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Parliamentarism and States of Emergency in Germany,
1914-1924**

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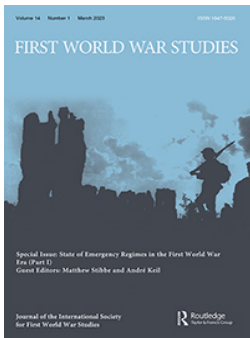
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From the Wartime State of Siege to Weimar's Early Years: Parliamentarism and States of Emergency in Germany, 1914–1924

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ABSTRACT

One of the paradoxical – but seldom recognised – aspects of the wartime state of emergency in Germany between 1914 and 1918 is that it went hand in hand with a simultaneous strengthening of parliamentarism. The Reichstag not only approved the granting of extraordinary powers to the unelected Bundesrat (Federal Council) to ‘order all necessary measures required to avert economic harm’ for the duration of the conflict, allowing in effect a temporary suspension of its own legislative rights. It also actively pushed the Bundesrat to go further in using these dictatorial powers, and when this failed, advocated handing them to a specially appointed Reich cabinet instead. Although moves to create such a Reich cabinet were blocked by conservative and military interests during the war itself, what was imagined in 1914–18 in many ways came to be put into practice under the two Enabling Acts passed by the Reichstag in late 1923. As a result of their wartime experience, the centrist parties in the Reichstag had come to the conclusion that in an emergency situation, temporary dictatorship on terms responsibly set by parliament was not only preferable to handing full powers to the military, but also a positive means of safeguarding and fortifying the indirect form of democracy, built on compromise and negotiation between elected representatives of the people, that was the foundation of the Weimar Constitution.


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This article uses the example of the First World War and early Weimar periods to make the case for seeing the history of parliamentarism in twentieth-century Germany as being deeply entangled with the history of states of emergency in that country. It takes seriously the argument put forward by Eckart Conze that the slow pace towards parliamentarisation before 1914 was due not only to the authoritarian elements in the Imperial Constitution of 1871, but also to a shared determination among the ‘bourgeois’ parties – including the National Liberals, Progressives, and Catholic Centre Party – to block the rise of Social Democracy.¹ Yet the situation after 1914 was more dynamic, as following the outbreak of the war, the Reichstag (national parliament) not only sought a say over matters of foreign policy.² It also increasingly claimed the right to monitor how the 1851

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Prussian state of siege law – and its 1912 equivalent in Bavaria – were put into practice across Germany.³ As such it challenged the prerogative powers of the Kaiser and other German princes in the name of the people. This happened even as the centrist parties, forming what might be called a loose proto-parliamentary (and pro-war) combination ranging from the National Liberals on the right to the Majority Social Democrats on the left, simultaneously allowed – and even encouraged – the establishment of what was in effect an unregulated economic dictatorship for the duration of the wartime emergency. Unimaginable even to advocates of a reformist national bloc ‘from Bassermann to Bebel’ in the pre-1914 era, the simultaneous expansion of central government powers and parliamentary influence during the wartime emergency was by no means universally welcomed and certainly should not be read as a story of rival parties and economic interests working in steady harmony – but it strongly (re)shaped notions of what could be achieved through the assemblage of political will all the same.⁴

A second major turning-point came after the revolution of 1918–19. Successive Weimar governments now sought to extend wartime powers into the post-war period. But this time, instead of hiding behind reasons of war-induced emergency, centrist parties deliberately made the defence of democracy the main justification for the need for exceptional powers, whether for the President under Article 48 of the new constitution, or for the Reich cabinet under a succession of Enabling Acts, culminating in those of 13 October and 8 December 1923.⁵ A different kind of emergency was envisaged, one in which extremist and special interest parties, or old-fashioned bureaucratic regulations, were able to undermine the new political order or the government’s reputation for economic and fiscal competence.⁶ At the same time, in order to make them more palatable to Social Democrats in particular, measures to uphold the constitution in the face of internal or external threat had to be demilitarised and placed under nominal civilian control, even if the possibility of a nationwide military state of emergency, with the army (Reichswehr) temporarily in charge, was retained.

The findings of the article also offer new insights into the multiple ways in which German politicians understood the term ‘dictatorship’ in the years 1914–33, not just when it came to public order powers but also in respect to economic and financial measures. Historians, it will be argued, have placed too much emphasis on the conservative legal theorist Carl Schmitt’s notion of the ‘state of exception’ as an instrument of the authoritarian political subject, in other words the ‘strong man’, supreme ruler or Caesarian dictator standing above the constitution.⁷ In Schmitt’s writings, history appears to be the enemy of parliamentary sovereignty with all its compromises and shallowness, and the willing servant of the unbound, subjective force of ‘authority’ and ‘personality’.⁸ Here, however, we will be more interested in how centrist parties defined and sought to democratise emergency powers. By ‘centrists’ I mean those politicians who between 1914 and 1918 favoured a partial or full-scale parliamentarisation of the Kaiserreich and who after 1918 backed the new constitution, but felt that the only way to guarantee its preservation was to have in place provisions for use of emergency powers in moments when it was imperilled, a bit like the short periods of dictatorship by a military figure practised on many occasions under the ancient Roman Republic.⁹ Centrists, in other words, contended that the manner of decision-making during an emergency, and the communication of decisions to the public, were just as important, politically, morally, and legally, as the question of who might be lent power to make those

decisions by the ultimate authority when it came to national legislation – the Reichstag.¹⁰ However naive or questionable this belief was, it is still, I will argue, important to take it seriously as a historical phenomenon if we want to understand how Weimar's early rulers could reconcile their strong commitment to parliamentary forms of government in the name of the sovereignty of the people with their desire to place ever fewer restrictions on the use of dictatorial powers in a 'real' political, economic or military emergency.

The Two Dictatorships in First World War Germany

Although this is rarely acknowledged, Germany during the First World War was ruled by two kinds of dictatorship, existing in tandem and occasionally crossing paths.¹¹ Typically, historians focus on only one of them: the state of siege or *Belagerungszustand*, which came into force on 31 July 1914 and handed sweeping police and censorship powers to the military for the duration of the fighting. It did so *not* by altering the Imperial Constitution but by placing what were essentially pre-1871 Prussian military command posts (temporarily) above it. Between 1914 and 1918 many civil liberties guaranteed under the Prussian Constitution of 1850 (and its equivalents in other states), such as freedom of association and assembly, the inviolability of the home, and the right of *habeas corpus*, were suspended (but not cancelled) on the basis of the Kaiser's *vorkonstitutionelle Kommandogewalt*, in other words his 'personal right to command'.¹² Although his powers were more restricted in peacetime, under Article 68 of the 1871 Imperial Constitution, Wilhelm II alone was responsible for ensuring 'public safety in the federal territory' during a state of war. Without needing to acquire counter-signatures from government ministers, still less to hold a vote in the Reichstag, he assigned this responsibility to a variety of military governors in the German interior (made up of the deputy commanding generals of various army corps districts and their equivalents for a number of strategic fortresses and defended ports).¹³ These nominees in turn became mini-dictators in their own territorial fiefdoms, answerable to the Kaiser alone and not even to the general staff, the admiralty staff or the armies in the field.

However, crucially, while they could give orders to civilian officials, and suspend various civic rights, the wartime deputy commanding generals could not interfere directly in the relationship between different constituent bodies such as the Reichstag, the Bundesrat (Federal Council) and the individual German states, and nor could they abrogate the special privileges granted to each of these bodies under the 1871 Constitution.¹⁴ In this sense, the Prussian state of siege law created a dictatorship but at the same time prevented the military from changing the Imperial Constitution itself, something that it could only do with the consent of the Reichstag and the individual state governments. The legal framework for governance in a constitutional monarchy like Germany allowed for exceptions to the rule of law when it came to issuing royal or imperial commands to state officials and the population as a whole during a state of siege or a state of war. But this did not mean that the constitution itself was a mere sham or that the Kaiser and other hereditary rulers stood entirely above it.

