



THE STATE OF EXCEPTION AND MILITANT DEMOCRACY IN A TIME OF TERROR

EDITED BY
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The State Of Exception And Militant Democracy In A Time Of Terror

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The State Of Exception And Militant Democracy In A Time Of Terror:

The State of Exception and Militant Democracy in a Time of Terror Afshin Ellian, Geliijn Molier, 2012-12-01

International Studies Library Which measures may a state undertake when its very existence is threatened Can it suspend the democratic legal order may it prohibit undemocratic political parties can it withhold fundamental constitutional rights from those who intend to abuse them Or in case of an external threat may the state use force in anticipatory self defense In addressing these issues two legal philosophical doctrines play a crucial role namely the state of exception and militant democracy Unlike other books this book offers an interdisciplinary approach to both doctrines by a variety of international scholars The state of exception and militant democracy are viewed from a legal philosophical legal positivist and sociological perspective thereby creating a broad perspective on how states actually deal and how they should deal with diverse threats to their democratic existence

TABLE OF CONTENTS Abbreviations Chapter I Introduction The State of Exception and Militant Democracy in a Time of Terror Afshin Ellian and Geliijn Molier Chapter II The State of Exception in a Time of Terror Afshin Ellian Chapter III Dutch Counterterrorism An Exceptional Body of Legislation or Just an Inevitable Product of the Culture of Control Maartje van der Woude Chapter IV Framing the Exception Securitization in the Netherlands Beatrice de Graaf and Renee Frissen Chapter V On Emergency Proof Human Rights and Emergency Proof Human Rights Procedures Jan Peter Loof Chapter VI The State of Exception and Necessity under International Law Geliijn Molier Chapter VII The Foundations of Militant Democracy Paul Cliteur and Bastiaan Rijpkema Chapter VIII Militant Democracy and State of Emergency in Germany Markus Thiel Chapter IX Democracy Freedom of Speech and the Twin Challenges of the Exception Quoc Loc Hong Bibliography Index About the Editors

Afshin Ellian is professor of Social Cohesion Citizenship and Multiculturalism at the Institute for the Interdisciplinary Study of the Law at Leiden University has published extensively on terrorism and radical Islam Geliijn Molier is a lecturer at the Leiden Law Faculty Department of Philosophy of Law and Jurisprudence His main field of research pertains to the law of peace and security in particular questions relating to the legitimacy of the use of force in international relations

Militant Democracy - Political Science, Law and Philosophy Afshin Ellian, Bastiaan Rijpkema, 2018-11-15 This volume offers an up to date overview of the much debated issue of how a democracy may defend itself against those who want to subvert it The justifications effectiveness and legal implications of militant democracy are discussed by addressing questions as How can militant democracy measures such as party bans be justified Why is it that some democracies ban antidemocratic parties Does militant democracy succeed in combatting right wing extremism And is militant democracy evolving into an internationalized legal and political concept Bringing together experts and perspectives from political science law and philosophy this volume advances our understanding of the current threats to democracy a political system once thought almost invincible It is especially timely in the light of the rise of illiberal democracy in the EU the increasingly authoritarian rule in Turkey the steady shift to autocracy in Russia and the remarkable

