

Sommersemester 2026 / Summer term 2026
Seminar: Courts as Guardians of Democracy
(Prof. Dr. Michaela Hailbronner)

Is it the task of courts – constitutional or human rights courts – to protect democracy? And if so, why, how and when might they do that?

To start with, human rights courts are designed to protect rights first and foremost, rather than democracy as such. This is because democracy is a famously contested concept. Different states with different political traditions understand democracy in very different ways – and supranational courts are meant to leave room for such different understandings. Yet, even within domestic systems, people may disagree about what democracy entails and should entail. Consider as an example the question of gender quota for parliamentary elections. Are such mechanisms democratic or not? And if we have a hard time deciding this, is this really a decision courts – as opposed to parliaments – should make? Wouldn't it be a perversion of democracy if the decision about what is democratic in a state is made by unelected judges?

However, perhaps it is precisely judges who are standing outside of the political fray and are independent that should be taking such decisions. This, at least, is what the international literature is increasingly suggesting, and calls for courts to act to protect and defend democracy have grown in recent years, as signs of “democratic backslide” have been mounting. From semi-authoritarian regimes and only nominally democratically governed states to those which have previously been considered stable democracies, such as the United States of America, democracy appears to be on the defence and losing. The ECHR as one of the oldest supranational courts for instance was explicitly conceived of as an external “alarm bell” against a slide (back) into fascism and authoritarianism. The Interamerican Court of Human Rights began its operations in the shadow of a series of authoritarian regimes in Latin America and something similar is true for the African Court for Human and People's Rights; both courts have developed a significant jurisprudence seeking to democratic rights and processes, with varying degrees of success. Similarly, many constitutional courts themselves understand their task to defend democracy. However, it is neither easy for courts to do so, nor is it unproblematic, given not least the definitional difficulties outlined above.

In this seminar we will discuss the different constitutional, human rights and comparative constitutional law implications which arise around the role of courts as protectors of democracy, both positive and negative. The seminar will start with two introductory sessions to some of the fundamental theories of review which view courts as defenders of democracy, both domestically and on the international level. **Students will typically pick one or two landmark judgments, which might be German, foreign or international judgments, and engage with them critically in the light of the existing theoretical literature.** The cases in questions might be cases that set a good or a bad example, in the light of the respective theoretical approaches, as to how courts should understand their role when it comes to democracy. On request, students might also pick a more theoretical perspective, engaging in more depth with the literature.

Potential topics:

Students should feel free to propose their own topics. I am attaching a list of potential topics and some ideas for judgments that might be interesting to students, but again if you want to discuss a different judgment and/or topic, please get in touch.

1. Freedom of speech and hate speech
E.g. *Perincek v. Switzerland* (ECtHR), *Soldaten sind Mörder*, *Elfes*, *Wunsiedel*, *R v. Keegstra* (Canada)
2. Electoral law / right to vote
E.g. *Ausländerwahlrecht I* (BVerfG 1990); different gender quota decisions (Spain, Italy, different German Länder); racial or partisan gerrymandering judgments US Supreme Court; electoral minimum thresholds (BVerfG)
3. Campaign and party financing
E.g. *Citizens United* (US Supreme Court), BVerfGE 20, 56 or BVerfGE 85, 264
4. Term limits for office-holders: e.g. *Sentencia C-141 of 2010* (Corte Constitucional de Colombia) or *Sentencia Constitucional Plurinacional No. 0084/2017* (Tribunal Constitucional Plurinacional de Bolivia).
5. Parliamentary procedures
 - a) Floor crossing (*United Democratic Movement*, Case CCT 23/02, South Africa)
 - b) Opposition rights: e.g. Art 18 ECHR (e.g. *Mammadov* judgment, ECtHR),
6. Party bans & militant democracy: *Refah Partisi* (ECtHR); *KPD-Urteil*, *NPD-judgment n. 2*
7. Procedural control of legislative process: *Doctors for Life*, *Heizungsgesetz*-decision (BVerfG) etc.
8. Rule of law protection & judicial independence: *Baka* (ECtHR), *ASJP* (CJEU), Polish judiciary cases (CJEU)
9. Success and modes of judicial intervention, i.e. *when and how* can courts successfully intervene (or not) – Judicial Intervention in Malawi's 2020 Electoral Crisis; Kenya's 2017 annulment of the Presidential Election etc.

