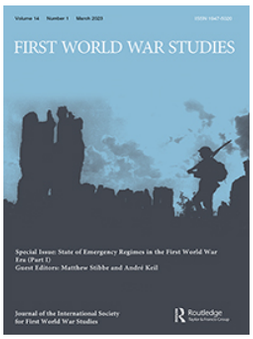

First World War Studies

ISSN: 1947-5020 (Print) 1947-5039 (Online) Journal homepage: www.tandfonline.com/journals/rfww20

Emergency, Exception, and the Colonial Rule of Law: The Case of British India

Mark Condos

To cite this article: Mark Condos (2023) Emergency, Exception, and the Colonial Rule of Law: The Case of British India, First World War Studies, 14:1, 29-50, DOI: 10.1080/19475020.2024.2307056

To link to this article: https://doi.org/10.1080/19475020.2024.2307056

Published online: 18 Mar 2024.

FIRST WORLD WAR STUDIES
2023, VOL. 14, NO. 1, 29–50
https://doi.org/10.1080/19475020.2024.2307056

Routledge
Taylor & Francis Group

Emergency, Exception, and the Colonial Rule of Law: The Case of British India

Mark Condos

Senior Lecturer in Imperial and Global History, King's College London, London, UK

ABSTRACT

Giorgio Agamben's now axiomatic formulation of the 'state of exception' is problematic when we consider the colonial world. As scholars have pointed out, Agamben's framework is inherently Eurocentric and fails to consider how racial difference rendered colonial rule an inherently authoritarian and anti-democratic enterprise from the outset. The blurring of executive, legislative, and judicial powers that Agamben identifies with the state of exception were, in fact, integral, systemic features of colonial power. Using British India as a case study, this article seeks to re-orient our understanding of states of emergency or siege away from the framework of the exception to consider how they may be more usefully considered as general techniques of colonial power. In so doing, it argues that rather than representing a point of rupture or change, the First World War simply offered an opportunity for the British colonial state to draw upon and expand an already extensive repertoire of coercive executive and legal practices that had been central to colonial control since the early nineteenth century.

ARTICLE HISTORY
Received 13 February 2023
Accepted 21 November 2023

KEYWORDS
Emergency; India; First World War; Law; Colonialism

Introduction

In March 1915, the Government of India (GOI) passed the notorious Defence of India (DOI) Act (Act IV of 1915).[1] Closely modelled after the Defence of the Realm Act (DORA) passed by the metropolitan British Parliament in August 1914 shortly after the outbreak of war with Germany,[2] the DOI Act enabled the Governor General in Council to 'make rules for the purpose of securing the public safety and the defence of British India'.[3] Like DORA, the measures were intended to 'prevent persons communicating with the enemy', 'to secure the safety of His Majesty's forces and ships', and 'to prevent the spread of false reports or reports likely to cause disaffection or alarm'. Broadly, conceived, the DOI aimed to provide civil and military authorities whatever powers deemed necessary to protect the country's strategic infrastructure, including railways, ports, dockyards, telegraph lines, electricity, gas, while also allowing government authorities to imprison or detain any individuals suspected of having acted or planning to do anything deemed 'prejudicial to the public safety'.[4] The wide-ranging and extraordinary powers conferred by this act effectively allowed colonial authorities to

CONTACT Mark Condos mark.condos@kcl.ac.uk

suspend *habeas corpus* through indefinite detention of political suspects, while also allowing them to conduct political trials using special commissions or tribunals that did not require a jury.[5] The ability to circumvent trial by jury was especially significant because individuals found to have broken these rules in an attempt 'to assist the King's enemies or to wage war against the King' could be punished by imprisonment up to ten years, transportation, and even execution.[6]

In his highly influential work, *State of Exception*, Giorgio Agamben singled out the First World War as a key turning point in the proliferation of a radical, new form of state power that was fundamentally anti-democratic, authoritarian, and which operated along the lines of a permanent state of emergency.[7] Framed, such as it is, within a firmly Eurocentric tradition, Agamben's paradigm about the state of exception is ultimately inattentive to the ways that the inherently racialised and unequal nature of the extra-European colonial world – 'the rule of colonial difference', as Partha Chatterjee put it – rendered the Western imperial project an inherently authoritarian and anti-democratic enterprise from the outset.[8] Thus, whereas Agamben views the First World War 'as a laboratory for testing and honing the functional mechanisms and apparatuses of the state of exception as a paradigm of government',[9] others such as W.E.B. Du Bois, Aimé Césaire, and Hannah Arendt, have all argued that the entire colonial world served this function.[10] This article argues that the blurring of executive, legislative, and judicial powers that Agamben identifies with the state of exception, and exemplified in the DOI Act, were, in fact, integral, systemic features of colonial power. Using British India as a case study, this article seeks to reorient our understanding of states of emergency – whether these be declarations of martial law, the suspension of *habeas corpus*, the enaction of 'repressive' legislation in the name of state security, or executive decrees and ordinances – away from the framework of the exception in order to consider how they may be more usefully considered as general techniques of colonial power. In so doing, it argues that rather than representing a point of rupture or change, the First World War simply offered an opportunity for the British colonial state to draw upon and expand an already extensive repertoire of coercive legal and executive powers that had been central to colonial control since the early nineteenth century.

Blurred Boundaries: War, Peace and the Colonial World

In the wake of the attacks of 11 September 2001 and the ensuing geopolitical and strategic reconfigurations brought about by the 'War on Terror', scholars have been increasingly attentive to the ways that states have deployed the political and legal framework of emergency in order to suspend, circumvent, and abrogate regular legal and judicial processes, while also conferring extraordinary executive powers upon those agents charged with defending the state against both its external and internal enemies.[11] The apparent boundlessness of the 'War on Terror' – both in terms of its global reach and temporal indeterminateness – has also prompted urgent questions about the deleterious effects of a permanent state of warfare upon society. While some of this work has sought to understand how the consolidation and expansion of state power and the concomitant curtailment of individual rights is the product of a new kind of security paradigm, others studies have attempted to locate this development within a longer historical trajectory.[12] David Kennedy and Mary L. Dudziak, for instance, have both argued that the strict

separation between war and peace that once prevailed across the Western world gradually became blurred during the modern industrial era to the point where politics, law, and nearly all other institutions and aspects of society became continuous with the operation of war.[13] War, in other words, ceased to be a temporary interruption of the ordinary procedures that prevailed during peacetime, and became embedded in the institutions that regulated everyday life.

Kennedy and Dudziak's observations, however, are based entirely on European and American experiences of war, and if we adopt a more global perspective, a very different picture emerges. Throughout much of the nineteenth and early twentieth century, many of the key markers that helped uphold the hallowed boundaries between war and peace in the Western world – distinctions between combatants and non-combatants, public and private actors, and a set of agreed legal principles that governed the declaration and conduct of war – were either already seriously blurred or altogether non-existent in the imperial wars fought outside the Western world.[14] As Tarak Barkawi has pointed out, the way we conceptualise the differences between war and peace is through an inherently Eurocentric framework, one that is ultimately untenable in the colonial world, which represented a sort of permanent form of war against the colonised.[15] In the colonial world, war, insurrection, or some other kind of emergency requiring the suspension of the 'normal' procedures of everyday life could potentially arise at any moment.[16] It is in this sense of the colonial world as a site of perpetual conflict that we can perhaps best understand the blurred boundaries between the 'emergency' powers of 'wartime', and the everyday manifestations of these techniques during so-called times of 'peace'. It is perhaps for this reason that the history of European imperialism has proved to be especially fruitful when considering the ways authoritarian regimes have systematically curtailed individual rights and freedoms in the name of security, while also regularly transgressing the normative boundaries and procedures of the law.[17]

In his highly influential work on 'necropower', Achille Mbembe draws upon the theories of Carl Schmitt and Agamben to argue that the entire colonial world was a zone of permanent exception *par excellence*, where the 'sovereign might kill at any time or in any manner'.[18] For Mbembe, colonial rule represented a form of 'absolute lawlessness' in which the brutal violence of empire was enacted through the unchecked, sovereign discretion of colonial agents.[19] This expansive characterisation of colonial rule and violence, however, is too reductive and ultimately inattentive to the myriad ways that law was actually quite central to the imperial project as a means of justifying colonial domination and the indisputably brutal violence it often perpetrated.[20] Colonial regimes were often deeply beholden to the law, especially in those moments when they were seen to be transgressing it.[21] Colonial violence, therefore, was most often enacted not by the discretionary decree of the sovereign, but through the techniques of 'lawfare', in which legal codes, charters and warrants, administrative regulations, and states of emergency were deployed to 'impose a sense of order upon its subordinates by means of violence rendered legible, legal, and legitimate by its own sovereign word'.[22]

