

Emergencies and the Rule of Law in a Time of COVID

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2 Questions

1. Can the rule of law prevail during a time of emergency?
2. Does the fact that it is a public health emergency affect the answer to that question?



Carl Schmitt (1888-1985)

Conservative German Public
Lawyer (and friend)

Carl Schmitt

Political Theology [1922]

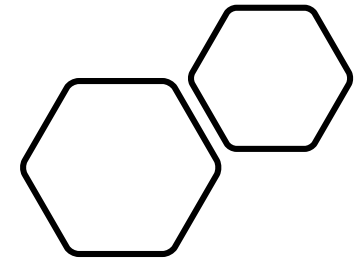
Sovereign is he who decides on the exception.

The Concept of the Political [1932]

The concept of the state presupposes the concept of the political.

The specific political distinction ... is that between friend and enemy.

The Guardian of the Constitution [1929]



Reichstag Fire

1933



The Enabling Act 1933



Trump and
Victor Orbán

Law of April 2020 - In such emergency the Government ... in order to guarantee for Hungarian citizens the safety of life and health, personal safety, the safety of assets and legal certainty as well as the stability of the national economy, may suspend the enforcement of certain laws, depart from statutory regulations and implement additional extraordinary measures by decree.



The War Measures Act and the October Crisis

Just watch me!



Emergencies Act 1985

AND WHEREAS the Governor in Council, in taking such special temporary measures, would be subject to the *Canadian Charter of Rights and Freedoms* ... and must have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency ...

Section 8 (3) (a) provides that powers under the Act shall be exercised or performed

(i) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province, and

(ii) with the view of achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed.

Section 10 provides that Parliament may revoke a declaration of a public welfare emergency.

Section 58 requires that an explanation of the reasons for the declaration, including the consultation with the provinces (mandated by Section 14), must be laid before both Houses of Parliament within seven sitting days of the declaration.

Section 59 permits a small number of the members of either House to bring a motion that the declaration be revoked.

Section 62 requires that a joint committee be established to review the 'performance of duties and functions pursuant to a declaration of emergency'.