

MODELS OF EMERGENCY STATEBUILDING IN THE US

Tyler M. Curley
Ph.D. Candidate
Dissertation Fellow
Center for International Studies
University of Southern California
tmcurl@usc.edu

Abstract: Over the last decade, the impact of emergencies on the American state has become the subject of renewed interest. While early literature in the post-9/11 era often overlooked historical developments in crisis governance, many scholars have begun to uncover the precedents that continue to shape modern emergency management. In an effort to clarify the main analytical assumptions of the existing scholarship, this essay constructs three models of emergency statebuilding: permanent emergency state, national security state, and contract state. I find that the models each share an underlying framework of historical institutionalism, which defines the state as a stabilized material institutional structure that is disrupted by emergency conditions – exogenous shocks that cannot be incorporated into the normal statebuilding processes or legal order. This perspective, however, is ill-equipped to explain change. I offer discursive institutionalism as an approach that emphasizes how discourse and ideas construct emergencies as objects of government management – in different ways, at different times. This perspective not only helps to uncover important nuances that have been lost in historical narratives of the American state, especially the importance of preparatory emergency management, but also provides a foundation to trace contingent processes of comparative institutional development in various settings.

Acknowledgements: I am grateful to Jeb Barnes, Patrick Thaddeus Jackson, Pat James, Anthony Kammas, Andrew Lakoff, Ann Tickner, and above all Jeff Isaac and the anonymous reviewers at *Perspectives on Politics* for their helpful criticisms, comments, and insights. Thanks also to the Center for International Studies at USC for institutional and financial support to write this paper while on a dissertation fellowship.

In recent years, the impact of national emergencies on the American state has become a topic of extensive political debate and scholarly analysis. The resurgence of interest in crisis governance after the terrorist attacks on September 11, 2001, has inspired countless studies related to the erosion of civil liberties in favor of heightened security;¹ the expansion of executive emergency powers, constitutional or otherwise;² and the increasing use of private military contractors in the Afghanistan and Iraq wars.³ Yet while these accounts differ in important respects, they often suffer from a lack of historical understanding. Instead of providing a contextual argument for how past developments continue to shape statebuilding, much of the early post-9/11 literature focuses on the ostensibly extraordinary transformations in the current period. Overlooking these wider historical processes, commentators mistakenly assert that 9/11 *changed everything*.

Historical research undermines this assertion, however, demonstrating that the “war on terror” shares considerable roots in efforts to manage emergencies over the last century.⁴ Some scholars have called for an explicit focus on these transformations in the American state. In a recent piece for *Perspectives on Politics*, for example, Daniel Tichenor proposes that we study executive emergency powers “*in time*,” by locating the specific “historical set points” that have established precedents for future administrations to follow.⁵ From this view, statebuilding has been episodic in that distinct crises have led to stark changes in the state institutional structure; but each period of emergency rule has nevertheless transformed the legal resources available to future administrations. To ground current practices in this history, we thus need to trace the

¹ See, e.g., Butler 2004; Cole 2003; Herman 2011; Johns 2005; Posner and Vermeule 2007; Stone 2004.

² See, e.g., Ackerman 2006, 2010; Agamben 2005; Cole and Dempsey 2002; Goldsmith 2007; Posner and Vermeule 2010; Posner 2006; Scheppele 2004; Scheuerman 2005, 2006; Schwarz and Huq 2007; Yoo 2005.

³ See, e.g., Pelton 2006; Scahill 2008; Singer 2007.

⁴ See, e.g., Cole 2003; Collier and Lakoff 2015; Higgs 1987; Neocleous 2008; Roberts 2013; Saldin 2011; Tichenor 2013; Unger 2012.

⁵ Tichenor 2013, 771, 772.

contours of institutional change during past times of emergency – what can be called emergency statebuilding.

Yet beyond this general directive, the historical scholarship lacks a unified interpretation. Analysts fundamentally disagree about legality during emergencies,⁶ the types of emergency measures employed, the processes of statebuilding in crises, and the form of state power at these times. Focusing on these different aspects, many critics in post-9/11 such as Giorgio Agamben, Judith Butler, David Cole, Susan Herman, and David Unger center on efforts to suspend the normal legal framework to enable illiberal practices like surveillance and indefinite detention; political and legal theorists as diverse as Bruce Ackerman, Jack Goldsmith, Sanford Levinson, Tichenor, and John Yoo underscore the expansion of dictatorial powers through constitutional and congressional delegations of authority; while still others who focus on the history of American Political Development, including Marc Eisner, Aaron Friedberg, Michael Hogan, and Barry Karl, highlight how societal and institutional pressures limit state growth at all times.

In this essay, I reconstruct the claims commonly advanced by scholars into three models (see *Table 1*). I employ ideal-typification as a methodological approach to bring analytical clarity to the prevailing views, by ordering them along central points of divergence and similarity.⁷ There are several benefits to this process. First, it simplifies the complexity of various perspectives. The emergency statebuilding literature spans subfields within political science and includes works from different historical periods. While ideal-typification does not offer a complete representation of any single study, it brings together valuable insights from a wide range of scholarship. Second, this process adds analytical precision to diverse historical interpretations. It organizes distinct narratives according to broader conceptual scaffoldings,

⁶ See Ferejohn and Pasquino 2004; and Gross and Ní Aoláin 2006, for excellent reviews of the role of law.

⁷ On this methodology, see Jackson 2011, Ch. 5; Weber 2011.

helping to recognize their potential and limitations.

Table 1. Prevailing Models of Emergency Statebuilding

	Permanent Emergency State	National Security State	Contract State
<i>Role of Legality</i>	Exceptional	Constitutional	Contractual
<i>Emergency Measures</i>	Suspend Liberties; Sovereign Dictatorship	Presidential Bureaucratic Autonomy	Anti-Statist; Compensatory
<i>Statebuilding Processes</i>	Sovereign Exceptionalism	Constitutional Dictatorship	Liberal Self- Government
<i>State Power</i>	Strong State	Strong State	Weak State

This process, even more importantly, identifies avenues in need of further elaboration. In uncovering the assumptions of each model, I find that they are limited in their ability to explain institutional change. At the core is a shared framework of *historical institutionalism*, which identifies from the outset what constitutes an emergency, what measures are employed to address these situations, and how these actions influence statebuilding. Each model defines the state as a solidified material structure that is disrupted by emergencies – exogenous shocks that cannot be incorporated in the everyday processes of statebuilding or normal legal framework. This reinforces the notion that crises are discrete, extraordinary periods for which the government cannot prepare. The models also overlook key developments in the forms of emergency rule. They view the state as the product of efforts to address security threats through methods that have been consistently applied throughout the past – whether sovereign exceptionalism, constitutional dictatorship, or liberal self-government.

Seen in this critical light, none of them adequately explains a crucial aspect of American state development: the transition from temporary emergency statebuilding before the Cold War to enduring crisis governance ever since. Each perspective, as I show, purports to describe how emergency measures became embedded in state institutions following World War II. And yet, without acknowledging the dynamics of statebuilding and emergency management in what are considered normal times, analysts smuggle in factors that are exogenous to their models – namely, official discourse and expert knowledge about how to address novel security problems – to explain this formative change. The American state, accordingly, appears like a fixed institutional structure with emergency powers and presidential autonomy permanently built into it, when in actuality this apparent solidity is maintained through ongoing processes to reform institutions in preparation for emergencies.

An alternative analytical approach is needed to account for these developments. I offer *discursive institutionalism* as a basis for viewing discourse and ideas as endogenous sources of institutional change.⁸ This perspective traces the contingent processes through which political actors construct emergencies as objects of government management – in different ways, at different times. The construction of emergencies at once identifies what constitutes a threat and defines the appropriate form of institutional development to manage it. From this theoretical baseline, I argue that the shift to lasting crisis governance in the United States (US) can be understood as part of a wider transition in the role of planning expertise beginning in the 1930s. Rather than assuming that emergencies are exogenous shocks to a stable structure, this approach demonstrates how discourse and knowledge about planning incorporated future emergency needs into the existing institutional system so that temporary, *ad hoc* measures were no longer necessary. This thread can be traced all the way through World War II mobilization, Cold War

⁸ My understanding is adapted from Schmidt 2008, 2010.

technocratic preparations for civil defense, and post-9/11 efforts to thwart terrorism.⁹

The essay is organized as follows. The first three sections outline the models, respectively, and show how they apply to US history. While this discussion is necessarily limited, the models are portable and should prove useful for more extensive studies. The fourth section explains how discursive institutionalism augments the prevailing models, by making discourse and ideas endogenous to statebuilding, but more critically locates aspects that have long been overlooked, especially the influence of preparatory emergency management. The conclusion suggests how this approach contributes to studies of comparative statebuilding. In tracking discursive and ideational processes of institutional development, scholars can account for variations in emergency rule across time in the US and other contexts. I show how discursive institutionalism opens prevailing analytical boundaries to uncover competing conceptions of security threats (e.g., ISIS in the Middle East), the role of discourse and ideas in shaping institutional development (like with global climate change), in addition to the influence of expert knowledge on administrative preparation (as demonstrated in the recent Ebola crisis).

