

### States of Emergency in Liberal Democracies

In an emergency, statesmen concentrate power and suspend citizens' rights. These emergency powers are ubiquitous in the crisis government of liberal democracies, but their nature and justification are poorly understood. Based on a pluralist conception of political ethics and political power, this book shows how we can avoid the dangers and confusions inherent in the norm/exception approach that dominates both historical and contemporary debate. The book shows how liberal values need never – indeed must never – be suspended, even in times of urgency. Only then can accountability remain a live possibility. But at the same time, emergency powers can sometimes be justified with reference to extra-liberal norms that also operate in times of normalcy. By emphasizing the continuity between times of normalcy and emergency, the book illuminates the norms of crisis government, broadening our understanding of liberal democratic government and of political ethics in the process.

Nomi Claire Lazar is currently the Canadian Bicentennial Visiting Fellow at Yale University. From 2005 to 2008, she held the position of Collegiate Assistant Professor and Harper-Schmidt Fellow at the University of Chicago. She holds a Ph.D. in political science from Yale University and degrees in philosophy from the University of Toronto and in legal and political theory from the School of Public Policy, University College, London. Prior to returning to graduate school, she worked in the Criminal Law Policy section of the Canadian Justice Department. Her writing has appeared in the journals *Politics and Society, Constellations*, and *Political Theory* and will soon appear in the *University of Toronto Law Journal*.



# States of Emergency in Liberal Democracies

NOMI CLAIRE LAZAR

Yale University





#### CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press 32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org Information on this title: www.cambridge.org/9780521449694

© Nomi Claire Lazar 2009

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2009

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Lazar, Nomi Claire, 1975-

States of emergency in liberal democracies / Nomi Claire Lazar.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-44969-4 (hardback)

1. War and emergency powers. 2. Democracy. 3. Liberalism. 4. Rule of law. I. Title.

JF256.L39 2009

323.4′9-dc22

2008048942

ISBN 978-0-521-44969-4 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLS for external or third-party Internet Web sites referred to in this publication and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate. Information regarding prices, travel timetables, and other factual information given in this work are correct at the time of first printing, but Cambridge University Press does not guarantee the accuracy of such information thereafter.



## Contents

Acknowledgments		page vii
I	The Problem of Emergency	I
2	Must Exceptionalism Prove the Rule?	19
3	Two Concepts of Liberalism	52
4	Are Rights Derogations Always Wrong?	81
5	The Rule of Law and the Roman Dictatorship	113
6	The Norms of Crisis Government	136
Bibliography		163
Index		173



# Acknowledgments

I am grateful to have had the opportunity to discuss the material in this book before a number of audiences and with a number of colleagues and teachers.

I wish to acknowledge Seyla Benhabib, Lynd Forguson, John P. McCormick, Fred Rosen, Frances Rosenbluth, and Ian Shapiro for their intellectual guidance, encouragement, and support, some with this project and some in the years leading up to it. Most of all, Steven Smith, who supervised the dissertation from which this book grew, deserves a true debt of gratitude for allowing me to rove freely and what must sometimes have appeared randomly, while always asking just the right question at just the right juncture to make me think a little deeper or push a little further. He is a teacher in the finest and truest sense. Patchen Markell and the late Iris Marion Young both provided sound advice at the end of the process. Along the way, conversations with Melvin Rogers, H. Abbie Erler, Jennifer Tobin, Mayling Birney, and Timothy Pachirat were always fun and inspiring.

When presenting ideas from this work at meetings of the American Political Science Association and the Canadian Political Science Association and at the University of Chicago, the National University of Singapore, the New School, the University of Southern Mississippi, and Yale, I benefited greatly from the insight and suggestions of a number of people. In particular, I am indebted to Bruce Ackerman, David Dyzenhaus, Oren Gross, Sanford Levinson, Victor V. Ramraj, Kent Roach,



viii

Acknowledgments

Bill Scheuerman, Mark Tushnet, and several anonymous reviewers for lively exchanges and helpful feedback.

At various stages, I have been grateful for the financial support of the Social Sciences and Humanities Research Council of Canada, Yale University, and the H. B. Earhart Foundation.

A previous version of Chapter 2 appeared in *Politics and Society* in June 2005 as "Must Exceptionalism Prove the Rule?" and I am grateful to Sage Publications for allowing me to include it. Similar thanks are due to Blackwell for the use of Chapter 5, "The Rule of Law and the Roman Dictatorship," a previous version of which appeared in *Constellations* in December 2006.

My parents, Frum and Alex Himelfarb and Avrim Lazar and his wife Valerie Clements, the ever energizing Mildred Lazar, and my excellent and constant friend Naomi K. Lewis have all provided warmth, support, and advice. In their various ways, they have influenced this book, sometimes profoundly. This book is dedicated to my dear husband, Emanuel, and to the memory of our sons, Isaac and Samuel.



States of Emergency in Liberal Democracies