

Modules: PT-MA-2; PT-MA-3;
PT-MA-5b; PW-BA-SP; PW-MA-2a, 3a, 4a;
SOZ-MA-8

Goethe-Universität Frankfurt
Sommersemester 2020
(Updated 19 April 2020)

Emergency and Exception

~~Thursdays 14:00–16:00, Seminarhaus 4.108~~

instructor: Brian Milstein, Ph.D.
email: brian.m.milstein@gmail.com
Skype address: brian.milstein
~~office: Clustergebäude “Normative Orders”
Max-Horkheimer-Straße 2, Raum 3.15
60323 Frankfurt am Main~~
office hours: by appointment

... NOT THE FINAL VERSION: CHECK FOR UPDATES ...

The Main Idea

In this seminar we will examine the concepts of “emergency” and “exception” in liberal democracies. Is it permissible for governments to act exceptionally in times of emergency? Is there a tension between the ideal of constitutionalism and the law of necessity? Who decides when it is appropriate to declare a “state of exception,” and how does a democracy return to “normality” afterward? Is there a sense in which “states of exception” are not exceptional at all, but a permanent and pervasive feature of political life? Over the course of the semester we will grapple with a variety of ways scholars have attempted to address the challenges of crisis governance and navigate distinction between “norm” and “exception.” Readings may be taken from the works of Carl Schmitt, Clinton Rossiter, Giorgio Agamben, Oren Gross, William Scheuerman, Arjen Boin, Nomi Lazar, Bonnie Honig, and others.

Progress and Assessment

Format of the course: This is an online course, and all readings, lectures, discussion spaces, assignments, and other learning materials will be available on **Moodle**: <https://moodle.studiumdigitale.uni-frankfurt.de/moodle/course/view.php?id=609>.

- All required texts (“primary readings”) for the course will be available at the start of the semester, as well a number of additional readings (“secondary readings”) that you may find useful.
- In addition to the readings, you will find variety of learning materials to guide you through them. These will typically include some form of recorded lecture,

and may also include webpages, handouts, or links. These will be made available by the beginning of each week.

- Our primary medium for discussing the materials will be via the chat forums. Each week will have a dedicated discussion thread, and one or more students will act as “discussion leaders” for that week’s primary readings.

Overview of requirements:

	<i>Teilnahmeschein</i>	<i>Leistungsschein</i>
Weekly primary readings	required	required
Participation in online forum (via Moodle)	recommended	required
Act as forum “discussion leader” for one week	required	required
<i>Hausarbeit</i>	not required	required

Both students pursuing a *Teilnahmeschein* and students pursuing a *Leistungsschein* are expected to:

- Keep pace with the weekly primary readings;
- Participate regularly in online forum discussions;
- Play role of “discussion leader” (in collaboration with me and others) in the online forum for at least one week’s primary reading.
- As a *Hausarbeit*, students pursuing a *Leistungsschein* will write a research paper of 5000-7500 words (about 15–20 pages), which will be due **Monday, 28 September, 2020**. Those pursuing a *Teilnahmeschein* are not required to submit a final paper.

Weekly Readings: As you look over the syllabus, you will notice a list of readings for each week. Don’t get nervous—you will not be asked to read all of them! The readings for each week are divided into several categories:

- *Primary readings:* The “primary reading” will be the main focus of that week’s lecture and discussion. Each week’s primary reading will typically be 25-40 pages long in total, though not always. It is expected that everyone will have read and will arrive to class ready to discuss the primary reading for each session. I have marked these readings in the syllabus with two stars (★★) so that they can be found easily.
- *Secondary readings:* For a number of our sessions, you can expect to find a handful of “secondary readings” listed after that week’s primary reading, which may be relevant to the issues raised or offer a differing perspective. These readings will be marked in the syllabus with one star (★). You are not required to read them on a weekly basis, but some of them may come in useful for answering the exam questions.