In his modern classic, *The Jurisprudence of Emergency*, Nasser Hussain takes the law much more seriously and argues that the colonial world represented a space of legal liminality, where the regular law could be easily suspended under the guise of various kinds of states of emergency, including the declaration of martial law. Far from constituting a regime of lawlessness, however, Hussain shows how these techniques constituted

a 'jurisprudence of emergency' that became a permanent feature of colonial rule.[23] Hussain's work, however, is heavily informed by the theories of both Agamben and Schmitt, and represents an attempt to resolve the apparent *aporia* between the avowed British commitment to the rule of law in India alongside their frequent recourse to the 'sovereign' discretionary powers during states of emergency. While Hussain's work is undoubtedly valuable in thinking about the relationship between law and emergency in the colonial world, he has been criticised by Lauren Benton and others for being insufficiently attentive to the ways that empire was a space for the creation of new forms of law and violence, beyond the Eurocentric framework of rule and exception. For Benton, one of the key problems with this approach is that it ultimately holds Europe up as its *telos*, rather than seeking to understand how the colonial world was the site for new kinds of legal innovation.[24] Indeed, a more productive line of inquiry can be seen in the recent work by John Reynolds, who has pointed out that the Schmitt/Agamben paradigm of sovereignty and law obscures the ways that sovereign prerogative could operate within the terrain of ordinary legal procedures.[25] For Reynolds, emergency was not something merely episodic or interruptive, but was a 'technique of governance' embedded into the everyday functioning of colonial regimes.[26]

This article takes its cue from the paths of inquiry laid out by Benton and Reynolds, and examines the ways that the British colonial regime in India regularly resorted to 'extraordinary', repressive legal measures outside of formally declared periods of emergency, such as the First World War.[27] Far from being examples of 'sovereign' discretion enacted during states of exception, this paper argues that the routinisation of 'emergency' procedures constituted a 'technique of governance' embedded into the everyday functioning of the colonial state in British India.[28] As we shall see, this proved to be remarkably durable, and continues to inform the post-colonial legal and political systems of both India and Pakistan today.

India and the Defence of India Act

During the First World War India recruited and mobilised nearly 1.4 million combatants and non-combatants, over a million of whom served overseas in France, Flanders, Mesopotamia, East Africa, Gallipoli, Egypt, Palestine, Aden, and elsewhere.[29] In addition to manpower, India also made enormous material contributions to the war effort, including raw materials for the manufacture of munitions and equipment, food to feed soldiers, animals for transport and combat, as well as raising £100 million through war bonds.[30] At the outbreak of the war, there were popular outpourings of support for the Empire across India as people rallied to fight for the 'King Emperor'.[31] However, despite this initial enthusiasm for the war, the exigencies of fighting a global total war placed enormous economic, social, and political strain on Indian society, These stresses were particularly acute in the strategically vital province of Punjab, the main recruiting ground for the Indian Army, and by the end of the war the increasingly intrusive and coercive recruitment practices of the colonial state had created significant discontent and even prompted several outbreaks of open, violent resistance.[32] Throughout the war, colonial authorities worried that the security of this province and the loyalty of their Punjabi soldiers would be compromised by revolutionary groups comprising Hindus, Muslims, and Sikhs, who

were actively working with German agents in what became misleadingly known as the 'Hindu-German Conspiracy'.[33] These Indian revolutionaries dreamed of winning their freedom, while their German collaborators hoped to sow disorder and potentially oust the British from their most strategically vital colony. In particular, British colonial authorities feared the activities of the Ghadar Party, whose fiery anti-colonial rhetoric called for the violent overthrow of British rule. During the war, Ghadar agents actively worked to foment insurrection and subvert the loyalty of Indian soldiers in Punjab. Although these efforts ultimately failed, the Punjab Government demanded extraordinary powers to deal with the revolutionary threat and on 19 December 1914 submitted a draft bill to the GOI that eventually became the foundation for the Defence of India Act.[34] Thus, when the GOI passed the DOI Act in March 1915, it was not responding as much to military crisis in Europe, as it was to the nationalist threat and the fear of a potential armed insurgency in India, particularly Punjab, and a global German conspiracy seeking to abet this.

Following the passage of the DOI Act, the colonial government conducted several high-profile trials against Indian revolutionaries, many of whom were Ghadar agents. The first of these began on 26 April 1915 and became known as the First Lahore Conspiracy Case. Of the sixty-eight who originally stood accused, twenty-four were sentenced to death, twenty-seven to transportation for life, six to various prison terms, and four were acquitted.[35] In their judgement, the special commissioners made it clear that these were dangerous revolutionaries who were colluding with the 'German enemies of the King Emperor' and that their actions constituted conspiracy to wage war against the King and acts of war against the King.[36] Over the course of the war, the British prosecuted nine different sets of defendants in these Lahore Conspiracy trials. In total, twenty-eight individuals were hanged, while the vast majority were sentenced to transportation or imprisonment; only twenty-nine were acquitted.[37] While the special tribunals were convened under the auspices of the DOI ACT, the accused were convicted of offences under the Indian Penal Code (IPC), particularly sections 121 and 121A: waging or attempting to wage war against the sovereign, and conspiracy to wage war against the sovereign.[38] By June 1915, 4,000 people had been put on trial using these special tribunals.[39]

Although it was made very clear by the GOI that the law was intended only as a temporary, emergency measure in order to guard against attempts to subvert the government during the First World War, it took the highly controversial decision to extend the DOI Act following the war, based on the recommendations made by the Rowlatt Committee.[40] The Anarchical and Revolutionary Crimes Act, known as the Rowlatt Act, provoked widespread public outrage and was quickly labelled the 'Black Act' by the Indian public. According to B. G. Horniman, the editor of the *Bombay Chronicle* and a strong supporter of the Indian nationalist movement, the Rowlatt Act deprived people 'of their most elementary human rights and [was] unparalleled in the laws of any modern civilised State'.[41] For Mohandas K. Gandhi, it was an 'affront to the nation'.[42] In a well-known protest letter penned to Viceroy Lord Chelmsford on 21 March 1919, the staunch constitutionalist Mohammed Ali Jinnah resigned from India's Imperial Legislative Council, claiming that the 'fundamental principles of justice have been uprooted and the constitutional rights of the people have been violated'.[43] The backlash against the

Rowlatt Act, coupled with the social and economic disruption caused by the war, led to widespread and violent protests across India that culminated in the infamous Jallianwala Bagh Massacre at Amritsar in April 1919.[44]

The repressive measures adopted by the British government during the First World War and their bloody aftermath in Amritsar were not isolated incidents, but were characteristic of the brutal and violent reaction of the imperial authorities to a series of crises and emergencies that rocked the Empire in the years 1914 to 1920, as nationalist groups in places like India, Ireland, and Egypt attempted to overthrow the yoke of colonial oppression.[45] Yet, British fears of nationalist agitation and subversion did not end with the war. In their report, the Rowlatt Committee detailed the extensive history of Indian revolutionary violence and concluded that it was absolutely necessary to maintain wide-ranging preventive and punitive powers to deal with sedition and terrorism after the war.[46] This was deemed especially important in Punjab, which the Rowlatt Committed feared would soon be home to 'a large number of disbanded soldiers, among whom it may be possible to stir up discontent.'[47] If anything, then, the colonial state became even more repressive in the years following the war.[48]

One of the key problems with extending these war time powers into peace time was that this flew in the face of promises made by the British government during the war to offer Indians a greater role in governing their own country. In 1917, in an attempt to soothe wartime unrest, the Secretary of State of India Edwin Montagu had announced it was the British intention to grant responsible government to India through a system of dyarchy that devolved certain powers and responsibilities to provincial governments run by Indian leaders. Indeed, when Montagu learned of plans to extend the DOI Act into peacetime, he expressed his deep opposition to Governor-General Lord Chemlsford. Unfortunately for Montagu, Chelmsford was a staunch supporter of this plan and saw it as a key opportunity to stifle revolutionary violence in India on a more enduring basis.[49] For many Indians, who had served loyally during the war and now expected to be rewarded with increased political autonomy and involvement under the much-touted Montagu-Chelmsford reforms, this was both a shocking betrayal of the government's promise and a glaring example of the hypocrisy of a British regime which claimed to be based on the rule of law.[50] Moderates, like Jinnah, who had previously sought to work within the constitutional framework of British India in order to bring about change now became disenchanted. The shocking brutality of the Jallianwala Bagh Massacre also seemed to dispel any remaining illusions that the British Raj represented a morally superior, civilising regime, and Gandhi used the public outrage it provoked to help launch his 1920–22 Non-Cooperation Movement.[51] But if the wartime repression and its bloody aftermath represented something of a turning point in terms of Indian nationalist politics, they were very much in keeping with the established traditions of British colonial rule.[52] Despite the emphatic insistence by the British government that the DOI Act and the Rowlatt Act represented 'exceptional', temporary responses to an emergency situation, they were – as the follow section will show – the culmination of a much longer tradition of colonial rule that stretched as far back as the early nineteenth century.

