Staying Up There

Maximilian Steinbeis

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He is still there. As of today, Friday, February 4, 2022, the Prime Minister of Her Majesty's Government is The Rt. Hon. Boris Johnson, MP for Uxbridge and South Ruislip and leader of the Conservative Party. I don't need to explain why I am mentioning this is to anyone who has not spent the last few weeks in the basement of a Trappist monastery with no cell phone signal. The man is under investigation by the police, he lied to Parliament, he humiliated the Queen, he undermined his own COVID policy, he slandered the Leader of the Opposition, and all of these are not just political and contestable allegations. This is what has happened. And everybody knows that.

And yet he's still there. Day after day he lingers on, each of which could be his last, or even should be, and yet – so far, anyway – is not. How does he do it? What move will he make next? How can one be like that? One could speculate about that now, but more interesting to me than Boris Johnson's character, motives and tactics is the question of the strategy behind it.

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Heidelberger Salon digital: "Who is the Guardian of Free Speech? Meta's Oversight Board and (other) Courts and Dispute Resolution Mechanisms"

10.02.2022 | 17:00-18:30 / 5pm (CET) | Via Zoom / Livestream

A conversation with

- *Professor Catalina Botero-Marino (Global Freedom of Expression, Columbia University),*
- *Professor Martin Eifert (Humboldt University Berlin),*
- *Professor Matthias Kettemann (University of Innsbruck / Hans Bredow Institute, Hamburg)*
- *and Erik Tuchtfeld (MPIL)*
- *Hosted by Alexandra Kemmerer (MPIL).*

For active participation, please register here and contact at berlin@mpil.de. More information can be found here.

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A Daily Telegraph columnist has recently compared Johnson to Danny Ocean, the smart gangster from *Ocean's Eleven* played by George Clooney: a criminal for whom you feel sympathy, whom you root for in his criminal deeds. "You want to see if he gets away with it. How he did it", the Telegraph guy said. "Part of me still thinks, he might get away with it. He might do pull off one more great con."

With that clever idea, the fellow makes an interesting point, though not so much about Johnson as about himself and the likes of him. There are still enough people out there, and perhaps more than ever, rooting for Johnson not in spite of his crimes but because of them. They see the government scandal in Westminster as a spectacle, a high-wire act in a circus tent, holding their breath to see if the man up there will finally break his neck doing his tricks or if he'll make it to the platform in one piece, and if he does they burst into storms of enthusiasm and celebrate the equilibrist as a hero and a great guy. In this case, the platform and the moment of enthusiasm are the same: Boris just has to stay up on his rope long enough until the scandal starts to lose momentum. Then he's pulled it off once more. Then he's a hero. A great guy.

This circus tent approach is as apolitical as it is immoral, of course, but might perhaps make the Tories' astonishing lack of resolve to rid themselves of Johnson a little more plausible: Under the British constitution, the rope on which Johnson balances is the support of a majority in the House of Commons. Any Tory who now dares to break cover and dispute this majority and bring Johnson down is, so to speak,

pulling the rope out from under him. Some of the spectators downstairs may not like that at all.

On a more abstract level, however, this circus tent approach is nothing less than apolitical, and that makes the whole thing a strategy: it implies that staying up there, winning, is what matters, and that staying up there and winning is the best and actual justification for getting up there in the first place. Power, so the implication, is due to the one who has it. And it proves and justifies itself by sustaining itself.

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MPIL Momentum Digital: Der Universalismus der Menschenrechte

08.02.2022 | 17:00 – 19:00 Uhr | via Zoom

Eine Berliner Buchkonversation anlässlich der Veröffentlichung von "Janne Mende: Der Universalismus der Menschenrechte".

Es diskutieren:

- *Priv.-Doz. Dr. Janne Mende (MPIL)*
- *Prof. Dr. Beate Rudolf (Deutsches Institut für Menschenrechte)*
- *Prof. Dr. Tine Stein (Georg-August-Universität Göttingen)*

Moderatorin: Alexandra Kemmerer (MPIL)

Weitere Informationen zur Veranstaltung und der Registrierungslink sind hier zu finden.

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That's not just true of Boris Johnson's power. It is true of the power of men over women, of *white* over Black persons, of rich over poor, of "normal people" over "minorities", of empires over colonies. In 2020, the old ideologies that earlier times used to supposedly justify that power with have lost their purchase for the most part, even among those who profited from them. This makes the situation shaky and wobbly and dangerous for those who insist in keeping their place on top nevertheless. So the most important thing is indeed: to stay up there. And whoever manages to do that becomes their hero, the more break-neck, break-rules and break-laws the better: Donald Trump, Silvio Berlusconi, Boris Johnson.

