

Resilience or Regression? Navigating Legal Transformation in the Era of Permacrisis

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Abstract: This paper examines how permacrisis—defined by continuous and overlapping crises—has reshaped legal and governance structures, blurring the traditional distinction between exception and normalcy. It argues that emergency powers, once confined to extraordinary circumstances, are increasingly normalised, embedding exceptional measures into ordinary legal frameworks and thereby threatening democratic principles. Drawing on insights from Complex Adaptive Systems (CAS) theory, the paper analyses how legal responses to crises evolve, adapt, and sometimes entrench themselves beyond their original scope. Considering ongoing democratic backsliding, it reconsiders the concept of legal resilience, proposing that adaptability must be tempered by strong protections for fundamental rights. Ultimately, the paper contends that responding effectively to the permacrisis requires a rethinking of resilience—not as flexibility alone, but as a commitment to democratic safeguards in times of sustained global uncertainty. The tension between resilience and regression is presented as central to the future of democratic legal systems.

Keywords: Liberal democracies; emergency powers; democratic backsliding; crisis governance; legal resilience; rule of law.

A. INTRODUCTION

*“There are centuries in which
nothing happens and years in
which whole centuries pass”.¹*

Throughout history, crises have served as turning points, reshaping societies, economies, and governance structures. From the fall of empires to global financial crashes, crises have long served as catalysts for change. Today’s era of “permacrisis” is marked by an unrelenting succession of crises. This concept, voted as the Collins Dictionary’s 2022 Word of the Year,² describes “a long period of great difficulty, confusion, or suffering that seems to have no end”.³ It refers to a prolonged state of instability where crises—ranging from financial meltdowns and geopolitical conflicts to climate disasters and pandemics—intersect and reinforce one another. Recent years have seen an exponential rise in the frequency and severity

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¹ Homero Aridjis, ‘Sefarad, 1492’ in *Ojos de otro mirar. Poesía 1960–2001* (Fondo de Cultura Económica 2002) 612–17, 613. (“*Hay siglos en los que no pasa nada y años en los que pasan siglos*”).

² David Shariatmadari, ‘A Year of Permacrisis’ (*Collins Dictionary Blog*, 1 November 2022) <<https://blog.collinsdictionary.com/language-lovers/a-year-of-permacrisis/>> accessed 8 January 2025.

³ ‘Permacrisis’, *Cambridge Dictionary Online* <<https://dictionary.cambridge.org/dictionary/english/permacrisis>> accessed 8 January 2025.

of crises that require urgent intervention.⁴ Amid this turbulence, legal systems face a fundamental question: Does this accumulation of crises mark the decline of democratic governance, or does it open pathways for institutional renewal?

The reality of contemporary governance suggests that the traditional cycle of crisis and recovery is no longer viable. With little respite between successive shocks, legal frameworks face mounting pressure to evolve. As Marie Goupy observed, “it could be [...] that the feeling of living in a situation of crisis constitutes one of the great feelings of the twentieth century”.⁵ This sentiment has only intensified in the 21st century, as escalating existential threats—including climate change and the risk of nuclear conflict—undermine the very foundations of legal stability. The key challenge is no longer just managing crises but determining whether legal systems can withstand continuous shocks while upholding democratic values, or if this transformation has already begun, subtly reshaping democratic governance in ways that remain underexamined.

As Glancy suggested, “we are living, it seems, in an age of permanent crisis; stumbling blindly from one calamity to the next”.⁶ If legal systems fail to adapt, democratic backsliding and the entrenchment of emergency governance could erode fundamental rights. Conversely, permacrisis may act as a catalyst for structural legal reform, prompting institutions to strengthen their resilience against systemic instability. This debate is not confined to legal scholars but extends to policymakers and civil society, as the implications of permacrisis reach beyond governance into the core fabric of democratic societies.

This paper aims to offer a diagnostic account of how the permacrisis has produced a “new normal” in liberal democracies: a sustained state of exception in which emergency powers have shifted from rare, extraordinary tools to embedded and institutionalised features of legal orders. Its central question is whether this shift represents democratic renewal – by fostering resilience – or instead reflects a deeper process of democratic backsliding or the rise of illiberal or authoritarian governance. At this stage, the immediate task is to map this

⁴ For instance, see Angus Urquhart and others, *Global Humanitarian Assistance Report 2023* (Development Initiatives, 20 June 2023) <<https://devinit.org/resources/global-humanitarian-assistance-report-2023/>> accessed 9 February 2025 (showing that in 2013, approximately 80 million people globally needed humanitarian aid, a number that doubled to nearly 200 million by 2018 and surged to over 406 million by 2022).

⁵ Charles Baud, ‘Marie Goupy, L’état d’exception ou l’impuissance Autoritaire de l’État à l’époque du Libéralisme’ (*Lectures*, 5 December 2016) <<https://journals.openedition.org/lectures/21864#quotation>> accessed 6 January 2025.

⁶ Josh Glancy, ‘Will the Permacrisis Ever End?’ (*The Times*, 26 February 2022) <www.thetimes.com/world/russia-ukraine-war/article/permacrisis-ever-end-covid-pandemic-brexite-ukraine-crisis-latest-fpznr05qk> accessed 12 January 2025.

paradigm shift. Once its contours are better understood, policymakers can then reflect on how to re-engineer emergency provisions best to safeguard democracy in the age of permacrisis.

The rest of this paper is structured as follows. Part B examines how the increasing interconnectedness of crises in a globalised world intensifies systemic risks, exposing the limitations of traditional legal responses. Next, Part C explores how the boundaries between temporary disruptions and prolonged emergencies have become increasingly blurred, leading to the normalisation of exceptional powers within legal systems. Follow this, Part D introduces key concepts from Complex Adaptive Systems (CAS) theory – such as nonlinearity, feedback loops, bifurcation and hysteresis – to explain how legal and institutional responses to crises become entrenched over time. Finally Part E, it rethinks the concept of legal resilience in an era of ongoing uncertainty, considering how a democratic legal framework can adapt to persistent shocks while preserving democratic values.

B. THE AGE OF PERMACRISIS: INTERCONNECTED CRISES AND CHALLENGES OF GLOBAL GOVERNANCE

The modern world is increasingly defined by the interplay of crises that no longer occur in isolation but instead reinforce and accelerate one another. While crises have always punctuated history, today's landscape is marked by the tangled interplay of financial instability,⁷ climate disasters,⁸ public health emergencies and geopolitical conflicts.

⁷ On financial instability and inequality, see Miguel A Centeno and others, 'The Emergence of Global Systemic Risk' (2015) 41 Annual Review of Sociology 65, 65–85 <www.annualreviews.org/content/journals/10.1146/annurev-soc-073014-112317> accessed 12 January 2025; Dirk Helbing, 'Globally Networked Risks and How to Respond' (2013) 497 Nature 51 <www.nature.com/articles/nature12047> accessed 5 February 2025; Dani Rodrik, *The Globalisation Paradox: Democracy and the Future of the World Economy* (WW Norton & Co 2011). These sources showcase how economic shocks, often amplified by neoliberal policies, expose gaps in international regulatory mechanisms. See also Michael Lawrence and others 'Global Polycrisis: The Causal Mechanisms of Crisis Entanglement' (2024) 7 Global Sustainability e6, 9 <www.cambridge.org/core/journals/global-sustainability/article/global-polycrisis-the-causal-mechanisms-of-crisis-entanglement/06F0F8F3B993A221971151E3CB054B5E> accessed 11 February 2025; Nancy Birdsall and Francis Fukuyama, 'The Post-Washington Consensus: Development After the Crisis' (2011) 90(2) Foreign Affairs 45; Dani Rodrik, 'Globalisation's Wrong Turn: And How It Hurt America' (2019) 98(4) Foreign Affairs 26-33 <www.jstor.org/stable/26798223> accessed 15 January 2025.