election of Trump in the US **Militant Democracy** Bastiaan Rijpkema, 2018-11-20 This book aims to present a comprehensive theory of militant democracy and to answer questions such as How can a democracy protect itself against its own downfall And when is intervention against antidemocrats justified Against the backdrop of historical and current examples this book examines a variety of theories from philosophers and legal scholars such as Karl Loewenstein Karl Popper and Carl Schmitt as well as contemporary alternatives It compares their interpretations of democracy and militant democracy discusses how helpful these references are and introduces two largely forgotten theorists to the militant democracy debate George van den Bergh and Milan Markovitch Militant Democracy then sets out to build a novel theory of democratic self defence on the basis of democracy's capacity for self correction In doing so it addresses the more classic and current criticisms of the concept while paying specific attention to the position of the judge the legal design and effectiveness of party bans and the national and supranational procedural safeguards that can safeguard the careful application of militant democracy instruments Militant Democracy seamlessly combines political philosophy political science and constitutional law to offer a new perspective on democratic self defence This book is essential reading for scholars and students of political theory jurisprudence democracy extremism and the history of ideas The Far-Right in International and European Law Natalie Alkiviadou, 2019-04-18 Since the Second World War the international community has sought to prevent the repetition of destructive far right forces by establishing institutions such as the United Nations and by adopting documents such as the Universal Declaration of Human Rights Jurisprudence and conventions directly prohibit far right speech and expression Nevertheless recently violent far right entities such as Golden Dawn of Greece have received unprecedented electoral support xenophobic parties have done spectacularly well in elections and countries such as Hungary and Poland are being led by right wing populists who are bringing constitutional upheaval and violating basic elements of doctrines such as the rule of law In light of this current reality this book critically assesses the international and European tools available for States to regulate the far right It conducts the analysis through a militant democracy lens This doctrine has been considered in several arenas as a concept more generally in the sphere of the European Convention on Human Rights in relation to particular freedoms such as that of association and as a tool for challenging the far right movement through the spectrum of political science However this doctrine has not yet been applied within a legal assessment of challenging the far right as a single entity After analysing the aims objectives scope and possibility of shortcomings in international and European law the book looks at what state obligations arise from these laws It then assesses how freedom of opinion and expression freedom of association and freedom of assembly are provided for in international and European law and explores what limitation grounds exist which are directly relevant to the regulation of the far right The issue of the far right is a pressing one on the agenda of politicians academics civil society and other groups in Europe and beyond As such this book will appeal to those with an interest in International European or Human rights Law and political science Militant Democracy and Its Critics

Anthoula Malkopoulou,2019-05-14 Can defensive efforts that curtail rights of participation of antidemocratic movements be consistent with democratic values In this collection of essays scholars from across politics philosophy and law address the unresolved practical and theoretical questions concerning democracy and extremism **The Far Right in Greece and the Law** Natalie Alkiviadou,2022-04-24 This book critically evaluates the rise of the far right in Greece detailing the legal context in which to understand both the emergence of Golden Dawn the far right s largest grouping and the 2020 court decision in which it was deemed to be a criminal organisation Golden Dawn was a political party which for years also functioned as a violent subculture movement with limited to no interference by the state This book sets out the background to its rise in Greece tracing its development from the post Junta era At the same time the book provides an assessment of the legal framework within which the far right has operated and the legal tools available to tackle it including criminal law non discrimination law the laws governing political parties and the public order framework and the country s international and European obligations Golden Dawn functioned as both a political party and violent entity until its leadership and parliamentary members were found guilty of leading and participating in a criminal organisation This book demonstrates that the state of impunity in which Golden Dawn s violent hit squads functioned was both a facilitating factor for its rise and potentially for its demise as the group potentially felt untouchable And its attention to how Greek Law has tackled and failed to tackle Golden Dawn offers a timely and more generally useful assessment of how legislation courts and policies can best challenge the far right This book will be of interest to those teaching and studying in law and politics as well as more others concerned with the rise of the far right and violent organizations especially in Europe *A New Introduction to Legal Method* Paul Cliteur,Afshin Ellian,2022-04-04 A New Introduction to Legal Method provides a comprehensive overview of legal science and the scientific character of legal knowledge In five chapters the book analyses and explores i legal methodology in general the main features of different schools of thought and the nature of science in general ii American realism which offers an ideal starting point for law students to reflect on the material they are about to study critically iii rationalism empiricism and logical positivism in particular the work of Karl Popper iv criticisms of essentialism v the ideological and philosophical background of contemporary liberal interpretation The inclusion of Dutch French and German literature sources makes this law title differ from previous writings on legal science This textbook is ideal for students of legal method and will be of great interest to those studying legal science jurisprudence legal research and legal skills *A New Introduction to Jurisprudence* Paul Cliteur,Afshin Ellian,2019-03-28 A New Introduction to Jurisprudence takes one of the central problems of law and jurisprudence as its point of departure what is the law Adopting an intermediate position between legal positivism and natural law this book reflects on the concept of liberal democracy or constitutional democracy In five chapters the book analyses i the idea of higher law ii liberal democracy as a legitimate model for the state iii the separation of church and state or secularism as essential for the democratic state iv the universality of higher law principles

v the history of modern political thought This interdisciplinary approach to jurisprudence is relevant for legal scholars philosophers political theorists public intellectuals historians and politicians

