

**Executives and Emergencies:
Normative, Legal, and Empirical Transatlantic Perspectives**

**Bloc Seminar - Summer 2021
Humboldt Universität zu Berlin / Princeton University**

This bloc seminar is jointly taught by Anna-Bettina Kaiser (Public Law, HU-Berlin), Jan-Werner Müller (Political Theory, PU) and Silvia von Steinsdorff (Comparative Politics, HU-Berlin) as part of the Princeton-Humboldt Strategic Partnership Project *Constitutionalism Under Stress*.

Course Description :

It is frequently asserted that emergencies are best addressed by powerful executives: the latter are said to be able to act faster, to have more information, and also to exhibit what American observers, following Hamilton, sometimes call “institutional energy.” There is also the view that executives might have to suspend normal legal provisions and either adhere to special rules designed for an exception or operate in a legal vacuum (with the proviso that they will eventually be held accountable for their conduct). The challenges posed by such understandings of emergencies and exceptions to theories of liberal democracy have been debated extensively with respect to the “global war on terror;” the 2020 pandemic has prompted new questions as to what happens to the separation of powers and fundamental rights when executives address a health emergency (and more, specifically, how much power legislatures can legitimately delegate to executives); less obviously, there has also been the concern that executive failure might amount to a violation of a fundamental right to health. As with other emergencies, there is, finally, the question whether it is institutional checks, or more informal political ones that ultimately prevent executive overreach (or underreach, for that matter).

The course sits at the intersection of political theory, comparative constitutional law, and comparative politics. It will examine important transatlantic differences in how the separation of powers and fundamental rights are understood in “exceptional times;” and who is responsible and accountable in systems of multi-level governance; moreover, it will, from a normative and empirical point, study conceptions of a “post-Madisonian” executive as the critiques of such conceptions that have been offered in the past two decades or so. The course will also examine the actual empirical track record of different types of executives when it comes to addressing emergencies.

Students will come away from the seminar with a deepened understanding of the normative challenges posed to liberal democracy by emergencies; and they will have a better sense of the different legal institutions, and jurisprudential arguments, available in the US and the German system.

Useful Resources:

COVID-19 Civic Freedom Tracker: <https://www.icnl.org/covid19tracker/>

Lawfare Blog on Executive Power: [Executive Power - Topics - Lawfare \(lawfareblog.com\)](https://www.lawfareblog.com/topics/executive-power)

DEM-DEC: <https://www.democratic-decay.org/> (in particular: <https://www.democratic-decay.org/covid-dem>)

Verfassungsblog: <https://verfassungsblog.de/category/debates/covid-19-and-states-of-emergency-debates/>

“The Profiteers of Fear? Right-wing populism and the COVID-19 Crisis: How has the COVID-19 crisis affected right-wing populists in Europe? A report series with contributions from Finland, Sweden, Italy, France, Spain, Greece, Portugal and Germany”. <https://nordics.fes.de/e/default-7f5ab95431>

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Friday, June 18, 2021

I- Executives and Emergencies: History and Theory

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[for participating students from HU: Sie können diesen Text auch im deutschen Original lesen, s. Schmitt, Carl, Politische Theologie. Vier Kapitel zur Lehre von der Souveränität, 10. Auflage, Duncker & Humblot Berlin 2015 (2. Auflage 1934), Kapitel 1 (S. 11-21) und Kapitel 3 (S. 41-55)]

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II- Executives and Emergencies: Legal and Conceptual Questions

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Bjørnskov, C. & Voigt, S. (2018). The Architecture of Emergency Constitutions. In INT'LJ.CON.L., vol. 16. [pp:101-127.]

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Saturday, June 19, 2021

III- Cases of Terror Attacks and Financial Crisis

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IV- Pandemics and Separation of Powers

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

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Lepsius, O. (2020). Grundrechtsschutz in der Corona-Pandemie, *Recht und Politik* 56 (2020), pp. 258–281.

For country-specific debates/case studies, see also:

<https://verfassungsblog.de/category/debates/covid-19-and-states-of-emergency-debates/>

VI- Evaluation and Conclusion