⁸ On the issue of climate change, see James Hansen and others, 'Global Warming in the Pipeline' (2023) 3(1) Oxford Open Climate Change <<https://academic.oup.com/oocc/article/3/1/kgad008/7335889>> accessed 10 February 2025 (highlighting how greenhouse gas emissions drive extreme weather events). See also Adrien Detges and others, '10 Insights on Climate Impacts and Peace: A Summary of What We Know' (*Adelphi Research and Potsdam Institute for Climate Impact Research*, June 2020) <https://weatheringrisk.org/sites/default/files/document/10%20Insights%20on%20Climate%20Impacts%20and%20Peace%20Report_0.pdf> accessed 9 February 2025; Tobias Ide and others, 'Multi-Method Evidence for When and How Climate-Related Disasters Contribute to Armed Conflict Risk' (2020) 62 Global Environmental Change <www.sciencedirect.com/science/article/pii/S0959378019307307?via=ihub> accessed 9 February 2025; Carl-Friedrich Schleussner and others, 'Armed-Conflict Risks Enhanced by Climate-Related Disasters in Ethnically Fractionalized Countries' (2016) 113(33) Proceedings of the National Academy of Sciences 9216,

Globalisation⁹ – accelerated by technological advancements,¹⁰ urbanisation, and population growth – has created an interconnected system where disruptions in one region can cascade rapidly across economies, societies, and governance structures,¹¹ transforming what were once temporary emergencies into sustained volatility.¹² Whereas traditionally crises were seen as finite disruptions followed by recovery, contemporary crises unfold in self-perpetuating cycles. For instance, the 2008 financial crisis not only destabilised economies but also fuelled public distrust in institutions, laying the groundwork for populist political movements and protectionist policies that continue to shape global governance.¹³ Meanwhile, the climate crisis is accelerating humanitarian emergencies, altering migration patterns, and intensifying security threats, further entrenching systemic instability. Similarly, the Covid-19 pandemic began as a public-health crisis but quickly disrupted supply chains, deepened political polarisation, triggered economic downturns, and exacerbated social inequalities worldwide.¹⁴ Likewise,

9221 <www.pnas.org/doi/full/10.1073/pnas.1601611113> accessed 9 February 2025 on how the climate crisis worsens conflicts and displacement with significant implications for international human rights and refugee law.

⁹ The exact definition and different periods of globalisation have been widely analysed and debated. For an overview, see David Held, Anthony McGrew, David Goldblatt and Jonathon Perraton, *Global Transformations: Politics, Economics and Culture* (Stanford University Press 1999) 540; see also George Ritzer, *The Blackwell Companion to Globalisation* (Wiley eBooks 2007) <<https://onlinelibrary.wiley.com/doi/book/10.1002/9780470691939>> accessed 10 February 2025.

¹⁰ For more on this issue, see David Harvey, *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change* (Basil Blackwell 1989).

¹¹ Carl Folke and others, ‘Our Future in the Anthropocene Biosphere’ (2021) 50 *Ambio* 834, 869 <<https://link.springer.com/article/10.1007/s13280-021-01544-8#citeas>> accessed 5 January 2025. See also Jeffrey Sachs and others, *Sustainable Development Report 2021: The Decade of Action for the Sustainable Development Goals* (CUP, June 2021).

¹² Centeno (n 7); Helbing (n 7); Rodrik, *The Globalisation Paradox* (n 7); Lawrence (n 7); Jocelyn Boussard and others, ‘Global Shocks Unfolding: Lessons from Fragile and Conflict-affected States’ (2024) IMF Working Papers 2024/214, A001, <www.elibrary.imf.org/view/journals/001/2024/214/001.2024.issue-214-en.xml> accessed 31 January 2025. These works showcase that the interlinked architecture of global systems is central to the current polycrisis because it worsens the risks ranging from pandemics, economic inequality, turmoil and ideological extremism.

¹³ Didier Wernli and others, ‘Understanding and Governing Global Systemic Crises in the 21st Century: A Complexity Perspective’ (2023) 14 *Global Policy* 207, 228 <<https://onlinelibrary.wiley.com/doi/10.1111/1758-5899.13192>> accessed 13 December 2024; Ian Goldin and Tiffany Vogel, ‘Global Governance and Systemic Risk in the 21st Century: Lessons from the Financial Crisis’ (2010) 1 *Global Policy* 4 <<https://onlinelibrary.wiley.com/doi/10.1111/j.1758-5899.2009.00011.x>> accessed 12 February 2025. See also Folke (n 11); Ettore Greco, Federica Marconi and Irene Paviotti, ‘Crisis and Geopolitical Reordering: Covid-19 from a Comparative Perspective’ (Zenodo, 13 June 2023) <<https://zenodo.org/records/8032860>> accessed 16 December 2024.

¹⁴ See Stéphanie Hennette-Vauchez, ‘The State of Emergency in France: Days Without End?’ (2018) 14(4) *European Constitutional Law Review* 704-6 <www.cambridge.org/core/journals/european-constitutional-law-review/article/state-of-emergency-in-france-days-without-end/4187319346967B43779DE75B1E59AF87> accessed 12 December 2024; See also on the concerns of racial and religious profiling in the French anti-terrorism context with consequent effects on the enjoyment of rights for particular minorities: UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, ‘Preliminary Findings of the Visit: UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Concludes Visit to France’ (OHCHR, 15 May 2018) <www.ohchr.org/en/press-releases/2018/05/preliminary-findings-visit-un-special-rapporteur-promotion-and-protection?LangID=E&NewsID=23128> accessed 12 December 2024. See also Theo Van Leeuwen and Ruth

Russia's 2022 invasion of Ukraine generated ripple effects beyond military conflict, fuelling an energy crisis, worsening global food shortages and shifting the geopolitical order. These developments illustrate how a crisis originating in one sector or region can rapidly escalate, rendering the world more sensitive to systemic shocks.¹⁵ The latter can be defined as shocks associated with large-scale failures or changes of a system that can alter or impair the functioning of core institutions, infrastructures, or legal systems.¹⁶ Such shocks are distinguished not only by their scope and intensity, but also by their capacity to trigger cascading effects across interconnected sectors, undermining governance stability.

Despite this evolving reality, legal and political systems have largely struggled to adapt. Many governance frameworks remain anchored in reactive crisis management, addressing each disruption as a separate event rather than recognising the broader structural vulnerabilities that allow crises to proliferate. As a result, decision-making processes often prioritise short-term containment over long-term resilience, leading to repeated cycles of emergency measures, institutional strain, and diminished public trust. Experts have a solid understanding of individual systemic risks – such as financial crashes or pandemics – but the interactions between these risks remain partially understood.¹⁷ For instance, while epidemiologists long warned of the likelihood of a global pandemic, few anticipated how governmental responses to Covid-19 would interact with misinformation, political polarisation, and economic dislocation to create a wider social and governance crisis.

Wodak, 'Legitimizing Immigration Control: A Discourse-Historical Analysis' (1999) 1 *Discourse Studies* 83, 118. Global crises often exacerbate inequality and instability, leading to democratic backsliding. Prolonged emergency measures erode institutional checks, concentrate power, and suppress dissent. Moreover, crisis-driven policies disproportionately impact marginalised communities, deepening social inequalities and reinforcing cycles of exclusion, as seen in austerity measures and anti-terrorism laws; Stephen McBride, 'Can the Permacrisis Be Resolved?' (*Transforming Society Blog*, 25 January 2023) <www.transformingsociety.co.uk/2023/01/25/can-the-permacrisis-be-resolved/> accessed 12 December 2024.

¹⁵ Goldin, 'Global Governance and Systemic Risk in the 21st Century' (n 13); Ian Goldin and Mike Mariathasan, *The Butterfly Defect: How Globalisation Creates Systemic Risks, and What to Do About It* (Princeton University Press 2014) <www.jstor.org/stable/j.ctt5hhqgq> accessed 10 February 2025; David Held and Anthony McGrew, *Globalisation/Anti-Globalisation: Beyond the Great Divide* (Polity Press 2007).

¹⁶ Helbing (n 7). See also Peter Hoffman, 'Complex Global Shocks, Emergency Platforms, and United Nations Reform' (2024) *International & Regional Organizations* 4 <www.jstor.org/stable/resrep63228> accessed 5 February 2025: 'Three recent episodes were formative in defining "complex global shock": The Global Financial Crisis (2008–2009), COVID-19 pandemic (2020–2022), Food security from war against Ukraine (2022–). Aside from the enormous number of people harmed and at risk, all three of these crises possess two distinctive attributes: First, the extensive scope of their impacts is rooted in interdependence. Global connections enable a crisis in one country or region to metastasize, spreading first- and second-order harms far beyond the source. Second, the most vulnerable populations are hit hardest; those who have the fewest capacities to cope with a crisis bear the highest costs. This is particularly evident in setbacks of least developed countries to meeting the SDGs seen in the wake of the COVID-19 pandemic and the war in Ukraine'.

¹⁷ See Jana Sillmann and others, 'ISC-UNDRR-RISK KAN Briefing Note on Systemic Risk' (International Science Council 2022) 8 <https://council.science/wp-content/uploads/2020/06/Systemic-risk-briefing-note_WEB.pdf> accessed 5 January 2025. See also Toby Ord, *The Precipice: Existential Risk and the Future of Humanity* (Hachette Books 2020).