The Duty to Investigate in Situations of Armed Conflict Floris Tan, 2023-09-14 This book explores the duty to investigate potential violations of the law during armed conflict and does so under international humanitarian law IHL international human rights law IHRL and their interplay Through a meticulous comparative legal analysis it maps out the scope and contents of investigative obligations On the basis of general international law it also develops and applies a novel and more broadly applicable step by step methodology for resolving issues of interplay between both legal regimes In doing so this study clarifies the scope of application and contents of investigative obligations under both legal regimes as well as for situations to which both apply The book finds that the oft heard narrative that to require States to conduct human rights investigations during armed conflict would be wholly unrealistic in light of the realities of hostilities is unfounded and in need of revision

Hate Speech and the European Court of Human Rights Natalie Alkiviadou, 2025-06-30 This book argues that the European Court of Human Rights ECtHR should reconsider its approach to hate speech cases and develop a robust protection of freedom of expression as set out in the benchmark case of *Handyside v the United Kingdom* In that case the ECtHR determined that Article 10 of the European Convention on Human Rights ECHR safeguarding the right to freedom of expression extends protection not only to opinions which are well received but also to those deemed offensive shocking or disturbing However subsequent rulings by the Court have generated a significant amount of contradictory case law Against this backdrop this book provides an analysis of hate speech case law before the ECtHR and the now obsolete European Commission on Human Rights Through a jurisprudential analysis it is argued that these institutions have adopted an overly restrictive approach to hate speech which fails to provide adequate protection of the right to freedom of expression It also demonstrates that there are stark inconsistencies when it comes to the treatment of some forms of hate speech versus others The study further contends that in reaching its decisions on hate speech cases the Court disregards empirical evidence on matters related to free speech restrictions Viewing the ECHR as a living instrument the book places this analysis within the current state of affairs vis vis the handling of hate speech particularly online by European countries the European Union itself and social media platforms actions which the author argues are contributing to a free speech demise The book will be a valuable resource for academics researchers and policymakers working in the area of law political science European studies and sociology

Radicalization in Belgium and the Netherlands Nadia Fadil, Francesco Ragazzi, Martijn de Koning, 2019-05-30 The concept of radicalization is now used to account for all forms of violent and non violent political Islam Used widely within the security services and picked up by academia the term was initially coined by the General Intelligence and Security Service of the Netherlands AIVD after the 9 11 and Pentagon attacks an origin that is rarely recognised This book comprises contributions from leading scholars in the field of critical security studies to trace the introduction adoption and dissemination of radicalization as a concept It is the

first book to offer a critical analysis and history of the term as an empty signifier that is a word that might not necessarily refer to something existing in the real world The diverse contributions consider how the term has circulated since its emergence in the Netherlands and Belgium its appearance in academia its existence among the people categorized as radicals and its impact on relationships of trust between public officials and their clients Building on the traditions of critical security studies and critical studies on terrorism the book reaffirms the importance of a reflective approach to counter radicalization discourse and policies It will be essential reading for scholars of security studies political anthropology the study of Islam in the west and European studies

Ethical Militancy Natascha Siouzouli, 2022-02-21 In recent years much research has been dedicated to the relationship between politics and aesthetics and in particular to the political power of aesthetics This book makes a claim for what comes before any political decision is made and action taken for what precedes the need for the subject to take a specific stance and adopt a particular political attitude It interprets the in between space of aesthetics Erika Fischer Lichte where production and reception have traditionally met as a topos within which action itself is called into question Joseph Vogl This is a space where aesthetics and ethics converge to trouble affirmations and beliefs and to challenge the subject By looking at recent theatrical performances and workshops put on mainly in Athens Greece and or created by Greek artists Nova Melancholia Rimini Protokoll Michael Marmarinos Theodoros Terzopoulos etc this book explores the conditions in which it is possible or necessary for the ethical to emerge in aesthetic contexts It tracks down the metamorphoses of the ethical and its manifestations in situations of aesthetic unsettling and reveals hidden ethical paradigms in aesthetic articulations Furthermore it focuses on the specific way in which the position of the ethico political subject is articulated within those conditions arguing that it is impossible for the subject to remain intact once it has entered the ethico aesthetic space It asserts that a catastrophe is required the loss and the vanishing of the subject in order to reinstate responsibility to respect the ethicality of time and to obtain justice and advocates for the rise of the object allowing for an unfamiliar political discourse to take the stage

