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CLASSROOM: LESSON N°1

THE STATE OF SIEGE: ORIGIN AND HISTORY

The state of siege is the foremost emergency regime of modern times, which had its beginnings during the French Revolution. It has a military origin, as its name indicates, in the ancient practice of conferring full powers of government on the general in command of a besieged fortress. A state of siege was perceived as the model for similar instruments of constitutional dictatorship in the German Empire and its member states, in almost all other civil-law countries, and even in Anthony Hope's mythical Ruritania. It was initiated only after an invasion or rebellion. The development of a state of siege in history involved the gradual conversion of this purely military institution to one that was political in character, one in which the state of siege became a fiction. This term indicates that an open civil area threatened by invasion or rebellion was to be regarded in law as "besieged" and that the government would



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have powers in that area. The government's powers in this regard were analogous to those of a general in command of a beleaguered fortress. The evolution of the institution from a military to a political one, from a real to a constructive state of siege was embodied in the French Law of 10 *Fructidor An V*, (the tenth *Fructidor* of the year 5) that is 27 August 1797. Through this law the previously exclusively military state of siege acquired the wider meaning of *état de siège fictif* or *état de siège politique* (constructive or political state of siege); which was confirmed by Napoleon's decree of 24 December 1811. After being incorporated into the *acte additionnel* of the French Constitution of 22 April 1815, the state of siege was consistently used by authorities. For example, on 24 June 1848, following the fall of the July Monarchy in France a decree of the Constituent Assembly placed Paris in a state of siege and assigned to General Cavaignac the task of restoring order in the city. This state of siege lasted until 12 October 1919, and led to a section on a state of siege being incorporated into the new French Constitution of 4 November 1848.

The turning point in the evolution of the strictly military and occasional state of siege into a civil and political institution was Law 1791/07/10 of 10 July 1791 on the conservation and classification of war areas, military positions, police fortification and other related issues.²² This Law provides that when war areas and military positions are in a state of siege, all the authority that civil officers derive from the Constitution for the maintenance of order and interior police will pass to the military commander who will have sole responsibility for it.

Subsequently, the political state of siege was entrenched in law on 9 August 1849. Before its abrogation by an Ordinance of 20 December 2004, section 1 of this



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legislation provided that a state of siege could be declared in the case of imminent peril to the internal or external security of the state.

Napoleon III made considerable use of the Law of 1849 both as President and Emperor, but particularly in the former capacity, and indeed turned it against those who had fathered the idea in the Constituent Assembly. Section 12 of his Constitution of January 1852 has the effect of transferring the prerogative of declaring a state of siege from the legislature to the head of state exclusively, with the Senate in the role of advisor. A few years after this provision, a state of siege was to be strictly enforced throughout France. Following the Franco-Prussian War of 1870-1871 in which Germany defeated France, more than forty French departments were declared to be in a state of siege for several years. This emergency government only came to an end on 4 April 1876. Subsequently the Law of 9 August 1849 on the political state of siege was amended twice, by Law 1878/04/03 of 3 April 1878 relating to this political state of siege and the Law of 27 April 1916 (released by the Official *Gazette* of the French Republic on 28 Apr 1916) on the functioning and competence of military tribunals in time of war. In 1914 the First World War broke out and the Law of 9 August 1849 was once again enforced in France on a large scale. On 2 August 1914, President Poincaré issued a decree placing the entire country including the eighty-six French departments, the territory of Belfort and the three departments of Algeria in a state of siege. For more than five years the citizens of France were largely governed by this emergency institution, which was not lifted until 12 October 1919.

To briefly summarise, the concept “state of siege” refers to two different situations: firstly, it is a real military state of siege that may be declared by the commanding officer of a place besieged or threatened by enemies. In France, this



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state of siege is framed by the Law of 10 July 1791 and the decrees of 24 December 1811 and of 4 October 1891. The second hypothesis is a fiction and is called a constructive state of siege or political state of siege, literally *état de siège fictif* or *état de siège politique*, which had its origins in the Law of 9 August 1849 and section 36 of the French Constitution. It is helpful to know that the concept of a state of siege refers to what is known in Anglo-Saxon systems as martial law. As mentioned by Max Radin, “What is expressed in English as martial law has as its counterpart in France, the *état de siège*, which we may refer to by its literal rendering ‘state of siege’”. In other words, to a certain extent the terms martial law and state of siege refer to the same emergency institution, since both transfer the responsibility for the security of cities to the army.

Lesson prepared

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