

RESEARCH ARTICLE

Emergency, narratives, and pandemic governance

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Abstract

Pandemics present opportunities for states to acquire emergency powers by narrativizing pandemics as “acts of God,” “acts of war,” “acts of outsiders,” “sanitation-hygiene,” or “acts of the invisible enemy.” These narratives conveniently justify the imposition of undefined and often unrestrained constitutional or extra-constitutional emergency powers to reshape individual, social, and governance modalities. These narratives conveniently establish *the setting* for states to justify the imposition of broad emergency powers by determining *the plot* of pandemic-appropriate modalities for individuals, society, and governance mechanisms and classifying the *characters* of pandemic as protagonists and antagonists as per the *plot* and *settings* of the preferred narrative. This article attempts to reveal the theoretical and applicational interconnections between state-sponsored narratives and exercise of emergency powers during the pandemic governance in plague, cholera, influenza, and Covid-19 pandemics.

Keywords: narratives and emergency powers; pandemic emergency powers; pandemics and narrative-driven emergency governance; theory of emergency powers and pandemic governance; governance mechanism of historical pandemics

Introduction

Every pandemic has shaped human history through its governance. It has opened questions about the scope and legality of pandemic governance. These questions revolve around pandemic¹, the state’s responses to socio-economic-cultural-governance crises emerging out of the pandemic. As the pandemic overwhelms ordinary governance mechanisms, states often resort to constitutional or extra-constitutional emergency powers to govern through the pandemic. To justify the use of emergency powers, states often build and propagate narratives such as “act of God,” “act of war,” “act of outsiders,” “hygiene-sanitation,” or “war against invisible and inevitable enemy.” These narratives conveniently establish *the setting* for states to justify the imposition of broad emergency powers by determining *the plot* of pandemic-appropriate modalities for individuals, society, and governance mechanisms and classifying the *characters* of pandemic as protagonists and antagonists as per the *plot* and *settings*. This article attempts to reveal the theoretical and applicational interconnections between state-sponsored narratives and exercise of emergency powers during the pandemic governance in plague, cholera, influenza, and Covid-19 pandemics.

The enormity and atypicality of pandemic governance have attracted academic attention even during pre-Covid-19 years (Arnold 1993; Barry 2004; Goodman 1978; Gunn, Craddock, and

¹“Pandemacy” is an etymological sibling of “epidemy” – the social and cultural crisis emerging from an epidemic. The fourteenth- and fifteenth-century literature effectively used the term “*epidemy*” to denote social and cultural crisis across European states. While the nineteenth-century literature introduces the term “*pandemic*” to refer the great reach of disease episodes in wide regions of the world, an additional term is needed to refer to the socio-economic-cultural-governance crisis emerging out of the pandemic.

Giles-Vernick 2010; Harrison 2020; Moreau de 1831; Morgan 1994; Osler 1914; Perry and Fetherson 1997; Rogers 1912; Watts 2018), while the Covid-19 pandemic prompted scholars to investigate pandemic governance models under a comparative prism (Aaltola 2021; Birn 2021; Bjørnskov and Voigt 2022; Bristow and White 2020; Chakraborty, Thakur, and Debaroti 2023; Frankema and Tworek 2020; Ginsberg 2020; Harper 2020; Kipfer and Mohamud 2021; Leib 2023; Ramraj and Thiruvengadam 2021; Villarreal 2020; Waal 2021). Recent scholarly works (Kipfer and Mohamud 2021; Ramraj and Thiruvengadam 2021; Villarreal 2020; Waal 2021) have comparatively investigated use of pandemic emergency powers across nations and historical pandemic, however, the application emergency powers to govern different pandemics has not been theoretically explored in reference to emergency and constitutional law theories. Recently scholars have shifted their attention toward perspective analysis of pandemic emergency governance (Aaltola 2021; Chakraborty, Thakur, and Debaroti 2023; Chua and Lee 2021; De Fina 2012; Waal 2021), yet the narratives build by states to acquire and impose these emergency powers during pandemics have not been scholarly explored. Even with growing academic attention on pandemics, it is alarming how little we know about comparative pandemic governance in reference to narrative-driven emergency powers in theory and in applications.

The article is presented in two interconnected parts. The first investigates theoretical interconnections between emergency and narratives in reference to emergency theories and narrative policy framework approach. The second examines these theoretical assertions and interconnections in reference to governance of four biggest pandemic of human history – plague, cholera, influenza, and Covid-19 pandemics. The article first involves emergency and constitutional law theories on the question of definition and legality of emergency powers, while analyzing Schmitt-Lockean (Schmitt 2005) justification of indefinability of emergency and highlighting three archetype models of extra-legality and legality of emergency powers by Gross, Dyzenhaus, and Ackerman (Ackerman 2004; Fijalkowski and Dyzenhaus 2007; Gross 2006). The theoretical analysis of emergency powers allows me to reveal how states use narratives to acquire and employ undefined and largely unrestrained emergency powers to govern through pandemics. The article employs *Narrative Policy Framework Approach* by Jones and Radaelli (Gray and Jones 2016; Jones and Radaelli 2015) to dissect pandemic narratives into *settings*, *plots*, and *characters* of pandemics. To examine the acquired theoretical interconnections, the article broadly investigates the narrative-driven pandemic emergency governance of plague, cholera, influenza, and Covid-19 pandemics. In this part, the article focuses on states' reliance on undefined and largely unrestrained emergency powers to govern through the pandemics with narrativized governance by arbitrarily determining *settings*, *plots*, and *characters* of the pandemic.