A Permanent State of Danger

From the outset, the British in India were preoccupied by issues of law and governance. As Philip Stern has demonstrated, the East India Company was deeply concerned with matters of sovereignty.[53] The Company's original charter empowered it to construct laws, constitutions, regulations, and ordinances designed to govern itself and those under its command, and to protect itself against mutiny and rebellion.[54] Subsequent grants issued by British monarchs also empowered the Company to make law, erect courts, and oversee punishment of those falling within its expansive jurisdiction.[55] Following the Battle of Plassey in 1757 and the transformation of the Company into a significant territorial state, the British Parliament began to exert a stronger influence over its internal affairs. Lord North's Regulating Act of 1773 established the new structure for the Company's government by creating a Supreme Court and delineating the powers of the Governor-General and his Executive Council, which included the ability to enact rules, ordinances, and regulations, so long as they were not 'repugnant to the laws of the realm'.[56] Thus, while the Company's law-making powers ultimately derived from the authority of the monarch and parliament back home, India was not bound by common law traditions, and the colonial regime retained significant powers to develop and practice law on its own terms beyond the metropole.[57]

As the Company state continued to expand its power and territory throughout the rest of the eighteenth century, the rule of law came to be seen as the cornerstone of colonial stability and good governance, while also serving as a key signifier of the moral superiority of British rule over the capricious whims and personal discretion of India's 'oriental despots'.[58] Yet alongside this avowed commitment to the rule of law was an equally, if not more, powerful imperative to maintain the security and stability of the colonial regime against anything that might threaten it.[59] One of the most common techniques of protecting the state deployed by authorities during times of danger or emergency are martial law powers. Martial law is often upheld as the premier example of the state of emergency and exception to the rule of law *par excellence*. For Hussain, martial law embodies Walter Benjamin's notion of 'mythical violence' in that it is a purely performative manifestation of power that exists entirely outside the law and attempts not merely to restore order but to guarantee the continued existence of the state itself.[60] However, as John Collins has recently shown, martial law was historically understood, debated, and practiced within the procedures of the law.[61] As such, there is a legal tradition in which martial law is understood not as a state of exception, but as an extension of the legal powers granted to officers during periods of 'emergency'.[62] In the case of the East India Company, martial law powers were part of its original charter, and were later expanded in 1683 by Charles II in order to help curb the rebellious behaviour of the Company's own officials, officers, sailors, and soldiers.[63] During the period of extended warfare and aggressive, rapid territorial expansion under Governor-General Richard Wellesley (1798–1805), the Bengal Government saw fit to clarify and reaffirm the powers of the Governor-General to suspend the regular law courts, declare martial law, and use courts-martial to try individuals for acts of 'hostility' or 'rebellion' against the British regime.[64]

Throughout the first half of the nineteenth century, the East India Company periodically called upon these martial law powers to maintain order during its wars with India's

Mughal successor states, and suppress various revolts against its authority, including the Travancore Rebellion of 1808 along the Malabar Coast, the Paika Rebellion of 1818 in Odisha (Orissa), the Kol Revolt of 1832, and the Santhal Rebellion of 1855 in Bengal.[65] Yet, the most spectacular and innovative use of martial law powers in India occurred during the Indian Uprising or 'Mutiny' of 1857. Shortly after the outbreak of the Uprising, the Lieutenant-Governor of the North-West Provinces declared martial law.[66] However, the widespread nature of the revolt and the desperate position of the British quickly convinced Governor-General Charles Canning (1856–62) and his Executive Council to pass a series of emergency statutes between May and June 1857, granting British officials more wide-ranging powers to suppress the rebellion.[67] Through these laws, Canning and his government augmented and expanded the purview and jurisdiction of martial law powers available to colonial officers, while also empowering civilian authorities to wield these as well.

It is important not to overstate the extent to which the British adhered to the rule of law when administering martial law during the Uprising, as there were widespread and egregious abuses of its authority. Sentences, including capital punishment, handed down by the special commissions and courts-martial that tried mutineers and rebels, were subject to neither approval nor appeal, and almost no records were kept of these proceedings, making it relatively easy for officers to abuse their powers.[68] Indeed, in many cases mutineers and rebels were executed summarily, without even the pretence of a trial, while ordinary criminals and many innocent people were also subject to this harsh 'justice'.[69] However, the crucial point here is not that colonial officers abused the wide-ranging powers and discretionary authority given to them, but that it was the law itself which enabled these practices to occur in the first place. Canning and his government understood that it was necessary to grant officers wide latitude when it came to suppressing the revolt, and designed these laws in such a way that they would not inhibit their discretionary authority. For example, as mentioned above, sentences issued by special commissions could be executed immediately, with no need for judicial review, 'to ensure speedy and exemplary punishment'.[70] The brutal and 'lawless' violence of the colonial state was thus ultimately unleashed by the law itself. When Canning and his Executive Council eventually learned about the widespread abuses being perpetrated by British officials under the auspices of these laws, they took the extremely controversial decision to issue a much-maligned Resolution, urging officers to show greater restraint and placing restrictions on the ways they could interpret these emergency powers.[71] It is thus incorrect to assume – as many scholars have done – that martial law 'is no law at all but that of the general'. Rather, it was an established legal mechanism of emergency rule ultimately enabled and adjudicated through the law, with the aim of upholding the state's monopoly on violence as an aspect of the rule of law.[72] To put it another way, martial law during the suppression of the Uprising may have been practiced *de facto* outside the precise letter of the colonial government's emergency laws, but it was ultimately enacted and legitimised through the law itself.[73]

Another key power that is often sought after by authorities during times of danger or emergency is preventive detention.[74] Considering this, it is perhaps unsurprising that one of the earliest and most enduring examples of the ways the British regime embedded emergency powers into the permanent workings of colonial statecraft can be seen in its use of preventive detention. In April 1818, the Bengal Government passed Regulation III,

known as the 'State Prisoners Act'.[75] This law enabled the Governor-General to suspend *habeas corpus* and issue warrants for the arrest and indefinite detention of any individual suspected of undermining the safety and security of the colonial regime. The law was designed to allow the state to act in the absence of sufficient evidence to institute regular judicial proceedings, or in cases where these were considered inappropriate or inexpedient. With its emphasis on the 'due maintenance of the alliances formed by the British Government with foreign powers, the preservation of tranquillity in the territories of Native Princes, entitled to its protection, and the security of the British dominions from foreign hostility, and from internal commotion', the law was clearly conceived as a way of protecting the colonial state against a wide range of potential threats to its power.[76] At the same time, we can also see how this set a strong precedent for the language later deployed in the DOI Act during the First World War, which emphasised the need to prevent Indians from colluding with a foreign enemy or any other activities deemed prejudicial to either the external or internal security of British India.[77]

One of the most illuminating examples of the colonial state's reliance on Regulation III of 1818 occurred during the so-called Wahhabi scare of the 1860s and 1870s, when the government used it to arrest and detain Amir and Hasmadad Khan, both of whom were accused of being part of a wide-ranging, 'fanatical', Muslim anti-colonial conspiracy.[78] After the Khan brothers' lawyer mounted a legal challenge against Regulation III and demanded his clients be granted a writ of *habeas corpus*, Viceroy Lord Mayo claimed that this was 'an attack on the validity of all the older legislation and regulation of India' that would have very serious legal and political repercussions if it succeeded.[79] Fortunately for Mayo, the High Court ultimately sided with the government. The decision by Chief Justice J. P. Norman to deny Amir Khan a writ of *habeas corpus* is particularly revealing of the ways that emergency measures were built into the everyday workings of the state. Gesturing to the numerous wars, conflicts, and other threats the British regime had faced in India both before and after the enactment of Regulation III of 1818, including the recent Indian Uprising or 'Mutiny' of 1857, Norman concluded that this law was indispensable in a country where there was always a 'permanent' danger to the state.[80] Norman's ruling was thus not only highly significant in upholding the legality of Regulation III and the legitimacy of the laws enacted by the colonial regime, but his characterisation of the permanent danger allegedly posed to the state explicitly acknowledged that it was impossible to distinguish between periods of emergency and non-emergency. In effect, emergency was the norm in India. As such, Norman's justification for upholding Regulation III of 1818 maintained the principle of *salus populi suprema lex* ('the welfare of the people is the highest law'), and was part of a wider British tradition of justifying the violent and coercive practices of the colonial state based on its alleged insecurity and the need to defend it against any potential threats.[81]

