PANTHÉON-ASSAS UNIVERSITÉ PARIS

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CDPC
Centre de droit public comparé

CONFÉRENCE DES INVITÉS DU CDPC

CONSTITUTIONAL EMERGENCIES, EXECUTIVE POWER AND THE ROLE OF LAWYERS

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With the special intervention of Stanford Law School Professeur Norman Spaulding.

Although the rhetoric of crisis is among the most shopworn of discourses in the American legal profession, there is mounting evidence that a true rule of law crisis is occurring.

The evidence includes:

executive branch defiance of court orders, abuse of emergency powers and the pardon power by both Democratic and Republican presidents to interfere with the administration of justice,
immunity doctrines that render executive officers unaccountable for violations of basic civil liberties,
judicial disregard for stare decisis,

death threats against judges,
elite law firms trading their professional independence to comply with unconstitutional executive branch orders,
deterioration of public confidence in rule of law institutions and the profession for failing to meet the needs of ordinary people,
and startling increases in political violence that include assassinations and an attempt to overturn the constitutional process for certifying federal election results on Jan. 6, 2020.

Significantly, the legal profession is both an obstacle and accelerant in the nation's authoritarian drift.

On the one hand, increasingly audacious and extra-legal exertions of executive power have been subjected to judicial review by courageous lawyers and judges. On the other hand, the courts and the legal profession are directly responsible for breathtaking expansions of executive power. Over decades, and in both Democratic and Republican administrations, political partisanship has distorted the judgment of elite government lawyers regarding constitutional limits on the Article II branch. Structural reforms are warranted to restore core professional values, but without reviving the norms, habits, and dispositions of disinterested service -- without resurrecting the meaning of the lawyer's oath to support the rule of law -- structural changes will not be equal to the crisis or prevent others when this one passes.

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