

POLSC 304: Special Topics: Democracy and Emergency

Hunter College
Fall 2009
Monday 5:35-8:15 p.m.
HW 1731

Professor Leonard Feldman

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This seminar explores the issue of *emergency powers* as they appear in *constitutional democracies*. Sudden and dramatic crises often face political communities and governments usually assert (and justify as a necessity) extraordinary powers to deal with the crisis. In this seminar we will examine debates around the exercise and limitation of emergency powers: What government actor is best suited to cope with an emergency? Which is best suited to prevent emergency powers from becoming tyrannical? How are emergency powers shaped by political context, and how does the exercise of emergency powers work to reshape that context?

Course Requirements:

- 1. 30 percent of grade:** 6 response papers (2 pages each), due at the beginning of class.

You must do 3 in part one of the course and 3 in part two of the course.

- 2. 20 percent of grade:** Seminar participation. Seminar participation includes being prepared to discuss the readings in class, and discussing them. Thus, one of the requirements of seminar participation is that you bring a copy of the day's readings to class. In other words, you must either bring the book we are reading that day, or print out a copy of the readings on blackboard and bring those to class.

- 3. 50 percent of grade:** Final paper.

12-15 page research paper. You must submit a 1-2 page prospectus to me by week 6 and come meet with me to discuss your ideas. The idea is either to combine some of the theoretical materials of the course with primary research concerning a problem or controversy concerning emergency powers or to examine a theoretical debate or orientation in greater depth.

Books to purchase at Shakespeare and Company:

Bruce Ackerman, *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism*

Mark Neocleous, *Critique of Security*

Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*

Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy*

Other readings: Articles and chapters will be available on Blackboard under "Course Materials." **Note: You are responsible for printing out copies of these readings and bringing them to class. Failure to do so counts against your class participation.**

A Note About Response Papers

Response papers are not simply a page or two of rambling thoughts. They should be organized, focused, thoughtful, critical, reflective, and questioning. It's best if your response paper is divided into 3 sections.

First section: Summary. Provide an overview of the week's readings. What were the central arguments in the readings? If we're reading a book, what is the central thesis of the text? If we are reading multiple authors, what is the central disagreement or area of debate? (1/2 page)

Second section: Critical analysis. Select one particular problem, issue, theme or argument in the readings for focused attention. Develop the author's argument, and, if appropriate, compare it to other readings. This section can include an evaluation of the reading including criticisms of any shortcomings. (1 page)

Third section: Questions. In a concluding paragraph, raise one or two thoughtful questions about the readings. What issue or problem would you like to discuss further? (1/2 page)

Grading: $\checkmark+$, \checkmark , $\checkmark-$

All $\checkmark+$: A

All \checkmark s: B

All $\checkmark-$: D

Mostly $\checkmark-$: C range

Mostly $\checkmark+$: A- range

8/31 Course Introduction

9/7 NO CLASS: Labor Day

9/14 An Example of the Politics of Emergency

Alan Dershowitz, "The Case for Torture Warrants"
David Luban, "Liberalism, Torture, and the Ticking Bomb"

Part One: Emergency, the State and Law: The Normative Debates

9/21 The Sovereign Executive Model

Carl Schmitt, *Political Theology*, chapter 1

Bybee-Gonzales August 1, 2002 memo, http://www.washingtonpost.com/wp-srv/politics/documents/cheney/torture_memo_aug2002.pdf

TUE 9/29 The Legalist Model

A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, excerpts (links also available on blackboard):

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1714&chapter=142115&layout=html&Itemid=27

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1714&chapter=142136&layout=html&Itemid=27

http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1714&chapter=142152&layout=html&Itemid=27

Ex Parte Milligan

10/5 The "Roman" Model: Constitutionalized Emergency Powers

Bruce Ackerman, *Before the Next Attack*

10/12 no class

WEDNESDAY 10/14 The Liberal Prerogative Model

Locke, *Second Treatise* ch 14, Oren Gross, "Chaos and Rules"

10/19 Debating the Models: Law Versus Discretionary Violence

Kim Scheppele, "Legal and Extra-legal Emergencies"

David Cole, "Judging the Next Emergency"

Andrew Arato, "Their Creative Thinking and Ours"

10/26 Complicating the Models: Law As Discretionary Violence

Robert Cover, "Violence and the Word" *Yale Law Journal*

Part Two: The Political Context(s) of Emergency

11/2 Emergency as Opportunity I: Opportunities for Democratic Engagement
Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy*

11/9 Debates over Surveillance Powers and Risk Profiling:

Richard Posner, *Catastrophe: Risk and Response*, "How to Reduce the Catastrophic Risks"

Cass Sunstein, *Laws of Fear*, "Fear and Liberty"

Frederick Schauer, *Profiles, Probabilities and Stereotypes*, chapter 7, "The Usual Suspects"

Amoore, "Governance, Data and Risk in the War on Terror"

11/16 The Discourse of National Security

Mark Neocleous, *Critique of Security* sections

11/23 The Rights of Citizens and Non-Citizens in Emergencies

Mary Fan, "The Quantum of Rights in Crime and War and the Cognition and Intuition of Citizenship"

11/30 Emergency as Opportunity II: Economic Crises and Neoliberalism

Naomi Klein, *The Shock Doctrine: Disaster Capitalism*

12/7 Reading TBA

Final Paper Due: December 16th