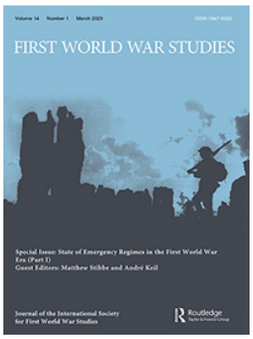

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Introduction: State of Emergency Regimes in the First World War Era

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ABSTRACT

This article introduces the theme of states of emergency during the First World War era, and provides details on the 13 different case studies presented in the special issue. It makes the case for seeing states of emergency as being shaped by historical experience as opposed to emerging from the abstract reasoning of legal principle and moral philosophy. Equally, though, it recognises that moments of exception do have legal and philosophical, as well as historical-political, dimensions. The article follows the Italian theorist Giorgio Agamben in regarding the year 1914 as a key turning point, not least in the lived historical experience of states of emergency. But it is highly critical of models, Agamben's included, that emphasise the purely coercive potentials of emergency powers. Instead, it calls for a more pragmatic and empirical approach, focusing on what neutral and belligerent governments did, on how they arranged, regulated and communicated their actions, and on the different political and legal expressions of exceptionality that subsequently emerged, both during and immediately after the 1914–18 conflict.

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The Debate: Recasting States of Emergency in the First World War Era and Beyond

When the First World War broke out in the summer of 1914, most continental European states had legal provisions in place for the kind of state of emergency that involvement in the conflict, whether as a belligerent or an armed neutral, would entail. Typically, these provisions were rooted in nineteenth-century state of siege laws modelled on the French examples of the 1790s and, later, of 1849. These pieces of emergency legislation were a distinctively new feature of the 'long' nineteenth century and, in many cases, a reaction to the growing importance of written constitutions. In essence, emergency powers acts were (and are) legal instruments to suspend crucial elements of constitutions in times of crisis, often by giving the executive exceptional prerogatives. The notion that existential, usually military, threats to the existence of a polity could warrant such extraordinary measures was, of course, nothing new. Yet the instrument of martial law that had been routinely used during such crises was now increasingly seen as too blunt a tool on its

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own, effectively a leftover from the days of absolutism. The new concept of emergency powers represented a move to enable the authorities to use extraordinary instruments and methods during a crisis in a legally regulated way, which would otherwise have been seen as incompatible with liberal ideals of the rule of law, or, in the case of the Second Republic in France in 1848–52, with the 'formal guarantees of legality enshrined in the [new] constitution . . . '.[1]

In most European states, emergency powers to temporarily suspend constitutional arrangements during crises emerged almost dialectically as a response to advancing constitutionalism. For instance, the Prussian State of Siege Law of 1851 only became necessary because after the 1848 Revolution, the King was persuaded in 1850 by his ministers and parliament to accept a constitution that enshrined some basic rights. The State of Siege Law, in turn, allowed for the suspension of these new rights during an emergency or a war. This represented a significant move away from the previously only informally constrained use of executive powers. In the political discourse not just of liberals but also of conservatives, constitutionalism and with it, limitations on the powers of the executive were considered the norm of civilised government (while explicitly excluding the colonial realm). The drafting and enactment of emergency legislation in its various forms was evidence for what German legal theorists later called *Verrechtlichung*, namely the definition and codification of what the state and its agents could legitimately do. The attempt to define the circumstances in which the 'normal' operation of the law could be suspended was in itself an expression of how dominant constitutional legalism had become.

However, all too often, scholars confuse this mere fact of the existence of emergency legislation in liberal and even some autocratic states by 1914 with the *political* term state of emergency, which can have two other meanings. First, it can refer to the experience of those who lose all legal protections under a state of emergency, as in the *homo sacer* or 'bare life' – life that is neither worth saving nor worth ending – referred to in Italian philosopher Giorgio Agamben's influential book of the same name.[2] It can also denote the legal or extra-legal use of police and military violence, and in the twentieth century, of concentration camps, as a tool of state power.[3] But secondly, the concept of the state of emergency refers to those policies necessary to secure legitimacy for the application of emergency powers, in other words, the recasting of the nature of political authority itself. This notion of the politics of emergency as a process allows us – in contrast to Agamben – to understand how public opinion, persuasion and propaganda were key to constructing emergency mindsets after 1914. True, such mindsets could lead those on the right – and not just the right – to argue for an enhanced role for the military and security agencies in domestic politics. But they also led some liberals and radical republicans to become detached from classic notions of legal liberalism in the name of greater democratisation and more expansive visions of sovereignty.

Even before 1914, there was no one size fits all approach to emergency as regime or process. Instead, throughout the second half of the nineteenth century, emergency powers were used to respond to all kinds of crises, both domestic and foreign. Formal declarations of states of siege or states of emergency became, for instance, an ever-more important instrument to suppress large-scale strikes and other forms of working-class protest.[4] During the First World War itself, the fear that food shortages and worsening living standards would lead to the growth of anti-war and revolutionary

movements on the home fronts of both belligerent and neutral countries is central to understanding the wartime state of exception. In particular, it helps to explain why emergency powers were first and foremost used to ensure the functioning of wartime economies, including interventions in border control and immigration, commercial and business decisions, industrial relations, and the very right to take collective action in support of demands for higher wages or better working conditions. While this political content was a shared feature of all varieties of First World War emergency regime, the organisation and form of delivery (or the 'how') differed significantly from case to case.

In some countries, exceptional power was concentrated at the centre, where the command was ultimately in the hands of the military or the civilian authorities or a mixture of both. In the United States, such centralisation was partly offset by the toleration and, in some instances, the deliberate encouragement of citizens' voluntary activism to support the war. In Sweden, a coalition of Liberal and moderate Social Democrat members of parliament moved to bloc similar moves to mobilise volunteer militias to crush left-wing demonstrations against wartime shortages in 1917. In this case, the state's monopoly of violence was upheld by, but at the same time made more accountable to, the centralising institution of the national parliament. In Italy, by contrast, the military Supreme Command under Field Marshal Luigi Cadorna was so convinced that the civilian government in Rome was too weak-kneed to impose real 'discipline' on the nation that it set up its own rival administrative and judicial centre in Udine with almost total control over all aspects of life, civilian and military. As shown by Marco Mondini in his contribution to this special issue, in terms of regulatory practice, and increasingly in legal terms too, the north-eastern provinces, including areas well behind the front lines, became a kind of *corpus separatum*, while government ministers, civilian jurists, and parliamentarians were only allowed access with the permission of the army. In other countries, the practical effect of the wartime state of emergency was to disperse power, especially that of the military, to multiple regions and *de facto* Viceroyalties or, in the case of the Austro-Hungarian Empire, to the dual centres of power in Vienna and Budapest. Across Europe, a handful of seemingly random localities already had had some direct, if usually time-limited, experience of living under an emergency powers regime in the decades leading up to 1914. This included, for instance, the Austrian port of Trieste in 1902, the Portuguese capital Lisbon in 1912, but also vast swathes of the Russian Empire in the aftermath of the assassination of Tsar Alexander II in 1881. For most Europeans, though, emergency rule was something more abstract, beyond living memory and clearly separated from 'normal' government and 'normal' times.

The terminology for the state of exception could also be confusing because some countries used the term 'state of war' to infer a kind of 'lesser' state of emergency, in which internal subversion, sabotage, or strikes might prevent adequate preparation for an external invasion, thus necessitating the introduction of martial law. The 'state of siege' was then reserved for situations when the enemy was literally at the gates, i.e. when the whole country, or parts of it, were under direct attack from an outside military force. But this was not always the case, with the two terms often being used interchangeably. When Europe went to war in 1914, it appeared that in very few countries was the ordinary population adequately informed in advance of what a formal state of siege or state of war

might look like. Thus, the German left-liberal journalist and editor of the *Berliner Tageblatt*, Theodor Wolff, looking back in 1934 at the first months of the war, wrote:

> What exactly does this new look of things, about which we were told nothing in our history lessons at school, mean? … The people of Berlin read the proclamation of a state of war [state of siege], which was signed by the 'Military Governor of Berlin and the Mark Brandenburg', Colonel-General [Gustav] von Kessel, and appeared in the evening papers … There were bans on the export of crops, food, animals, cars and medicines, limits on travel by train and use of post and telegraph services, carrying a passport became mandatory … , emergency arrangements were made for the holding of bar examinations and weddings, and of course, the press was placed under the direction of the military censor.[5]

