Resisting Submission

My answers to the US border officials

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Like probably all academics around the world, I have watched in horror at the speed with which Donald Trump and his willing executioners are killing democracy in the United States, including freedom of speech and academic freedom.

As a professor of European constitutional law, I have published on academic freedom and am currently pursuing a project on the political role of the university in a polarized society. As part of this project, hosted by Charles University in Prague, I should spend this autumn at NYU as a Senior Emile Noël Fellow. I was looking forward to rejoining the rich intellectual life of American universities, which I have always admired.

After the start of the authoritarian takeover in the United States (of which the "war on universities" is only a small part), I wondered whether I should come to New York. The news of a French researcher who was "denied entry to the US after messages critical of Trump were found on his phone" and the illegal detention of Columbia graduate student Mahmoud Khalil reinforced my doubts, which grew every day as we read of more detentions and attacks on academics for their support of the Palestinian people in Gaza).

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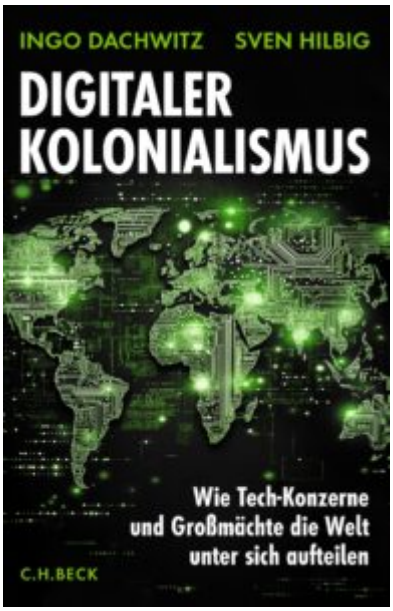

Innovativ, mächtig, rücksichtlos: Kaum eine Geschichte wird so oft erzählt wie die vom unaufhaltsamen Aufstieg der Tech-Konzerne an die Spitze der global vernetzten Welt. Nur ein Kapitel wird dabei ausgelassen: Der Preis, den der globale Süden dafür bezahlt.

Der Tech-Journalist ***Ingo Dachwitz*** *und der Globalisierungsexperte* ***Sven Hilbig*** *beleuchten diesen blinden Fleck und zeigen die weltweiten Folgen des digitalen Kolonialismus sowie bestehende Ansätze für eine gerechtere Digitalisierung auf. Soviel steht fest: AI will not fix it.*

Mehr Informationen hier.

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I also started to think about what I should do – I am very sceptical about what goes under the name of "scholactivism", and writing this post on this blog may seem inconsistent with that conviction. But this is different: I am not calling on anyone else to take action against the destruction of American universities (no matter how much I would like some of the wealthiest institutions like Columbia or Harvard to defend

academic freedom forcefully instead bowing to the illegal demands made of them). Nor do I want to start a petition here, although this might be exactly the "extraordinary instance" of the government "threatening the very mission of the university and its values of free inquiry", which justifies a collective action by academics and their institutions.

I don't think boycotting the United States is the answer for me. It would also mean boycotting institutions that are among the first victims of Trump's coup: universities. At the same time, I felt that we, in the free world – on the other side of the Atlantic, should not remain passive, especially those of us who plan to come in the near future.

Two pieces of news made me realise what I needed to do: First, it was Yale's email advising all foreign students and scholars of heightened scrutiny when entering the US. It noted that individuals could be questioned by border officials about their support for Palestinian causes and that their visas could be revoked based on their answers. "We cannot advise you on how to answer such questions", the guidance said, "but you should be prepared to answer them."

Second, this short essay by the art historian Anna Dumont, which recalls the moment in 1931 when Italian intellectual life surrendered to the Fascist regime. It was when "a law went into effect requiring every Italian university professor, as a condition of employment, to sign an oath swearing allegiance to the government of Benito Mussolini. Out of more than 1,200 professors in the country, only 12 refused". She adds: "The signing of the oath by the vast majority of professors represented the surrender of Italian intellectual life to the regime. It signalled to the rest of the country that there would be no resistance in the world of Italian ideas".

