

## **The ‘state of exception’ and disaster education: a multilevel conceptual framework with implications for social justice**

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The term ‘state of exception’ has been used by Italian political theorist Giorgio Agamben to explain the ways in which emergencies, crises and disasters are used by governments to suspend legal processes. In this paper, we innovatively apply Agamben’s theory to the way in which countries prepare and educate the population for various types of emergencies. We focus on two main aspects of Agamben’s work: first, the paradoxical nature of the state of exception, as both a transient and a permanent part of governance. Second, it is a ‘liminal’ concept expressing the limits of law and where ‘law’ meets ‘not-law’. We consider the relationship between laws related to disasters and emergencies, and case studies of the ways in which three countries (England, Germany and Japan) educate their populations for crisis and disaster. In England, we consider how emergency powers have been orientated around the protection of the Critical National Infrastructure and how this has produced localised ‘states of exception’ and, relatedly, pedagogical anomalies. In Germany, we consider the way in which laws related to disaster and civil protection, and the nature of volunteering for civil protection, produce exceptional spaces for non-German bodies. In Japan, we consider the debate around the absence of emergency powers and relate this to Japanese non-exceptional disaster education for natural disasters. Applying Agamben’s work, we conclude by developing a new, multilevel empirical framework for analysing disaster education with implications for social justice.

**Keywords:** education; disasters; state of exception; comparative; qualitative

### **Locating the ‘state of exception’ in relation to disaster education**

Emergencies, disasters or crisis and the ways in which they interact with education systems have become a topic of recent research interest (Shaw, Shiwaku, and Takeuchi 2011; Smawfield 2012; Preston 2012; Saltman 2008, 2011). This ‘disaster education’ literature considers how education systems prepare citizens for emergencies, how they respond to emergencies and

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sometimes how emergencies and disasters reshape whole education systems as forms of ‘disaster capitalism’ (Klein 2008; Saltman 2008). In these discussions, there is some realisation that emergencies might produce a discontinuity between previous and existing social relations. Clausen et al. (1978) temper this enthusiasm for a societal ‘break’ and in recent crisis and disasters, such as Hurricanes Katrina (Marable 2008; Ladson-Billings 2006) and the Japanese Tsunami (Preston 2012), authors have considered that inequalities and institutional structures of class, race and gender have been maintained during and after crisis. It is evident that approaches to disaster education, the extent to which disaster education might exist as a separate structure to national education systems and the way that it interacts with other social structures differ globally. In this paper, we consider case studies from England, Germany and Japan.

Most countries will have laws in place which attempt to regulate what happens in a national emergency, how the government should respond and how the population is to respond and be protected. These are often numerous and complex. In this paper, we focus on the laws which might create a potential ‘State of Exception’ in the face of a national disaster, and explore the theory of Giorgio Agamben in order to develop a framework for understanding different national approaches to disaster education.

In simple terms, the ‘State of Exception’ depicts the way in which governments, in extremis, react to a national emergency. Agamben defines the ‘state of exception’ as a paradox that attempts to encapsulate ‘judicial measures that cannot be understood in legal terms, and the state of exception appears as the legal form of what cannot have legal form’ (Agamben 2005, 1). Agamben does distinguish between states of exception which are regulated by terms in the constitution and those which are not (10), but in both senses the state of exception is contradictory in that it aims to be a set of legal arrangements that abolishes the law. This has a contemporary resonance in the concept of derogation (Humphreys 2006) whereby states can specify constitutional exceptions ‘[w]hen faced with a public emergency that “threatens the life of the nation”’ (Humphreys 2006, 678).

Agamben uses the State of Exception as the ‘technical term for the consistent set of legal phenomena which it seeks to define’ (4). It is noted that the State of Exception is found in German theory (as *Ausnahmezustand*) but is not found in Italian and French theories (where ‘emergency decrees’ and ‘state of siege’ are used) nor in Anglo-Saxon theory (‘martial law’ and ‘emergency powers’) (4). Agamben distinguishes state of exception as not being a special form of law, but rather as a ‘suspension of the judicial order itself, it defines law’s threshold or limit concept’ (4). In defining the ‘State of Exception’, Agamben also considers what it is not. He considers first the French Constituent Assembly’s decree of 1791 which distinguishes between an *état de paix* (where civil and military authority act in their own sphere), *état de guerre* (where civil and military

authority act in concert) and an *état de siège* (in which civil authority is passed to the military). Although Agamben considers that an *état de siege* and suspension of the constitution would become a State of Exception (5) an *état de siege* alone would not mean a ‘suspension of the law itself’ (4), as military law may prevail. It is only with the suspension of the constitution (in a constitutional democracy) that a state of exception would exist. The state of exception is not, though, full powers (*pleins pouvoirs*) which is an expansion of the powers of government to become synonymous with the law (5).

