Verfassungsblog
ON MATTERS CONSTITUTIONAL

Wolves and Men

Maximilian Steinbeis

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I'm up to my ears in Hilary Mantel's monumental Thomas Cromwell trilogy again, the first two volumes for the second time. The work really doesn't need my praise after two Booker Prizes, a BBC film adaptation and countless rave literary reviews, but nevertheless: if you haven't already read it anyway – by all means do! It's worth it.

Like any historical novel, this work derives part of its fascination from the illusion of making present another world, a lost era. As with the fantasy saga "Game of Thrones" (whose historic models you seem to encounter at every turn while reading, by the way), it is a foreign and exotic world opposed to our own, a non-presence that you believe to be experiencing as you turn the pages. But of course the trilogy is not a document of the Tudor era. It is a 21st century book, read by 21st century people, in whose language the book is written and its characters talk to each other. It is a book of the present. That's the other and perhaps more interesting part of the explanation why it's so successful: it resonates with very specific, very present matters.

King Henry VIII of England, prince and sovereign, harbours a desire to be rid of his wife because his heart and hope for a male heir to the throne and the continuation of his dynasty are attached to another – but he is unfortunately bound up in a supranational legal order which does not allow it. It is Thomas Cromwell, the son of a blacksmith and infinitely superior to all courtiers and noblemen in terms of rhetorical skill, strategic intelligence, loyalty and courage, who sets the 16th-century Brexit in motion for him. The Pope in Rome and the Habsburg Emperor in Vienna/Madrid can chew on their velvet caps with rage all they want: They cannot prevent English money from remaining in England instead of feeding the Vatican's gravy train, and the head of the Church in England being no longer a foreigner, but himself, Henricus Rex, King in Parliament.

Henry and his chancellor are not the only ones who want to kick this supranational order in the teeth. On the continent, Bibles are being printed in all possible languages, including English, so that people can read the Gospel for themselves instead of having to rely on the word of the clergy, and realise that there is not a word in it that says you will go to purgatory after death: The priests only say that you will, but it is all just self-serving hokum. The Medici Pope in Rome has long been a Renaissance prince himself, just like "my brother France", as Henry likes to call his colleague Francis over in Paris, all powerful men and competitors on equal footing who give each other nothing and owe each other nothing, and of course they lie: It is not those who lie who have a problem, but those who believe.

In the post-Brexit EU, the heads of government in the Council decided in December that they wouldn't have their brothers Poland and Hungary cut off financially by some supranational rules of law, just because they happen to have some problems with the rule of law, and wrote into their decision *contra legem* what should apply instead. Parliament could have appealed against this to the European Court of Justice. But it chose not to. As ALBERTO ALEMANNO describes in a highly recommended and seethingly angry analysis, it was the EP legal service that had written down all kinds of reasons why a lawsuit was pointless and impossible. The resonance goes way beyond the British Isle, it seems.

Cromwell: a lawyer. It is all lawyers who are breaking Henry free from his ecclesiastical bonds.

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Academy in Exile is happy to announce its 2021 call for applications. A renewal grant from the Volkswagen Foundation will allow us to offer **eight 24-month fellowships** at the Forum Transregionale Studien Berlin and the Kulturwissenschaftliches Institut Essen. The deadline for applications is **March 15, 2021**.

The call has been announced on twitter and on our homepage. Please feel free to distribute the call widely in your circles.

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Today the Supreme Court of the United Kingdom gave its verdict in the case of Shamima Begum: This is a young British woman who as a 15-year-old school girl went to Syria in 2015 to join IS, gave birth to three children who have since died, and is now stuck in a camp in Syria. Under British law, Cromwell's current successor as Secretary of State has the power to strip British citizens of this status if they believe it is "conducive to the public good", as long as they do not render them stateless. Shamima Begum has parents who are from Bangladesh and is therefore, according to the British government, entitled to Bangladeshi citizenship. Can she challenge this decision in court? Theoretically she can, but practically not in her Syrian camp with no proper way to communicate with her lawyers. Therefore, she had applied for a leave to enter the UK to appeal the decision. No, said the government and kept the reasons secret for "reasons of national security and public interest".