Opaqueness in the implementation of state of siege regulations was, of course, in no way a peculiarly Prussian or German trait. The problems with the exercise of emergency powers were, at least in part, the result of a lack of practical political experience in managing or limiting a permanent state of exception, combined with illusions about the likelihood of a short conflict and a desire for 'business as usual'.[6] This applied particularly, but not only, in the sphere of economics.[7] Especially during the first months of the war, the chains of command and the respective roles of military and civilian administration were also not always clear. In some cases, this led to the emergence of competing power centres and polycratic structures on the home fronts. This is not surprising if we follow L. L. Farrar in noting that the conflict 'began with the assumption of a short war through rapid offensives but actually produced a long war characterized by tenacious defense'.[8]

After 1914, some states proved more capable of adapting emergency legislation to suit the unprecedented challenges of the First World War while maintaining the broad support of their populations. Paradoxically, it was the more authoritarian powers, as they came under increasing pressure from below in the second half of the war, that wielded less power, not more, as social and/or national tensions worsened. Particularly those lying along the 'shatterzone of empires' in Eastern Europe and Asia Minor, fell apart completely under the pressures of fighting for four years or more.[9] Others still, like Italy, Portugal, and several of the successor states to the Habsburg Empire, moved within a few years of the end of the war from liberal democracies to authoritarian dictatorships. In the United States, 'proposal[s] that would vest the authority to reorganize federal agencies in the president' in the event of war led to counter-proposals that such powers should be managed by private citizens and, after 1917, to 'protests that Wilson was trying to destroy the republican form of government'.[10] In colonies belonging to Britain, France and other allied powers, the routine practice of violent repression of indigenous populations, including nationalist movements, much of it rooted in colonial law, was repackaged in form, but not in content, as a series of measures needed to defend the motherland in the face of the grave security threat posed by the 'barbaric' Germans. Nationalist politicians were not taken in, as the Easter Uprising in Dublin in 1916 and the revolts against British rule in Egypt, India, and Ireland in 1919 clearly show. Likewise, in the post-Habsburg successor states, governments of various political colours used older imperial ordinances and emergency powers to repress new regionally-based irredentist and revolutionary movements. An example is, for instance, the treatment of nationalist and leftist supporters of the Hungarian Bolshevik leader Béla Kun in the Slovak half of Czechoslovakia and Romania in 1919.[11]

For all the local, regional, and global variations in legal instruments and political presentation, the essential outcome of state of emergency regimes during the 1914–18 period and its immediate aftermath was nonetheless apparent, at least to critical observers in the 1920s and 1930s: a near-universal shift in power from the legislative and judicial to the executive and administrative branches of government, with consequences stretching well beyond the formal end of the fighting in November 1918.[12] This was the case, for instance, in the Ottoman Empire and its successor after 1922, the modern Turkish Republic, where states of siege were already the norm before 1914 and continued to be so both after 1918 and again after the conclusion of the War of Independence waged by the national resistance movement in large parts of Anatolia in the early 1920s. But it also applied in democracies as much as in 'modern' dictatorships such as those of Mussolini in Italy or Atatürk in Turkey. Indeed, after 1918, the very term 'dictatorship' lost its traditional, more narrow meaning, namely 'the concentration of executive power in wartime' (*la concentration du pouvoir exécutif en temps de guerre*), to become, in the 1920s, a way of imagining supposedly democratic as well as authoritarian responses to emergencies arising from failings of the political, financial or economic system, or all three.[13] In Germany, for instance, which remained a democracy until 1933, the preferred response to the post-war sense of emergency might manifest as a 'dictatorship of the proletariat' or a 'presidential dictatorship'. But equally, as Matthew Stibbe shows in his contribution to this special issue, it could be presented as a pragmatic and temporary 'dictatorship of the centre'. In the United States, as Lon Strauss argues in his piece, there was, in fact, no formal state of siege during the war. President Wilson took care not to go beyond his constitutionally limited powers. And yet the foundations were still laid in 1917 and 1918 for Franklin D. Roosevelt's use of executive measures to shut the banks in 1933 (a peacetime measure) and to enact various other emergency executive decrees following the outbreak of the Second World War in Europe in 1939 and the United States' own entry into that conflict in 1941. Moving forward to the third decade of the twenty-first century, French President Emmanuel Macron told his cabinet ministers on 16 March 2023 that he had decided to push through a controversial increase in the pension age from 62 to 64 using special powers under article 49.3 of the constitution rather than allow a vote in parliament because 'the financial risks were too great' should deputies rebuff the measure.[14]

The seeming permanence of emergency, both after 31 July 1914 and, in more recent times, after 9/11 in 2001, the global financial crash of 2008, the attacks in Paris on 13 November 2015, and the COVID-19 pandemic of 2020–21[15] has also allowed multiple layers of exception to exist one on top of the other. 'At least since World War One', writes Agamben, such finely stratified exceptions could even exist 'independent[ly] of [their] constitutional or legislative formalization'.[16] This further implies that they could emerge irrespective of any customary restraints or conventional checks and balances. Yael Berda, for instance, has identified this phenomenon in respect to the legal status of Israel's post-1991 permit regime in the occupied West Bank, which – for want of a better term – she describes as 'an exception to an exception'.[17] More recently, Jörg Lau of the German liberal weekly *Die Zeit* has argued that plans of the far-right coalition government to reform the legal system in Israel in 2023 in ways that threaten its independence not only reflect the personal interest of Prime Minister Benjamin Netanyahu in avoiding corruption charges but

also the intention of government ministers representing parties of the religious Zionist movement to 'normalize' the dispossession of Palestinian land and property in the occupied territories – another example of generating sovereignty claims, this time for settlers in the West Bank, out of exceptions to the exception. Yet significantly, continues Lau, the protest movement against these reform proposals in Israel itself, including among elements within the nation's Defence Force and security apparatus, reflects a growing recognition that 'the permanent occupation [of the West Bank] is eating away at the moral [and democratic] foundations of the Israeli state' as it passes through and beyond the seventy-fifth anniversary of its foundation.[18]

Defending democracy may be the key concern of demonstrators against the emergency and special powers laws, and not just in Israel in 2023. Other important examples since 2020 would include Myanmar and Hong Kong. Yet uncertainties over how to decide which came first in any given post-1918 situation, the 'exception' or the 'exception to the exception', further explain the interest shown by jurists, philosophers, political scientists and critical theorists in the aftermath of the First World War, but also today, in conceptualising rule by 'exception' as a 'paradigm of [twentieth- and twenty-first century] government' beyond the categories 'democracy' and 'dictatorship'.[19] In concrete terms, states of exception have been cast in relation to what they can tell us about 'sovereignty' (Carl Schmitt)[20]; about the psychology and psychopathology of contemporary (western) life (Gaston Roffenstein; Erwin Stransky)[21]; about the machinations of the 'prerogative state' as opposed to the 'normative state' (Ernst Fraenkel)[22]; and about 'constitutional dictatorship', formalised in law, as a liberal 'pretence' which ignores the decisionist essence of the state of exception (Schmitt); or alternatively as a 'dangerous thing' for democratic constitutions which – as in the example of the ancient Roman Republic – could be their undoing (Clinton Rossiter).[23] The historical analysis of the nature of the state of exception is also vital to our understanding of the twentieth century as the 'century of camps'[24]; and about camps themselves as the spatial dimension of the exception in which humans are chosen for life or death according to their 'immediate . . . biopolitical significance'.[25] It forces us to think about 'zone[s] of indifference, where inside and outside do not exclude each other', creating the conditions in public law for 'bare life' among those expelled from legal and political representation to the point where they are denied access to their own histories, have (inferior) identities imposed upon them, and are reduced to mere 'objects' to be 'rescued' by military and humanitarian interventions (Agamben; Didier Fassin and Mariella Pandolfi).[26] And more generally, it raises serious questions about the hollowing out of the rule of law and the death of democracies (Jean-Claude Paye).[27]

Admittedly, from the vantage point of the early 2020s, Agamben's suggestion that we should dive deep into the 'poetic', in other words, look for moments of extreme nationalism, irrationality and exclusionary violence in the terminology and knowledge claims made by those seeking to gain control over human consciousness and bodies through the creation of a '*fictitious or political state of siege*', is less 'of the moment' in the field of political science than it was 15 or 20 years ago.[28] In the wake of the COVID-19 pandemic, some effort has gone into conceptualising a positive (bio)politics for emergency situations that is inclusive and transformative, sensitive to lived experience, community-oriented, and above all rational and evidence-based.[29] Yet, in the discipline

of history, Agamben's dictum that the years 1914–18 'coincided with a permanent state of exception in the majority of the warring countries' and thus served as a 'laboratory for testing and honing the functional mechanisms and apparatuses of the state of exception' and the 'right of resistance' has itself yet to be measured against the cold, non-poetic test of rigorous empirical research.[30]