Humphreys (2006) considers that Agamben’s writing is generally ‘unsupported by empirical reference or example’ (681), and by Agamben’s own definition it is difficult to locate empirical examples of the state of exception. Emergency powers legislation is often a form of *pleins pouvoirs* and martial law a form of *état de siege* rather than being a straightforward suspension. In each case, a legal framework is enforced whether this is government action automatically becoming law or if it is military law prevailing. However, paradoxically, the state of exception is not exceptional as a mode of governance, being a common paradigm of government in the twentieth century (Agamben 2005, 6–7). Hence whilst (by definition) the state of exception is exceptional, it has a universality in that states commonly invoke emergency powers and maintain them in perpetuity.

Agamben provides a comparative depiction of states of exception for some countries (11–22), distinguishing between those countries where a state of exception is regulated by the constitution and those where it is not. He also highlights differences between European and US conceptions of the state of exception. He considers that the French tradition of states of exception is a parliamentary one, in that parliament (rather than the constitution) allows for the imposition of states of exception. In Germany, the constitution has made provisions for the evoking of a state of exception since the times of Bismarck. In England, the tradition is one of both martial law and emergency powers legislation, whereas in the USA, the state of exception is discussed in terms of the extent of the powers of the president as opposed to those of the congress. Our case study, Japan, is however, not mentioned by Agamben. Although these cases differ in terms of their explicit legal form, or their emphasis on constitutional provision for a state of exception, they are topologically identical in that the state of exception is the expression of a paradox, or as Agamben states, ‘How can an anome be inscribed within the judicial order?’ (25). There is no resolution to this problem as it is indeed paradoxical, but Agamben considers the state of exception as being instructive as to the ‘threshold’ of the law, ‘a zone of indifference’ where ‘law’ and ‘non-law’ are blurred. This distinction between ‘law’ and ‘non-law’ enables Agamben to move to a more general critique of the law which is the substantive subject of the book [the state of exception acting like a lever for Agamben to use to look under the concept of law itself (Table 1)].

Table 1. What is the state of exception?

What state of exception is	What state of exception is not
Suspension of the law itself (4)	Not a special kind of law (like the law of war) (4)
Defines law's threshold or limit concept (4)	<i>État de paix</i> (5)
<i>État de siege</i> and suspension of the constitution (5)	<i>État de guerre</i> (5)
Kenomatic state (absence of law) (6)	<i>État de siege</i> (5) unless the constitution is suspended
Not pleromatic but frequently involves the abolition of branches of government (7)	Pleins pouvoirs (5) (full powers)
A paradox (25)	Pleromatic state where the powers of government are not distinguished (6)
Where law meets 'non-law'	

This notion of the state of exception as 'law's limit' is, we consider, potentially very useful to an analysis of the state of exception in disasters and emergencies, where the boundary between law and non-law is most confused and contested and the subterranean powers of the state may be most evident (Campbell 1983; Zuckerman 1984; Hennessy 2003). Humphreys (2006) considers that Agamben maps the 'liminal spaces of law' or 'how law copes when faced with the irreducibly non-legal' (Humphreys 2006, 680). Agamben's work tends to focus on national law and nation states, although he also explores the suspension of legal processes for certain groups of citizens. Others have applied his theories to analyse such locally bounded 'state of exception'. Preston (2009), for example, has argued that the state of exception can also be considered to be a zone of legal experimentation where the state experiments with legal and citizen relationships in disasters. In the field of education, it has been applied to consider the extra-legal classification of individuals or jurisdictions in education outside of emergencies or disasters (Lewis 2006; Kennelly 2009). Chadderton (2012) and Chadderton and Colley (2012) argue that certain educational regimes place certain disadvantaged groups of young people under such high levels of surveillance that their rights are reduced to such an extent that a state of exception has been created although it has not been explicitly legislated for.

Across a range of countries (England, Germany and Japan), we consider what can be seen to be major contemporary issues of 'disaster education' in each setting – in England around infrastructure failure, in Germany around civil defense volunteering and in Japan around earthquake preparedness – and relate these to some of the ways in which the countries legislate for emergencies and disasters. We are not using countries as 'ideal types' nor are we conducting an exhaustive review of all forms of disaster education or

security laws in each country. We update Agamben's individual national focuses on Germany and England, and ask whether the notion of the state of exception is one which is transferable and relevant to a non-European context, Japan. We focus on two main aspects of Agamben's work: first, the paradoxical nature of the state of exception, as both a transient and a permanent part of governance, and second, the state of exception as a 'liminal' concept expressing the limits of law and where 'law' meets 'not-law'. We ask how far this idea of the state of exception as representing the 'liminality' of the law is useful in examining the way in which education and pedagogy for disasters and emergencies are expressed in different national cases. How exceptional are disaster pedagogies in the different national contexts, or are they integrated into wider education systems? Do liminalities exist in the law around legislation for disasters and in different approaches to disaster education? Do different forms of disaster orientation create different forms of liminality?

