Democracy as opposed to what?

Maximilian Steinbeis

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There, it's been said: democracy is to blame. In an op-ed in the *Süddeutsche Zeitung* this week, the novelist Thomas Brussig has voiced what many are probably thinking, namely that an entire form of government is failing on an epic scale right now in these pandemic times. "*Mehr Diktatur wagen*" (dare more dictatorship) is the title of Brussig's article, an allusion to Willy Brandt's famous 60s quote "*Mehr Demokratie wagen*". According to Brussig, democracies are proving incapable of getting a grip on the pandemic, which is why we should, in his opinion, "throw overboard convictions that prevent us from doing what is necessary. If we were up to that, Covid-19 would be long behind us. The recipes are well known."

Assuming that Brussig wants to be taken seriously in the first place and does not just intend his text as a (certainly successful) attempt to troll *Querdenker* libertarians, there is plenty to find amiss in his argument, which has already been criticised extensively in the social media as well as in the *Süddeutsche* itself. But one has to give to him this: He did contribute, albeit with insufficient means, to the revival of a genre that seemed almost extinct after years and decades of TINA politics: political systemic criticism.

In Germany in particular, there is a long tradition of viewing democracy as a system acceptable on probation only, so to speak. The *Reich*, the Nazis, communism – for most of the time during the last 100 years, there was always a tangible counter-system nearby. Anyone who was dissatisfied with the services of the democratic constitutional state could seek relief in sighing: oh dear, this wouldn't have happened with the *Kaiser/Adolf/Erich*. We sure like democracy well enough for now. As long as it delivers. If it doesn't, we'll know where to look for an alternative supplier.

This cut both ways. A clear and obvious answer to the question "as opposed to what?" can be good for democracy, too: It gains an edge, and a face. Kennedy as opposed to Khrushchev, Ebert as opposed to Hitler and Hindenburg, the SPD as opposed to the KPD, Adenauer as opposed to Ulbricht. Also, it can be a healthy thing to be measured against its own demarcations vis-à-vis its counter-system. An old friend of my father's used to tell a story of his army days at the end of the 1950s, when all he and his fellow recruits had to say to make his superiors instantaneously behave with utter correctness was: damn it, this place sucks, I guess I'll go over to the GDR after all.

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Since the year of 1989 (around which, by the way, Brussig's literary work largely revolves), this kind of opposition no longer exists at all any more. Most countries describe themselves democracies in one way or another, and those who don't are mostly no good as alternatives to begin with. Including China. I have yet to meet anyone who seriously argues, beyond a noncommittal wink at authoritarianism, that the

Chinese system of government has anything in store for the Federal Republic of Germany to learn from. (The reverse is more likely.)

I can see how this creates for many a feeling of lack, a vacuum. A pull. There has to be an outside to this inside somewhere, a point from which you can see the system as a whole, an Archimedean point of view to criticise the system from. In normal times one can bear it, this negative pressure. In a crisis, less so. The pull becomes too strong, you give way: and, bang, there it is, the magical *Ausnahmezustand* (state of exception). Finally being able to step out of the normal, out of the norm, out of the system! To be sovereign! To be redeemed!

In a situation like that, it happens that one loses sight of what exactly one needs the exception for in the first place. What, indeed? A hard lockdown, perhaps? Zero covid? Radical isolation of infection outbreaks? Why, all this could be done under the current rule already? Oh no! That won't do at all! Away with all those concerns and procedures and rules and standards! We want to see action! Dare more dictatorship!

It goes without saying that there are of course many good reasons to harshly criticise the Corona policy of the German and many other democratic governments. I also find it perfectly legitimate to argue that the current constitutional and fundamental rights norms stand in the way of effectively combating the plague. That can be amended, if need be, there are procedures for that. Including, if necessary, the Basic Law.

But only in a democracy.

But if you want to see what an actual systemic alternative to democracy looks like nowadays, just look to the USA. There's one standing trial in the Senate right now.

The week on Verfassungsblog

In a widely read German labour law journal (Neue Zeitschrift für Arbeitsrecht) a commentary has appeared which reveals a jaw-dropping level of **racism** on the part of the author. An open letter to the publisher C.H. Beck, but not only to him, has generated hundreds of signatures.

The Second Senate of the German Federal Constitutional Court has excluded its new member Astrid Wallrabenstein from the further proceedings in the ominous **Weiss** case because she had allegedly commented on the case in a newspaper interview in a way that might be seen as biased. FLORIAN MEINEL and CHRISTIAN NEUMEIER take a closer look at the decision and find it rather questionable in several respects.

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How can "**precaution**" against possible future dangers from coronavirus mutants be legally contained at all? HINNERK WISSMANN asks this question and is rather concerned about the answer.

On 1 April, many of the legal foundations for Covid-19 measures in Germany will fall away. Instead of simply extending the existing regulations, the legislature should finally create **pandemic-response legislation** that conforms to the constitution, says ANNA-LENA HOLLO.

For almost a year now, the federal and state governments have been **coordinating measures** to combat the Corona pandemic. JOHANNES GALLON thinks it is a problem that political decisions are made without public participation.

The CDU/CSU parliamentary group is considering whether a **mosque register** can be introduced in Germany in conformity with the constitution. However, it is unlikely that this will succeed, says MARYAM KAMIL ABDUSALAM.

The German Ministry of Justice is planning to propose a new criminal offence for the dissemination

of "**enemy lists**". SEBASTIAN GOLLA finds the draft problematic and pleads for a coherent data protection criminal law.

The German Federal Supreme Court has ruled that **officials of a foreign state** can be prosecuted in Germany if they have tortured people abroad. MARTEN BREUER analyses the implications of this decision.

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News from **Poland**: The PiS government is planning to impose an advertising tax on the private media to bring them into line, taking another page out of Viktor Orbán's playbook from Hungary. However, it appears to be uncertain whether all of the PiS coalition partners will go along with this. Earlier, a bizarre dispute in one of the coalition parties had caused a stir. PAWEŁ MARCISZ explains what this was about.

At the EU's external border, the law continues to be disregarded – to a point where CHRISTOPH TOMETTEN believes it is justified to speak of **rule of lawlessness**.

On 27 January, **Frontex** announced that it would cease its activities in Hungary. This unprecedented step, however, is not a clear sign of the EU Commission's commitment to the rule of law, finds FRANCESCO LUIGI GATTA. Nor is it an expression of any intention to end the agency's involvement in human rights abuses, but merely an attempt to protect Frontex's already compromised reputation.

In Germany, asylum procedures take far too long. DIETRICH THRÄNHARDT describes what Germany could learn from **Switzerland** in this respect.

The latest episode in the decades-long saga of Julian Assange and his fight against extradition to the United States took place on 4 January 2021. A court in England, while not convinced by his defence, ruled against the extradition because of human rights concerns. STELIOS ANDREADAKIS and DIMITRIOS KAFTERANIS suspect that this saga is nearing its end.

After the military coup in **Myanmar** on 1 February, Germany and other Western countries face great uncertainties about their engagement in the region.

Germany will have to rethink its Myanmar strategies. JONATHAN LILJEBLAD explains what factors are at play.

The **Facebook Oversight Board** is supposed to apply the lex Facebook – internally set rules such as community standards. But LORENZO GRADONI says the initial decisions show that the board, armed with human rights standards, can be much more far-reaching in its criticism of Facebook's moderation practices than anticipated.

That's all for now, I guess.

As always, allow me to point out the possibility of making a financial contribution to the upkeep of Verfassungsblog: permanently here and as a one-off here.

Thank you for this and for your attention, and see you next week!

Max Steinbeis

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