Emergency powers, narratives, and pandemic governance: theoretical interconnections

To reveal the theoretical interconnections between emergency powers, narratives, and pandemic governance, the article first explores the definition and legality of emergency in reference to emergency and constitutionalism theories. Additionally, the article focuses on the narratives replacing legality in emergency governance, due to the undefined and largely unrestrained nature of emergency provisions, particularly in reference to the governing narratives of pandemic emergencies.

Emergency: an undefined and largely unrestrained conception

Emergency and Constitutional Law theorists concentrate on two key questions: (1) whether emergency could be defined by law, particularly categorizing triggering factors of different forms of crises and their governing mechanism in legal terms; (2) whether emergency powers could be regulated by the principles of legality and constitutionalism. Scholars have shared a prolonged traditional commitment toward in-definability of emergency, leading to underdeveloped typology of emergency situations in the constitutions. Starting from Carl Schmitt observing “no legal norm can foresee them (emergencies) or constrain in advance the measures needed to confront them” (Schmitt 2005). While Schmitt supports indefinability of emergency due to unpredictable nature of crises and emergency powers as the mark of sovereignty (Schmitt 2005); Locke supports prerogative emergency power to

identify and manage different forms of crises (Locke 1988). With theoretical support of indefinability of emergency, the constitutional conception of emergency remains opaque, radical, and unbridled; till date no constitution could identify a conclusive list of crises that justify use of emergency powers, while nearly every constitution has ensured extreme power concentration beyond the control of legality during emergencies. An undefined or loosely defined emergency provision allows sovereign to use emergency as an opportunity to determine unalarming events as emergencies, overlook the opposites, and more importantly use broad and inappropriate emergency power to a technically different kind of emergency. Without a comprehensive list of critical events, the sovereign relies on narratives in support of broad emergency powers such as war, internal disturbance, and public order crisis to govern through technically specific crises such as pandemics. To use broad emergency powers and justify their actions, sovereign often resort to narratives of considering pandemic or public health crisis as “act of God,” “act of war,” “act of outsiders,” and “hygiene-sanitation disorder causing internal disturbance,” and so on.

Theorists have maintained a conservative attitude on the question of legality of emergency powers. Early constitutional liberalists denied legality as it will limit sovereign’s acts against crises – John Locke, David Hume, Santi Romano, and William Blackstone were highly attuned to the limitation of law in dealing with events that disrupt the regular order (Sarat 2010). Schmitt’s claim of emergency powers beyond legality – “Every political order ultimately presupposes the existence of an extralegal, absolutist, dictatorial power- embodied in the person of the sovereign- recognized by his ability to decide on the exception” (Schmitt 2005) prevailed over larger critical legal thinking (Chua and Lee 2021) and realist scholarships (Sarat 2010). However, the normative theorists remained committed to legality and offered reconstruction of emergency provisions under strict compliance of the principles of rule of law. The theoretical debate on legality of emergency powers could be classified in three archetype models of emergency powers; each of these models accommodates different degree of narrativized emergency governance.

- i. The Extra-Legal Model (ELM) denies legality as it allows sovereign to go outside the legal mechanism during emergency, thereby justifies wider suspension of fundamental rights. Lockean model of prerogatives (Locke 1988) and Oren Gross’s ELM (Gross 2006) are the illustrations of ELM in reference to traditional and modern legal systems respectively. Gross asserts that there is no need to identify the criteria when emergency is severe enough to make extra-legal powers legitimate as it should be left to the discretion of officials to decide and once the emergency is over the extra-legal actions must be submitted to public judgment or ratification making public the ultimate judge of its validity. ELM empowers sovereign to determine discretionary and act upon the crises, the discretion is often justified by the state-sponsored narratives to act extra-legally in the times of narrativized crisis.
- ii. The Business as Usual (Legality) Model mandates that exceptional and temporary regimes wherein ordinary norms no longer apply, needs to be according to the law. The legality model believes in containment of emergency powers through pure legality by denying the existence of a legal category of exception and claiming that law’s resource can accommodate any kind of crisis. David Dyzenhaus (Fijalkowski and Dyzenhaus 2007) objects Gross’s ELM on compulsion of legality and argues if we are not committed to governing through law, we will lead two unsatisfactory positions: either as *internal realist* – undermining law’s claim to authority by creating a veneer of legality or as *external realist* – establishing sovereign power beyond any constraint of law (Fijalkowski and Dyzenhaus 2007). The legality model objects narratives to drive emergency regimes, as it mandates that narratives could create veneer of legality in the names of necessity, however the model does not prescribe typology of emergency situations that could be recognized by law.
- iii. Neo-Roman Model (NRM) by Bruce Ackerman (Ackerman 2004) concentrates on modern emergency institutions and justification inspired from archetype of Roman commissarial dictatorship. Ackerman criticizes Gross’ ELM for moving outside the law as it will undermine rule of law and once officials acted outside law they will tempt to stay or move outside the

law as often as they can (Ackerman 2004). He argues for a super majoritarian escalator requiring a prompt legislative endorsement to a declared state of emergency and determining different states of emergency. NRM partially replaces narratives with definitions of different states of emergencies including public health emergencies, however the model does not prescribe beyond legislative restraints on emergency powers, allowing narratives to facilitate extra-legality of emergency powers.