### Country case studies

#### *England: emergency powers and the critical national infrastructure*

For the English case study, we look at the emphasis that has been placed on the protection of the critical national infrastructure (CNI) and industry in general in emergency powers. We argue that this seems to have engendered a parallel pedagogical approach of exceptionality in disaster education.

In England, the approach to disaster pedagogy has largely been one of public information, rather than education, with an emphasis largely on 'surge' information rather than preparedness (Preston 2012). Disaster education, at a national level, is exceptional but in extremis emergency powers legislation can invoke a national state of emergency. In this legislation, the protection of property (in particular the national infrastructure) is considered to be of particular importance rather than the security of the population. For example, the Emergency Powers Act (1920) makes explicit reference to the protection of infrastructure:

any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life ... shall be imprisonment with or without hard labour for a term of three months, or a fine of one hundred pounds, or both such imprisonment and fine, together with the forfeiture of any goods or money in respect of which the offence has been committed.

In the Emergency Powers Act (1964), this was extended so as the threat of a disruption, as well as actual disruption, could be legislated against:

for the words from ‘any action’ to ‘so extensive a scale’ there shall be substituted the words ‘there have occurred, or are about to occur, events of such a nature’.

The Emergency Powers Act was superseded by the Civil Contingencies Act (2004) on 10 December 2004. Both the Emergency Powers Act and the Civil Contingencies Act were considered to comprise a fundamental part of UK constitutional law. The Civil Contingencies Act continues to emphasise the national infrastructure as being parallel to human welfare. It defines the term ‘emergency’ to include threats to human welfare (which includes infrastructural elements), war or terrorism and security. As well as these Acts there are various Acts related to specific industries for the protection of infrastructure (for example, Telecommunications Act, 1984). There are also various police forces such as the Civil Nuclear Constabulary and the British Transport Police that have an infrastructure remit.

The protection of the infrastructure is therefore a powerful motivation behind creating a national ‘state of exception’ in England. This is a complex task. Despite being largely a private sector concern, the protection of the national infrastructure is a multi-agency responsibility which involves the majority of government departments and agencies. In particular, it involves the Centre for Protection of the National Infrastructure (CPNI). In the UK, the CPNI was created from a merger of the UK’s National Infrastructure Security Co-ordination Centre (NISCC), a part of MI5 and the National Security Advice Centre (NSAC) in 2007. The CPNI defines nine sections of the national infrastructure as communications, emergency services, financial services, energy, financial services, food, government, health, transport and water. The various elements and sub-elements are valued according to their ‘criticality’ which is measured on a scale made up of the impact on delivery of the nation’s essential services, economic impact (arising from loss of essential service) and impact on life (arising from loss of essential service). The UK does not include public spaces, events and sites of historical importance as part of the CNI but in emergency legislation these are referred to.

Before 2007, then, the UK did not have a single agency responsible for the protection of the national infrastructure. It protected the CNI through legislation and making certain areas ‘sites of security’ with special (exceptional and emergency) legislative powers. There were also informal (and formal) agreements with nationalised industries. The CPNI approach bureaucratise and codifies this more ad hoc approach into sites of ‘criticality’. One of us has previously described this as the State ‘experimenting’ with legislative regimes within the state’s own boundaries (Preston 2009). We would provisionally describe the UK approach as being one of ‘sites of security’ – using legislative and coercive power to construct limited (often localised) states of emergency. This is the state’s attempt to resolve the topological contradiction raised by Agemben’s critique of emergency powers legislation (e.g., that it can exist both inside and outside of the law). The postponement is either temporary or

localised. There is no massive intergovernmental bureaucracy to protect the national infrastructure, rather the CPNI is located as part of the security services and a series of temporal and spatial ‘holes’ or ‘sites’ of criticality are identified. At these sites of criticality, there may be multiple jurisdictions operating simultaneously. For example, a critical infrastructure site may be under the jurisdiction of CPNI for the purposes of security but also fall under the Control of Major Accident Hazards (COMAH) regulations and other legislation relating to critical sites such as nuclear installations (such as the Civil Nuclear Constabulary). This multi-layering of legal and governance structures on top of national legislation produces ‘sites of exception’ being geographical zones where the limits of legal determination are reached.

In terms of education, the UK approach (at least since the Second World War) has similarly not been to use mass public education in terms of preparedness for CNI collapse or emergency or to attempt to mobilise the UK as a ‘civic garrison’ state as in the USA. As stated earlier, the CNI has existed as a state of exception within a state, in the province of the security services. It is a ‘secret of the state’ and not in the public domain. Except for those areas immediately surrounding dangerous CNI (COMAH) sites in which schools should, in principle, receive preparedness training [or at least some form of public information in public information zones (PIZs)], population response on a national scale has often been conducted on the basis of ‘surge education’ – that is education at the last minute with the purposes of informing the population through largely didactic information. This has been the remit of the Central Office of Information (1946–2010) and latterly the Cabinet Office (from 2010) rather than the Department for Education.