In philosophical terms, the problem of emergency, as the German-born, Canadian inter-disciplinary scholar Nomi Claire Lazar says, 'exists at the intersection of law, morality, and politics'.[31] Yet most critical theorists of states of exception since 1918, including the majority of those mentioned above, put politics first, arguing that the key characteristic of emergency powers regimes – not least those practiced in liberal democracies, for instance during the late Weimar period in Germany (1930–33),[32] the 'Troubles' in Northern Ireland (1969–98)[33] or more recently, the global 'War on Terror' after 9/11[34]—is their ability to divorce themselves from customary moral codes, side-line democratic procedures, violate the integrity of the human body and otherwise derogate from the rule of law. 'Sovereign is he who decides on the exception', as Schmitt famously wrote in 1922, with the emphasis firmly on the *he* rather than the *she*, and *decides* rather than *formalizes* or *legislates for*.[35] Indeed, even opponents of Schmitt's authoritarian views on sovereignty accept his critique of 'legal liberalism' and the many 'hypocrisies' that make it vulnerable to authoritarian drift.[36] This can lead to a very narrow approach to exceptionalism. Precisely because it impacts on constitutions, written or otherwise, the sovereignty of the body, the right to justice in an abstract sense, governance, especially practices of military rule and colonial violence, permit regimes, and, in general, matters of sexuality, reproduction, discipline and surveillance, psychological and corporal punishment, non-judicial detention, statelessness, deployment of lethal force, and state-sanctioned killing, a broader understanding of the state of exception is necessary.[37]

Other omissions in the canon of literature on states of emergency can be added to the list. Thus surprisingly little theoretical or empirical work has been produced on financial and budgetary measures, state industrial policy, and property rights during states of emergency since 1914. Likewise, historical studies on efforts to articulate an ethics of immunology research, vaccine procurement and other potentially life-saving bio-political measures during health emergencies remain scarce.[38] Less still has been written on the problem of how to write about these phenomena from a historical perspective while taking into account Lazar's point about the intersections between politics, law and morality.[39] And we have almost nothing on the behind-the-scenes bureaucrats, those (non-poetic and impersonal) 'shadows who move … , anonymous along the private passages and through the council chambers of every nation in every age', as British novelist Robert Harris calls them:

> … a word here, a warning there, a secret imparted, a person betrayed—[the] most useful shadow[s]; [the] shadow[s] who cause things to happen.[40]

As well as overlooking the shadows, the dominance of critical theory and the preference for the poetic and the personal over identifying concrete foundational norms in debates on states of exception since 1918 has meant that there is little on the role of 'time-bound human judgements and motivations', or on 'what leaders and publics try on or allow against the backdrop of existing motivations and traditions and their relative strength', as

the US scholars Gary Gerstle and Joel Isaac put it.[41] Instead, exceptionalism is emphasised as a constituent feature of late modernity, liberal democracy and colonial violence in the twentieth and early twenty-first centuries, seemingly unbound by time except when it comes to sanctifying, in a positive and negative sense, particular legal or literary texts and terminologies.[42] The fundamental question of whether, during a state of emergency, the recourse to exceptionalism can ever be justified on the grounds of preventing something even worse, or perhaps even, exceptionally, as a pragmatic means of fostering something good in the world, somehow gets lost in this more fixed preoccupation with western control over colonised lands, bodies and peoples.

Like Gerstle and Isaac's volume on states of exception in United States history, this double special issue, consisting of 13 separate articles, argues that to truly understand states of emergency at local, national, and global levels, we need history just as much as critical theory.[43] The argument that the First World War was a turning point in the extension of state power and societal mobilisation and in the search for new political, legal and moral orders has already been made by others.[44] However, we intend to uncover the myriad ways in which this conflict reset the dial on *impersonal* understandings of what exceptionalism was, in the domestic arena and abroad, at the centre and the periphery, in Europe and beyond, and in neutral as well as belligerent countries.

Our stress on the impersonal is deliberately and consciously anti-Schmittian. Our case studies range from Britain, France and Germany to Tsarist Russia, Habsburg Austria-Hungary and the Ottoman Empire, through Italy, the United States, the Netherlands, Sweden, and on to British India and Imperial Japan. The inclusion of the colonial sphere is important in its own right because it draws attention to the fact that many non-white /non-settler colonies had long been ruled by arbitrary and often racist exceptions to the metropolitan 'norm'. However, we have made one omission which might appear strange to some readers, namely the issue of emergency rule in occupied territories in Europe, Africa and Asia as opposed to on the home and colonial fronts. There are some pragmatic reasons for this, including considerations of word length, and the fact that this journal has already published one very successful special issue on occupations in 2013.[45] We also willingly concede that occupied territories were subject to emergency regulations, not least the imposition of martial law and the use of forced labour to carry out *Notstandsarbeiten* or 'essential' maintenance work on public infrastructure such as roads, reservoirs and forests.[46] Even more importantly, occupation regimes in 1914–18 contributed to the development of the new emergency mindsets discussed in this volume, including the notion that security is a matter of political and economic choices rather than straightforward policing and military control.[47]

Yet for all the similarities between home fronts and invaded territories, the powers exerted by occupying armies, although often highly draconian, were not deemed to be exceptional, even if they were held to be a matter of necessity. In fact, after the 1899 and 1907 Hague Conventions on Land Warfare (*Haager Landkriegsordnungen*) they were placed within a normative framework that was supposed to make them non-exceptional. Violations of the conventions occurred, of course, but this is not to say that the conventions themselves allowed the creation of exceptional powers beyond what would normally be expected of occupation regimes. Even the Israeli case today demonstrates this, for the permit system is about access to Israel itself for Palestinians, not about policing and security inside the occupied Palestinian territories.[48] Moreover, returning to the

1914–18 period specifically, states of emergency on the home fronts required new forms of political action based on new forms (or degrees) of executive authority. In other words, the ability to use violence domestically was always determined (and limited) by politics itself, which in turn depended on matters such as public opinion and legitimacy. This was much less the case in invaded territories, where top-down power, whether of the civil or, more usually, the military kind, was able to operate with far fewer political constraints. In short, while First World War occupations could and did lead to the creation of *spaces of exception* in which extremes of violence could be perpetrated,[49] they lacked some of the crucial ingredients that went into the creation of *emergency regimes* on the home fronts: the changed role of the state in the lives of mobilised citizens and separately in the lives of aliens or non-citizens; the time-limited suspension of some previously guaranteed and unconditionally observed legal rights and freedoms; and the related quest permanently to alter the terms of the debate on political authority away from the model of nineteenth-century constitutional government and separation of powers towards an acceptance of executive prerogatives in particular circumstances.

Last but not least, our overarching emphasis in this special issue on the new and unprecedented in the period 1914 to 1923 is deliberate and underpinned by the empirical research exhibited in each article. However, this does not mean that we have adopted exactly the same timeframe for each case study. In some instances, particularly where the end of the war brought about an abrupt shift in politics or state structures, it has made more sense to end in 1918 or, in relation to Tsarist Russia, even in 1917. In other cases, political continuities between wartime and post-war, outbreaks of paramilitary violence, civil war or community unrest in 1919 and beyond, and the mission creep that occurred when emergency powers, instead of being abolished, were reframed to suit peacetime purposes, has rendered it more useful to continue the analysis into the early 1920s and, now and then, even into the middle part of that decade. Likewise, our focus on the extent of change after 1914, especially in the sphere of political mindsets, does not mean that we are entirely oblivious to the role of pre-existing legal traditions, customary practices and ideological assumptions stemming from late eighteenth and early nineteenth-century precedents, not least for those acting behind the scenes in government bureaucracies and on state-appointed committees. It is to these precedents that we now turn.