PERMANENT EMERGENCY STATE

In a recent account, journalist David Unger laments: “America has slipped into a permanent, self-renewing state of emergency.”¹⁰ Constitutional limits to dictatorial executive authorities and illiberal security practices, he finds, have been consistently undermined during periods of national emergency over the past century, leading to an enduring emergency state that favors security at all costs over liberal democracy. Unger is not alone in this view. The *permanent emergency state* (PES) model builds on a longstanding tradition in political and legal

⁹ See generally Collier and Lakoff 2015; Lakoff 2007; Roberts 2013.

¹⁰ Unger 2012, 2.

theory that considers the devastating impact of crises on constitutional liberal-democracies. The foremost scholar in this vein is Carl Schmitt, a Weimar jurist whose work famously bolstered the Nazi's rise to power in the early 1930s; but his insights have been given a new life after 9/11.¹¹

According to this model, emergencies result from the limitations inherent to liberal-constitutional systems. Principles like competitive federalism, the separation of powers, and the detailed enumeration of authority are designed as universal laws to ensure limited government. And yet, Schmitt argues, this arrangement cannot possibly account for all situations ahead of time. Emergencies – events for which there are no predetermined laws for government action – inevitably arise. The most a constitution can do to prepare for these conditions is to name who may act.¹² The need for effective government response, consequently, accelerates the statebuilding processes through which powers are redistributed to the executive. Crisis management requires executive rule that is boundless and dictatorial – what Schmitt calls sovereign exceptionalism. In deciding when an emergency exists and what measures are necessary, the executive becomes the sole ruling authority and lawmaker.¹³ Such periods of exceptional rule, Schmitt explains elsewhere, arise from the threat posed by political enemies, those who intend to negate the state's way of life and must be eliminated.¹⁴

Building on this basic understanding, many scholars have resurrected Schmitt's legacy in the post-9/11 literature – as a source of both analytical insight and ideological difference. Simply put, even though they describe the processes of emergency statebuilding in a related fashion, they use the analytical model for different political purposes: whereas Schmitt prescribes

¹¹ See Schmitt 2004, 2005. Scheuerman 2006 offers an excellent review of Schmitt's influence.

¹² Schmitt 2005, 6-7.

¹³ "Sovereign is he who decides on the exception," as Schmitt, *Ibid.*, 5, notoriously put it. Cf. Schmitt 2004.

¹⁴ See Schmitt 1996.

exceptionalism as a necessary sovereign tool, recent scholars oppose the legitimacy of this form of crisis governance. Some leftist theorists, most prominently Giorgio Agamben and Judith Butler, have explicitly traced Schmitt's diagnosis of liberal-constitutional failures under crisis, not to promote the rise of dictatorship but to disrupt the emergency powers and indefinite detention witnessed in the "war on terror."¹⁵ Likewise, many liberal jurists and pundits, including David Cole, Susan Herman, and Unger, have implicitly adopted this analytical framework to critique what they see as the illegitimate use of extralegal emergency authorities to suspend civil liberties.¹⁶

Most problematically, from this critical vantage, emergency statebuilding results in a permanent emergency condition. In suspending the legal order, it is argued, crisis rule becomes an enduring fixture of state institutions in at least two ways. First, emergencies continuously arise, due to the persistent threats posed by political enemies. Because the executive's primary concern is to ensure the state's preservation, emergency measures follow a double standard, whereby citizens are protected through policies to abolish the constitutional liberties of political enemies.¹⁷ The executive uses extralegal authorities to place enemies in exceptional sites beyond the legal order – the detention camp – where, once imprisoned, they can be treated with impunity.¹⁸ Second and related, these measures fundamentally alter normal institutional arrangements, such as the separation of powers, allowing the executive to remain unchecked and unbalanced by constitutional limits. Exceptionalism, as Agamben warns, "threatens radically to alter... the structure and meaning of the traditional distinction between constitutional forms."¹⁹

¹⁵ See Agamben 2005; Butler 2004, Ch. 3. See also Levinson 2006; Scheppele 2004.

¹⁶ See Cole 2003; Cole and Dempsey 2002; Herman 2011; Unger 2012. See also Schwarz and Huq 2007.

¹⁷ See, e.g., Cole 2003; Unger 2012.

¹⁸ Agamben 1998, 2005; Butler 2004, Ch. 3.

¹⁹ Agamben 2005, 2. See also Schwarz and Huq 2007; Unger 2012.

US Emergency Statebuilding: A First Cut

Viewed in this way, exceptional statebuilding began in earnest with World War I (WWI). The American state initially lacked the capacities to engage in modern total war, which required the mass mobilization of the population and resources to produce armaments.²⁰ The Woodrow Wilson administration restructured institutions through measures to assume control of the national program. Extralegal authorities were disproportionately concentrated on suppressing the rights of those who impeded the mobilization program. Various inroads were paved through the Espionage Act of 1917 and the Sedition Act of 1918 to give the president powers to incriminate political enemies suspected of anti-mobilization activities.²¹ These acts further legitimated a government program between 1919-1921 to suppress individuals considered threatening to the state, through unwarranted search and seizure, arrest, and deportation.²²

Despite these instances of dictatorial rule, Unger argues that it was not until the Franklin D. Roosevelt (FDR) administration took power that extraconstitutional authorities were embedded in the American state.²³ The recession beginning in late 1929 was the first national economic emergency to garner dictatorial interventions. The lack of an existing institutional system to respond to the crisis led to the use of widespread governmental controls.²⁴ Though unprecedented, exceptional measures to address the economic condition of the 1930s were overshadowed by World War II (WWII). Much like earlier wartime efforts to establish a strong state, the FDR administration took command of the national program starting in late 1939. The most egregious exercise of authority, from this perspective, came not by controlling industries or labor but by suspending the rights of political enemies. After the attacks on Pearl Harbor in

²⁰ Koistinen 1997.

²¹ Cole 2003, Ch. 7-8; Stone 2004.

²² See Unger 2012, 25-31.

²³ See *Ibid.*, Ch. 2.

²⁴ See Belknap 1983; Higgs 1987, Ch. 8; Scheuerman 2000.

December 1941, President Roosevelt authorized the internment of roughly 120,000 foreigners and citizens of Japanese descent. Executive Order 9066 issued on February 19, 1942, initiated a vast detention program in the western US to diminish the perceived threat posed by potential sabotage and espionage.²⁵

Because of practices like these, FDR is hailed as the founder of exceptional statebuilding in the US. “The precedents he set, and his successors’ decisions to continue down the same paths,” Unger maintains, “make FDR the godfather of America’s emergency state.”²⁶ His suspension of normal government procedures and separation of powers, in addition to his heightened surveillance programs and insistence on government secrecy, mark some of the early foundations of the modern emergency state.²⁷ Following in these footsteps, US statebuilding arguably entered a new stage after WWII.²⁸ No longer was exceptionalism employed merely as a temporary means to manage emergencies as they arose. Rather, President Harry S. Truman sought to ensure that expanded executive authorities were utilized even during peacetime. His decisions created a state with lasting executive powers to suspend legality, leaving security policies unaccountable to other branches of government and the American public. The Cold War presidents who followed further cemented sovereign dictatorship in their efforts to persecute alleged communists, draft dodgers, and anti-war activists.

This narrative has gained wide currency in the post-9/11 era. Many critics, as previously noted, argue that extralegal powers have been employed to erode constitutional liberties.²⁹ In order to defend against the new threat of terrorism, they argue, executive officials have instated emergency dictatorial rule by seizing lawmaking authorities; suspending the liberties of

²⁵ See Cole 2003; Stone 2004.

²⁶ Unger 2012, 29.

²⁷ On espionage, see Persico 2001. Katyal and Caplan 2008 argue that surveillance during this time serves as the clearest precedent for post-9/11 measures.

²⁸ See Unger 2012, Ch. 3.

²⁹ See Agamben 2005; Butler 2004; Cole and Dempsey 2002; Herman 2011; Schwarz and Huq 2007; Unger 2012.

suspected terrorists, as well as the American citizenry, through heightened domestic surveillance; and eroding due process through the extraordinary rendition, torture, and indefinite detention of political enemies in extralegal sites, like Guantanamo Bay. With complete sovereignty to decide on these illiberal security practices, executive powers have become permanently unmoored from constitutional restraints, leading to a condition of perpetual emergency. “[T]he state of emergency is potentially limitless and without end,” Butler claims, “and... the prospect of an exercise of state power in its lawlessness structures the future indefinitely.”³⁰

The applicability of this model, however, is fraught with complications. Its theoretical foundations stem from Schmitt’s work as a jurist in the Weimar period. Schmitt understood exceptionalism as a sovereign technique to suspend the constitutional framework, a revolutionary move that undermines the existing order.³¹ Yet it is difficult to make this case for the US. Wilson did not revolutionize the state institutional structure in a permanent way, nor did Roosevelt. The claim, made most forcefully by Unger, is that Cold War and post-9/11 administrations followed the same extralegal approach to emergency management as before. This implies that it is the executive’s decision whether to continue exceptional crisis government, not that earlier precedents transformed state institutions. Thus, while the pattern of emergency measures may be shared across time, it remains unclear how past instances of exceptionalism serve as direct precedents for later periods, unless one takes official discourse as a primary source of institutional change.

