

EDITOR'S NOTE: THE CONSTITUTION IN TIMES OF EMERGENCY

Earlier in this Volume of *The Yale Law Journal*, Professor Bruce Ackerman published his essay *The Emergency Constitution*,¹ in which he advocated a new constitutional regime to confront the potential for recurring terrorist attacks among modern nations—and the United States in particular—in the twenty-first century. Professor Ackerman proposed that, following such an attack, the President seek congressional authorization for a declaration of emergency, with reauthorizations at fixed intervals, subject to increasing supermajority requirements. Among other measures, Professor Ackerman's emergency regime permitted time-delimited detention, subject to ex post judicial review at the close of the emergency.

The status of the constitution in times of emergency is not a new topic of inquiry: It has loomed large throughout our nation's history, particularly—but not exclusively—in times of overt military conflict. Yet we believe the subject to be an important one at this historical juncture, and Professor Ackerman's work is by no means the only view of how to empower governments to combat terrorism and deal with emergency in a post-September 11 world. In the pages that follow, Professor David Cole and Professors Laurence Tribe and Patrick Gudridge provide alternatives for the structure of emergency regimes, reflections on our nation's—and other nations'—histories of dealing with emergency, and critiques of Professor Ackerman's approach.

We have also invited Professor Ackerman to pen a short response to his critics. In the interests of prompting as full and thoughtful a debate as possible in the limited space available, the authors of the essays in this Issue were given an opportunity to respond to Professor Ackerman's new work over the course of their editorial process. Professor Ackerman, in turn, has been given an opportunity to reply to these editorial changes in a brief postscript at the close of his response.

1. Bruce Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029 (2004).