This can also be seen in the Indian Councils Act, passed by the British Parliament in 1861 in response to the 1857 Uprising, which made specific provisions for the Viceroy to retain emergency law-making powers. In the following decades, British Viceroys generally adhered to the customary practice of exercising their executive power to issue ordinances sparingly, and only had recourse to the 1861 Act on seven occasions before the First World War. However, in 1914–15 alone, it was used twelve times.[82] One of the most notable instances was the promulgation of the Ingress into India Ordinance of 5 September 1914, which granted officials the power to restrict the movement of returned

emigrants by either indefinitely detaining them or confining them to their villages under police surveillance. During the war, the British Empire developed a massive, global network of internment camps and deportation centres to deal with 'enemy aliens' – including Germans, Austro-Hungarians, Turks, and Bulgarians[83]–but the Ingress into India Ordinance was one of the first instances where British subjects were denied their rights and subject to these kinds of authoritarian measures. It was specifically designed to counter the revolutionary threat posed by the Ghadar Party. Based along the West Coast of North America, the Ghadar Party tapped into the frustration and disillusionment felt by Indian migrants in Canada and the United States due to the widespread racial discrimination they faced there.[84] Its violent anti-colonial politics called for the complete overthrow of British rule, and its members actively worked to bring about a second 'Mutiny' in the strategically vital province of Punjab during the war.[85] British officials were especially alarmed by reports that Germany was supporting the Ghadarites as well as other Indian revolutionary groups as part of an effort to subvert their strategically crucial Indian colony.[86] The Ordinance was first used against the passengers aboard the *Komagatu Maru*, a ship believed to be carrying Ghadar agents returning to India from North America. Following the ship's arrival just outside Calcutta on 29 September 1914, many of the passengers were arrested after violent clashes with the police, and interned with no formal charges or evidence brought to bear against them.[87]

In 1915, the GOI also passed the Emergency Legislation Continuance Act, enabling ordinances issued during the war to extend beyond their normal six-month expiry, many of which remained in force until 1922 and were only officially repealed in 1927.[88] These powers were reaffirmed and protected in the Government of India Acts of 1915 (later revised in 1919) and 1935.[89] The much-touted Montagu-Chelmsford Reforms, ushered in after the First World War under the 1919 Government of India Act, also failed to offer any kind of effective check against the executive powers of the Viceroy. Although these reforms expanded the Indian legislature by creating a more representative Indian Legislative Assembly as its lower house, the Viceroy maintained the power to veto or certify any laws that were passed or rejected by the Assembly, effectively bypassing it entirely.[90] Thus, even after the crisis of the First World War, as the British colonial government moved towards a more liberal, participatory regime in which Indians had a greater role to play, the colonial government jealously guarded its prerogative to rule by ordinance and executive decree. Indeed, the era of mass nationalist politics during the 1920s and 30s saw a massive expansion of ordinances in a desperate attempt to suppress nationalist meetings and organisations.[91] However, we must remember that while this power was used much more frequently following the war, this represented merely an expansion of a much older form of executive prerogative.

Alongside its continued ability to rule by ordinance and decree, the post-1857 Government of India also continued to promulgate laws which were specifically designed to grant officers extraordinary powers to deal with pervasive threats to colonial security. The Murderous Outrages Act (MOA) of 1867, for instance, gave colonial officials stationed along India's dangerous North-West Frontier wide-ranging, discretionary powers to try and execute 'fanatics', who were deemed an existential threat to the state.[92] Although it was initially meant only to apply for a limited period within specified regions along the North-West Frontier, it was repeatedly extended, its jurisdiction enlarged, and it also later served as an inspiration for British officials during the early

twentieth century when it came to framing and responding to terrorist violence in Bengal and elsewhere.[93] It was further used, alongside both Regulation III of 1818 and the Defence of India Act, during the First World War in order to detain and imprison suspected revolutionaries.[94]

To stem the new tide of seditious and violent revolutionary activity in the first two decades of the twentieth century, the GOI passed a series of repressive laws, while also amending older ones in order to provide their colonial officials with sufficient powers to root out and destroy this elusive revolutionary menace. These included the Seditious Meetings Act (Act VI of 1907), the Newspaper (Incitement to Offences Act) (Act VII of 1908), the Explosive Substances Act (Act VI of 1908), the Criminal Law Amendment Act (Act XIV of 1908), the Press Act (Act X of 1910), and the Criminal Law (Amendment) Act (Act VIII of 1913). Altogether, these laws armed the colonial state with a frightening new set of draconian legal powers which allowed officials to ban political meetings; muzzle the free press by imposing hefty fines and even prison sentences for publishers of 'seditious' or revolutionary material; and to speed up the conviction of suspected revolutionaries by abolishing trials by jury. In a letter to Secretary of State John Morley from 11 June 1908, Viceroy Lord Minto justified these measures by insisting they were far from being a 'hysterical' overreaction to the threat of revolutionary political violence, but were simply part of an established tradition of indomitable, firm-handed British rule: 'I maintain that the strength of the British Raj has been built upon the justice of its administration. Heaven knows it has been no weak rule, but it has been a just one – one it will continue to be so'.[95]

Of course, some of the most enduring and effective weapons used against Indian revolutionaries came from within the existing arsenal of repressive colonial legislation. Regulation III of 1818 gained a renewed importance during the Indian freedom struggle, and was widely used both before and after the First World War in order to arrest, detain, and deport Bengali terrorists and other Indian activists and nationalist leaders, often with little or no evidence.[96] As we have seen, the Indian Penal Code (IPC) was also commonly used to charge revolutionaries with participation in criminal conspiracies, particularly sections 121, 121-A, and 124-A, 'waging war' against the sovereign, 'conspiracy' to wage war against the sovereign, and 'exciting disaffection', respectively.[97] Following the First World War, the GOI devised further repressive legislation in its ongoing fight against revolutionary violence, including the Bengal Criminal Law Amendment Acts of 1925,[98] the Bengal Criminal Law (Arms and Explosives Act) of 1932, and the Suppression of Terrorist Outrages Act of 1932.[99] Thus while ostensibly the Indian population was subject to the same legal regime as Europeans, in practice many laws were devised for and applied only to the former. The central element of the colonial rule of law was racial difference: Indians were policed and punished under separate laws and administrative regulations from their European rulers.[100]

For many Indians, this well-established pattern of legal repression was a source of enduring hostility and bitterness, and the colonial state's increasing recourse to such measures both during and after the First World served only to exacerbate revolutionary violence while also further alienating those loyal or more moderate sections of the population from British rule.[101] Following the mass protests against the Rowlatt Act, the GOI appointed a special committee in March 1921 to examine its historic and ongoing use of 'repressive laws' and offer recommendations on whether these should

be repealed.[102] The committee was chaired by Tej Bahadur Sapru, the Law Member of the Viceroy's Executive Council, and consisted of a mixture of mostly Indian, and a few British members. The committee examined a range of legislation, including the Bengal State Offences Regulation (Regulation X of 1804), Regulation III of 1818, the State Offences Act of 1857, the Indian Criminal Law Amendment Act of 1908, the Seditious Meetings Act, which had been extended in 1911, the Defence of India Act, and the Rowlatt Act. As the committee pointed out, some of these laws were 'inconsistent with modern ideas', and many 'arm the Executive with special powers which are not subject to revision by any judicial tribunal'.[103] The committee, therefore, recommended that the majority of these laws should be repealed, particularly the Defence of India Act. Regulation III of 1818 was also to be amended and used much more judiciously in future.[104] Although the new Viceroy, Lord Reading, accepted the committee's recommendations, and the majority of these laws were subsequently repealed, the much-urged amendments to Regulation III failed to materialise.[105] For the duration of British rule, the colonial regime continued to use Regulation III against political prisoners and revolutionaries, along with numerous other repressive laws that continued to be promulgated.[106]

Conclusion

In 1935, Sundara Satyamurti, a prominent member of the Indian National Congress, introduced a bill to the Legislative Assembly for the repeal of various repressive laws. As Satyamurti astutely noted, there was a very clear line of continuity to be drawn between the older emergency measures adopted during the days of the East India Company, and the modern British colonial state in the twentieth century:

> The Old Regulations of 1818, 1819 and 1827 have, in recent years, been unearthed for the purpose of detaining prisoners without trial, for indefinite periods, without any charge and without the possibility of a resort to the Courts for a Writ of Habeas Corpus. Numerous other Acts have also been passed in recent years, some embodying the provisions of temporary Ordinances enacted by His Excellency the Governor General for dealing with the non-co-operation movement, as permanent measures on the Statute Book. They are highly detrimental to the free expression of opinion, and even to the lawful carrying on of the ordinary avocations of peaceful citizens.[107]

In his speech to the Assembly in 1936 during the debate over the bill, Satyamurti railed against the longevity of these laws, noting how governments come and go, 'but these wretched Acts go on'.[108] Despite his impassioned plea in the name of justice, freedom, and the rule of law, Satyamurti's bill was ultimately rejected.