Furthermore, given the historical evidence, the argument that exceptionalism has revolutionized the constitution is unfounded. Government leaders have consistently legalized the ostensibly extralegal security measures identified by proponents of the PES model. Wilson

³⁰ Butler 2004, 65.

³¹ I thank a reviewer for insisting on this point.

utilized congressional acts to target political enemies in WWI;³² and Congress and the Supreme Court were wont to support Japanese internment during WWII and the suspension of liberties in the Cold War. In current times, moreover, many commentators demonstrate that the expansion of executive powers and indefinite detention remain within constitutional limits.³³ The next model demonstrates more convincingly how emergency dictatorial rule has often been delegated through legal sources, and helps account for some of the historical oversights in the permanent emergency story.

NATIONAL SECURITY STATE

During times of emergency, as argued in the model above, dictatorship provides the benefit of acting outside normal constitutional constraints to allow for strong executive leadership of the emergency government. But whereas sovereign exceptionalism maintains that absolutist rule is employed through extralegal measures to appropriate legislative authorities and suspend the liberties of political enemies, the *national security state* (NSS) model emphasizes the legality of emergency statebuilding in the US and other liberal democracies. Leaders, from this perspective, do not suspend the legal framework through the exception – quite to the contrary. The constitution sets limits so that emergency powers remain bounded by the law. Even if executives are called upon to take control of the crisis government, they nevertheless employ dictatorial rule through constitutional means.

Several features distinguish this perspective from the previous one.³⁴ First, dictatorial powers are instituted to uphold, rather than undermine, the existing political and legal framework. Instead of revolutionizing the state structure, constitutional dictatorship is a period of

³² Tichenor 2013.

³³ Goldsmith 2007; Johns 2005; Neocleous 2008; Posner and Vermeule 2007, 2010; Posner 2006; Yoo 2005.

³⁴ See McCormick 1997.

crisis governance designed to ensure the perseverance of the prevailing system. Second, in contrast to the claim that executives break free of legal shackles through declarations of sovereign right, emergency measures are permitted through legal channels. The constitution, according to this model, offers the flexibility to change institutional arrangements in crises; indeed, many argue, if it proved too inflexible to meet security needs, the liberal-democratic form of government would break under the demands of emergency.³⁵ Congressional delegation also transfers administrative authorities to the executive, giving the president autonomy to manage the government without interference. Last, constitutional dictatorship establishes temporal limits to crisis powers. The legal right to determine when emergency rule is necessary and when it is over does not reside within the executive, as an “inherent authority,” but in an independent legislative body that can appoint and depose the dictator.³⁶

As with sovereign exceptionalism, a long line of political theorists, historians, and jurists have grappled with the promises of constitutional dictatorship as a tool for effective government action in crisis periods. This form of emergency statebuilding was first employed in ancient Rome, and was extensively studied by Machiavelli in his classic *Discourses on Livy*. The impacts of total war mobilization during the early- and mid-20th century revived interest in this model among prominent political and legal scholars, Edward Corwin, Karl Friedrich, Lindsay Rogers, Clinton Rossiter, and Frederick Watkins.³⁷ A diverse set of analysts after 9/11 have also followed the insights of this model, whether indirectly or explicitly – from liberal jurists Bruce Ackerman, Jack Balkin, and Samuel Levinson to conservative legal scholars and advisors Jack Goldsmith, Richard Posner, and John Yoo to political scientists Mark Neocleous and Daniel

³⁵ See Posner and Vermeuele 2007; Posner 2006; Yoo 2005.

³⁶ Watkins 1940, 368. See Ackerman 2006, 2010; and Levinson and Balkin 2010, for applications of this point to post-9/11.

³⁷ See Corwin 1947, 1976; Friedrich 1946; Rogers 1919, 1934; Rossiter 1948, 1950; Watkins 1940.

Tichenor.³⁸ Yet even as each agrees on the logic of the analytical framework, they employ it for different ideological ends. Conservatives, on the one hand, emphasize the desirability of presidential autonomy in crisis, and liberals on the other, underscore the dangers of this method, which they insist fixes emergency powers in the constitutional order indefinitely.

Since absolutism is by definition the antithesis of limited government, these critics argue, all instances of dictatorship, regardless of intent, alter the existing system of government. In Corwin's words, "There is always a tendency, even in democracies, for the emergency device to become the normal."³⁹ But while in the PES model sovereign exceptionalism expands through extralegal means, in the NSS model it is the delegation of presidential autonomy that transforms the state institutional structure.⁴⁰ The temporary aggrandizement of the emergency bureaucracy results in unending statutory authority that can be called into action in the event of future crises. Although intended as temporary expansions of power, these measures become part of the constitutional order. Following this logic, with the creation of an executive institutional system not subject to congressional oversight, the US president has been given ultimate autonomy to manage emergency conditions. These measures have transformed the relationship between branches, in what many consider a national security state.⁴¹

US Emergency Statebuilding: A Second Cut

Adherents of this model argue that constitutional dictatorship was first introduced as a method for national mobilization in WWI, because it was necessary to centralize administrative decisionmaking within the executive branch. Emergency demands were met through the

³⁸ See Ackerman 2006, 2010; Balkin and Levinson 2006; Goldsmith 2007; Levinson and Balkin 2010; Neocleous 2008, Ch. 2; Posner 2006; Tichenor 2013; Yoo 2005.

³⁹ Corwin 1976, 120. Cf. Levinson and Balkin 2010; Rossiter 1948, 13, 295; Watkins 1940, 329-330.

⁴⁰ Corwin 1947; Rossiter 1950.

⁴¹ See, e.g., Leffler 1992; Stuart 2012; Zegart 1999.

delegation of “vast unchannelled powers” to the president, according to Corwin.⁴² Congress gave Wilson the authority to control transportation (Shipping Act of 1916); force industries to produce armaments (National Defense Act of 1916); seize private property deemed essential to the war effort (Army Appropriations Act of 1916); establish regulations on imports, manufacturing, storage, mining, and distribution of war necessities (Lever Act of 1917); and strengthen the executive branch’s control of mobilization (Overman Act of 1918).⁴³ With these delegations, it is claimed, numerous precedents were established for dictatorship in future times of crisis, and the presidency was converted into an institution with global reach.⁴⁴ Nevertheless, at the close of the war the Wilson administration dismantled the mobilization institutional machinery and wartime dictatorial authorities. When the crisis concluded, Rogers writes, the government “took off its war harness very quickly.”⁴⁵

Constitutional dictatorship on this scale was not reinstated until the FDR administration. Lacking the institutional capacity to ensure economic prosperity in the depression, New Dealers experimented with a variety of absolutist measures that were previously tested only in wartime. Yet in direct contrast to the sovereign exceptionalism narrative, many scholars insist that Congress was more than willing to define the emergency powers which, in Rogers’ words, installed President Roosevelt as “dictator of the economic life of the country.”⁴⁶ The authorities delegated to the Wilson administration during WWI were regarded as fruitful sources of constitutional legitimacy and legal precedent for early New Deal legislative measures.⁴⁷ Articulated as a continuous progression of past wartime efforts, this legislation sought to extend executive authorities to intervene directly in the economy through wage and price controls.

⁴² Corwin 1976, 47.

⁴³ Higgs, Ch. 9.

⁴⁴ Corwin 1976, 53; Tichenor 2013.

⁴⁵ Rogers 1934, 65.

⁴⁶ *Ibid.*, 128.

⁴⁷ See Katznelson 2013, Ch. 1; Levinson and Balkin 2010; Leuchtenburg 1995, Ch. 2; Sherry 1995, 15-22.

This approach proved even more useful for creating a strong state in WWII.⁴⁸ Just as total mobilization in WWI required absolutist rule, so did WWII. A vast national defense structure was constructed to compel big business to follow various regulations, giving the FDR administration full autonomy to direct production, set wage and price codes, and control shipping and other modes of transportation.⁴⁹ Corwin finds that a number of lasting institutional transformations were initiated through these actions: the development of an integrated conception of federalism, by which states were regarded as crucial parts of the program to fulfill the national government's demands; the dissolution of the separation of powers through the delegation of executive administrative authorities; and the diminishing significance of Congress and the Judiciary in crises. Even more important was the shift in war powers. Whereas the constitution previously enumerated the president's authorities, Congress delegated inherent powers for total mobilization, making national resources permanently available for the purposes of waging war.⁵⁰

For many looking back, this era foreshadows a greater transition in the American state.⁵¹ With the threats of the Cold War looming after WWII, the Truman administration secured dictatorial powers. International pressures of impending war catalyzed executive institutional growth for continuous mobilization and heightened militarism. Premised on the fear of the ever-present possibility of nuclear attack, constitutional dictatorship began to take permanent form. The National Security Act of 1947 reorganized the Armed Forces and centralized foreign policy decisionmaking within the executive. Along with merging the Departments of War and the Navy, the act institutionalized many aspects of the modern US security bureaucracy, including

⁴⁸ See Hooks 1991; Polenberg 1972; Saldin 2011, Ch. 4; Sherry 1995, Ch. 2; B. Sparrow 1996; J. Sparrow 2011.