The questions of definition, categorization, classification, and constraints on emergency powers lack theoretical consensus, resulting in extremely wide, undefined, and largely unrestrained emergency powers across the constitutions around the world. States are keen to employ these broad emergency powers irrespective of the nature of crises, as these powers allow states to govern the crisis beyond legality. The state-built and propagate narratives are critical for the state to acquire and impose broad emergency powers particularly during the pandemics; the next part of this article theoretically and historically investigates how narratives shapes pandemic governance across pandemics.

Narratives: filling up the gaps within the definition and legality of emergency

During the normal times, states draw their legitimacy through Constitutions on evolved principles of individual rights and social justice; however, during emergency situations, states' legitimacy orients from their capacity to handle crises. States strategically use narratives to legitimize and propagate their rationale for opting emergency powers to govern through the crisis. The undefined emergency powers regarding the triggering factors of emergencies further enhances roles of narratives to invoke broad emergency powers. The vacuum generated by undefined and largely unrestrained emergency provisions allows state-built narratives to determine the use of exceptional power particularly during pandemics or public health crises. For example, more than 90% of all constitutions contain emergency provisions (Bjørnskov and Voigt 2022); out of that 68% recognize “war,” “external aggression,” or “international conflict” as triggering factors of emergency; “internal disturbance,” “economic unrest,” and “natural calamity” are the other prominent grounds of emergency (Elkins 2009), while “pandemic” or “public health crisis” is scarcely mentioned as the ground of constitutional emergency (Ginsberg 2020). Thus, at the times of pandemics, states often resort to emergency powers dedicated to handle war or internal crisis or natural calamity situations with “act of war,” “act of God,” or “act of outsider” narrative in order to justify the use of broad emergency powers.

Contemporary legal scholars (Brooks 2005; Scheppele 1989; White 1974) have highlighted an intensified dynamics between law and narratives, as Wharton and Miller emphasize, “narrative and law do not encounter each other accidentally but are ineluctably intertwined” (Wharton and Miller 2019), particularly during exceptional times of crises. The narratives help state to replace legality with intuitions, anecdotes, and ad-hoc theorization of facts, circumstances, and outcomes. These narratives allow the state to step outside the ordinary course of law to acquire and employ extraordinary power to counter the extraordinary event. The usual actors to question the narrative-driven governance, such as legislatures, press, and courts also yield for an enabled sovereign to govern through the emergency. Through narrative-based governance, the sovereign redraws standards of social, cultural, and individual behaviors and persuades decision-makers to mold legal mechanism and public policy to govern through pandemics.

To understand how narratives help state to invoke constitutional and extra-constitutional emergency powers during pandemics, I have used *Narrative Policy Framework* (NPF) pioneered by Jones and Radaelli (2015). The NPF approach allows me to dissect narratives-driven emergency powers during pandemics on three factors: *settings* to acquire broad emergency powers, determining *characters* of the pandemic narratives, and assigning *plots* to emergency protocols to enforce bodily, social, and fiscal sanctions.

- i. *Settings* are based on the primary context of contagion which could potentially harm people; states often determine the threat of contagion as “acts of God,” “act of war,” or “act of

outsiders” to acquire and justify broad emergency powers. Due to these narratives, pandemic governance is susceptible to overestimation or underestimation of contagion threat thereby resulting into misgovernance of the pandemic. These narratives also empower sovereign to act beyond legality to govern through the pandemic with absolutist powers.

- ii. *Characters* of pandemics are determined and classified according to the narrative as victims, antagonists, and protagonists. Narratives conveniently allow sovereign to characterize the antagonists of contagion – for example, narratives such as “act of outsiders” or “local sanitation-hygiene disorder” presuppose foreigners, traders, and native populations as the antagonists. The identification of antagonists and protagonist is the critical for determining blames and credits in the narratives-driven emergency governance. As per the narrative often a particular racial, religious, caste, or national group is conveniently characterized as the antagonists of the pandemic. Narratives also allow sovereign to place itself as the chief protagonist of the pandemic narrative at the core and peripheral levels, while downplaying other factors against the contagion.
- iii. *Plots* situate the *setting* and *characters* in time and space, and empower protagonists to act upon contagion, often resorting to extraordinary powers against perceived antagonists. Plots redraw the pandemic-appropriate social-cultural and individual behaviors and reshape *characters’* morality. Plots are actionable pandemic protocols flexing state power over lives, liberty, and economy of individuals and society by imposing bodily, social, and fiscal sanctions.