In terms of the UK, then, although national states of emergency are infrequently invoked, there are site-specific exceptionalities created around the national infrastructure itself. First, the CNI is a focus for emergency legislation itself and parts of it are explicitly named in Emergency Powers and Civil Contingencies laws. Second, the CNI is given a secret designation and is protected by the security services (under the auspices of CPNI). So the ‘liminality’ of law is located around the geographical (and increasingly) cyber security of the CNI itself. The object of protection is itself at the limits of the law and is secret. Parallel to this, national education in England does not concern itself to any extent with emergencies and disasters around the failure of the CNI and it is only in a national emergency that the state would employ extensive (informal and didactic) public information campaigns. The exception to this is in the case of schools and other institutions within the vicinity of CNI sites which may have some educational provision in case of disaster. In the UK, then, there is provision for national ‘states of exception’ but the liminalities of both law and pedagogy, at least in terms of CNI, are concentrated on localities.



***Germany. Population protection: exceptional laws and exceptional bodies***

In the German case study, we focus on liminalities of emergency laws and emergency pedagogies in which non-German bodies are exceptionalised. Emergency laws themselves have always been contested in the German context, and are always surrounded by much controversy (Jakab 2005). This is mostly due to Art 48 in the Weimar Constitution which allowed Hitler, as president of the Reich, to suspend fundamental rights including freedom of expression of opinion and freedom of the press in response to a national emergency as violence reached extreme levels in 1933. This in turn allowed him to pass an Enabling Act which enabled him to set up a one-party dictatorship without the agreement of parliament (Hanshew 2012). Therefore, key to post-war Germany's legislation on a potential national emergency is the safeguarding of a functioning democratic state, and proving to the population that democracy can provide them with security, after the Weimar Democracy was seen to have failed to do this.

Emergency Laws have in fact been enshrined in the (west) German constitution since 1968. A state of internal emergency could be called in the event of a natural catastrophe, an especially grave accident, or a threat to the integrity of free and democratic order in the Federal Republic of Germany or any of her states (Schweitzer 1969). It was stipulated that if the parliament was unable to convene, a joint committee could make decisions in its place. The right to free speech can be suspended for individuals who engage in 'anti-democratic activities' (Schweitzer 1969), freedom of movement can be restricted in an emergency and the military can be called in 'in times of grave danger', although they would not be allowed to bear arms in the case of an internal catastrophe (Hanshew 2012).

The Laws were intended to protect the democratic state from threats to democracy by preventing the overthrow of the constitution (Schweitzer 1969); however, they are strongly contested among the population and members of parliament who felt that they threaten democracy, rather than protect it. Both the arguments for and against the Emergency Laws were based on the Weimar and Nazi past. This can be seen as an example of the liminality of law, where both law and not-law are viewed as threatening democracy by the German people.

The Emergency Laws have never been invoked. However, other, more recent laws it could be argued evoke a state of exception for certain social groups. For example, a Security Package, Sicherheitspaket II, was passed by an overwhelming majority from all five parties (Haubrich 2003, 9) as a response to the terror attacks of 9/11 in the USA, in order to protect Germany from any similar threats. Germany did not make any amendments to the written constitution in creating its new anti-terror laws, and neither did it invoke a State of Emergency. However, the anti-terror legislation substantially limits civil rights in Germany. The laws mostly focus on police access to



personal data and a more holistic approach to security between the various security services. However, they infringe disproportionately upon the civil rights of non-citizens (Haubrich 2003). For example, foreigners requesting entry to Germany (either on a visa or asylum-seekers) can now be rejected not only if the applicant is suspected to support a terrorist organisation but also if he or she ‘publicly threatens with the use of violence’ (Haubrich 2003, 16). Applicants for visas should be fingerprinted and have their voice recorded (In Britain this only applies to asylum seekers; Haubrich 2003). This is particularly significant in Germany where it is exceptionally difficult to gain German citizenship if an individual is not of German descent, and thus is home to large number of foreign nationals, especially Turks. It may therefore be possible to argue that although no legal state of exception has been invoked, one has been created within Germany for those without German citizenship. This is a good example of the paradoxical nature of the state of exception, ‘a zone of indifference’ where ‘law’ and ‘non-law’ are blurred.

As in the UK, there has been no formal education in schools and colleges in Germany for disasters and civil defence. This is probably due to the fact that historically there has been emphasis on security, rather than preparedness in civil defence, because the German people for long did not trust their state after their experiences in the war (Biess 2013, Interview with Author, May 7). On the other hand, both historically and today there is a comparatively large percentage of the population involved in volunteering for disaster assistance, which can be seen as a type of informal learning. In total, 1.8 million people volunteer for organisations involved in disaster assistance (BMI 2011). The volunteer forces involved in disaster assistance include the Red Cross, the Johanniter, the volunteer fire brigade and the Technisches Hilfswerk (THW), a technical volunteer force for disaster assistance which was founded in 1953. The THW became a Federal Institute of the Ministry of the Interior (Franke 2008), and remains one of the pillars of German civil defence, and has its own state-funded training school, the THW Bundesschule.