Dumont's essay is entitled "What Autocrats Want from Academics: Servility". And that is exactly what I refuse to give them, even in my small, insignificant way. Carefully preparing to answer questions that we should all be free to answer as we see right would be an act of submission that I want to resist.

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Mehr Informationen hier.

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Therefore, the following statement is intended for my colleagues outside the United States who will soon be travelling there and may be inspired by it. It is also an act of self-protection of my own dignity, since I may not have the courage to say these things when (and if) I enter the U.S. in the fall.

Let me say this publicly:

- Donald Trump and his minions are destroying democracy, fundamental freedoms, and the Constitution on which these values are based.
- By supporting Israel's disproportionate response to the Hamas terrorist attacks of October 2023, the United States is complicit in the crimes against the Palestinian people in Gaza, which should be properly investigated by the International Criminal Court.
- Punishing people for saying these two things violates the U.S. Constitution and the value of which Americans have always prided themselves: the freedom of speech.
- We, in the free world, will keep reminding of these truths, that "we hold to be self-evident".

I have yet to apply for my J1 visa. If I am denied, I will know why. But I will not participate in the act of submission that Trump and his people demand of all of us who wish to come to the United States as we knew it before their unconstitutional coup.

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Editor's Pick

by MARGARITA IOV



Over the last few weeks, I have often thought about "*Burnt Offerings – Aaron Bushnell and the Age of Immolation*" by US historian Erik Baker. The essay appeared in *n+1* last year and deals with a young US soldier who set himself on fire in front of the Israeli embassy in Washington on February 25, 2024, in protest against the war in Gaza.

This very precise and haunting text – of rare beauty, in my opinion – deals with fire as a weapon. We follow its trail of destruction through history: from the burnings of witches to the horrors of the Vietnam War to the hellfire visions of Puritan slave traders. Baker demonstrates how to write about the unbearable: by truly looking at it. Perhaps taking a step back or two – but never turning away. And the central question is not: How can it be that some people resort to such radical means? But rather: How can the rest of us bear not to?

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The Week on Verfassungsblog

summarised by EVA MARIA BREDLER

Easter is still a few weeks away, but Jesus might be early to his resurrection this year: "Jesus Christ was found guilty, and he was innocent", said Bruno Gollnisch, a former Member of the European Parliament. He was sentenced alongside Marine Le Pen by a Paris court on Monday for embezzling EU funds – with both being banned from running for office for five years with immediate effect. "I do not compare Marine Le Pen to Jesus Christ, but she is innocent, and so am I," he quickly added, and just like that, Jesus conveniently went back into his grave. The power of words! Gollnisch insisted that the verdict marked "the end of democracy in France", while **Marine Le Pen** framed it in rather dramatic terms: "The system has pulled out the nuclear bomb." What has happened? CHARLOTTE SCHMITT-LEONARDY (GER) offers reassurance: In this case, a court applied universal law to a politician who abused her position and is responsible for millions in damages.

Meanwhile, in **Romania**, a far-right presidential candidate, Călin Georgescu, was also barred from running, but not because he committed a crime. The Romanian Constitutional Court barred him as a candidate from the presidential race on grounds of antidemocratic behaviour. RADU CORNEA (ENG) analyses the case as an act of militant democracy.

Things are very much different in **Turkey**: The candidacy of Istanbul's mayor and Erdoğan's most promising opponent Ekrem İmamoğlu was also blocked, but through his arrest. He has been in pretrial detention ever since, facing corruption charges. TOLGA ŞIRIN (ENG) argues that immediate, preventive

intervention from the European Court of Human Rights is needed before irreparable political damage occurs.

With authoritarian power everywhere, one big question keeps coming up: How can the constitution be protected, and who is responsible for doing so? In the United States, we can now painfully observe just how much power the **executive branch** has by acting no matter what the law says. Quite timely, the UK's House of Lords Constitution Committee recently published a report on the role of the in the "stewardship" of the constitution. BEN YONG (ENG) reviewed the report and worries that its trust in the executive might turn out to be wishful thinking.