Late Eighteenth- and Nineteenth-Century Parallels and Precedents

When thinking about emergency mindsets in particular, it is noticeable from all our contributions that those in charge of implementing wartime emergency measures in 1914 were still very influenced by certain social prejudices developed in Europe since 1789. The records kept by state administrators and military officials during the war are thus shot through with condemnation of all those deemed to be undermining war efforts or preparations for war. Their targets ranged from open war resisters and strike leaders to teenage miscreants, women engaged in illicit sex, homosexuals, the so-called 'work-shy', enemy aliens, refugees and members of 'suspect' nationality groups.[50] In most cases, this reflected their socialisation as noble or bourgeois sons in the masculine values of 'order, subordination and honour' found in the structures of the wartime and peacetime conscript armies of continental Europe from the late eighteenth century onwards.[51] Whether cast by others as the moral educators of the 'nation-in-arms',[52] top-down mediators of

martial 'rules of conduct'[53] or guarantors of the imperial idea of 'ethnic tolerance' above competition between nationalities and revolutionary independence movements,[54] the officer corps in most countries in pre-1914 Europe and the Ottoman Empire saw themselves not merely as servants of the state but its very foundation. Or, to put it more bluntly, 'as far as the military was concerned, it was not one institution among many, but the model on which all others should be based' – including the institution of the state of siege.[55] This also helps explain why after 1914, in all belligerent countries and many neutral nations, the military authorities also invested significant resources in policing and maintaining what they saw as the legitimate moral and political order. The military and police, as the principal agents of the state of exception, also became the guardians of the wartime national community.

But there were other precedents and mindsets from that era, which also determined how emergency powers regimes were framed and embedded between 1914 and 1918. The legal liberalism of the late eighteenth and nineteenth centuries, which Schmitt was so opposed to, identified states of exception more as a technical problem of law and somewhat less as a question of political authority or legitimacy. The key problem was how to prevent exceptions from undermining the European project to create a modern legal system with universal validity. In this sense, laws for emergency situations were necessarily a fudge.[56] On the one hand, they were an attempt to retain the Roman principle that when the enemy was literally at or already inside the gates, the commander-in-chief, acting for the King (or as in France after 1789, for the nation and its elected representatives), should be allowed to do *anything* to defend the besieged fortress (or Republic) and save it from ruin. On the other hand, however, emergency laws typically added the caveat that 'anything' in effect meant 'anything' bar permanently destroying the constitution and (republican) political institutions. And as a fudge, such laws left essential questions unanswered, which nineteenth-century jurists fought over. Firstly, how could a positive, norm-building or norm-reinforcing and impersonal framework be created for allowing what was technically impossible in a state based on the rule of law but nonetheless presented itself as political fact during a state of war or state of siege, namely derogations from the law on the part of servants of the executive arm of the government, first and foremost the police and army? And secondly, how could a (military) dictator or a 'committee of public safety' be granted special powers to defend the nation and uphold order and security during a temporary state of emergency and then be prevented from using those powers to change state institutions or individual laws permanently in their own political interest?[57]

The French republican answer, dating back to a law of 9 August 1849, partially modified in 1878, was to place the state of exception entirely within the framework of the law and the separation of powers, i.e. to ensure that just like the 'state of normality', emergency government was also a *régime de legalité*.[58] The law of 3 April 1878 thus set out in full the circumstances in which the Chamber of Deputies might be permitted to pass legislation setting in place a state of siege ('imminent danger resulting from foreign a war or an armed insurrection') and further the very limited circumstances in which the head of state, as commander-in-chief of the armed forces, might delegate military tasks and deputise for the legislature – but not usurp its powers – if the latter were not in session.[59] Critically, during a state of siege, the president was not permitted to change laws already approved by parliament. The latter was expected to remain in permanent

session to fulfil its law-making functions, as mandated by the people. The president had no prerogative power to dissolve parliament if it failed to do his or her bidding. In contrast, the parliament could pass an act declaring the lifting of a state of siege without the president's blessing. The 3 April 1878 law was passed in the wake of the failed coup launched by the royalist president Patrice MacMahon in 1877. It underpinned the claim – upheld until 1940—that the 1875 constitution had permanently transformed France into a parliamentary republic.[60] As Clinton Rossiter wrote in his book *Constitutional Dictatorship* in 1948—and as Pierre Purseigle largely confirms in his contribution to this special issue – the 'state of siege in fact' established in France from 2 August 1914 to 12 October 1919 'conformed remarkably closely . . . to the letter and spirit of the laws'.[61]

In the Netherlands, the level of anxiety to avoid military dictatorship was similar to that in France. Mobilization and civil-military relations during the early phases of Dutch neutrality proceeded according to the 1899 War Act, which contained several legal and parliamentary checks and balances. At the same time, however, it granted emergency powers, in different contexts, to the government (to declare martial law in particular regions or the whole country), to the armed forces (to prepare for a possible invasion while acting in a support role in defence of national borders against smugglers and 'suspect' persons) and to the royal paramilitary police (*Koninklijke Marechaussee*), customs officials and the Ministry of Finance (to police borders). Wim Klinkert highlights in his contribution to this volume that new parliamentary legislation in 1917–20 constituted a 'game-changer' regarding current and future understandings of 'dictatorship' in the Kingdom. Legislation pertaining to four key areas was proposed and implemented regarding civilian conscription; immigration and border controls; firearms; and the criminalisation of revolutionary subversion. All four represented significant diversions from Dutch legal and political traditions, which can only be explained by the impact of the First World War. The government in The Hague justified such radical change by the need to preserve Dutch neutrality and thus the existence of the Netherlands as an independent country.

Elsewhere in continental Europe, a state of siege or state of war was usually declared by royal proclamation, with the Emperor, monarch or princely ruler expressly not acting on behalf of parliament but in accordance with their pre-constitutional right of command over the armed forces and hereditary duty to defend the realm in time of danger.[62] There was also no formal requirement for the legislature to remain in permanent session, and prorogation or dissolution were not expressly ruled out as a means of asserting royal authority. In the Austrian half of the Habsburg Empire, for instance, the Reichsrat was already dissolved in March 1914, but this did not stop Emperor Franz Joseph I from issuing a decree on 31 July 1914 massively increasing the powers of the Army High Command in the areas of military and civilian governance in occupied territory and – admittedly in conjunction with the War Ministry in Vienna and for the Austrian half of the empire only – on the home front too.[63] Yet in Hungary, where he was King, a different situation prevailed. The problem of dualism, as Tamara Scheer argues in her piece for this special issue, was inextricably tied up with the legal and political aspects of emergency rule and went back to issues that remained unresolved from the *Ausgleich* ('compromise') of 1867 and the 1869 'Law on the Authority of the Government to Issue Emergency Decrees', which was valid in Austria only. States of emergency had been declared

from time to time in specific regions or cities of the Dual Monarchy, including partial mobilisation in 1908. The territory of Bosnia-Herzegovina, in Austro-Hungarian hands since 1878 and formally annexed in 1908, was governed for a while under a *de facto* state of exception. However, the entire bundle of imperial and royal regulations for a state of siege or state of war, including the 1869 Austrian law and its 1912 Hungarian equivalent, had never been put to the test before 1914. When they were finally tried out, they proved entirely inadequate to the tasks expected of them – creating legal uncertainty and preventing an adequate response to material shortages.

In Imperial Russia, as Peter Waldron shows, the Tsar hardly needed to give the civilian and military authorities more powers in 1914, as by 1912, some 60 million subjects already lived under some kind of emergency rule, some of it at the 'higher level' of 'extraordinary protection'. An additional two million were subject to the more severe martial law. All of this was a legacy of the 1881 assassination of Alexander II, which prompted the 14 August 1881 statute 'On Measures to Safeguard State Security and Public Order' and, more recently, the revolutionary disturbances of 1905–7. Yet on top of this, even before the war began, the regime introduced new 'Regulations on the Field Administration of Troops in Wartime' on 16 July 1914, which gave Nicholas II's uncle, Grand Duke Nikolai Nikolaevich, even greater powers in the western regions of the empire as commander-in-chief, and ensured that he was accountable to no-one apart from the Tsar (and even to him only in retrospect).

In Portugal, a republic since 1910 but one without the same strict adherence to separation of powers as France, governments had a long tradition of resorting to emergency powers in the face of monarchist plots, clerical intransigence, industrial unrest or straightforward political difficulty with opposition parties in the parliamentary sphere. The powers usurped after the German declaration of war in March 1916, including the reintroduction of the death penalty in certain circumstances, were in part requested by the military. At the same time, however, the government used them against opposition elements within the military and political life, particularly against those who wished to expose corruption or challenge the case for Portuguese intervention in the war in Europe.

