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Narrating the emergency. The state of siege between public order control and authoritarian tendencies

Summary: Introduction – 1. State of siege or state of war? Judicial space and political process – 2. Two states of siege: 1894 and 1898 – Conclusions.

Introduction

The issue of the *law of exception* in Liberal Italy, and in particular the doctrine and practice of the *state of siege*, occupies a central position in historicallegal scholarship of the last decades[1]. Since the 1960s, studies devoted to the formation of the Italian State have shown how the original ambiguity of the Albertine Statute -more a political charter than a true constitution- granted the executive particularly broad margins of intervention in situations designated as emergencies. From this perspective, the proclamation of the state of siege emerged as a frequently employed yet highly problematic instrument, situated in the grey zone between formal legality and *raison d'État*, as Rosario Romeo already observed in his classic works on the *Destra storica*[2]. Subsequent historiography has insisted on the structural, rather than episodic, nature of recourse to exceptional measures in postunification Italy. The works of Denis Mack Smith and Geoffrey A. Haywood have underscored that authoritarian management of public order was not a deviation from the liberal model but one of the means by which ruling elites sought to govern the political incorporation of the masses[3]. Recently a new wave of research -such as that of Luigi Lacchè, Fulvio Cammarano and Carmine Pinto- shifted attention from repressive episodes to the political culture of emergency, highlighting the role played by narratives of threat (anarchist, socialist, republican) in legitimizing the suspension of statutory guarantees[4]. At the

[1] G. Motzo, *Assedio (stato di)*, in *Enciclopedia del diritto*, vol. III, Milano 1958, pp. 250-268; J.A. Davis, *Legge e ordine. Autorità e conflitti nell'Italia dell'800*, Milano 1989.

[2] R. Romeo, *Il Risorgimento in Sicilia*, Bari 1950; Id., *Risorgimento e capitalismo*, Bari 1959.

[3] D. Mack Smith, *Italy and Its Monarchy*, New Haven 1989; G.A. Haywood, *Failure of a Dream. Sidney Sonnino and the rise and fall of liberal Italy 1847-1922*, Firenze 1999.

[4] L. Lacchè, *Il costituzionalismo liberale e la legge fondamentale*, in *Lo Stato costituzionale. Radici e prospettive*, by M. Gregorio and B. Sordi, Milano 2023, pp. 151-155; F. Cammarano, *L'inquietudine costituente. Saggi di storia politica*, Pisa 2024, pp. 192-225;

same time, the international debate on the state of exception, revitalized by the writings of Carl Schmitt and, more recently, Giorgio Agamben has provided an essential conceptual framework for reinterpreting the Italian case in comparative perspective. The constitutional monarchies of nineteenthcentury Europe, from France to Belgium to Prussia, developed analogous instruments for suspending the ordinary judicial order; yet, as demonstrated by the research of Mark Neocleous and John Horne, Italy distinguished itself by the particular elasticity of the mechanism and by the scarcity of formal constraints on its activation[5].

Within this broader context must be placed the episodes of 1894 and 1898, traditionally regarded as emblematic moments of repressive degeneration in the Liberal State. The Sicilian events of 1894 and the Milan crisis of 1898, though different in social composition and political dynamics, both show how the executive resorted to the juridical fiction of "*internal war*" to circumvent the principle of the natural judge and to activate military jurisdiction. Therefore, this assimilation of social conflict to war has not always proved to be just a legal expedient but a real ideological device, which framed popular protest as a threat to the integrity of the State. Within the contemporary doctrinal debate, the figure of Francesco Racioppi occupies a particularly significant place. His *Commento allo Statuto del Regno*, published between 1901 and 1909, remains one of the most rigorous analyses of the tension between statutory guarantees and emergency practices. As noted by Luigi Lacchè and Carlo Ghisalberti, Racioppi sought to bring the exception back within a coherent juridical framework while simultaneously denouncing the normative vacuum that allowed the executive, by unilateral act, to transform a disturbance of public order into a "*political state of war*"[6]. His reflections provide a privileged vantage point on the largely unsuccessful attempt to articulate a legal theory of emergency in Liberal Italy. This contribution situates itself within this extensive historiographical tradition. By analyzing comparatively the two cases of 1894 and 1898, it aims to highlight the tension between statutory norms, governmental praxis, and contemporary legal doctrine-showing how the state of siege became a political instrument before it was a juridical one. A reconstruction of parliamentary debates,

