

Quis furor, o cives...

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Civil war. Looking at what has happened in Minneapolis and over 100 other US cities last week, I suppose I am not the only one who had that association, in a potential sense anyway. The President explicitly threatening to deploy the military against his own citizens. An unleashed police force apparently not even pretending to protect anyone from anything any more for the most part. Heavily armed masked paramilitaries lining up in Washington. Meanwhile, it's anyone's guess what scenarios the man in the White House is playing out in case he'll lose that election in autumn.

Civil war? It's a horrible thought, the most horrible of all. But then again, the word is also befitting the gravity of the situation, isn't it? It has that edifying Roman Republic ring to it, hasn't it, which is always great in relation to the USA. Sounds like historiography even. Spoken from a safe distance.

For this reason alone it should be mistrusted.

The conceptual history of civil war, as the historian David Armitage has [shown](#), is long, twisted and ambiguous but has a localizable and nameable starting point: ancient Rome. The concept of *cives romanus*, the Roman citizen, was necessary to infuse the idea that the bearers of this legal status could be on one another's throat instead of their common enemy's, with all its paradoxical horror. Romulus and Remus, plebs and patricians, Marius and Sulla, Caesar and Pompeius – Rome found its form in civil status and its history in civil war.

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Talking about civil war implies two statements: The conflict at hand is marked, on the one hand, as a conflict between citizens and, on the other hand, as an internal affair of a distinct community. American is fighting against American, and that is terrible for America, but only for America.

What is being blanked out by this is what this conflict is about in the first place: the status of the citizens as equal bearers of rights. Which is exactly what people of color in the USA have been deprived of since forever and, having to live in constant fear for their life particularly in contact with the police, still are. It's not that Americans and Americans attack one another in beautiful symmetry like Marius attacked Sulla and Sulla attacked Marius. In Cincinnati during the riots, the police raised the so-called "Thin Blue Line Flag" instead of the Stars and Stripes: the symbol of the blue-uniformed police as the thin line which stands in defense of civilization against anarchy. In defense of the scared, law-abiding, white citizens against the wild, angry, dangerous, "criminal" blackness out there. That thin blue line is an external border.

It's no coincidence that it's mainly the Right who are using the word civil war, as a diagnosis for what the Left (or rather: the Non-Right) is trying to inflict on them. Newt Gingrich, the man who invented large parts of the right-wing populist strategy decades ago, used exactly this term to describe the campaign against Ronald Reagan's Supreme Court nominee Robert Bork as early as 1988:

"Up until the Bork nomination, all of us failed to appreciate that the Left in this country has come to understand politics as civil war. The Left at its core understands in a way that Grant understood after Shiloh that this is

a civil war, that only one side will prevail, and that the other side will be relegated to history. This war has to be fought with the scale and duration and savagery that is only true of civil wars. (...) You can expect from here on that the hard Left, which includes Jim Wright and Tony Coelho and many people who do not look hard Left, will try by chameleon-like actions to destroy our country. In fact, these individuals practice being chameleons: they are who they have to be today in order to be acceptable. But they do not represent American values. The hard Left will systematically root us out and destroy us if they can."

So the civil war opponents are not so much the people of color and other marginalized. They don't even exist in this narrative. The enemies are white old men like Jim Wright from Texas and Tony Coelho from California, "chameleons" who may look white and "acceptable", but only to deceive. In reality, they do not "represent American values". Thus, the right-wing project of subjugation is swiftly transformed into a civil war instigated by destructive, treacherous, left-wing *hostes publici*. This is the story that a significant portion of the American public has been telling themselves for more than thirty years now.

That story is no longer a specifically American story. Nor is the underlying conflict merely an internal US affair. That too is being blanked out by the talk of civil war. We would like that, we Europeans, wouldn't we? Of course, racism in America is specific in many ways, but the fact that "normal citizens" and holders of rights are perceived as white people is very much real in all European societies, too, just as the everyday police violence against people who deviate from this supposed normality.

If, God forbid, it should actually come to a point where the term civil war starts to make sense, then this won't be because of the protests and unrest. It will be because Donald Trump will deliberately make it so, in order to stay in power in the event of an impending loss of the election. Meanwhile, high-ranking military officers have publicly declared that they disagree with their Commander in Chief. Who would have thought that the insubordination of the military to the civilian government would one day be perceived as reassuring news?

The week on Verfassungsblog

... is summarized by LENNART KOKOTT:

Brutal and racist **police violence**: that is what seems to take place on a daily basis in the US presently. In [Corona Constitutional #32](#), RALF MICHAELS talks to MAX STEINBEIS about the protests since the death of George Floyd caused by policemen and how the constellation in the country and the behaviour of President Trump remind him of the *Reichstagsbrand* in Germany 1933. [JUD MATTHEWS](#) looks at Trump's attacks on Twitter after the company attached a fact checking notice under one of his tweets. The legal consequences of the executive order which Trump promptly signed are likely to be limited, but the action makes it clear that the president is stepping up his attacks on the alleged liberal media elite presented to

his audience as an enemy of the people, he says. It should go without saying in the current debate that police violence is not a phenomenon limited to the US. In [Corona Constitutional #31](#), MAX STEINBEIS interviews police sociologist RAFAEL BEHR about "cop culture" in Germany and the dimensions of police violence here.

