

Democratic Resilience:

Transatlantic Normative and Empirical Perspectives

Bloc Course taught by Anna-Bettina Kaiser, Jan-Werner Müller, and Silvia von Steinsdorff

as part of the Princeton-Humboldt Strategic Partnership

(Constitutionalism Under Stress)

E 25, “Kommode”, Law Faculty, Humboldt University

Democracies have been under stress worldwide. We ask which resources democracies can muster to defend themselves against rising authoritarianism. We also revisit some of the hypotheses and ideas developed in past seminars and workshops as part of the “Constitutionalism Under Stress” project.

At the end of the course, students will be familiar with a range of crucial debates about democratic self-defense at the intersection of law, political and legal theory, and intellectual history. They will also have a sense of different approaches to these debates in Europe and the United States. Lastly, they will be able effectively to draw on some of the key positions of scholars working in the area of comparative constitutional law.

Grading Requirements:

The course requirements for the participating students from PU, HU law faculty and HU social sciences department (ISW) differ slightly according to specific study regulations. However, ALL participants are expected to prepare the assigned readings and to give one presentation on questions and texts specified (15 minutes maximum; if possible, in co-operation with students from other participating universities/disciplines).

The seminar will be followed by an international workshop on the same topic, hosted by Humboldt University on July 3 and 4. Students are very welcome (but not required) to present research papers/work in progress during that event.

Read as Background:

Kai von Lewinski (ed.), *Resilienz des Rechts* (Nomos, 2016)

Nancy Bermeo, *Ordinary People in Extraordinary Times: The Citizenry and the Breakdown of Democracy* (Princeton University Press, 2003)

Svetlana Tyulkina, *Militant Democracy: Undemocratic Political Parties and Beyond* (Routledge, 2015)

Friday, 6/19/2020

9.00-9.30

Welcome. Introductory remarks

9:30-11:00

1. Is Democracy dying?

- S. Levitsky and D. Ziblatt, “How a Democracy Dies”, The New Republic, 7th December 2017, at: <https://newrepublic.com/article/145916/democracy-dies-donald-trump-contempt-for-american-political-institutions>
- Wojciech Sadurski, “How Democracy Dies (in Poland)”, at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103491
- Lührmann, Anna / Lindberg, Staffan (2019) – A third wave of autocratization is here: what is new about it? In: *Democratization* 26 (7), pp. 1095-1113.
- Carothers, Thomas / Youngs, Richard (2017) – Democracy Is Not Dying. In: *Foreign Affairs*, Op-Ed. April 11, 2017
- Jedediah Purdy, “Normcore”, in: *Dissent*, Summer 2018, at: <https://www.dissentmagazine.org/article/normcore-trump-resistance-books-crisis-of-democracy>
- Larry Diamond, “Facing Up to Democratic Recession,” in: *Journal of Democracy* (January 2015)
- Daniel Treisman, “Is democracy really in danger?”, in: *Washington Post*, 19 June 2018, at: https://www.washingtonpost.com/news/monkey-cage/wp/2018/06/19/is-democracy-really-in-danger-the-picture-is-not-as-dire-as-you-think/?utm_term=.4f80624f1b53

11:30-13:00

2. Diagnoses

- Kim Lane Scheppele, “Autocratic Legalism,” in: *University of Chicago Law Review* (2018)
- Tóth, Gábor Attila (2018) – Constitutional Markers of Authoritarianism. *Hague Journal on the Rule of Law*, Vol. 11(1), pp. 37–61.
- Mounk, Yascha (2018) – *The People vs. Democracy: Why our Freedom is in danger and how to save it*. Cambridge, MA: Harvard University Press., Parts I and II
- Norris, Pippa / Inglehart, Ronald 2019 – *Cultural Backlash. Trump, Brexit, and Authoritarian Populism*. Cambridge: Cambridge University Press, Introduction and Conclusion
- Luce, Edward (2018) – *The Retreat of Western Liberalism*. London: Abacus, Preface, Ch. 1 & 2