C. Pinto, *La guerra per il Mezzogiorno. Italiani, borbonici e briganti 1860-1870*, Roma-Bari 2024.

[5] G. Agamben, *Stato di eccezione*, Torino 2003 (trad.: *State of Exception*, Chicago 2005); M. Neocleous, *The Fabrication of Social Order*, London 2000; Id., *Critique of Security*, Edinburgh University Press 2008, pp. 39-76; J. Horne (ed.), *State, Society and Mobilization in Europe during the First World War*, Cambridge University Press 1997.

decisions of the Court of Cassation, and doctrinal positions of the period reveals how the exception functioned as a *permanent device* for governing social conflict. From this perspective, Liberal Italy emerges as a laboratory in which legality and authority were constantly recomposed in an unstable equilibrium, an inheritance that would assume new forms and new interpreters in the postwar years and during the fascist era[6].

1. *State of siege or state of war? Judicial space and political process*

Francesco Racioppi, professor of public law at the University of Cagliari, in his *Commento allo Statuto del Regno*, published between 1901 and 1909, with the help of Ignazio Brunelli, dedicates a chapter entitled: "Lo stato d'assedio e i tribunali di guerra"[7]. His reflection focuses mainly on the constitutionality of this emergency measure in light of the recent management of the long crisis at the end of the century, during which there were two instances of the state of siege being invoked between 1894 and 1898 by the Crispi and Di Rudinì governments. In this regard, Racioppi refers to the articles of the Statute that together govern emergency measures. While Article 6 recognises the executive's power to issue decrees to enforce laws, it is equally significant that this power is limited by law, otherwise the government would operate within an absolutist regime, similar to that in force in France under Charles X until 1830[8]. Consequently, the other articles connected to the previous one are fundamental: Article 70, which obliges the executive power "non derogare all'organizzazione giudiziaria se non in forza d'una legge[9]", and Article 71, which establishes the principle that no one can be diverted from their natural judge, therefore, the executive cannot set up extraordinary courts or commissions. It follows from these premises that the issuance of a decree declaring a state of siege conflicts with the positive legal system of the country, even though the

[6] F. Racioppi, I. Brunelli, *Commento allo Statuto del Regno*, Torino 1901-1909; L. Lacchè, *Liberalismo e ordine pubblico*, Torino 1994; C. Ghisalberti, *Storia costituzionale d'Italia*, Bari 1977.

[7] F. Raciopppi, I. Brunelli, *Commento allo Statuto del Regno. 3. Dall'art. 48 all'art. 84 ed ultimo*, with a preface by L. Luzzatti, Torino 1909.

[8] On the state of siege in France in the first half of the 19th century: Cfr. R. Tombs, France 1814–1914, London 1996; C. Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (1948, repr., NY 2002), pp. 12-20.

[9] "Not to derogate from the judicial organisation except by virtue of a law".