All of this represented a substantial interference in individual rights and freedoms, and this in countries whose constitutional order was at best fragile and at worst – as the war ultimately demonstrated – unworkable. Nonetheless, with the exception of Ottoman Turkey, discussed in more detail below, the state of siege in its national varieties was still a *régime de legalité*. The monarch or Emperor had no right to change the constitution without consulting the legislature or to replace a state based on the rule of law with one based on sovereign prerogative. In other words, it was not a return to royal absolutism or a system based on total ministerial or commissarial arbitrariness. Rights enshrined by law, including property rights and the right to free speech and assembly, could be suspended by royal or presidential decree or command of a military deputy or civilian governor-general/commissioner. Still, the underpinning laws themselves could not simply be declared null and void. Furthermore, in some monarchical jurisdictions or in states where institutions of the Republic were sacrificed for the sake of political advantage, such as Portugal, it was possible that citizens could claim retrospective financial compensation through the courts for rights violated under a state of siege or state of exception.[64] By contrast, in republican France, the very robustness of the state of siege's claim to be

a *régime de legalité* approved by a democratically-elected national parliament made it more difficult, if not impossible, for lawyers to envisage launching such compensation claims.[65]

In America, as Lon Strauss shows in his article for the special issue, a variety of institutional checks and balances, combined with deliberate encouragement (but not formal legalisation) of citizens' initiatives from below, allowed the federal government to avoid entering into a formal state of exception. True, in the case of the nationalisation of railroads in December 1917, President Wilson went further than his French counterpart (although perhaps not quite as far as President Macron in respect to the pension age reforms of 2023) by issuing an executive order interfering with property rights while Congress was not sitting. Nonetheless, he did so while claiming to be acting constitutionally under the Army Appropriation Act of 1916 and in his role as Commander-in-Chief following Congress's declaration of war on Germany in April 1917. A state of siege, internal military surveillance or resort to extra-constitutional powers were not needed to prosecute the war successfully, a view that Wilson shared with Congress (which anyway approved the Railway Administration Act in March 1918) and with the Department of Justice. The rule of law itself, enhanced by fresh Acts passed by Congress, was deemed sufficient in itself to meet the government's needs for anti-espionage and anti-sedition measures and also concerning the successful management of the economy and food supply. Citizen vigilantism in support of the war effort could be tolerated until it went too far, with the police and civil courts being left to decide where the boundary between legitimate patriotic concern and criminality lay.

In Britain, where there was (and is) no written constitution, the equivalent of the state of siege before 1914 was the declaration of martial law, again a prerogative of the Crown (or, in some interpretations, 'an example of a common law right (of the civil or military power [or the general population, M.S.] to employ force to repel force')).[66] However, martial law was kept separate from statute law and, for that matter, from common law. Even if they were understood and presented by state and court officials as part of the workings of the justice system, military courts used to try offences under martial law were only *de facto* courts and had no permanent judicial authority.[67] In reality, they were administrative (and therefore political) arms of the executive, intended merely to uphold the peace of the realm and protect the constitution in times of serious internal unrest or external danger. Indemnities from legal liability for potentially unlawful acts committed by the Crown and its agents during periods of martial law were if judged necessary by the government's advisors, sought from and granted by parliaments in retrospect through so-called Acts of Indemnity. These pieces of legislation ensured that cases could not be taken to ordinary courts *ex post facto*. For instance, '[n]o less than seven Indemnity Acts were passed in Ireland between 1796 and 1800'.[68] Parliamentary sovereignty was nonetheless upheld in the sense that the legal principle that martial law could not override statute law (or common law) was vindicated in the process of indemnification.[69]

In contrast to the situation in France, historians and political scientists have traditionally argued that after 1914, and especially after the Emergency Powers Act of 29 October 1920, Britain parted company with many of its 'ancient' customs and constitutional traditions regarding states of exception.[70] André Keil's article written for this special issue, discusses how the 1920 Act, albeit with some statutory limitations, effectively extended wartime emergency powers into peacetime. It was thus part of the

'hidden in plain sight' drift towards authoritarianism that characterised the coalition government of David Lloyd George in particular. The parallels between the Defence of the Realm Act in Britain and the 1914 Enabling Act in Germany are striking and can be seen by reading Keil's and Stibbe's pieces together. In both countries, the national Parliament surrendered its prerogative rights over major areas of legislation, especially but not only in the spheres of wartime economic management and regulation of commerce (or what is known in German as *Gewerbefreiheit*). Yet paradoxically, by asserting their right temporarily to give away such powers to the executive branch, the respective legislatures actually strengthened their claim to be the legitimate – because pragmatic and businesslike – representatives of the interests of the nation and people. In the short to medium term, this may actually have done the cause of parliamentarism in both countries some good and allowed the legislative branch to avoid accusations that it was holding up urgent action, especially in the spheres of finance and economics. True, the increasingly harmful effects of this 'pragmatic authoritarianism' were more evident in the long run, especially in the case of Germany in 1933. However, during the First World War and into the crises of the 1920s, neither the Reichstag nor the British House of Commons can be accused of simply acting as rubber stamps for the abuse of executive powers. The same applies to the Swedish Parliament, the Riksdag, with respect to its move to block the extra-legal use of voluntary militias to police the streets in 1917, as Michael Jonas shows in his contribution to our special issue.

Before moving on to reflect on the broader consequences of First World War state-of-emergency regimes for the 1920s and beyond, it is important to discuss one other set of precedents from the eighteenth and nineteenth centuries, namely the exercise of emergency powers in the extra-European colonial sphere. As Mark Condos shows in the case study of British India he has written for this special issue, European thinkers have colonised the very concept of states of exception since the 1920s in a way that disguises the fact that the deployment of lethal force, the substitution of *de facto* military for *de jure* civilian courts, and government by administrative fiat were established techniques of colonial rule as practiced by the western imperial powers in Africa, Asia and Latin America from the early nineteenth century onwards. And yet his findings point away from post-colonial theorist Achille Mbembe's notion that colonial rule was a form of 'absolute lawlessness' based on a 'racial denial of any common bond between the conqueror and the native'.[71] Rather, the evidence points to efforts to bind the colonially oppressed into what was still some kind of rules-based system, or what he calls a 'colonial rule of law'. Furthermore, it was a system in which imperial agents invested considerably more meaning in procedural matters, including the issuing of 'legal codes, charters and warrants[, and] administrative regulations' than in life-and-death decisions made by a sovereign. Western imperialism, in other words, relied more on rules, knowledge systems, networks, institutions and action in pursuit of profit and commercial self-interest than it did on Mbembe's 'necropolitics'.[72] De-centring Europe shows that the 'sense of emergency' generated by the First World War was real enough. But as a global conflict, it did less to reflect the Schmittian 'state of exception' than it did to reveal '*pre-existing conditions*' of material inequality across the world.[73]

In respect to matters of governance and administration, Condos concludes, Europe under the different emergency powers regimes of 1914–23 began to take on some of the political, moral and legal characteristics of 'the colonial rule of law'. In other words,

European societies adopted elements of rule that were no longer firmly restrained, as had been the case before 1914, by eighteenth- and nineteenth-century forms of legal liberalism, including equal access to justice for all, but rather were characterised by signposting of overlapping forms of inclusion and exclusion. In Portugal, as Filipe Ribeiro de Meneses and Pedro Aires Oliveira show, there had, in fact, never been any 'golden age' of 'normal' rule of law, with both the pre-1910 monarchical regime and the post-1910 Republic resorting to methods of government existing somewhere between 'legality' and 'exceptionality'. As an example, in May 1916, in response to the German declaration of war a few weeks before, not only German nationals but Portuguese citizens of German heritage were declared to be 'enemy subjects' and, as such legitimate objects of administrative measures against 'aliens', including property confiscations and residence restrictions, without right of legal redress. This also fits in with the findings of a recent study by Ringo Müller of state policy towards enemy aliens in the mirror-image setting of the German home front during the First World War, which again shows how the process of separating out enemy nationals as a hostile 'other' and the 'enemy within' took place largely in the semiotic realm, in other words via order-creating, administrative acts of writing and documentation made possible by the wartime suspension of constitutional guarantees.[74] This discursive construction of the 'enemy other' could then be mobilised to enact even harsher measures against political opponents and social outsiders. Yet whereas the treatment of (white) 'enemy aliens' in Europe, and later in all parts of the world, was based above all on 'othering' on the grounds of nationality or national background, 'the central element of the colonial rule of law was racial difference', as Condos puts it.[75]