14:00-15:30

3. Saving democracy I: Approaches to militant democracy

- Karl Loewenstein, “Militant Democracy and Fundamental Rights I,” in: *American Political Science Review*, vol. 31 (1937), 417-432.
- Karl Loewenstein, “Militant Democracy and Fundamental Rights II,” in: *American Political Science Review*, vol. 31 (1937), 638-658
- Giovanni Capoccia, ‘Defending Democracy: Strategies of Reaction to Political Extremism in Inter-War Europe’, in: *European Journal of Political Research*, vol. 39 (2001)
- Alexander S. Kirshner, ‘The Self-Limiting Theory of Militant Democracy’, in: *A Theory of Militant Democracy*
- Jan-Werner Müller, “Peer Review in Militant Democracy” (available from instructor)

16:00-17:30

4. Saving Democracy II: Party bans

- Peter Niesen, “Anti-Extremism, Negative Republicanism, Civic Society: Three Paradigms for Banning Political Parties,” in: Shlomo Avineri and Zeev Sternhell (eds.), *Europe’s Century of Discontent: The Legacies of Fascism, Nazism and Communism* (Magnes Press, 2003), 249-68
- German Federal Constitutional Court (BVerfG), Judgment of the Second Senate of 17 January 2017 - 2 BvB 1/13 -, paras. (1-1010), http://www.bverfg.de/e/bs20170117_2bvb000113en.html
- Venice Commission (European Commission for Democracy through Law), *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures* (2000). Available at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF%282000%29001-e 2>
- John Morijn, ‘Responding to “populist” politics at EU level: Regulation 1141/2014 and beyond’, in: *International Journal of Constitutional Law*, vol. 17 (2019), 617-40
- Venice Commission (European Commission for Democracy through Law), *Opinion on the Legal and Constitutional Provisions relevant to the Prohibition of Political Parties in Turkey* (2009), available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2009\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2009)006-e)

Saturday, 06/20/2020

09:30-11:00

5. Who Defends I? Courts and their Alternatives

- Samuel Issacharoff, “Fragile Democracies,” in: *Harvard Law Review*, vol. 120 (2007), 1405-67
- Adam Clinton and Mila Versteeg, “Courts’ Limited Ability to Protect Constitutional Rights”, in:

University of Chicago Law Review (2018)

- Lorenz Kähler, Resilienz durch Rechtsprechung, in: Kai von Lewinski (ed.), Resilienz des Rechts, 2016, pp. 57-82
- Klaus Ferdinand Gärditz, “Institutioneller Respekt und unabhängige Justiz.” *Deutsche Richterzeitung (DRiZ)* 2019, 134-137
- Laurence Tribe and Joshua Matz, *To End a Presidency: The Power of Impeachment* (Basic Books, 2018) (excerpts)

11:30-13:00

6. Who Defends II?: Civil Society – including Civil Disobedience

- John Rawls, “A Theory of Justice”, Chapters 53-59, Oxford: Oxford University Press (1971), 308-343.
- Jürgen Habermas, “Civil Disobedience: Litmus Test for the Democratic Constitutional State”, *Berkeley Journal of Sociology*, vol. 30 (1985), 95-116.
- Kimberlee Brownlee, “Features of a Paradigm Case of Civil Disobedience”, *Res Publica*, vol.10 (2004), 337-351.
- Robin Celikates, “Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm”, *Constellations*, vol. 23 (2016), 37-45
- Gülay Türkmen and Shai M. Dromi, “Why Faltering Democracies Need Strong Opposition Parties”, in: *Reset*, at: <https://www.resetdoc.org/story/lessons-from-istanbul-why-faltering-democracies-need-strong-opposition-parties/>

14:00-15:30

7. Who Defends III?: Asymmetrical Federalism/Regional Resistance

- Heather Gerken on Federalism, intro: <https://www.vox.com/the-big-idea/2016/12/12/13915990/federalism-trump-progressive-uncooperative>
- Jessica Bulman-Pozen/Heather K. Gerken, “Uncooperative Federalism”, *The Yale Law Journal*, vol. 118 (2009), 1256-1310.
- Christine Known and MARRISA ROY, “Local Action, National Impact: Standing Up for Sanctuary Cities,” in: *Yale Law Journal* (2018), at: <https://www.yalelawjournal.org/forum/local-action-national-impact>