In sum, as the 21st century progresses, the permacrisis compels a fundamental reconsideration of governance at all levels—national, regional, and global. Without a shift to more integrated and anticipatory governance models, legal and political institutions risk remaining trapped in a reactive loop, unable to build long-term stability. The challenge is not merely to respond to crises but to transform governance structures to navigate an era where disruption is the norm rather than the exception. This prompts a vital question: can global governance evolve to foster systemic resilience, or will democratic institutions buckle under relentless crises? As emergency responses become routine and crisis governance becomes a structural feature rather than an exception, policy fragmentation and institutional fatigue deepen. Legal frameworks, traditionally designed for predictability, must now contend with permanent uncertainty, continuously recalibrating to manage overlapping shocks.

C. CRISIS AS THE NEW STATUS QUO? WHEN THE EXCEPTION BECOMES THE RULE: THE NORMALISATION OF EMERGENCY POWERS

In this paper, we examine emergency powers as the principal legal mechanism for responding to sustained, complex crises. This part explores the normalisation of emergency powers as a permanent governance feature. Traditionally, crises were understood as temporary and exceptional ruptures, demanding urgent intervention before a return to pre-crisis stability (*status quo ante*). The etymology of the word crisis – from the Greek *krisis* – evokes a decisive turning point that ultimately leads to resolution.¹⁸ Historically, legal systems reflected this understanding: the Roman Republic’s dictatorship model granted extraordinary powers for limited periods to address emergencies¹⁹, and post-World War II rule-of-law paradigms insisted that emergency powers remain temporary, proportionate, and necessary to preserve democratic values.²⁰

¹⁸ Guillaume Mazeau and Jeanne Moisand, Interview with Yves Citton and Myriam Revault d’Allonnes, ‘Revolution and the Crisis of Temporality’ (La Vie des Idées, 2022) <<https://lavedesidees.fr/Revolution-and-the-Crisis-of>> accessed 9 January 2025.

¹⁹ The Roman republican regime lasted from 509 to 31 BC. It was preceded by a period of monarchy, whereas the final political crisis of the Republic (in the 1st century BC) gave way to an imperial regime created by Augustus. The latter learned from these past experiences, especially the Syllian and Caesarian dictatorships that left an indelible mark on the function of a dictatorship. For more on this issue, see David Gwynn, *The Roman Republic: A Very Short Introduction* (Oxford University Press 2012) <<https://global.oup.com/academic/product/the-roman-republic-9780199595112?cc=gb&lang=en&>> accessed 5 January 2025.

²⁰ Anne Chemin, ‘L’état d’urgence permanent subvertit en profondeur l’État de droit’ *Le Monde* (Paris, 21 January 2022) <www.lemonde.fr/idees/article/2022/01/21/stephanie-hennette-vauchez-l-etat-d-urgence-permanent-subvertit-en-profondeur-l-etat-de-droit_6110344_3232.html> accessed 15 January 2025.

However, in the current era of permacrisis, this view has eroded. States routinely justify exceptional powers by invoking the ongoing nature of global threats – like terrorism, pandemics or climate change – under the rationale that “exceptional threats call for exceptional measures”.²¹ Crises are no longer isolated and short-lived events; instead, they persist, evolve and interact, becoming complex challenges “that can only be managed, not resolved”,²² rendering a return to normalcy increasingly elusive. Hennette-Vauchez’s “dimmer-switch”²³ analogy captures this shift: emergency governance no longer toggles between binary states – “on” or “off” – but rather fluctuates in intensity, embedding itself within legal orders.²⁴ Similarly, Edgar Morin’s notion of “polycrisis”²⁵ underscores how interconnected crises amplify one another.²⁶

As emergency powers migrate from the margins into the core of legal frameworks, emergency governance gradually becomes the new *status quo*,²⁷ blurring the distinction between normalcy and exception. To illustrate this shift, this part focuses on three emblematic cases – Ireland, Egypt and Israel – that, despite differing historical and political contexts, offer useful comparative insight into the long-term entrenchment of emergency powers. These cases

²¹ Danielle Lochak, ‘Synthèse’ (2008) 6 Cahiers de la recherche sur les droits fondamentaux 127 <<http://journals.openedition.org/crdf/6872>> accessed 21 January 2025. See also Ben Bernanke, ‘Federal Reserve Policies to Ease Credit and Their Implications for the Fed’s Balance Sheet’ (Speech, National Press Club, Washington DC, 18 February 2009) <www.federalreserve.gov/newsevents/speech/bernanke20090218a.htm> accessed 21 January 2025 (where Ben Bernanke, American Economist and Former Chair of the Federal Reserve, stated: “Extraordinary times call for extraordinary measures”).

²² Neil Turnbull, ‘Permacrisis: What It Means and Why It’s Word of the Year for 2022’ (*The Conversation*, 11 November 2022) <<https://theconversation.com/permacrisis-what-it-means-and-why-its-word-of-the-year-for-2022-194306>> accessed 18 January 2025.

²³ Stéphanie Hennette-Vauchez, *La Démocratie en état d’urgence* (Seuil 2017) 41-2.

²⁴ On this issue, see Guillaume Paugam, ‘L’état d’exception: Sur un paradoxe d’Agamben’ (2004) 19(3) *Labyrinthe* 43, 53 <<https://journals.openedition.org/labyrinthe/237>> accessed 3 January 2025; Hennette-Vauchez, *La Démocratie* (n 23).

²⁵ For instance, the public health issues arising from the Covid-19 pandemic intersected with economic instability, political polarisation, environmental disasters, and geopolitical tensions. This created a web of systemic challenges, defying linear solutions and requiring adaptive strategies to balance competing priorities. On this issue, see Adam Tooze, ‘Welcome to the World of the Polycrisis’ (*Financial Times*, 28 October 2022) <www.ft.com/content/498398e7-11b1-494b-9cd3-6d669dc3de33> accessed 3 January 2025; Simon Tormey, ‘The Contemporary Crisis of Representative Democracy’ (2014) 1(2) *Democratic Theory* 104 <<https://www.berghahnjournals.com/view/journals/democratic-theory/1/2/dt010211.pdf>> accessed 9 October 2025; Brian Walker and others, ‘Navigating the Chaos of an Unfolding Global Cycle’ (2020) 25(4) *Ecology and Society* 23 <<https://www.ecologyandsociety.org/vol25/iss4/art23/>> accessed 12 January 2025; Brian Walker and David Salt, *Resilience Thinking: Sustaining Ecosystems and People in a Changing World* (Island Press 2006).

²⁶ Edgar Morin, ‘Pour une crisologie’ (1976) 25 *Communications* 149 <www.persee.fr/doc/comm_0588-8018_1976_num_25_1_1388> accessed 8 January 2025; Edgar Morin, *The Challenge of Complexity: Essays by Edgar Morin* (Amy Heath-Carpentier ed, Liverpool University Press 2023) <www.jstor.org/stable/j.ctv3029jw9> accessed 12 January 2025; Keith Moser, ‘The Challenge of Complexity: Essays by Edgar Morin’, Morin E. (A. Heath-Carpentier ed.) *The Challenge of Complexity: Essays by Edgar Morin* (2024) 80 (3) *World Futures* 269 <www.tandfonline.com/doi/full/10.1080/02604027.2024.2340775> accessed 8 January 2025.