Crimmigrant Nations Robert Koulisch, Maartje van der Woude, 2020-03-03 As the distinction between domestic and international is increasingly blurred along with the line between internal and external borders migrants particularly people of color have become emblematic of the hybrid threat both to national security and sovereignty and to safety and order inside the state From building walls and fences overcrowding detention facilities and beefing up border policing and border controls a new narrative has arrived that has migrants assume the risk for government sponsored degradation misery and death Crimmigrant Nations examines the parallel rise of anti immigrant sentiment and right wing populism in both the United States and Europe to offer an unprecedented look at this issue on an international level Beginning with the fears and concerns of immigration that predate the election of Trump the Brexit vote and the signing and implementation of the Schengen Agreement Crimmigrant Nations critically analyzes nationalist state policies in countries that have criminalized migrants and categorized them as threats to national security

Highlighting a pressing and perplexing problem facing the Western world in 2020 and beyond this collection of essays illustrates not only how anti immigrant sentiments and nationalist discourse are on the rise in various Western liberal democracies but also how these sentiments are being translated into punitive and cruel policies and practices that contribute to a merger of crime control and migration control with devastating effects for those falling under its reach Mapping out how these measures are taken the rationale behind these policies and who is subjected to exclusion as a result of these measures Crimmigrant Nations looks beyond the level of the local or the national to the relational dynamics between different actors on different levels and among different institutions

Der nervöse Staat Tristan Barczak, 2020-06-12 Was ist ein nervoser Staat Vor dem Hintergrund der sicherheitsrechtlichen Herausforderungen des 21. Jahrhunderts entwirft Tristan Barczak ein facettenreiches als kritische Analyse konzipiertes Staatsbild Skizziert wird ein Staat der aus ständiger Angst den letzten Zeitpunkt rechtzeitigen Handelns zu verpassen schon in der Normallage so handelt als befände er sich im Ausnahmezustand Unter den Bedingungen einer von Globalisierung Digitalisierung und Dynamisierung geprägten Risiko- und Sicherheitsgesellschaft tritt an die Stelle des verfassungsrechtlichen Ausnahmeregimes ein permanent abrufbares Präventionsrecht das der Verhinderung der Krise weit im Voraus konkretisierter Gefahren dient Vorverlagerung Verstärkung und Vergesetzlichung wirken auf Form und Struktur des Ausnahmezustands zurück Sie erfordern neue rechtliche Bindungen die ebenso stabil wie elastisch ebenso rigide wie flexibel sein müssen Nur so erweist sich das Recht resilient gegenüber einem antizipierten Ausnahmezustand und ebnet dem Staat den Weg aus der Antizipationsfalle

Blackstone's Guide to the Anti-Terrorism Legislation Professor Clive Walker, 2014 This new edition of the Blackstone's Guide to the Anti-Terrorism Legislation provides expert explanation of the key anti-terrorism legislation It offers comprehensive guidance on the effects extent and scope of the legislation along with key extracts from the legislation including the Terrorism Act 2000 Anti-Terrorism Crime and Security Act 2001 Terrorism Act 2006 the Justice and Security Northern Ireland Act 2007 the Counter-Terrorism Act 2008 the Terrorist Asset Freezing etc Act 2010 and the Terrorism Prevention and Investigations Measures Act 2011 The book is clearly organized with separate chapters on counter-terrorist powers terrorist investigation terrorist offences and special criminal processes It highlights important case law relating to the jurisprudence of human rights It further explores public perceptions of counter-terrorism measures desistance from terrorism and the developing issue of terrorism and the internet Statistical data is given in all chapters and there is also analysis and critique of official documents and the reviews from Parliament and the Independent Reviewers of Terrorism Legislation The Blackstone's Guide Series delivers concise and accessible books covering the latest legislative changes and amendments They offer expert commentary by leading names on the effects extent and scope of the legislation plus a full copy of the Act itself They provide a cost-effective solution to key information needs and are the perfect companion for any practitioner needing to get up to speed with the latest changes

