

# What It Means to Say “Crisis” in Politics and Law

Written by Laura Henderson

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LAURA HENDERSON, MAR 5 2014

Crisis seems to be everywhere. Economic crises, environmental crises, gun-violence crises, national security crises abound. This article focuses on the meaning of calling something a ‘crisis’ and argues that crisis discourse is a key factor in hegemonic change. In what follows, I will substantiate my claim that crisis discourse can lead to hegemonic change, by explaining the way in which crisis discourse creates a rupture in an existing discourse, a rupture that creates room for alternative discourses to enter. Further, I will discuss what I mean by hegemonic change and I will argue that crisis discourse not only affects politicians and the executive branch of government, but also has to do with the judiciary and how legal discourse is sustained and changed. I conclude that more research is necessary to understand how the judiciary is involved in crisis discourse and hegemonic change, and to grasp the implications this has for the judicial role in democracy and the rule of law.

### Dislocations and Crisis Discourse

Calling something a crisis means to frame an issue as an urgent, structural threat that necessitates an urgent course of action to avert the danger. Crucially, since the threat is structural, it means that the current status quo is not a sufficient way to deal with the threat. An alternative course of action is necessary. For example, after 9/11, Attorney General Ashcroft invoked this discourse when he claimed that the 9/11 attacks “brought us face to face with a new enemy, and demanded that we think anew and act anew in order to protect our citizens and our values.”<sup>[1]</sup>

Such a discourse creates what I will refer to as a dislocation: a break or gap in a particular narrative. Discursively, the crisis delegitimizes the narrative previously used to describe reality. The discursive vacuum needs to be filled with a discourse that is presented as something new and as a solution to the crisis.<sup>[2]</sup>

Now, it is important to be clear that the very presence of a crisis discourse does not automatically ensure a broadly accepted dislocation that is successfully filled with a new discourse. Rather, the use of crisis discourse should be seen as having two effects, one certain and one potential. First, the very evocation of crisis conceives a rupture. But, the second effect, namely discursive change, only occurs if the existence of the rupture is subsequently accepted by the audience and is filled in with a new discourse.<sup>[3]</sup> Thus, whereas the first effect can be qualified as illocutionary and only requiring the utterance of ‘crisis’ to cause it,<sup>[3]</sup> the second effect is best qualified as perlocutionary and requires action on behalf of the audience in order for it to take place.<sup>[4]</sup>

### Dislocation and Hegemonic Change

I argue that from a neo-Gramscian perspective, discursive change is the equivalent of hegemonic change, and hegemonic change means a change in intellectual and cultural norms. Since these intellectual and cultural norms are what ensure consent for the way political power is held in a political system, discursive change means a shift in political power structures.

Let me unpack this a bit further. In short, the idea of hegemony has to do with how political power is held within society. From this viewpoint, legitimate consent is “the predominant means of political control” in modern states.<sup>[5]</sup> Thus, instead of exercising overt violence to dominate subordinate groups, leading groups are allowed to lead because subordinate groups have been convinced to lend their support to the leading group. Legitimate consent is

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obtained through instilling certain narratives, norms and values into society that support the leading group's power. Hegemony can thus also be seen as similar to Steven Lukes third dimension of power: it is power that shapes the identities and interests of individuals such that they want what the exerciser of power wants them to want.<sup>[6]</sup>

Discourses are the way in which the narratives, norms and values are instilled into society. When discursive change takes place, it implies a change in one or more of these underlying narratives, norms and values. From this it follows, that a change in these underlying foundations means a change in the leading group's power and/or the consent given by the subordinate groups.

Struggle over the prevailing discourses in a society is part and parcel of politics in this neo-Gramscian perspective. Hegemonic struggle is what non-hegemonic groups must engage in in order to wrestle power away from the hegemonic group.

## Crisis Discourse in the Courtroom

There is evidence that crisis discourse, and the corresponding dislocations and hegemonic struggles, take place not only in political discourse but also in legal discourse. Legal discourse – just like political discourse – is a site in which narratives, norms and values are instilled that support a certain constellation of political power.

An example of this can be seen in the *Hamdi v. Rumsfeld* case heard in US courts between 2002 and 2008. A discourse analysis of the case documents from all three levels this case was heard at shows evidence of crisis discourse present in judicial deliberations as well as evidence of this discourse creating a dislocation that was filled with a new discourse on counter-terrorism.<sup>[7]</sup> In the end, the US Supreme Court accepted the basic idea that the “full protections” that apply in other settings “may be unworkable and inappropriate” in the present time of crisis.<sup>[8]</sup> As such, the crisis discourse succeeded in creating a dislocation and this dislocation ended up being filled with a military-preventive counter-terrorism approach.

Further research is necessary to more fully understand the role of crisis discourse in legal discourse. However, the fact that there is evidence that crisis discourse *can* lead to change in legal discourse indicates that the judiciary might have some sort of role in hegemonic struggle in general. What this role is exactly, and what the implications thereof are for conceptions of democracy and the rule of law, must be further studied.

<sup>[1]</sup> Attorney General Ashcroft, ‘Statement of John Ashcroft Attorney General of the United States before the Committee on the Judiciary United States Senate Concerning Oversight of the Department of Justice’ (25 July 2002) 1.

<sup>[2]</sup> My understanding of dislocations is inspired by Laclau and Mouffe’s use of the term (*See for example* Ernesto Laclau, *New Reflections on the Revolution of Our Time*, Verso, 1990, pp. 39-59). Yet, while Laclau and Mouffe conceptualize a dislocation as caused by an event that is inherently irreconcilable with a present discourse, I argue that dislocation can best be understood as discursively called into being. In my view, a dislocation is *constructed* by a discursive framing of an event as something inherently irreconcilable with that narrative.

<sup>[3]</sup> ‘Crisis’ can be uttered in many ways and does not even necessarily require the use of the word ‘crisis’. What it does require, as mentioned above, is the postulation of a structural threat that can only be dealt with by a new, non-status quo approach.

<sup>[4]</sup> J.L. Austin, “How to do Things with Words: The William James Lectures delivered at Harvard University in 1955,” Oxford, 1962.

<sup>[5]</sup> W. Adamson, *Hegemony and Revolution: A Study of Antonio Gramsci’s Political and Cultural Theory*, University of California Press, 1980, p. 168.

<sup>[6]</sup> Steven Lukes, *Power: A Radical View*, Macmillan, 1974.

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<sup>[7]</sup> See Laura Henderson, “Crisis Discourse: A Catalyst for Legal Change?” *Queen Mary Law Journal* (2014, forthcoming) for a full account of this analysis.

<sup>[8]</sup> *Hamdi v. Rumsfeld*, United States Supreme Court Judgment, O’Connor (28 June 2004) 28.

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## About the author:

**Laura M. Henderson** is a PhD candidate at the VU University Amsterdam. She can be contacted at [L.M.Henderson@vu.nl](mailto:L.M.Henderson@vu.nl).