Albertine Statute does not explicitly prohibit the use of such decrees. In light of this obvious area of ambiguity or legislative vacuum, in 1899 the Court of Cassation in Rome issued a ruling which, together with the Government and Parliament, recognised the constitutionality of this type of measure, effectively confirming the full legality of the establishment of the courts martial in May 1898. This ruling is significant, since in 1894 the judiciary was not given the power to rule on the repressive measures decreed by the state of siege in Sicily and Lunigiana. In that circumstance, the Crispi government resolved the question of the legality of the measure solely through a parliamentary debate that ended with a large majority vote in favour of the measures taken by the executive behind closed doors. Therefore, the legitimacy of the measure came from the government itself, which did not allow any examination of the legality of a measure dictated by the "necessity" and urgency of preserving national unity. In 1894, the interpretation that allowed Crispi to uphold the legality of resorting to a state of siege was justified by equating a subversive phenomenon with an attack on the institutional order. Hence the need to declare a "state of war", applicable by royal decree and governed by Articles 243 and 244 of the Criminal Code, which authorises the concentration of powers in the hands of the military commander and the replacement of ordinary justice with courts martial. Obviously, the legal validity of the state of siege is entirely discretionary, since it is up to the body responsible for political direction, the executive, to determine whether or not the conditions exist for identifying an extraordinary disturbance of public order such as to be equated with a "state of war". Four years later, this assimilation was not endorsed by the Court of Cassation, which limited itself to proceeding intuitively with regard to the finding of an actual "state of war", which in the judgment appears only "by way of hypothesis". Consequently, the assimilation between a state of siege and a state of war is a stretch, especially since a state of war involves the presence of a foreign invading army and not a situation of public disorder. Racioppi therefore notes the presence of a serious legal vacuum, in that the current legislation does not provide for a different interpretation of the state of siege that allows for its use solely by virtue of the authority of the executive in office: a "state of political siege". In this regard, the constitutionalist introduces an aspect that goes beyond a purely legal assessment: the political sphere. In fact, the use of exceptional measures against citizens is primarily a political measure, since the concentration of powers in the hands of the executive branch and its delegation to the army stems from a "necessity"

recognised by the government through a decision by the Council of Ministers. It is clear that the state of siege decree derives its legality from a "supreme necessity that makes it inevitable". On the one hand, jurists such as Racioppi recognise the government's right/duty to protect public order, even resorting to the use of arms. On the other hand, they raise a question that will be at the centre of the two respective parliamentary debates of 1894 and 1898, namely whether it is lawful, once public order has been restored, to bring the perpetrators of subversion before military courts, since the reinstatement of the law is the responsibility of the ordinary judiciary. In reality, even in the presence of legal uncertainty, it is not considered lawful to suspend all constitutional guarantees without the prior consent of the legislative power because, as Racioppi argues, "il diritto di necessità non è il miglior fondamento giuridico allo stato d'assedio proclamato dall'esecutivo"[10].

Conversely, those who support the legality of the state of siege on the basis of Article 5 of the Statute, which entrusts the King with the proclamation of war, believe that the provision does not require any approval by Parliament to be converted into law. During the debate on public order, held in the weeks following the repression in Sicily and Lunigiana, Francesco Crispi firmly rejected the idea of converting the emergency measures taken between December 1893 and January 1894 into law[11]. During the debate in Montecitorio, the government limited itself to simply approving an agenda presented to the elected Chamber, which merely expressed its appreciation for the executive's prompt reaction to restore public order in the territories affected by the subversion. In short, as the radical Imbriani denounced, the Chamber was convened solely to ratify a verdict, but not to evaluate the legitimacy and legality of the measures adopted, effectively rendering the legislative branch's role of oversight completely marginal[12]. Not only that, but with the subsequent anti-anarchist laws passed a few weeks later, on 19 July 1894, the political significance of the insurrectionary actions was neutralised, with their consequent decriminalisation in the Assize Court trials, as potential

[10] "The right of necessity is not the best legal basis for the state of siege proclaimed by the executive". Racioppi, *Lo stato d'assedio e i tribunali di guerra*, p. 146.

[11] Atti Parlamentari (d'ora in poi AP), Camera dei Deputati (d'ora in poi CdD), Discussioni, Legislatura XVIII, 24 febbraio 1894, p. 6646-87.

[12] S. Trovalusci, *L'ultimo titano del Risorgimento. Il mito di Francesco Crispi nell'Italia liberale (1876-1901),* Roma 2023, p. 137; D. Adorni, *Francesco Crispi. Un progetto di governo*, Firenze 1999, pp. 364-365; C. Duggan, *Creare la nazione. La vita di Francesco Crispi*, Roma-Bari 2000, p. 773.

political offenders were equated with common criminals, not deserving of any favourable treatment[13]. On the other hand, in the decades following the consolidation of national unity, the political system faced the significant challenge of democratising the institutional structure, which often manifested itself through the complex management of political and social conflict and the delicate relationship between maintaining public order and protecting freedom of expression. On the one hand, opponents/antagonists of the "system" can use the trial to highlight the contradictions in the legal system; on the other hand, the predominant preliminary investigation phase favours a culture of unquestioned state authority, so the reasons for order are more easily asserted than the reasons for guaranteed freedom[14]. Consequently, the long crisis at the end of the century four years later saw a new and even more tragic recourse to a state of siege and the jurisdiction of military courts: Milan, 6-9 May 1898.