Considerations of length, topic and focus have meant that this special issue does not consider in any detail the experiences and voices of those on the receiving end of colonial violence, or, for that matter, of those categorised as 'enemy subjects' in European, Ottoman, North American, Australasian and extra-European colonial settings.[76] Nonetheless – and particularly in the contribution by Condos – we do look for empirical traces of colonial attitudes in the administration, codes, practices and transformations of emergency rule in the 1914–23 period. We do not eschew theory altogether but wear it lightly or cover it with historical caveats. In particular, we follow the point recently made by Swiss historian Oliver Schneider that contemporaries – whether colonisers or the colonised – rarely made use of the term *state of exception* as a 'political-legal concept' before 1914, even though many did govern at home or in overseas colonies by means of exceptional legislation.[77] The exception to the exception, as Yücel Yanıkdağ shows in his contribution to the special issue, was the Ottoman Empire, where the contemporary literature sometimes referred to a 'state of exception' (*fevkalâde hal*), although here too, the term 'state of siege' (*idare-i örfiye, örfi idare*) was admittedly more common. Something significant was happening here that also pointed to developments after 1918 and again after 1923. In any case, Yanıkdağ's argument in favour of Ottoman and Turkish exceptionalism is grounded not only in considerations of terminology and timeframes, but in empirical findings that demonstrate that that country's politics, both in the early twentieth century and beyond, came closer to Schmitt's and also Agamben's notions of the exception with regards to both sovereignty and the exercise of power over life and death than any other of the case studies we have considered in this project.[78]

After 1908 the 'Young Turks' who led the revolution against Abdulhamid II were forced to save that revolution by resorting to unconstitutional means of instituting a state of siege in the capital Istanbul in 1909 and in various other localities thereafter, a move that engendered a battle over sovereign power and further eroded the meaning of and safeguards contained within the 1876 constitution, even though that constitution had effectively been suspended from 1878 anyway. After 1908, the first modern victims of this seemingly permanent normalisation of exception were the 130,000 to 150,000 'Roman Greeks' or 'Rum' living along the Turkish Aegean coast who were violently and illegally expelled, both as a demographic security measure and to make way for 400,000 Muslim refugees from Greece who arrived in Anatolia in the aftermath of the first Balkan War of 1912–13. Other victims were to follow, most notably the 1.5 million Ottoman Armenians who were expropriated, deported and murdered during the genocide in 1915–16, but also Kurds from eastern Anatolia. A renewal of hostile propaganda against the Ottoman Greek community on the Aegean coast also had deadly results. In particular, as George Horton, US consul in that part of Turkey, later remembered:

> 'A series of sporadic murders began at Smyrna ... the list in each morning's papers numbering from twelve to twenty'. The situation was even worse in the rich farmland that surrounded the city. 'Peasants going into vineyards to work were shot down from behind trees and rocks by the Turks'.[79]

Alongside such lethal actions, which were clearly unlawful and unconstitutional, and founded on 'exceptions to the exception', the executive legally approved 1,061 temporary laws under the wartime state of siege, including the nullification of the Capitulations or special trading rights previously enjoyed by certain groups of merchants holding foreign passports (above all French and British).[80] Some of this wartime legislation was made permanent when it received retrospective sanction from the parliament, often with scant debate. At the same time, other measures remained provisional (but in practice achieved permanence through the ongoing state of siege, which was extended well beyond the end of the war in 1918, when struggles over national and political sovereignty were again wrapped up in the question of who held power over the exception).

In late nineteenth- and early twentieth-century Europe, on the other hand, as well as in the Ottoman Empire of Abdulhamid II and his immediate predecessors, most constitutional experts seemed to accept as a relatively uninteresting fact that states of war or states of siege would place their polity in some kind of twilight zone between legality and exception, to quote the title of Filipe Ribeiro de Meneses's and Pedro Aires Oliveira's article on Portugal again. They did not link this to questions of sovereignty in the sense of power over life and death, to questions of democratic political legitimacy and the shaping of public opinion, or, in the Turkish case before 1908 or 1914, to questions of national independence. Theoretical 'advances' only really got going in the wake of the First World War, mainly in reaction to the appearance of controversial works by Schmitt on *Dictatorship* (1921) and *Political Theology* (1922).[81] And such theoretical developments must be treated with caution, not only because of Schmitt's open hostility to parliamentary democracy, but because he and many of his critics followed a largely Eurocentric path which ignored, or at best peripheralised the colonial and Middle Eastern spheres and on top of that, contributed to the deliberate 'forgetting' of the Armenian genocide after 1918.[82]

'The enemy', wrote Schmitt in 1932 in his conceptualisation of 'the political', which he divorced entirely from trade and economics, and also from the sphere of international law and human rights, 'is *hostis* (enemy) not *inimicus* (disliked) in the broader sense; *polémios* (belonging to war) not *exthrós* (hateful)'.[83] His phrase 'the concept of the state presupposes the concept of the political' was the foundation of, and the prelude to, this particular rendering of the 'friend-enemy distinction'. Ultimately, it was rooted in 'othering' as the sole possible means of asserting sovereignty in a world in which only some peoples, mainly those with white skin, were allowed to 'group themselves' as nations and others were not.[84] Exposing the explicit and hidden assumptions of the post-1918 European theorists of the state of exception, we maintain, can – alongside empirical research on the social history of the war, including political authority's search for greater legitimacy in the context of mass mobilisation – contribute to what Pierre Purseigle, in his article on France, refers to as a different vision of sovereignty. This was based on a sober-headed commitment to maintaining public services, which was 'demonstrably shared … between the state and the mobilized citizenry' and between central government, local authorities and the voluntary sector. In other words, emergency powers could be used pragmatically and contingently and did not necessarily lead to an irreversible loss of old or new constitutional checks and balances. And this, in a nutshell, is also the case that our special issue makes against the theoretical claims of Schmitt and Agamben.

Consequences

The courses and consequences of wartime states of siege varied enormously from country to country, and we have left it to our contributors to outline these in detail in their individual pieces. However, one crucial overall observation to make here is that the results of our different case studies complicate the understanding of the relationship between First World War states of emergency and post-war practices of democracy as well as dictatorship. None of the countries concerned saw a full return to pre-1914 liberal norms in the immediate post-war period, and some did not have liberal traditions to return to anyway. To varying degrees, all governments wished to hold onto the new powers they had acquired vis à vis the legislature and the judiciary during the war, or to enhance them, as Swedish jurist Herbert Tingsten observed in 1930.[85] However, in several cases in the 1920s and 30s, emergency powers were used to preserve democracy, or at least a particular form of democracy often characterised by fierce anti-communism (and, in some cases, opposition to vested economic interests), with accompanying qualifications to civic rights. The classic example, mentioned by Lon Strauss in his article, would be the emergency measures to shut the banks enacted by Franklin D. Roosevelt when he came into presidential office in 1933.

Sweden, the case analysed by Michael Jonas in his contribution to this special issue, would be another instance of a country being transformed in a (social) democratic direction by the use of emergency laws to combat a series of external and internal crises linked to the First World War without formally instituting a state of exception. He shows that Liberals and Social Democrats were willing to accept emergency measures provided for under the constitution to uphold the country's neutrality and alleviate the economic effects of the war on ordinary people but came together in 1917 to block moves by

conservatives in government to make use of irregular volunteer militia to counter left-wing unrest and demands for female suffrage. More generally, the net effect of the domestic and foreign upheavals of 1917–18 was to shift the country away from a rigid, change-stifling form of government, in which monarchical and bureaucratic authority was only partially held in check by a legislature elected on a restricted franchise, towards a fully-fledged parliamentary monarchy with a universal voting franchise. Both liberal and conservative politicians who championed individual property rights and moderate left-wing leaders like Hjalmar Branting, who advocated universal suffrage, state welfare and collectivist social policies and who went on to become Sweden's first Social Democrat Prime Minister in 1920, could feel invested in the changed political system that emerged from the crisis of 1917–18. In this sense, Jonas agrees with the case made by the American historian Steven Koblik in the 1970s that Sweden was a 'neutral victor' in the 1914–18 war, but more through its multi-layered domestic response to the wartime emergency than as a result of its unadventurous foreign policy and careful management of its neutrality in the international sphere.[86] In other words, the actual victors were the Swedish people, not the King, the state bureaucracy or the institution of the monarchy as it had existed before 1914.

