Daylight

The Right-Wing Majority Between Possibility and Reality

Maximilian Steinbeis

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This time of passage between the German federal election and the formation of a government has something unsettling about it. The old is over, the new has not yet begun – a perceived liminal space of being ungoverned and insecure opens up, even if reason and Article 39(1) Sentence 2, Article 69(3) of the Basic Law assure that it isn't so. These are, in a way, the *Rauhnächte*, the yuletide nights of politics – the longest and darkest nights between one year and the next, when, outside, the *Wild Hunt* is howling around the huts, and inside, people are lowering their heads and sending up silent prayers: Lord, let this pass.

Friedrich Merz is not yet Chancellor. A feeble 28.5 per cent voted for him, and a governing majority for his *Politikwechsel* will only happen if either the AfD (never!) or the ousted Chancellor's party, the SPD, allow it to. So, is there now a right-wing majority, or isn't there? Have the leftist cranks (Merz: "*linke Spinner*") with their loose screws (Merz: "*nicht alle Tassen im Schrank*") , the *Grannies Against the Right* and *tutti quanti*, funded by taxpayers' money under Angela Merkel's sponsorship scheme, the hundreds of thousands who took to the streets against the deliberately contrived rapprochement between centre-right and far-right – have they all now been defeated, humiliated, outvoted? Or have they not? Has a right-wing majority vote by the people now put an emphatic end to left-wing *woke* cultural hegemony? Or has it not? Hush – listen to the screaming and raging outside. Lord, let this pass.

With these election result, there exists now a possibility of a right-wing majority. But whether possibility becomes reality depends on decisions – decisions for the CDU/CSU and the SPD to make. Until these decisions are formally sealed in the form of a coalition agreement and a stable chancellor's majority, that possibility will rage like a *Wild Hunt* across a sky streaked with lightning, instilling both fascination and dread precisely because it is not real.

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The first to determine the duration and outcome of this situation is the CDU/CSU. The party insists it will never form a coalition with the AfD, and I see no reason to doubt that they mean it. They would be utterly foolish, just as they face the task of arming Germany against Putin, to make themselves dependent on his biggest fans – not to mention the vast economic and European policy differences. At the same time, however, they make clear every day that they want to exploit the possibility of a right-wing majority politically. They seek a culture war, proclaiming the existence of a right-wing *silent majority* – a truer people than the left-woke urban elites in those NGOs and protest movements, a silent majority that has spoken and manifested itself in this election. But actually turning this majority into a chancellor's majority? Never!

They want to have the cake and eat it, too. This is, of course, a self-contradictory statement. It cannot be defended with reasoned arguments. This may partly explain the emotional response of many conservatives to the accusation that the CDU/CSU is blurring the line between centre and extreme right. Florian Meinel and I made this point in our editorial three weeks ago (recommended reading: here and here). Last week, a prominent CDU politician whom I have known for a long time cut ties with me over it: We had, he claimed, blamed his party of consciously and deliberately supporting the Nazis (we did not, for the record), and he found this personally offensive as a party member – an insult to his honour. The break in discourse that he initiated, he laid at our feet.

Those *Grannies Against the Right* and all the others who call out this paradoxical stance of the CDU/CSU? Something must be wrong with them. That *Wahl-O-Mat*, which tells CDU politicians that they are 71 per cent in line with the AfD? Highly suspect, too. Someone should take a closer look at these guys. They all need to be shown what it means to be in the minority, now that the right-wing majority…

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But it is also, and above all, the SPD that must make a decision. With its 16.4 per cent, it has the ability to insist that this wild majority-possibility hunt dissipates into thin air when examined in broad daylight – and that the chancellor's majority, which it is required and expected to provide, makes sure that someone is elected who keeps it that way. *Brüder, zur Sonne, zur Freiheit*! Whether the SPD has the strength and will to do so is another question. That Hubertus Heil enters the cabinet again is, of course, also tremendously important.

And there is another force that carries more weight than it may realise in these dark moments: the engaged, enlightened, organised public – also known as *civil society*. This election could have turned out a hell of a lot worse. A shift of political culture only happens, the cultural-political possibility only becomes a hard political reality when basically everyone across the political spectrum, except for a couple of marginalised cranks perhaps, agrees that, well, yes, that seems to be just how it is now. That, so far, has not happened. Every non-right-wing-extremist party that seemed to accept this shift has gotten their behinds handed to them in this election, and the only one that didn't – the Left Party – turned out to be the great surprise winner. If, despite this, that phantom silent-majority thing should in fact rule over our political reality in the coming years, it will be because we allowed that to happen. Why should we?

Thanks to Florian Meinel for valuable input.

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Editor's Pick

by EVA MARIA BREDLER



On Wednesday, I did guided "breathwork" at sunrise. Feel free to laugh. I thought breathing was one of the few things that did not require any work. But let me tell you, flooding yourself with oxygen while some Australian guy tells you how to exhale actually does amazing things to the body: My eyes started watering, my lips went numb, and somehow I could feel parts of my back. Then again, it was also freezing cold. For those who don't want to pant in communion but still look for a coping strategy, simply listen to the album that has been giving me hope for weeks – by the literal beacon of hope, Esperanza Spalding, titled, well, you guessed it: *Esperanza*.

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

Germany has finally voted, after what felt like a long, tiring election campaign. The new *Bundestag* will convene by March 25 at the latest, with Friedrich Merz as the designated Chancellor.