The protection of the Reichstag's rights was not without its critics among Germany's wartime leaders. The deputy Prussian Minister of War from 1914 to 1916, Franz Gustav von Wandel, indeed wanted to allow the deputy commanding generals on the home front 'to issue decrees in the interests of public safety even where this interferes with those

constitutional articles that are not annulled' by the Prussian state of siege law.¹⁵ However, Reich Chancellor Theobald von Bethmann Hollweg was concerned to reduce the number of complaints and petitions being put forward by parliamentary deputies from all parties, whether in the Reichstag Budget Committee (in 1915 renamed the Main Committee), or during plenary sessions, about the military's 'excessive' use of censorship measures, non-judicial arrests, and other emergency regulations.¹⁶ He was thus unwilling to countenance the Ministry of War's suggestions. Instead, he supported a proposal coming from the Reichstag itself – in the form of motion put by Gustav Stresemann of the National Liberals before the Main Committee in October 1916 and to the whole house on 30–31 October – for the creation of a 'central military authority to act as a regulatory and complaints body in respect to orders issued by the deputy commanding generals under the state of siege'.¹⁷ He argued that the Prussian cabinet should be relaxed about this because what was being proposed was not a 'body responsible to parliament but a military command post'.¹⁸ Furthermore the Kaiser's 'personal right of command' would not be 'affected by the proposed legislation'.¹⁹ Vice-Chancellor Karl Helfferich, who was also *ex officio* a member of the Prussian cabinet and one of the seventeen Prussian members of the Bundesrat, the body that represented the collective view of Germany's twenty-two hereditary princes and three city-state governments,²⁰ expressed reservations but believed that Prussian and other state delegates should push for the quick acceptance of the measure 'not least given the unwelcome questions that were raised about it in today's session of the [Reichstag] Budget [or rather Main] Committee'.²¹ The measure was approved in the Reichstag on 26 November 1916 and in the Bundesrat on 29 November, and was signed into law by the Kaiser on 4 December. It allowed for domestic complaints to be directed to a Supreme Military Governor (*Obermilitärbefehlshaber*) – named by imperial decree as Hermann von Stein, the new Prussian Minister of War, on 8 December – in cases of 'restrictions on personal liberty', 'censorship of the press as well as the theatre, cinema, and other public venues' and 'limitations on the right of association and assembly':

Complaints should be lodged with the deputy commanding general who issued the regulation. If he views the complaint as justified, then he should offer a remedy, and if not, he should immediately lay the complaint before the Supreme Military Governor . . . If the Supreme Military Governor decides that the complaint should be upheld, then he can issue the relevant command, or he can delegate this task to the deputy commanding general concerned.²²

In a separate, but related piece of legislation, approved by the Reichstag and Bundesrat and again signed into law by the Kaiser on 4 December, the government agreed – in line with a proposal initially made by the National Liberals in a draft resolution put before the Main Committee – to the creation of a Supreme Military Court (*Obermilitärgericht*) to hear appeals against detention without trial (*Schutzhaft*) and residence restrictions (*Aufenthaltsbeschränkungen*) imposed on ordinary German citizens.²³ Unlike the decree creating the new command post of *Obermilitärbefehlshaber*, this so-called *Schutzhaftgesetz* did, at least in theory, expose some of the arbitrary measures enacted by the deputy general commanders under the state of siege law to the possibility of independent judicial review and held out the chance that victims of unlawful detention might be able to claim financial compensation in retrospect.²⁴

To understand why Bethmann Hollweg and even the Prussian Ministry of War might be willing to accept parliamentary initiatives of this kind, it would be necessary to look at the second, and less well-known of the two dictatorships that were put into place in Germany at the start of the war. On 4 August 1914, the wartime state of emergency was taken one stage further with a bill – not envisaged in the Prussian state of siege law or its Bavarian equivalent – which was passed through the Reichstag on the same day that deputies voted unanimously in favour of extending war credits to the government. Already described during the war as an ‘Enabling Act’,²⁵ it loaned out the Reichstag’s powers over economic legislation to the unelected, Prussian-dominated Bundesrat, in other words the collective body representing German princes and city-states.

The Bundesrat is empowered for the duration of the war to enact any legal measures deemed necessary to mitigate economic harm. These measures must be brought to the attention of the Reichstag at the earliest opportunity and are to be rescinded on its request.²⁶

Unlike the state of siege, the 4 August 1914 law represented a material change to the way Germany was governed because, by handing powers that normally resided with the Reichstag to the Bundesrat, it altered relations between two vital state organs. Any measure proposed by the Prussian cabinet in the name of the King and Kaiser and rubber-stamped by the Bundesrat in the name of the unelected representatives of the German princes and the three city-states could be presented in such a way that it was intended to help avoid or mitigate damage to the economy caused by the war. There was also next to no protection against executive abuse in the fields of procurement and the awarding of government contracts, or compensation payments to affected businesses. In effect this was a ‘dictatorship of the Bundesrat’, as the jurist Ernst Heymann later referred to it, albeit one modified to some extent by the Auxiliary Service Law of December 1916.²⁷ Already in the period up to December 1915, around 250 emergency economic decrees had been passed, some of them cancelling or amending peacetime legislation approved by the Reichstag and some of them replacing or enhancing previous wartime emergency measures.²⁸ In practice, though, the Reichstag very rarely made use of its right under the Enabling Act to demand the retrospective lifting of economic decrees issued by the Bundesrat. No moves were made in this direction in plenary sessions, and very rarely in sessions of the Main Committee. In fact, if anything, Reichstag deputies expressed concern that the Bundesrat and the Prussian cabinet were not producing enough decrees, or not at the right speed to ensure that the basic economic needs of the nation and people were being met.²⁹ As early as 19 March 1915, for instance, the National Liberal leader Ernst Bassermann argued on the floor of the Reichstag that

... many Bundesrat decrees regarding the cataloguing, price-indexing, requisitioning and seizure of food stocks have been introduced and implemented at far too slow a pace. It is in order to avoid a repeat of such delays that we now suggest the drawing up of an economic plan to be implemented during and beyond the next harvest.³⁰

Such a *national* economic plan, he continued, even though it might violate time-honoured principles of federalism and even though it might give sharper form to the wartime state of emergency than some would like, would represent the ‘fixed, unbending will of all state governments, the German people and German legislative bodies’. The Reichstag, he claimed, should play its part in helping to *enable* this undivided will to be

turned into political action.³¹ Both the pro-war Social Democrat Eduard David and the Catholic Centre Party politician Matthias Erzberger also criticised the Bundesrat in the Reichstag Main Committee in 1915–16 as a cumbersome creature of the Prussian cabinet, and – in a move that in many ways anticipated the Enabling Acts of October and December 1923—demanded that the emergency economic powers invested in it be handed *directly* to the Reich Chancellor instead. This would lead to swifter measures, they believed, and would boost the effectiveness of the state’s command structures by placing them in the hands of a single person (or cabinet) responsible to the national parliament.³²

One way of interpreting these proposals would be to place them in a negative line of continuity with the Enabling Act of March 1933, a key foundation stone of the Nazi dictatorship alongside paramilitary violence and a series of strong, but not altogether decisive performances in state and national elections in the early 1930s. The Swedish political theorist Herbert Tingsten, a leading inter-war critic of enabling acts or what he called ‘full powers laws’, had already warned Europe’s legislatures in 1930 against passing them, lest they ‘extend beyond their original purpose’, and in particular, lest they allow an authoritarian leader to side-line legislative scrutiny altogether:

It could happen, for instance, that the competence to legislate is, entirely or in certain important fields, abandoned to the executive, entailing a truly radical change in the relations between the parliamentary sphere and the government.³³

Yet equally, and perhaps more importantly, the ideas of Bassermann, Erzberger and David in 1915–16 could be read as a norm-building, pro-parliamentary affirmation of what the political theorist Hannah Arendt meant when she argued that power (as opposed to violence) derives from the ‘human ability ... to act in concert’ so that being “‘in power’” necessarily means ‘being empowered by a certain number of people’ – in this case, the elected representatives of the nation – ‘to act in their name’.³⁴ The imperative to act in turn derived from a recognition, indeed an assertion, that parliament should play a leading role in politically (re)defining ‘emergency’ and ‘dictatorship’ to suit a more democratic age. No longer could it be simply about urgent defence of federal-monarchical territory from foreign attack or rapid, forceful counter-action against internal spies and subversives. Rather, it was about ensuring the ‘protection of the public from dangers and anxieties of any kind’, including, not least, in the economic sphere.³⁵ The dictatorship of the Bundesrat was not adequate for these purposes, and needed to be replaced by another kind of dictatorship.