⁴⁹ Rossiter 1948, 5-6.

⁵⁰ Corwin 1947; 1976, 146-155, 161.

⁵¹ For the following, see Leffler 1992; Stuart 2012; Zegart 1999.

the National Security Council, Central Intelligence Agency, and Joint Chiefs of Staff.

This quest for presidential autonomy has important implications for studies of the post-9/11 state. The “war on terror,” from this vantage, does not simply represent an extraordinary break from traditional legal constraints and the separation of powers, as the critics above purport. Instead, the NSS model demonstrates how barriers to effective crisis management have been consistently undermined through the delegation of dictatorial authorities to the president. Cast in this light, the lack of congressional and judicial oversight concerning matters of national security is endemic to the longstanding tradition of constitutional dictatorship, not the ostensibly exceptional responses to 9/11. This narrative effectively disabuses us of the folk wisdom that before 9/11 there was a clear separation of powers and set of constitutional norms against illiberal security measures which have since been dismantled.⁵²

Still, several questions remain. First, without an in-depth comparison, it is unclear why constitutional dictatorship was dismantled after WWI but has persisted since the Cold War. If the process of statebuilding was the same, what explains the different outcomes? Second, if we assume that absolutist rule has become permanently embedded in state institutions, why do different administrations insist on establishing new agencies to deal with crises as they arise?⁵³ Third, what accounts for the different reasoning of administrations regarding the legality of emergency powers? The model does not provide adequate answers to these concerns. Scholars are ill-equipped to account for crucial variations between crisis periods. Indeed, proponents of this framework insist that it can be used to describe what Rossiter boldly says is the “whole gamut of emergency powers and procedures in periodical use in all constitutional countries.”⁵⁴ No matter the time or place, in other words, emergency management occurs in the same way.

⁵² See Neocleous 2008; Tichenor 2013.

⁵³ I thank a reviewer for pointing this out.

⁵⁴ Rossiter 1948, 5.

Following this assumption, analysts must argue that exogenous factors explain institutional change. Dictatorship is not simply embedded in state institutions but is continuously legitimated through official legal discourse about the constitutionality of emergency measures.

CONTRACT STATE

Both of the models above focus on efforts to expand executive authority, whether through extraconstitutional or constitutional means, in an attempt to deal with emergency conditions. A competing perspective has taken shape based on the premise that the liberal values, constitutional procedures, and government institutions which emerged at the founding of the American republic have historically limited state power even during crises. American Political Development scholars and historians such as Marc Eisner, Aaron Friedberg, Michael Hogan, and Barry Karl have sought to demonstrate the unique impact of constitutional and ideological restraints against dictatorship in the US.⁵⁵ They argue that the American state is exceptional and that any conception of emergency statebuilding must be attuned a number of distinctive qualities.

From this perspective, the state appears as the product of an economic, political, and cultural idealism exclusive to the American people. At the heart of this idealism, Karl explains, is a “commitment to the autonomous individual as the fundamental element in American democracy.” The individual is said to possess natural rights to liberty, property, and security; and it is the individual who endows the state with the responsibility to ensure that these rights are upheld in a political collectivity. Liberal individualism “is the one most fundamental tenet in the American belief in self-government, in the state that serves its citizens and meets their

⁵⁵ See Eisner 2000; Friedberg 1992, 2000; Hogan 1998; Karl 1983. Cf. Huntington 1981; Lipset 1996; Skowronek 1982. Not all American Political Development scholars agree. See, e.g., Leuchtenburg 1995; Novak 2008; Sherry 1995, for an emphasis on advances in state power.

demands.”⁵⁶ The state is constructed from the bottom-up, as an organization designed specifically to promote individual freedom, rather than to compel the private sphere to act in the collective interest.

This core belief in liberal self-government, it is said, provides the philosophical basis for *anti-statism*.⁵⁷ US statebuilding occurs only through institutional and ideological pressures against dictatorship. On the one hand, institutions weaken unitary control of the government: the separation of powers doctrine lays out distinct, competing responsibilities so that each branch functions as a check against the others; and competitive federalism limits national government influence by giving states and localities the right to self-determination. On the other hand, liberal ideology leads to a suspicion of government. A strong state threatens individual rights to self-determination and the autonomous development of the private sphere. This concern bolsters a widespread push for traditional economic liberalism, which embraces *laissez-faire* as the foundation for non-interference with the market and decentralized forms of economic management.

Given these countervailing forces, analysts contend that the American state is neither as big nor as strong as it could be. The struggle is to strike a tradeoff between the need for effective government action and the public demand to uphold the tenets of liberalism. This tentative balancing act throws the American state into tension, forever destined to lumber between executive interests in dictatorial government powers and a widespread cultural drive for decentralization. “No matter how big and strong it grows,” Friedberg writes, “the American state is destined always to be uneasy.”⁵⁸ In his eyes, even with rising security threats, the American state has not succumbed to dictatorship. During moments of crisis, liberal values and institutions

⁵⁶ Karl 1983, 6.

⁵⁷ For the following, see Friedberg 1992; 2000, Ch. 1.

⁵⁸ Friedberg 2000, 33, citing Karl 1983.

have catalyzed statebuilding solutions that encourage, rather than coerce, individuals and businesses to cooperate with officials.⁵⁹

Liberal idealism thus motivates anti-statist solutions to emergencies. Capacities for crisis governance are expanded not through government controls, centralized executive authority, and heightened militarism but through compensatory processes which provide incentives to industrial leaders and the public to assist the state.⁶⁰ Security practices are contracted out to the private sector, leading to a *contract state* (CS). Instead of allowing for transformations in the normal constitutional order, anti-statist institutions and ideologies act as permanent barriers to dictatorship. Even if institutions must be reformed to stoke the unity required for emergency management, statebuilding subsides after these periods to restore pre-crisis arrangements. Expanded state capacities are rolled back once the threat dissipates, allowing for the return of liberal self-government and traditional, free-market economic policies.

US Emergency Statebuilding: A Third Cut

These ideals were first seriously tested by the unparalleled need for national action in WWI. Before this time, the state was largely aloof from industrial activity and did not interfere with private institutions. Yet with the start of war, policymakers required administrative resources to equip and build industrial facilities for war production, employ skilled laborers, procure raw materials, and limit civilian consumption of war goods.⁶¹ While many suggest that these demands necessitated an acute transformation in the state structure through absolutist measures to control the economy, suspend constitutional liberties, and expand presidential autonomy, Eisner and Karl find that anti-statism made dictatorial emergency government

⁵⁹ Friedberg 1992, 2000. Cf. Hogan 1998.

⁶⁰ On compensatory statebuilding, see especially Eisner 2000.

⁶¹ Koistinen 1997.

impracticable.⁶² Industrial mobilization, for them, was initiated through compensatory processes that upheld the principle of industrial self-government. The Wilson administration expanded state capacities for mobilization by restructuring the government's relationship with industry, drawing up contractual agreements with industrial leaders, and cultivating a voluntary program.

When the war concluded, the Wilson administration clarified its approach to reconvert the wartime security apparatus for peacetime. Administrative growth served a temporary purpose and was subsequently rolled back to resume normal functions. This general pushback against a state role in directing the economy stemmed from widespread aversions to centralized executive authorities, which acted as counterweights to the installation of dictatorship throughout WWI.⁶³ Mobilization did, however, establish a novel pattern of cooperation between the state and industry that lasted in the postwar period. The common arrangement during the war, by which business leaders took government positions to assist in the mobilization process, endured in the 1920s and after.

Compensatory practices, in turn, informed the FDR administration's approach to emergency statebuilding. Early New Deal policies demonstrated the benefits of government non-interference in economic institutions and bolstered capitalist interests while maintaining industrial leaders' autonomy.⁶⁴ Programs that smacked of dictatorship, such as the National Recovery Administration, were deemed unconstitutional by the Supreme Court and were dismantled to restore the ideal of self-government. In the same fashion, emergency authorities to direct mobilization in WWII were rarely, if ever, dictatorial in that the executive harnessed complete control of the economy through compulsory actions. Instead, for it to be successful, Friedberg argues that mobilization required a limited approach, intended to induce industrial

⁶² For the following, see Eisner 2000; Karl 1983.

⁶³ See Koistinen 1997, Ch. 12.