There she sits, stripped of her citizenship and without access to justice. What does the Supreme Court have to say about this? Well, it says unanimously, that's just the way it is. Whether it is "conducive to the public good" if Shamima Begum is no longer British is a matter for the Home Secretary's discretion, and no court may substitute its own discretion for his/her's. Of course, one must be able to appeal against that decision, but if you find yourself in a situation where you can't, that is not the minister's fault. The fact that the applicant does not have access to a fair and effective appeal at the moment does not mean that she should be allowed to enter the country in order to have one. Perhaps her situation will change at some point. Let her continue her proceedings then. And the practice of the interior ministers not to withdraw citizenship if the person concerned is outside the scope of the ECHR and in danger of being killed or tortured is just that: a practice. Not a right. It will be done that way as long as Her Majesty's Minister sees no reasonable grounds to do otherwise.

Thomas Cromwell could not have put it more eloquently.

Now hurry, I want to get on with my book. I really want to know how it ends.

But actually I already know, don't I?

But first:

This week on Verfassungsblog

In the spring of 2020, together with Joelle Grogan, we launched an online symposium that actually went under that name for form's sake only: we published country reports from all over the world to gather knowledge on how different countries deal with the emergency pandemic. Now, one year later, we want to take another look: How has the situation evolved? How do countries find their way out of the emergency? "**Power and the Covid-19 Pandemic**" is the title of the online symposium, supported by Democracy Reporting International and the Horizon2020-funded RECONNECT research project, and it will end up with more than 60 reports. We kicked off this week with reports from Australia, Brazil, Finland, Greece, India, Mexico, Singapore, Spain, Sweden, and Thailand, as well as a live-streamed discussion event with MARTIN SCHEININ, THULASI K. RAJ, JAKUB JARACZEWICZ, TOMAS BUSTAMANTE and moderated by JOELLE GROGAN.

Also live this week on Verfassungsblog: ADAM BODNAR, ARMIN VON BOGDANDY, PIOTR BOGDANOWICZ, ANDRÁS JAKAB, JUSTYNA ŁACNY, JOSEPH WEILER and others discuss, on the initiative of the Max Planck Institute in Heidelberg, the newly published book "**Defending Checks and Balances in**

EU Member States. Taking Stock of Europe's Actions".

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Stelle als Wissenschaftliche*r Mitarbeiter*in (m/w/d)

GEORG-AUGUST-UNIVERSITÄT GÖTTINGEN

Am Institut für Grundlagen des Rechts der Universität Göttingen, Abteilung Vergleichendes Staatsrecht und politische Wissenschaften (Prof. Dr. Florian Meinel) ist demnächst eine **Stelle als Wissenschaftliche*r Mitarbeiter*in (m/w/d)** zu besetzen. Die Stelle bietet neben der Mitarbeit am Institut Gelegenheit, eigene Forschungsinteressen im Bereich der vergleichenden, historischen und theoretischen Grundlagen des öffentlichen Rechts zu verfolgen und insbesondere ein Promotionsvorhaben zu entwickeln und voranzutreiben.

Die **Bewerbungsfrist läuft bis zum 1. April 2021**. Weitere Informationen finden sich hier (https://www.uni-goettingen.de/de/305402.html?cid=15431).

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On 2 February 2021, the **Czech** Constitutional Court annulled several crucial provisions of the Electoral Act. MAREK ANTOS and FILIP HORÁK find this decision surprising, as all previous petitions to annul the Electoral Act were rejected by the court either on procedural grounds or on the grounds of obvious lack of merit.

SABRINA RAGONE reports on a decision of the **Italian** Constitutional Court on the issue of the choice of surname for newborns. In the absence of legal reforms, the court is seeking to bring the Italian legal framework, which still adheres to traditional naming practices, into line with constitutional and international standards of equality.

In **France**, the minister of higher education wants to have an investigation done into the extent to which the country's universities are contaminated by what she and some right-wing culture warriors call "Islamo-Leftism". This apparently means gender and postcolonialism studies, and THOMAS PERROUD reports on what's behind it.