Right to the end of British rule in 1947, the Government of India continued to rely on extraordinary legal powers to arrest, detain, try, convict, and punish revolutionaries, enemies of the state, 'fanatics', or 'hereditary' criminals who were deemed menacing to the stability of the colonial regime. Yet it would be wrong to see these extraordinary powers as exceptional or extra-legal. Between 1930 and 1939 the authorities in Bengal alone dealt with over 8,800 cases under Regulation III of 1818, the Bengal Criminal Law Amendment Act of 1930, the Bengal Suppression of Terrorist Outrages Rules of 1934, and various other laws containing sections that could be used to prosecute individuals for terrorism-related offences or crimes against the state.[109] As this article has sought to

demonstrate, the British colonial regime's frequent recourse to these kinds of extraordinary, repressive legal measures outside of formally declared periods of emergency began well before the First World War, which marked not so much a turning point as a culmination of a wider logic of authoritarian colonial jurisprudence and rule.

The durability and longevity of these permanent techniques of emergency rule also extend well beyond the colonial period and into the post-colonial present. Regulation III of 1818, for instance, not only lasted through to the final days of the Raj, but was also retained by independent India until 1952, when it was replaced by similar legislation.[110] The Criminal Tribes Act was similarly reprocessed into the Habitual Offenders Act.[111] Indeed, since independence, both Pakistan and India have continued regularly to deploy draconian powers of preventive detention and other repressive legal measures in order to maintain order and control.[112] Both the Indian Constitution of 1950, and the various Pakistani Constitutions promulgated between 1956 and 1973, drew upon British constitutional precedents and retained various emergency provisions.[113] Repressive laws and measures have been regularly deployed against various nationalist secessionist movements, whether in Indian Punjab in 1984, or Pakistani Baluchistan in 2006.[114] Meanwhile, colonial-era laws, notably Section 124-A of the Indian Penal Code, have been used to arrest, detain, and prosecute individuals falling under the expansive and vaguely-defined category of being 'anti-national'.[115] As Uzair J. Kayani has pointed out, the colonial logic of perpetual emergency as a way of justifying the coercive powers of the state has more recently been reproduced and succeeded by the logic of anti-terrorism.[116] The Indian Prevention of Terrorism Act of 2002, for instance, built upon these colonial precedents, and was widely used to prosecute ordinary criminal cases, rather than terrorism-related offences, before its repeal in 2004.[117] In 2019, the Indian Government amended the Unlawful Activities (Prevention) Act (UAPA), which had been in effect since 1967, enabling the state to declare individuals to be terrorists, and to arrest and incarcerate them without trial.[118] We can thus see how so-called emergency laws have come to serve the function of everyday policing and governance. Much like their British forbearers, successive Indian governments, whether they be Congress- or BJP-led, have shown themselves reluctant to surrender the extraordinary powers granted to them under these kinds of repressive laws.[119]

When the GOI introduced the DOI Act in March 1915, it gestured explicitly to the crisis in Europe and even framed aspects of the law as an extension of the UK's wartime emergency legislation, the Defence of the Realm Act.[120] Read through the metropolitan lens, the DOI Act was simply an exceptional response to a crisis in Europe that threatened to spill over into India. However, if we adopt the vantage point of the colony and extend our gaze towards the repressive legislation and 'emergency' powers that were regularly deployed during so-called 'peacetime', a very different picture emerges. In a context where force, repression, and violence were the norm, laws like Regulation III of 1818, the Ingress into India Ordinance, or the Defence of India Act, were simply products of the wider logic of colonialism. As an autocratic, authoritarian regime obsessed with maintaining its own stability and security, the British colonial state in India privileged security and embedded these concerns into its governing fabric. The colonial world was organised along a different legal register from that of the metropole, which is why attempts to understand it in terms of the 'exception' are less productive than looking to the ways in which it was

the site of the creation of new kinds of statecraft and legal innovation. From this vantage point, we might also turn the mirror back against Europe itself, and argue that the reason the First World War is seen as such a turning point in modern statecraft by Agamben and others is because this is the moment when, in terms of its emergency laws designed to be used during 'states of exception', Europe began to resemble less a metropolitan space, and more a colonial one. The blurring between war and peace, between executive, legislative, and judicial functions, and the existence of a state of permanent emergency are not something unique to the post-9/11 world, or even the post-First World War global order, but have been a distinctive feature of colonial rule for centuries.

Notes

1. *A Collection of the Acts*, 1916, 13–20.
2. See André Keil's contribution to this special issue.
3. *A Collection of the Acts*, 1916, 14.
4. *A Collection of the Acts*, 1916, 14–15.
5. Ibid.; India Home Department Proceedings (Confidential Political), April 1915–June 1915, BL IOR/P/CONF/7; Legislative Council Proceedings (Debates), 18 March 1915, BL, IOR, V/9/41.
6. *A Collection of the Acts*, 1916, 16.
7. Agamben, *State of Exception*, 7.
8. Chatterjee, *The Nation and its Fragments*, 14–19.
9. Agamben, *State of Exception*, 7.
10. Du Bois, *The World and Africa*; Césaire, *Discourse on Colonialism*; and Arendt, *The Origins of Totalitarianism*. For a critical summary of this line of analysis, see Gerwarth and Malinowski, "Hannah Arendt's Ghosts."
11. Brenkman, *The Cultural Contradictions of Democracy*.
12. For a good summary and critique of the former, see Neocleous, *Critique of Security*, chap. 2. Examples of the latter approach include Khalili, *Time in the Shadows*; and Bishai (ed.), *Law, Security*.
13. Kennedy, *Of Law and War*; and Dudziak, *War Time*.
14. See, generally, Kuss, *German Colonial Wars*; Gallois, *A History of Violence*; and Wagner, "Savage Warfare."
15. Barkawi, "Decolonising War," 200, 205.
16. Condos, *The Insecurity State*.
17. See Simpson, "Round Up the Usual Suspects"; Kalhan et al., "Colonial Continuities"; Reynolds, *Empire, Emergency and International Law*; and Roberts, "From the State of Emergency to the Rule of Law."
18. Mbembe, "Necropolitics".
19. Ibid., 24.
20. See Reynolds, *Empire, Emergency and International Law*, 50–1; Benton, *A Search for Sovereignty*, 32–3; and Comaroff, "Symposium Introduction." Neocleous makes this point about the operation of emergency powers across states more generally – see Neocleous, *Critique of Security*, 69–72.
21. Comaroff and Comaroff, "Law and Disorder," 24, 29–30.
22. Ibid., 29–30.
23. Hussain, *The Jurisprudence of Emergency*.
24. Benton, *A Search for Sovereignty*, 32–3, 286–7.
25. Reynolds, *Empire, Emergency and International Law*, 38.

26. Ibid., 48. Christopher N. J. Roberts has similarly pointed to the limitations of Agamben and Schmitt in focussing on major moments of exception, rather than its more quotidian manifestations. See Roberts, "From the State of Emergency", 5–6.
27. Reynolds, *Empire, Emergency and International Law*, 48.
28. Ibid.
29. Tan, *The Garrison State*, 98; Das, *India, Empire, and First World War Culture*, 11; and Singha, *The Coolie's Great War*, 3.
30. Das, *India, Empire, and First World War Culture*, 23.
31. Ibid.
32. Tan, *The Garrison State*, chap. 3.
33. On German collaborations with Indian revolutionaries during the war, see Brückenhaus, *Policing Transnational Protest*, chap. 2; Sohi, *Echoes of Mutiny*, 72, 77, 153–4, 165–71; Ramnath, *Haj to Utopia*, chap. 3; and Puri, *Ghadar Movement*, 88–100.
34. PG to the GOI, 19 December 1914, BL, IOR, P/CONF/7; PG to the GOI, 25 February 1915, Ibid.; and PG to the GOI, 5 March 1915, Ibid.
35. Isemonger and Slattery, *An Account of the Ghadr Conspiracy*, 126.
36. Waraich and Singh, *Ghadar Movement Original Documents*, 336, 340. In their judgement, the commissioners took special pains to explain exactly how the actions of these revolutionaries constituted waging war against the King or its abetment: Ibid., 350–391.
37. *Report of the Sedition Committee, 1918*, para. 143, 157.
38. Agnew, *The Indian Penal Code*, 60–61.
39. McQuade, *A Genealogy of Terrorism*, 144.
40. *Report of the Sedition Committee, 1918*, para. 197, 210.
41. Horniman, *Amritsar*, 49.
42. See Ghosh, *Gentlemanly Terrorists*, 35, citing Brown, *Gandhi's Rise*, 134.
43. "In my opinion," Jinnah continued, "a Government that passes such a Law in times of peace forfeits its claim to be called a civilized Government." Cited in Saiyid, *Mohammad Ali Jinnah*, 116–17.
44. Wagner, *Amritsar 1919*.
45. See Ibid.; Manela, *The Wilsonian Moment*; Lawrence, "Forging a Peaceable Kingdom"; and Gallagher, "Nationalisms."
46. *Report of the Sedition Committee, 1918*, 195–212.
47. *Report of the Sedition Committee, 1918*, para. 175, 195.
48. See Ghosh, *Gentlemanly Terrorists*.
49. McQuade, *A Genealogy of Terrorism*, 160.
50. Ghosh, *Gentlemanly Terrorists*, 34–5; Manela, *The Wilsonian Moment*, 168–71; and Chandra et al., *India's Struggle for Independence*, chaps. 13–15.
51. Chandra et al., *India's Struggle for Independence*, chap. 15.
52. Wagner, *Amritsar 1919*; Wagner, "Calculated to Strike Terror"; and Condos, *The Insecurity State*, 2–24.
53. Stern, *The Company-State*.
54. Ibid., 10.
55. Ibid., 12, 29.
56. Ibid., 209; and Hussain, *The Jurisprudence of Emergency*, 42.
57. Hussain, *The Jurisprudence of Emergency*, 42; and Stern, *The Company-State*, 143.
58. See Metcalf, *Ideologies of the Raj*; Travers, *Ideology and Empire*; and Wilson, *The Domination of Strangers*.
59. Singha, *A Despotism of Law*.
60. Hussain, *The Jurisprudence of Emergency*, 124. For Benjamin's notion of 'mythical' and 'law-making' violence, as opposed to 'law-preserving' violence, see Benjamin, 'Critique of Violence'.
61. Collins, *Martial Laws and English Laws*, esp. 6–8, 280.