Across the rest of Europe, the fear that states of emergency or states of siege could end in dictatorship or overthrow of the state by the military – a key concern through much of the nineteenth century – was partly alleviated by the fact that beyond Russia, only one fully-fledged coup actually took place during the war: in Portugal in 1917. The next coup of world significance after this one was the 'March on Rome' by the Fascists which brought Benito Mussolini to power in Italy in late October 1922, apparently without the support of the Italian armed forces, who supposedly had no political axe of their own to grind against the Liberal system. True, recent literature has convincingly challenged the conventional explanation that King Vittorio Emanuele III's failure to declare a state of siege in Rome on the morning of 28 October 1922 was the critical factor in embarrassing the army and preventing it from successfully countering the blackshirts' stage-managed 'conquest' of the capital city.[87] Yet, as John Foot has recently conceded, historians still struggle to identify 'where the push for this master narrative came from' when it first emerged in the 1920s.[88] Certainly, though, it was a narrative that hid more than just violence and the state's complicity in it. Its other purpose was to give voice to the new, post-war view of constitutional Liberals that the (royal) sovereign's prerogative to suspend legal norms was more than just a matter of being objectively prepared for war or serious threats to internal order. It was also a subjective and political question, namely the appearance of braveness and consistency in decision-making in any given 'emergency' situation. In other words, in Liberal as much as in Fascist discourse, the purpose of the state of siege had shifted from fighting off external enemies to legitimising domestic political authority by demonstrating (masculine) qualities of leadership. The King's abdication in 1946, after the Second World War, concealed much of this.

Meanwhile, some positives were identified in emergency powers in the 1920s, even by social democrats like the Webbs in Britain.[89] They could be used to enable interventionist economic or health policies, to ensure that food supplies and public services could be maintained at basic levels even during a major domestic or external crisis, and to curb the blocking influence of banks, cartels and other vested interests. Neither Keynesianism nor the Soviet economic system (which the Webbs so

admired), and neither Roosevelt's New Deal nor Sweden's welfare state, could have emerged without the precedents created by the First World War – whether by precedents we mean formally instituted states of exception or *de facto* acceptance of the need to break with the past through enacting emergency measures and muddling through with the consequences. Another example from the inter-war period was what Andrea Orzoff describes as the gradual remaking of 'the Czechoslovak parliamentary system … as a '"disciplined democracy"'.[90] This started in the 1920s with the use of the *stálý výbor* (the Permanent Committee, made up of sixteen deputies and eight senators and with a built-in anti-left majority) to conduct legislative business when Parliament was not in session; and culminated in 1933 in the *zmocňování zákon* (Enabling Law), approved by the Parliament against the backdrop of the Great Depression. The latter's scope gradually moved from purely economic matters to a much broader range of policy areas, especially during the first presidency of Edvard Beneš (1935–38).[91]

The nineteenth-century past seemingly no longer held sway over the future, with even republican France resorting to the instrument of Enabling Acts to deal with financial emergencies in the post-First World War era. Indeed, having refused to do so during the war itself, the French Parliament passed 'full powers laws' (*lois de pleins pouvoirs*) temporarily delegating authority to the executive to modify or suspend laws relating to the management of state budgets and structures on three separate occasions in the inter-war period: 22 March 1924, 3 August 1926 and 28 February 1934.[92] And in a near parallel case, the Belgian Parliament also passed its own *loi de pleins pouvoirs* on 16 July 1926, allowing the King and his ministers 'to take all measures necessary for improving Belgium's financial situation'.[93] Under this piece of legislation, referred to in a 2016 study of the state of emergency in Belgian constitutional law as the country's first 'Special Powers Act', forty-six 'Royal Decisions' were taken over a six-month period, including the reorganisation of government finances and debt, partly by converting the latter into national railway bonds, and the devaluation of the Belgian franc to one-seventh of its pre-war rate against the international Gold Standard.[94]

The transnational influences on French and Belgium policy may well have included the wartime and early post-war Enabling Acts in Germany, but also the example of the Italian Parliament, which, as Mondini shows, to some extent pioneered the idea of a 'disciplined nation' in March – May 1915 by approving what was in effect a wholesale surrender of legislative rights in the areas of national economics, defence and security even before the country had entered the war, and without setting any time limit – not even a vague one such as 'for the duration of the wartime emergency'. After the war, this enabled even the Liberal Governments that preceded the Mussolini dictatorship to enact emergency peacetime financial measures and to grant extraordinary powers first to the military and then from the summer of 1919 to two special Civilian Commissariats (*Commissariati Civili*), to manage security in the newly-acquired, erstwhile Austrian territories now incorporated into the Julian Venetia region. The Commissariati Civili's policies of forced Italianization to ensure swift integration of non-Italian speakers and identification/isolation of 'suspect persons' (*elementi pericolosi*) – mainly Slavs – were criticised by France as a crass and authoritarian way to build a political community. In its view, citizens should either voluntarily adhere to the nation or be expelled, with no contrived assimilation. Germans, however, were the (post-1914)

exception: as 'aliens' and erstwhile 'enemy invaders', they were expelled en masse from France in 1918–20, including from the 'regained' provinces of Alsace and Lorraine.[95]

The mix of factors that went into post-war emergency legislation and the importance of 'lessons' learned from the 1914–18 era can also be seen in the Japanese case, which we would like to end this introduction with. As Mahon Murphy shows in his contribution to this special issue, Japan did not declare a state of siege in 1914 or at any point during its involvement as an armed belligerent in the First World War, reflecting the lack of any danger of a German attack on its home territory or colonial possessions in East Asia. Yet its increasing use of exceptional powers after 1919 was linked both to anxieties caused by social unrest at home (the Rice Riots of July – September 1918) and mission creep when it came to the Japanese Siberian Intervention of 1918–22, characterised as it was by simultaneous efforts to crack down militarily on Korean nationalists who had crossed into China or eastern Russia following the suppression of the 1 March movement in Korea itself. Intersecting with all these developments, and feeding into the new empire-wide security paradigm enshrined in the Peace Preservation Law of 1925, was Imperial Japan's observations of the successes and failures of the different state of emergency regimes in Europe from 1914 onwards, combined with its determination not to have its own history and expectations usurped or displaced by the western colonial powers in the Pacific and East Asia region, especially the United States, Britain, France and the Netherlands.

Although our case studies have mainly been concentrated on Europe as well as Ottoman and post-Ottoman Turkey, particularly when it comes to presenting empirical evidence, the Japanese example illustrates the importance of treating the problem of extraordinary executive measures and formal declarations of states of siege during the First World War as globally entangled. In other words, the practice and normalisation of emergency powers cannot just be seen by historians as a one-way process of transfer from Europe to the wider world. Instead, European and non-European emergency regimes were both mutually constitutive of a twentieth century in which the state's coercive powers were determined much more by politics than by considerations of legal regulation and strict adherence to the rule of law.[96] Between 1914 and 1945, as Eric Hobsbawm puts it, actual 'experience [showed] that agreements reached in peace treaties could easily be broken' without any certainty about when and whether this would lead to the resumption of war and, if so, about who would fight on which side and who would count as the 'enemy'.[97] The same could equally be said of agreed (or apparent) states of emergency: as they came to an end in 1918–20, nobody could be sure if and when they might be reinstated, and if so, whether this would be done by regimes that were in favour of or opposed to the preservation of democracy. This was because liberals, social democrats and advocates of nationalist or conservative authoritarianism all emerged from the First World War increasingly adept at equating emergency not only with necessity, but with the whole question of political legitimacy.