²⁷ On this issue, see Hennette-Vauchez, *La Démocratie* (n 23) 14; Giorgio Agamben, *State of Exception* (University of Chicago Press 2005).

were selected for their temporal scope, regime diversity, and their ability to reflect broader structural dynamics in the normalisation of emergency governance across different legal systems. Ireland's prolonged state of emergency from 1939 to 1995, which originally responded to the exigencies of World War II, was retained through constitutional mechanisms that made its removal politically and legally complicated.²⁸ While some restrictions eventually faded, the general legal and political environment for maintaining these emergency powers persisted for decades. In contrast, Egypt's 1958 Emergency Law (Law No 162/1958) conferred sweeping powers on the executive and remained in force even through the 2011 uprising, only formally lifted on 31 May 2012.²⁹ It became a tool for systematic repression, including warrantless detention, special security courts, censorship and mass surveillance.³⁰ Israel's continuous state of emergency since its creation in 1948³¹ presents yet another variation: emergency governance has been continually extended through routine Knesset renewals under

²⁸ Ireland's prolonged state of emergency was constitutionally entrenched through Article 28.3.3 of the Irish Constitution and sustained by parliamentary renewals, while judiciary deference, notably in *State (Walsh) v Lennon*, further entrenched the emergency regime. This illustrates how constitutional emergency clauses effectively entrenched exceptional governance for decades. For more on this issue, see Fergal F Davis and Christopher Thornhill, 'Article 28.3.3: Terrorism, Democracy, Supra-Legality and the "State of Emergency" in the Irish Constitution' in Eoin Carolan (ed), *The Constitution of Ireland: Perspectives and Prospects* (Bloomsbury Professional 2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2092294> accessed 23 April 2025; Department of Justice, *Report of the Committee to Review the Offences against the State Acts 1939–1998 and Related Matters* (the Hederman Report, 7 October 2002) <www.gov.ie/en/departments-of-justice/publications/report-of-the-committee-to-review-the-offences-against-the-state-acts-1939-1998-the-hederman-report/> accessed 23 April 2025; European Commission for Democracy through Law (Venice Commission), *Emergency Powers, Science and Technique of Democracy No 12* (Council of Europe, Strasbourg 1995) CDL-STD(1995)012, 10 <[www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1995\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1995)012-e)> accessed 23 April 2025; 'Emergencies' (*Irish Legal Blog Post*) <<https://legalblog.ie/emergencies/>> accessed 23 April 2025.

²⁹ This Emergency Law was continually amended and renewed from President Sadat's declaration in 1981 through President Mubarak's last renewal by Decree No 126/2010. Under this regime, emergency courts tried civilians without appeal, and the President could censor any kind of message and all forms of expression. Human-rights organisations documented that, over those three decades, arbitrary detention, torture and trials in unfair courts became systematic. Additionally, Egypt's Supreme Constitutional Court declined to strike down core emergency provisions (such as warrantless detention powers) until 2013, decades after they were enacted, illustrating the profound weakness of both legislative and judicial oversight during prolonged emergency. For more on this issue, see Yussef Auf, 'The State of Emergency in Egypt: An Exception or Rule?' (*Atlantic Council*, 2 February 2018) <www.atlanticcouncil.org/blogs/menasource/the-state-of-emergency-in-egypt-an-exception-or-rule/> accessed 20 April 2025; Sadiq Reza, 'Endless Emergency: The Case of Egypt' (2007) 10(4) *New Criminal Law Review* 532 <<https://online.ucpress.edu/nclr/article/10/4/532/68595/Endless-Emergency-The-Case-of-Egypt>> accessed 20 April 2025; International Commission of Jurists, *Submission to the Universal Periodic Review of Egypt, United Nations Human Rights Council, 7th Session of the Working Group* (August 2009) <www.icj.org/wp-content/uploads/2009/09/Egypt-ICJ-submission-UPR-non-judicial-submission-2009.pdf> accessed 20 April 2025.

³⁰ Human Rights Watch, 'Tahrir Square Voices Will Never Be Silenced' (*Human Rights Watch*, 11 February 2011) <www.hrw.org/news/2011/02/11/tahrir-square-voices-will-never-be-silenced> accessed 20 April 2025.

³¹ Adam Mizock, 'The Legality of the Fifty-Two Year State of Emergency in Israel' (2001) 7(2) *U.C. Davis Journal of International Law & Policy* 223 <https://heinonline.org/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/ucdl7&men_hide=false&men_tab=toc&kind=&page=223> accessed 10 January 2025.

Section 38 of the Basic Law³², which requires annual parliamentary approval to sustain the state of emergency.³³ Judicially, the Supreme Court repeatedly upheld the validity of emergency regulations, thereby normalising their application.³⁴ Over time, the interaction between legislative renewal and judicial validation transformed temporary crisis measures into enduring features of Israel's ordinary constitutional legal order.³⁵

Although these cases differ in historical, legal, and political context, they reveal a striking convergence around four structural patterns of normalised emergency governance. First, the absence of effective sunset clauses or automatic termination mechanisms enabled emergency powers to be renewed indefinitely, facilitating their gradual incorporation into ordinary law. Without clear endpoints, these temporary powers were re-legislated, interpreted, and layered into legal systems through repeated use, leading to their formal embedding and normalisation. The result is a hyper-legalised emergency regime,³⁶ where extraordinary powers are continuously redefined, expanded, and prolonged. Second, the systems of parliamentary and judicial oversight that should have provided checks and balances often proved weak, delayed, or merely reactive. Rather than serving as proactive restraints on executive authority, legislatures and courts largely adapted to the emergency *status quo*, further legitimising expansive government action instead of contesting it. Third, the scope of emergency powers expanded incrementally far beyond their original justifications. Initially focused on immediate threats to national security or public order, these powers expanded to include surveillance, media regulation, public health management, and ordinary criminal justice, reshaping governance structures in fundamental ways. Finally, in all cases, governments justified the ongoing use of emergency frameworks by invoking the indeterminate and evolving nature of modern threats. This rhetoric of perpetual insecurity – whether framed around terrorism, war, internal unrest, or other systemic risks – allowed emergency powers to persist even as the initial causes for their enactment diminished or changed.

³² Basic Law: The Government [2001] S.H. 165 (Isr) s 38.

³³ John Reynolds, 'Intent to Regularise: The Israeli Supreme Court and the Normalisation of Emergency' (2013) 104 *Adalah Review* 2 <<https://ssrn.com/abstract=2272771>> accessed 15 January 2025.

³⁴ See for example *Poraz v Government of Israel* [1992] Isr HCJ (affirming the executive's broad discretion to maintain emergency regulations with parliamentary approval) and *Streit v Chief of Staff* [1964] Isr HCJ (confirming administrative detention as lawful under emergency law).

³⁵ On this issue, see Federica D'Alessandra, 'Israel's Associated Regime: Exceptionalism, Human Rights and Alternative Legality' (2014) 30(7) *Utrecht Journal of International and European Law* 30 <<https://ssrn.com/abstract=2511202>> accessed 12 January 2025; Suzie Navot, 'Emergency As a State of Mind – The Case of Israel' in Pierre Auriel, Olivier Beaud and Carl Wellman (eds), *The Rule of Crisis: Terrorism, Emergency Legislation and the Rule of Law* (Springer 2018) <<https://ssrn.com/abstract=3247520>> accessed 13 January 2025; Reynolds (n 33).

³⁶ On this topic, see Mathieu Carpentier, *Norme et Exception: Essai sur la défaisabilité en droit* (Institut universitaire Varenne 2014) 8.

This trend is not confined to these three jurisdictions. In France, the 2020 law establishing a “transitional exit regime”³⁷ for Covid-19 repackaged health emergency powers into ordinary legislation, institutionalising measures – such as lockdowns, travel restrictions, and digital surveillance – long after the immediate public health threat had subsided.³⁸ Similarly, the French anti-terrorist state of emergency following the 2015 Paris attacks³⁹ incorporated permanent changes to the Penal Code and Code of Internal Security. These included the legalisation of continuous video surveillance for individuals in custody for terrorist offenses, restrictions on sentence reductions, and the criminalisation of travel to terrorist-controlled areas. Likewise, in the United States, the Patriot Act of the 26th of October 2001⁴⁰ (Patriot Act), enacted after 9/11, institutionalised mass surveillance and security protocols that remain in place over two decades later, despite significant changes in the threat landscape.⁴¹

The differences in the cases mentioned may suggest that not all democracies are equally vulnerable to the risks of permanent exceptionalism. Nevertheless, the overall trend across these systems highlights a profound shift: from viewing emergencies as discrete ruptures to perceiving them as enduring, ambient conditions that alter governance frameworks. Rather than simply ending emergency measures, these legal adaptations created a hybrid state – neither full emergency nor full normalcy – where exceptional governance mechanisms persist

³⁷ Law No 2020-856 of 9 July 2020 (organising the end of the state of health emergency), Official Journal of the French Republic (*JORF*) No 0169 of 10 July 2020. During the Covid-19 crisis, the health state of emergency law of March 23, 2020, initially enacted as a temporary response, was repeatedly extended. The law of May 11, 2020, prolonged the emergency until July 10 and amended key provisions of the Public Health Code. This expansion enabled the government to impose restrictive health measures beyond the immediate crisis period. The July 9, 2020, law, paradoxically titled “organizing the end of the state of emergency”, preserved many emergency powers, effectively prolonging the exceptional governance regime. Additionally, new surveillance tools such as the SI-DEP and Contact Covid databases were introduced to track infections and contacts, with data collection persisting beyond the state of emergency.