Italy has a new government: once again, non-partisan experts are to lead the country. CARLO FUSARO reconstructs how this came about and why the hope that the Draghi government will bring about fundamental reforms for Italy is probably deceptive.

In **Spain**, the state of the independence of the judiciary worries the EU Commission. The General Council of the Judiciary has been caught between political fronts. AGUSTÍN RUIZ ROBLEDO analyses how this came about and proposes a lottery to break the impasse.

The **Indian** government orders Twitter to block hundreds of accounts critical of regime on account of the 'Farmers Protests'. After short resistance, Twitter gave in. SANGEETA MAHAPATRA, MARTIN FERTMANN and MATTHIAS C. KETTEMANN discuss potential solutions to strengthen social media against authoritarian demands.

It has been less than 10 days since Facebook blocked access to news in **Australia** because the Australian government wanted to legislate Facebook to compensate certain publishers for hosted content. GIOVANNI DE GREGORIO, ORESTE POLLICINO and ELENA PEROTTI explain how Facebook's decision has forced the Australian government back to the negotiating table.

The Berlin bill to introduce a "**migrant quota**" for public service was both legally and politically controversial. It is off the table for now, but it will certainly not be the last push in this direction. IBRAHIM KANALAN argues that such affirmative action measures are not only constitutionally permissible, but also obligatory under international law.

Last week, Berlin's Mitte district office caused a stir when it banned broadcasters from **livestreaming a press conference** – using data protection law as a justification for the refusal. AQILAH SANDHU clears up some misconceptions on data protection and press freedom.

The Federal Constitutional Court has declared the **electronic ankle bracelet** constitutional – at least for the time being. Whether it really has a crime-preventing effect is completely unclear due to a lack of empiri-

cal data. KATHARINA MEUER explains the decision and what the legislature must do now.

There is a lot of complaints about **federalism** in Germany in the Corona pandemic, but according to HARTMUT KÜHNE, the federal state is far from exhausting its possibilities.

Last week, the EU Commission presented its new **trade strategy**, with which it also wants to strengthen the enforcement of labour and environmental protection standards. FRANZ CHRISTIAN EBERT outlines the existing deficits and explains what the Commission could do, even without having to change the rules in its free trade agreements.

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Heidelberger Salon digital: "Vaccine Nationalism" and Distributive Justice: The Role of Global Health Law



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Wednesday, 03.03.2021 | 16:00-17:30 (CET) | Via Zoom & Livestream

A conversation with Alexandra Phelan, Maike Voss, Mark Eccleston-Turner, Pedro Villarreal, and Leticia Casado. Hosted by Alexandra Kemmerer. The event will be livestreamed via Völkerrechtsblog and Verfassungsblog.

For active participation, please register until 01 March 2021 at berlin@mpil.de

Panelists:

- Dr Alexandra Phelan, Assistant Professor, Center for Global Health Science and Security & Georgetown University Law Center, Georgetown University
- Maike Voss, Associate, Research Division Global Issues, German Institute for International and Security Affairs (SWP), Berlin
- Dr Mark Eccleston-Turner, Lecturer in Law, Keele University
- Dr Pedro Villarreal, Senior Research Fellow, Max Planck Institute for Comparative Public Law and International Law, Heidelberg
- Leticia Casado, journalist (stringer for New York Times at al), Brasilia

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Refugees are only granted **subsidiary protection** in Germany if the abstract danger in the country from which they fled surpasses a certain statistical threshold. The Advocate General at the CJEU does not agree with this, and if the Court follows him, this could have major consequences for German asylum law, writes LUKAS MITSCH.

The draft **supply chain law** agreed upon by the governing coalition in Germany has met with much criticism. DAVID KREBS would also have liked more, but appreciates that at least a compromise has been found.

That's all for this week. Have you already enjoyed your coffee from your Verfassungsblog cup? Yes or no: Hold on to the Constitution!

Thank you very much and see you next week,
Max Steinbeis

ABOUT THE AUTHOR

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

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