⁶⁴ See Eisner 2000, Ch. 9.

production through the voluntary cooperation of the private sector.⁶⁵ Government officials incentivized businesses to collaborate by providing economic benefits to industrial leaders.

Building on these cooperative relations between public and private actors, efforts to mobilize for WWII ultimately laid the foundations for what has since become known as the “military-industrial complex.”⁶⁶ The overwhelming tendency in the Cold War was for the state to stimulate private businesses to produce armaments, conduct research, and develop technologies for national security purposes, instead of nationalizing these activities. Given the numerous pressures to expand state power to deal with the security issues of that time, Friedberg and Hogan ask why the American state did not grow as much as it could have.⁶⁷ They find that different ideologies competed to determine the most desirable path, resulting in an uneasy compromise between centralization and limited government. Because of a longstanding anti-statist tradition in the US, emergency statebuilding throughout this period aimed to preserve the values of liberal self-government by demonstrating a constrained extractive scale, limited directive scope, and a reliance on private resources.⁶⁸

Even as the attacks on 9/11 arguably created a condition in which the principles of limited government were most threatened, this context did not simply constitute a perfect storm for the onset of absolutist rule. In addition to the widespread cultural shift in support of a unilateral response to terrorism, officials were largely predisposed to expand the reach of executive powers when the “war on terror” began. Nevertheless, it is often claimed that the historical development of a military-industrial complex through compensatory measures continued to inspire the use of private security companies to ensure that wartime state violence in

⁶⁵ Friedberg 1992, 114-116.

⁶⁶ See Koistinen 1973.

⁶⁷ See especially Friedberg 1992, 2000; Hogan 1998.

⁶⁸ Friedberg 1992, 114.

Afghanistan and Iraq did not infringe on the freedoms of the American public but instead bolstered capitalist interests.⁶⁹

Despite its prospects, this model also has shortcomings. First, liberal ideals are reified as constant sources of anti-statism. While the CS model is laudable to the extent that it introduces the importance of ideas for statebuilding, it discusses them in a very limited way. Ideas are seen as a particular type of social ideology against state growth. Culture, legal institutions, and anti-statism appear stagnant since the dawn of the American republic. Rather than examine changes in institutional and ideological traditions, this approach views the constitution as an inflexible document impervious to conflicting interpretations, the separation of powers and federalism as inherently competitive means to limit state power, societal actors as always ideologically opposed to state growth, and *laissez-faire* as the only acceptable method of economic management. Yet even a brief glance at history demonstrates that these assumptions are, at best, inaccurate and, at worst, ideologically charged promotions of a certain political agenda. This narrow understanding neglects the influence of competing ideologies throughout US history, many of which have served to undermine liberal values and bolster state authority.

Second and related, the CS model overlooks crucial developments in power. As William Novak argues in a scathing review, there is “a tension between the story that Americans themselves like to tell themselves about individualism, self-reliance, voluntarism, associationalism, free labor, and the free market and the actual history of the ‘concrete national institutions,’... that have been capable of wielding such broad interventionist, coercive, and regulatory power.”⁷⁰ In emphasizing the rollback of emergency measures, this perspective does not account for ongoing statebuilding efforts. Collaborative relations between government,

⁶⁹ On contract warfare after 9/11, see Pelton 2006; Scahill 2008; Singer 2007.

⁷⁰ Novak 2008, 754. Cf. King and Lieberman 2009.

military, and industrial leaders in WWII and the Cold War, as shown by the other models, were ultimately grounded in a strong state structure;⁷¹ and post-9/11 security also involves the widespread expansion of executive powers.

TOWARDS AN ALTERNATIVE APPROACH

The models outlined above inform insightful narratives about the history of US emergency statebuilding. They are, however, based on a shared underlying framework that limits studies in problematic ways. Their differences notwithstanding, each proceeds from the same core understanding of the state, emergencies, and institutional change. Following historical institutionalism, the state is conceptualized as a stabilized material institutional structure, emergencies are seen as exogenous shocks that cannot be incorporated into the normal statebuilding processes or legal order, and it is argued that the approach employed to manage crises is consistently applied across time. Viewing institutional development in this way, each model struggles to identify crucial transformations in emergency statebuilding.

The remaining task is to develop a theoretical understanding that more thoroughly explains the dynamics of emergency statebuilding over time. In an effort to address these shortcomings, in this section I propose discursive institutionalism as a different analytical approach (see *Table 2*). This perspective explains institutional change by reference to discourse and ideas. Instead of conceptualizing the state as a material structure subject to reorganization only during extraordinary periods, I argue that the state is an *effect* of discursive and ideational processes, and that expert knowledge about how to deal with crises can lead to important developments in state institutions. Discursive institutionalism is not an entirely opposing theory;

⁷¹ See Hooks 1991; Stuart 2012; Zegart 1999.

in showing how discourse and ideas are endogenous to statebuilding, it can be used to bolster the findings of existing models. But it also, more significantly, helps to identify aspects that have been given insufficient attention by models that do not foreground discourse and ideas, specifically the role of national planning to continuously prepare the state for emergencies.

*Table 2. Emergencies and State Development*⁷²

	Historical Institutionalism	Discursive Institutionalism
<i>Object of Explanation</i>	Structures and Practices	Discourse and Ideas
<i>Logic of Explanation</i>	Path-Dependence	Expert Knowledge Production
<i>Definition of State</i>	Macro-Historical Material Institutional Structure	Effect of Discursive and Ideational Processes
<i>Institutional Development</i>	Static – Continuity Interrupted by Critical Junctures	Dynamic – State in Constant Process of Administrative Ordering
<i>Explanation of Change</i>	Emergencies as Exogenous Shocks	Endogenous Process to Prepare for Crises

Discursive Institutionalism and Emergency Statebuilding

Discursive institutionalism provides a useful starting point to work through the limitations of the prevailing models. Vivien Schmidt first proposed discursive institutionalism as an alternative approach to the existing frameworks of institutional development in American, comparative, and international politics. She laments, in particular, the apparent inability of historical institutionalism and other perspectives to explain change without relying on exogenous factors. The bulk of the “new institutionalisms” literature brings in discourse and ideas as the

⁷² Adapted from Schmidt 2010, *Table 1*, 5.

primary sources of change while inadequately theorizing these processes. Schmidt's discursive institutionalism is intended specifically to view discourse and ideas as endogenous to these institutional dynamics.⁷³

Schmidt offers two important advances. First, institutions are the settings within which actors produce meaningful political action *and* are constituted through processes that grant them legitimacy. In contrast to historical institutionalism, which understands institutions merely as path-dependent material structures that constrain actors, Schmidt writes that discursive institutionalism “treats institutions as given (as the context within which agents think, speak, and act) and as contingent (as the results of agents’ thoughts, words, and actions). These institutions are therefore internal to the actors, serving both as structures that constrain actors and as constructs created and changed by those actors.”⁷⁴ With this understanding, secondly, discourse and ideas not only account for the stickiness of institutions but also change. Discourse and ideas are unsettled, open to revision; and as constitutive processes of institutional development, these changes can destabilize the apparent solidity of a given structure. Rather than exogenous critical-juncture periods, Schmidt writes, “for discursive institutionalists these moments are the objects of explanation through ideas and discourse, which lend insight into how the historically transmitted, path-dependent structures are reconstructed.”⁷⁵

These basic insights may be fruitfully extended to the issue of emergency statebuilding. Instead of conceptualizing the state as a material institutional structure whose stability is disrupted by exogenous shocks, discursive institutionalism views the state as an effect of discursive and ideational processes. This understanding echoes the insights of a long line of theorists – from Pierre Bourdieu, Michel Foucault, and Weber to the recent contributions of

⁷³ See Schmidt 2008, 2010.

⁷⁴ Schmidt 2008, 314.

⁷⁵ *Ibid.*, 316.

Timothy Mitchell and James Scott, among others. Discourse and ideas give meaning to the state, and they orient social activity towards the state as a material structure, based on the belief in the legitimacy of the rules that underlie its authority. The intersubjective meaning of state legitimacy, Weber tells us, is “one of the important aspects of the existence of a modern state,” because “the action of various individuals is oriented to the belief that it exists or should exist, thus that its acts and laws are valid in the legal sense.”⁷⁶

The state, from this view, takes a material form only through the social processes that constitute it as an existing structure with normative legitimacy. In this sense, it exists both as a material force *and* as a construct. The state institutional structure and the idea of the state, Mitchell clarifies, are part of the same process: “The phenomenon we name ‘the state’ arises from the techniques that enable mundane practices to take on the appearance of an abstract, nonmaterial form. Any attempt to distinguish the abstract or ideal appearance of the state from its material reality, in taking for granted this distinction, will fail to understand it.” The theoretical task, he concludes, “is not to clarify such distinctions but to historicize them.”⁷⁷

Ideas constitute the modern state in another way. All modes of state rule, as Foucault and Scott remind us, require knowledge about the state and its inhabitants.⁷⁸ With the creation of information about national resources, expert knowledge brings certain objects into sharper relief for the purpose of exercising administrative control through the state. Maps, censuses, and public opinion polls are just a few examples of the countless attempts to generate static facts for this purpose. Consider also the importance of accurate statistics about the functioning of the national economy and industrial production for wartime mobilization, which are unnoticed altogether by the historical narratives outlined above. These ideas constitute vital state developments, and they

⁷⁶ Weber 1978, 14.

