

Paradox of the state of exception and the normal: A comparative study of the legal infrastructures in response to covid-19 in the us and taiwan

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Abstrak

The spread of COVID-19 brings holistic and tough impacts to legal institutions. As the Roman proverb goes, necessity knows no law. This public health hazard has quickly developed into a state of emergency and an exception which must be admitted when discussing legal order, due to the disease's strikingly rapid transmission and high fatality rate. To handle the lingering state of emergency caused by the pandemic in 2020, many states have either set up or altered their legal and procedural supervision mechanisms. This paper firstly examines the theoretical origins, developments, transformations and practices of the legal infrastructures with regard to state of emergency in the US and Taiwan. Based on such background, we further analyze the emergent preventive measures for COVID-19 in the two states, testing if their emergency legal systems are able to curb the pandemic while abiding by their constitutional principles. Our research shows that compared with Taiwan's disease control model, the US federalism equips the federal and state governments with better legal frameworks to establish emergency safety nets. Despite this, the Trump administration failed to timely invoke the constitution-assigned presidential emergency order, engendering policy swings and incoordination between the federal and state authorities. The lack of coherence in the US leadership eventually led to the failure of the country's pandemic governance. On the other hand, our comparative study indicates that in both nations' approaches to inhibit COVID-19, the Presidential emergency power (decree) embedded in the Constitutions is replaced by the emergency legislation. The lawmaking-dependent inclination marked by the integration of laws for managing disasters and threats to public health not only highlights the decline of presidential emergency powers granted by constitutional laws, but also brings profound challenges to judicial review which aims to ensure human rights.