

EMPIRE, EMERGENCY AND INTERNATIONAL LAW

What does it mean to say we live in a permanent state of emergency? What are the juridical, political and social underpinnings of that framing? Has international law played a role in producing or challenging the paradigm of normalised emergency? How should we understand the relationship between imperialism, race and emergency legal regimes? In addressing such questions, this book situates emergency doctrine in historical context. It illustrates some of the particular colonial lineages that have shaped the state of emergency, and emphasises that contemporary formations of emergency governance are often better understood not as new or exceptional, but as part of an ongoing historical constellation of racialised emergency politics. The book highlights the connections between emergency law and violence, and encourages alternative approaches to security discourse. It will appeal to scholars and students of international law, colonial history, postcolonialism and human rights, as well as policy-makers and social justice advocates.

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Empire has created the time of history. Empire has located its existence not in the smooth recurrent spinning time of the cycle of the seasons but in the jagged time of rise and fall, of beginning and end, of catastrophe. Empire dooms itself to live in history and plot against history. One thought alone preoccupies the submerged mind of Empire: how not to end, how not to die, how to prolong its era.

J.M. Coetzee, *Waiting for the Barbarians*

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FOREWORD

The question of ‘emergency’ and its relationship to the law has now been the subject of extensive scholarship spanning political theory, philosophy, human rights and international and constitutional law. Much of this has been produced in response to developments since the tragic events of 11 September 2001, and a great deal of it focuses on events and theorising in the West, sometimes returning to Roman times to explain the origins and character of emergency rule. Dr Reynolds takes a different approach, exploring instead the development and operation of emergency rule in colonial territories, and the enduring influence of this model on emergency law and indeed, international law. His book examines ‘imperial emergency rule’ – it could in fact be termed a global history of imperial emergency rule – in a number of different contexts, encompassing both colonial and ostensibly post-colonial states. Dr Reynolds thus connects together accounts of emergency that are often treated separately: colonial emergencies, the impact of these emergencies on the drafting of international legal instruments and contemporary settler colonialism. It is by drawing on this range of diverse yet related materials and case studies that Dr Reynolds provides such a far-reaching and incisive account of the complexities of ‘imperial emergency rule’ and how it has shaped, and continues to shape, emergency law everywhere.

The concept of ‘racialised emergency’ – and its characteristics, elaborations, variations, operations – is one of the principal themes by which Dr Reynolds connects his materials. He offers here a sustained study of the racialised character of imperial emergency governance which was broadly and generally justified on the basis that the ‘normal’ rule of law needed to be suspended because of the supposedly barbaric nature of the natives. Further, Dr Reynolds attempts to study emergency rule from below, from the perspective of those who are subjected to it. It is by elaborating and developing this approach that he challenges the clichéd claim that we are now living in unprecedented times in which the exception has become the norm. By focusing on the experiences of those

often overlooked by history, Dr Reynolds persuasively points out that this has long been the case for millions of people who are living under emergency rule and have done so for decades.

In these cases, emergency rule becomes normalised, so much so that this version of emergency itself produces a complex set of regulations which create a simulacrum of the rule of law and rhetorically mimics its attributes. Notably further, imperial emergency rule has an important economic dimension and is directed at dispossessing peoples marked as racially other from their lands. The natural resistance of these people to their immiseration is then represented as a confirmation of their barbaric and inhuman nature, which again justifies the expansion of emergency rule and ongoing violence against them. Emergency rule must extend even further, to govern these people, and it then filters into everyday life. What we then observe is the ‘banality’ of emergency, this in contrast to the dramatic and singular events (such as 9/11) that trigger formal declarations of a state of emergency.

One of the key issues raised by this book is precisely the disturbing extent to which emergency has become so entrenched in the everyday operations of the law that in some respects the two regimes become indistinguishable. Emergency is inherent in the idea of law itself. Indeed, it generates law. Even when emergency is succeeded by a set of laws which make some claim to restore normality these laws are inevitably marked by structural changes imposed under the emergency. As a result, a residue of emergency remains even in the ‘normal’ law but the rhetoric shifts to some version of the importance of ‘adapting to novel threats’. Current attempts to legalise drone strikes and expand the concept of self-defence through the ‘unable or unwilling’ test are adorned in the language of ‘balance’, ‘necessity’, ‘proportionality’ and ‘law’ itself. They are presented as universally binding and applicable principles of general international law, rather than exceptional, emergency measures. Once again, however, their likely target as in the time of emergency is the racialised other, the failed state, the inherently violent barbarian.

Dr Reynolds modestly and carefully points out that the paradigm he elaborates in such detail cannot account for every dimension of the complex phenomenon of emergency; and yet, there is a great deal he illuminates in this book which combines erudition with superbly clear writing. Racialised emergency, after all, is now prevalent in the West itself. What began as ‘colonial emergency’ has gone global. And his study of the economic dimensions of emergency is surely relevant to appreciating the plight of the tribal peoples and peasants expelled from their

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lands in countries intent on achieving ‘development’. As Dr Reynolds argues, however, emergency produces resistance from below, and an understanding of how precisely emergency operates is crucial to this project of contestation. Dr Reynolds’ book offers one such incisive understanding. It is an eloquent and valuable book which provides enduring insights into a pervasive feature of our times.

Antony Anghie