



# THE USE OF A STATE OF EMERGENCY TO TURN YOUNG DEMOCRACIES INTO AUTOCRATIC STATES

Political Studies

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My path in life is: I study war to fight for peace.

صبا ياسر مدور - طالبة دراسات عليا في برنامج الماجستير قسم دراسات الحرب في جامعة كينغز لندن - متخصصة في حل النزاعات في المجتمعات المنقسمة. صبا إعلامية سورية، مذبة ومقدمة برامج عملت في قنوات تلفزيونية عربية من أبرزها الجزيرة وقناة العربي بالإضافة للتلفزيون التركي الناطق باللغة العربية - كتبت صبا أسبوعيا في الشأن السوري في جريدة المدن وتلفزيون سوريا، سبق للباحثة أن أجرت بحث ماجستير في التطوير التنظيمي في القنوات التلفزيونية بالتطبيق على قناة الجزيرة عام 2011 وهي الاولى من نوعها في سوريا ولم تناقش لاسباب سياسية فتم نشرها في مركز الجزيرة للدراسات.

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**“We may also suspect that they<sup>(1)</sup> suspected that emergency powers would tend to kindle emergencies.”**

**Robert Jackson**, *former US attorney general*

## 1. Introduction

A state of emergency (SoE) is a temporary measure that allows governments to use exceptional powers outside the framework of existing ordinary laws to deal with crises that endanger the state (Pati, 2009, p. 235). In theory, this occurs during emergencies such as war, foreign aggression, civil conflict, and natural catastrophes since the limits of existing legislation mean the law is inadequate, ineffective or too slow to guarantee state security. (DePlato, 2021, p 135). Emergency powers are often granted to the head of state or the executive authority because they can respond to crises more quickly and appropriately than the legislature or the courts (Ibid)

The 18th century political philosopher Jean-Jacques Rousseau described the difficulty in the concept of a state of emergency by seeing it as a “temporary dictatorship”, with the caveat that this “temporary” dictatorship is “a means for democratic reform” and therefore should only be “a time-limited and revocable commission to protect the constitution and to provide for a more stable and effective state organisation based on the principle of popular sovereignty” (de Wilde, 2019, p. 1107). Despite its complications, Rousseau acknowledged the necessity of the state of emergency and the inability of other laws to act in crisis because certain dangers place the state in a position where it cannot wait for the bureaucracy of ordinary laws (Lijphart, 1978, p 404) and must adopt special measures to protect itself. Exceptional emergency powers are still seen in this light: as a tool to defend the democratic state against threats and the consequences of threats, before focusing on restoring democratic legal order again. Indeed, its roots are profoundly founded in democratic political philosophy (Zwitter, 2015, p 2), which has supported the approach that suspending democratic government processes is the necessary response to emergency conditions, and that forsaking democratic government is the only way to handle emergencies (DePlato, 2021, p. 135)

Despite the assumption that such a political situation is temporary, and the state will soon return to the condition of a democratic state in the presence of solid legislative institutions capable of stopping the state of emergency as soon as the threat is removed, this research argues that restoring the status quo (that is, actual democratic status) after the declaration of a state of emergency may be more difficult in emerging democracies or in countries still undergoing democratisation.

A crucial issue or a puzzle that arises in existing research on the topic, is that despite a new democracy’s need for emergency laws to combat any number of crises characteristic of its transition, and despite

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1 The pronoun “they” here refers to the founders of the US Constitution who omitted emergency powers. (Goitein, 2020)

it being an attribute of a democratic state, this tool by its powers has the potential to become a weapon that undermines democratic principles and erodes them over time. The nature of a youthful democracy suffers from many weaknesses that can themselves pose threats to the new state. There may be constitutional voids, security concerns, societal divisions, and political and economic challenges (N. Converse & B. Kapstein, 2008, p 127,128), and any of these may be used as a justification for declaring a state of emergency. Such an approach can be self-destructive, particularly when public institutions are young and fragile, or when political elites choose rather to leverage the state of emergency to secure power. When emergency measures endure longer than required, due to the absence of an explicit emergency constitution ( Bjørnskov & Voigt, 2018, p. 122), the state of emergency itself can become self-defeating for young democracies.

