

State of Emergency

Nine out of ten constitutions contain explicit emergency provisions. During the pandemic, half of the governments with such constitutions made use of these provisions by declaring a state of emergency. *State of Emergency* is the first book to analyze the factors that led to such provisions being included in newly drafted constitutions. It explores their use – as well as their misuse – and explains the effects of using emergency provisions. Declaring a state of emergency is particularly challenging in federally constituted states as it endangers the balance of powers between the federal level and the states. This book, therefore, pays special attention to this topic. Focusing on two of the most important recent cases relating to emergency provisions, the Covid-19 pandemic and acts of terrorism, this book uses numerous examples to analyze emergency provisions with a rigorous empirical approach.

CHRISTIAN BJØRNSKOV is Professor of Economics at Aarhus University in Denmark, as well as affiliated researcher at the Research Institute of Industrial Economics in Stockholm, Sweden. He is the author of more than 100 articles in journals including the *American Journal of Political Science* and *Public Choice*.

STEFAN VOIGT is Professor of Law and Economics at the University of Hamburg and the Director of its Institute of Law and Economics. His research focuses on the economic effects of institutions. He is one of the editors of the journal *Constitutional Political Economy* and author of *Institutional Economics: An Introduction* (2019, Cambridge University Press) and *Constitutional Economics: A Primer* (2020, Cambridge University Press).

State of Emergency

An Economic Analysis

CHRISTIAN BJØRNSKOV
Aarhus University

STEFAN VOIGT
University of Hamburg



Cambridge University Press & Assessment
978-1-009-37208-4 – State of Emergency
Christian Bjørnskov, Stefan Voigt
Frontmatter
[More Information](#)



Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781009372084

DOI: 10.1017/9781009372138

© Christian Bjørnskov and Stefan Voigt 2024

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

First published 2024

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

Library of Congress Cataloging-in-Publication Data

Names: Bjørnskov, Christian, author. | Voigt, Stefan, author.

Title: State of emergency : an economic analysis / Christian Bjørnskov, Aarhus University, Denmark, Stefan Voigt, University of Hamburg.

Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2024. | Includes bibliographical references and index.

Identifiers: LCCN 2023047144 | ISBN 9781009372084 (hardback) | ISBN 9781009372138 (ebook)

Subjects: LCSH: Economics – Political aspects. | Emergencies – Law and legislation. | Constitutional law – Economic aspects. | Economic policy.

Classification: LCC HB74.P65 B526 2024 | DDC 330–dc23

LC record available at <https://lcn.loc.gov/2023047144>

ISBN 978-1-009-37208-4 Hardback

ISBN 978-1-009-37210-7 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

<i>List of Figures</i>	<i>page</i>	ix
<i>List of Tables</i>		xi
<i>Acknowledgments</i>		xiv
1 Introduction		1
1.1 Outline		3
2 The Architecture of Emergency Constitutions		7
2.1 Introduction		7
2.2 Defining Constitutional Emergency Provisions		9
2.3 Trends in Emergency Powers		10
2.4 Cluster Analysis		24
2.5 Are There Typical Emergency Constitutions?		25
2.6 Conclusions and Outlook of the Chapter		34
Appendix		36
3 The Determinants of Emergency Constitutions		44
3.1 Introduction		44
3.2 Conjectures		45
3.3 When Are Emergency Constitutions Introduced?		48
3.4 Determinants of the Characteristics of Emergency Provisions		52
3.5 Verbosity in Emergency Constitutions		62
3.6 Conclusions and Outlook		63
Appendix		65
4 Why Do Governments Call a State of Emergency?		67
4.1 Introduction		67
4.2 Theory		70
4.3 Data Sources and Descriptive Statistics		78
4.4 Stylized Facts and Bivariate Correlations		85
4.5 Regression Results and Their Interpretation		87

vi		<i>Contents</i>
	4.6 Nondeclaring Countries	97
	4.7 Conclusions and Outlook	99
5	The Effectiveness of Emergency Constitutions after Natural Disasters	102
	5.1 Introduction	102
	5.2 Hypotheses	105
	5.3 Data and Descriptive Statistics	111
	5.4 Our Estimation Approach	115
	5.5 Estimation Results	117
	5.6 Conclusions and Open Questions	128
	Appendix	130
6	When Does Terror Induce a State of Emergency? And What Are the Effects?	131
	6.1 Introduction	131
	6.2 Defining Our Key Terms	133
	6.3 Theory	135
	6.4 Are the Emergency Constitutions of OIC Members Special?	145
	6.5 Data and Estimation Approach	147
	6.6 Estimation Results	159
	6.7 Consequences for Repressive Policy	179
	6.8 Conclusions and Open Questions	185
	Appendix	187
7	States of Emergency after Domestic Turmoil	190
	7.1 Introduction	190
	7.2 Theory	191
	7.3 Data and Estimation Approach	194
	7.4 Results	198
	7.5 Conclusions	211
8	Dealing with Disaster: Analyzing the Emergency Constitutions of the US States	212
	8.1 Introduction	212
	8.2 The INEP for US State Constitutions	215
	8.3 Cluster Analysis Applied to US State Constitutions	218
	8.4 The Factors Determining the Clusters	220
	8.5 Do the Differences Matter?	221
	8.6 Conclusions and Outlook	224