2. *Two states of siege: 1894 and 1898*

1894-1898, four years separate the adoption of "full powers" by an executive without prior consent from Parliament: that led by Antonio Starabba, Marquis Di Rudinì. There were various causes for the unrest, and various protagonists called upon to deal with the discontent: on the one hand, the titanic government born of Francesco Crispi's "truce of God" and, on the other, the fragile coalition led by Di Rudinì. The dynamics that gave rise to Crispi's repressive line were the logical consequence of the political direction of an executive that, from its genesis, pursued an authoritarian plan aimed at neutralising social forces that did not fit into the institutional framework[15]. Conversely, the political

[13] L. Lacché, *Sulla forma giudiziaria. Forma costituzionale della giustizia e paradigmi del processo politico tra Otto e Novecento*, in F. Colao, L. Lacché and C. Storti (curr.), *Giustizia penale e politica in Italia tra Otto e Novecento. Modelli ed esperienze tra integrazione e conflitto*, Milano 2015, pp. 17-18; J.A. Davis, *Legge e Ordine. Autorità e Conflitti nell'Italia dell'800*, Milano 1989, p. 285.

[14] L. Lacché, *Sulla forma giudiziaria. Forma costituzionale della giustizia e paradigmi del processo politico tra Otto e Novecento*, in *Giustizia penale*, cit., pp. 11-13; M. Sbriccoli, *Dissenso politico e diritto penale in Italia tra Otto e Novecento. Il problema dei reati politici dal Programma di Carrara al Trattato di Manzini*, Milano 1973 e Id., *Crimen laesae maiestatis. Il problema del reato politico alle soglie della scienza penalistica moderna*, Milano 1974.

[15] M.M. Aterrano, *Salus patriae suprema lex. Il controllo delle armi nella repressione dei Fasci a Palermo, 1894*, in «Rassegna storica del Risorgimento», I (2023), pp. 57-82:

premises and expectations underlying the formation of the third cabinet headed by the heir to the historical right wing were very different. From the outset, this cabinet expressed its willingness to collaborate with the more reformist wing of the liberal camp[16]. In this regard, the impression linked to this "turning point" reported in the *Memoirs* of a leading figure such as Giovanni Giolitti is significant. Giolitti perceived, albeit with suspicion, the intention to impose a generally anti-reactionary line on the political agenda with the entry of Giuseppe Zanardelli into the Ministry of Justice and Francesco Cocco-Ortu into the Ministry of Agriculture. Disillusionment, however, materialised immediately, coinciding with a serious economic crisis that resulted in an unsustainable increase in the cost of bread. The inevitable protests were once again equated with subversive phenomena that justified the imposition of a state of siege. This gave rise to the question of the limitations of a culture of government that was still incapable of adopting alternative measures to the usual recourse to emergency legislation in the face of the physiological unrest of the working classes, affected by cyclical financial and economic crises that made it impossible to guarantee minimum subsistence levels. Giolitti again declared:

La principale questione che si poneva alle classi politiche ed agli uomini di governo, era se questi problemi potevano risolversi col regime di libertà, o se essi imponevano un restringimento di freni e l'adozione di provvedimenti eccezionali[17]

The aforementioned exceptional measures were promptly adopted at the beginning of May 1898, five months after the launch of the ministry that was supposed to mark the start of the liberal-moderate experiment. In the previous weeks, in fact, the country was once again swept by a long series of disturbances reminiscent of the riots that took place in Sicily in the 1893-94 season. Less than five years later, strong waves of protest were recorded in Bari, Faenza, Naples, Palermo and the Ferrara area. The

57-70; M. Gibson, *Italian prisons in the age of positivism, 1861-1914*, Bloomsbury 2019, p. 203; P. Garfinkel, *Criminal Law in Liberal and Fascist Italy*, Cambridge 2019, pp. 170-176.