On top of this, the problem arises during a state of emergency; governments may use a variety of prohibited and extreme actions in the name of national security (Ackerman, 2020, p. 10), increasing the possibility that a state of emergency can be a line of first attack to bring about significant changes in the structure of the political, social and economic system. These changes may favour the executive or even a person like the head of state, or a government elite pitched against parliament and the judiciary (Bjørnskov & Voigt, 2017, p.2). The unfettered powers granted to the executive in a declared “emergency” may be abused to achieve political ambitions unrelated to the reasons for imposing the emergency law and may take place over time. The state of emergency may be extended for no convincing reason, which means that laws which protect rights and liberties are suspended for an undefined, additional period; such a state allows authorities to act without democratic accountability to modify the political landscape and structures. Such extensions mean that the state has in effect violated the meaning of emergency; Goitein (2019) stated, “conditions lasting that long are not unforeseen or temporary, which are the basic elements of an emergency”. By this stage, however, the pillars of democracy such as independent press, a judiciary abiding by the rule of law, and human rights protections may be significantly weakened, then dissolved.

There is therefore a need for a more meaningful understanding and deeper investigation and analysis of how a state of emergency or so-called “exceptional measures” can affect emerging democracies, and whether emergency powers may turn a democracy into a constitutional dictatorship. This paper will adopt Tunisia as a case study to address the following question:

*What are the potential dangers of using a state of emergency and exceptional measures in emerging democracies?*

Answering this question can contribute to a better understanding of how a state of emergency may be used to fundamentally transform a country’s political system from an emerging democratic government to a permanent emergency regimes.

## 2. Methodology

This research has as its starting point the concept of the state of emergency and its limits according to the most prominent theorists. From here, a number of secondary sources are reviewed, and literature examining pre-emergency political situations compared to after the state of emergency, as well as comparative studies on emergency outcomes by regime type.

The literature review will form the data that will be analysed, a discussion that will link a particular type of democratic state with certain effects of emergency powers, using the scenery of Tunisia as a backdrop. Tunisia is widely believed to have begun the transition to becoming a new democratic state and as such is the only “success story” of the 2011 Arab Spring in 2011 (Hamid, 2021). However, President Qais Saeed’s proclamation of emergency powers and extraordinary measures in 2021 resulted in legislative and political changes and has raised concerns about the country’s democracy (Holleis, 2023). Due to the novelty of the events in Tunisia, there is a scarcity of literature on the subject; this research will rely on a review of the Tunisian Constitution 2014 (which legitimises the emergency powers) and a scan of media, including investigative articles and opinion pieces.

The research focuses on the period between June 18, 2021, the week before emergency powers were activated to outline the conditions prior to the declaration on 25 June and understand its context, tracing them until January 2023, when the state of emergency was extended for another year, and still remains in place.

## 3. Literature Review

The notion of a state of emergency was acknowledged by the 15th century philosopher Niccolò Machiavelli, who conceded that emergency powers do more harm than good in the long term and saw them as unnecessary in a state that was well organised and equipped with laws to confront all dangers. In his view, once ordinary laws were suspended for reasonable justifications and for benevolent ends, it would be easier to suspend or ignore them under another pretext in future, more likely for malevolent purposes. Machiavelli thus theoretically suggested limits on the emergency powers of the president and executive authority (De Plato, 2021, p. 140).

German jurist and political theorist Karl Schmitt coined the term “state of exception” in the 1920s and assigned it to a state of governance similar to the modern notion of a “state of emergency”, in which essential legal and democratic rights are removed and the rule of law is suspended. However, Schmitt based his theory on the contention that these adjustments should not be a temporary or secondary aspect of a political system, but an inherent and necessary characteristic of a strong state (Head, 2016, p 13). Schmitt believed that absolute sovereignty is the form of governance most capable of tackling dangers and crises (Sorell, 2003, p. 224). Schmitt based his theory on the assumption that the ruler transcends the rule of law in the name of the public good.