However, significantly, volunteers do not come from all social backgrounds and groups. They often come from traditional volunteering families, 90% are male, and there are very few people from a migrant background. These issues have begun to receive more attention recently, as it has become clear that there is a growing shortage of volunteers, for two reasons: first, the abolition of compulsory military and community service in 2011 (BBK 2011), and second, demographic change (BBK 2011; Hartmann and Krapf 2009; Würger 2009) to which there are three aspects: the population is ageing, minority ethnic young people are very underrepresented in civil defence and the population is becoming more mobile. There is therefore, historically, a significant level of exclusion in volunteering, although it has not been conceived in these terms.

Some thought is now going into attracting a wider range of people to volunteering. However, when it comes to attracting more people from migrant

backgrounds, the evidence from some BBK (Federal Ministry for Population Protection and Disaster Assistance) publications suggest that fixed notions of difference may be operating, and contributing to their ongoing exclusion from disaster response training. A BBK publication reads:

disaster assistance organisations are already often faced with situations where intercultural and linguistic competences are a necessity, a situation which in the future will only become more frequent .... Volunteering is not only useful to the general public, it is also of use to those who volunteer, whose integration will be supported by participating in community life. People from a migration background can not only make contact with others through their volunteering work, they also have the opportunity to view themselves as part of an important community. They also acquire knowledge and skills which could improve their employability and the possibility of qualifications which could improve their chances in the labour market. (Würger 2009, 7–8, my translation)

It could be argued that the publication stereotypes those from migrant backgrounds as ‘other’: having intercultural competencies and the ability to speak languages other than German, and more seriously, as being unintegrated in society and having low levels of employability. Furthermore, the BBK records a seminar held by themselves in 2009 on the topic with little or no participation from citizens with migrant backgrounds (2–3), suggesting that their voices continue to be excluded from discussions around volunteering and therefore from disaster pedagogies.

In Germany then, as in the UK, disaster pedagogies are exceptional. However, a proportion of the population is heavily involved in volunteering for disaster assistance, which is state regulated. Only certain groups (white German, male) are involved in civil protection and disaster preparedness, other groups are to a certain extent actively excluded. (Perceived) non-German bodies are exceptionalised in both emergency legislation and emergency pedagogies. The German state’s efforts to protect democracy can be viewed as creating pocket states of exception for non-Germans who are perhaps not considered part of the German state. Whether or not the state of exception is officially invoked, non-German bodies are exceptionalised in emergencies.

### ***Japan: extending universal disaster education***

In Japan, we focus on the non-exceptionality of disasters and legislation and education for disasters. As an island nation located on top of crustal plates, Japan has experienced a number of natural disasters since the beginning of her history. Still clear in our memory is the Great East Japan Earthquake of 2011, a complex disaster referred to as ‘beyond the scope of the assumption [souteigai]’ (Murosaki 2013), which led to the loss of nearly 16,000 lives (National Police Agency 2013). It was just one of the 24 earthquakes over Magnitude 6 recorded since 2006 (Japan Meteorological Agency 2013). The next predicted earthquake

of a similar scale is said to be around the Nankai trough, where a large part of western Japan is. An official source recently confirmed that the probability of the occurrence of the earthquake of Magnitude 8 or 9 within the coming 30 years is between 60% and 70% (The Headquarters of Earthquake Research Promotion 2013). Natural disasters are no longer ‘an emergency’, and preparedness and control became usual, not exceptional. We suggest that such universality of natural disasters and disaster education has been extended to other types of emergencies shifting towards a holistic approach to emergency legislation and education.

The current legal system of Japan does not allow for the suspension of the Constitution law (The Research Committee<sup>1</sup>, 2003). Therefore, legally, ‘a state of exception’ cannot be called (as Agamben would argue, the state of exception would involve the suspension of law, rather than a special kind of law). The Japanese approach has been to employ certain legal measures within existing laws in case of national emergencies, adhering to the Pacifism of Article 9 and the guarantee of fundamental human rights of Article 14 of the Constitution. We will first look at those legal measures and then how they are translated into educational pedagogies.