Needless to say, before November 1918 proposals to place emergency powers in the hands of a Reich Chancellor accountable to the Reichstag were rejected by the Prussian and other state cabinets, and thus by the Bundesrat.³⁶ This was mainly because they would have interfered with the authoritarian, anti-democratic, federal-monarchical principles established in the 1871 Constitution, which, as Reinhard Schiffers notes, were put there by Bismarck precisely to ensure a ‘holding back of parliamentarism’.³⁷ True, according to Gerald Feldman, the Kaiser’s Prussian ministers (and the ministers of other state governments) were forced to make some noteworthy concessions when it came to another piece of wartime government legislation, the Auxiliary Service Law (*Hilfsdienstgesetz*) of 5 December 1916. The *Hilfsdienstgesetz* allowed the Bundesrat to rubber stamp further sweeping economic

and procurement measures, including the forced labour conscription of all men aged seventeen to sixty not serving in the armed forces and not deemed to be in jobs essential to the war effort. Compromises, including the establishment of a special standing committee of the Reichstag to oversee its implementation, were necessary to get the law approved, because, as Bethmann Hollweg told the Prussian cabinet on 26 November 1916, ‘in normal times the Reichstag would never delegate legislative powers affecting the civil rights of citizens to the Bundesrat or to a government agency’.³⁸ However, the real reason for this concession was to forestall demands made by the independent group of anti-war socialist MPs, the *Sozialistische Arbeitsgemeinschaft*, for each measure announced under the law to be put before a parliamentary vote, which would have been the only way of wresting back the legislative prerogatives that the Reichstag had given away in its vote on 4 August 1914. The compromise reached with the Majority Social Democrats and the ‘bourgeois’ parties was incorporated into Article 19 of the law, which read:

The Bundesrat issues the provisions necessary for the implementation of this law. General ordinances require the approval of a committee of fifteen members selected by the Reichstag from among its members . . . The *Kriegsamt* is obliged to keep the committee informed of all important events, to give it information on request, to receive its suggestions, and to obtain its opinion before issuing important orders of a general nature . . . The committee is entitled to meet even during parliamentary recesses . . . The Bundesrat can threaten violations of the provisions [of the law] with imprisonment of up to one year and a fine of up to ten thousand marks or with one of these penalties . . .³⁹

However, while this may have been an ‘important victory’ for the Reichstag and an expression of its will, it in no way guaranteed wholesale parliamentary oversight. Rather the new *Kriegsamt* or War Office, a kind of Ministry of Munitions created by imperial ordinance on 1 November 1916 and housed within the Prussian Ministry of War, was given powers to direct the implementation of the law according to the needs of the armed forces, and issued instructions to the Bundesrat accordingly.⁴⁰ Complaints about malpractice could not be directed to the Reichstag or to a court of law but only to a ‘central body consisting of two officers from the *Kriegsamt*, one of whom is in the chair, two officials appointed by the Reich Chancellor, one official to be appointed by the central authority of the federal state to which the company, organisation or professional practice belongs, as well as one representative each of the employers and the workforce’.⁴¹ The SPD and the trade unions accepted this because – as the Chairman of the General Commission of German Trade Unions Carl Legien had demanded all along – it represented an official recognition by a government agency, the *Kriegsamt*, of the right of the trade unions to exist, and gave them parity of representation alongside employers’ organisations. In other words, as with the notion of a *national* economic plan, it supposedly brought Germany one step closer to socialism.⁴²

By no means all representatives of the German left accepted this argument. The Independent Socialists – who constituted themselves as an entirely separate party, the USPD, from April 1917 onwards – questioned the notion that the military should be allowed to judge its own record and correct its own homework when it came to overseeing the exercise of dictatorial powers under the state of siege and Auxiliary Service laws. This is because they rejected outright the notion of a defensive war. Subsequently, they refused to vote for the Auxiliary Service Law and for the Law concerning

Preventative Detention (*Schutzhaft*), claiming that both upheld an unjust system of militarism directed against the working class.⁴³

It is the position of the Majority Social Democrats (MSPD) that concerns us more, however. As the principal opposition party before 1914 and foremost advocate of democratisation of the Empire in the Reichstag Main Committee, it 'persistently tried to subject [domestic] military measures to the approval of the Reich Chancellor and to hold the Chancellor responsible for these measures'.⁴⁴ In late May 1916, for instance, it put its weight behind a motion – rejected by the Bundesrat 'on legal and practical grounds' – that the Chancellor should have the final say on all decisions relating to bans on newspapers, extra-judicial detention orders or interference in the right to free association and assembly.⁴⁵ It also regularly called for the annulment of the state of siege law itself.⁴⁶ However, significantly it did not see the executive's use of emergency economic measures as being incompatible with parliamentary rule or social democratic principles. In the vote on the Auxiliary Service Law on 2 December 1916, a mere eight of the SPD deputies present abstained; the remainder voted with the centrist 'bourgeois' parties – National Liberals, Progressives, and Catholic Centre Party – in favour.⁴⁷ In so doing, the party made decisions that are again comparable to those it took during votes in the Reichstag on the two Enabling Acts of October and December 1923, as we shall see below.

Germany, then, had two dictatorships during the wartime state of emergency. The state of siege established a dictatorship which was sanctioned under the 1851 law but was wholly undemocratic and rooted in the Prussian army's deep-seated hostility towards parliamentarism. It was opposed by both of the main social democratic parties and formally annulled by executive decree of the Council of People's Deputies on 12 November 1918.⁴⁸ Meanwhile, the 4 August Enabling Act, buttressed by the 4 December 1916 regulations on the implementation of the state of siege, created a separate dictatorship exercised in the first instance by the Prussian cabinet as the dominant force in the Bundesrat.⁴⁹ Secondary beneficiaries after 1916 were the *Kriegsampt* in the Prussian Ministry of War, headed by General Wilhelm Groener, which directed arbitrary measures under the Auxiliary Service Act via the Bundesrat; the Reich Military Court, which now adjudicated legal complaints about detention without trial and forced residency across almost the whole of Germany, but rarely, if ever, found in favour of the complainant; and the Prussian Minister of War himself in his capacity as Supreme Military Governor and final place of appeal against censorship and abuses of personal freedoms under the state of siege.

Ironically, the only constituted authority to take action to defend its own prerogative powers in the face of the second of these dictatorships was the Bavarian War Ministry. In March 1918 it successfully argued, through its representatives in the Bundesrat, that the Supreme Military Governor and the Reich Military Court could not have any jurisdiction in the Kingdom of Bavaria – as the latter's special privileges under the 1871 Constitution remained legally valid *in all circumstances*, including in wartime.⁵⁰ Furthermore, in spite of the November 1918 revolution and the subsequent lifting of the state of siege in the rest of Germany, and in spite of the announcement of a 'Free State of Bavaria' in place of monarchical rule by grace of God, the state of war (*Kriegszustand*) declared there by King Ludwig III on 31 July 1914 remained in place until 4 November 1919.⁵¹ Nonetheless, in all other respects, the November Revolution, followed by the coming into force of the

Weimar Constitution – the *Weimarer Reichsverfassung* or WRV – on 11 August 1919, did away with the *Reservatrechte* enjoyed by Bavaria under the old Imperial Constitution of 1871. It could no longer claim any special privileges, and, although right-wing governments in Munich between 1920 and 1924 refused to recognise this, it was theoretically just as vulnerable as any other state to Reich economic or military intervention if it failed to adhere to the provisions of the new constitution.