³⁸ For instance, during the Covid-19 pandemic, France introduced a health pass on July 21, 2021, before legislative approval, while Germany considered restrictions on unvaccinated citizens. On this issue, see Arié Alimi, *Le Coup d'état d'urgence: Surveillance, repression et libertés* (Seuil 2021). See also Hennette-Vauchez, *La Démocratie* (n 23) 34-41.

³⁹ Law No 2016-987 of 21 July 2016.

⁴⁰ On this issue, see Sharon Rackow, ‘How the USA Patriot Act Will Permit Governmental Infringement upon the Privacy of Americans in the Name of “Intelligence” Investigations’ (2002) 150(5) *University of Pennsylvania Law Review* 1651 <www.jstor.org/stable/i273549> accessed 7 January 2025; Jennifer C Evans, ‘Hijacking Civil Liberties: The USA Patriot Act of 2001’ (2002) 33(4) *Chicago Law Journal* 933 <<https://lawecommons.luc.edu/lucj/vol33/iss4/13/>> accessed 8 January 2025; Susan N Herman, ‘The USA Patriot Act and the Submajoritarian Fourth Amendment’ (2006) 41 *Harvard Civil Rights-Civil Liberties Law Review* 67 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=715221> accessed 7 January 2025.

⁴¹ David Cole and Jules Lobel, *Less Safe, Less Free: Why America Is Losing the War on Terror* (New Press 2009).

indefinitely.⁴² Once crises are framed as open-ended or existential, emergency powers tend to become the “true ‘state’ of the law”.⁴³

D. CRISIS DYNAMICS AND LEGAL TRANSFORMATIONS: A CAS APPROACH

The legal and institutional responses mobilised to address crises often operate within a narrow framework that fails to account for the complexity and evolving nature of contemporary emergencies. This rigidity can lead to long-term disruptions in democratic governance, as temporary crisis measures gradually become embedded within legal systems. To better understand these transformations, a comparative legal approach informed by CAS theory provides valuable insights. CAS theory studies how interacting, diverse components give rise to unpredictable, system-wide behaviours via non-linear dynamics, feedback loops, and adaptive learning, making it a useful framework for analysing how legal systems evolve and embed emergency measures under sustained stress. This allows for a more nuanced analysis of how they respond to prolonged crises, adapt over time,⁴⁴ and sometimes fail to revert to prior democratic standards. Key concepts such as nonlinearity, trigger mechanisms, emergent properties, feedback loops, bifurcation, and hysteresis help illustrate the profound ways in which crises reshape governance.

One of the defining characteristics of CAS theory is *nonlinearity*, meaning that small legal and institutional shifts can lead to disproportionately large and unintended

⁴² For more on this topic, see Daniel Weinstock, ‘A Harm Reduction Approach to the Ethical Management of the COVID-19 Pandemic’ (2020) 13(2) Public Health Ethics 166 <<https://academic.oup.com/phe/article/13/2/166/5899250>> accessed 12 January 2025 (where the author argues that while confinement and quarantine measures during the early phase of the COVID-19 pandemic were justified by the exigencies of the situation, they came at significant costs. Identifying these costs helps to weigh principles for managing future risks, echoing harm reduction practices and guiding post-confinement policy).

⁴³ Giorgio Agamben, *État d’exception. Homo sacer II* (Éditions du Seuil 2003) 47; Richard Jackson, ‘The Epistemological Crisis of Counterterrorism’ (2015) 8(1) Critical Studies on Terrorism 33 <www.tandfonline.com/doi/abs/10.1080/17539153.2015.1009762> accessed 10 January 2025; Marine Guéguin, ‘The Normalisation of Exceptional Counterterrorism Powers: The Case of France’ (DPhil thesis, University of Leeds 2022) 40–1 <https://etheses.whiterose.ac.uk/32113/1/Gu%C3%A9guin_MG_POLIS_PhD_2023.pdf> accessed 10 January 2025.

⁴⁴ For more information on CAS, see John H Holland, ‘Complex Adaptive Systems’ (1992) 121(1) *Daedalus* 17 <www.jstor.org/stable/20025416> accessed 10 January 2025; J Stephen Lansing, ‘Complex Adaptive Systems’ (2003) 32 *Annual Review of Anthropology* 183 <www.jstor.org/stable/25064826> accessed 10 January 2025. See also Didier Wernli and others, ‘A Complexity Lens on the COVID-19 Pandemic’ (2022) 11(11) *International Journal of Health Policy and Management* 2769 <https://www.ijhpm.com/article_4360.html> accessed 11 January 2025; Tom Pegram and Julia Kreienkamp, ‘Governing Complexity: Design Principles for Improving the Governance of Global Catastrophic Risks’ (*UCL Global Governance Institute Policy Brief Series*, November 2019) <www.ucl.ac.uk/global-governance/sites/global-governance/files/governing_complex_global_catastrophic_risks_ggi_policy_brief_nov2019.pdf> accessed 15 January 2025 (discussing the limitations of traditional governance structures in addressing the complex nature of global catastrophic risks. It advocates for governance models that recognise systemic interconnections and complexity and proposes using complexity theory to improve governance frameworks).

consequences.⁴⁵ This is particularly evident in crisis governance, where temporary emergency measures—such as heightened surveillance or restrictions on free movement—often escalate into broader transformations of legal norms. The Covid-19 pandemic exemplifies this dynamic: lockdowns, contact tracing, and emergency powers initially framed as temporary public health measures blurred the distinction between exception and rule, entrenching crisis governance as an enduring feature of legal systems.⁴⁶

The concept of *trigger mechanisms* further highlights how crises accelerate systemic change. These mechanisms emerge from acute stressors—such as terrorist attacks, pandemics, or financial collapses—that demand immediate responses, often leading to an incremental expansion of executive authority. This can erode institutional checks and balances, shifting the governance framework in ways that persist long after the initial emergency has passed. The Patriot Act and emergency laws enacted during the Covid-19 pandemic discussed above exemplify this phenomenon. While both were justified as urgent crisis responses, they set legal precedents that facilitated the long-term entrenchment of extraordinary powers, reshaping the balance between security and civil liberties.

In addition, CAS theory introduces the idea of *emergent properties*, describing how legal and institutional transformations arise from the interaction of multiple factors rather than from singular policy choices.⁴⁷ For example, the 2008 financial crisis and the Covid-19 pandemic⁴⁸ fuelled widespread distrust in financial institutions and governments, accelerating the rise of anti-system and populist movements. These reactions were not merely the result of

⁴⁵ In a nonlinear system, the outcome isn't directly proportional to the input, making the system's behaviour unpredictable. On the notions of complexity and nonlinearity, see Marie I Kaiser, 'Complexity', *Encyclopedia of Systems Biology* (Springer 2013), 456-60 <https://link.springer.com/referenceworkentry/10.1007/978-1-4419-9863-7_55> accessed 15 January.

⁴⁶ For more on this issue, see Adam Tooze, *Shutdown: How Covid Shook the World's Economy* (Penguin UK 2021)/ Tooze underscores the enduring impact of the Covid-19 pandemic on global governance, highlighting it as a precursor to even more severe crises in the future. This crisis also demonstrated how governments can mobilise extensive emergency powers, but also how these powers tend to persist, reshaping governance structures under the guise of necessity. Tooze's analysis reveals that the pandemic not only disrupted economic and social orders but also perpetuated the cycle of permacrisis governance, making the state of exception a recurring feature rather than a temporary deviation.

⁴⁷ On this issue, see Oran R Young, *Governing Complex Systems: Social Capital for the Anthropocene* (MIT Press 2017) <<https://direct.mit.edu/books/monograph/3567/Governing-Complex-SystemsSocial-Capital-for-the->> accessed 11 January 2025; see Holland (n 44).

⁴⁸ On this issue, see Sandra Bertezene and Jacques Martin, 'Fighting Covid-19 as an army would fight its enemy?' (23rd Excellence in Services International Conference, Online, France, September 2020) 1-3 <https://hal.science/hal-03283384/document> accessed 12 January 2025 (where it is argued that the Covid-19 pandemic exemplifies a VUCA (volatility, uncertainty, complexity, ambiguity) world, where rapid, unpredictable changes and systemic interdependencies hinder clear decision-making). Contradictory policies, distrust in authorities, and the failure of conventional crisis protocols have fuelled public scepticism, reinforcing political instability and anti-establishment sentiment. See also Greco (n 13).

individual crises but rather the compound effect of repeated systemic shocks, highlighting how crises shape public perception and institutional behaviour in unpredictable ways.