⁷⁷ Mitchell 1999, 77. Cf. Bourdieu 1999; Vu 2010.

⁷⁸ See, e.g., Foucault 2007; Scott 1998.

significantly enhance officials' capacities to govern social life – from the banal to the extraordinary.

We can further outline, in logical terms, the different impacts that discourse and ideas may have on emergency statebuilding, by locating the processes through which the boundaries of a crisis are drawn and redrawn. Discourse names emergencies as threats that must be managed. This may be related to traditional security issues like war or economic depression, as the above models assume, yet is not limited to these types. US officials have identified a much wider array of national problems that require government management, such as natural disasters and epidemics. Ideas help officials understand these emergencies and propose the best form of institutional development to deal with them. Expert knowledge can inspire not only responsive measures to address existing threats but also preparatory and preventive actions to transform state institutions before an emergency occurs.⁷⁹

This view of emergency statebuilding necessarily emphasizes historical contingency. Models should not assume from the outset what constitutes a national emergency, nor should they reify the modes of state power, the role of legality, or the processes of statebuilding in crises. Nevertheless, this is precisely what happens when analysts adhere to historical institutionalism, which reinforces problematic dichotomies – strong versus weak state, dictatorship versus limited government, legal versus extralegal powers, norm versus emergency. In direct contrast to this mode of theorizing, discursive institutionalism opens our analytical perspective to trace the contingent, ongoing processes through which political actors construct crises as objects of government management and rebuild state institutions to govern these apparent security threats.

⁷⁹ On preparation, see Collier and Lakoff 2015.

US Emergency Statebuilding: A Fourth Cut

Since it centers on the importance of context, this perspective can be used to support the findings of the prevailing models. For the PES model, it can demonstrate how presidents employ official discourse to name political enemies as existential threats and to justify the use of illiberal security practices. For the NSS model, it can illuminate how administrations cite the legal reasoning of past periods of emergency rule as a way to expand executive autonomy in the present. And for the CS model, it can show how normative claims against state growth and dictatorial rule in the US stem from specific interpretations of the rule of law, separation of powers, and federalism. Yet rather than predefining the approach to crisis governance and institutional development, discursive institutionalism emphasizes the contextual forces that inspire emergency statebuilding in these various ways, and it establishes discourse and ideas as endogenous to these processes.

This approach, more crucially, expands existing analytical boundaries to recognize alternative modes of emergency statebuilding that go overlooked by historical-institutionalist models, which neglect the role of discourse and ideas. The transformation from temporary crisis government in WWI to enduring emergency measures after WWII, in particular, can be understood as a result of the rising influence of expert knowledge during and after the New Deal. In response to the economic downturn of the early 1930s, socioeconomic and public administration experts in the FDR administration proposed novel ideas about national planning, which helped create a state institutional system with the capacity to manage a range of emergencies without the need for further *ad hoc* measures. Planning incorporated future emergency needs into the existing institutional system, so that further expansions of executive

power were unnecessary to deal with crisis conditions.⁸⁰

Experiments in planning laid the foundation for a shift from temporary crisis governance to preparatory emergency management. Beginning with the creation of the National Planning Board in the executive branch in 1933, planning experts such as Frederic Delano, Charles Merriam, and Wesley Mitchell advised officials on how to manage national social problems, like mass unemployment, without resorting to dictatorial measures or relying on the limited schemes of liberal anti-statism.⁸¹ They insisted that national planning offered an innovative, systemic approach to view state resources, both natural and human, within the structure of the nation as a whole; and they expanded government capacities to govern security issues through advances in data collection and statistical generation along these lines. Based on this structural perspective, the board members were in a position to examine the more pressing problems of economic crisis and executive branch organization in a different light.

While outside the narratives of the prevailing models, these ideational changes proved remarkable. On the one hand, macroeconomic planning enabled New Deal policymakers to identify specific problem areas prior to full-scale crisis and to initiate targeted reforms that facilitated economic growth. Economic advisors, including Gardiner Means, Wesley Mitchell, Lauchlin Currie, and Marriner Eccles, recommended deficit spending as a way in which leaders could redistribute income to consumers without absolutist interventions or unwieldy business cooperation.⁸² On the other hand, national planning reformed the institution of the presidency. Public administration experts in the President's Committee on Administrative Management, led by Louis Brownlow, Charles Merriam, and Luther Gulick, promoted planning as a democratic

⁸⁰ The following summary is part of a much wider research project I am conducting. See also generally Collier and Lakoff 2015; Reagan 1999; Roberts 2013.

⁸¹ See, e.g., Collier and Lakoff 2015; National Planning Board 1934; Reagan 1999.

⁸² See Brinkley 1995.

approach to prepare the state for emergencies before threats materialized so further expansions in executive power were unnecessary. With the creation of the Executive Office of the President in 1939, the presidency became the primary system with the administrative resources and flexibility to manage crises within existing constitutional boundaries.⁸³

These developments similarly informed preparations for WWII mobilization and civil defense. National planning precluded the reliance solely on dictatorial executive authorities and compensatory measures, and instead gave Roosevelt the resources to continually reorganize the executive branch in preparation for impending war emergencies. Mobilization was managed through the creation of an innovative institutional system in the Office for Emergency Management.⁸⁴ This structure functioned as an *emergency-war machine*, designed to coordinate the activities of local, state, and regional actors. It did not require consolidated powers but rather facilitated a collaborative, dynamic federalist approach to statebuilding. Leaders formed crucial ties with local and state communities – both governmental and non-governmental – to devise plans to protect civilians and secure vital industrial facilities against sabotage, air-raid bombings, and other attacks. And industrialists' voluntary efforts were coordinated within this wider government mobilization system to prevent redundancies and bottlenecks.

Innovations in preparatory emergency management at these times facilitated a crucial break from the prevailing models of emergency statebuilding (see *Table 3*). By integrating future crisis needs into the policymaking space of the present, planning obviated the need for temporary measures. Unlike the PES model, this approach prepared the state for emergencies so extraconstitutional expansions of executive authority were no longer necessary to deal with national crises. In contrast to the NSS model, planning aided in the construction of a federal

⁸³ See Emmerich 1971.

⁸⁴ See Ibid; Collier and Lakoff 2015; Koistinen 2004.

organizational system that could collaborate with local and state governments, as well as non-governmental actors, without the use of dictatorial controls. And by comparison with the CS model, it did not restrain statebuilding but rather reordered the American state to address the many limitations inherent to *laissez-faire* practices.

Table 3. Alternative Models of Emergency Statebuilding

	Permanent Emergency State	National Security State	Contract State	Emergency-War Machine
<i>Role of Legality</i>	Exceptional	Constitutional	Contractual	Constitutional
<i>Emergency Measures</i>	Suspend Liberties; Sovereign Dictatorship	Presidential Bureaucratic Autonomy	Anti-Statist; Compensatory	National Planning; Collaborative Federalism
<i>Statebuilding Processes</i>	Sovereign Exceptionalism	Constitutional Dictatorship	Liberal Self- Government	Preparatory Emergency Management
<i>State Power</i>	Strong State	Strong State	Weak State	Dynamic

Tracing this line further, one comes to a more nuanced historical understanding.

Preparatory emergency management, as Stephen Collier, Andrew Lakoff, and Patrick Roberts all demonstrate, transformed the American state in the shadows of nuclear threat during the Cold War and terrorism following 9/11.⁸⁵ Alongside the typical story of the national security state apparatus established after WWII with the constitutional authority to permanently mobilize for war, the Truman administration sought to prepare the state for a potential nuclear attack through the Office of Defense Mobilization. From within this institutional setting, experts constructed technocratic plans for how the population and industrial centers could endure the projected impacts of a potential nuclear attack through civil defense preparations. Repurposing the WWII

⁸⁵ For the following, see especially Collier and Lakoff 2015; Lakoff 2007; Roberts 2013.

mobilization administrative machinery, the Federal Emergency Management Agency was later created as an institutional system that could be called into action in the event of a natural disaster to coordinate state and non-state actors.

This thread of institutional development continues to shape post-9/11 statebuilding. In order to reduce the devastating effects of a future terrorist attack or natural disaster, the Department of Homeland Security was established as a home for risk-assessment experts to determine the resilience of existing institutions, economic hubs, and other vital systems, and to propose solutions to inefficiencies before another crisis.⁸⁶ The department coordinates numerous agencies, including the Federal Emergency Management Agency, with a variety of preparatory mandates, ranging from disaster preparedness to infrastructure protection to cybersecurity defense. These efforts share important aspects of the New Deal, WWII, and Cold War lineage to plan for emergencies so that temporary emergency statebuilding is no longer required. Thus, what appears to many as a solidified American state permanently embedded with executive dictatorial powers is actually maintained through processes designed to continuously prepare the state before crises occur.

