

POLSC 303: Democracy and Emergency

Professor Leonard Feldman
Hunter College
Spring 2018

Room: HW 1731

Time: Tues, Fri: 1:10 pm - 3 pm

Prof. Feldman's Contact Information:

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Office Hours: Tues, Fri: 11:30 am to 12:30 pm, and by appointment

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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. Whether it be a natural disaster or a terrorist attack, crises and threats play a prominent role in political life. 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?

Learning Objectives

This seminar will immerse students in a robust debate within contemporary political and legal theory, and we will explore linkages between historical and contemporary political theory. Thus we will be able to analyze the influence of classical liberal, republican and other forms of political thought upon contemporary theoretical and practical arguments. You will learn the central features and underlying assumptions of four of the main normative models of emergency powers in Constitutional democracies, as well as the real-world contexts within which variants of those models are deployed and debated. The seminar will also teach you to become more critical, reflective and nuanced in your responses to the politics of crisis by moving beyond two standard but ultimately inadequate responses to claims of emergency rule: Uncritical acceptance and universal cynicism. Finally, the seminar will develop your skills through research, writing and oral presentations: Response papers (and the guidance you receive on them) will help you identify authors' central arguments and critically evaluate the adequacy of the reasoning and evidence used to defend them. The midterm will help you engage in comparative evaluations, placing theories and concepts in dialogue with each other in order to see what underlying assumptions each model relies upon. The research paper process will guide you from identifying a topic to formulating a question, searching for relevant academic literature, applying theoretical materials to a concrete case study and developing an original argument. The oral presentation, finally, will give you valuable

experience in crafting a clear and succinct summary of your research and presenting it to an audience.

Office of Accessibility

Hunter College is committed to ensuring educational parity and accommodations for all students with documented disabilities and/or medical conditions. It is recommended that all students with documented disabilities (Emotional, Medical, Physical and/or Learning) consult the Office of Accessibility located in Room E1124 to secure necessary academic accommodations. For further information and assistance please call 212-772-4857, TTY 212-650-3230.

Academic Integrity

Any deliberate borrowing of the ideas, terms, statements, or knowledge of others without clear and specific acknowledgment of the source is intellectual theft and is called plagiarism. It is not plagiarism to borrow the ideas, terms, statements, or knowledge of others if the source is clearly and specifically acknowledged. Students who consult such critical material and wish to include some of the insights, ideas, or statements encountered must provide full citations in an appropriate form. Hunter College regards acts of academic dishonesty (e.g., plagiarism, cheating on examinations, obtaining unfair advantage, and falsification of records and official documents) as serious offenses against the values of intellectual honesty. The College is committed to enforcing the CUNY Policy on Academic Integrity and will pursue cases of academic dishonesty according to the Hunter College Academic Integrity Procedures.

Other issues

Cr/ NC requirements: College rules specify that to be eligible for credit/no credit, students must complete all course requirements. In this course, students who wish to be graded on the credit/no credit system must have turned in on time at least 6 response papers, completed the midterm, and submitted the research paper. Failure to do so will void the CR/NC option and you will receive the appropriate letter grade.

Late papers: No late **response** papers will be accepted under any circumstances (see below). For the research paper and midterm, I will deduct 1/3 of one grade for every day that the paper is late unless you provided documentation of a medical emergency.

Books to purchase at Shakespeare and Co:

Jennifer Rubenstein, *Between Samaritans and States*

Bruce Ackerman, *Before the Next Attack*

Nomi Lazar, *States of Emergency in Liberal Democracies*

Mark Neocleous, *Critique of Security*

Naomi Klein, *The Shock Doctrine*

Other readings available on Blackboard

Course Requirements:

1. 5 percent of grade: One 10 minute presentation.

The goal of this presentation is to stimulate class discussion. Presenters should seek to articulate the central argument(s) of the week's reading, any significant disagreements, contrasts or surprising overlaps between texts if multiple authors are assigned and raise three genuine thoughtful questions about the readings for discussion. Presenters should not provide a mechanical page-by-page summary of topics covered but should refer to specific passages of the text.

2. 20 percent of grade: 8 response papers (2 pages each), due at the beginning of class.

Absolutely no late or emailed papers accepted under any circumstances. A **paper** copy of the response is due at the beginning of class. If something happens and you are prevented from bring a paper copy of your response paper to class, just skip that session and write a paper for the next. Because you have 8 papers due and there are 23 class sessions with reading assignments, there is significant "slack" built into the structure. For information on how to craft a response paper see response paper guide below.

2. 20 percent of grade: Consistent 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. Seminar participation involves both active speaking and active listening. Sometimes I will ask you to share your analysis or thoughtful questions from your response paper and even when I don't you should feel free to use your response paper as the basis of a contribution to discussion especially if you feel anxious about speaking "off the cuff".

3. 20 percent of grade: A 6 page midterm essay due Thursday March 15th electronically via blackboard.

You will be provided a focused essay question/prompt that asks you to brings the first-half readings into conversation with each other. The topic/question will be distributed two weeks before the due date.