Another central element of CAS theory is *feedback loops*, which play a crucial role in the normalisation of crisis governance. *Positive* feedback loops occur when crisis responses reinforce the very conditions that sustain them. For instance, prolonged public fear during a crisis can increase support for restrictive measures, such as mass surveillance or emergency executive powers.⁴⁹ Over time, this cycle legitimises the gradual expansion of state authority, making exceptional governance the norm rather than the exception. Conversely, *negative* feedback loops, which could serve as stabilisers by restoring legal and democratic norms,⁵⁰ are often too weak or delayed in reversing systemic shifts in an era of permacrisis.

Finally, two particularly important concepts for understanding democratic erosion in the age of permacrisis are *bifurcation* and *hysteresis*. Bifurcation points represent moments when governance structures split into competing trajectories, potentially leading to irreversible transformations. At such junctures, legal systems face a fundamental question: can they restore pre-crisis norms, or do they become permanently altered by the crisis response? The post-9/11 security framework serves as a clear example: rather than scaling back emergency measures once the immediate terrorist threat had subsided, many states codified them into permanent legal structures.⁵¹

Closely related is *hysteresis*, which describes the difficulty legal systems face in returning to prior democratic conditions after prolonged crises. Once emergency measures become institutionalised, they are rarely repealed in full. For instance, France's 2020 law on the "transitional exit regime" introduced a legal framework that, instead of lifting emergency measures, effectively repackaged them into ordinary governance. Such developments reveal how emergency powers, once justified as temporary, reshape legal frameworks in ways that

⁴⁹ For more on this issue, see Cole (n 41).

⁵⁰ See Adam Tooze, 'Defining Polycrisis – From Crisis Pictures to the Crisis Matrix' (*Chartbook*, 24 June 2022) <<https://adamtooze.substack.com/p/chartbook-130-defining-polycrisis>> accessed 8 February 2025. Tooze highlights how crises like food insecurity, energy market disruptions, inflation, and geopolitical tensions interact through complex feedback loops, where one crisis exacerbates another. His matrix of global risks illustrates that certain crises, such as inflation, can amplify others, while events like recessions can have both stabilising and destabilising effects, emphasising the systemic interconnections characteristic of polycrisis.

⁵¹ Michael Cox, 'Paradigm Shifts and 9/11: International Relations After the Twin Towers' (2002) 33(2) *Security Dialogue* 247 <www.prio.org/publications/2780> accessed 10 February 2025; Jessica Wolfendale, 'Terrorism, Security, and the Threat of Counterterrorism' (2007) 47 *International Studies Quarterly* 511 <www.ojp.gov/ncjrs/virtual-library/abstracts/terrorism-security-and-threat-counterterrorism> accessed 11 February 2025; Jessica Wolfendale, 'The Narrative of Terrorism as an Existential Threat' in Richard Jackson (ed), *Routledge Handbook of Critical Terrorism Studies* (Routledge 2016) 114-24; Richard Jackson, *Writing the War on Terrorism: Language, Politics and Counter-terrorism* (Manchester University Press 2005).

outlive the crises they were meant to address,⁵² with the risk of vacillating towards authoritarianism by normalising exceptional powers.⁵³

To sum up, the entrenchment of emergency governance does not occur in a vacuum. These transformations unfold gradually, reinforced by political, economic, and social factors that make reversibility increasingly difficult. The challenge for legal systems is to develop adaptive governance models that enhance resilience without succumbing to the normalisation of authoritarian-like measures. By integrating insights from CAS theory, policymakers can better understand the different stages that democratic systems may go through during prolonged crises. In turn, this can inform them to better design resilient legal frameworks that balance adaptability with the preservation of democratic values. This requires reforms in governance structures that prevent the normalisation of emergency rule, ensure constitutional protections remain intact, and foster multilateral cooperation to address complex global challenges.⁵⁴ If left unchecked, the entanglement of crises may destabilise democratic legal systems, leading to further regression rather than resilience.⁵⁵

E. RETHINKING LEGAL RESILIENCE IN THE AGE OF ONGOING UNCERTAINTY

When the logic of the emergency becomes permanent, it ceases to be a contingent legal anomaly to become a normalised mode of governance. Rather than purely exceptional responses, emergency powers increasingly form part of resilience – or, conversely, regressive – constitutional architectures. It's crucial to understand how legal systems can develop mechanisms to enhance flexibility while safeguarding democratic principles. On one hand, advocates of a more flexible emergency framework argue that adaptability is necessary in times of crisis, since rigid legal structures may not be able to keep pace with rapidly evolving

⁵² Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (CUP 2006).

⁵³ Liberal democracies are more vulnerable during prolonged or permanent emergencies due to their foundational principles of transparency, accountability, and individual liberties. In times of crisis, the urgency for decisive action can conflict with these principles, often leading to the expansion of executive powers and the erosion of civil liberties. Moreover, liberal democracies typically face greater scrutiny and resistance from both the public and political actors when emergency measures are implemented. In contrast, authoritarian regimes, with their centralised power structures and limited political freedoms, can more easily suppress opposition and impose restrictive measures without facing the same degree of resistance.

⁵⁴ For more on this issue, see Thomas G Weiss and Rorden Wilkinson, 'Rethinking Global Governance? Complexity, Authority, Power, Change' (2014) 58 *International Studies Quarterly* 207 <www.jstor.org/stable/24017859> accessed 12 February 2025. See also the debate on the scale of reform required: Dan Plesch and Thomas G Weiss, '1945's Lesson: "Good Enough" Global Governance Ain't Good Enough' (2015) 21 *Global Governance*, 197, 197; cf Stewart Patrick, 'The Unruled World: The Case for Good Enough Global Governance' (2014) 93 *Foreign Affairs* 58, 58.

⁵⁵ On this issue, see Anthony Giddens, *Politics of Climate Change* (Polity 2009).

threats.⁵⁶ On the other hand, critics of expansive executive power warn that continual reliance on emergency measures risks an irreversible slide toward authoritarianism, as crisis-driven governance increasingly erodes checks and balances, concentrates power, and restricts civil liberties.⁵⁷ Ultimately, the future of democratic governance will depend on whether legal frameworks can reconcile adaptability with the enduring protection of fundamental rights.

In the era of permacrisis, globalisation not only amplifies systemic disruptions but also underscores the urgent need for more effective governance at both national and international levels. The increasing complexity of global crises has created an interdependent system highly vulnerable to shocks. However, existing governance mechanisms often fail to provide coherent and effective responses. As Hale, Held, and Young argue, global governance remains gridlocked due to institutional inertia, conflicting national interests, and the complexity of transnational challenges.⁵⁸ This is particularly evident in issues like climate change, where international cooperation is hindered by diverging economic priorities between developed and developing nations,⁵⁹ despite the rhetoric of global solidarity.⁶⁰

⁵⁶ On this issue see David R Godschalk, 'Urban Hazard Mitigation: Creating Resilient Cities' (2003) 4(3) *Natural Hazards Review* 136, 137 <https://research-legacy.arch.tamu.edu/epsru/Course_Readings/Ldev671MARS689/LDEV671_Readings/Godschalk_urbanhazard_mitigation.pdf> accessed 23 April 2025. Godschalk argues that resilient cities are those that can absorb shocks without descending into chaos or suffering permanent damage. He describes them as systems that “might bend from hazard forces, [but do] not break”, becoming stronger by adapting and learning from past disasters. See also Todd Miller, Loi De Lé, Katherine Hore, ‘The adaptive shift: Embracing complexity in disaster and emergency management’ (2025) 119 *International Journal of Disaster Risk Reduction* 105323 <www.sciencedirect.com/science/article/pii/S2212420925001475?via=ihub> accessed 22 April 2025; Michael J Bolton, Gregory B Stolcis, 'Overcoming Failure of Imagination in Crisis Management: The Complex Adaptive System' (2008) 13(3) *The Innovation Journal: The Public Sector Innovation Journal* 1 <https://innovation.cc/wp-content/uploads/2008_13_3_4_bolton-stolcis_crisis-mgmt.pdf> accessed 22 April 2025; Alex Burns and Ben Eltham, ‘Catastrophic Failure’ *Theories and Disaster Journalism: Evaluating Media Explanations of the Black Saturday Bushfires* (2010) 137(1) *Media International Australia* 90 <<https://journals.sagepub.com/doi/10.1177/1329878X1013700111>> accessed 22 April 2025; Tim Prior and Florian Roth, ‘Disaster, Resilience and Security in Global Cities’ (2013) 6(2) *Journal of Strategic Security* 59 <www.jstor.org/stable/26466761> accessed 22 April 2025; Yacov Y Haimes, Kenneth Crowther and Barry M Horowitz, ‘Homeland security preparedness: Balancing protection with resilience in emergent systems’ (2008) 11(4) *Systems Engineering* 287 <<https://incose.onlinelibrary.wiley.com/doi/10.1002/sys.20101>> accessed 22 April 2025.