The narratives not only shape states’ outlook toward pandemics but also shape individual, social, cultural, and economic behaviors by formulating alterable standards of social discipline to shape subject morality by calibrating and coordinating social relationships to achieve the desired results at collective level through security modality. In the next part, the article explores how various narratives have shaped governance in different pandemics.

Pandemic governance: narrative-driven emergency powers

The theoretical interconnections of narratives, emergency powers, and pandemic governance need to be examined in reference to historical pandemics, for that I have focused on governance mechanism of four biggest pandemics of human history – plague, cholera, and influenza along with the recent Covid-19 pandemic. In this analysis, I have attempted to verify two key theoretical assertions on narratives, emergency powers, and pandemic governance.

- i. Whether states have resorted to undefined and largely unrestrained constitutional or extra-constitutional emergency powers to govern through the pandemic?
- ii. What was the primary narrative behind acquiring, applying, and justifying emergency powers? What were the settings, plots, and characters of these narratives shaping pandemic governance?

The great plague pandemic

The bacterium *Yersinia pestis* caused the deadliest pandemic of human history – the great plague pandemic killed around 70–100 million people over the years (Perry and Fetherson 1997). The plague pandemic appeared in several episodic waves over centuries from early-age plague episodes in the ancient Greek and Roman empires as early as 432 BCE to the bubonic plague episodes in the late fourteenth century in Europe (Little 2006; Mark 2018; Meier 2016). With limited documentary evidence particularly on the governance of the early plague pandemic, I will rely on secondary accounts covering social-economic-security impact of this enormous pandemic in two parts: the early plague episodes and the Black Death episodes.

The early-age plague episodes in Greece and Rome

The historians have found the earliest documented episode of plague in Athens at around 432 BCE, presumably the contagion would have spread to other parts of Europe and Asia due to the

geographical intermediary location of Athens and its participation in the Peloponnesian War with Sparta in 431 BCE (Luginbill 2020; Wood 1992). Thucydides captures the panic of society during the pandemic, offering me an opportunity to peek into the governance of the pandemic; Thucydides *History* 2.54.1 (Luginbill 2020) observes that the Greeks disregarded civic authority, violated laws and customs, and discarded burial procedures with thousands of untended corpses being left on the streets of Athens, ignored infected individuals and families, rendered them isolated at the time of their greatest need, and abandoned their work both in fields and cities (Luginbill 2020; Morgan 1994). The reports of two Greek physicians: Aretaeus of Cappadocia (Aretaeus 1785) and Rufus of Ephesus (Rufus of Ephesus 2020) also highlight social reliance on supernatural cures for the disease, which hints on reliance on “act of God” narrative by Greek society and state.

By the time plague engulfed the Roman empire, Rome had developed a sophisticated model of governance through laws and decrees for normal and emergency times. The emergency powers commonly referred as the *Roman dictatorial powers*, allowed the emperors to go out of the peacetime legal trajectory and acquire absolute power for crisis governance. The three main instruments of emergency powers were the dictatorship, the last decree of the senate (*senatus consultum ultimum*), and extraordinary commands (*imperia extraordinaria*) (Straumann 2016). The triggering factors for the crisis were wars, internal conflicts, and natural catastrophes but the reach and impact of plague would have penetrated the crisis definition either directly or indirectly. This assertion is further supplemented by recent historical discoveries estimating around 200 instances of emergency power invocations during the plague years (Hays 2006; Meier 2016; Mordechai *et al.* 2019). The Roman Empire reinforced the popular social and cultural belief of considering disease, illness, and death as “acts of God,” which allowed the empire to act upon emergency power to save lives against the divine intervention (Watts 2018). The Roman Empire heavily relied on the use of emergency powers during the three prominent episodes of plague – Antonian-165AD, Cyprian-250AD, and Justinian-541AD. Recent scholarships suggest that the use of emergency powers led to mass unrest and violence threatening the existence of the empire (Harper 2016; Mordechai *et al.* 2019; Scheidel 2002). Edward Watts in his seminal book *Mortal Republic* (Watts 2018) illustrates an incident when a mob imprisoned the Roman Senate in the senate house and threatened to burn them alive during Antonian plague unrest. Ultimately the Roman Empire could not sustain the narrative-driven pandemic emergency governance due to its economic-social costs and the empire collapsed.

The bubonic plague episodes in Europe

The first wave of bubonic plague arrived at the worst possible timing amid warmer years (750–1250) and the great European Famine (1315–1318) (Fraser 2011) – it destroyed the European burgeoning economies and killed more than 30% of European, Middle Eastern, and African population (Green and Symes 2015). The first case of bubonic plague was reported in the port city of Messina, Mediterranean island of Sicily in October 1347 (Henneman 1984). The outbreak spread rapidly across Europe, Asia, and Africa in periodic waves during the thirteenth and fourteenth centuries through evolved trading routes such as the silk routes.

