

9. Berliner Colloquium zur Zeitgeschichte

Rereading Clinton Rossiter, *Constitutional Dictatorship*

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Interview

Berliner Colloquien zur Zeitgeschichte: Why did the Berliner Colloquien choose to devote a conference to Clinton Rossiter's book?

Another of the Berliner Colloquien's self-assigned tasks is to present a forum for re-reading classic or long-forgotten books and essays which may provide surprising impulses for the diagnosis of current developments. Clinton Rossiter's work is *both* a classic and a long-forgotten work, at least in Germany. Originally written as a dissertation and published in 1948 in America and England, this study of the relationship between crisis, states of emergency and democracy was compulsory reading in Germany until the early 1970s when political scientists began constructing increasingly abstract theoretical models and historians took a fancy to extensive excursions into cultural history. And both of these approaches were compelled to accept the fact that the categorical foundation of their scholarship was—to put it bluntly—demolished: power, governance, state and politics. It was a clear indicator that the times and interests had changed when Rossiter's book was reprinted in the United States in 2004.

BCZ: What exactly do you mean by changed times and interests?

The immediate occasion was the »War on Terror« and the autocratic bearing of George W. Bush's administration. Since then, and for a good reason, there has been a great deal of discussion regarding the durability of modern democracies. How are democracies to cope with substantial challenges—insurgencies, civil wars, economic crises, and wars between states? In a state of emergency how do we safeguard the sovereign's ability to act? What changes occur in the architecture of governance, in the structure of separate yet still intersecting powers? Who rules in crises, based on what legitimization—and, above all, to whose advantage and disadvantage? The multiple financial and economic crises since 2008 have shown that such questions cannot only be discussed within the context of fighting terrorism. We could argue endlessly as to whether the executive branch is now

more dominant than ever before; but it is beyond dispute that we are experiencing the uncoupling of constitutional supervisory bodies, a development that is generally interpreted as being »without any alternative.« On that account you have Angela Merkel's often-cited phrase with respect to parliamentary scrutiny as being a »limiting factor.« Or her assertion that in the end only »market-compliant« policies—that is those protected from disruptive alternatives—can withstand crises.

BCZ: How can Rossiter assist us in coming to grips with this debate?

In principle, in one very essential way. He irritates us and does not allow us to take refuge in excessively moralizing critique. On the contrary, Rossiter provokes us, and this provocation provides an ideal opportunity for us to re-examine much-loved arguments and to ruthlessly analyze the problem. Particularly in crises there is certainly much to be said for repeatedly pointing out that there should be an absolute minimum of democracy and referring to constitutional principles such as the separation of powers, transparency, and parliamentary controls. And in no way does Rossiter wish to uproot these principles. Instead, he cites the interwar years from 1919 to 1939 to show how merely appealing to the ideal can be a blunt weapon.

BCZ: In other words, democracies can only be saved in times of crisis and emergency if they are prepared to suspend their constitutional principles?

That is precisely the issue. That's what his notion of »constitutional dictatorship« homes in on. In Rossiter's view there had been and would be repeated situations in which a democracy could not be saved by its innermost principles, and always when that great resource »time« is so scarce, at the height of a crisis there is no time for deceleration of the decision-making process, for reaching a compromise and for public accountability. According to Rossiter's convincing empirical findings, that's when the executive's hour strikes. In this respect there are undeniable parallels between the Weimar Republic and contemporary developments in England, France and America. But in order for these emergency policies not to be evaluated in a normative way, Rossiter insists on political and constitutional self-commitment: On the one hand, the option of an unplanned »dictatorship« should be explicitly envisaged as an option in the constitutional text. On the other hand, it should also be accompanied by the unconditional obligation to return as quickly as possible to the previous status quo. In other words, legal vacuums should by all means be avoided

BCZ: What was the discussion like regarding this?

In part it was very sceptical, even distanced. The big question was why should the pressure of the unexpected always play into the hands of the executive? It is conceivable that unconventional ways of decision-making are undertaken, that one might install committees and proceedings which were not provided for in the organizational chart. The process of German reunification from 1989 to 1991 is a good example of how this can work. Seen from this standpoint, a preventative regulation within Rossiter's meaning may stifle, rather than foster ways of stemming crises and conflicts. One might argue that the more detailed the list of precautionary measures, the less flexible the response. The faith in ad hoc solutions and the courage to take risks thus seems more realistic than the model of a »constitutional dictatorship.« This is how we can interpret the experiences of the interwar period, disputing Rossiter's analysis by means of his own facts. After all, during this period those states with constitutions without established emergency clauses fared best. On the whole, the model of »constitutional dictatorship« suffers from the fact that it allows for too many opportunities for abuse while underestimating the situational flexibility of robust democracies and their ability to save their own skin through other means in times of emergency.

BCZ: From this standpoint then it would seem that Rossiter is rather unsuitable for the present debate about finding ways out of the crisis?

Despite all scepticism, one should not go too far with the criticism. Rossiter himself was aware of the fact that his concept was contestable and even referred to »constitutional dictatorship« as political and social dynamite. The book's value lies in the fact that Rossiter took on an uncomfortable subject that invites controversy and incites debate. Just looking at the post-9/11 world and in the wake of Lehman Brothers, we can see how vulnerable the democratic foundation is and how short-sighted much of the discussion is about the legislature and public disempowering itself while aggrandizing the executive. Rossiter knew that crises which burgeon into permanent conditions could compel states, in their quest for stability and security, to fall prey to »crisis-prevention« tactics that have not been fully thought through and which could lead to unanticipated consequences. Clinton Rossiter does not express any unease regarding democracy but rather an intellectual restlessness due to the vulnerability of democracies.