62. Beginning in the early nineteenth century, however, martial law was increasingly divorced from its original and more limited application during times of war, and was transformed into a more expansive and general set of powers that could be called upon during times of 'crisis' or 'emergency', including periods of civil strife, rebellion, or other kinds of internal disorder. See Neocleous, *Critique of Security*, 46–9.
63. Stern, *The Company-State*, 67.
64. Regulation X of 1804, *Regulations passed by the Governor General in Council of Bengal*, 6 vols. (London: J Cox, 1829), Vol. 3, 39.
65. Minattur, *Martial Law*, 15–16. For an examination of some of these revolts, see Guha, *Elementary Aspects*.
66. The Governor-General of India in Council to the Court of Directors, 11 December 1857, PP, 1857–58 (26), *Letters from Governor General of India to Court of Directors, December 1857, with Resolution of Government of India, July 1857, Relating to the Mutinies in India*, para. 4, 2.
67. These included the State Offences Act (Act XI of 1857), the Military or State Offences Act (Act XIV of 1857), also known as the 'Hanging Act', and the Heinous Offences Act (Act XVI of 1857). See *Proceedings of the Legislative Council of India*, 3 vols.; Theobald, *The Legislative Acts of the Governor General of India*, 2 vols., 644–7, 661–4, 758–61; The Governor-General of India in Council to the Court of Directors, 11 December 1857, PP, 1857–58 (26), *Letters from Governor General of India to Court of Directors, December 1857, with Resolution of Government of India, July 1857, Relating to the Mutinies in India*, para. 13, 3.
68. Peers, "The Indian Rebellion," 25.
69. On 1 August 1857, Deputy Commissioner Frederic Cooper summarily executed 237 sepoys at Ajnala without trial: Cooper, *The Crisis in the Punjab*, 160–67; also Condos, "The Ajnala Massacre."
70. "30 May 1857: Offences Against the State," *Proceedings of the Legislative Council of India*, 3 vols., IOR, V/9/3, 283–4.
71. Resolution of the Government of India, 31 July 1857, PP, 1857–58 (26), *Letters from Governor General of India to Court of Directors, December 1857, with Resolution of Government of India, July 1857, Relating to the Mutinies in India*, 8–10.
72. Collins, *Martial Laws and English Laws*, 4.
73. This is an example of what David Dyzenhaus describes as the 'puzzle' of martial law: even those who believe martial law to be an absence of law conceive of this as a space ultimately created by, and potentially bounded, by the law See Dyzenhaus, "The Puzzle of Martial Law," 1–2, 61.
74. Simpson refers to this as "executive detention." See Simpson, *Human Rights and the End of Empire*, 55.
75. Regulation III, *Bengal Regulations, 1815–1819*, BL, IOR/V/8/19. Similar laws were subsequently passed in the Madras and Bombay Presidencies in 1819 and 1827, respectively. In 1850, the Regulation was extended to most of British India through Act XXXIV, and its provisions were also re-enacted under Act III of 1858. See Theobald (ed.), *The Legislative Acts of the Governor General of India*, 2 vols., 796–8; and Goodeve (ed.), *The Bengal Law Reports*, 6 vols., 459.
76. Regulation III, *Bengal Regulations, 1815–1819*, BL, IOR/V/8/19.
77. *A Collection of the Acts*, 1916, 14–16; McQuade, *A Genealogy of Terrorism*, p. 142.
78. Stephens, "The Phantom Wahhabi." On the history of British fears of Muslim conspiracies in India, see Mallampalli, *A Muslim Conspiracy*; Condos, "Fanaticism"; and Padamsee, *Representations of Indian Muslims*.
79. Mayo to Argyll, 12 August 1870, BL, Mss Eur B380/5, 119.
80. "The Regulation [III of 1818] differs from Acts passed for the suspension of the Habeas Corpus Act in this – that it is not a temporary Act but if the danger to be apprehended from the conspiracies of people of such a character as those I have mentioned is not temporary, but from the condition of the country must be permanent, it seems to me that the principles which justify the temporary suspension of the Habeas Corpus Act in England justify the Indian Legislature in entrusting to the Governor-General in Council an exceptional power

of placing individuals under personal restraint when, for the security of the British dominions from foreign hostility, and from internal commotion, such a course might appear necessary to the Governor-General in Council." See Goodeve (ed.), *The Bengal Law Reports*, 6 vols., 455.

81. Inagaki, *The Rule of Law*; and Condos, *The Insecurity State*.
82. Pandey, "Hundred Years of Ordinances in India," 263.
83. Manz and Panayi, *Enemies in the Empire*.
84. Sohi, *Echoes of Mutiny*.
85. See McQuade, *A Genealogy of Terrorism*, chap. 3; Mawani, *Across Oceans of Law*; Condos, *The Insecurity State*, chap. 5; and Sohi, *Echoes of Mutiny*.
86. See Puri, *Ghadar Movement*, 88–100, 169; Popplewell, *Intelligence and Imperial Defence*, 166, 175–87; and Brückenhaus, *Policing Transnational Protest*, chap. 2.
87. Between October 1914 and December 1917 a total of 331 suspected Ghadarites were interned under the Ingress into India Ordinance, while a further 2,576 were confined to their villages. See *Report of the Sedition Committee, 1918*, para. 145, 160.
88. Pandey, "Hundred Years of Ordinances in India," 264.
89. Kalhan et al., "Colonial Continuities," 126; and Pandey, "Hundred Years of Ordinances in India," 262.
90. McQuade, *A Genealogy of Terrorism*, 164.
91. Ghosh, *Gentlemanly Terrorists*; and Pandey, "Hundred Years of Ordinances in India," 265.
92. Condos, "Licence to Kill"; and Condos, "Fanaticism."
93. Condos, *The Insecurity State*, chap. 4.
94. *Report of the Sedition Committee*, para. 143, 157.
95. Minto to Morley, 11 June 1908, BL, Mss Eur D573/16, fp. 22. Minto's writing here is a good example of what Kama Maclean has described as "the art of panicking quietly:" Maclean, "The Art of Panicking Quietly."
96. GOI to the PG, 7 May 1907, BL, IOR, P/7590, para 2, fp. 93; Tegart, "Notes on the Situation in Chandernagore," para. 2, 276; Springfield, *List of Persons in Bengal*, BL, IOR L/PJ/12/676.
97. Agnew, *The Indian Penal Code*, 60–63; and generally, Ghosh, *Gentlemanly Terrorists*.
98. The Bengal Criminal Law Amendment Act was initially promulgated by Viceroy Lord Reading as the Bengal Criminal Law Amendment Ordinance in October 1924, but was later affirmed and passed as law through the legislature. See McQuade, *A Genealogy of Terrorism*, 177–8.
99. The Bengal Suppression of Terrorist Outrages Act, 1932 (Bengal Act XII of 1932), BL, Mss Eur F161/40; and NAI, Home, Political, 1932, nos. F-4/65/32-Poll. For a good summary of these laws and the logic behind them, see Hale, *Terrorism in India*.
100. For example, in July 1915, the Home Secretary for the GOI issued instructions that no European should be tried using the special tribunals that were permitted under the DOI Act: McQuade, *A Genealogy of Terrorism*, 153.
101. Ghosh, *Gentlemanly Terrorists*.
102. Home Department Resolution no. 714, 19 September 1921, NAI, Foreign and Political, General B, February 1922, no. 82, 12.
103. Report to the Government of India of the Committee appointed to examine repressive laws, 2 September 1921, NAI, Foreign and Political, General B, February 1922, no. 82, para. 11, 17.
104. The committee, however, did recommend maintaining the Seditious Meetings Act, which had been extended in 1911, and parts of the Criminal Law Amendment Act of 1908.
105. *Hansard*, HC Deb. 9 December 1929, 233 vols., cols. 4–5. Most of these laws were repealed by Act IV of 1922, while Act V of the same year repealed certain sections of the Indian Criminal Law Amendment Act of 1908. See *A Collection of the* Acts, 1923.
106. Springfield, *List of Persons in Bengal Warned or Dealt with (since 1930) under Regulation III of 1818, the Bengal Criminal Law Amendment Act, 1930 (Act VI of 1930), and 16A of the Bengal Suppression of Terrorist Outrages Rules, 1934* (Calcutta: Superintendent, Government Printing, 1939), BL, IOR, L/PJ/12/676; and BL, IOR, L/PJ/8/490.
107. Statement of Objects and Reasons, NAI, Home, Political, 1935, nos. 24/6, fp. 50.