To govern through the bubonic plague, most of the European states relied on sovereign’s broad undefined and unrestrained war-like emergency powers, with arbitrary use of military force to ensure compliance to the sovereign’s directives that even allowed states such as Italy to continue with the emergency powers even after the pandemic. The cross-country nature of the contagion allowed states to use “act of war” and “devastation from outsiders” narratives to impose mandatory quarantine laws particularly against foreigners, and military cordons (*cordons sanitaires*) of foreign ships and vessels. The “act of war” and “devastation from outsiders” narratives reinforced state’s exercise of emergency powers to impose strict lockdowns, arrests, and killing of lockdown violators and foreign merchants. These narratives empowered states to establish the setting of pandemic as an extraordinary event to acquire and justify use of emergency powers, particularly during the deadly initial waves. The setting of emergency could also be identified in instances of arbitrary exercise of power throughout the pandemic, such as Marseille cordoning off the entire city during the outbreak by military forces leading to

multiple arrests and killings (Slack 1988); the Austrian-Hapsburg government using 11000 armed officer with extraordinary power to arrest and cordon off the Turkish border (Velimirovic and Velimirovic 1989); and Pistoia's city council in Italy legislating twenty-three decrees detailing quarantine, social distancing, and mandatory punishment to control the pandemic (Curtis 2022). On this *setting*, narrative of “*devastation by outsiders*” built the *characters* of plague pandemics – foreigners, merchants, and traders were considered as antagonists, while executive and army were portrayed as the protagonists of pandemic governance, which led to several violent attacks on foreign merchants and weavers, most notably killing of Flemish merchants in 1348 (Lucas 2018). The *plot* of the pandemic was to impose strict lockdowns and military cordons against every kind of trading whether within state or international. The *plot* justified adoption and implementation of partisan quarantine policies with arbitrary sanctions and fines on foreigners and merchants. The narrative-driven pandemic emergency powers led to complete militarized ban on international trade and foreign merchants resulting in 30% fall of global GDP during the pandemic (Green and Symes 2015), and eventual revolts and riots in Europe such as the French revolts of 1358, 1381, and 1382, the rebellion in Ghent in 1379, and the English peasant rebellion in 1381.

The cholera pandemic

Vibrio cholerae toxigenic bacterium caused one of the longest-sustaining pandemics in human history – the Cholera pandemic. The epidemiologists and historians estimated the origin of Cholera in the eastern part of British India (the Ganga-Brahmaputra delta) (Cooper and Crosby 1973; Lockhart et al. 1979; Rogers 1926). The metrological and sanitary conditions in the region were extensively criticized for the origin, incubation, and dissemination of the contagion, leading to erroneous name shaming of the pandemic as the Indian Cholera or Asian Cholera. Most of the contemporary literature referred the contagion a consequence of sanitation and hygiene habits of Indians. The name-shaming was part of the narrative-building process to vindicate the real culprit of the pandemic, which was colonial maladministration rather than mere Indian metrological conditions and hygiene habits. Modern scientific studies (Arnold 1991, 1993; Hamlin 2009; Harrison 2013; Ranger and Slack 1992) suggest that Indians have been familiar with Cholera-like disease for centuries and with prolonged exposure Indians in the region would have acquired natural herd immunity to the contagion or learned to live with it (Hamlin 2009; Playter 1893). This status-quo was disrupted by the East Indian Company's seizure of Bengal (Eastern India) in 1757, as it enforced ruthless exploitation of agricultural and handicraft laborers contributing biggest famine in human history and unprecedented migration in India (Chandavarkar 1992; Houston 2022). The unprecedented famine and migration exposed Indians from various regions to the contagion specific to eastern India, which led to more than 15 million deaths in India between 1817 and 1865, and more than 23 million more death during 1865 and 1899 (Arnold 1993).

Despite the numbers and far-reaching consequences, the British colonial government underplayed the pandemic and took no measures until British lives were at risk. The colonial government did not impose emergency powers during the pandemic as it would have generated security and economic risks to the government and instead governed the pandemic with narratives such as “*local sanitation-hygiene disease*” and “*act of God*.” The “*local sanitation-hygiene disease*” narrative was the predominant narrative of coloniality of blaming the native habits; however, the governing narrative revolved around propagating social narrative toward pandemic as “*act of God*.” These narratives allowed the colonial government to determine the *plot* for highly non-interventionist approach toward the pandemic. The *plot* was based on the belief that a public health intervention may affect Indian religious and social sentiments which may trigger resistance against the foreign rule. Following the rebellion of 1857, the colonial government has maintained a non-interventionist approach to the religious-social-cultural beliefs of Indians, which remained instrumental during the outbreak. The “*act of God*” narrative generated the *setting* to foster government's indifference and inertia to intervene, while many Indians acting on *divine interventions* remained superstitious, and the pilgrimages and

religious sites emerged as super-spreader of the contagion (Heaton 2021). During cholera the Indian society followed “*act of God*” narrative and the colonial government fostered the same along with propagating contagion as “*local sanitation-hygiene disease*” to justify non-interventionist approach toward the pandemic. Under the *settings* and *plots* of these narratives, colonial government determined the *characters* of Cholera pandemic publicizing poor sanitation conditions, metrology, and ecology as the primary *antagonists*. On the basis of these narratives, colonial authorities hyphenated a direct connection between cholera infection and sanitary-hygiene situations in India to establish a cultural and moral critique of colonized community (Harrison 2013).