Recent research has concentrated on the major implications of the state of emergency (SoE) on democracies specifically. According to Bjornskopf and Voigt (2022) emergency constitutions determine and predict outcomes. They noted that emergency constitutions might have long-term ramifications on a country's constitutional order. They conclude that using SoE in democracies nearly invariably violates people's rights and undermines the system of checks and balances by favouring the executive. Similarly, Lührmann and Rooney (2019) contend that emergency governance is more often conducive to autocratisation; emergencies can be both "a symptom and an accelerator" of autocratisation, in that the very nature of emergency legislation and subsequent emergency governance goes against the basis of democratic institutions. This underlines the inherent problem in the research discussed earlier – that a state of emergency or "exceptional measures" can be self-defeating in a democracy. This is because executive aggrandisement undermines the independence of and cooperation between different branches of democratic power, whose interaction is required for the survival of democracy itself. Lührmann and Rooney (2019) further state that a state of emergency can enable leaders to prolong their authority so that political changes are felt well beyond their lifespan. Petrov (2020) acknowledges this, but goes further to highlight how the expansion of executive power and lack of cooperation between legislative, judicial and executive branches can result in policy gridlock and thereby undermine the efficiency of governance in an emergency, in effect producing the opposite of the desired outcome of emergency powers.

On the topic of the preconditions to state of emergency, Bjørnskov & Voigt (2018) found that emergency constitutions must address significant questions and determine consanguine regulations in response - these questions were: the required circumstances for a situation to be deemed to be an emergency; who has the authority to declare an emergency; who is then authorised to end an emergency; who has the authority to check the legality of the emergency response methods; who exercises emergency authority; and what (extra) powers does the emergency government possess. According to Bjørnskov & Voigt, the less regulations in a state of emergency, the more likelihood of further declarations.

The notion of justification emerges as key in research by Bishop and Phillips (2002, pp. 92-93), who highlighted that some executives create an environment and circumstances to perpetuate or create a state of emergency; this is referred to as "manufacturing emergency" and can reach a point in which public security is endangered by the very state that declares the emergency, in order to use special powers granted by the emergency constitution. Examples of such manufactured emergencies include false flag attacks and manufactured economic crises. The outcome of such actions by the executive leads to widespread public insecurity and mistrust, which the executive further leverages.

Interestingly, Lundgren et al. (2020) conducted their study during the Covid-19 pandemic, and they found that weak democracies were more likely than strong democracies or dictatorships to proclaim a state of emergency and exploit it to solidify their authority. And the findings appear that weak democracies are often unstable by nature, regardless of an emergency. This means that incumbents in power, may invoke a state of emergency more frequently – and more believably – to consolidate power; the purpose



of “regaining stability” helps to maintain their public image. Stasavage (2020) states that there is an apparent and almost inevitable trade-off between civil rights and security as well as emergency response effectiveness and power abuse. In democracies, the number and nature of institutional restrictions and the flow of information, influence the extent to which the government will misuse its authority. The degree of centralisation, the breadth of presidential powers, and the connection between the media and civil society are among the most significant influencers of the outcome of the state of emergency. A strong democracy demonstrates robustness in these areas.

Lührmann and Rooney (2020) through a large-N study designed to estimate if and to what extent the state of emergency hinders democratic processes and is conducive to subsequent autocratisation, statistically demonstrate that democracies are 75% more likely to slide into authoritarianism after a state of emergency. Particularly, even a democratic government is much more likely to violate basic rights under a state of emergency, although this varies by country. Afsahi et. al (2020) reveal that a state of emergency in fact causes the biggest “backsliding” (autocratisation), to the extent that they call it “the hour of the executive,” meaning parliament has no say and the inner executive – that is, central government assumes control of all aspects of governance. Despite this, Afsahi et. al (2020) conclude that the state of emergency and the political changes it brings, have not eroded popular support for democracy in Western democracies.

