA MULLAY finds: The Scottish question must be resolved or the UK risks becoming a "failed state."

In **Poland**, the persecution of judges who get in the way of the PiS government continues: no less than 14 judges in Krakow are now being targeted for not punishing a whistleblower from the Polish prosecutor's office. In an open letter, KATARZYNA SZCZYPSKA calls on the EU to finally act.

The verdict of the Polish "Constitutional Court" on **abortion** has now finally been published. What the delay of this actually purely formal act reveals about the state of the rule of law in Poland is examined by ex-constitutional judge MIROSŁAW GRANAT.

On January 22, **Turkish** President Erdogan appointed a new constitutional judge: Irfan Fidan was previously Istanbul's prosecutor general, and in recent years the Turkish Constitutional Court has repeatedly found his interpretation of his powers to be unconstitutional. GÖKHAN SEN examines the consequences of his appointment.

The UN Human Rights Committee has issued an important decision on state responsibility for **sea rescue** on the high seas, to the applause of NASSIM MADJIDIAN.

ISABELLA RISINI examines the ruling of the European Court of Human Rights in the interstate case between Georgia and Russia over the **Ossetian War** and the line between human rights and international humanitarian law.

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So much for another exciting and eventful week. Thanks for your attention!

The slot into which you can drop your penny for the upkeep of Verfassungsblog is here (recurring) and here (one-off).

All the best, and see you next week!

Max Steinbeis

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