

Visiting Professor

Not Everything is an Emergency: The Case for Strong Judicial Review of the Exercise of Emergency Powers

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Elga Cegla Hall (room 21), the Buchmann Faculty of Law



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It is often claimed courts should give sweeping deference when governments exercise emergency powers, such as those reserved for times of war, invasion, or other serious crises. Such deference is badly misguided. It turns emergency powers that are only supposed to be used in extraordinary circumstances into blank checks that can be used anytime the government wishes. It also gravely threatens both structural constraints on government power and constitutional civil liberties. Deference on emergency powers issues also cannot be justified on the basis of appeals to the government's supposedly superior expertise. The talk draws on recent experience in the United States with government invocations of emergency powers in the fields of immigration, tariffs, and domestic use of the military. But many of the issues at stake are also relevant to other constitutional systems.