The narrative of “*sanitation and hygiene disease*” led to the misconception of considering cholera as a local disease due to hygiene conditions in India. This misconception rendered the world completely unprepared for a truly global pandemic. The cholera reached Europe in 1821 and the contagion spread through maritime, land, and train routes to every part of Europe. By the time, cholera reached Britain, the mandatory quarantine and cordon protocols enforced by the Act of 1751 were substantially reduced under the pressure of lobbyists and traders. The Quarantine Acts of 1805, 1806, 1810, and 1811 further reduced the quarantine period and abolished the cordon system (McDonald 1951). These acts also increased extraordinary bureaucratic discretion, giving space for corruption and non-compliance, rendering the protocols largely ineffective. The British parliament passed the Quarantine Act of 1825 based on the narrative that cholera is a “*local-sanitation-hygiene disease*,” thereby abolishing the sanitary regulations and quarantine requirements of the previous acts. Britain and the rest of Europe paid an extremely heavy price for misunderstanding and misrepresenting cholera as local disease of Indians. After the initial havoc of cholera, the narrative to govern pandemic substantially changed from being “*local hygiene-sanitation disease*” to “*public health emergency*.” While cholera governance in India was highly non-interventionist, the European states governed it with the emergency powers. The British parliament passed the Public Health Act of 1848 refocusing on quarantines, social distancing, and lockdowns, the act also introduced an interventionist approach toward sanitation, for example, statutory duty of the state to build covered sewage and treatment of waste. It also established the British Port Sanitary Authority – a statutory administrative body to inspect and impose a quarantine on suspected contagion bearers. The British model of pandemic governance based on the Public Health Act 1848 was a balanced model, replacing militarized power with expertise-dominated executive power for screening and quarantining on one front and state intervention in sanitation and hygiene at another front. The cholera pandemic governance demonstrates willful omissions, inaccurate planning, and unscientific deductions with capricious laws and policies due to states’ excessive reliance on narratives developed to promote partisan interests and objectives. Different narratives provided *setting* to justify different approaches toward the contagion – “*act of God*” and “*divine intervention*” narratives led to highly non-interventionist approach in colonial India, and *local hygiene-sanitation disease* led to negation of contagion in Britain and rest of Europe.

The influenza pandemic

The influenza pandemic was the fastest-spreading pandemic of human history; most modest estimates suggest that more than 21 million people lost their lives within a decade of the contagion (Spinney 2018). The origin of Influenza is contested – some researchers suggest that the influenza emerged from the USA and swept around the world in three waves: first in war-ravaged Europe and America, second in Asia and North Africa, and third in Australia and New Zealand (Killingray and Phillips 2003).

The influenza pandemic’s co-existence with the world war empowered states to govern it with *war within a war* narrative to justify continuous and unrestrained use of emergency powers. Additionally, the narrative fostered combatant states to negate the contagion by underreporting infections and deaths while focusing on the war efforts. The narrative generated *setting* for misinformation and mistrust between governing and governed; for example, two most affected combatant states Britain and

USA initially reported the outbreak as “ordinary influenza propagated by different names” (Gunn, Craddock, and Giles-Vernick 2010); most of the combatant states heavily censored the press and public information (Spinney 2018), for example, German government propagated a misinformed study of the war pestilences that would imperil the troops in every territory through which they advanced (Outka 2020; Smallman-Raynor 2004). The “*war within a war*” narrative drove influenza governance in the USA, forming the *plot* of negation toward the contagion, resulting in complete absence of federal planning and provincial coordination during the contagion. During the initial waves, while city authorities were overwhelmed with cases of contagion and death, the federal and provincial governments were focused on war efforts. In Philadelphia, the city authority organized “The Liberty Loan Parade” to raise funds for war efforts, accumulating 200,000 people at the peak of the pandemic on September 28, 1918 – neither federal nor provincial governments intervened against the parade under nationalist agenda of war efforts – the parade turned out to be the super-spreader, causing 12,000 deaths in next few months. The *war within a war* narrative allowed federal government to negate the contagion and determine *antagonists* and *protagonists* of the pandemic, “while exposing the fragility of American optimism” (Bristow and White 2020).