<i>Contents</i>	vii
9 Keeping up the Balance between the Federation and the States	226
9.1 Introduction	226
9.2 Article 356 (the President’s Rule)	230
9.3 Veto Players and Their Incentives	233
9.4 Data and Empirical Approach	241
9.5 Patterns around Invocations of the President’s Rule	246
9.6 Discussion	250
9.7 Conclusions and Outlook	255
Appendix	256
10 Constitutionalized Media Freedom during Emergencies: Is It Only Window Dressing?	257
10.1 Introduction	257
10.2 Media Freedom: A Brief Survey	260
10.3 Terrorism and Media Freedom: Some Hypotheses	262
10.4 Constitutional Provisions to Safeguard Media Freedom	265
10.5 Control Data and Empirical Strategy	270
10.6 Main Results	276
10.7 Conclusions and Outlook	285
Appendix	288
11 Unconstitutional States of Emergency	295
11.1 Introduction	295
11.2 Framing the Issue	296
11.3 Data	300
11.4 What Is Common to Unlawful SOEs?	307
11.5 Conclusions	317
Appendix	318
12 The COVID-19 Pandemic, States of Emergency, and Reliance on Executive Decrees	319
12.1 Introduction	319
12.2 Hypotheses	322
12.3 Data and Estimation Approach	324
12.4 Results	327
12.5 Conclusions and Outlook	333
Appendix	335

viii	<i>Contents</i>
13	Returning to the Status Quo Ante? 336
13.1	Introduction 336
13.2	Returning to the Status Quo Ante: Definitions and Incentives 337
13.3	Data and Empirical Strategy 340
13.4	The Raw Data 342
13.5	Empirical Results 344
13.6	Discussion and Conclusions 348
14	Contracting for Catastrophe: Legitimizing Emergency Constitutions by Drawing on Social Contract Theory 351
14.1	Motivation 351
14.2	Emergency Constitutions: The Relevant Dimensions 352
14.3	Justifying Emergency Legislation: A Brief Sketch of the Contractarian Literature 359
14.4	A Novel Justification of Emergency Constitutions 363
14.5	Outlook: Toward an Economics of Emergency Constitutions 374
15	The Future of States of Emergency 376
15.1	Introduction 376
15.2	A Very Brief Synthesis of Our Findings 377
15.3	Possible Trends 378
15.4	Possible Modifications in Legalized Emergency Regimes 383
15.5	Possible Modifications beyond Emergency Regimes: Strengthening Resilience 387
15.6	Concluding Remarks 389
	<i>References</i> 392
	<i>Index</i> 412

Figures

2.1 Share of constitutions with emergency provisions, 1900–2013	<i>page</i> 11
2.2 Average INEP, 1950–2013	21
2.3 Map indicating permissiveness of emergency constitutions	21
2.4 Six separate indices, INEP, 1950–2010	22
3.1 The expansion of emergency constitutions over time	45
4.1 Probability of calling a state of emergency, 1980–2010	83
4.2 Natural SOEs and main characteristics	86
4.3 National-political SOEs and main characteristics	86
4.4 Characteristics of nondeclaring countries	98
5.1 Events, institutions, policy choices, and outcomes	109
5.2 Average number of affected individuals, share of total population, versus Cost INEP	116
5.3 Average number of affected individuals, share of total population, versus Benefit INEP	117
6.1 Structures of emergency constitutions in the OIC	146
6.2 Terrorist attacks and states of emergency, 1970–2014, Western countries	157
6.3 Terrorist attacks and states of emergency, 1970–2016, OIC countries	158
6.4 Terrorist attacks in sample countries, 1990–2016	158
7.1 Reasons for declared SOEs	197
7.2 Probability of SOE, three sources	198
7.3 Marginal effects, conditional on benefits	205
8.1 Disaster declarations per country, US, Louisiana and Mississippi	213
8.2 State constitution INEP	218
8.3 Cost and benefit INEPs, six clusters	220
9.1 Formal procedure of invoking Article 356	231
9.2 State-wise incidence of President’s rule (1951–2019)	246