CONCLUSION

Building on the recent directive to place post-9/11 within a broader historical context, I have constructed three models of emergency statebuilding that produce competing historical narratives of the American state, each of which, in its own right, reveals crucial insights about crisis government since WWI. In addition to adding analytical clarity to these interpretations, I argue that these models share the underlying perspective of historical institutionalism, which

⁸⁶ On risk, see Aradau and van Munster 2007.

conceptualizes the state as a material institutional structure that is disrupted by moments of crisis. This view, simply put, assumes that long periods of stability are interrupted by brief episodes of emergency statebuilding which, in turn, strike a new status quo and become path-dependent.

A persistent criticism of this interpretation, however, is that it is better at explaining continuity than change. Indeed, the models lack a clear understanding of how the processes of US emergency statebuilding vary over the past century. Focusing on discontinuous moments of crisis government, accepted accounts neglect important transformations during what are seen as normal times. Yet institutional transformations in the American state have taken place not simply through measures to address existing crises but through means to prepare for and even prevent them. What constitutes a national emergency has also changed. The traditional issues of war, economic depression, and most recently terrorism, represent only a portion of the concerns in the modern American state. Leaders have sought to govern a variety of crisis conditions, including but not limited to natural disasters (e.g., Hurricane Katrina) and public health epidemics (e.g., HIV/AIDS and the 2014 Ebola scare).

With these developments in mind, I argue that analytical perspectives should be attuned to the historical contingencies of emergency statebuilding. Instead of predefining what counts as an emergency, the methods of crisis governance, and the mode of statebuilding in these periods, discursive institutionalism traces the processes through which events become considered crises that require government involvement, in addition to the impacts of preparatory emergency management. National planning, first seriously tested during the 1930s and 1940s, has inspired a host of statebuilding efforts that do not fit well within existing frameworks. The modern American state, from this perspective, is not a stabilized institutional system with emergency

authorities built into it but rather an effect of ongoing discursive and ideational processes to govern the catastrophic potential of emergencies before they happen.

This analytical approach not only accounts for nuances in US history but also contributes to comparative studies. Whereas the PES and NSS models are explicitly laid out by proponents as comprehensive frameworks that apply in the same way in all constitutional liberal-democracies, and the CS model is expressly limited to the American case, discursive institutionalism is portable in that it explains variations in emergency statebuilding across time and space. Focusing on contingent processes, this perspective can be used, in particular, to make three types of comparisons: 1) how political actors construct emergencies differently; 2) how the construction of the threat influences institutional development in disparate ways; and 3) how alternative forms of expert knowledge shape institutional dynamics. Consider the following brief illustrations of these points.

One of the main contributions of this view is that it traces the processes through which security threats are defined. Rather than assuming what constitutes an emergency, as the prevailing models do, discursive institutionalism finds that the identification of a threat is largely a discursive process and is subject to change. Among other things, this provides insights into the ongoing debates in the US, Israel, and the Middle East about what is the most pressing emergency – ISIS or Iran? Actors differ in their response to this question, based on competing understandings of the threat, and these conceptions have important political impacts. For many officials in the US and throughout the Middle East, ISIS presents an immediate threat to regional stability and US interests. After years of intervention fatigue, however, the Barack Obama administration has floundered in trying to devise a viable solution. Conversely, for a number of conservatives in the US, Israel, and recently Arab nations like Egypt and Jordan, diplomatic talks

with Iranian officials about a nuclear deal pose a greater long-term security issue.

Discursive institutionalism, furthermore, traces how the construction of a threat shapes institutional change. Discourse and ideas define the spatial and temporal boundaries of an emergency in different, and sometimes conflicting, ways. These differences matter for how a perceived crisis impacts statebuilding. Take the issue of global climate change, for which there are rival hypotheses about how or even if it is a security threat and, as a result, opposing policy recommendations for what form of institutional development is needed to address it. Scientists, politicians, and local communities fundamentally disagree about the influence of human activity on the climate. Some, like US Senator Jim Inhofe, believe that climate change is a hoax. Others assert that the rise in sea temperatures is an effect of naturally occurring shifts and only presents a problem for later generations. Seen in this way, efforts to transform national and international institutions in order to limit global warming are unproductive. By contrast, many experts, activists, and environmental groups such as Greenpeace insist that humans are the primary catalyst for climate change and that the threat is imminent, and they advise policymakers to create laws and regulations to reduce these impacts.

Lastly, the principal implication laid out in this essay is that expertise can influence institutional development in ways that make emergencies endogenous to statebuilding. The discursive institutionalism approach uncovers how planning prepares institutions to manage emergency conditions before they occur. This can be starkly seen in the disparities in preparation for the recent Ebola outbreak. Measures to contain the spread of the virus throughout West Africa were thwarted, above all, at the point of administrative coordination. The countries hit hardest – Guinea, Liberia, and Sierra Leone – had underdeveloped healthcare infrastructures to effectively detect and treat the afflicted. At the international level, the World Health

Organization was similarly unprepared for the crisis and instead relied on non-governmental organizations and volunteers to coordinate relief. In the US, by contrast, the Center for Disease Control and Prevention was able to provide intellectual and administrative resources to help deal with the outbreak. While the prevailing models typically overlook the importance of contextual variations, discursive institutionalism provides an amenable foundation to undertake in-depth studies of these and other comparative cases.

REFERENCES

- Ackerman, Bruce. 2006. *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism*. New Haven: Yale University Press.
- . 2010. *The Decline and Fall of the American Republic*. Cambridge, MA: Belknap Press.
- Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Translated by Daniel Heller-Roazen. Chicago: University of Chicago Press.
- . 2005. *State of Exception*. Translated by Kevin Attell. Chicago: University of Chicago Press.
- Aradau, Claudia, and Rens van Munster. 2007. "Governing Terrorism through Risk: Taking Precautions, (un)Knowing the Future." *European Journal of International Relations* 13(1): 89-115.
- Balkin, Jack M., and Sanford Levinson. 2006. "The Processes of Constitutional Change: From Partisan Entrenchment to the National Surveillance State." *Fordham Law Review* 75: 489-535.
- Belknap, Michael R. 1983. "The New Deal and the Emergency Powers Doctrine." *Texas Law Review* 62: 67-109.
- Bourdieu, Pierre. 1999. "Rethinking the State: Genesis and Structure of the Bureaucratic Field." In *State/Culture: State Formation after the Cultural Turn*, edited by George Steinmetz. Ithaca: Cornell University Press.
- Brinkley, Alan. 1995. *The End of Reform: New Deal Liberalism in Recession and War*. New York: Vintage Books.
- Butler, Judith. 2004. *Precarious Life: The Powers of Mourning and Violence*. New York: Verso.
- Cole, David. 2003. *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terror*. New York: The New Press.

- Cole, David, and James X. Dempsey. 2002. *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*. New York: The New Press.
- Collier, Stephen J., and Andrew Lakoff. 2015. "Vital Systems Security: Reflexive Biopolitics and the Government of Emergency." *Theory, Culture, and Society* 32(2): 19-51.
- Corwin, Edward S. 1947. *Total War and the Constitution*. New York: Alfred A. Knopf.
- . 1976. *Presidential Power and the Constitution: Essays*. Edited by Richard Loss. Ithaca: Cornell University Press.
- Eisner, Marc Allen. 2000. *From Warfare State to Welfare State: World War I, Compensatory State Building, and the Limits of the Modern Order*. University Park: Pennsylvania State University Press.
- Emmerich, Herbert. 1971. *Federal Organization and Administrative Management*. University: University of Alabama Press.
- Ferejohn, John, and Pasquale Pasquino. 2004. "The Law of the Exception: A Typology of Emergency Powers." *International Journal of Constitutional Law* 2(2): 210-239.
- Foucault, Michel. 2007. *Security, Territory, Population: Lectures at the Collège de France, 1977-1978*. Translated by Graham Burchell. New York: Picador.
- Friedberg, Aaron L. 1992. "Why Didn't the United States Become a Garrison State?" *International Security* 16(4): 109-142.
- . 2000. *In the Shadow of the Garrison State: America's Anti-Statism and Its Cold War Grand Strategy*. Princeton: Princeton University Press.
- Friedrich, Carl J. 1946. *Constitutional Government and Democracy: Theory and Practice in Europe and America*. Boston: Ginn and Company.
- Goldsmith, Jack. 2007. *The Terror Presidency: Law and Judgment inside the Bush*