Spain being a non-combatant state developed a unique “*public health emergency*” narrative to govern the influenza pandemic. Post cholera, Spain legislated the Public Health Act of 1885 to contain the spread of so-called “exotic disease” by establishing multi-disciplinary institutions for sanitation, hygiene, and disease control at municipal, provincial, and national levels (Grabuleda Teixidor 2003). The narrative of *public health emergency* empowered executive to acquire specific emergency powers equipped to handle public health crises with some restraint of legality. The pandemic-specific emergency power helped Spain to build institutions for both critical and non-critical phases of pandemics, involving executive, public health, and political authorities. The general instruction on public health (1904) created permanent health offices responsible for on-spot inspection, restructured the advisory boards (for disease outbreaks), and merged executive and medical bodies within the political authority of the Minister of Interior. The instruction was perhaps the first legal mechanism combining executive, medical, and political consultations in decision-making at the national level (minister of interior), provincial level (Boards), and municipal level (Mayors). Though the institutional organization was pathbreaking, but narrative of public health emergency concentrated excessive discretionary powers to executive leading to partisan and arbitrary applications of pandemic protocols (Marset Campos 2008); for example, while public teaching institutions were closed in anticipation of the pandemic but the private remained open and functional, on one hand football clubs and stadiums were strictly restricted while massive religious demonstrations were regular feature in Spain (Gunn, Craddock, and Giles-Vernick 2010). In spite of that the Spanish government did not change peace-time law trajectory to war-time trajectory that let a free flow of press and public information on the contagion. Spain was one of the first countries to report cases of influenza contagion of immigrant workers returning from combatant states, the non-Spanish European press used these cases to inaccurately dub the influenza pandemic as “Spanish Flu.” This was another example of a stigmatization narrative deeply embedded in pandemic governance over the centuries.

Influenza’s coexistence with the war largely influenced pandemic governance as most states concentrated on war efforts while influenza was creating havoc at the domestic front. To negate the pandemic, states used “*war within a war*” narrative to establish pandemic just as another front of war and justified exercise of war-like emergency powers. The war narrative also justified state’s unhindered attention to the war efforts, while underplaying, underreporting, and negating the influenza contagion. Through this narrative war opponents were characterized as the *antagonists*, and military, state, and institutions as the *protagonists*. The “*war within a war*” narrative fostered the *settings* for unqualified emergency powers to control press and other sources of information regarding contagion, leading to an uninformed, unscientific, and uncoordinated pandemic governance. During influenza the public could trust nothing, knew nothing, and did nothing to save themselves while the scientific investigators had no clue whether to identify the pathogen or ignore it, the epidemiologists often misrepresented

and miscalculated the contagion while the legislation to contain the spread was outdated, outmaneuvered, and outplayed by war politics. *Illinois Health News* (November 1918) perfectly captures the agony of pandemacy during Influenza:

? Flu?

If we but knew,

The cause of flu and whence it comes and what to do,

I think that you. And we folks, too,

Would hardly get in such a stew,

Do you?

The Covid-19 pandemic

The Covid-19 is the biggest pandemic crisis of our lifetime, with more than 700 million infections and 6 million deaths in four years (2019–2023) (“WHO Coronavirus (COVID-19) Dashboard” n.d.). The first cases of Covid-19 were detected in China; it spread across human civilization at an unprecedented speed, generating severe social, economic, and political disruptions and discrimination at racial, geographical, and economic levels.

The governance of Covid-19 pandemic has been a confluence of constitutional-statutory-executive authority using emergency powers against the contagion. An analysis of the governance mechanism during the pandemic reveals four patterns of emergency powers: (i) states opting for constitutional state of emergency, mostly the general constitutional emergency powers based on the grounds such as war or internal disorder or governance crises, while very few states opting for public health emergency powers, if specified in the constitution; (ii) states opting for statutory public health emergency powers, whether specified under pre-existing statutes or newly drafted public health emergency statutes, (iii) states opting for statutory general emergency powers on the grounds of internal disorder, public order, or governance crises specified within pre-existing statutes; (iv) states opting for executive decree-based emergency powers (Ramraj and Thiruvengadam 2021). By 2021, fifty-eight states opted for a constitutional state of emergency, thirty-two states imposed emergency under the statute law either under general or public health statutes – by 2022, more than 100 states had opted for some kind of emergency powers during Covid-19 (Bjørnskov and Voigt 2022; Ginsberg 2020). Various states opted for general constitutional emergency powers due to their undefined and largely unrestrained nature, as the pandemic triggered internal crisis, war-like situations, or threat to national security, economic, and social order. Another set of states opted for statutory emergency powers due to restrictive text of constitutional emergency provisions; some of these states opted nearly obsolete and largely irrelevant pandemic governance laws to govern the pandemic, for example, India used a colonial left-over Epidemic Disease Act 1887, along with irrelevant laws such as Disaster Management Act 2003. A small number of states resorted to specialized and often impetuous laws for Covid-19 governance, for example, the UK passed the Coronavirus Act 2020 (without a day’s discussion in the parliament), allowing unrestrained power to executive to fight against the contagion. Nearly every state opted for executive decree-driven emergency measures along with the constitutional and/or statutory emergency proclamations (Cowan and Mumford 2021), these measures ensured direct supervision and control of the executive authority over the lives and liberty of the people at large.