9.3 Incidences of President's rule by year (1951–2019)	246
9.4 State party influence	247
9.5 Further influences	248
9.6 Disasters and riots around the President's rule	249
9.7 President's rule before, during, and after <i>SR Bommai</i>	250
10.1 Developments, 1994–2013	272
10.2 Media freedom differences, constitutional provisions	273
10.3 Effects of terrorism, conditional on court independence	281
10.4 Effects of terrorism, triple interacted conditions	284
11.1 Frequency of state of emergency	308
11.2 Frequency of unlawful state of emergency	308
12.1 Emergency declarations	324
12.2 Repressive events against journalists and media	325
13.1 Number of years to status quo ante	343
13.2 Typical developments of repression around SOE	344
13.3 Marginal duration effects, repression in autocracies and democracies	346
14.1 A conceptualization of emergency constitutions	355

Tables

2.1 Percent of all emergency constitutions that name the respective topic as a possible reason for declaring an SOE	<i>page</i> 13
2.2 Constructing the INEP	19
2.3 Characteristics of emergency constitutions, regime types	23
2.4 Cluster memberships, preferred six-cluster solution	25
2.5 Cluster characteristics	29
2.6 Determinants of cluster placement, constitutional characteristics	31
A2.1 Variables and sources	36
A2.2 Descriptive statistics, data used in Tables 4a, b, and 8a, b	37
A2.3 Descriptive statistics, data used in Tables 6–7	38
A2.4 Variable definitions	38
A2.5 Cluster solution specifics	41
A2.5a Countries with more than one nonbenevolent emergency provision in 2010	42
A2.5b Countries with one nonbenevolent emergency provision in 2010	43
3.1 Determinants of introducing emergency constitutions (given constitutional change), 1950–2010	49
3.2a Determinants of constitutional characteristics	54
3.2b Determinants of constitutional characteristics	57
A3.1 Variables and sources	65
A3.2 Descriptive statistics, data used in Tables 4a, b, and 8a, b	65
A3.3 Descriptive statistics, data used in Tables 3.6 and 3.7	66
4.1 Descriptive statistics	84
4.2 Determinants of SOEs	88
4.3 Determinants of SOE with interactions, disasters, and conflicts	94

4.4	Determinants of SOE with interactions, coups, and negative growth	95
4.5	Nondeclaring countries	98
5.1	Descriptive statistics	112
5.2	Main effects	119
5.3	Main effects, INEP unbundled into single variables	123
5.4	Side effects, policies, human rights, and democracy	125
A5.1	Predicting emergency provisions	130
6.1	Descriptive statistics	152
6.2a	Main results, all observations	160
6.2b	Main results, OIC countries	162
6.3	Main results, only democracies	166
6.4	Main results, only democracies with different events	168
6.5	Specific results, types of attack	172
6.6a	Only democracies, interactions	175
6.6b	Only democracies, interactions	177
6.7	Main regression results, all observations, Western sample	180
6.8	Main regression effects, OIC sample	182
A6.1	Countries included in the sample	187
A6.2	Definitions and sources of variables	187
7.1	Descriptive statistics	196
7.2	Main results	199
7.3	Results conditional on ease of declaring	201
7.4	Results conditional on emergency powers	203
7.5	Consequences for civil liberties	208
8.1	Cluster memberships, preferred six-cluster solution	219
8.2	Characteristics of emergency constitutions, clusters	219
8.3	Further cluster characteristics	221
8.4	Descriptives, additional disaster data	222
8.5	Disaster consequences	223
9.1	Descriptive statistics	244
A9.1	Data sources for Chapter 9	256
10.1	Descriptive statistics	276
10.2	Main results, Freedom House index (2017)	277
10.3	Specific results	282
A10.1	Country averages	289
A10.2	Results, different types of attack	293
11.1	(Unconstitutional) States of emergency according to both regime type and potential causes	302

<i>List of Tables</i>	xiii
11.2 Unconstitutional behavior during the various phases	303
11.3 Descriptive statistics	306
11.4 Empirical results	310
11.5 Empirical results, domestic events only	312
11.6 Empirical results, democracies only	314
A11.1 All simple differences	318
12.1 Determinants for declaring an SOE	328
12.2 Probability of SOE declaration depending on emergency as well as decree powers	329
12.3 Determinants of events against journalists	331
12.4 Sequence of events against journalists	332
A12.1 Descriptive statistics	335
13.1 Descriptive statistics	341
13.2 Duration of repression increase after SOE	345
13.3 Duration of declines in rule of law and GDP after SOE	347
15.1 Overview of effects	377