[16] M. Belardinelli, *Un esperimento liberal-conservatore. I governi Di Rudinì (1896-1898),* Roma 1976; P. Carusi, *Superare il trasformismo. Il primo ministero Di Rudinì e la questione dei partiti nuovi*, Roma 1999.

[17] "The main question facing the political classes and government officials was whether these problems could be solved under a regime of freedom, or whether they required a tightening of the reins and the adoption of exceptional measures". G. Giolitti, *Memorie della mia vita*, Milano 1922, 2 voll., vol. I, pp. 153-153.

conservative press, led by *La Perseveranza* and *La Nazione*, with the initial exception of *Il Corriere*, pushed for Crispi's example to be followed with decisive repression to curb a subversive drift of socialist and republican origin. In particular, *La Perseveranza*, heir to the moral leadership of Ruggero Bonghi, was the main interpreter of this state of intolerance towards the wait-and-see and tolerant strategy initially manifested by the executive. On the other hand, Di Rudinì's ministry represented a synthesis between the moderate right and the constitutional left, which the most orthodox conservatives disapproved of, as it was a re-edition of the political opportunism that had seen them marginalised from government roles with the advent of Depretis. In reality, although Giuseppe Zanardelli headed the Ministry of Justice, the Ministry of the Interior remained under the leadership of the Prime Minister himself, in accordance with an established practice that allowed the presidency to take on a portfolio. In addition, the undersecretary of Palazzo Braschi was assigned to the jurist Giorgio Arcoleo, who, more than anyone else during the Crispi era, justified the use of emergency legislation in parliamentary debates in the face of incidents that threatened public order. Between 6 and 9 May, demonstrations against the high cost of living in Milan were suppressed by the indiscriminate use of weapons by General Fiorenzo Bava Beccaris, causing almost 81 deaths and several hundred injuries.

Consequently, two possible scenarios emerge: one that entrusts a reactionary party with the task of systematically suspending all forms of expression of discontent, increasing the means of repression; the other entrusting liberal and reformist groups with the responsibility of resolving social problems at their root, so as to mitigate the pressure of protest without resorting to any restrictions on areas of freedom. At this stage, a different political perspective emerged: that of Giovanni Giolitti, who did not share Zanardelli's initial willingness to form a government with conservative elements, as he was culturally inclined to adopt exceptional measures in times of crisis. On the other hand, Giolitti was ousted by Crispi in December 1893 because of his excessive tendency towards mediation rather than repression. Already at the time of his first ministry, he accused the proponents of the reactionary line of improperly proclaiming themselves "continuers of Cavour's policy", in fact manipulating facts and episodes that refer to the transition phase between the Second War of Independence and the establishment of the unified state. According to Giolitti, even the most authentic heirs of Cavour's culture, such as Lamarmora, Ricasoli, Menabrea, Lanza, Sella and Minghetti, resorted to

emergency legislation with great caution, limiting it only to very serious events that truly threatened national unity, but not using it in the difficult phases following the treaties of Novara and Villafranca, or in the face of the events of Mentana and Aspromonte[18].

Equally critical of this automatic response, which establishes the inevitable recourse to a state of war in the face of social unrest, is another unexpected exponent of moderate liberal culture: the editor of the *Corriere della Sera*, Eugenio Torelli Viollier, who resigned from the newspaper he himself had founded in 1876 when he found himself disagreeing with the line of the editorial staff and the owners regarding the violent repression that had taken place in Milan. In a famous letter dated 12 May, the now former editor of via Solferino confided to Luigi Roux, editor of *La Stampa* in Turin, that he fully shared Napoleone Colajanni's opinion on the handling of the Milanese riots: "Siamo dunque in pieno colpo di Stato fatto a beneficio della borghesia contro il Popolo, ossia di una classe contro l'altra, dell'oppressore contro l'oppresso[19]". On the other hand, the new editor of the Lombard newspaper, Domenico Oliva, signed an editorial entitled *La politica conservatrice* on the same day (12 May), expressing unconditional appreciation for the measures taken to ensure "public peace" and preserve the political and social order. The objective enemy therefore remains identified with the "popular social classes" who organise themselves to promote "insurrections and to mobilise against the state and against property". It is the crowd, the people, the masses "poisoned and influenced" by troublemakers who fuel the revolt. This basic demand for the preservation of the status quo gives rise to a clear warning to the ruling class and the executive:

I nostri governanti hanno permesso l'organizzazione d'un partito che apertamente affermavasi rivoluzionario, hanno permesso che si formassero associazioni e federazioni repubblicane, hanno tollerato che costoro avessero una finanza un esercito […] hanno tollerato che i deputati profittassero delle così dette immunità parlamentari a danno dello Stato e della patria[20].

[18] G. De Giudici, *La criminalità e le misure repressive nelle inchieste parlamentari dell'Ottocento*, in A. Mattone e S. Mura (cur.), *Le inchieste parlamentari sulla Sardegna (1869-1972)*, Milano 2021, pp. 245-250.

[19] "We are therefore in the midst of a coup d'état carried out for the benefit of the bourgeoisie against the people, that is, of one class against another, of the oppressor against the oppressed". L. Villari, *I fatti di Milano del 1898. La testimonianza di Eugenio Torelli-Viollier*, in «Studi Storici», VIII (1967), n. 3, pp. 534-549.

[20] "Our rulers have allowed the organisation of a party that openly claimed to be revo-

In particular, it is emphasised that the socialist party, which was dissolved following the anti-anarchist and socialist laws passed by the last Crispi government, subsequently reorganised itself and launched a proselytising campaign characterised by discontent and revolutionary spirit. Meanwhile, the heterogeneous political combination represented by the Di Rudinì government could not withstand the shock of the state of siege and handed back its mandate to the sovereign. The subsequent reappointment, the result of a rapid reshuffle, saw the absence of Zanardelli and the Catholic Visconti Venosta, allowing Di Rudinì to attend only the parliamentary debate on 16 June, where the exceptional measures were submitted to the Chamber of Deputies for consideration: namely, a long list of municipal councils that had been dissolved. It was up to the Minister of War, Lieutenant General Asinari di San Marzano, through the military attorney general on mission at the Court of Milan, to request the Chamber's authorisation to keep the deputies Turati, De Andreis, Bissolati, Costa and Morgari under arrest[21]. After that, as in 1894, the Chamber ratified the "urgent and temporary measures for the maintenance of public order", laconically illustrated by the Prime Minister and the new Minister of Justice Teodorico Bonacci, a follower of Zanardelli[22]. These provided for the executive power to declare a state of siege where necessary to protect public order; to reinstate the law of 19 July 1894, passed by the Crispi government against anarchist and socialist associations, prohibiting their reorganisation; to reinstate compulsory residence; to restrict freedom of the press if periodicals commit the offence of contempt against the army or other figures called upon to maintain public order. In particular, the repressive measures focused on legislation governing freedom of the press, as the government proposed to amend the edict of 26 March 1848, indicating the obligation to replace the responsibility of the manager with that of the actual editor of the periodical, a measure that did not come into force permanently (as it would with the decree of July 1923 presented by the Mussolini government); to require printing companies to pay a deposit to compensate for any offences committed in the press by periodicals; to allow the judiciary to ban the distribution of a periodical for up to six months if its editorial line is found to be in breach of the rules

lutionary, they have allowed republican associations and federations to form, they have tolerated these people having finances and an army [...] they have tolerated deputies taking advantage of so-called parliamentary immunity to the detriment of the state and the homeland.": *La politica conservatrice*, in «Corriere della Sera», 12-13 May 1898, p. 1.

[21] AP, CdD, Discussioni, 16 June 1898, p. 6269.

[22] Ivi, pp. 6261-62.

governing the maintenance of public order. With regard to the right of association, these were required to provide the public security authorities with a list of their members and their statutes. Meanwhile, according to a tried and tested pattern of unintended consequences, the opposition of the extreme left and large sections of the conservative centre, together with the Lombard right, i.e. those who had initially urged Rudinì to take a hard line, expressed their aversion to a political line that was too vacillating. Therefore, this time the result is definitive resignation, without the package of measures relating to public order being approved[23].