To acquire and justify these emergency powers states relied on narratives such as “*war against the invisible enemy*” and “*war against inevitable microbial world.*” These narratives remained instrumental in state’s acquisition and imposition of emergency powers as they established the *setting* for war-like emergency powers beyond the definition, legality, and constitutionality restraints on pandemic emergency powers. For example, learning from Chinese lockdown strategies in Wuhan, the Italian government opted for the first-ever nationwide lockdown that led to greater economic disaster in Italy. India also followed the narrative-driven pandemic emergency governance as the Indian Prime Minister Narendra Modi used absolutist state power to impose the biggest and strictest lockdown of modern human history (Alfred 2021), without even a day’s notice, causing unimaginable hardships to

migrant-agricultural laborers and pushed millions far deeper into poverty (Bhargava and Bhargava 2021). The “*war against invisible enemy/microbial world*” allowed governments to determine the *characters* of the pandemic – very often political opponents, minority, foreigners, and press emerged as *antagonists* of this narrative. American President Trump’s rhetoric calling of “Chinese virus” (Allyson 2020) is also a part of narrative building in which originator of the contagion is blamed as the principal *antagonist* of the pandemic. The war narratives also allowed executives to project themselves as the *protagonists* of the contagion, often prematurely declaring their victory against the pandemic, as in the case of India, Prime Minister Modi boosted its victory over Covid-19 pandemic at the World Economic Forum in January 2021, while in April 2021, India registered highest-ever-single day Covid-19 infections by any country in the world (Reuters Report 2021). These narratives also facilitated states to restraint and manipulate information at national and international levels, the restriction on information and freedom of press also reflect mistrust between governing and governed. China, Russia, Turkey, Hungary, Philippines, Saudi Arabia, and Malaysia introduced laws to restrict freedom of information by criminalizing independent news forums to report on contagion and enforced stricter restraints against internet and social media networks. As the infection spread across states and societies, states became more restrictive toward the correct information to their own people and world, not allowing space for conscious and information-driven decision making by people. On the other hand, the better performing states during the Covid-19 pandemic (such as South Korea, Taiwan, and New Zealand) used lockdowns as a limited and area-specific measure, particularly in the infected locality, city, or province, and used “find-trace-isolate” technique as the primary nationwide strategy. It is critical to understand that although these states used extraordinary powers but with the narrative of considering pandemic as “*public health crisis*,” in which contagion management was decentralized which was governed through a highly specialized mechanisms.

Conclusion

A pandemic biologically feeds on a novel pathogen spreading through its bacteriological or virological properties, but a pandemic sociologically feeds on its misgovernance through unscientific authority generating gaps between governing and governed. The bacterial-virological build, epidemiological speed, and social-economic impact of pandemics have historically outmaneuvered and outpaced its governance. The article identifies that the pandemic governance has been immotile, unbridled, and unscientific, largely due to state’s historical reliance on narrative-driven constitutional and extra-constitutional emergency powers.

As the theorists and constitutions could not define, characterize, and restraint emergency, the concept and typology of emergency remained beyond the question of legality, particularly during pandemic emergencies. The undefined and largely unrestrained structure of constitutional and extra-constitutional emergency powers entices the sovereign to govern a pandemic through emergency powers. States often built and propagate narratives to acquire and justify use of emergency powers through the theoretical and constitutional vacuums within the definition and legality of emergency powers. These narratives are convenient *settings* for state to acquire and justify the use of emergency powers by determining the *characters* of the pandemic as antagonists and protagonists to fit within the chunky *plotline* of extraordinary powers to redraw individual-social behavior and reshape social, cultural, and governance modalities.

From earliest episodes of plague in 420 BC to the recent Covid-19 pandemic, states have relied on highly counterintuitive pandemic governing narratives, such as “*act of war*” narrative generating highly militarized intervention in Rome and Europe during plague, while “*local hygiene-sanitation disease*” narrative is responsible for a highly non-interventionist response in colonial India and Europe during Cholera. The “*war within war*” narrative shaped influenza governance as an extension of larger war efforts among the combatant states, and “*war against invisible enemy or microbial world*” narrative remained instrumental during Covid-19 pandemic; both narratives justified application of

constitutional and extra-constitutional emergency powers to govern through the pandemics. State's reliance on narratives to govern through pandemics has been remained historically consistent and critical. Although narratives such as “act of God” and “divine intervention” have not been as relevant as “act of war,” “war against microbial world,” and “war against invisible army” narratives in the recent years; the narrative-driven pandemic governance has not transformed in its form, content, and approach. Over the centuries, the narrative-driven emergency powers are not only restraining individual-social-cultural liberties but also generating an omnipresent political-legal environment of willful omissions, unscientific deductions, inaccurate and biased information, stigmatization, and mis-governance of the pandemics.

The article recommends that pandemic governance needs to evolve beyond narratives toward legality of pandemic governance at the intersection of ecology-economy-environment and science, involving informed and conscious decision making, through a grounded definition of pandemic or public health emergency within the constitutions and statutes along with the substantive and procedural restraints on pandemic emergency powers. The article is an appeal to scholars, lawyers, historians, economists, governments, legislators, judges, epidemiologists, virologists, doctors, and citizens of the world to come together in search of a definition and legality of pandemic emergency beyond Schmitt's school of indefinability and Gross' school of extra-legality of emergency power.

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