4. 35 percent of grade: Final 15 page research paper.

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. Greater detail about your options will be presented in week 3. All of the following are required for the final paper

and form the basis of your grade:

- a. 2 page prospectus due in class March 9th. You are required to meet with me (either the week before or the week after) to discuss your ideas. Your prospectus should identify your central question, and it should identify and briefly discuss two texts from the class and three outside sources (book or journal article) which you will use in your research. (10 points)
- b. An outline an annotated bibliography, due April 11th. The outline should provide a tentative structure of your paper/argument. In addition, the outline should be accompanied by an “annotated bibliography” providing 6 sources (books or journal articles) with 1 paragraph summaries of each. (15 points)
- c. A 15-minute multimedia presentation on your research in one of the last 2 weeks of class, followed by 15 minute question and answer (15 points)
- d. The final paper is due Tuesday May 22nd (60 points) electronically, via Blackboard.

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 main 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: All √+: A; All √: B; All √-: D

SCHEDULE OF TOPICS AND READING ASSIGNMENTS

Part One: Emergencies Ethics

Tues 1/30: Course Introduction

Fri 2/2: What is an emergency? A case study of emergency and one political concept:

prerogative power

Sheri Fink, "The Deadly Choices at Memorial"
John Locke, *Second Treatise of Government*, chapter 14

Tues 2/6: Two more political concepts for thinking about emergencies: "the exception" and "dirty hands"

Carl Schmitt, *Political Theology* chpt 1, excerpt
Michael Walzer, "Dirty Hands" and "Emergency Ethics"

Fri 2/9: Emergency habits

Elaine Scarry, *Thinking In An Emergency*, pp. 3-18, 33-49, 51-61, 69-80

Tues 2/13 NGOs, humanitarian emergencies, and "splattered hands"

Jennifer Rubenstein, *Between Samaritans and States*

Fri 2/16: Humanitarian emergencies and medical ethics

Rubenstein, *Between Samaritans and States*, cont'd
Eliza Barclay, "[The psychiatrist who briefed Congress on Trump's mental state: this is 'an emergency'](#)"

Fri 2/23: Returning to the torture question: Popular culture and state power

Jane Mayer, "Whatever It Takes"
Desmond Manderson, "Trust Us Justice: 24, Popular Culture, and the Law,"
(24)

Tues 2/27: The critique of the ticking-bomb hypothetical

Kim Scheppelle, "Hypothetical Torture in the 'War on Terrorism'"
David Luban, "Liberalism, Torture and the Ticking Bomb"

Part Two: Security with or against liberal democracy?

Fri 3/2: Security as the supreme value of liberalism

Thomas Hobbes, *Leviathan*, chapter 13
Mark Neocleous, *Critique of Security*

Tue 3/6: The growth of the national security state

Neocleous, *Critique of Security* continued

(Frontline: *Top Secret America*)

Fri 3/9: Risk management and everyday “tradeoffs” between security and liberty

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

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

Marieke de Goede, *Speculative Security* excerpt

→ Research prospectus due in class.

Tues 9/13: Citizens and non-citizens in national security crises

Mary Fan, Citizenship Perception Strain in Cases of Crime and War: On Law and Intuition

→ 6 page paper due to blackboard on Thursday March 15

Part Three: Emergency, the State and the Rule of Law: Four Models

Fri March 16: (1) The Sovereign Executive Model

Posner and Vermeule, *The Executive Unbound* excerpt
(Frontline: *Cheney's Law*)

Tues March 20 (2) Extra-legalism

Oren Gross, “Chaos and Rules”

Fri March 23 (3) Liberal Legalism

David Cole, “Judging the Next Emergency”
David Dyzenhaus, *Constitution of Law* (excerpt)

Tues March 27 (4) The neo-Roman Model: Constitutionalized Emergency Powers

Bruce Ackerman, *Before the Next Attack*

Tues April 10: The neo-Roman model, cont'd

Ackerman, finish
Clinton Rossiter, *Constitutional Dictatorship*, pp. 3-14, conclusion

Part Four: Complicating the Models

Wed April 11: Against norms and exceptions

Nomi Lazar, *States of Emergency in Liberal Democracies*

→ Outline/Annotated Bibliography due in class

Fri April 13: Emergencies in Normal Politics

Lazar, finish

Tues April 17: Pre- and Post- Emergency

Karin Loevy, *Emergencies in Public Law* excerpt

Fri April 20: Emergencies as Opportunities I

Naomi Klein, *Shock Doctrine*

Tues April 24: Neoliberalism as Crisis-Exploiter

Klein, cont'd
(Commanding Heights film on Milton Friedman)

Fri April 27: Emergencies as Opportunities II

Bonnie Honig: *Emergency Politics*, chpts 3 and 4.

Tues May 1: Policing and/as Emergency

Leonard Feldman, "Police Violence and the Legal Temporalities of Immunity"

Part Five: Research Presentations

Fri May 4

Tues May 8

Fri May 11

Tues May 15

→ **Final Paper Due Tuesday May 22nd via blackboard.**