The Constitution itself entails one section on ‘emergency situations [kinkyuu jitai]’, which is the Diet section of Article 54. The House of Councillors is closed when the House of Representatives is dissolved, and the article allows the Cabinet to convoke the House of Councillors in an emergency session. However, any decisions taken at the session remain provisional and require authorisation once the Diet is reopened (The Constitution Division 2003). Apart from this constitutional law, historically, the legal system around national emergencies has been largely driven by recurring natural disasters in Japan. After the Second World War, control measures for natural disasters were prioritised in terms of infrastructure and population protection. In 1947, the Disaster Relief Act laid out the practicalities of post-disaster measures. This was followed by the Fire Control Act, the Flood Control Act, and in 1961, overall control measures for natural disaster were summarised as the Basic Act on Disaster Control Measures. The Basic Act stipulates that the heads of municipalities are responsible for decision-making in the event of a disaster, and only in case of an extraordinary-scale disaster, the Prime Minister may declare ‘a disaster emergency situation [saigai kinkyuu jitai]’ and offer recommendations and instructions, but no orders. The declaration has to be made after obtaining an approval in a cabinet meeting and authorised by the Diet within 20 days. If the Diet is closed, authorisation has to be obtained as soon as it is reopened (e-Gov 2013a). Other specific laws such as the Police Act, the Self-Defense Act and the Act on Special Measures Concerning Nuclear Emergency Preparedness include a similar ‘weak’ form of emergency powers, all of which are understood as ‘an extension of the constitutional order, not an emergency power act’ (e-Gov 2013a).

The turning point for Japan was 2003–2004 when the Three Acts Concerning the Measures in Armed Attack Situations were introduced, and the following year, the Civil Protection Act.<sup>2</sup> After decades of debates, the legal framework for armed attacks and terrorism was consolidated, largely triggered by a series of external threats since the mid-1990s, including North Korea's missile experiments, 9/11 in the USA and the Iraqi War (Cabinet Secretariat 2013a). The government proclaims that the Pacifism and the guarantee of fundamental human rights of the Constitution are the underlying principles in the acts. It is stipulated that in case of an armed attack:

the use of military power has to be limited for the purpose of eliminating the attack, and that any restriction against freedom and rights of the people must be kept to requisite minimum and in a fair and appropriate manner (e-Gov 2013a, 2013b).

There is a view, however, that these laws manifest the beginning of the shift towards an acceptance of 'a state of exception' whereby the Constitution could be suspended (Tsukui 2012).

Having existed as long as natural disasters have existed, disaster education has been well developed in Japan. In post-war Japan, the approach has been legislated, overt and integrated into school curriculums and lifelong learning programmes. Both mass public education and provision of information, advice and guidance (IAG) have been the major pedagogic means for emergency education. Mass public education is undertaken at school, in communities and industries. The Basic Act on Disaster Control Measures obliges disaster prevention plans at the municipal and the prefectural levels and from certain businesses with public purposes (e-Gov 2013b). In those plans, educational activities have to be defined and planned, responding to the needs of the region in which the school or the organisation is situated. Another example is fire drills legislated in the Fire Control Act, which obliges drills at every public space (e-Gov 2013c). These preparedness activities are very much embedded in Japanese society.

Building upon such legislated schemes, school policy in relation to emergency has been extended to 'safety education [anzen kyouiku]' guided by the Ministry of Education, Culture, Sports, Science and Technology (MEXT). Safety education is a multi-hazard approach which addresses traffic accidents, intruders and kidnapping, as well as natural disasters. Safety at school has been increasingly debated, which resulted in the 2011 new Course of Study (national curriculum) in which 'enrichment of safety education' (MEXT 2013) was stated for the first time. This means individual schools are obliged to implement certain hours of preparedness lessons. The MEXT has produced guidelines to help schools develop their own safety education responding to their needs. The latest edition of the guideline was issued in 2013, which reflected the lessons learned in the 3.11 earthquake and tsunami.

The experience of the extraordinary-scale disaster has reinforced the necessity for even tougher preparedness at school.

Outside of school curriculum, laws, policies, initiatives and learning resources concerning emergency control and population response, as well as the information about real-time emergency situations have been made available in the public domain. The Cabinet Secretariat, the Cabinet Office and related ministries and agencies make a range of IAG available on their homepages. Following the enactment of a series of the Acts Concerning the Measures in Armed Attack Situations, the notion of ‘civil protection’ has been promoted through, for example, the Civil Protection Portal Site<sup>3</sup> and a leaflet entitled ‘Protecting Ourselves against Armed Attacks and Terrorism’.<sup>4</sup> Also, civil protection exercises are organised, and the recorded exercises are made available for viewing (Cabinet Secretariat 2013a, 2013b, 2013c). These public pedagogies are applied in advocating the population to prepare and protect themselves in case of a crisis, rather than waiting for the state’s instruction and support.

Thus, currently in Japan, there is an effort to extend the non-exceptionality of disaster legislation and education to other types of emergencies. In parallel with this transition, there has been an ongoing debate whether to introduce a holistic emergency act [*kinkyuujitai kihonhou*], which allows ‘a state of exception [*kokka kinkyuukun*]’. A plan for such act was agreed by the three major parties in 2004, but it has been neither passed through nor rejected in the Diet. Here is not a place to examine the whole debate, but what is significant is that the proposal has been reevaluated after the Great East Japan Earthquake of 2011. In the following year, a request to forward the enactment of the proposed law won the vote in the Diet.

