

I. Executives and Emergencies: History and Theory

Questions:

- Which prerogative rights of the king does Locke assume and why?
- Is there a distinct continental European tradition of the state of exception?
- In what way does the US model differ from the European tradition in treating emergencies?
- Is the state of exception inside or outside the law according to Schmitt?
- Why exactly are states of exception so dangerous for constitutional orders?
- How has the executive branch evolved in the US, according to Posner/Vermeule? Do you agree with their account?

Presentations:

Locke on prerogative

- Historical development of state of exception regulations in Europe and the US
- Carl Schmitt on the state of exception
- Current theoretical discussion(s) about (un)constitutional states of exception

II. Executives and Emergencies: Legal and Conceptual Questions

Questions:

- Which models of emergency constitutions can be distinguished?
- What does Oren Gross mean with the question: "Should Responses to Violent Crises Always be Constitutional?"
- "Embedding Emergency Government in Everyday Constitutional Life" – does this thesis also prove true in the case of fighting the Covid-crisis?
- What is the weakness of the German emergency constitution (Notstandsverfassung) according to Grote?

Presentations:

- The German Notstandsverfassung
- Comparative overview of different models of emergency constitutions
- The "Extra Legal Measures-Model" versus "Embedding Emergency Government in Everyday Constitution Life"

III. Cases of Terror Attacks and Financial Crisis

Questions:

- Critically discuss Ackerman's proposals for an Emergency Constitution.
- Is the image of a balance between liberty and security plausible?
- Why is treating terror attacks as a state of exception/state of emergency problematic?
- To what extent has the separation of powers changed as a result of terrorism since 9/11? As a result of the financial crisis?

Presentations:

- Emergency regimes in the wake of 9/11
- The 2008 financial crisis and state of emergency measures
- Other examples of emergency rule in the recent past (ideally a comparative perspective)

IV. Pandemics and Separation of Powers

Questions/Presentations:

- Discuss the following questions using the examples of
 - Germany,
 - Hungary,
 - the US
- Does the pandemic lead to a “state of exception” / “state of emergency”?
- Is the pandemic the “hour of the executive”?
- What role do experts play in the pandemic? Does their influence pose a threat to democracy?

V. Pandemics and Threats to Fundamental Rights vs Violating Rights to Health

Questions/Presentations:

Discuss the following questions analyzing and/or comparing different country cases:

- “Do authoritarian or democratic countries handle pandemics better?”
- How can a “right to health” be constructed according to German constitutional law? Why is balancing a “right to health” with (other) fundamental rights so difficult?
- What role does the “principle of proportionality” play in German administrative and constitutional law during the pandemic? Discuss the role of the Federal Constitutional Court and the role of the administrative courts during the pandemic!
- Were/are the restrictions on fundamental rights in Germany unconstitutional?