- Administration*. New York: W.W. Norton.
- Gross, Oren, and Fionnuala Ní Aoláin. 2006. *Law in Times of Crisis: Emergency Powers in Theory and Practice*. Cambridge, UK: Cambridge University Press.
- Herman, Susan N. 2011. *Taking Liberties: The War on Terror and the Erosion of American Democracy*. Oxford: Oxford University Press.
- Higgs, Robert. 1987. *Crisis and Leviathan: Critical Episodes in the Growth of American Government*. Oxford: Oxford University Press.
- Hogan, Michael J. 1998. *A Cross of Iron: Harry S. Truman and the Origins of the National Security State, 1945-1954*. Cambridge, UK: Cambridge University Press.
- Hooks, Gregory. 1991. *Forging the Military-Industrial Complex: World War II's Battle of the Potomac*. Urbana: University of Illinois Press.
- Huntington, Samuel P. 1981. *American Politics: The Promise of Disharmony*. Cambridge, MA: Harvard University Press.
- Jackson, Patrick Thaddeus. 2011. *The Conduct of Inquiry in International Relations: Philosophy of Science and its Implications for the Study of World Politics*. London: Routledge.
- Johns, Fleur. 2005. "Guantanamo Bay and the Annihilation of the Exception." *The European Journal of International Law* 16: 613-35.
- Karl, Barry D. 1983. *The Uneasy State: The United States from 1915 to 1945*. Chicago: University of Chicago Press.
- Katyal, Neal, and Richard Caplan. 2008. "The Surprisingly Stronger Case for the Legality of the NSA Surveillance Program: The FDR Precedent." *Stanford Law Review* 60(4): 1023-1077.
- Katznelson, Ira. 2013. *Fear Itself: The New Deal and the Origins of Our Time*. New York:

- Liveright Publishing Corporation.
- King, Desmond, and Robert C. Lieberman. 2009. "Ironies of State Building: A Comparative Perspective on the American State." *World Politics* 61(3): 547-588.
- Koistinen, Paul A.C. 1973. "Mobilizing the World War II Economy: Labor and the Industrial-Military Alliance." *Pacific Historical Review* 42(4): 443-78.
- , 1997. *Mobilizing for Modern War: The Political Economy of American Warfare, 1865-1919*. Lawrence: University Press of Kansas.
- , 2004. *Arsenal of World War II: The Political Economy of American Warfare, 1940-1945*. Lawrence: University Press of Kansas.
- Lakoff, Andrew. 2007. "Preparing for the Next Emergency." *Public Culture* 19: 247-71.
- Leffler, Melvyn P. 1992. *A Preponderance of Power: National Security, the Truman Administration, and the Cold War*. Stanford: Stanford University Press.
- Leuchtenburg, William E. 1995. *The FDR Years: On Roosevelt and His Legacy*. New York: Columbia University Press.
- Levinson, Sanford. 2006. "Constitutional Norms in a State of Permanent Emergency." *Georgia Law Review* 40(3): 699-751.
- Levinson, Sanford, and Jack M. Balkin. 2010. "Constitutional Dictatorship: Its Dangers and Its Design." *Minnesota Law Review* 94: 1789-1866.
- Lipset, Seymour Martin. 1996. *American Exceptionalism: A Double-Edged Sword*. New York: W.W. Norton.
- McCormick, John P. 1997. "The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Power." *Canadian Journal of Law and Jurisprudence* 10(1): 163-187.
- Mitchell, Timothy. 1999. "Society, Economy, and the State Effect." In *State/Culture: State*

- Formation after the Cultural Turn*, edited by George Steinmetz. Ithaca: Cornell University Press.
- National Planning Board. 1934. *Final Report – 1933-34*. Washington, DC: US Government Printing Office.
- Neocleous, Mark. 2008. *Critique of Security*. Montreal: McGill-Queen's University Press.
- Novak, William J. 2008. "The Myth of the 'Weak' American State." *American Historical Review* 11(3): 752-772.
- Pelton, Robert Young. 2006. *Licensed to Kill: Hired Guns in the War on Terror*. New York: Broadway Books.
- Persico, Joseph E. 2001. *Roosevelt's Secret War: FDR and World War II Espionage*. New York: Random House.
- Polenberg, Richard. 1972. *War and Society: The United States, 1941-1945*. Philadelphia: J.B. Lippincott Company.
- Posner, Eric A., and Adrian Vermeule. 2007. *Terror in the Balance: Security, Liberty, and the Courts*. Oxford: Oxford University Press.
- , 2010. *The Executive Unbound*. Oxford: Oxford University Press.
- Posner, Richard A. 2006. *Not a Suicide Pact: The Constitution in a Time of National Emergency*. Oxford: Oxford University Press.
- Reagan, Patrick D. 1999. *Designing a New America: The Origins of New Deal Planning, 1890-1943*. Amherst: University of Massachusetts Press.
- Roberts, Patrick S. 2013. *Disasters and the American State: How Politicians, Bureaucrats, and the Public Prepare for the Unexpected*. Cambridge, UK: Cambridge University Press.
- Rogers, Lindsay. 1919. "Presidential Dictatorship in the United States." *The Quarterly Review*

- 231: 127-148.
- . 1934. *Crisis Government*. New York: W.W. Norton.
- Rossiter, Clinton L. 1948. *Constitutional Dictatorship: Crisis Government in the Modern Democracies*. Princeton: Princeton University Press.
- . 1950. "War, Depression, and the Presidency, 1933-1950." *Social Research* 17(4): 417-440.
- Saldin, Robert P. 2011. *War, the American State, and Politics since 1898*. Cambridge, UK: Cambridge University Press.
- Scahill, Jeremy. 2008. *Blackwater: The Rise of the World's most Powerful Mercenary Army*. New York: Nation Books.
- Scheppele, Kim L. 2004. "Law in a Time of Emergency: States of Exception and the Temptations of 9/11." *Journal of Constitutional Law* 6: 1-75.
- Scheuerman, William E. 2000. "The Economic State of Emergency." *Cardozo Law Review* 21: 1869-1894.
- . 2005. "The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11." *Perspectives on Politics* 4(3): 605-607.
- . 2006. "Survey Article: Emergency Powers and the Rule of Law After 9/11." *The Journal of Political Philosophy* 14(1): 61-84.
- Schmidt, Vivien A. 2008. "Discursive Institutionalism: The Explanatory Power of Ideas and Discourse." *Annual Review of Political Science* 11: 303-326.
- . 2010. "Taking Ideas and Discourse Seriously: Explaining Change through Discursive Institutionalism as the Fourth 'New Institutionalism.'" *European Political Science Review* 2(1): 1-25.
- Schmitt, Carl. 1996. *The Concept of the Political*. Translated by George Schwab. Chicago:

- University of Chicago Press.
- , 2004. *Legality and Legitimacy*. Translated by Jeffrey Seitzer. Durham: Duke University Press.
- , 2005. *Political Theology: Four Chapters on the Concept of Sovereignty*. Translated by George Schwab. Chicago: University of Chicago Press.
- Schwarz, Jr., Frederick A.O., and Aziz Z. Huq. 2007. *Unchecked and Unbalanced: Presidential Power in a Time of Terror*. New York: The New Press.
- Scott, James. 1998. *Seeing Like a State: How Certain Schemes to Improve the Human Condition have Failed*. New Haven: Yale University Press.
- Sherry, Michael S. 1995. *In the Shadow of War: The United States since the 1930s*. New Haven: Yale University Press.
- Singer, Peter W. 2007. *Corporate Warriors: The Rise of the Privatized Military Industry, Revised Edition*. Ithaca: Cornell University Press.
- Skowronek, Stephen. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*. Cambridge, UK: Cambridge University Press.
- Sparrow, Bartholomew H. 1996. *From the Outside In: World War II and the American State*. Princeton: Princeton University Press.
- Sparrow, James T. 2011. *Warfare State: World War II Americans and the Age of Big Government*. Oxford: Oxford University Press.
- Stone, Geoffrey. 2004. *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism*. New York: W.W. Norton.
- Stuart, Douglas T. 2012. *Creating the National Security State: A History of the Law that Transformed America*. Princeton: Princeton University Press.

- Tichenor, Daniel J. 2013. "Historical Set Points and the Development of U.S. Presidential Emergency Power." *Perspectives on Politics* 11(3): 769-788.
- Unger, David. 2012. *The Emergency State: America's Pursuit of Absolute Security at all Costs*. New York: Penguin Press.
- Vu, Tuong. "Studying the State through State Formation." *World Politics* 62(1): 148-175.
- Watkins, Frederick M. 1940. "The Problem of Constitutional Dictatorship." *Public Policy* 1: 324-379.
- Weber, Max. 1978. *Economy and Society: An Outline of Interpretive Sociology, Volume I*. Edited by Guenther Roth and Claus Wittich. Berkeley: University of California Press.
- , 2011. "'Objectivity' in Social Science and Social Policy." In *Methodology of Social Sciences*, translated and edited by Edward A. Shils and Henry A. Finch, 49-112. New Brunswick: Transaction Publishers.
- Yoo, John. 2005. *The Powers of War and Peace: The Constitution and Foreign Affairs after 9/11*. Chicago: University of Chicago Press.
- Zegart, Amy B. 1999. *Flawed by Design: The Evolution of the CIA, JSC, and NSC*. Stanford: Stanford University Press.