Neglecting the constitution is a general trend when it comes to migration policies. In their coalition talks, the CDU/CSU and SPD agreed to "coordinate with our European neighbours to carry out rejections at the common borders, even for asylum seekers." However, EU law generally requires an asylum or Dublin procedure for this, with exceptions only allowed in cases of "national emergency". SEBASTIAN KORSCH and KILIAN UMBACH (GER) look into what the potential consequences of **rejecting asylum seekers** at the German borders could be.

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More information can be found here.

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At least the incoming coalition wants to strengthen the **Federal Agency for Political Education**. ANNA-MIRA BRANDAU and FRIEDRICH ZILLESSEN (GER) explain why the agency is crucial for our democracy, how vulnerable it is, and how it can be better protected.

(Political) education is crucial indeed. But what if access to education is already lacking? Since the German Federal Constitutional Court confirmed during the COVID school closures that children and adolescents have a **right to education**, the question remains: Is this a justiciable right to school (places)? Although the FCC left this question open in a recent ruling, it continues to trust the administration when citing a lack of capacity. ISABEL LISCHEWSKI (GER) explains why this "judicial blackboxing" of administrative processes could be a problem for fundamental social rights in the long run.

Hungary has also been dealing with its children, but in a very different way: In mid-March, the Hungarian parliament passed a law to protect children from assemblies promoting homosexuality. Although the law uses general terms, it's widely seen as a ban on the LGBTQ+ Pride Parade, just before its 30th anniversary. According to RENÁTA UIZ (ENG), the law deliberately violates European human rights standards on freedom of assembly and LGBTQ+ rights, as well as fundamental EU values.

It's not only enacted laws but also omitted ones that can cause problems, as seen in **Italy**. The Italian Constitutional Court ruled five years ago that assisted suicide is legal. But the national parliament still hasn't agreed on a law. The region of Tuscany grew impatient and simply passed its own one. Opponents fear fragmentation and are seeking to overturn the law in court. PIER FRANCESCO BRESCIANI (ENG) explains why the Constitutional Court should not block this kind of strategic regional legislation but rather appreciate it as a form of support for the rule of law.

More familiar than strategic legislation is strategic litigation. The latest trend are Strategic Lawsuits Against Public Participation (SLAPP) – abusive lawsuits from powerful actors intended to intimidate and silence critical voices in civil society. In one such case, a US court has ordered **Greenpeace** to pay hundreds of millions of dollars for allegedly aiding trespassing and defamation. CHRISTINA ECKES and PHILLIP PAIEMENT (ENG) see this as a test case for the EU Anti-SLAPP Directive.

There are plenty of test cases for **global gender equality**: democratic backsliding, the climate crisis, armed conflicts, and humanitarian crises, just to name a few. Thirty years after 189 countries adopted the groundbreaking Beijing Declaration, the Beijing +30 Action Agenda for the next decade was unveiled in New York. NARIN NOSRATI and HANNA WELTE (GER) take stock of the global gender equality policy in the last decades and evaluate the potential of the new agenda.

This week, we launched a symposium on "**Intellectual Property and the Human Right to a Healthy Environment**" (ENG). The connection may not be apparent, but is proving increasingly important: the core issue is that intellectual property protection can hinder sustainability – for example, trademark protection and upcycling can conflict, as ELENA IZYUMENKO (ENG) explains in her introduction.

Finally, JULIA GELBHAAR (ENG) has profiled Simone Rozès in the April edition of the "**Outstanding Women of International, European, and Constitutional Law**" calendar – a pioneering jurist who had a lasting impact on the French judicial system in the 20th century. Rozès would surely have had interesting thoughts on Marine Le Pen's case. Unfortunately, we won't get to hear them since Rozès' resurrection seems unlikely for the time being (just to clarify: I didn't compare Rozès to Jesus).

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Take care and all the best!

Yours,

the Verfassungsblog Team

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