108. Legislative Assembly Debates, 9–23 April 1936, 3817.
109. *List of Persons in Bengal Warned or Dealt with (since 1930) under Regulation III of 1818, the Bengal Criminal Law Amendment Act, 1930 (Act VI of 1930), and 16A of the Bengal Suppression of Terrorist Outrages Rules, 1934* (Calcutta: Superintendent, Government Printing, 1939), BL, IOR, L/PJ/12/676.
110. Simpson, "Round Up the Usual Suspects," 638; and Kalhan et al., "Colonial Continuities," 128.
111. Gandee, "The 'Criminal Tribe' and Independence."
112. Kalhan et al., "Colonial Continuities."
113. For example, see The Constitution of India 1950, art. 359 and the Constitution of Pakistan 1973, art. 233. See Darr, "Shadow of the Raj," 183.
114. Darr, "Shadow of the Raj," 184.
115. "Use and Misuse of Sedition Law: Section 124A of IPC," *India Today*, 9 October 2019: https://www.indiatoday.in/education-today/gk-current-affairs/story/use-and-misuse-of-sedition-law-section-124a-of-ipc-divd-1607533–2019-10-09. First accessed 26 October 2020; and John Simte, "Why the State Continues to Validate the Archaic Sedition Law," *The Wire*, 19 July 2019: https://thewire.in/law/why-the-state-continues-to-validate-the-archaic-sedition-law. First accessed 26 October 2020.
116. Kayani, "Antiterrorism as Neocolonialism," 166.
117. Despite its repeal, cases which were pending at the time have carried on, while certain aspects of this law were later re-enacted as amendments to the Unlawful Activities (Prevention) Act. See Kalhan et al., "Colonial Continuities," 152–3, 185–6.
118. Human rights activists, for instance, have been branded as 'terrorists' under this law. See Ibid., 136; and Amartya Sen, "As India drifts into autocracy, nonviolent protest is the most powerful resistance," *The Guardian*, 26 October 2020: https://www.theguardian.com/commentisfree/2020/oct/26/india-autocracy-nonviolent-protest-resistance. First accessed 26 October 2020.
119. Kalhan et al., "Colonial Continuities," 150–1.
120. Legislative Council Proceedings (Debates), 18 March 1915, BL, IOR, V/9/41, 473, 475. For more on DORA, see André Keil's contribution to this special issue.

Acknowledgments

I would like to extend my thanks to the editors of this special edition, Matthew Stibbe and Andre Keil for all their hard work in organizing and editing this volume. My thanks as well to Jon Wilson, Kim Wagner, Alistair McClure, and Elisabeth Leake, who all provided invaluable feedback on earlier drafts of this piece.

Disclosure Statement

No potential conflict of interest was reported by the author(s).

Bibliography

A Collection of the Acts Passed by the Governor General of India in Council in the Year 1915. Calcutta: Superintendent Government Printing, 1916.

A Collection of the Acts of the Indian Legislature and of the Governor General for the Year 1922. Calcutta: Superintendent Government Printing, 1923.

Agamben, Giorgio. State of Exception. Trans. Kevin Attell. Chicago, IL: The University of Chicago Press, [2003] 2005.

Agnew, W. F., ed. *The Indian Penal Code and Other Acts of the Governor-General Relating to Offences*. Calcutta: Thacker, Spink & Co, 1898.

Anil, Kalhan, Gerald P. Conroy, Kaushal Mamta, Sam Scott Miller, and Jed S. Rakoff. "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India." *Columbia Journal of Asian Law* 20, no. 1 (2006): 93–234.

Arendt, Hannah. *The Origins of Totalitarianism*. New York: Penguin Classics, [1951] 2017.

Barkawi, Tarak. "Decolonising War." *European Journal of International Security* 1, no. 2 (2016): 199–214. doi:10.1017/eis.2016.7.

Benjamin, Walter. "Critique of Violence." In *Reflections: Essays, Aphorisms, Autobiographical Writings*, edited by Peter Demetz, 293–295. New York: Schocken Books, 1986.

Benton, Lauren. *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900*. Cambridge: Cambridge University Press, 2010.

Bishai, Linda S., ed. *Law, Security and the State of Perpetual Emergency*. London: Palgrave Macmillan, 2020.

Brenkman, John. *The Cultural Contradictions of Democracy: Political Thought Since September 11*. Princeton, NJ: Princeton University Press, 2007.

British Library. *Regulations Passed by the Governor General in Council of Bengal* 6 vols. London: J. Cox, 1829.

British Library. *Proceedings of the Legislative Council of India, from January to December 1857*. Calcutta: J. Thomas, Baptist Mission Press, 1857.

Brown, Judith M. *Gandhi's Rise to Power: Indian Politics 1915–1922*. Cambridge: Cambridge University Press, 1974.

Brückenhaus, Daniel. *Policing Transnational Protest: Liberal Imperialism and the Surveillance of Anticolonialists in Europe, 1905–1945*. Oxford: Oxford University Press, 2017.

Césaire, Aimé. *Discourse on Colonialism*. Trans. Joan Pinkham. New York: Monthly Review Press, [1950] 2000.

Chandra, Bipan, Mridula Mukherjee, Aditya Mukherjee, K. N. Panikkar, and Sucheta Mahajan, eds. *India's Struggle for Independence, 1857–1947*. New Delhi: Penguin, 1989.

Chatterjee, Partha. *The Nation and Its Fragments: Colonial and Postcolonial Histories*. Princeton, NJ: Princeton University Press, 1993.

Collins, John M. *Martial Laws and English Laws, c.1500–C.1700*. Cambridge: Cambridge University Press, 2016.

Comaroff, John L. "Symposium Introduction: Colonialism, Culture, and the Law: A Foreword." *Law & Social Inquiry* 26, no. 2 (2001): 305–314. doi:10.1111/j.1747-4469.2001.tb00180.x.

Comaroff, John L., and Jean. Comaroff. "Law and Disorder in the Postcolony: An Introduction." In *Law and Disorder in the Postcolony*, edited by John L. Comaroff and Jean Comaroff, 1–56. Chicago, IL: University of Chicago Press, 2006.

Condos, Mark. "'Fanaticism' and the Politics of Resistance Along the NorthWest Frontier of British India." *Comparative Studies in Society and History* 58, no. 3 (2016): 717–745. doi:10.1017/S0010417516000335.

Condos, Mark. "Licence to Kill: The Murderous Outrages Act and the Rule of Law in Colonial India, 18671925." *Modern Asian Studies* 50, no. 2 (2016): 479–517. doi:10.1017/S0026749X14000456.

Condos, Mark. *The Insecurity State: Punjab and the Making of Colonial Power in British India*. Cambridge: Cambridge University Press, 2017.

Condos, Mark. "The Ajnala Massacre of 1857 and the Politics of Colonial Violence and Commemoration in Contemporary India." *The Journal of Genocide Studies* 24, no. 4 (2022): 567–585. doi:10.1080/4623528.2021.2022271.

Cooper, Frederic. *The Crisis in the Punjab, from the 10th of May Until the Fall of Delhi*. London: Smith, Elder and Co, 1858.

Darr, Amber. "Shadow of the Raj: Understanding Rule of Law and Emergency in Modern South Asia." *Indian Law Review* 2, no. 2 (2018): 178–190. doi:10.1080/24730580.2018.1549865.

Das, Santanu. *India, Empire, and First World War Culture: Writings, Images, and Songs*. Cambridge: Cambridge University Press, 2018.

Du Bois, W. E. B. *The World and Africa*. Oxford: Oxford University Press, [1947] 2007.