The argument of the proposed law is twofold. First, a multi-hazard law is required to amalgamate a range of existing emergency laws which separately address natural disasters, armed attacks and human errors, as described earlier. Such a law will enable joined-up working which is necessary in case of a multi-hazard disaster. Second, the Prime Minister should have a power to make decisions in an extreme emergency situation, overriding the decisions of municipal and prefectural governments (Okada 2011).

The first part of the argument seems to be widely accepted. The 2011 experience demonstrated that the different jurisdictions of the emergency laws, which derive from government’s vertical administrative structure, caused confusion and delay during the control and relief processes after the multi-disaster of the earthquake and tsunami and the nuclear power plant incident. The second part of the argument has been more controversial. The supporters claim that the Prime Minister should have been able to take over, make decisions and give orders when municipal governments were collapsed and decision-making was malfunctioning. The opposition has been concerned here that the Pacifism and the guarantee of fundamental human rights stipulated in

the Constitution would require an amendment in passing the proposed law, and that it would permit too much state power and endanger democracy (Okada 2011). There is another group of opposition which indicates that the current emergency laws are not applied correctly. A multi-hazard approach is welcome, which will enable clearer decision-making processes, and all of this can be done within the current Constitutional order (Tsukui 2012).

What will happen to the proposed act is yet to be seen; however, a common ground has been developed in Japan that she has to increase preparedness so as to be able to handle as many types of emergencies as possible 'within' the scope of the assumption.

In summary, in Japan, due to the frequency and strength of the threat of natural disasters, 'exceptional' legislation has until now not been required to maintain the functioning of the state. Equally, lifelong learning for natural disasters is not exceptional, indeed, it is fully integrated into existing systems of learning and IAG, and this approach is being applied to other forms of crisis. On the basis of the 2011 experience, Japan's effort since has been to extend 'the scope of the assumption' so that no disaster will be exceptional.

### **Conclusion: a multilevel conception of the pedagogical in disaster education**

In the earlier examples, we see that the way in which the state positions education in disasters and emergencies differs between national contexts. In Japan, disaster education is perceived to be unexceptional, and it permeates a number of aspects of lifelong learning and citizenship. Preparedness is considered to be a responsibility of state education institutions, communities, businesses and individuals. The whole country is alert, and emergencies, particularly natural disasters, are understood as a norm. It has not (yet) been regarded as necessary to legislate for potential states of exception because disasters are not considered exceptional. This position has been challenged by the 2011 earthquake and tsunami, and the nuclear power plant disaster, which was actually a multi-layered exceptional disaster, and it has become a strong drive towards an introduction of states of exception.

Both England and Germany legislate for a state of exception, and are examples of 'protected democracies'. England has invoked emergency laws in order to protect certain geographical sites essential to internal security; however, in Germany, emergency laws have never been invoked explicitly, although it could be argued that laws which deal with security create liminalities which differentiate between German and non-German bodies, and an exceptional space around non-German bodies. In England and Germany, disaster education is exceptional at a national level, but there are 'sites of exception' or 'persons of exception' in these states where disaster education is localised. However, even in these countries these localisations involve expressions of state power. In England, the importance of critical infrastructure in national emergency powers



means that particular attention is paid to local populations in its vicinity and pedagogical anomalies are created where emergency education is regulated differently from the mainstream. In Germany, the emphasis on legal citizenship as a national priority produces a certain type of exclusive and exceptional citizenship, expressed here in the example of volunteering for civil protection.

In [Table 2](#), we use the results from this analysis to create a taxonomy of different types of pedagogical liminalities for disaster education.

In case (a), the national orientation is such that preparedness against a disaster/emergency is at the highest level. It could be seen that the country is in a permanent state of emergency, or already in a state of emergency. There is no 'liminality', law is either already at its limit (full, national, state of exception) or would not be altered following a disaster or emergency. Similarly, one would not expect the education system to undergo a radical transformation in a disaster or emergency. In case (b), the disaster/emergency produces a rapid transition to emergency powers (a 'state of emergency') and this would radically alter education and pedagogies for disasters. Legally, the nation would proceed to a full 'state of emergency'. These are the limit cases.

In case (c), the national orientation is that local geographies or facilities represent the 'limit' of law. There may be legal 'anomalies' or educational 'anomalies' around these areas. In case (d) it is certain 'bodies' that are classed as being 'exceptional' or 'legal anomalies'. Again, in this case there may be educational or pedagogical anomalies around these bodies. Note that these cases are not necessarily exhaustive and several 'levels' of pedagogical liminality may appear within the same country. We hence understand the state of exception as a multilevel concept where liminalities and exceptional spaces are created not just at the national but also at the local and individual level. This would seem to be a good analytical framework for a comparative analysis of disaster education, in order to begin to relate a state's approach to disaster education to wider, legal approaches the state takes to defend itself in national emergencies.