To differentiate between weak and established democracies and focus separately on the regimes that displayed signs of autocratisation prior to the emergency, Maerz et. al (2020) conducted large-N research on government responses to an emergency. They argue that in “backsliding” democracies, leaders are more likely to justify the violation of democratic norms with emergency threats and constraints imposed by the emergency, even in cases when the constraints and violations go beyond what is required to address the emergency. In weak democracies and hybrid regimes (states that combine dictatorial and democratic characteristics and may conduct political repressions as well as hold regular elections), leaders tend to try to reframe the context of the emergency to target the opposition, consolidate their power, exercise more control over the judiciary, and limit media freedom.

Györy and Weinberg (2020) study Hungary extensively. Before the emergency, it was a hybrid regime with an illiberal populist leader and democratic institutions under danger. The state of emergency provided the government greater leeway to merge emergency legislation (giving the executive more authority) with statutory law. Although the state of emergency didn’t fundamentally change the political system, it created new legal frameworks for strengthening executive authority and taming legislative opposition, while retaining procedural democracy’s constitutional features. Under hybrid regimes or regressing democracies, a state of emergency is likely to exacerbate autocratisation, as shown by Gausti (2020). Kacarska and Milacic (2021) consider the effects of the state of emergency on the democracies of southeastern Europe and argue that legalising and normalising the exclusion of parliament from the decision-making process during times of emergency creates an opening for power grab strategies and may even inspire

politicians with authoritarian tendencies to take further action towards authoritarianism. This could be fatal for weak democracies with an already strong executive.

Much of the literature distinguishes between established democracies (usually meaning liberal Western democracies), or backsliding democracies, where subtle signs of democratic backslide were apparent before the emergency. Most of the literature to date is mainly concerned with pinpointing and explaining the general effects of the state of emergency on the quality of democratic institutions. Very little literature considers the state of emergency on different types of democracies; most apply a scale-like definition of democracy (elections, checks and balances, an independent judiciary, etc.) and differentiate them based on their individual “score” against these predetermined characteristics.

While this literature is undoubtedly valuable for answering the question posed in this paper, there is still a gap in that few works explicitly compare the effects of emergency for different types of democratic governments. Questions remain as to whether there are different consequences of a state of emergency on young, or new emerging democracies, from those experiencing a process of democratic transition or semi-democracy (i.e. a hybrid regime or a backsliding democracy), and from established democracies or dictatorships.

## 4. Analysis and Discussion (Tunisia)

This section will discuss how the ruling regime in the 10-year-old young democratic state in Tunisia has used the state of emergency declared seven years ago without interruption to invoke exceptional powers. Through actions such as the dissolution of parliament, the rewriting of a new constitution, and the absence of checks and balances to undermine democratic rights, the political landscape has changed gradually. It will then be briefly compared to the current rulership in Peru. This discussion aims to answer the paper question:

*What are the potential dangers of using a state of emergency and exceptional powers in emerging democracies?*

### 4.1. The road to the emergency power

Tunisia’s 2019 parliamentary elections, the third since 2010, produced a fragmented parliament that failed to amend legislation that infringed upon human rights and neglected to create constitution court to ensure that legislation fulfilled the 2014 constitution’s principles (Human Rights Watch, 2021). Governments employed repressive criminal code articles to penalise speech, primarily criticism of public officials (Ibid). After three deadly terrorist attacks in 2015, the former president imposed a prolonged state of

emergency that allowed for mass detention and police abuse (Crisis Group, 2016). The state controlled the press, prohibited strikes and other protest gatherings, and caused widespread violations of human rights, according to human rights advocates (Al Jazeera, 2020). Economically, corruption and sustainability remain challenges (Gabsi, 2022, p. 96). In numbers, Tunisia's young unemployment rate was 16.26% in 2021 (O'Neill, 2023). These economic circumstances have fuelled popular dissatisfaction with the government's failure to solve economic and health crises, all of which have – rather than stimulating political change – simply further eroded trust in the government and state institutions (Todman, 2021).