Dudziak, Mary L. *War Time: An Idea, Its History, Its Consequences*. Oxford: Oxford University Press, 2012.
Dyzenhaus, David. "The Puzzle of Martial Law." *The University of Toronto Law Journal* 59 (2009): 1–64. doi:10.3138/utlj.59.1.1.
Gallagher, John. "Nationalisms and the Crisis of Empire, 1919–1922." *Modern Asian Studies* 15, no. 3 (1981): 355–368. doi:10.1017/S0026749X00008623.
Gallois, William. *A History of Violence in the Early Algerian Colony*. Basingstoke: Palgrave Macmillan, 2013.
Gandee, Sarah Eleanor. "The 'Criminal Tribe' and Independence: Partition, Decolonisation, and the State in India's Punjab, 1910s–1980s." PhD thesis, University of Leeds, 2018.
Gerwarth, Robert, and Stephan Malinowski. "Hannah Arendt's Ghosts: Reflections on the Disputable Path from Windhoek to Auschwitz." *Central European History* 42, no. 2 (2009): 279–300. doi:10.1017/S0008938909000314.
Ghosh, Durba. *Gentlemanly Terrorists: Political Violence and the Colonial State in India 1919–1947*. Cambridge: Cambridge University Press, 2017.
Goodeve, L. A., ed. *The Bengal Law Reports of Decisions of the High Court at Fort William*. Vol. 15. Calcutta: Thacker, Spink & Co, 1871.
Guha, Ranajit. *Elementary Aspects of Peasant Insurgency*. Durham, NC: Duke University Press, [1983] 1999.
Hale, H. W. *Terrorism in India 1917–1936*. Simla: Government of India Press, 1937.
Horniman, B. G. *Amritsar and Our Duty to India*. London: T. Fisher Unwin, 1920.
Hussain, Nasser. *The Jurisprudence of Emergency: Colonialism and the Rule of Law*. Ann Arbor, MI: University of Michigan Press, 2003.
Inagaki, Haruki. *The Rule of Law and Emergency in Colonial India: Judicial Politics in the Early Nineteenth Century*. Palgrave MacMillan, 2022. https://link.springer.com/book/10.1007/978-3-030-73663-7.
Isemonger, F. C., and J. Slattery. *An Account of the Ghadr Conspiracy. 1913–1915*. Lahore: Supterintendent Government Printing, 1919.
Kayani, Uzair J. "Antiterrorism as Neocolonialism: Prophylactic Governance in an Uncertain World." In *Law, Security and the State of Perpetual Emergency*, edited by Linda S. Bishai, 155–184. London: Palgrave Macmillan, 2020.
Kennedy, David. *Of Law and War*. Princeton, NJ: Princeton University Press, 2006.
Khalili, Laleh. *Time in the Shadows: Confinement in Counterinsurgencies*. Stanford, CA: Stanford University Press, 2013.
Kuss, Susanne. *German Colonial Wars and the Context of Military Violence*. Trans. Andrew Smith Cambridge, MA: Harvard University Press, 2017 [2010].
Lawrence, Jon. "Forging a Peaceable Kingdom: War, Violence, and Fear of Brutalization in Post-First World War Britain." *The Journal of Modern History* 75, no. 3 (2003): 557–589. doi:10.1086/380238.
Maclean, Kama. "The Art of Panicking Quietly: British Expatriate Responses to 'Terrorist Outrages' in India, 1912–33". In *Anxieties, Fear and Panic in Colonial Settings: Empires on the Verge of a Nervous Breakdown*, edited by Harald Fischer-Tiné, 169–209. Houndmills: Palgrave, 2017.
Mallampalli, Chandra. *A Muslim Conspiracy in British India? Politics and Paranoia in Early Nineteenth-Century Deccan*. Cambridge: Cambridge University Press, 2017.
Manela, Erez. *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism*. Oxford: Oxford University Press, 2007.
Manz, Stefan, and Panikos Panayi. *Enemies in the Empire: Civilian Internment in the British Empire During the First World War*. Oxford: Oxford University Press, 2020.
Mawani, Renisa. *Across Oceans of Law: The Komagata Maru And Jurisdiction in the Time of Empire*. Durham, NC: Duke University Press, 2018.
Mbembe, Achille. "Necropolitics." *Public Culture* 15, no. 1 (2003): 11–40. doi:10.1215/08992363-15-1-11.

McQuade, Joseph. *A Genealogy of Terrorism: Colonial Law and the Origins of an Idea*. Cambridge: Cambridge University Press, 2020.
Metcalf, Thomas R. *Ideologies of the Raj: The New Cambridge History of India*. Cambridge: Cambridge University Press, 1998.
Minattur, Joseph. *Martial Law in India, Pakistan and Ceylon*. The Hague: Martinus Nijhoff, 1962.
Neocleous, Mark. *Critique of Security*. Edinburgh: Edinburgh University Press, 2008.
Padamsee, Alex. *Representations of Indian Muslims in British Colonial Discourse*. Basingstoke: Palgrave Macmillan, 2005.
Pandey, A. P. "Hundred Years of Ordinances in India." *Journal of the Indian Law Institute* 10, no. 2 (1968): 259–293.
Peers, Douglas M. "The Indian Rebellion, 1857–58." In *Queen Victoria's Wars: British Military Campaigns, 1857-1902*, edited by Stephen M. Miller, 8–39. Cambridge: Cambridge University Press, 2021.
Popplewell, Richard. *Intelligence and Imperial Defence: British Intelligence and the Defence of the Indian Empire, 1904–1924*. London: Frank Cass, 1995.
Puri, Harish K. *Ghadar Movement: Ideology, Organisation and Strategy*. Amritsar: Guru Nanak Dev University Press, 1983.
Ramnath, Maia. *Haj to Utopia: How the Ghadar Movement Charted Global Radicalism and Attempted to Overthrow the British Empire*. Berkeley, CA: University of California Press, 2011.
Report of the Sedition Committee, 1918. Calcutta: Bengal Secretariat Press, 1918.
Reynolds, John. *Empire, Emergency and International Law*. Cambridge: Cambridge University Press, [2017] 2018.
Roberts, Christopher N. J. "From the State of Emergency to the Rule of Law: The Evolution of Repressive Legality in the Nineteenth Century British Empire." *Chicago Journal of International Law* 20, no. 1 (2019): 1–61.
Saiyid, Matlubul Hasan. *Mohammad Ali Jinnah: A Political Study*. Lahore: Sh. Muhammad Ashraf, [1945] 1953.
Simpson, A. W. B. "Round Up the Usual Suspects: The Legacy of British Colonialism and the European Convention on Human Rights." *Loyola Law Review* 41, no. 4 (1996): 629–711.
Singha, Radhika. *A Despotism of Law: Crime and Justice in Early Colonial India*. Delhi: Oxford University Press, 1998.
Singha, Radhika. *The Coolie's Great War: Indian Labour in a Global Conflict, 1914–1921*. Oxford: Oxford University Press, 2020.
Sohi, Seema. *Echoes of Mutiny: Race, Surveillance and Indian Anticolonialism in North America*. Oxford: Oxford University Press, 2014.
Springfield, E. *List of Persons in Bengal Warned or Dealt with (Since 1930) Under Regulation III of 1818, the Bengal Criminal Law Amendment Act, 1930 (Act VI of 1930), and 16A of the Bengal Suppression of Terrorist Outrages Rules, 1934*. Calcutta: Superintendent, Government Printing, 1939. BL, IOR, L/PJ/12/676.
Stephens, Julia. "The Phantom Wahhabi: Liberalism and the Muslim Fanatic in Mid-Victorian India." *Modern Asian Studies* 47, no. 1 (2013): 22–52. doi:10.1017/S0026749X12000649.
Stern, Philip J. *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India*. Oxford: Oxford University Press, 2011.
Tan, Tai Yong. "The Garrison State: The Military." *Government and Society in Colonial Punjab* (2005): 1849–1947.
Tegart, C. A. "Notes on the Situation in Chandernagore." 10 March 1917. In *Terrorism in Bengal*, Vol. 6, edited by Amiya K. Samanta, 276–297. Calcutta: Government of West Bengal, 1995.
Theobald, William. *The Legislative Acts of the Governor General of India in Council, from 1834 to the End of 1867*. Vol. 5. Calcutta: Thacker, Spink & Co, 1868.
Travers, Robert. *Ideology and Empire in Eighteenth Century India*. Cambridge: Cambridge University, 2007.
Wagner, Kim A. "'Calculated to Strike Terror': The Amritsar Massacre and the Spectacle of Colonial Violence." *Past & Present* 233, no. 1 (2016): 185–225. doi:10.1093/pastj/gtw037.

Wagner, Kim A. "Savage Warfare: Violence and the Rule of Colonial Difference in Early British Counterinsurgency." *History Workshop Journal* 85 (2018): 217–237. doi:10.1093/hwj/dbx053.
Wagner, Kim A. *Amritsar 1919: An Empire of Fear and the Making of a Massacre*. New Haven, CT: Yale University Press, 2019.
Waraich, Malwinderjit Singh, and Harinder Singh, eds. *Ghadar Movement Original Documents Volume 1: Lahore Conspiracy Cases I and II*. Chandigarh: Unistar, 2008.
Wilson, Jon E. *The Domination of Strangers: Modern Governance in Eastern India, 1780–1835*. Basingstoke: Palgrave Macmillan, 2008.