### **Connecting the framework to theories of social justice**

Grappling with the concept and invocation of the state of exception across different national settings and applying the concept of liminality allows us to understand better the complexities involved in disaster education. Inherent in our framework, then, are implications for social justice. The framework, based on the concept of the state of exception and legal liminalities, allows us to show how disaster education as well as emergency laws might operate differentially in different spaces and for different social groups. This fits in with the very high-profile analysis of actual disasters undertaken by Klein (2008), for example, who argued that it is primarily the interests of capital and the ruling class that are served by disaster preparation and recovery. Klein's work challenges more liberal notions of social justice, in which there would still be the expectation of equality of treatment to citizens, even whilst emergency and disaster situation



Table 2. Emergencies, liminalities and education.

Disasters/emergencies and states of exception	Liminalities	Implications for education/pedagogy
a. Disasters/emergencies seen as unexceptional, societal orientation towards preparedness. Emergency measures are in place under the Constitution order.	None	Education has an orientation towards disaster education. Pedagogical schemas for involving citizens in preparedness. (e.g., Japan's universality of lifelong learning for natural disasters)
b. Disasters/emergencies seen as exceptional, no societal orientation to preparedness. Emergency legislation invoked in disasters. Emergencies/disasters produce national states of exception.	Nation state and temporal	Education is not orientated towards disaster education. No pedagogical schemes for preparedness.  Surge education following an emergency. (e.g., UK in national CNI failure)
c. Disasters/emergencies seen as exceptional but localised on geographies or sites.	Geographical	National education is not orientated around disaster education but there are distinct types of education in sites of (actual/anticipated) emergency. (e.g., UK information and guidance around COMAH sites)
d. Disasters/emergencies seen as exceptional but localised on bodies or identities.	Bodily	National education is not orientated around disaster education but there are distinct types of education around (actual/anticipated) 'emergency'. (e.g., German volunteering privileging certain categories of volunteer)

laws are considered to be revised or suspended in a geographical zone or extreme political situation. Klein argues that fundamentally laws that protect property rights and exchange, even when modified by laws that allow for redistribution, still reflect the interests of capital as long as they do not disrupt the circulation of value. Hence, in the case of Hurricane Katrina, the same national legal and educational system can produce inequitable results between subjects (Ladson-Billings 2006; Marable 2008).

Strong (1985) in the introduction to the translation of Carl Schmitt's 'Political Theology' (Schmitt's work provides Agamben with inspiration for both his argument and critique) considers that Schmitt's (and relatedly

Agamben's) work emphasised the procedural aspects of law. Similarly, Agamben's theory is not one which considers that the suspension of law in a 'state of exception' is against social justice. Indeed, there is the tacit suggestion that it is the implementation of law, or (as often is the case) the eventual crafting of a 'state of exception' into law or indefinite policy that produces the worst forms of oppression, even genocide. However, from a Marxist perspective, according to Colatrella (2011), Agamben's theory 'lacks any understanding of the relationship between politics and economics, or of class forces in historical outcomes, and any link between civil liberties and guarantees to and control over livelihood' (103). Colatrella is troubled by Agamben's neglect of certain historical subjects (such as Native Americans and indigenous people) and lack of consideration of colonialism (106) or neo-colonialism (107) in his analysis. Colatrella situates the 'state of exception' as related to Klein's conception of 'disaster capitalism' and to processes of capitalist exploitation and appropriation more fundamentally.

We would argue, though, that Colatrella's critique is not antithetical to Agamben's thesis, nor necessarily opposed to Agamben's notion of the state of exception. In particular, the concept of liminality might allow us to consider the ways in which the state and capital redefine geographical, temporal spaces, or concepts, such as citizenship or democracy, as sites of 'primitive accumulation' where capital is allowed to a greater degree of leniency following Klein's definition of 'disaster capitalism'. In examining the UK, for example, one could consider that the nature of emergency powers has been primarily concerned with the protection of the CNI (part of 'capital' or the 'forces of nature' which are of use to all capitalists) and also with the disciplining of labour power (as 'emergency powers' have primarily been exercised during industrial disputes rather than in disasters or other forms of emergency), and in Germany with the protection of the capitalist system in the guise of democracy. Our future task, then, is to work towards developing this framework for disaster education further linking to work already conducted around actual disasters to identify and make more explicit the multilevel implications for social justice in disaster education.

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## Notes

1. The Research Committee on the National Constitution of Japan in the House of Representatives.
2. In full, the Act Concerning the Measures for Protection of the People in Armed Attack Situations, etc.
3. <http://www.kokuminhogo.go.jp/>
4. <http://www.kokuminhogo.go.jp/en/pdf/protecting.pdf>

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