This picture supports Lundgren's (2020) conclusion in the above literature that weak or "backsliding" democracies, are unstable regardless of a state of emergency, so rulers may utilise such a state more readily to centralise power. Democracy in Tunisia can clearly be seen as having been at the dawn of its life, a weak democracy with toothless institutions that – with a stronger central executive – made it susceptible to instability; this was worsened by the attacks in 2015, which essentially gave the green light for the executive to assume a tighter grip on the state. Premature institutions, economic problems, and failures to construct the constitutional court may have paved the way for the president to redeclare the state of emergency and seize complete control on June 25, 2021.

## 4.2. The turning point

On June 25, 2021, Tunisian President Qais Saeed adopted Article 80 of the constitution to take "exceptional measures" to tackle what he claimed was an "imminent threat" (McKernan & Cordall, 2021). Article 80 allows the president to use all extraordinary powers indefinitely and suspend the constitution and state activities until the threat is over (Constitution, 2014 p.19). Saeed's exceptional measures included suspending parliament for 30 days, removing MPs' immunity, dismissing the prime minister, and imposing a curfew (Beaumont, 2021). It is important to mention that the Tunisian constitution of 2014 does not specify the actions that can be taken under Article 80 (Ghannouchi, 2023), and so this was open to exploitation. Due to the severity of the measures, the military besieged parliament and prevented lawmakers from entering; by doing this, Saeed violated not just a democratic principle, but a 65-year-old taboo of using the military in politics. (Masmoudi, 2021). He stated in a televised statement following an emergency meeting with security chiefs, "We have taken these decisions ... until we save the state" (Parker, 2021). Saeed explained his declaration by stating that the state's institutions are ineffective and corrupted (Nazif, 2021). After a month of this declaration, the president permanently prolonged emergency powers (Reuters, 2021).

Under the state of emergency, Saeed has arbitrarily detained hundreds of journalists, activists and political personalities, and attorneys who criticise him (Saleh, 2023). On September 22, the president issued Decree 117, announcing that he would disobey parts of the constitution and rule by presidential decree while he prepared to change the political system (Mcdowall & Amara, 2021). Human Rights Watch (2021) termed this "a precursor to dictatorship", since it implicitly dissolves the constitutional framework and places Tunisians at risk of losing their human rights under a democratic system. In a further step, Saeed has dismissed

57 judges and created a new temporary Supreme Judicial Council replacing the original judicial body, giving himself more power over the country's judicial institution (Al Jazeera, 2022). Amnesty International (2022) considered this unprecedented move "a serious threat to the country's judicial independence".

Following a year of exceptional measures, the president changed the constitution, so that it is currently reliant on a presidential system rather than a parliamentary democracy, and gives the president full authority over the state, while removing many of the checks and balances of the 2014 constitution (Abouaoun et al., 2022). In this context, there are severe penalties for speaking against the President – for example, calling these moves "a coup" on social media could result in a ten-month prison sentence (ben Salah, 2022), although Hamid (2022) terms Saeed's moves "a slow-motion coup".

As alluded in the literature, the Tunisian emergency constitution conforms to the principles of Schmitt's philosophy which permits, or even insists upon, the president assuming sole control to determine the state's destiny at the time of crisis – except that this is done for the public good. Saeed's actions can lead to what O'Donnell (in Collier & Levitsky, 1997, p. 432) has called "delegative democracy", in which presidents are elected freely and fairly but rule undemocratically, without checks and balances or accountability; others have coined this trend one of "defective democracies" (Ibid). This type of governance produces subtle challenges to classical democracy, such as ensuring rule through populism, closing down key democratic institutions, and violating basic human rights and liberties that are protected in a modern functioning democracy (Ibid, p. 448). Most of the damage to democratic governance occurred in Tunisia under the pretext of an emergency, followed by "an imminent threat", which precipitated exceptional measures, pushing Tunisia into a state of "defective democracy". From this, it is clear that a state of emergency can threaten democratisation.