Post-War States of Emergency Under Weimar

Although the new Social Democrat rulers in Berlin had declared the state of siege to be lifted on 12 November 1918, it was unclear for several weeks whether a future constituent National Assembly would try to reform it, seek to replace it with something else, or leave it to lapse entirely. The Council of People's Deputies, which came into power on 9 November, itself operated a kind of extra-legal dictatorship outside the constitution, declaring the old Reichstag to be dissolved and in effect taking over the wartime emergency decree-issuing functions of the Bundesrat, which anyway had ceased to function once the monarchs and other state sovereigns that it represented had been overthrown by the people. As well as suspending the state of siege, the Council of People's Deputies announced the abolition of the Auxiliary Service Law, the implementation of the eight-hour workday and the enfranchisement of women, all by means of executive orders.⁵² It also confirmed the creation of a Reich Office for Economic Demobilization, as initially decreed by the then still functioning Bundesrat on 7 November, and in the winter of 1918–19 granted this body a range of fresh dictatorial powers to enable the restructuring of domestic food production, mines, public utilities, industrial manufacturing, and associated labour markets following the end of the war and 'the sudden cessation of war contracts'.⁵³ Taken together, this package of measures amounted to what Sean Dobson calls 'revolution by fiat'.⁵⁴

The authority of Germany's new rulers was still highly provisional in nature, however. It was not yet clear, for instance, whether any of the economic decrees introduced by the Council of People's Deputies would also have to be approved by the Prussian and other state governments, by an elected constituent national assembly, or by some kind of successor body to the Bundesrat. Meanwhile, the measures it took against the extreme left in December 1918 and January 1919 went well beyond what would be acceptable in any state claiming to be based on the rule of law. Thus SPD Reichswehr Minister Gustav Noske and the acting commander of the Guards Cavalry *Schützen* Division, Waldemar Pabst, were both directly involved in the brutal military suppression of the Spartacist Uprising from 5 to 12 January 1919 and the extra-judicial execution of captured Spartacist prisoners, including Karl Liebknecht and Rosa Luxemburg.⁵⁵ Noske's *Schießbefehle* (shooting orders) – which instructed military commanders and *Freikorps* units to shoot 'Red' insurgents on the spot during the revolutionary unrest in Berlin from 9 to 16 March 1919 and the suppression of the Munich councils republic in April – May 1919—were likewise deeply problematic from a legal as well as a moral and political viewpoint.⁵⁶

Noske, it is true, had the backing of the new Reich President, Friedrich Ebert, who assumed office on 11 February 1919, two days before the Council of People's Deputies was formally dissolved and replaced by a centrist 'Weimar coalition'

government under MSPD leader Philipp Scheidemann. But it was open to question what would happen if the Constituent National Assembly, elected on 19 January, sought to impeach the Reichswehr Minister. This was an option favoured by the opposition USPD, which admittedly only had a small number of representatives in the National Assembly.⁵⁷ The political grounds for impeachment were that the violence meted out against the left during the period March to May 1919 went far beyond that used by the old regime during the strike waves of April 1917 and January 1918. According to USPD leader Hugo Haase, the shooting dead by the army and *Freikorps* irregulars of scores of workers during the 'March Days' in Berlin could not even be justified on the basis that martial law had been declared in the city. Martial law, he argued, while a 'form of judicial proceeding that takes place with undue haste and in summary form', was still partly shaped by the formal legal system in the sense that the accused had the 'right to defend themselves and present evidence'. Under Noske's *Schießbefehl*, on the other hand, 'soldiers are given permission to execute those captured whilst fighting with weapons in hand, without judicial proceedings' – a completely exceptional situation for which Haase could find no precedent, except perhaps 'at the time of the collapse of Ancient Greece and Rome'.⁵⁸

The Weimar Constitution, which came into force on 11 August 1919, finally brought an end to this post-war 'constitutional no-man's land'.⁵⁹ Under Articles 60–67, the Bundesrat was replaced by a Reichsrat (Reich Council) which had few powers and was essentially just an 'administrative entity' run by civil servants representing state governments.⁶⁰ Far more significant was Article 48, the long-awaited joint successor to the Prussian state of siege law and its Bavarian counterpart. It allowed the Reich President, in the event of a 'threat to public order and safety', to suspend temporarily some of the fundamental rights enshrined in the constitution and to take all 'measures necessary for the restoration of public order and safety, intervening, if necessary with the aid of the armed forces'.⁶¹ It had been preceded by a less water-tight law on the provisional authority of the Reich (*Gesetz über die vorläufige Reichsgewalt*), valid from 10 February 1919, which, among other things, empowered Ebert to set up a Reich Ministry of Finance on 21 March 1919 and order the dissolution of the Reich Office for Economic Demobilization on 26 April.⁶² The *Gesetz über die vorläufige Reichsgewalt* and Article 48 were primarily the work of Reich Minister of Interior Hugo Preuß, a lawyer and leading figure in the left-liberal German Democratic Party (*Deutsche Demokratische Partei*, DDP) who wanted something more modern and up to date to replace the old state of siege law. In this, he was supported by a 'decisive majority' of delegates to the National Assembly and by several leading Social Democrats, including Wolfgang Heine, Prussian Minister of Interior from March 1919 to March 1920, and his successor in that post for most of the period to 1932, Carl Severing.⁶³ Both of the latter were relieved – as strong opponents of the old state of siege law – when the new Reich Chancellor and acting Reich Minister of Justice Gustav Bauer affirmed in October 1919 that

With the entry into force of the constitution . . . not only the previous legal provisions at Reich level (Article 68 of the earlier imperial constitution) but also the state laws on the state of siege, in particular the Prussian state of siege law, [have] expired. At present, these

regulations are only relevant as far as they deal with states of siege ordered before the new constitution came into force. After their expiry, extraordinary measures to restore public safety and order can only be taken on the basis of Article 48.⁶⁴

In the aftermath of the Reichswehr's refusal to defend the Republic during the failed Kapp-Lüttwitz Putsch of March 1920 and in light of the behaviour of some army commanders during the Ruhr Uprising of March – April 1920—including the use of extraordinary tribunals (*Kriegs- und Standgerichte*) to condemn communist insurgents to death⁶⁵—further reforms were introduced. At a meeting in Berlin on 6 April 1920, attended by senior military figures, the new Reich Chancellor Hermann Müller, the new Reichswehr Minister Otto Geßler, and the Reich Minister of Interior since October 1919, Erich Koch, it was agreed, with the approval of the Reich President, that

regulations based on Article 48 of the Reich Constitution, if the need for their enactment has been established, are to be designed in such a way that the executive power does not pass to the military commander but remains with the civil authorities. This is intended to ensure that the military authorities are kept free from political responsibility. The military should only be used if this is necessary to support the police.⁶⁶

It is of course true, as Peter Caldwell puts it, that Ebert, even as he sought to demilitarise the transfer of executive power during an emergency, also 'dramatically broadened the range of actions covered by Article 48'.⁶⁷ Already in 1919 extraordinary decrees were issued on a bewildering fifty occasions under Article 48 or its 10 February predecessor, and a further seventy times between 1920 and 1923.⁶⁸ Sometimes relatively small geographical areas were effected such as the Saxon city of Leipzig, which was placed under successive states of siege for the best part of a year, from 12 April 1919 to 17 March 1920.⁶⁹ Sometimes whole regions were drawn in, for instance during the Ruhr Uprising of March to April 1920.⁷⁰ This normalisation of violence, in other words the shift from it being perceived as a measure of last resort to being regarded as necessary and legitimate means of self-defence (*Notwehr*) against all kinds of 'Bolshevik terror', with the 'exceptional' thus becoming the new 'ordinary', is significant. True, fear of communism and threats to property rights was not strong enough to bring about any concerted calls for the restoration of the monarchy. Instead, anti-democrats and sceptics (*Vernunftrepublikaner* or 'reluctant republicans') turned to Schmitt's authoritarian alternative: 'Sovereign is he who decides on the exception'.⁷¹ Hans von Seeckt, the new Reichswehr chief (*Chef der Heeresleitung*) from 26 March 1920, for instance, was surrounded, at least during his first three years in office, by people who believed that it might be possible to use Article 48 as the basis for declaring a military state of emergency across the whole of Germany, without the need for parliamentary approval or oversight and with the aim of establishing an army-backed dictatorship 'by legal means', possibly in alliance with the conservative, anti-republican German National People's Party (DNVP) or even with the Social Democrat President, Ebert.⁷²