...etc.

Schedule:

The seminar will consist of two substantive sessions in April and May to discuss some of the foundational theories (readings will be assigned) and a blocked session at Landhaus Rothenberge from

Wednesday, 10 June (afternoon/evening) to Friday, 12 June (early afternoon). A preliminary meeting offering an introduction and preparing the ground, including for selecting topics, will take place online, on Feb. 11 at 3 pm. Mid-May, all seminar participants will meet with Prof. Hailbronner to discuss their drafts and/or outlines.

Completed work does not need to be available by the date of the block seminar. A student assistant will be available during the seminar to answer any questions that may arise spontaneously in an informal setting. If there is demand, we will offer an introduction to doing research and writing seminar papers. The finalised work, which should incorporate the feedback from the block seminar, is to be submitted by Friday, 31 July 2026.

January 19, 2026	Registration deadline
by Jan. 26, 2026	Selection of participants, sending of confirmations
Feb. 11 – 3 pm	Introduction and discussion/distribution of potential topics
April 29, 6-8 pm	Session 1: John Hart Ely and political process theory today
May 13, 6-8 pm	Session 2: Comparative political process theory and human rights courts
May 14-15	Individual discussions on seminar paper outlines
Wed, 10–12 June 2026	Block seminar / colloquium, full day (Rothenberge)
	Presentation and discussion of drafts, approx. 40 minutes per text
31 July 2026, 12:00 '	Submission of seminar papers / written and digital

Information on Registration

Registration for Schwerpunkt-students: *The seminar is aimed at students specialising in Schwerpunkt 4, 6, 9 and 11.*

Selection of participants: *The number of participants is limited to 15. If the number of interested students exceeds this number, students with relevant prior knowledge will be given priority. After that, places will be allocated depending on how close the students are to taking their exams. You will be notified of your admission by email.*

*Please compile the following documents into a single PDF file (**file name: SE_Surname.pdf**) and send it to the chair's office (ioerecht@uni-muenster.de).*

- 1. A short letter of motivation explaining your interest in the seminar.*
- 2. The registration form (see last page).*
- 3. Proof of your academic record to date.*

Please register by the deadline Jan 19 at ioerecht@uni-muenster.de and in WILMA 3.

If you have any questions, please contact Prof. Michaela Hailbronner (hailbronner@uni-muenster.de).

Sommersemester 2026
Seminar: Courts as Guardians of Democracy

(Prof. Dr. Michaela Hailbronner, Lara Geldsetzer)

ANMELDUNG

Name, Vorname:	
Straße:	
PLZ, Wohnort:	
Handy-Nr.:	
Uni-E-Mail:	
Matrikel-Nr.:	

☐ WiLMA III ☐ Studienortswechsler*in

☐ Sonstige (Bachelor PuR/WuR, ERASMUS, zur Übung), nämlich:

Das ist mein Fachsemester Jura.

Leistungsnachweis (Ausdruck aus WiLMA II/III) vorgelegt:

☐ ja ☐ nein Begründung:

Gewünschte Prüfungsform:

☐ Kolloquium ☐ Schriftliche Arbeit ☐ beide Prüfungsformen, separat benotet

Besondere Interessengebiete aus dem Themenbereich des Seminars (Themenwünsche):

1.

2.

3.

☐ Ja, ich bin damit einverstanden, dass meine E-Mail-Adresse an alle Seminarteilnehmer*innen weitergegeben wird.

Datum:

Unterschrift: _____