### 4.3. History repeats itself: the case of Peru

Tunisia's situation recalls the situation in Peru in 1992. Here, a young and vulnerable democracy experienced the imposition of a state of emergency and "serious emergency measures" by its elected president at the time, Alberto Fujimori (Mauceri, 1995, p.7.8). This was in response to internal political strife, and the presence of armed groups including the Shining Path (Sendero Luminoso) and the Tupac Amaru Revolutionary Movement, and the resultant violence by state security forces. Since Fujimori was re-elected in 1995, the state of emergency has been extended gradually throughout the country.

As a consequence, the president was able to curtail the judiciary's independence, shut down Congress, suspend the constitution, rewrite the 1979 constitution, and progressively grab all powers and while civilian authorities cede control of specific territories to the Political-Military Command, comprised of police and members of the armed forces. This has placed the county under presidential governmental and military control, and it has allowed the president to maintain and enforce emergency measures (Cameron

2018, p. 11). Since then, the government has been extending the state of emergency throughout the country year after year. This has been criticised locally and internationally as a threat to democracy (Ibid).

However, Fujimori has justified the acts by saying parliament and the judiciary were corrupted (Infobae, 2022). Many analysts believe that these measures are dictatorial and anti-democratic, resulting in the seizure of power under the guise of democracy. Peru's case has prompted political theorists to include the necessity of checks on executive power in their theories and procedural definitions of democracy (Collier & Levitsky, 1997, p. 444). However, since the state of emergency is a power made available to democracies, Mauceri (1995, p. 32) considered that structural and institutional shifts by exceptional measures should be regarded as democratic breakdown and "a self-coup".

Because of the parallels between the two countries' situations, we can place Tunisia in the same category as Peru and come to the same conclusion: the use of the state of emergency and exceptional measures led to changes in the institutional design of the state. One of the dangers of these shifts was that it has weakened the level of democratic governance in the emerging democracy. Technically speaking, this is a self-coup, and it follows the pattern of coups in weak democracies, when the elected president writes a new constitution and gains more powers through a state of emergency (Arceneaux & Pion-Berlin, 2018). This supports Lührmann and Rooney (2020, p.6) who state that "states of emergency allowing such dramatic derogation from the nation's standard institutions, even a single declared state of emergency can have a dramatic impact on the future of the nation". Moreover, the regime which is ruled by prolonged emergency power within a democratic framework can be called an "emergency regime" which according to Lijphart (1978, p. 402) can deviate democratic governance into a constitutional dictatorship.

This has been evident that an eight-year state of emergency from 2015 to 2023 has threatened, if not upended, democratic governance, since emergency laws were themselves part of, and available to, the new democracy country. Owing to this, the state had not fully practiced democracy and people had developed an affinity with the presence of SoE over time.

## 5. Conclusion

This research paper discussed the impact of the state of emergency on an emerging democracy to answer the question: what are the potential dangers of using a state of emergency and exceptional measures in emerging democracies?

Much water can flow under the bridge through emergency powers. The executive can change the social atmosphere through the normalisation of "emergency", and slowly alter the political landscape by rewriting a new constitution, restricting legislative and judiciary authorities and restricting rights and liberties and other procedures foundational to democratic governance. This confirms the central argument that restoring the status quo (that is, the original democratic status) after a declared state of emergency may be



more challenging in emerging democracies or countries still experiencing democratisation, where public institutions are weak and the political system is vulnerable to exploitation by wilful personalities and compliant executives.

The gravity of what has happened in Tunisia confirms that democratisation there is on its deathbed. This is precisely what both Machiavelli and Rousseau cautioned as a potential danger to a state governing by democracy. This should signal the need to regulate emergency provisions or omit them altogether in new democracies, in order to avoid their exploitation and use as a weapon against the survival of the democratic country. Keeping in the mind the American adage by Abraham Lincoln that the constitution must not be transformed into a “death pact” in itself, the inclusion of a state of emergency or “special measures” clause in the law should be replaced by other legal options for crises, when governments should be protecting the people and enhancing public security, rather than securing themselves.

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