⁵⁷ On this issue, see Hennette Vauchez, *La Démocratie*, (n 23); Michel J Crozier, Samuel P Huntington, Jōji Watanuki, *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission* (New York University Press 1975) 8 <https://ia801308.us.archive.org/23/items/TheCrisisOfDemocracy-TrilateralCommission-1975/crisis_of_democracy_text.pdf> accessed 10 February 2025.

⁵⁸ Thomas Hale, David Held and Kevin Young, *Gridlock: Why Global Cooperation Is Failing When We Need It Most* (Polity 2013).

⁵⁹ On this issue, see Irene Paviotti, ‘Covid-19 and the International Liberal Order: Goodbye “Global”, Hello “Regional”?’ (22 October 2021) <www.iai.it/en/publicazioni/covid-19-and-international-liberal-order-goodbye-global-hello-regional> accessed 16 January 2025.

⁶⁰ On the issue of global health solidarity, see Mina Hosseini, ‘Building Global Health Solidarity in a Permaworld: Legal Impacts of a Pandemic Treaty’ (UCD Working Papers in Law, Criminology & Socio-Legal Studies, Research Paper 14/2023, 2023) <<https://ssrn.com/abstract=4659766>> accessed 2 February 2025.

Furthermore, crises are increasingly becoming synchronised, occurring “everywhere all at once”.⁶¹ As Tooze observes, the accumulation of global challenges creates a precarious reality where interconnected systems, through rapid positive feedback loops, can escalate localised issues into widespread crises where “the whole is even more dangerous than the sum of the parts”.⁶² The persistence of crisis-driven governance highlights the limitations of current legal frameworks in addressing the complexities of permacrisis.⁶³ Failing to account for the interactions between different crises has become a critical risk in itself. This persistent state of flux further erodes the distinction between normalcy and exception, reinforcing a state of perpetual crisis⁶⁴ and compounding governance challenges. To navigate this new reality, legal systems must shift their focus from reactive crisis management to long-term adaptability.

The concept of resilience has emerged as a valuable framework for understanding these legal transformations.⁶⁵ In contrast to traditional legal approaches that aim to restore pre-crisis conditions, resilience emphasises the ability of legal systems to absorb shocks, adapt, and not only maintain but potentially enhance their core functions in the face of evolving stressors.

⁶¹ Stephen Walt, ‘How many shocks can the world take?’ (*Foreign Policy*, 24 October 2022) <<https://foreignpolicy.com/2022/10/24/how-many-shocks-can-the-world-take/>> accessed 19 January 2025.

⁶² Tooze, ‘Defining Polycrisis’ (n 50). See also Dimitris Katsikas, Maria Antonieta Del Tedesco Lins and Andrea Ribeiro Hoffmann, ‘Introduction: A New Era? Permacrisis and the Challenges to Financial Stability, Economic Growth, and Democracy’ in Dimitris Katsikas, Maria Antonieta Del Tedesco Lins and Andrea Ribeiro Hoffmann (eds), *Finance, Growth and Democracy: Connections and Challenges in Europe and Latin America in the Era of Permacrisis* (United Nations University Series on Regionalism vol 33, Springer 2025) <https://link.springer.com/chapter/10.1007/978-3-031-68475-3_1#citeas> accessed 19 January 2025.

⁶³ For more on how global health crises such as the Covid-19 pandemic expose weaknesses in compliance with international health regulations, highlighting the tension between emergency powers and human rights obligations, see Yusha Araf and others, ‘Marburg Virus Outbreak in 2022: A Public Health Concern’ (2023) 4(1) *The Lancet Microbe* e9 <<https://pubmed.ncbi.nlm.nih.gov/36209757/>> accessed 8 January 2025; Katherine F Smith and others, ‘Global Rise in Human Infectious Disease Outbreaks’ (2014) 11(101) *Journal of the Royal Society Interface* 20140950 <<https://pubmed.ncbi.nlm.nih.gov/25401184/>> accessed 11 February 2025. Similarly, the intersection of environmental crises such as climate change with other global risks stretches existing legal frameworks on state responsibility and environmental protection, as states struggle to reconcile urgent action with long-term obligations. On this issue, see Hoffman (n 16); Argyrios Altiparmakis and others, ‘Pandemic Politics: Policy Evaluations of Government Responses to COVID-19’ (2021) 44(5-6) *West European Politics* 1159 <www.tandfonline.com/doi/full/10.1080/01402382.2021.1930754> accessed 13 February 2025.

⁶⁴ Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton University Press 2009) <www.jstor.org/stable/j.ctt7strv> accessed 20 January 2025.

⁶⁵ On this issue, see Wolfgang Merkel and Anna Lührmann, ‘Resilience of democracies: responses to illiberal and authoritarian challenges’ (2021) 28(5) *Democratization* 869 <www.tandfonline.com/doi/full/10.1080/13510347.2021.1928081> accessed 15 February 2025; Jon-Paul Faulkner, Enda Murphy and Mark Scott, ‘Developing a holistic ‘vulnerability-resilience’ model for local and regional development’ (2020) 28(12) *European Planning Studies* 2330 <www.tandfonline.com/doi/abs/10.1080/09654313.2020.1720612> accessed 15 February 2025; Eric Stollenwerk, Tanja A. Börzel and Thomas Risse, ‘Theorizing Resilience-Building in the EU’s Neighbourhood: Introduction to the Special Issue’ (2021) 28(7) *Democratization* 1219–38 <www.tandfonline.com/doi/full/10.1080/13510347.2021.1957839> accessed 16 January 2025; Josh Holloway and Rob Manwaring, ‘How well does ‘resilience’ apply to democracy? A systematic review’ (2023) 29(1) *Contemporary Politics* 68 <www.tandfonline.com/doi/abs/10.1080/13569775.2022.2069312> accessed 16 January 2025.

Drawing from a broad literature, resilience can be understood as a dual concept. On the one hand, it can be seen in terms of *performance*, referring to how resilient the democratic system actually is – whether it continues on the same or an equivalent level during a period of crisis as before or after the crisis and is able to resist degradation and adjust to a changed environment.⁶⁶ On the other hand, it reflects an underlying *capacity* of resilience, referring to the set of conditions and mechanisms that enable a system to absorb risks and allow it to “bounce back” and recover post-crisis.⁶⁷ This perspective acknowledges that modern crises do not simply end, but instead require legal systems to stabilise at new equilibrium points. Additionally, this approach aligns with the interconnected nature of current polycrises and permacrises, recognising that effective responses require coordination across sectors and scales.⁶⁸

In this context, the Covid-19 pandemic serves as a case study of legal adaptation under prolonged crisis conditions, prompting a radical rethink of existing legal systems and their limitations.⁶⁹ Initially, some feared that the pandemic would mark the decline of globalisation⁷⁰ and multilateralism, while others saw it as an opportunity to rethink existing governance structures. Tooze warned that Covid-19 was only a preview of even greater crises to come, emphasising the need for legal frameworks that are not only responsive to immediate crises but also capable of anticipating future disruptions.⁷¹ Without resilient governance models, the vulnerabilities exposed by permacrisis will only intensify.

While global interconnectedness has intensified the impact of crises, it also offers opportunities for collective solutions.⁷² No single country can effectively address transnational

⁶⁶ Aurel Croissant and Lars Lott, ‘Democratic Resilience in the Twenty-First Century’ (V-Dem Working Paper 149/2024, 2024) 5-7 <https://v-dem.net/media/publications/WP_149.pdf> accessed 18 February 2025.

⁶⁷ Johannes Helgest and others, ‘A new game in town: Democratic resilience and the added value of the concept in explaining democratic survival and decline’ (Gutenberg School of Management and Economics Working Paper 2206, 2022) <<https://ideas.repec.org/p/jgu/wpaper/2206.html>> accessed 17 February 2025; Carl Folke and others, ‘Regime Shifts, Resilience, and Biodiversity in Ecosystem Management’ (2004) 35(1) *Annual Review of Ecology, Evolution, and Systematics* 557, 558 <<https://www.annualreviews.org/content/journals/10.1146/annurev.ecolsys.35.021103.105711>> accessed 17 February 2025.