The handing over of domestic anti-insurgency operations to the Ministers of Interior at Reich and state levels and to the various state police forces under their command on 6 April 1920 did nonetheless represent a shift in the way Germany was to be legally and administratively governed. Henceforth, announcements of emergency decrees issued under Article 48 were no longer signed off by the Reichswehr Minister, but the Reich Minister of Interior alongside the Reich Chancellor and the Reich President. Local

decrees could be issued by *Reichs-* or *Staatskommissare* acting in the name of the Reich Minister of Interior, or in the Prussian provinces, in the name of the Prussian Minister of Interior.⁷³ This was the situation, for instance, during the March Action in 1921, which was essentially a police operation directed by Severing against communist insurrectionists in the Prussian Province of Saxony and their sympathisers in the Ruhr, with back-up support from a very small number of Reichswehr units.⁷⁴ As in the case of the Netherlands, discussed by Wim Klinkert in his contribution to this special issue, the aim was also to unburden the army when it came to tackling internal subversion and other threats to public order. In fact, the only deviation from this new set of political assumptions and expectations regarding civilian responsibility for domestic security came on 26 September 1923 when, in response to Bavaria's unilateral decision to instal the ultra-conservative Gustav Ritter von Kahr as *Generalstaatskommissar*, rumours of communist unrest in Hamburg and Central Germany, and the general chaos caused by hyperinflation and the end of passive resistance in the Ruhr, Ebert declared a Reich-wide *military* state of emergency and placed executive powers in the hands of Geßler as Reichswehr Minister.⁷⁵

The National Military Emergency of 1923–4 and the Legacy of the First World War

On 18 November 1923, the *Reichskommissar für Überwachung der öffentlichen Ordnung*, a permanent office created inside the Reich Ministry of Interior in early 1920 by presidential decree which was responsible for monitoring domestic political extremism across all eighteen German states, reported that the sole internal security purpose of a *military*, as opposed to a *civil*, state of emergency was 'to successfully counter putsch attempts' by use of rapid and overwhelming armed force. Nonetheless, it continued, with reference to Article 48 of the WRV:

The problem of maintaining order is . . . at the present time less a question of the use of the police as a tool of state power than a question of politics itself. It is therefore impossible to assess the situation in the Reich with regard to public safety and order solely from a policing perspective.⁷⁶

Paradoxically, in 1923–4 this point was understood more readily by Seeckt, the Reichswehr chief and a non-politician, than it was by Geßler, a leading member of the left-liberal DDP. One of the latter's first acts under the new state of emergency was to order the Reichswehr to invade Saxony and Thuringia on 30 October and 6 November 1923 to depose left-wing governments there. The invasion of Saxony prompted the resignation of the SPD Ministers from the Reich cabinet in protest at Geßler's failure to act with similar force in the parallel case of the right-wing Kahr government in Bavaria, while both military 'interventions' brought with them the theoretical possibility of impeachment proceedings in the Reichstag against the Reich President and *his* Reichswehr Minister on grounds of politically-motivated abuse of Article 48. In so far as he adopted a position at odds with his previous support for a military-backed 'legal dictatorship', it was Seeckt who helped to preserve Ebert's authority in the last few weeks of 1923 after the latter handed him full executive powers

and powers of supreme command over the entire armed forces in place of the cack-handed Geßler.⁷⁷

In the scholarship on the domestic crisis of 1923–4 much less attention has been given to the Enabling Acts of October and December 1923. These gave temporary exceptional powers to the Reich cabinet to deal with the nationwide economic emergency caused by hyperinflation, but in the name of parliamentary government rather than on the basis of Article 48. The SPD approved both of them, the first on 13 October, when it was still a member of Gustav Stresemann's short-lived 'grand coalition' cabinet, and the second on 8 December, when it was formally in opposition to the new minority 'bourgeois' cabinet of Centre Party politician Wilhelm Marx.⁷⁸ The key feature was the need to deal quickly with issues that could otherwise take a long time to get through parliament. However, the parties of government had no intention of using the Enabling Acts to create a dictatorship above the constitution by quasi legal means, as Hitler did in March 1933.⁷⁹ Rather, their concern was that extremist minority parties of left and right might exploit the situation created by the economic emergency to obstruct parliamentary business and create chaos. In particular, Article 34 of the WRV could be used by parties opposed to the constitution to block the enactment of financial, economic and social measures that were considered 'urgent and necessary' in order to alleviate 'the crisis facing the nation and the Reich'.⁸⁰ Article 34 read:

The Reichstag shall have the right to, and upon the proposal of one-fifth of its members must, set up committees of investigation. These committees shall in public sitting inquire into such evidence as they or the petitioners consider necessary . . . The courts and administrative authorities are required to submit evidence requested by these committees . . .⁸¹

The short-lived dictatorship created by the Enabling Acts of late 1923 was a dictatorship of the centre, but not a dictatorship aimed at establishing new, anti-democratic or Caesarian claims to power. The ultimate proof of this is that Carl Schmitt disapproved. In a foreword written in August 1927 to the second edition of his book *Dictatorship*, Schmitt referred to the Enabling Acts as an expression of liberal hypocrisy, with its the 'ideology of the majority' (*Majoritätsideologie*) and its pathetic refusal to acknowledge the politically and morally unbound nature of sovereignty.⁸² Far left and anti-republican right-wing parties had expressed themselves similarly in the Reichstag debates of October and December 1923. For them, the Enabling Acts were the ultimate symbol of a 'corrupt peace' and the 'artificial' bourgeois civilisation that had created it.⁸³ DNVP leader Count Kuno von Westarp used the occasion of a debate on the first Enabling Act in the Reichstag on 8 October 1923 to argue that parliamentarism had clearly failed. It would be better, in his view, to endure further chaos, followed by the creation of a 'dictatorial power independent of parliament', than to vote for a piece of 'egotistic' legislation that merely established a *diktat* of the Weimar parties. The army was the only independent power capable of standing up to the communists at home and the Entente powers abroad, he maintained.⁸⁴ Interestingly, this line of argument was also pursued by the DNVP representatives on the Reichstag Budget Committee in December 1926 when challenging plans drawn up by the DDP Reich Finance Minister Peter Reinhold to rearrange the physical location of particular Reich ministries in Berlin. Reinhold's proposals, it was claimed, were tantamount to

‘some kind of Enabling Act’ favouring those democratic parties and interests that were supposedly incapable and/or unwilling to stand up to the Entente and its reparations demands.⁸⁵

The SPD parliamentary group, not surprisingly, disagreed with Westarp in 1923. Both Enabling Acts, in its view, would support the Republic and the nation through the state of emergency caused by the economic crisis and the ending of passive resistance in the Ruhr. They would also help prevent ‘constitutional failure’ as a result of Article 34, or for that matter, Article 48, as far as the latter empowered recalcitrant state governments such as Bavaria to initiate their own ‘temporary measures’ in response to a national emergency without first informing the government of the Reich. Furthermore, both Enabling Acts were time-limited: the first was worded to last until a ‘change of the current Reich government or its party-political composition, but no later than 31 March 1924’. In practice it ceased to be valid once the SPD left the Stresemann cabinet on 2–3 November 1923. The second had a time limit until 15 February 1924. Both could be repealed by the Reichstag at any time. The first allowed the Reich cabinet ‘to deviate from the basic rights guaranteed by the constitution’ if this were necessary to achieve an end to the economic emergency, whereas the second stated explicitly that ‘a deviation from the provisions of the Reich Constitution is not permitted’. Even so, the second Enabling Act was more controversial than the first among rank-and-file Social Democrats, because it no longer excluded certain social policies, such as the ‘regulation of working hours’ and the ‘public funding of insurance and pension schemes’ from being altered by government decree.⁸⁶

Under the first Enabling Act, the Stresemann cabinet issued forty-five decrees between 13 October and 2 November 1923 covering a diverse number of economic issues, including administration of government finances, the establishment of the state-controlled *Rentenbank* with a licence to issue its own bank notes, and radical cuts to the number of public-sector employees at Reich and state levels.⁸⁷ Under the second, the Marx government issued sixty-eight decrees between 8 December 1923 and 15 February 1924, the bulk of them ‘concerning economic and financial questions’.⁸⁸ The most disputed of these – although it was never reversed – was the decree ‘temporarily’ overturning the agreement on the eight-hour day reached between unions and employers and endorsed by the Council of People’s Deputies on 15 November 1918.⁸⁹

