The Imaged

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It is a work of art, a piece of parliamentary architecture, a writing on the wall, a constitutional monument: the installation "*Grundgesetz 49*" by Dani Karavan next to the *Reichstag* in Berlin, made of towering glass plates on which the text of Articles 1 to 19 of the Federal German Constitution is engraved, so that every tourist strolling through the parliamentary centre of German democracy on the Spree promenade takes note of what this Republic is based on.

Strictly speaking, it is not the current constitutional text that is on display, but its original version from 1949, as if the fundamental rights to asylum and to the inviolability of the home were still the hard and concise rights they were in the mythical beginning. It's not as if many people actually stop to read all that text, I suppose. And that is not the point. After all, it is the parliament that has erected this monument, not the Federal Agency for Civic Education. The republic is speaking to itself. There it stands, the text, no matter if anyone reads it. It's a monument after all.

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Articles one to nineteen, the catalogue of basic rights. The part that is about ordinary people and their rights, before that whole technical *Staatsorganisationsrecht* stuff starts. Some articles are well known. Others not so much. The German *Bundestag* shows on its website, of all things, the pane with Article 15 on it: "Land, natural resources and means of production may, for the purpose of socialisation, be transferred into common ownership or into other forms of common economy by a law regulating the nature and extent of compensation." Yes, indeed, Ms. Giffey, believe it or not: That's also part of the monumental inventory of the *Grundgesetz*.

Last weekend, the climate activists of the Last Generation doused this work of art with a few buckets of "crude oil" (coloured glue, actually) to demonstrate what fundamental rights will still be worth in the future for those who will have to live most of their lives in the hellish world beyond the 1.5-centigrades threshold. As far as the Basic Law is concerned, there is nothing to be said against this. This is precisely the use of freedom of expression and assembly that the constitutional text monumentalised in the artwork protects. The constitution, even if some of its text temporarily disappeared behind washable paint, was not impaired in the slightest. It is not difficult to see that. And yet the greater part of politics and the press, far into the progressive camp even, behave as if the activists had pointed a Katyusha at the *Bundesverfassungsgericht*. Why is that?

Apparently, it is not only the work of art, not just the monument, not the image that is perceived as being attacked here, but the thing that is imaged, the Constitution itself. The Last Generation is "defiling the Basic Law", they say. "The dignity of the *Grundi* is inviolable", one joker quipped on Twitter. The letters on the glass panes not only refer to the Basic Law, no:

they *are* the text of the Basic Law! The holy scripture! Whoever violates it commits a terrible crime!

The holy scripture, then, the hallmark of all monotheistic religion? Let's see: Firstly, to state the obvious, the Basic Law is not a revelation, but a man-made law, fundamental for sure, but nevertheless made in, by and for this time and this world, a formable, mortal thing. Secondly, the prohibition of idolatry is very much a hallmark of monotheistic religion as well. The prohibition of building a fetish, of worshipping the image instead of the imaged. Those who equate the letters on the glass panes with the constitution fetishise the Basic Law.

But that is not the whole story, it seems to me. A constitution, unlike the Holy Scriptures, is a covenant with oneself. The republic is speaking to itself. It binds itself, as a prerequisite of its power. It binds itself to let the people subject to its power remain nevertheless free and equal. It binds itself to fundamental and human rights that make it expectable that these people will take the risk of letting themselves be outvoted. That is what makes a republic a democracy. That is what the *Bundestag* had Dani Karavan build a monument to. That is what is imaged here.

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The democratic republic, speaking to itself in and with its constitution and in and with this monument, is the product of a certain political constellation in a certain time. Its emergence and its heyday coincide pretty much with the era of industrialisation. Providing for a durable setup to make the class conflict between capital and labour productive was its raison d'être and its great success. Industrialisation means burning of coal, oil and gas, and the class conflict was principally about the distribution of the tremendous profits made possible by it. Nowadays, these profits are rapidly drying up, while the supposedly externalised costs are piling up to dizzying heights. Not only space, also time appears thoroughly colonized; an entire generation realizes that their future has already been gobbled up by their predecessors before it could even happen. A new class conflict is emerging, a new ecological class is forming, and the whole political field is being realigned in the process. Who will be on the left? Who will be on the right? Who tries to wing it in the "juste milieu" for another while? That is not yet clear. One thing that does seem increasingly clear to me that the SPD may have to be regarded as a right-wing party in the future.

What will that entail for democracy, for fundamental rights, for the constitution? That's a fascinating question. At any rate, it seems quite unlikely that everything will simply stay just as it is. Constitutions are shaped by class conflicts. This one, too, will leave its mark. It already does. In that sense, I guess it can be said that those who think an attack on the constitution is taking place do indeed have a point.

Well. No one can be blamed for being terrified by what lies ahead. But allowing oneself to be terrified to a point where one prefers shooting the messenger to hearing the message, that is a different matter.

