



## Visiting Professor

# EMERGENCY POWERS FOR GOOD

**Monday, January 6, 2025 16:00**

The Sonia and Edward Kossoy Conference Room (307), The Buchmann Faculty of Law



## Prof. Elena Chachko

Elena Chachko is an Assistant Professor of Law at Berkeley Law School. She was the inaugural Rappaport Fellow at Harvard Law School and a Miller fellow at Berkeley Law. Motivated by experience in diplomacy and intelligence analysis, Professor Chachko's research explores the intersection of law and geopolitics.

Emergency powers are widely, and justly, criticized as threats to the rule of law. In the United States, forty-three declared emergencies give the executive vast authority to exercise power unencumbered by standard legal and procedural requirements. A long tradition of executive use of emergency powers to erode civil liberties amplifies fears of executive overreach. Yet this, we argue, is only part of the picture. We examine how emergency powers can be used for good. We argue that under certain limited conditions, political actors can legitimately invoke emergency powers to transform public policy. In addition to widely accepted requirements of crisis severity, transparency, and time limits, we argue that broad consensus and a reformulated non-discrimination requirement are essential to the proper use of emergency powers for societal transformation. We analyze recent high-profile exercises of emergency powers by the U.S. executive to fund a wall on the southern border and to forgive billions in student debt, as well as the European Union's (EU) extraordinarily frequent and broad use of emergency powers in the last three years in response to COVID-19 and Russia's Ukraine invasion. We conclude that the U.S. measures fail under our normative framework, while the EU measures offer a promising template for the transformative use of emergency powers.

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