

# RECONCEPTUALIZING STATE OF EXCEPTION

European Lessons from the Pandemic

**Edited by** Austin Sarat

STUDIES IN  
LAW, POLITICS, AND SOCIETY

**VOLUME 90**

RECONCEPTUALIZING STATE  
OF EXCEPTION

# STUDIES IN LAW, POLITICS, AND SOCIETY

## Recent volumes:

Volumes 1–2: Edited by Rita J. Simon

Volume 3: Edited by Steven Spitzer

Volumes 4–9: Edited by Steven Spitzer and Andrew S. Scull

Volumes 10–16: Edited by Susan S. Sibey and Austin Sarat

Volumes 17–33: Edited by Austin Sarat and Patricia Ewick

Volumes 34–77: Edited by Austin Sarat

Volume 78: Edited by Livia Holden and Austin Sarat

Volumes 79–89: Edited by Austin Sarat

# EDITORIAL BOARD

<b>Gad Barzilai</b>	<i>Tel Aviv University, Israel</i>
<b>Paul Berman</b>	<i>George Washington University, USA</i>
<b>Roger Cotterrell</b>	<i>University of London, UK</i>
<b>Jennifer Culbert</b>	<i>Johns Hopkins University, USA</i>
<b>Eve Darian-Smith</b>	<i>University of California, Santa Barbara, USA</i>
<b>David Delaney</b>	<i>Amherst College, USA</i>
<b>Florence Dore</b>	<i>University of North Carolina, USA</i>
<b>David Engel</b>	<i>State University of New York at Buffalo, USA</i>
<b>Anthony Farley</b>	<i>Albany Law School, USA</i>
<b>David Garland</b>	<i>New York University, USA</i>
<b>Jonathan Goldberg-Hiller</b>	<i>University of Hawaii, USA</i>
<b>Laura Gomez</b>	<i>University of California, Los Angeles, USA</i>
<b>Piyel Haldar</b>	<i>University of London, UK</i>
<b>Thomas Hilbink</b>	<i>Open Society Institute, USA</i>
<b>Desmond Manderson</b>	<i>Australian National University, Australia</i>
<b>Jennifer Mnookin</b>	<i>University of Wisconsin, USA</i>
<b>Laura Beth Nielsen</b>	<i>American Bar Foundation, USA</i>
<b>Paul Passavant</b>	<i>Hobart and William Smith College, USA</i>
<b>Susan Schmeiser</b>	<i>University of Connecticut, USA</i>
<b>Jonathan Simon</b>	<i>University of California, Berkeley, USA</i>
<b>Marianna Valverde</b>	<i>University of Toronto, Canada</i>
<b>Alison Young</b>	<i>University of Melbourne, Australia</i>

*This page intentionally left blank*

STUDIES IN LAW, POLITICS, AND  
SOCIETY VOLUME 90

**RECONCEPTUALIZING  
STATE OF EXCEPTION:  
EUROPEAN LESSONS FROM  
THE PANDEMIC**

Special Issue

EDITED BY

**AUSTIN SARAT**

*Amherst College, USA*

GUEST EDITED BY

**HANNA-MARI KIVISTÖ**

*University of Jyväskylä, Finland*

**GONÇALO MARCELO**

*University of Coimbra, Portugal*

AND

**JOSÉ MARÍA ROSALES**

*University of Málaga, Spain*



United Kingdom – North America – Japan  
India – Malaysia – China

Emerald Publishing Limited  
Emerald Publishing, Floor 5, Northspring, 21-23 Wellington Street, Leeds LS1 4DL.

First edition 2024

Editorial matter and selection © 2024 Austin Sarat.  
Individual chapters © 2024 The authors.  
Published under exclusive licence by Emerald Publishing Limited.

**Reprints and permissions service**

Contact: [www.copyright.com](http://www.copyright.com)

No part of this book may be reproduced, stored in a retrieval system, transmitted in any form or by any means electronic, mechanical, photocopying, recording or otherwise without either the prior written permission of the publisher or a licence permitting restricted copying issued in the UK by The Copyright Licencing Agency and in the USA by The Copyright Clearance Center. Any opinions expressed in the chapters are those of the authors. Whilst Emerald makes every effort to ensure the quality and accuracy of its content, Emerald makes no representation implied or otherwise, as to the chapters' suitability and application and disclaims any warranties, express or implied, to their use.

**British Library Cataloguing in Publication Data**

A catalogue record for this book is available from the British Library

ISBN: 978-1-83608-199-9 (Print)  
ISBN: 978-1-83608-198-2 (Online)  
ISBN: 978-1-83608-200-2 (Epub)

ISSN: 1059-4337 (Series)



INVESTOR IN PEOPLE

# CONTENTS

<i>List of Contributors</i>	<i>ix</i>
<i>Acknowledgements</i>	<i>xi</i>
<b>Introduction: Reconceptualizing State of Exception: European Lessons from the Pandemic</b> <i>Hanna-Mari Kivistö, Gonçalo Marcelo and José María Rosales</i>	<i>1</i>
<b>Chapter 1 A Pandemic That Never Took Place: Discursivity, State of Exception, and Hyperreality</b> <i>Iraklis Ioannidis</i>	<i>7</i>
<b>Chapter 2 Sequestered Cosmopolitanism: Exception or New Paradigm?</b> <i>Marin Beroš</i>	<i>35</i>
<b>Chapter 3 Checks and Balances in Times of Pandemics: The Portuguese Example</b> <i>João Cruz Ribeiro</i>	<i>47</i>
<b>Chapter 4 Finland and the COVID-19 Pandemic – Risks Inherent in a Restrained State of Exception</b> <i>Tatu Hyttinen and Saira Heinikoski</i>	<i>63</i>
<b>Chapter 5 Constitutionalism and Emergency Rule: Comparing Germany’s and Spain’s Responses to the COVID-19 Pandemic</b> <i>José María Rosales</i>	<i>83</i>



*This page intentionally left blank*

# LIST OF CONTRIBUTORS

<i>Marin Beroš</i>	Institute of Social Sciences ‘Ivo Pilar’ – Pula, Republic of Croatia
<i>Saila Heinikoski</i>	Finnish Institute of International Affairs, Finland
<i>Tatu Hyttinen</i>	University of Turku, Finland
<i>Iraklis Ioannidis</i>	Existential Network Scotland, UK
<i>Hanna-Mari Kivistö</i>	University of Jyväskylä, Finland
<i>Gonçalo Marcelo</i>	University of Coimbra, Portugal
<i>João Cruz Ribeiro</i>	University of Minho, Portugal
<i>José María Rosales</i>	University of Málaga, Spain

*This page intentionally left blank*

# ACKNOWLEDGEMENTS

In addition to acknowledging the support of COST Action 16211 RECAST to organise the Working Group's workshops, we would like to thank Professor Austin Sarat for his support of this project and the reviewers for their insightful reports.

Gonçalo Marcelo's research is funded by the Foundation for Science and Technology through a research contract (<https://doi.org/10.54499/DL57/2016/CP1370/CT0021>) and the strategic project of the CECH (UIDB/00196/2020).