- *Supplementary readings:* For those of you who find a particular week's reading compelling, most weeks will also include recommendations for further reading. These may include other works by the author of the primary reading, in-depth interpretations of the author's work, philosophical works by others that are often studied alongside the author, or contemporary attempts to grapple with issues related to the ones the author raises. Again, these lists will cover but a snippet of what is really out there, but these should help you begin your journey. These will often be full-length books; as such, they will not be made available on the course website

Forum Discussions and Discussion Leaders: Because we will be conducting the course online, our primary medium for discussing the weekly readings will be via the online forums on Moodle.

- Each week, a new discussion thread will be opened on the coming week's reading.
- *Discussion Leaders:* One or more students will act as "discussion leader" for that week. Everyone in the class must act as a discussion leader *at least once* to receive credit. As a discussion leader, your job will be to initiate the discussion, pose questions to the rest of the class, keep the discussion going, and serve as moderators for the week.
- *Forum Participation:* Regardless of whether you are a discussion leader for a given week, all students are expected to participate regularly in the forums. You do *not* have to contribute every week; however, you should contribute frequently enough to show that you are following along in the class.
 - Quality contributions should demonstrate that you have done the week's reading and are trying to think about the issues they raise. They can involve asking questions about the reading or answering questions posed by others; they can involve raising points of agreement or (respectful!) disagreement with points made by me or others.
 - Quality contributions are not about being "right." They are about figuring things out, realizing what you might have missed, correcting mistakes and misinterpretations, and being confronted with perspectives you may not have previously considered.
 - Above all, quality contributions should be on topic, and they should be polite and respectful of other students' views and backgrounds.
 - Though participation is required, your primary goal should not be to "impress" me or your fellow classmates. On the contrary, you should see the forums as an opportunity to think about the texts, experiment with ideas and arguments, and ask for clarifications.

Hausarbeit: At the conclusion of the semester, students pursuing a *Leistungsschein* will write a research paper of 5000-7500 words (about 15-20 pages), which will be due **no later than Monday, 28 September, 2020**. Those pursuing a *Teilnahmeschein* are not required to submit a final paper.

- You are free to write the paper on any topic you wish, so long as your topic is based on the central themes of the course. *You are strongly encouraged to meet*

with me at least once to discuss your paper. When writing, you should approach your final paper as a serious piece of scholarly research, complete with citations and bibliography: you should develop a clear central thesis; you should demonstrate knowledge of your topic; you should engage the material in a critical and thoughtful manner; you should be able to back up your arguments with reasons, evidence, and examples; and you should strive to show readers what conclusions they can draw from your efforts.

••• IMPORTANT •••

All papers must be double-spaced, in 12-point type, with one-inch margins, and must be submitted to me via email as either a Microsoft Word (.doc or .docx) or Adobe PDF (.pdf) file at **brian.m.milstein@gmail.com**.

Unfortunately, I will not be able to accept papers not written in English.

For all papers, you will be expected to adhere to proper conventions of scholarly attribution. Any work quoted or otherwise referenced must be appropriately and fully cited. Any idea, argument, information, or quotation that you might employ from an external source must likewise be accompanied by full citation. You are free to use any standard bibliographic citation style you wish, but you should apply it consistently. **Plagiarism, cheating, and other forms of academic dishonesty will not be tolerated and may result in automatic failure of the course.**

Weekly Readings

All required readings for the course will be made available online, as well as at least some of the suggested supplementary readings (which will be indicated with an [online](#) icon).

••• **PLEASE NOTE:** The readings listed may be subject to change, and additional supplementary readings may be added or made available over the course of the term.
Check periodically for updated versions of this syllabus. •••

13–19 April / START OF TERM DELAYED

Week 1 (20–26 April) / Introduction

★★ Primary reading:

- Selam Gebrekidan (2020) “For Autocrats, and Others, Coronavirus Is a Chance to Grab Even More Power,” *New York Times*, 30 March <<https://www.nytimes.com/2020/03/30/world/europe/coronavirus-governments-power.html>>. [online](#)

Week 2 (27 April–3 May) / “Sovereign Is He...”

