The Ground Beneath the Feet

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20.01.2023 doi: 10.17176/20230121-095934-0

It is a very strange physical experience to be stuck in the mud. Normally, you hardly notice the ground you are walking on. You just push yourself off it, and when your foot lands on it again, it is there, firm and reliable, providing support and resistance. And where that's not the case – sand, snow, slush – it at least remains passive, gives way, offers no resistance.

Mud is different. It is not passive. It grabs you. Holds it tight, the foot. Literally sucks it in. It closes around your heel, loamy and tough, and won't let go. It pulls your shoes right off your feet. The more you kick and drag and wrench to free your foot, the deeper you push the other into it. There you are, up to your ankles in the loamy cement, and all of a sudden you can't get away at all anymore. There you stand, wide-legged and wobbly, reaching into the void, at best into the soft, yielding stuff down there, as you flail your hands for support. And if someone comes and gives you a shove, you just fall over.

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***FREEDOM NEEDS FIGHTERS:** Freiheit-srechte.org/join*

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I was in Lützerath last Saturday, as announced last week. Not in the condemned village itself, but within sight, a few steps in front of the police cordon. We were instructed to clear the field, and when we didn't, the police pointed their water cannon at us, whose jet, however, was driven right back behind the police line by the icy January wind, much to the cheers of the demonstrators. The police advanced, we retreated, and at some point, in the soggy field, there were wide-legged, staggering figures all over the place, struggling to keep their balance and keep going, some of them wearing black helmets, uniforms and armour, some of them not.

On the videos, this looks utterly ridiculous. But there, on the field, no one was laughing. This was not a protest carnival that draws its energy from mocking what it is protesting against. None of that. This was no riot either. Here were the demonstrators and wanted to get through to Lützerath, or at least not clear the field on which they were standing. And there were the police to stop them and push them away. I had the impression that neither side was keen for a fight. I didn't feel at all that hot, shimmering atmosphere that usually precedes the outbreak of violence in such confrontations (or else I wouldn't have come so close). The predominant emotion was not anger and indignation, but – as my daughter Theresa, who was also there, put it – sadness. It was not a hot feeling. It was different. Loamy, if you will, and tough.

Then there's the brim. The ground you are standing on suddenly ends. Where the field should go on, suddenly nothing. A 40-metre drop. Emptiness for many, many miles. Opencast mining is what is going on beyond the edge. What is being extracted is the same material that is underneath us as we trudge through the mud. Under our feet the soil, under the soil the carbon, fossilised biomass, for millions of years safely tucked away and separated from the earth's atmosphere, and for the last 50 years or so dredged up again with these inconceivably huge machines in this

inconceivably huge non-existence of soil that is the open-cast lignite mining area Garzweiler II. The ground on which we are standing is there. But is it? It breaks off. It is unreliable. The excavators will be there any moment.

"The new universality", wrote the great Bruno Latour, who died last year, in his ‚terrestrial manifesto' in 2017, "is the sensation that the ground is slipping away from under your feet". The loss of the ground beneath one's feet is the one experience shared by all, migrant and patriot, colonised and coloniser, worker and capitalist, from the family evicted from their flat in Berlin to Elon Musk in his space rocket. Their terrain is at stake, what they stand on, what they are at home in, what gives them support, what their foot pushes off and lands on again. The conclusions are radically different. Hence the conflict. But the experience from which they are drawn is essentially the same.

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An der Professur für Öffentliches Recht und Europarecht (Jürgen Bast) sind zum 1.4.2023 ***zwei Stellen als wissenschaftliche:r Mitarbeiter:in*** *(50 %) zu besetzen!*

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On Sunday we drove on to Essen, to the beginning of the Prussian-German Carbon Age, so to speak, where the derelict mine headframes, most of them merely cultural monuments long since, are towering into the sky. We visited the grotesquely hideous *Villa Hügel*, coagulated from inconceivable amounts of carbon energy, the would-be-Downton-Abbey home of the steel- and arms-producing Krupp family. We went to the *Zeche Zollverein*, where in 1965, when President Johnson's Scientific Advisory Council first warned against the "vast geophysical experiment" of blowing 500 million years' worth of fossil carbon into the atmosphere within a few decades, several million tons of hard coals were still mined every year, now a national monument and a cultural center. The ground was pulled out from under the feet of the Ruhr region when the Western world's demand for fossil energy shifted away from coal and towards oil. How much coal mining had to do with the rise of Western democracy and the shift to oil with its disintegration and destruction can be read in Timothy Mitchell's fabulous *Carbon Democracy*. Most oil-producing states, meanwhile, have lost the ground under their feet more disastrously than even the drabbest of all western coalfields. As for the millions of refugees from Iraq and Syria, in a quite horribly literal sense.