Both Enabling Acts required a two-thirds majority in the Reichstag to pass, as they touched on constitutional questions. One of the reasons why the SPD agreed to the second Enabling Act – even though it was no longer in government and could easily have blocked it, and even though it led to the abolition of the eight-hour day, one of the major social achievements of the November revolution, without a formal vote in parliament – was because, paradoxically, it communicated a positive public message about the authority of the Reichstag and the responsible, orderly nature of its proceedings. In this sense, it had the potential to reinforce the cross-party parliamentary culture that had developed since the wartime state of siege of 1914–18 and the election of the constituent National Assembly in early 1919.⁹⁰ Article 1 of the 8 December Enabling Act stipulated that:

Before the decrees are issued, a committee of the Reichsrat and a committee of the Reichstag of fifteen members are to be consulted in a confidential hearing. ... The ... Reichstag

committee is also to be consulted about the application of decrees based on the law of 13 October 1923 . . . , as far as the Reichstag so decides.⁹¹

The legislature, in other words, retained a definite, if somewhat opaque, say in decisions. Seen from this point of view, the Enabling Acts of 1923 were not so much a foretaste of what happened in 1933 as a phenomenon linking the economic ‘states of exception’ in 1914–18 and in the Weimar Republic of the 1920s with the exceptional, parliament-oriented, democratic ‘crisis management’ envisaged under the West German emergency laws (*Notstandsgesetze*) of 1968. The *Notstandsgesetze*, as political scientist Matthias Lemke points out in a recent study, are ‘only at first glance a domain of the executive’ – a finding that might equally apply to the Enabling Acts of 1914 and 1923:

[This is] because as a condition of being empowered to issue decrees, [governments] require authorization in the form of a law. Only parliament can pass laws, so that in principle every regulation [regarding decree-issuing powers] must be preceded by a corresponding law, including a parliamentary debate on the content.⁹²

Returning to the situation in 1923, one key but often overlooked actor who played a central role in determining the outcome of the 1923–4 crisis and preserving the republican idea of the state (and of the state of emergency) was the Prussian Minister of Interior Severing. Like the *Reichskommissar für Überwachung der öffentlichen Ordnung*, whose reports he had access to, he believed that – even during a military state of emergency – the question of upholding order remained a political one, both in form (the how) and content (whose order was being upheld?). In an interview conducted by a researcher working for the Munich-based Institut für Zeitgeschichte in late 1951, he conceded that the decision to allow the Reichswehr to invade Saxony and Thuringia had caused him ‘sleepless nights’, reflecting his Social Democratic roots and residual anti-militarism, but explained how he had reached the conclusion that on this occasion it was a better alternative to launching a (Prussian-led) police action, since the Reichswehr was ‘not bound to a particular state’. There was also a real danger that without use of military force, the Reich could lose Saxony and Thuringia to the communists.⁹³ Therefore he backed Seeckt’s mop-up operations across those states and in Hamburg and beyond in late November 1923, and instructed the regional and district governors (*Ober- und Regierungspräsidenten*) of the various Prussian provinces to do likewise.⁹⁴ In particular he supported the temporary use of protective custody orders ‘against persons who are suspected of conducting intelligence and surveillance activities’ on behalf of leftist insurgents, meaning in most cases KPD (Communist Party) members.⁹⁵ Yet he was also among the first to call for the immediate release of all those held in detention without trial once the state of military emergency had been lifted – at Seeckt’s request rather than that of the Marx cabinet – on 28 February 1924.⁹⁶

Along with the Reichstag President Paul Löbe, the Prussian Minister-President Otto Braun and the Reich Minister of Finance Rudolf Hilferding, Severing also welcomed the Enabling Acts of 13 October and 8 December 1923 as an extension of and improvement on experiments carried out during the wartime economic emergency in cooperation between the Prussian government and bureaucracy on the one hand, and the national parliament on the other.⁹⁷ Indeed, as a prominent deputy in the Reichstag, he voted for both measures, as did Löbe and the vast majority of the SPD parliamentary group.⁹⁸ Like Ebert and Geßler, his ultimate goal was to uphold the WRV, but he also saw more clearly

that in order to achieve this, the Reich Chancellor and the Reich cabinet collectively – which relied on the confidence, toleration and/or cooperation of the majority centrist parties in parliament – would have to be empowered alongside and as a counterweight to the Reich President and others granted executive or commissarial powers under Article 48. In particular, the republican state could not be left solely in the hands of a man, Seeckt, who had told him twice, once at the time of the Kapp Putsch in March 1920, and again on the night of 8–9 November 1923, that if sections of the army decided to support a right-wing coup for purposes of protecting property and order, ‘Reichswehr would not fire on Reichswehr’.⁹⁹

By 28 February 1924, as far as Severing was concerned, several important political goals had been achieved: the restoration of order in all parts of Germany, the prevention of an army dictatorship but simultaneously the retention of military force as a tool of last resort to uphold the constitution, and the reassertion of the Reichstag’s authority as the national legislature representing the will of the people. Incidentally, this was also the view of SPD veteran Eduard Bernstein, who praised the majority decision of the Reichstag fraction to vote in favour of the second Enabling Act in closed sessions on 5 and 6 December on the grounds that it was a better outcome than the only alternative: dissolution of the Reichstag and rule under Article 48, thereby suspending parliament’s collective ability to shape economic measures in the interests of the people for a period of up to sixty days, and leading to a politically undesirable election campaign in the deep mid-winter months of early 1924.¹⁰⁰

Conclusion

George L. Mosse, in his celebrated essay on the ‘brutalization’ of German politics, argues that the direct presidential power created by Article 48 of the WRV was both a legacy of wartime and post-war violence and damaging to democracy because it allowed a prioritisation of state authority over parliamentary rule in what appeared to be a zero sum game between the two.¹⁰¹ However, this article has argued that the opposite was the case in respect to the two Enabling Acts of late 1923. Precisely because the powers they created were approved and supervised by the Reichstag, they actually were believed by the parties who voted for them (and those who voted against them) to embolden parliamentarism and reinforce political centrism – even though, in a temporary sense, they handed extraordinary powers to the Reich cabinet. The Enabling Acts were approved by centrist parties not only because they established the power of the civilian Reich Chancellor against the chief-of-staff of the Reichswehr and the Reich President during the state of military emergency. More importantly, they did so in the belief that in the long term the Enabling Acts would preserve the authority of parliament and the culture of parliamentarism.¹⁰² And by preserving parliamentary rule, they would be preserving the principle of popular sovereignty, which – as Article 1 of the Weimar Constitution made clear – was the only legitimate foundation of state power and the only guarantee of the rule of law.

The SPD’s support for the December 1923 Enabling Act is particularly striking – as it was in opposition, but still felt itself to be part of the broader parliamentary culture.¹⁰³ On the other hand, the SPD withdrew from government because it could not accept the use of Article 48 to overthrow the left-wing government in Saxony on 30 October 1923.

And in March 1933 it bravely voted against Hitler's Enabling Act. In both of the latter instances, it identified and acted against what it saw as a deliberate and unwelcome use of exceptional measures by the executive which, even if technically lawful, were entirely incompatible both with the maintenance of established parliamentary prerogatives and with the constitutional principle that all 'all state power originates from the people'.¹⁰⁴

What this means is that the history of parliamentarism in Germany cannot be written without simultaneously thinking about the history of states of emergency. The overlap between the two goes back to the experimental Enabling Act at the start of the First World War. On the one hand, the extraordinary powers given to the Bundesrat to combat the wartime economic emergency might seem like 'the hour of the [Prussian] executive'. On the other hand, the preservation of these powers forced the Prussian cabinet – just like the Reich cabinet in 1923—to address some of the wartime demands made by the Reichstag. In this sense Peter Caldwell is right to assert that the Reichstag was able to 'limit the extent of direct power over society demanded by' the military during the war.¹⁰⁵ At the same time it was able to form and assert its own political objectives, in other words to engage in a pluralistic *Willensbildung*.¹⁰⁶ True, it was unable, and to some extent unwilling, to monitor all the abuses committed under the state of siege and the Auxiliary Service Law, including arbitrary procurement practices. And it was unable to regain its full prerogatives in the legislative sphere until after the November 1918 revolution, which swept away Germany's unelected princes and thereby rendered the Bundesrat irrelevant. But for all that, it had been able to strengthen its position as the national legislature whose voice ultimately counted for more than the unelected Bundesrat or old-fashioned Bavarian particularists. An informal coalition stretching from the National Liberals to the SPD had demanded concessions and got them precisely because the Prussian cabinet wanted to preserve the extraordinary powers that it had been granted on 4 August for as long as possible.¹⁰⁷ This was of course similar to the coalitions that approved the two Enabling Acts in 1923.