★★ Primary reading:

- Carl Schmitt (1985 [1921, 1934]). *Political Theology: Four Chapters on the Concept of Sovereignty*, trans, George Schwab (Cambridge, MA: MIT Press). Pp5–52. [online](#)

★ Secondary reading:

- Eric A. Posner and Adrian Vermeule (2009) “Crisis Governance in the Administrative State: 9/11 and the Financial Meltdown of 2008,” *University of Chicago Law Review* 76(4): 1613–82. [online](#)

Supplementary reading:

- Carl Schmitt (2014 [1921]) *Dictatorship*, trans. Michael Hoelzl and Graham Ward (Cambridge, UK: Polity).
- Carl Schmitt (2007 [1927]) *The Concept of the Political*, trans. George Schwab (Chicago: University of Chicago Press).
- Ernst Fraenkel (2017 [1941]) *The Dual State: A Contribution to the Theory of Dictatorship*, trans. E.A. Shils, Edith Lowenstein, Klaus Knorr, and Jens Meierhenrich (Oxford: Oxford University Press).
- Reinhart Koselleck (1988) *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, MA: MIT Press).
- William E. Scheuerman (1999) *Carl Schmitt: The End of Law* (Lanham, MD: Rowman & Littlefield).
- Gopal Balakrishnan (2002) *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso).

Week 3 (4–10 May) / Constitutional Dictatorship

★★ Primary reading:

- Clinton L. Rossiter (2002 [1948]). *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (New Brunswick: Transactions Publishers). Pp3–28, 288–314. [online](#)

★ Secondary reading:

- Bruce Ackerman (2004) “The Emergency Constitution,” *Yale Law Journal* 113: 1029-91 [online](#)
- Oren Gross, “The Concept of ‘Crisis’: What Can We Learn from the Two Dictatorships of L. Quinctius Cincinnatus?,” 1-23 [online](#)
- Jeremy Waldron (2003) “Security and Liberty: The Image of Balance,” *Journal of Political Philosophy* 11(2): 191–210. [online](#)

Week 4 (11–17 May) / Legality and Extra-Legality

★★ Primary reading:

- David Dyzenhaus (2012) “The Compulsion of Legality.” In Victor V. Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge, UK: Cambridge University Press). Pp33–59. [online](#)
- Oren Gross (2012) “Extra-Legality and the Ethic of Political Responsibility.” In Victor V. Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge, UK: Cambridge University Press). Pp60–93. [online](#)

★ Secondary reading:

- Oren Gross (2003) “Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?,” *Yale Law Review* 112: 1011–1134. [online](#)
- Victor V. Ramraj (2012) “No Doctrine More Pernicious? Emergencies and the Limits of Legality.” In Victor V. Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge, UK: Cambridge University Press). Pp3–29. [online](#)

18–24 May / NO CLASS

Week 5 (25–31 May) / Economic Emergency

★★ Primary reading:

- William E. Scheuerman (2000) “The Economic State of Emergency,” *Cardozo Law Review*, 21(5–6): 1869–94. [online](#)
- Jonathan White (2015) “Emergency Europe,” *Political Studies* 63: 300–318. [online](#)

★ Secondary reading:

- William E. Scheuerman (2012) “Presidentialism and Emergency Government.” In Victor V. Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge, UK: Cambridge University Press). Pp258–85. [online](#)
- William E. Scheuerman (2016) “Crises and Extralegality from Above and from Below.” In Poul F. Kjaer and Niklas Olsen (ed), *Critical Theories of Crisis in Europe: From Weimar to the Euro* (London: Rowman & Littlefield International). Pp197–212. [online](#)

Supplementary Reading:

- Jonathan White (2019) *Politics of Last Resort: Governing by Emergency in the European Union* (Oxford: Oxford University Press).