⁶⁸ International IDEA, *The Global State of Democracy 2024: Strengthening the Legitimacy of Elections in a Time of Radical Uncertainty* (International IDEA 2024) <<https://cdn.sanity.io/files/2e5hi812/production-2024/0134f4cc56156db21ee23cf1072ab6d71704cd51.pdf>> accessed 10 January 2025.

⁶⁹ Paviotti (n 59).

⁷⁰ ‘Has Covid-19 Killed Globalisation?’ (*The Economist*, 14 May 2020) <www.economist.com/leaders/2020/05/14/has-covid-19-killed-globalisation> accessed 9 February 2025.

⁷¹ Tooze, *Shutdown* (n 46).

⁷² However, systemic risks are described by some as “endemic to globalisation”. On this issue, see Goldin, *The Butterfly Defect* (n 15) xiii (where the authors argue that while reforms – such as adjustments to the neoliberal economic order – could potentially mitigate these risks, they cannot be fully eliminated). See also Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (Vintage Canada 2009) for a critique on how neoliberalism, driven by market liberalisation, privatisation and deregulation, has eroded state power and deepened inequality.

challenges – whether climate change, global migration, or financial instability – in isolation.⁷³ Instead of focusing solely on crisis containment, legal systems must shift toward proactive adaptation. The concept of “building back better” encapsulates this, advocating for systemic reforms that move beyond short-term recovery toward long-term sustainability. In other words, legal resilience cannot be achieved without addressing systemic inequalities. For instance, in times of crisis, marginalised communities often bear the brunt of the impact. Hence, responses to crises must be inclusive, ensuring that they don’t perpetuate existing power imbalances. Resilient legal systems must ensure that vulnerable populations are included in decision-making processes, with a focus on equity and justice.

In a nutshell, rather than restoring outdated legal frameworks, the objective must be to create forward-thinking legal structures capable of navigating uncertainty without compromising democratic values.⁷⁴ The well-known expression “never let a good crisis go to waste” encapsulates the paradox of crisis governance.⁷⁵ While crises often expose systemic weaknesses, they also present opportunities for transformation. Instead of viewing crises as periods of mere disruption, they should be understood as inflection points – moments when legal and institutional paradigms can be fundamentally reimaged to meet the demands of an increasingly unpredictable world. The challenge is not simply whether legal systems should change, but how they can evolve in ways that reinforce resilience. If democratic legal orders are to endure, they must develop mechanisms that balance flexibility with the protection of fundamental rights, ensuring that governance remains adaptive yet accountable, responsive yet rights-based in an era of sustained global uncertainty.

She argues that neoliberalism often advances through crises, exploiting “shock” moments – such as wars, natural disasters or financial collapses – to impose unpopular economic reforms that transfer wealth from the public to private elites. Klein emphasises that these policies undermine state sovereignty, weaken democratic institutions and leave societies more vulnerable to crises. See also Jason Tatum, ‘The Shock Doctrine: The Rise of Disaster Capitalism by Naomi Klein’ (2009) 41 *Antipode* 214 <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1467-8330.2008.00666.x>> accessed 12 January 2025: “The reason shocks have been essential for neoliberalisation is because neoliberal policies are unpopular and can only be forced through during a severe crisis”. Within this context, scholars have advocated for a systemic change in the global system to address the root causes of the crises we face and create more equitable and resilient legal systems. For example, see Rodrik, ‘Globalisation’s Wrong Turn’ (n 7).

⁷³ On this issue, see Altiparmakis (n 63).

⁷⁴ On this issue, see Hoffman (n 16).

⁷⁵ On this issue, see Yves Daudet, “‘Never Let a Good Crisis Go to Waste’: Can International Law Seize the Advantage?” (2021) 115 *Proceedings of the ASIL Annual Meeting* 129 <www.cambridge.org/core/journals/proceedings-of-the-asil-annual-meeting/article/never-let-a-good-crisis-go-to-waste-can-international-law-seize-the-advantage/F230DFCFDEBC653DC761208A03F9A13E> accessed 7 February 2025; Marie A Chisholm-Burns, ‘A Crisis Is a Really Terrible Thing to Waste’ (2010) 74(2) *American Journal of Pharmaceutical Education* 19 <<https://pmc.ncbi.nlm.nih.gov/articles/PMC2856408/#B9>> accessed 13 February 2025.

F. CONCLUSION

This paper has examined how permanent crises are reshaping democratic legal orders, creating a new equilibrium where resilience and adaptability become essential. First, it analysed how contemporary crises, characterised by their interconnected and complex nature, have heightened systemic risks and challenged governance structures. It then explored how globalisation has amplified these vulnerabilities, turning once-isolated disruptions into an ongoing crisis continuum. Furthermore, it demonstrated how the normalisation of emergency governance has blurred the boundaries between normalcy and exception. The hope of returning back to “normal” has long been disrupted by globalisation, which has introduced competing forces—security versus liberty, competition versus cooperation, innovation versus conservation.⁷⁶ Events such as the 9/11 attacks in New York, the 2008 global financial crisis, and the Covid-19 pandemic have accelerated this destabilisation, transforming emergency governance into an enduring global condition. The analysis of CAS concepts – particularly non-linear feedback loops and the hysteresis of embedded emergency measures – demonstrated how temporary emergency measures can solidify into permanent norms, weakening institutional checks and eroding human rights protections. Lastly, the study of resilience underscored the need to legal frameworks to “change the compass”⁷⁷ to navigate the “new normal” evolving world marked by crisis-driven governance.⁷⁸

As crises unfold in rapid succession, the assumption of reversibility has eroded, requiring legal systems to stabilise at new equilibrium points that acknowledge the realities of an interconnected world. However, this does not mean passively surrendering to a state of permanent crisis; rather, it calls for reimagining legal structures that balance flexibility with the protection of fundamental rights. Law has always existed at the intersection of continuity and adaptation, requiring a delicate balance between preserving core legal principles and adjusting to new realities. As such, the question is not whether legal systems should change,

⁷⁶ Mireille Delmas-Marty, *Liberté et sûreté dans un monde dangereux* (Seuil 2009); Mireille Delmas-Marty, *Aux quatre vents du monde* (Seuil 2016).

⁷⁷ Mireille Delmas-Marty, ‘Changer de Boussole’ in Stéphanie Hennette Vauchez (ed), *La Démocratie en état d’urgence* (Seuil 2017) 181; Mireille Delmas-Marty, *Sortir du pot au noir: L’humanisme juridique comme boussole* (Buchet-Chastel 2019); Mireille Delmas-Marty, *Une boussole des possibles* (Collège de France Éditions 2020).

⁷⁸ David Henig and Daniel M. Knight, ‘Polycrisis Prompts for an Emerging Worldview’ (2023) 39(2) *Anthropology Today* 3 <https://research-repository.st-andrews.ac.uk/bitstream/handle/10023/27458/Henig_2023_AT_Polycrisis_CC.pdf;jsessionid=EB0272F0D61E12CA96D09B39822CEDE2?sequence=1> accessed 12 February 2025. See also Fabian Zuleeg, Janis A. Emmanouilidis and Ricardo Borges de Castro, ‘Europe in the Age of Permacrisis’ (*European Policy Centre*, 11 March 2021) <<https://www.epc.eu/publication/Europe-in-the-age-of-permacrisis-3c8a0c/>> accessed 13 February 2025.

but how they can do so in ways that reinforce democratic governance rather than undermine it. History has shown that crises, while destabilising, also present opportunities for transformation. They force societies to confront the inadequacies of existing governance models, sometimes accelerating necessary reforms that might have otherwise been unattainable. In fact, in Chinese language, “the word ‘crisis’ consists of two characters, one symbolising danger and the other opportunity”.⁷⁹

⁷⁹ Former President of the United States, John F Kennedy, employed this expression in presidential campaign speeches in 1959 and 1960: John F Kennedy, ‘Remarks of Senator John F. Kennedy’ (Conference on India and the United States, Washington DC, 4 May 1959) <www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/india-and-the-us-conference-washington-dc-19590504> accessed 13 January 2025; John F Kennedy, ‘Remarks of Senator John F. Kennedy’ (University of New Hampshire, Durham, New Hampshire, 7 March 1960) <www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/university-of-new-hampshire-19600307> accessed 13 January 2025. See also Lewis Mumford, *The Condition of Man* (Martin Secker & Warburg Ltd 1944) 394; Benjamin Zimmer, ‘Crisis = Danger + Opportunity: The Plot Thickens’ (*Language Log*, 27 March 2007) <<https://itre.cis.upenn.edu/~myl/languageblog/archives/004343.html>> accessed 13 January 2025.