The week on Verfassungsblog

… summarised by PAULA SCHMIETA:

Following the introduction of the "**Feminist Foreign Policy**" by the **German** federal foreign Minister Annalena Baerbock, ROMY KLIMKE & CHRISTIAN TIETJE examine the proposed Foreign Economic Policy within the context of **EU law**. They argue that EU primary law provides a strong basis for feminist trade policy, and that the key question is not *if* EU external action should comply with feminist foreign policy, but rather, *how*.

A new chapter in the saga of the European rule-of-law crisis? LENA KAISER takes a closer look at the academic debate surrounding the **EU Commission**'s attempt to mobilise **Art. 2 TEU as a stand-alone**

provision against Hungary. She stresses the need for credible Union institutions and warns that the Commission's approach has to be handled with great care.

"No Jab, No Job" – **Italy** has seen unprecedented measures during the COVID-19 pandemic. MICHELE MASSA discusses the Italian COVID-19 vaccination legislation which was recently scrutinised by the Italian Constitutional Court.

Three years after the WHO declared COVID-19 a global health emergency, **we may be beyond the pandemic, but major global crisis still lie ahead**, so THORSTEN KINGREEN. According to him, there are important lessons to be learnt, first regarding the relationship between advice-giving science and decision-making politics, second with regard to behaviour that is protected by personal rights but can have considerable negative effects for the general public.

According to JULIA WULFF, the **expansion of renewable energies and species protection law** are increasingly in conflict. She comments on the amendment to the Regional Planning Act (ROG) and concludes that in practice ROG creates more confusion than relief.

ADEMIR KARAMEHMEDOVIC examines the proposal of the "Last Generation" to set up a **society council** whose members would be representative of the German society and not be elected but selected at random. He considers blanket criticism to be "neither scientifically sound nor appropriate to the matter at hand".

The already mentioned action by the "**Last Generation"** at the "**Grundgesetz 49″ monument** is legally scrutinized by LORENZ WIELENGA who thinks that the "intemperate and dangerous criticism of climate protection activism" does neither stand up to legal analysis, nor does it reflect well on the state of liberal democracy in Germany.

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*Am **15. März 2023 um 18 Uhr** widmet sich **Alexandra Kemmerer** in der nächsten Veranstaltung der Ukraine-Vortragsreihe, einer Kooperation zwischen dem Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht und der Württembergischen Landesbibliothek, dem Thema **„Kriegsverbrechen in der Ukraine: Ermittlung und Ahndung zwischen Recht und Politik"**.*

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Two months ago, Chile and Colombia submitted a joint request for an advisory opinion on the climate emergency and human rights to the **Inter-American Commission on Human Rights**. According to VERENA KAHL, they pave the way for the court's first ground-breaking decision on this topic.

MARIANA VELASCO RIVERA sees Mexican Democracy at a crossroad. According to her, **Mexico**'s electoral agency, the *Instituto Nacional Electoral*, is a pillar of the country's democracy, which has now come under attack by President López Obrador. He and his party are testing the resilience of Mexico's democracy, it's constitution and the Mexican Supreme Court, so Velasco Rivera.

Four years ago, the British Home Secretary revoked Shamima Begum's British citizenship, after she was discovered among (former) ISIL members in a refugee camp in northern Syria. Begum appealed against this decision before the Special Immigration Appeals Commission. Although the Commission thought her likely to be a victim of child trafficking, she upheld the Home Secretary's decision. ANJA BOSSOW comments on this "blatantly unjust" decision, which not only "unfairly punish[es] a victim of child trafficking, but also indicates a dangerous decline in the **UK**'s commitment to the rule of law".

Following the earthquakes in **Turkey**, a children's rights NGO filed claims against the governmental Directorate of Religious Affairs (*Diyanet İşleri Başkanlığı)* and members of the Sufi cult "İsmailağa" for capitalising on the destitution of young earthquake victims. Against this backdrop, AYTEKIN KAAN KURTUL explains how theocratic practices in a consti-

tutionally secular country bring "the trampling of the rule of law and the abuse of children" about.

South Korea's Parliament is in the midst of a debate on electoral reform. JOSEPHINA LEE sheds light on a judgment of the South Korean Constitutional Court from 2022, which, according to her, recognises significant changes in the political culture and could have a major impact on how future election campaigns will be conducted in **South Korea**.

The **Bundesverfassungsgericht** recently **published** another **volume of translated key judgments**, this time **on the "General Right of Personality"** (Article 2(1) Basic Law). This volume, so claims DIETER GRIMM, proves that a middle way between a very broad and a narrow interpretation of Art. 2(1) – as suggested in his dissenting opinion in *Reiten im Walde* would have been "viable and apt".

According to a decision by the Berlin Regional Court, the *Akademie der Künste* is no longer allowed to publish the journal *Sinn und Form* because its state funding impedes free competition. LUISA CELINE ZIMMER discusses the judgement. She says that although one could interpret the facts of the case as a mere "formal legal" problem, one should not deceive oneself about the fact that the survival of several **cultural magazines** is at stake.

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That's it for this week. All the best to you!

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Max Steinbeis

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