Week 6 (1–7 June) / The Colonial Rule of Law

★★ Primary reading:

- Nasser Hussain (2003). *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press). Pp69–144. [online](#)

★ Secondary reading:

- Achille Mbembé (2003) "Necropolitics," *Public Culture* 15(1): 11–40. [online](#)
- Nasser Hussain (2006) "Beyond Norm and Exception: Guantánamo," *Critical Inquiry* 33(4): 734–53. [online](#)
- Lauren Benton (2010) *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press). Pp279–99. [online](#)

8–14 June / NO CLASS**Week 7 (15–21 June) / The Permanent State of Exception**

★★ Primary reading:

- Giorgio Agamben (2005). *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press). Entire.

★ Secondary reading:

- Mark Neocleous (2006) "The Problem with Normality: Taking Exception to 'Permanent Emergency,'" *Alternatives* 31: 191–213. [online](#)
- Michel Foucault et al (2020) "Coronavirus and Philosophers," *European Journal of Psychoanalysis* <<https://www.journal-psychoanalysis.eu/coronavirus-and-philosophers/>>.

Week 8 (22–28 June) / The Democratic State of Exception

★★ Primary reading:

- Bonnie Honig (2009). *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press). Pp1–11, 65–111. [online](#)

★ Secondary reading:

- Hannah Arendt (1968 [1951]) *The Origins of Totalitarianism*, new ed. (New York: Harcourt). Pp267–302. [online](#)
- Jacques Rancière (2004) "Who Is the Subject of the Rights of Man?" *South Atlantic Quarterly* 103(2/3): 297–310. [online](#)
- Leonard C. Feldman (2008) "Judging Necessity: Democracy and Extra-Legalism," *Political Theory* 36(4): 550–77. [online](#)

Week 9 (29 June–5 July) / Beyond Norm and Exception

★★ Primary reading:

- Nomi Clare Lazar (2009). *States of Emergency in Liberal Democracies* (Cambridge, UK: Cambridge University Press). Pp81–162. [online](#)

★ Secondary reading:

- Nomi Clare Lazar (2012) "A Topography of Emergency Power." In Victor V. Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge, UK: Cambridge University Press). Pp156–97. [online](#)

Week 10 (6–12 July) / Crisis Management and Exploitation

★★ Primary reading:

- Arjen Boin, Paul 't Hart, and Allan McConnell (2008) "The Politics of Crisis Exploitation," in Arjen Boin, Allan McConnell, and Paul 't Hart (eds), *Governing after Crisis: The Politics of Investigation, Accountability, and Learning* (Cambridge, UK: Cambridge University Press). Pp23–38. [online](#)
- E.L. Quarantelli, Arjen Boin, and Patrick Lagadec (2018) "Studying Future Disasters and Crises: A Heuristic Approach." In Havidán Rodríguez, William Donner, and Joseph E. Trainor (eds), *Handbook of Disaster Research* (Cham: Springer). Pp23–38. [online](#)

★ Secondary reading:

- Arjen Boin, Paul 't Hart, and Sanneke Kuipers (2018) "The Crisis Approach." In Havidán Rodríguez, William Donner, and Joseph E. Trainor (eds), *Handbook of Disaster Research* (Cham: Springer). Pp23–38. [online](#)

Week 11 (13–19 July) / Preparation and Pandemic

★★ Primary reading:

- Andrew Lakoff (2007) "Preparing for the Next Emergency," *Public Culture* 19(2): 247–71. [online](#)
- Stephen J. Collier and Andrew Lakoff (2015) "Vital Systems Security: Reflexive Biopolitics and the Government of Emergency," *Theory, Culture, and Society* 32(2): 19–51. [online](#)

★ Secondary reading:

- Peter Adey, Ben Anderson, and Stephen Graham (2015) "Governing Emergencies: Beyond Exceptionality," *Theory, Culture, and Society* 32(2): 3–17. [online](#)
- Carlo Caduff et al (2014) "Pandemic Prophecy, or How to Have Faith in Reason," *Current Anthropology* 55(3): 296–315. [online](#)
- Brownen Lichtenstein, Towanda Pettway, and Joe Weber (2018) "Sharecropper's Tuberculosis: Pathologies of Power in a Fatal Outbreak," *Medical Anthropology* 37(6): 499–513. [online](#)

••• Final paper due Monday, 28 September, 2020 •••