The ground beneath our feet is not the stable and indifferent surface for us to build the limitless modern world upon. It is not nature. It is an actor. The earth strikes back. Lützerath, says Robert Habeck, our green federal Minister of Economy and Climate Protection, is the wrong symbol. I don't think I agree.

This week on Verfassungsblog

… summarized by PAULA SCHMIETA & PAULINE SPATZ:

PHILIPP ESCHENHAGEN & ENNIO FRIEDEMANN consider the legal situation in the Lützerath case. They conclude that the legislative scope for a (temporary) **halt to coal mining in Lützerath** has not been fully exhausted and therefore criticise the narrative of the Green Party.

ANTONIA BOEHL discusses the decision of the German Federal Constitutional Court not to accept the constitutional complaint against the non-introduction of a **speed limit**.

TJARDA TIEDEKEN comments on the proposal to decriminalise **dumpster diving** in Germany. The proposal, which is based on a change of procedural law, is, in her view, a fair temporary solution, but a change of the substantive law seems more desirable in the long run.

PATRICK R. HOFFMANN expresses his views on the planned **liberalisation of nationality law**. In his view, there are good reasons for both accepting multiple nationality and lowering the residence requirement to five years.

In January 2022, **North Rhine-Westphalia's** first **assembly law** came into force. KATHARINA LEUSCH looks at the law and finds it unsurprising that a constitutional complaint has now been filed against it.

FABIAN MICHL & JOHANNA MITTROP assess the traffic light coalition's draft on **electoral law reform**, looking in particular at how consistently it implements the farewell to personal elections.

It is an unwritten rule of democracy to make electoral law changes as far as possible by consensus. But what if that is not possible? UWE VOLKMANN ponders what an amendment to **electoral law with a simple majority** would imply.

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*The Department of European Studies at the University of Amsterdam has a vacancy for an **Assistant Professor in Climate Change Law and Governance**, whose work lies at the intersection of climate change and EU economic law and governance, and who would be keen to work in an interdisciplinary and international Department. Teaching duties will include BA and MA courses on internal market law/EU trade law, and EU climate change law more specifically.*

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ANNE SANDER & ELISABETH FALTINAT discuss how to deal with **radicalised judges** in Germany. They present two case studies on using disciplinary measures to protect judicial independence and provide background information on the Germany specific context.

LAURENT PECH elucidates the current state of the polish judiciary, concluding that latest (unconstitutional) bill in that respect merely continues to disguise **Poland**'s rule of law breakdown.

AEYAL GROSS sheds light on the current constitutional situation in **Israel** by outlining proposed changes to constitutional law, explaining the current law's paradoxes and pointing to the unique context of "democratic backsliding" occurring in a specific ethnonational context.

Likewise, ELI SALZBERGER is very much concerned about the draft bills in **Israel**, warning that "a regime change" – with an immense increase of human rights violations with no effective legal avenues to challenge them – may lie ahead.

Against the background of European telecommunications network operators demanding content providers (such as Facebook or Google) to contribute a "fair share" to their infrastructure costs, KONSTANTINOS KOMAITIS comments on a possible regulatory shift by the European Commission, which, so Komaitis, could risk an **Internet collapse in Europe**.

PHILIPP HACKER, ANDREAS ENGEL & THERESA LIST examine the emerging **regulatory landscape surrounding large AI models** and make suggestions for a legal framework that serves the AI community, the users, and society at large.

Considering the forthcoming elections KAHFI ADLAN HAFIZ points the precarious condition of **Indonesia**'s judicial independence. He specifically warns that the members of the Constitutional Court may be faced with the choice between facilitating free and fair elections and losing their jobs.

In the sixth episode of our **RuleOfLaw** podcast with the German Bar Association, LENNART KOKOTT talkst to JAMES MACGUILL and FLORIAN GEYER about the European Union and the state of the professional freedom of attorneys there.

That's all for now. All the best, and see you next week!

Max Steinbeis

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

SUGGESTED CITATION

Steinbeis, Maximilian: The Ground Beneath the Feet, Verfassungsblog, 20.01.2023, doi: 10.17176/20230121-095934-0.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20230121-095934-0.