The 'Militant Democracy' Principle in Modern

Democracies Markus Thiel, 2016-02-17 This collection provides an up to date analysis of key country approaches to Militant Democracy Featuring contributions from some of the key people working in this area including Mark Tushnet and Helen Irving each chapter presents a stocktaking of the legal measures to protect the democracy against its enemies within In addition to providing a description of the country's view of Militant Democracy and the current situation it also examines the legal and political provisions to defend the democratic structure against attacks The discussion also presents proposals for the development of the Militant Democracy principle or its alternatives in policy and legal practice In the final chapter the editor compares the different arrangements and formulates a minimum consensus as to what measures are indispensable to protect a democracy Highly topical this book is a valuable resource for students academics and policy makers concerned with democratic principles

Terror and Democracy in West Germany Karrin Hanshew, 2012-08-20 In 1970 the Red Army Faction declared war on West Germany The militants failed to bring down the state but this book argues that the decade long debate they inspired helped shape a new era After 1945 West Germans answered long standing doubts about democracy's viability and fears of authoritarian state power with a militant democracy empowered against its enemies and a popular commitment to anti fascist resistance In the 1970s these postwar solutions brought Germans into open conflict fighting to protect democracy from both terrorism and state overreaction Drawing on diverse sources Karrin Hanshew shows how Germans faced with a state of emergency and haunted by their own history managed to learn from the past and defuse this adversarial dynamic This negotiation of terror helped them to accept the Federal Republic of Germany as a stable reformable polity and to reconceive of democracy's defence as part of everyday politics

Jahrbuch Öffentliche Sicherheit 2020/2021 Martin H. W. Möllers, Robert Chr. van Ooyen, 2023-01-31 Der neue Band 2020/21 setzt sich direkt mit den sch rften Grundrechtseinschr nkungen in der Geschichte der Bundesrepublik durch den Pandemie Notstand auseinander 1 Als wir vor rund zwanzig Jahren kurz nach dem 11 September ein Jahrbuch f r ffentliche Sicherheit beschlossen war uns zwar klar dass Sicherheit Konjunktur haben wird aber in diesem Ausma ahnten wir das nat rlich nicht von Corona ganz zu schweigen Inzwischen ist das Thema Sicherheit regelrecht explodiert sodass auch in den gro en sozial und rechtswissenschaftlichen Fachverlagen eigene Reihen und z T neue Zeitschriften entstanden sind Da das JB S hier fr h unterwegs war hat es sich rasch ganz ordentlich etablieren k nnen und wurde bald auch ber den Sicherheitsdiskurs i e S hinaus als wichtiges politik und rechtswissenschaftliches Forum zur Er rterung demokratiepolitischer und sicherheitsrelevanter Fragen angesehen 2 So lag es schlie lich nahe den Leserkreis noch breiter aufzustellen und seit 2016/17 ber unseren Hausverlag f r Polizeiwissenschaft hinaus das JB S in Kooperation mit dem Nomos Verlag zu publizieren

Hymne til friheden Flemming Rose, 2015-09-28 I 10 ret for offentlig relsen af Muhammed tegningerne g r Flemming Rose status over den debat som han verden over har haft en central rolle i Denne lille bog er en engageret hyldest til frihedsrettighederne

Routledge Handbook of Illiberalism András Sajó, Renáta Uitz, Stephen Holmes, 2021-11-29 The Routledge Handbook of Illiberalism is the first

authoritative reference work dedicated to illiberalism as a complex social political cultural legal and mental phenomenon Although illiberalism is most often discussed in political and constitutional terms its study cannot be limited to such narrow frames This Handbook comprises sixty individual chapters authored by an internationally recognized group of experts who present perspectives and viewpoints from a wide range of academic disciplines Chapters are devoted to different facets of illiberalism including the history of the idea and its competitors its implications for the economy society government and the international order and its contemporary iterations in representative countries and regions The Routledge Handbook of Illiberalism will form an important component of any library's holding it will be of benefit as an academic reference as well as being an indispensable resource for practitioners among them journalists policy makers and analysts who wish to gain an informed understanding of this complex phenomenon

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