



Book Review

Review of Molinaro, Dennis G. 2017. *An Exceptional Law: Section 98 and the Emergency State, 1919-1936*. Toronto: University of Toronto Press.

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From the most basic forms of petty criminality to complex structures of organized crime and terrorism, governments across Western liberal democracies are adopting more preemptive interventions aimed at preventing crimes before their manifestation. Dennis Molinaro's *An Exceptional Law: Section 98 and the Emergency State, 1919-1936* focuses on the important question of how prevention has become a *raison d'être* of modern governance in Canada. An in-depth and nuanced historical account, *An Exceptional Law* presents a wonderful exploration of how "emergency powers" became "normalized" in the Canadian public sphere's approach to political dissent. The central focus for this social historian is Section 98 of the *Criminal Code of Canada*, which, passed in 1919 as a response to the Winnipeg general strike, targeted "unlawful associations" in the name of emergency and security. In his examination of Canada's legal experimentation between the World Wars, Molinaro illustrates the historical foundation of legislation that continues to impact political "radicals," immigrants, and civil society organizations, and uncovers the Canadian context of insecurity that has made modern political dissent increasingly difficult.

An Exceptional Law begins with vignettes of two notable terrorist attacks on Canadian Parliament and in Saint-Jean-sur-Richelieu, Quebec, that occurred in October of 2014, highlighting the book's keen attentiveness to connections between history and the contemporary from the very first sentence. The introduction then sets the stage for a charming six-chapter account of how, in a liberal-democratic society, police can possess the legitimized authority to arrest a person before the manifestation of any criminal offense. Perhaps more interesting is Molinaro's unambiguous attempt to address questions related to the sort of legal framework that is necessary to process an accused person before they have committed a crime. To address these key questions, Molinaro closely analyzes archival materials, newspaper accounts, parliamentary debates, and legal statutes to highlight the sociohistorical precursors to establishing Section 98 in Canada's *Criminal Code* (more on this below).

The author's central argument, that the creation of Section 98 was a turning point in Canadian legal history wherein the state began attempts to "normalize" repressive emergency measures, stems from the well-established social philosophy of Giorgio Agamben, whose notions of *homo sacer* and state of exception have been widely adopted in the social sciences. The author thus maintains that Section 98 enables the formation of a Canadian political identity founded on exclusion rather than inclusion; political

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dissent is therefore excluded in law and, perhaps more importantly, in the nationalist ideals of Canadian civil society. While Molinaro does not engage with Agamben's theoretical perspective as deeply as a faithful social theorist might expect, he does a respectable job of implicitly weaving theory throughout a well-written historical narrative, which logically moves from discussions of protection and suspect creation, to legal structures of the trial and judgement.

Molinaro cleverly sidesteps some of the theoretical challenges that have agonized the state of exception literature by highlighting how law creates contexts of exceptionality, rather than narrowly focusing on how it produces and reproduces a general *state* of exceptionality that pervades all aspects of society. As the author himself questions, if Agamben is correct to suggest that the state of exception dates back to Ancient Greece, what is exceptional about modern forms of exceptionality? In other words, if we have long lived in a so-called "state of exception," are cases of exceptionality not better understood as the norm? Molinaro addresses this critical flaw in some exceptionality literature by connecting normalized emergency powers in the Canadian context with a nation-building enterprise that affects the identity and political fabric of the country. Rather than predictably arguing that Section 98 is yet another manifestation of an overarching state of exceptionality, Molinaro instead treats the statute as illustrative of a biopolitical attempt to construct temporalities of exception that seek to target activities and individuals that are particularly problematic for the "state"—a concept that Molinaro appropriately challenges throughout. The author's attention to detail in this respect does not go unnoticed and exemplifies the complexity of Molinaro's scholarship.

In a current socio-political climate increasingly adoptive of "new" preemptive, preventative policies targeting what some have called a "pre-criminal" space (McCulloch and Pickering 2009; Zedner 2007), Molinaro's project highlights the long and muddled history of governmental attempts to normalize the criminalization of activities long before the manifestation of a crime. As the author puts it, "we need to historicize the use of these powers to understand how they fit in relation to law, the state, our democracy, our politics, and even our nationalism" (Molinaro 2017: 5). This focus is a key strength of *An Exceptional Law*, and the author does an incredible job fulfilling this promise by grounding robust historical analysis in an anti-reductionist treatment of an oft-reduced social theory.

One critique I have of Molinaro's work is perhaps more related to disciplinary standards rather than the author's own handling of the data, but I would be remiss to ignore the book's lack of methodological transparency. As I have noted, Molinaro is a historian and this book is certainly organized with specific disciplinary standards in mind. It is also clear from Molinaro's inclusion of useful appendices that his work is methodologically rigorous. However, I was left wanting more detail in terms of the specific ways in which the author collected, organized, and analyzed the data for which he based his central arguments (this is not to suggest that the author is not empirically focused). A methodological appendix detailing Molinaro's research process, rather than a simple listing of primary and secondary resources, would have gone to great lengths to satisfy my own preoccupation with methodological transparency.

Security concerns are in many ways at the forefront of public attention. Political discourse in the Western world is often focused primarily on sources of state insecurity—from terrorism and political violence to hate crime and interpersonal violence. However, as Molinaro illustrates, we must look to the past to understand our current context of insecurity and state authority. In this respect, *An Exceptional Law's* anti-reductionist approach is so much more nuanced than simply tracing the historical antecedents of a particular statute. Rather, Molinaro sheds light on how our contemporary condition of insecurity—seemingly preoccupied with crafting policies aimed at a pre-criminal space—is part of a broader process of normalizing preemptive law that has been undertaken by the Canadian state for decades.

An Exceptional Law is a fascinating, useful contribution to not only the discipline of history, but also to criminal law and legal studies, sociology and criminology, political science, international affairs, and even

anthropology. Not only is this book suitable for both relevant upper-year undergraduate courses and graduate students, but scholars researching a wide variety of topics related to security, national identities, surveillance, and social movements will find it tremendously useful. Furthermore, Molinaro's book will be of interest to any individual curious in the sociohistorical evolution of social policy targeting political dissent, as well as those interested in civil disobedience, protest, and social justice advocacy. *An Exceptional Law* is both captivating and deeply informative. Not only have I learned much from Molinaro's richly empirical study of which I was previously unaware, I have also found it enlightening for my own research. *An Exceptional Law* is now one of my favorite treatments of legal history and I would recommend it to any student, academic, activist, lawyer, or anyone interested in broad questions of public law, security, and society.

References

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