Acknowledgments

A book – especially if it contains as many chapters as this one – is the result of many influences, comments, criticisms, suggestions, ... Back in 2013, the Minerva Center for the Rule of Law under Extreme Conditions was established at the University of Haifa – and Stefan was one of its founding members. When reflecting upon his possible input to the Center, the idea of analyzing how extreme conditions are dealt with in constitutions took hold. The regular exchange with my colleagues in Haifa was not only important but always very pleasant. Thanks are due to Gad Barzilai, Amnon Reichman, Eli Salzberger, and Deborah Shmueli. It was a lucky coincidence that I was invited to spend a couple of months as a senior fellow at the Institute of Advanced Study at the University of Notre Dame in 2013. This gave me the room and time to do some basic reading on states of emergency. Special thanks go to the then director of the Institute, Vittorio Höfle.

Likewise, it was a lucky coincidence that the two authors came to discuss the concept of “constitutional crime,” which morphed into the themes covered in this book. While Stefan could draw on having a central role in European law and economics research, Christian was grateful for much input from colleagues in public choice. Peter Kurrild-Klitgaard, Jacob Mchangama, and Martin Rode deserve special mention as well as the Jan Wallander and Tom Hedelius Foundation for funding part of the research.

While we are responsible for the research going into this book, it would have been impossible without the help of a number of colleagues. Most specifically, the original research for Chapter 10 was a joint effort with Mahdi Khesali who coauthored the article in the *The Journal of Legal Studies*. Likewise, much of the impetus for Chapter 13 and the ideas behind the chapter are the result of work by our excellent master’s student, Emily Johnson. We feel privileged to have worked with such talented young researchers and are grateful to them for including their work in this book. Also, Chapter 9 has

Acknowledgments

xv

benefited a lot from our cooperation with Abishek Choutagunta and Shruti Rajagopalan. We have also been very fortunate to have some long-term colleagues who have been willing to produce constructive comments on pretty much any idea: Although they do not appear as co-authors in any of the chapters, Jerg Gutmann and Niclas Berggren have contributed immensely to the project.

Bits and pieces of this long-term project have been presented at many conferences. In a sense, we were almost regulars at the Public Choice Society meetings (e.g. San Antonio 2015), the European Public Choice Society Meetings (Freiburg 2016, Budapest 2017, Jerusalem 2019), the meetings of the European Association of Law & Economics (e.g. Vienna 2015, Bologna 2016, Tel Aviv 2019), the annual meetings of the Italian Law & Economics Society (e.g. Naples), the Southern Economic Association, and the Danish Public Choice Society conference. But we were also fortunate to have been invited to nonregular events such as the jubilee conference of the Eucken Institute (Freiburg, June 2014), the conference “State of Exception – an Overview” organized by Matthias Lemke at the German Historical Institute in Paris (2017), the Future of Federalism Conference at the NYU Law School in November 2016, the Law & Economics workshop in Florence, the Political Economy Workshop of the University of Indiana (at Berlin) and others.

And of course, we presented single chapters of this book to many regular department workshops including those in Ankara (Bilkent), Bonn, Freiburg, Hamburg (Helmut Schmidt University), Hannover, Lugano, Lund, Marseille, Milan (Bicocca), Munich (TU), Paderborn, Prague (University of Economics), and Stellenbosch. We thank all the convenors for inviting us and all the participants for raising interesting and intriguing questions.

A long list of other people have helped to improve our work: Dagmar Ahlgrimm, Daniel Arce, Dan Brinks, Francisco Castellanos, Adam Chilton, Kevin Cope, Matthias Dauner, Nora El Bialy, Marek Endrich, Benjamin Engst, Lars Feld, Paula Herm, Daniel Hicks, Sven Höppner, Sina Imhof, Jean Michel Josselin, Rola El Kabbani, Hartmut Kliemt, Tim Krieger, Tommy Krieger, Patrick Leyens, Katerina Linos, Mariana Llanos, Brian Loveman, John Matsusaka, Katarzyna Metelska-Szaniawska, Stephan Michel, Peter Nannestad, Konstantinos Pilpilidis, José Reis, Roe Sarel, Janina Satzer, Thomas Stratmann, Agnes Strauss, Alois Stutzer,

Rok Spruk, José Tavares, Mark Tushnet, Viktor Vanberg, and Mila Versteeg.

At the end of the day, dozens and dozens of colleagues have commented on various aspects of this book during the years of work on the project. However, we cannot blame any of them for the mistakes and shortcomings in the rest of this book, which are entirely ours. We also cannot blame them if we decide to continue research on this topic. This book is the beginning of our understanding of states of emergency, but far from the end.