The next ministry is entrusted to a general, Luigi Pelloux, who refuses to use his power to declare a state of war in the square in Bari to which he had been assigned in the previous months. Historiography is divided on the judgement reserved for the Piedmontese officer's management of public order. Perhaps close to Giolitti's constitutional left, but certainly not insensitive to the pressures of Sidney Sonnino's paternalistic conservatism[24], Pelloux also ends up taking a rather contradictory line. In fact, he began by requesting authorisation to proceed against all the deputies who had been arrested because they were directly or indirectly involved with the Milanese socialist leaders who had instigated the riots (Costa, Bertesi, Bissolati). Furthermore, out of an excess of legalism, he submitted for ratification the decrees relating to the application of the state of siege: in particular, Bill No. 296, containing "urgent and temporary measures for the maintenance of public order"[25]. The government's intention was, therefore, to formalise the state of siege and compulsory residence in the provinces where it had been applied[26].

> Come disse benissimo l'onorevole Crispi – dichiara Pelloux – la questione degli stati d'assedio è molto gelosa. Essi consistono in una misura di repressione, che non si può regolare preventivamente; in una misura che si prende proprio quando si crede che non se ne possa fare a meno. […] Lo stato d'assedio non è altro che l'applicazione pura e semplice di un articolo del Codice penale militare, relativo allo stato di guerra. Una volta dichiarato lo stato di guerra, ci sono

[23] M. Sagrestani, *Italia di fine secolo. La politica-parlamentare dal 1892-1900*, Correggio 1976, pp. 374 e ss.

[24] G.A. Haywood, *Failure of a dream. Sidney Sonnino and the rise and fall of Liberal Italy 1848-1922*, Firenze 1999, pp. 181-182.

[25] D. Fozzi, *Tra prevenzione e repressione: il domicilio coatto nell'Italia liberale*, Roma 2010, pp. 182 e ss.; F. Colao, *Il delitto politico tra Ottocento e Novecento. Da delitti fittizio a nemico dello Stato,* in «Quaderni di Studi senesi», Milano 1986, pp. 2-3.

[26] AP, CdD, Discussioni, 4 July 1898, pp. 6425-26 (Pelloux).

> tante novità che ne conseguono, ed è la dichiarazione stessa dello stato d'assedio che crea tutto il resto[27].

The debate on a bill regulating the measures to be taken to ensure public order ends on 12 July. During that session, Pietro Nocito intervenes, emphasising how it now appears essential for the Italian legal system to define a law that indisputably regulates the use of a state of siege, filling a regulatory gap that Germany, France and even Russia have filled decades ahead of the Kingdom of Italy.

Mi auguro presto possa venire una legge che determini i poteri dei comandanti nello stato d'assedio civile, e fissi la giurisdizione e la procedura dei tribunali di guerra a tutela dei diritti dei cittadini e dell'ordine pubblico[28].

In reality, the Pelloux government prepared a text regulating the use of emergency measures: Law No. 297 of 17 July 1898. The proposal was countersigned by the Keeper of the Seals, Camillo Finocchiaro-Aprile, and submitted to a mild parliamentary debate held in the Chamber of Deputies on 12 July 1898[29]. However, the text left many issues unresolved due to a profound ambiguity resulting from too many compromises with its heterogeneous parliamentary majority. Once again, within the constitutional perimeter that brought together Rudiniani, Sonnini, Giolittiani and Zanardelliani, the principle of non-negotiable justice was almost unanimously affirmed on statutory guarantees such as the right of association and freedom of expression and of the press. The use of emergency legislation became the hallmark of measures relating to the maintenance of public order from the end of the 19th century until the formation of Mussolini's first government, just as the absence of the use of a state of siege became emblematic when its non-application proved instrumental in maintaining "functional disorder", as in the case of the

[27] "As Crispi so aptly put it, Pelloux declares, the question of states of siege is a very sensitive one. They consist of a measure of repression that cannot be regulated in advance, a measure that is taken precisely when it is believed that there is no alternative. [...] The state of siege is nothing more than the pure and simple application of an article of the Military Penal Code relating to the state of war. Once the state of war has been declared, there are many new developments that follow, and it is the declaration of the state of siege itself that creates everything else". Ivi, p. 6427.

