



# BOFAXE

## A Silver Lining of the US Election? (PART 1)

— So Trump won. Pollsters predicted 50:50 chances for both candidates just before the election (see e.g. here and here). But it was not to be: Donald Trump won in a landslide. The result is a shock for many international lawyers. I don't want to add to the many eulogies to international law and the dark predictions on what this means for multilateralism. While I agree with some of the grim analyses of what a second Trump administration implies (e.g. for trade, migration and climate change, see here on this very blog), the purpose of this article is different. In these disappointing hours for many internationalists, we also might need some consolation. Let me thus try to identify a few lessons: one on defense, one on equality and one on education. If we act upon them, maybe the election can have a silver lining, or at least help to digest this week's events

### Stronger Military Unity for Europe

First: (regional) security. A key hope is that European NATO States finally understand that they have to stand on their own two feet when it comes to defense. Most European States still don't meet the goal of spending 2% of GDP on defense which NATO heads of State and Government committed to in response to Russia's annexation of Crimea (NATO Wales Summit Declaration of 5 September 2014, at para. 14). This is dramatic as Trump has openly threatened to leave NATO or to not honor the *casus foederis*: the commitment enshrined in Art. 5 NATO Treaty to consider an attack on a NATO member as an attack against all, requiring collective self-defense. Although European States combined spend more than double on military and defense than Russia, European leaders still shiver when Mr. Putin flexes his muscles in Ukraine and look to their transatlantic partners for help. This impulse is an important shadow of the Second World War, but it is a habit that Europe has still not shaken off. Europeans often point with incredulity to enormous American spending in health care, emphasizing the poor and unequal outcomes it produces (cf. here). But we have to admit to ourselves that the same is true for Europe's military capacity. This lesson need not imply downgrading the importance of NATO, as some political parties on the far left or right regularly do (see for Germany the respective passages in the political programs of the "BSW" and "AfD"). Rather, it implies that, in addition to the transatlantic partnership, Europe also requires the capacity to act independently. Whether this leads to stronger regionalism in international law more generally, remains to be seen. At least, NATO with a better-coordinated military capacity in Europe has a better chance to be seen as a partnership of equals (including by an incoming US administration). The silver lining then is that the election result makes greater military unity to maintain political stability in Europe a necessity that can no longer be deferred (as European leaders have for too long).

### Gender Equality and Re-Imagining the Obama Coalition

Second, while security has undoubtedly gained in importance in political debate, equality must remain a priority, too. For reasons of brevity, let me focus on one particular aspect: gender equality. Exit polls show that through all ethnic groups, Kamala Harris scored consistently around 10% worse with male than with female voters. Those voices who once referred to Prime ministers Gandhi, Thatcher and Merkel or to CEDAW being one of the most ratified international conventions worldwide in claiming that gender equality is a reality in developed States, are wrong. Male voters (and not only in the US) are apparently still not willing to elect a female leader: only around 20-25% of executive government leaders and members of national parliaments are currently female (see here). It is an interesting thought experiment whether the same would have held true for a gay candidate such as of Pete Buttigieg. One lesson of the election certainly is that we still need a strong women's rights movement. This is true in international law, but in particular also in the US, which signed CEDAW under Jimmy Carter 24 years ago, but remains one of the few states worldwide that has not yet ratified the convention. Women's rights proponents (both activists and scholars) need to re-affirm old alliances (e.g. with Black and Latino voters) and think about new ones (e.g. trade unions and the environmental movement). International lawyers must resist falling into the trap of reducing women's rights to reproductive rights as has been the case in this election, and find ways to challenge a male lens in law and politics that still favors white (and orange) straight men. It has often been discussed that the 2008 and 2012 Obama coalition has fallen apart – maybe this devastating election can unfold a reuniting power of groups that have worked for equality, but too often for 'my group' rather than for all. The lesson for human rights lawyers then is to think about inequality more as an overarching challenge rather than getting lost in group-specific discussions or rivalry between different vulnerable groups. To paraphrase one of the phrases of the American revolution, maybe the election can make pro-equality actors realize that to fight discrimination, they need to 'join or die' – to fight their opponents, and not each other.



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## A Silver Lining of the US Election? (PART 2)

### Putting up 'Good Education' Rather than a 'Good Fight'

The third lesson concerns education. While the inter-connection between civil and political rights and economic, social and cultural (esc) rights has been stressed in the past (e.g. [here](#)), with second generation rights being an important stepping stone for first generation rights, hardly any right makes this insight as painfully clear as the right to education [Art. 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR) – yet another human rights treaty all previous US Presidents failed to ratify (see [here](#))]. One should not jump to quick conclusions here: it is not only uneducated voters that have voted for Trump. Around 42% of voters with college degrees [voted](#) for him too. Significantly, however, 'democracy and its protection' was an important factor for both Trump and Harris voters (even if in larger number for democrats). Given the stark contrast between the candidates in terms of their democratic record – specifically the history of one as an insurrectionist and convicted criminal and the other as a prosecutor –, this seems to indicate a certain failure of the education system to enable a healthy understanding of what living in a democratic political system with a functioning rule of law means. But how can we expect voters to make an informed political decision if half of them [cannot name](#) the three branches of government, or point on a map to where Israel or Ukraine even are? [General Comment 13 of the ESCR-committee](#) offers many valuable insights here: that the realization of the right to education requires education in human rights and democracy (GC 13, at. para 1), that states must prioritize education within their budgets, including for marginalized groups (CG 13, at para. 6), and that the obligation of non-discrimination is an immediate one (CC 13, at para. 43), as for all socio-economic rights (GC 3, at para. 1). One is not surprised that the US has not ratified the ICESCR when reading this interpretation of the Covenant. Maybe after 25 years – GC 13 is from the last millennium when digital education and social media played a much lesser role – it is also time for an update of the GC. More broadly speaking: education must step back into the spotlight of national and international legal and political discussion. In this sense, while much of the democrat rhetoric was, even in Harris' concession [speech](#), focusing on putting up a 'good fight', in truth, we need first and foremost a concerted effort to put up 'good education'. At the very least, Europe and other parts of the world must avoid the US' path of undermining democracy – not through subversion, but through simple ignorance of its foundations.

### Embracing already existent realities

As Kanschat and Friedrichs [have argued](#) on this blog before the election, a second Trump presidency "could mark a significant shift in U.S. domestic and foreign policy, with far-reaching implications for the international legal order" and "weaken the international rules-based system and erode the credibility of multilateral institutions". I agree. However, we must now not stop at lamenting the demise of international law. We must make the best of it and try to find also the positive, in order not to despair and move forward. In this vein, what unifies the three identified lessons is the hope that maybe we learn to embrace a reality that was there all along. Many who have known this intuitively might have tried to evade facing this truth by checking daily election forecasts and obsessively listening to political podcasts of our preferred flavor (I certainly have.). Many of us have much more time on our hands now, without these daily rituals. Maybe we should use this new spare time to act upon these and other lessons and reflect on what they mean for international law generally and in Europe (after all, populists are on the rise in many places) – so that there can be a silver lining to the election outcome after all.