This finding also has implications for how we assess German history after 1945, particularly in regard to the passing of the (West) German *Notstandsgesetze* in May–June 1968, again by a grand coalition in the Bundestag, and this time some nineteen years after the constitution or Basic Law was approved in 1949.¹⁰⁸ A time-limited loan of emergency powers to the executive, I would argue, does not necessarily counter parliamentarism, and in some contexts, can be its enabler or renewer. It is the extra-parliamentary state of siege or state of emergency that is its greater enemy of liberal democracy.¹⁰⁹ Precisely because this variant of Schmitt's 'state of exception' can be put into effect without requiring prior parliamentary consent, and/or because it allows the executive to ignore or nullify a subsequent parliamentary vote by means of prorogation or dissolution, it can easily evolve into the prevailing norm, as indeed it did during the period of presidential rule in Weimar Germany from 1930 to 1933.¹¹⁰ This does not necessarily mean that parliamentarism alone is a more adequate means of safeguarding against abuses of state power during a state of exception – the example of First World Portugal, as outlined by Filipe Ribeiro de Meneses and Pedro Aires Oliveira in their contribution to this special issue, or today of Viktor Orbán's Hungary, should be enough to put paid to that idea. But what it does mean, ironically, is that in the case of modern Germany at least, the history of parliamentarism and of states of emergency exist in mutual relationship to one another and cannot be treated as opposites.

Notes

1. Conze, *Schatten des Kaiserreichs*, 128.
2. Oppelland, *Reichstag und Aussenpolitik*.
3. On Bavaria's special prerogatives (*Reservatrechte*), even in wartime, see Schudnagies, *Der Kriegs- oder Belagerungszustand*, 49.
4. The pre-war dream (and it was no more than that) of an anti-conservative 'Bassermann to Bebel' alliance in the Reichstag was a reference to the National Liberal leader Ernst Bassermann and the Social Democrat leader (until 1913) August Bebel. See Heckart, *From Bassermann to Bebel*.
5. In total, eight time-limited Enabling Acts were approved by the Weimar National Assembly and the Reichstag between 1919 and 1923. The two discussed in this essay – coming last chronologically – were without doubt the most far-reaching. See Frehse, *Ermächtigungsgesetzgebung*, 182.
6. Löbe, *Erinnerungen*, 86–7. See also Middendorf, *Macht der Ausnahme*.
7. See, for instance, Preuß, "Carl Schmitt."
8. Schmitt, *Political Theology*, 29–30.
9. Rossiter, *Constitutional Dictatorship*, 15–28.
10. *Ibid.*, 55–6.
11. In a different legal context, emergency powers were also used in enemy territories occupied by the German army. However, for reasons of space, and to keep the focus on the relationship between 'emergency' and parliamentarisation, I have not included consideration of occupation policies here. See also the introduction to this special issue for a broader justification.
12. Schmitt, *Political Theology*, 29.
13. Deist, "Kaiser Wilhelm II," 26–8, 32. Article 68 of the Imperial Constitution read: 'If public safety in the federal territory is threatened, the Kaiser can declare one or every part of it to be in a state of war'.
14. Schudnagies, *Der Kriegs- oder Belagerungszustand*.
15. See Prussian War Ministry to Württemberg War Ministry, 10 January 1916, in Deist, ed., *Militär und Innenpolitik*, Vol. 1, 39.
16. For examples of these complaints and petitions, see *ibid.*, 44, n. 1; and Schiffers, *Hauptausschuß*, 156–65. Also Hauptstaatsarchiv (henceforth HStA) Stuttgart, E 40/72, Nr. 626, Übersicht der vom Bundesrat gefaßten Entschliessungen auf Beschlüsse des Reichstags (= Drucksachen des Reichstags, Nr. 229, 625).
17. See *Verhandlungen des Reichstags*, Vol. 308, 1899–934, 1941–78 (quote from the actual motion on 1976–7). On the role of the National Liberals in the Main Committee, see also Schiffers, *Hauptausschuß*, 157.
18. Bethmann Hollweg to Prussian cabinet, 14 November 1916, in Deist, ed., *Militär und Innenpolitik*, Vol. 1, 44.
19. Bethmann Hollweg to representative of the German Foreign Office at Grand Headquarters, 21 November 1916, in *ibid.*, 50.
20. Conze, *Schatten des Kaiserreichs*, 110.
21. Helfferich before the Bundesrat, 23 November 1916, in Deist, ed., *Militär und Innenpolitik*, Vol. 1, 51, n. 9.
22. Verordnung zur Ausführung des Gesetzes über den Kriegszustand, 4 December 1916, in *Reichsgesetzblatt* 1916, Nr. 275/5594, 1332.
23. Gesetz betreffend die Verhaftung und Aufenthaltsbeschränkung auf Grund des Kriegszustandes und des Belagerungszustandes, 4 December 1916, in *ibid.*, Nr. 275/5592, 1329–31. For the Reichstag debates on 27–28 October 1916 which immediately preceded this act, see *Verhandlungen des Reichstags*, Vol. 308, 1859–64, 1870–94. On the National Liberals' initial draft resolution in the Main Committee, see Schiffers, *Der Hauptausschuß*, 161–2.
24. Keil and Stibbe, "Ein Laboratorium," 549.

25. See, for instance, HStA Stuttgart, E 40/72, Nr. 626, clipping of newspaper article 'Das Ermächtigungsgesetz und der Reichstag', *Münchener Neueste Nachrichten*, Nr. 268, 30 May 1918.
26. Tingsten, *Les pleins pouvoirs*, 287.
27. Heymann, *Die Rechtsformen*, 182–3.
28. Schiffers, *Der Hauptausschuß*, 204.
29. For evidence, see *ibid.*, 202–4 and n. 134.
30. *Verhandlungen des Reichstags*, Vol. 306, 85.
31. *Ibid.*
32. Schiffers, *Der Hauptausschuß*, 204–7.
33. Tingsten, *Les pleins pouvoirs*, 13.
34. Arendt, *On Violence*, 44.
35. Müller, "Feindliche Ausländer," 20.
36. See "Das Ermächtigungsgesetz und der Reichstag," *Münchener Neueste Nachrichten*, Nr. 268, 30 May 1918 (as note 25).
37. Schiffers, *Der Hauptausschuß*, 199.
38. Feldman, *Army, Industry, and Labor*, 224.
39. Gesetz über den vaterländischen Hilfsdienst, 5 December 1916, in *Reichsgesetzblatt* 1916, Nr. 276/5595, 1333–9 (here 1338).
40. For the idea that the *Kriegsamt* was modelled on the British Ministry of Munitions, created by David Lloyd George in May 1915, see Heymann, *Die Rechtsformen*, 29.
41. Gesetz über den vaterländischen Hilfsdienst (as note 39), 1334.
42. Schiffers, *Der Hauptausschuß*, 123, 204, n. 148.
43. *Ibid.*, 160. The Independent Socialists' position was also set out in three plenary speeches in the Reichstag made by Wilhelm Dittmann in 1916. See Dittmann, *Drei Reden*.
44. Schiffers, *Der Hauptausschuß*, 159.
45. See Übersicht der vom Bundesrate gefaßten Entschliessungen (as note 16), 7.
46. Schiffers, *Der Hauptausschuß*, 160. See also Deist, *Militär und Innenpolitik*, Vol. 1, 44, n. 3. Further examples can be found in *Verhandlungen des Reichstags*, Vol. 306, 433; *ibid.*, Vol. 307, 860.
47. Feldman, *Army, Industry, and Labor*, 247; and Schiffers, *Der Hauptausschuß*, 158–9.
48. Aufruf des Rats der Volksbeauftragten an das deutsche Volk, 12 November 1918. Reproduced in Huber, ed., *Dokumente*, Vol. 3, 6–7.
49. Schiffers, *Der Hauptausschuß*, 200.
50. Bayerisches Hauptstaatsarchiv Munich, Abt. II: Neuere Bestände (henceforth BayHStA-II), MIInn 66272, petition of the Kingdom of Bavaria and the Bavarian Ministry of War to various Bundesrat committees, 6 March 1918.
51. BayHStA-II, MIInn 66272, Verordnung des Gesamtministeriums des Freistaats Bayern über die Aufhebung des Kriegszustandes und über zeitweilige Massnahmen nach Art. 48, Abs. 4 der Reichsverfassung, 4 November 1919.
52. See note 48 above.
53. Heymann, *Die Rechtsformen*, 37; and Bessel, *Germany*, 97–8, 133–5, 234–5.
54. Dobson, *Authority and Upheaval*, 198.
55. Gietinger, *The Murder of Rosa Luxemburg*.
56. On Noske's 'shooting orders', see Jones, *Founding Weimar*, esp. 251–85.
57. See, for instance, USPD leader Hugo Haase's speech before the National Assembly on 27 March 1919, in *Verhandlungen des Reichstags*, Vol. 327, 842–7.
58. *Ibid.*, 843.
59. Keil and Stibbe, "Ein Laboratorium," 553.
60. Caldwell, "The Weimar Constitution," 128.
61. Article 48 WRV, at http://germanhistorydocs.ghidc.org/pdf/eng/ghi_wr_weimarconstitution_Eng.pdf