Wherever one turns one's gaze, it seems that one sees a **crackdown on democracy and the rule of law**. The Chinese national security law for Hong Kong might not be compatible with the Basic Law of Hong Kong for a number of reasons, writes [JOHANNES M.M. CHAN](#), and gives a gloomy outlook on what life in the city would look like under that security law. In Brazil, the autocratic President is lacking the majority for a court packing scheme, but nonetheless is aiming for the Supreme Court. Now, he wants to make the military a constitutional moderator in order to weaken institutions that annoy him, explain [JOÃO VICTOR ARHEGAS and LETICIA KREUZ](#), and set out why this would be manifestly unconstitutional for historical reasons and fatal for democracy. In Poland, too, the government first agitated against the Supreme Court and then tried to pack it with loyalist judges. At the same time, it is taking action against critical voices such as the legendary comparative constitutionalist WOJCIECH SADURSKI, who is facing several court cases as a result of tweets against the government and a TV station controlled by the PiS. [GRAÍNNE DE BÚRCA and JOHN MORIJN](#) call once again for his support.

[GÁBOR HALMAI, GÁBOR MÉSZÁROS and KIM LANE SCHEPPELE](#) show how in Hungary, the Enabling Act which came into force at the beginning of the pandemic is being replaced by new legislation, which cannot, however, remove the legal concerns but on the contrary legally perpetuates emergency powers.

Four weeks have passed since **the German Federal Constitutional Court's ultra vires ruling**. [MARCIN BARANSKI, FILIPE BRITO BASTOS and MARTIJN VAN DEN BRINK](#) respond to the [call](#) from the previous week and note that, despite all the negative effects of the ruling, it should be noted that in view of the lack of democratic ratification of the primacy of Union law, a deviation from it for the protection of the national constitutional order could be justified in exceptional cases. [RUSSELL A. MILLER](#) points to the influence of the common law tradition on the European legal order apparent in the judgment, and why this is not a bad thing. [ANGELA HUYUE ZHANG](#) analyzes the sociology of the European Court of Justice and works out shortcomings in the selection of judges and disparities on the Court's working level. [DANIEL SARMIENTO and JOSEPH H.H. WEILER](#) take a pessimistic view of the European judiciary after the judgement: the aim is now to limit damage and avoid new decisions of this kind, and a new appeal procedure at the European level could provide a remedy, they say. [ARMIN HATJE](#) also proposes a solution for the dilemma by the establishment of a new "Joint Council of the Supreme Courts of the European Union", which could in future have the last word in deciding on norm collisions.

[LAURENT PECH](#) looks at a peculiar consequence of **Brexit**: the fact that the Member States prematurely terminated the term of office of the British Advocate General was, in his view, an act contrary to European law which the Union must not allow with a view to the attacks on the independence of the judiciary everywhere and which could not be justified by the desire to get Brexit done quickly, he says.

[FRANCESCO COSTAMAGNA](#) and [MATTHIAS GOLDMANN](#) look at the **European economic recovery package** and note that the crisis management instruments are once again contributing to the further development of European constitutional law, while leaving open whether this will also lead to greater democracy and solidarity in the Union.

[BENEDIKT REINKE](#) examines whether the **BND ruling** of the FCC and its assertion that the German state is bound by the fundamental rights of the *Grundgesetz* abroad go beyond the dimension of protection from the state and is sceptical in particular with regard to the dimension of protection by the state abroad. [DAVID KREBS](#), on the other hand, argues that the debate about such protective duties is also reignited by the judgement and should be examined with regard to a possible obligation of the Federal Republic of Germany to intervene in exploitative supply chains by law.

Our **current debate** *Lieferkettengesetz Made in Germany* is also devoted to the discussion about a supply chain law. [MIRIAM SAAGE-MAASS](#), [MAREN LEIFKER](#) and [ARMIN PAASCH](#) explain why a supply chain law is more necessary than ever due to the devastating effects of the Covid 19 pandemic at the beginning of supply chains and how such a law would contribute to a more just globalization. [FRANZISKA HUMBERT](#) and [ROBERT GRABOSCH](#) look at the possibilities of such a law from a legal perspective and state that it could in particular provide individual legal protection against companies for human rights violations.

So much for this week. Take care of yourself and stay healthy! Please remember to donate (paypal@verfassungsblog.de, DE41 1001 0010 0923 7441 03, BIC PBNKDEFF), will you? Thank you very much.

All best,

Max Steinbeis