[28] "I hope that a law will soon be passed that determines the powers of commanders in a state of civil siege and establishes the jurisdiction and procedure of courts martial to protect the rights of citizens and public order". AP, CdD, 12 july 1898, pp. 6452 (Nocito).

[29] C. Latini, *Governare l'emergenza. Delega legislativa e pieni poteri in Italia tra Otto e Novecento*, Milano 2005.

"radiant days of May" or the march on Rome. This confirms a clear short circuit between the guarantee of constitutional freedoms and the protection of public order, where prevention and repression often end up merging into a grey area.

The only significant aspect that marks a slight difference between the effects of the emergency legislation between 1894 and 1898 is represented by the attenuation of the state arbitrariness that had regulated the state of siege until then. The judiciary, and not the police, is now vested with control over the press. Furthermore, the limited temporal effectiveness of the exceptional measures, which were to expire after one year, suggests a slight opening in the direction of legality and reformism. Consequently, Giolitti's intervention on 12 July regarding Article 2 of the draft law on the regulation of public order took on a preparatory value, as it was aimed at reducing the penalty of confinement imposed on those who joined subversive associations. Giolitti once again pursued social coexistence through mediation and, a few years later, he would interpret this line during his speech as Minister of the Interior on 21 June 1901 in the newly formed Zanardelli government, when he spoke at length about strikes, defining them as 'the only weapon that, in some cases, workers have; and this has been universally recognised by all', effectively foreshadowing his policy of non-intervention during the general strike of October 1904[30].

Conclusions

The analysis of the recourse to the *state of siege* in Liberal Italy reveals the persistence of a structural feature of the postunification constitutional order: the chronic difficulty of reconciling the protection of statutory liberties with the daytoday management of social and political conflict. The crises of 1894 and 1898 clearly illustrate that the emergency did not function as a temporary suspension of the legal order, but rather as a flexible political instrument positioned in the liminal space where formal legality intersected with necessity, producing a grey zone of expanded executive sovereignty. Within this framework, the *law of necessity* invoked to justify the compression of constitutional guarantees was not merely a legal expedient; it operated as an ideological device through which the government reshaped the very notion of public order, translating

[30] AP, CdD, 21 June 1901, p. 5505.

social conflict into "internal war" and assigning to military jurisdiction a role that exceeded the physiological limits of the Albertine system. The doctrinal attempt to contain emergency powers within a coherent legal structure, epitomised by Racioppi, thus proved largely ineffective when confronted with the political force of governmental interpretation. The dialectic between norm and necessity, between statutory guarantees and executive discretion, exposes the deep functioning of the Liberal State: an order that, while proclaiming the centrality of law and the natural judge, preserved wide zones of extraordinary action ready to be activated during political and social crises. In this sense, the Italian case emerges as a laboratory in which the exception evolved into a stable technique of governance and a longterm matrix of political practice, extending its influence well beyond the end of the century. This same "elasticity of emergency" would later facilitate new forms of concentration of power in the postwar period and during the advent of authoritarianism[31]. Thus, the state of siege is not merely a repressive measure but a privileged vantage point for understanding the fundamental tensions of Italian liberalism, its institutional fragility, and its tendency to anchor political order in a constant oscillation between legality and authority. It is within this ambivalence that the lasting legacy of the crises of 1894 and 1898 can be located, an interpretive key that sheds light on the trajectory leading from the emergency practices of the Liberal age to the normalization of exception in the early decades of the twentieth century.

[31] For a broader European comparison and for the continuity between nineteenthcentury emergency regimes and their subsequent transformation after the First World War, including the Italian transition toward the normalization of exceptional powers, see M. Neocleous, *Critique of Security*, Edinburgh 2008; O. Gross, F. Ní Aoláin, *Law in Times of Crisis. Emergency Powers in Theory and Practice*, Cambridge University Press 2006.