62. Keil and Stibbe, "Ein Laboratorium," 553; Middendorf, *Macht der Ausnahme*, 54; and Heymann, *Die Rechtsformen*, 38.
63. Rossiter, *Constitutional Dictatorship*, 35. On Heine, see his statement before the constituent Prussian state assembly, 16 December 1919, in Landesarchiv Nordrhein-Westfalen (henceforth LNRW), Abt. Westfalen, Oberpräsidium Münster, Nr. 6321, Bl. 22. On Severing's position in 1919–20, when he was Reichs- und Staatskommissar in the Ruhr and subsequently Prussian Minister of Interior, see Severing, *1919/1920 im Wetter- und Watterwinkel*.
64. LNRW, Abt. Westfalen, Oberpräsidium Münster, Nr. 7622, Bl. 134–5, Statement by Gustav Bauer, 5 October 1919, in response to question raised in the Budget Committee of the Reichstag, 25 September 1919.
65. On the use of military courts against captured 'Red army' fighters during the Ruhr Uprising, see Pöppinghege, *Republik im Bürgerkrieg*, esp. 117–9; and Geyer, "Grenzüberschreitungen," 363. The latter notes that in March – April 1920, 205 death sentences were passed. Fifty were actually carried out, the remainder being commuted by order of the Reich President.
66. LNRW, Abt. Westfalen, Oberpräsidium Münster, Nr. 5387, Bl. 73, Aufzeichnung über die Chefbesprechung am 6. April 1920 im Reichskanzlerhaus.
67. Caldwell, "The Weimar Constitution," 125.
68. Keil and Stibbe, "Ein Laboratorium," 538; and Geyer, "Grenzüberschreitungen," 360.
69. Dobson, *Authority and Upheaval*, 260, 283–4.
70. Pöppinghege, *Republik im Bürgerkrieg*.
71. Schmitt, *Political Theology*, 5.
72. Carsten, *The Reichswehr*, esp. 107, 165–6, 187.
73. See, for example, LNRW, Abt. Westfalen, Oberpräsidium Münster, No. 5395, Sammlung der allgemeinen Erlasse des Regierungskommissars Dr. Wuermeling: Erlasse betr. den Ausnahmezustand, 1920–1.
74. Winkler, *Von der Revolution zur Stabilisierung*, 514–7.
75. Huber, ed., *Dokumente*, Vol. 3, 286–8.
76. Lagebericht Nr. 98 des Reichskommissars für Überwachung der öffentlichen Ordnung, 18 November 1923, reproduced in Eckardt, ed., *Ausnahmezustand in Thüringen*, 27–9 (here 29).
77. See the evidence in Hürten, ed., *Das Krisenjahr 1923*.
78. Winkler, *Von der Revolution zur Stabilisierung*, 638–9, 679–81.
79. Morsey, ed., *Das Ermächtigungsgesetz*, 96–7, 195, 203–4; and Lemke, *Deutschland im Notstand*, 44–7.
80. Tingsten, *Les pleins pouvoirs*, 292, 317.
81. Article 34 WRV, in Huber, ed., *Dokumente*, Vol. 3, 134. For other forms of day-to-day parliamentary obstruction, particularly those favoured by the extremist parties, see Mergel, *Parlamentarische Kultur*, 166–77, 436–49.
82. Schmitt, *Dictatorship*, foreword to second edition (1928).
83. Mosse, "The Brutalization of German Politics," 163, 170.
84. *Verhandlungen des Reichstags*, Vol. 361, 11970–3.
85. Middendorf, *Macht der Ausnahme*, 205–6.
86. See Vorstand der SPD, *Materialien*.
87. Tingsten, *Les pleins pouvoirs*, 313.
88. *Ibid.*, 319. For a full list of all decrees issued under both Enabling Acts, see Frehse, *Ermächtigungsgesetzgebung*, Appendix, Part III, Nr. 2 and 3, 1–8.
89. Winkler, *Von der Revolution zur Stabilisierung*, 681–4.
90. On Weimar's cross-party parliamentary culture, and its role in minimising political turmoil (*Tumulte*) in the Reichstag, particularly in the years 1924–8, i.e. the period immediately after the 1923 Enabling Acts, see Mergel, *Parlamentarische Kultur*, here 173.
91. Vorstand der SPD, *Materialien*, 3.

92. Lemke, *Deutschland im Notstand*, 98. For this reason I would also argue that Frehse, *Ermächtigungsgesetzgebung*, 195, overplays the differences and underestimates the continuities between the Enabling Acts of the early Weimar period and the Federal Republic's *Notstandsgesetze*.
93. Archiv des Instituts für Zeitgeschichte, Munich, ZS 25-147-1, Niederschrift der Unterredung des Herrn Reichs- und Staatsministers a.D. Karl [sic!] Severing am 23. und 27. Dezember 1951 mit Dr. Freiherr von Siegler, 3 January 1952, 1–4 (here 2).
94. LNRW, Abt. Westfalen, Oberpräsidium Münster, Nr. 5377, Bl. 269–70, Severing to the Ober- und Regierungspräsidenten of Prussia, 30 November 1923.
95. Ibid.
96. Winkler, *Von der Revolution zur Stabilisierung*, 691–3.
97. Löbe, *Erinnerungen*, 96–7. On Hilferding's views, see also Middendorf, *Macht der Ausnahme*, 119–20.
98. Historisches Archiv der Stadt Köln, Bestand Wilhelm Marx, 1070/341, lists of votes cast for the first, second and third readings of the December 1923 Enabling Act (= Drucksachen des Reichstags, Nr. 6367, 6385). Löbe is also recorded here as having voted yes on all three occasions.
99. Niederschrift der Unterredung des Herrn Reichs- und Staatsministers a.D. Karl Severing (as note 93), 1.
100. Bernstein, "Was war die Alternative?" 2. Bernstein was also among the large majority of SPD deputies who voted yes following all three readings of this Enabling Act on the floor of the Reichstag on 6–8 December 1923—see note 98 above.
101. Mosse, "The Brutalization of German Politics," 172.
102. Winkler, *Von der Revolution zur Stabilisierung*, 627.
103. See Vorstand der SPD, *Materialien*, 16.
104. Article 1 WRV, in Huber, ed., *Dokumente*, Vol. 3, 129.
105. Caldwell, "The Weimar Constitution," 120.
106. On the notion of parliamentary *Willensbildung* and the fierce opposition that it aroused among more authoritarian state officials and political thinkers in the 1920s and 30s, see Middendorf, *Macht der Ausnahme*, 142, 381.
107. Schiffers, *Der Hauptausschuß*, 262–4.
108. Diebel, 'Die Stunde der Exekutive'.
109. Rossiter, *Constitutional Dictatorship*, 13–14.
110. See also Lemke, *Deutschland im Notstand*, 48.

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