Already on election night on Sunday, Merz spoke with Israeli Prime Minister **Netanyahu** and announced an invitation to Germany. He assured Netanyahu of finding ways to prevent his arrest despite an international warrant. This may be a sign of hospitality, but also of a violation of both international law and the separation of powers, as KAI AMBOS (GER) argues.

That the government cannot simply promise whatever it pleases but must act within constitutional limits should be clear, given the extensive case law. But what about the *Bundestag*? This question arose after a **parliamentary inquiry** (with no less than 551 questions) by the CDU/CSU parliamentary group on the "Political Neutrality of State-Funded Organizations". As the inquiry faced harsh criticism, the CDU/CSU defended it as a legitimate attempt to examine the tax compliance of these organisations – a core parliamentary responsibility. SOPHIE SCHÖNBERGER (GER) clarifies: These are by no means harmless questions. Rather, the suspicions and insinuations raised by the inquiry have the potential to intimidate the organisations in question with regard to their freedom of expression and general activities. In doing so, the inquiry exceeds the boundaries of parliamentary information gathering.

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Not only NGOs but also the **electoral reform** faced scrutiny. The *Bündnis Sahra Wagenknecht* has announced legal action, primarily against the electoral threshold. Others criticise that the new election law results in not all district winners getting a mandate. ANTJE VON UNGERN-STERNBERG (GER) explains why this is a problem and how it could be fixed.

Besides testing the new electoral law, the Bundestag elections also tested the **Digital Services Act**. Is it truly capable of preventing election manipulation on online platforms? JAN-OLE HARFST (GER)

assesses: While the Act could eventually help protect the integrity of elections, the current reality looks different.

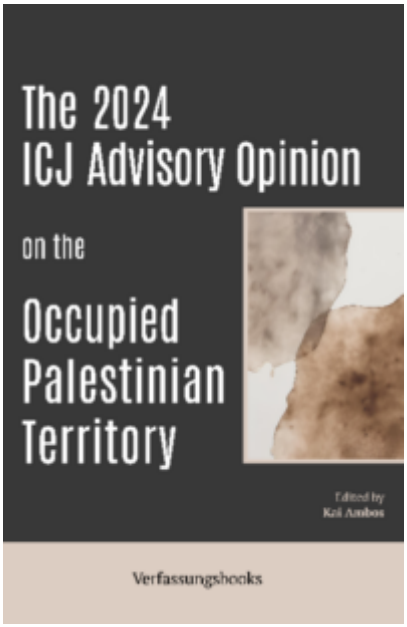
Merz wants to make defence a priority again and needs money to make that happen. A swift reform of the debt brake could free up resources but relies on the old parliamentary majorities. Merz prefers a **special defence fund** which, too, would only be able to pass in the old *Bundestag*. But does the outgoing *Bundestag* still have the legitimacy to pass such measures? While it should remain operational, the outgoing parliament should not be allowed to amend the constitution, as JOEL S. BELLA (GER) argues.

To strengthen Germany's defence capabilities, Merz has shown himself open to the idea of a new conscription system. A recent ruling of the Federal Court of Justice might come in handy: It states that the fundamental **right to conscientious objection** could be suspended in times of war. KATHRIN GROH (GER) strongly disagrees, arguing that especially in times of national defence, the core of this fundamental right must remain fully intact.

Meanwhile, the U.S. constitutional system is becoming increasingly defenceless – no news there. RUTH HOUGHTON and AOIFE O'DONOGHUE (EN) are not surprised either. They read "**Project 2025**" – a political program by conservative and far-right U.S. organisations – as a manifesto that both prefigures and paves the way for constitutional crisis, and also highlight emerging counter-manifestos.

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Trump's supporters cloak this political manifesto in theoretical justifications – such as the "unitary executive theory", which claims that all state power derives from the U.S. president. MICHAEL MEYER-RESENDE (EN) warns against being misled by theoretical rhetoric: Trump's supporters are not deploying the theories in good faith. A **power grab** remains a power grab, even if it's dressed up "in theoretical garb".

Trump's plans to introduce so-called "reciprocal" tariffs have little to do with good faith either – they contradict the existing rules of the world trade order, as PETER-TOBIAS STOLL (EN) explains. Tariffs may be a mundane matter, but they raise an important question: How do we deal with rules that were created in better times and are now in danger of disintegrating?

The question also arose before the EU General Court, though in a different form: A Romanian association of prosecutors challenged the 2023 termination of the Cooperation and Verification Mechanism. However, the court dismissed their annulment action, citing a lack of direct concern. BENEDETTA LOBINA and CANDICE MEERA MAHARAJ (EN) argue that the decision does not reflect the rule of law situation in **Romania** and leads to undesired consequences.

The EU is also grappling with dispute resolution outside of its Member States, specifically with **Switzerland**. CARL BAUDENBACHER (EN) examines a package of sectoral treaties that would grant the European Commission the unilateral right to bring Switzerland before an "arbitration tribunal".

Meanwhile, Argentina has taken a step toward defending international legal principles. In February 2025, an Argentinian court issued arrest warrants against Myanmar's Senior General and *de facto* leader Min Aung Hlaing as well as 24 other high-ranking military officials. These are the first public **arrest warrants issued against the Myanmar military** in a universal jurisdiction case – offering a glimmer of hope for displaced and oppressed Rohingya, as WINONA XU (EN) writes.

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Have a hopeful week ahead!

Yours,

the Verfassungsblog Team

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