With every day he lasts up there, the success of this strategy becomes more likely.

This week on Verfassungsblog

The **compulsory vaccination** controversy on Verfassungsblog has developed into a fundamental constitutional debate: How much constitutional protection does irrationality deserve? KLAUS FERDINAND GÄRDITZ responds to Ute Sacksofsky's counter-criticism, supported by HANS PETER BULL, while MARTIN NETTESHEIM sides with Sacksofsky and JÖRN REINHARDT and MATHIAS HONG take a mediating position. STEFAN BRAUM examines whether, conversely, there can also be a right to compulsory vaccination. In Austria, compulsory vaccination has meanwhile come into force, although many details remain unclear, as criticized by SUSANNE GSTÖTTNER.

In the **Czech Republic**, the Supreme Administrative Court overturned of restriction of access to restaurants and hotels for unvaccinated persons. However, the reason for this was not fundamental rights of vaccination opponents, but rather the lack of competence of the Ministry of Health, explain NATÁLIE DŘÍNOVSKÁ, MICHAL KOVALČÍK and ZUZANA VIKARSKÁ.

Andreas Fischer-Lescano's contribution on the **Jens Maier** case from the previous week found its way into German national TV news via a live interview with the author. The Saxon judicial administration, unlike Fischer-Lescano, believes it has no legal way to prevent the right-wing extremist ex-MP from returning to his judicial job, and defends itself in an internal legal opinion with harsh criticism against Fischer-Lescano's expertise. KLAUS FERDINAND GÄRDITZ, on the other hand, supports Fischer-Lescano's interpretation: It is not a simple case. However, leniency would less be a token of liberal tolerance towards dissenters, but rather endangering the freedom of those people whose cases Jens Maier would adjudicate.

The German Federal Constitutional Court has ruled on the constitutional complaint of the Green politician **Renate Künast**, who had tried in vain before

the civil courts to enforce injunctive relief and claims for damages against authors of hate comments on Facebook. According to EVA MARIA BREDLER, the decision gives hope that courts will work more carefully in dealing with (sexualized) hate speech in the future.

The city of Munich must not refuse space for a discussion on the ground that it could refer to the **BDS** ("Boycott, Divestments and Sanctions") movement. Last Thursday's ruling by the Federal Administrative Court is within the bounds of established case law on freedom of expression. LOTHAR ZECHLIN explains what this matter is all about.

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IRP Institut für Rechtspolitik an der Universität Trier

Online-Veranstaltung zur Wahlrechtsreform

Der Politologe ***Prof. Dr. Joachim Behnke*** *referiert am 9. Februar 2022, 18.30 Uhr, auf Einladung von Antje von Ungern-Sternberg (Institut für Rechtspolitik Trier) zum Thema „Zu viele Abgeordnete im Deutschen Bundestag und zu viele falsche Wahlkreisgewinner: Warum eine Reform des Wahlsystems weiterhin dringlich geboten ist". An der anschließenden Diskussion beteiligt sich der innenpolitische Sprecher der FDP-Bundestagsfraktion,* ***Konstantin Kuhle****.*

Anmeldungen unter kemper@uni-trier.de.

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In **Ireland**, the Supreme Court has strengthened the rights of the Travelling community with respect to property rights on publicly owned land. RACHAEL WALSH analyzes the decision.

In **Colombia**, the Constitutional Court has declared life imprisonment unconstitutional. MANUEL ITURRALDE SÁNCHEZ and DANIEL BONILLA MALDONADO consider the way the court protects the constitution's basic structure even against constitutional amendments innovative and bold. At the same time, complex questions arise regarding the role of courts and judicial activism.

One blog symposium, on **human rights and decolonization** against the backdrop of the Dutch colonial past, concludes this week, with contributions by STEFAN SALOMON, MEREL DINKLA, and STEF SCAGLIOLA, and another begins: on the day of the opening of the **Winter Olympics in China**, ANTOINE DUVAL and DANIELA HEERDT launch our latest blog symposium about the transnational private regulation of expression by sports federations and, in particular, the Olympic Movement.

Our series of blog symposia on the impact of 9/11 after 20 years enters a new round: it's about the fallout of the attacks and the security policies they triggered on public discourse and freedom of the press, information and expression. ASH BHAGWAT contributes on the US, JAYSON LAMCHEK on the Philippines, GE CHEN on China, IMRAN PARRAY on India, and JACOB ROWBOTTOM on the UK.

So much for this week. All the best to you, please don't forget to support us on Steady, stay safe 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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