Notes

1. Head, *Emergency Powers*, 40.
2. Agamben, *Homo sacer*.
3. Ibid., 166–80.

4. For an excellent account of the situation in Germany, which also takes a wider comparative angle, see Caruso, "*Blut und Eisen auch im Innern.*"
5. Wolff, *Der Krieg des Pontius Pilatus*, 355–6.
6. See, for example, Farrar, *The Short-War Illusion*.
7. Horn, "Economic Planning." Also quoted in Schneider, *Die Schweiz im Ausnahmezustand*, 67–8. Afflerbach, *On a Knife Edge*, 28, also makes the same point specifically in relation to Germany, where the 'General Staff had a plan of operations rather than a strategy and the war ministries (not only in Prussia, but also in Bavaria, Saxony and Württemberg) had made only hesitant and substantially flawed economic preparations for war'.
8. Farrar, "Nationalism in Wartime," 141.
9. Bartov and Weitz (eds.), *Shatterzone of Empires*.
10. Clemens, "Delegated Governance," 296.
11. See, for example, Huebner, "The Internment Camp at Terezín."
12. Tingsten, *Les pleins pouvoirs*.
13. Llanque, "Le concept de 'dictature'", here esp. 132.
14. Chrisafis, "Uproar as Macron bypasses parliament."
15. On the similarities between the post-1914 and post-2001 eras, as well as the exceptional and unprecedented aspects of the latter, see Hobsbawm, *Globalisation, Democracy and Terrorism*, esp. 31–48. On the 2008 financial crash and its decade-long aftermath see Tooze, *Crashed*; on the importance of the Bataclan attack see Lemke, *Demokratie im Ausnahmezustand*, 246–58; and on the COVID-19 pandemic see Florack, Korte and Schwanholz, "Coronakratie."
16. Agamben, *State of Exception*, 4, 10.
17. Berda, *Living Emergency*, 36.
18. Lau, "Sie haben Recht."
19. Agamben, *State of Exception*, 1–31.
20. Schmitt, *Political Theology*.
21. Roffenstein, Zur *Psychologie und Psychopathologie der Gegenwartsgeschichte*; and Stransky, *Psychopathologie der Ausnahmezustände*.
22. Fraenkel, *The Dual State*.
23. Rossiter, *Constitutional Dictatorship*, 294.
24. Bauman, "Das Jahrhundert der Lager?"; Kotek and Rigoulet, *Le siècle des camps*; Greiner and Kramer (eds.), *Welt der Lager*; and Jahr and Thiel (eds.), *Lager vor Auschwitz*.
25. Agamben, *State of Exception*, 3.
26. Ibid., 23; See also Agamben, *Homo Sacer*; and Fassin and Pandolfi (eds.), *Contemporary States of Emergency*.
27. Paye, *Das Ende des Rechtsstaats*, esp. 53–4.
28. Agamben, *State of Exception*, 4.
29. See, for instance, Bratton, *The Revenge of the Real*; Lemke, "Die Empirie von Ausnahmezuständen"; and Florack, Korte and Schwanholz, "Coronakratie."
30. Agamben, *State of Exception*, 7, 10, 12.
31. Lazar, *States of Emergency*, 161.
32. Agamben, *State of Exception*, 14–16.
33. Garnett, "Emergency Powers in Northern Ireland."; and Head, *Domestic Military Powers*, 23–5.
34. Hewitt, *The British War on Terror*.
35. Schmitt, *Political Theology*, 5.
36. Agamben, *State of Exception*, esp. 19, 32–6; Paye, *Das Ende des Rechtstaats*, esp. 41, 211–13, 221; and Odent, *Europe, état d'urgence*, esp. 110–12.
37. Mbembe, *Necropolitics*; Head, *Domestic Military Powers*; Berda, *Living Emergency*; Neal, "Foucault in Guantánamo"; and Pugliese, *State Violence*; Siegelberg, *Statelessness*.
38. See, however, Van Middelaar, *Pandemonium*.
39. Other important exceptions are Middendorf, *Macht der Ausnahme*; Caglioti, *War and Citizenship;* and Heymann, *Die Rechtsformen der militärischen Kriegswirtschaft*.

40. Harris, *Act of Oblivion*, 41.
41. Gerstle and Isaac (eds.), *States of Exception in American History*, 11.
42. See, for example, Morton, *States of Emergency*.
43. See note 41 above.
44. In particular, we are indebted to Horne (ed.), *State, Society and Mobilization*; and Raphael, *Imperiale Gewalt und mobilisierte Nation*.
45. See De Schaepdrijver, 'Special Issue: Military Occupations'.
46. Stibbe, "Gewalt gegen Zivilisten," 79.
47. See Liulevicius, *War Land*; and Gumz, *The Resurrection and Collapse*. Also Stibbe, "Gewalt gegen Zivilisten."
48. Berda, *Living Emergency*.
49. We use the phrase 'spaces of exception' here in the same way that Agamben uses it to describe the twentieth-century concentration camp as the '"Nomos" of the Modern'. See Agamben, *Homo Sacer*, 166, 169.
50. Keil, "The Captives of the Kaiser."; and Stibbe, "Krieg und Brutalisierung."
51. Frevert, *A Nation in Barracks*, 28.
52. Forrest, *The Legacy of the French Revolutionary Wars*, 164.
53. Frevert, *A Nation in Barracks*, 207.
54. Deák, *Beyond Nationalism*, 37, 213.
55. Frevert, *A Nation in Barracks*, 201.
56. Osterhammel, "Europas unendliche Arroganz."
57. Schneider, *Die Schweiz im Ausnahmezustand*, 12.
58. Mandry, "Der Ausnahmezustand in Frankreich," 13.
59. Rossiter, *Constitutional Dictatorship*, 82–3.
60. Agamben, *State of Exception*, 12.
61. Rossiter, *Constitutional Dictatorship*, 103.
62. See, for instance, Schudnagies, *Der Kriegs- oder Belagerungszustand*.
63. See Scheer, *Zwischen Front und Heimat*, 55–6.
64. Keil, "The Captives of the Kaiser," 67–8.
65. Rossiter, *Constitutional Dictatorship*, 97–102.
66. Head, *Domestic Military Powers*, 26. See also Heck, "Der Ausnahmezustand in England," 193–4.
67. Heck, "Der Ausnahmezustand in England," 208–9; and Rossiter, *Constitutional Dictatorship*, 148.
68. Head, *Domestic Military Powers*, 25.
69. Rossiter, *Constitutional Dictatorship*, 149.
70. See, for instance, ibid., 172–7; and Townsend, *Making the Peace*, 86–8.
71. Mbembe, *Necropolitics*, 77.
72. Ibid.
73. Bratton, *The Revenge of the Real*, 8. Italics in the original.
74. Müller, "*Feindliche Ausländer.*"
75. On the at times overlapping and at other times quite separate roles of nationality and race in global internment policies during the First World War, see also Stibbe, "Ein globales Phänomen."
76. On the latter, see also Caglioti, *War and Citizenship*; and Stibbe, *Civilian Internment*.
77. Schneider, *Die Schweiz im Ausnahmezustand*, 55–6.
78. See in particular Agamben, *Homo Sacer*.
79. Horton, *The Blight of Asia*, as cited in Milton, *Paradise Lost*, 67.
80. Milton, *Paradise Lost*, 62.
81. Schmitt, *Dictatorship*; and Schmitt, *Political Theology*.
82. Mosse, "The Brutalization of German Politics," 160.
83. Schmitt, *The Concept of the Political*, 28. Also cited, with additional translations of terms cited by Schmitt in Latin and Greek, in Tracy B. Strong's foreword to Schmitt, *Political Theology*, xvi.

84. Schmitt, *The Concept of the Political*, 19, 28. For a critical discussion of the role played by considerations of sovereignty – including which peoples were and were not entitled to it – at the Paris Peace conference of 1919–20, see Manela, *The Wilsonian Moment*; and Smith, *Sovereignty at the Paris Peace Conference of 1919*.
85. Tingsten, *Les pleins pouvoirs*.
86. Koblik, *Sweden, the Neutral Victor*.
87. See, for instance, Mondini, *Roma 1922*, 212–16; and Foot, "The March on Rome."
88. Foot, "The March on Rome," 163.
89. On the Webbs, see Keil, "Zwischen Kooperation und Opposition."
90. Orzoff, *Battle for the Castle*, 177.
91. Ibid.
92. *La continuité constitutionnelle en France*, 97. For the first two of these 'full powers laws', see also Mandry, "Der Ausnahmezustand in Frankreich," 28; and for the 1924 law in particular, see Tingsten, *Les pleins pouvoirs*, 15–57.
93. Haegenborgh and Verrijdt, "The State of Emergency in Belgian Constitutional Law," 18.
94. Ibid. See also Meerten, *Capital Formation*, 207; and Tingsten, *Les pleins pouvoirs*, 137–47.
95. See Stibbe, *Civilian Internment*, 271–3; and Boswell, "From Liberation to Purge Trials."
96. Farrar, "Nationalism in Wartime," 145. While we accept Farrar's claim that state decision-makers before 1914 largely based 'their choices on . . . prevailing assumptions about state relations – secret diplomacy, state power, the balance of power, and war as a valid tool of state policy', we would question whether this still applied after the opening weeks of the First World War, when new ways of imagining and catering for internal and external emergency came to the fore at the same time as the world entered what Hobsbawm calls an 'age of extremes'.
97. Hobsbawm, *Globalisation, Democracy and Terrorism*, 21.

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