

**DICTATORSHIP: FROM THE ORIGIN OF
THE MODERN CONCEPT OF SOVEREIGNTY
TO PROLETARIAN CLASS STRUGGLE**

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Dictatorship, in the form of Caesarism, is in the American air. I have recently written on what, in practical terms, an American Caesar would do; I will soon tell you how likely our Caesar is, and why. As it happens, I am at the same time working my way through all the books of Carl Schmitt, in their order of original publication, and his next book up, *Dictatorship*, published in 1921, clarifies the historical and legal-analytical part of what is unspooling before our eyes. We cannot be better informed, analytically at least, than by pondering this work of the peerless German, whose book, as always, puts to shame today's mostly insipid political and constitutional analysis.

All modern Western nations are governed, in theory, by a constitution. These all rely on the separation of powers; no Western nation is a unitary state. The key question for Schmitt's writings from the 1920s, which he begins to address in this book, is this: in a system of separation of powers, who is to rule by suspending that separation when there is an emergency that threatens the nation, and by what authority and under what limitations does he take such action?

Dictatorship forms a crucial groundwork for, and bridge to, Schmitt's later work on the "state of exception," part of Schmitt's larger framework that is often called (though Schmitt never called it that), "decisionism," which revolves around the question of ultimate sovereignty as the justification of action. For Schmitt, the core matter for the political life of all nations is that someone must make the necessary decisions when there is an emergency; such decisions and the decision-maker are not an emergent property from any preexisting body of people or laws. In crisis situations, whatever the governing law is, gaps will arise that are not addressed by that governing law, and therefore someone must address the concrete situation not addressed by the law, if order, and even more justice, are to be attained. "Measures" must be taken when "law" does not provide the answer. No doubt this is dangerous, but it is inevitable, and ought to be faced head-on, not avoided or dodged.

In today's popular mind, to be sure, dictatorship simply means despotic single-man rule. This is a confusion that ignores both the history of dictatorship and the many variations possible; it is obvious from Schmitt's text that he writes in part to clarify what was already, in his far better-educated time, a concept often addressed in a way that offered no light. He writes not only to talk about the present day, but to explain what a dictator was, in the Classical and Renaissance worlds, and what it has become since Western monarchy went the way of the dodo. Even absent a larger political framework, this book would be a clarifying work.

If there is a Cliffs Notes version of *Dictatorship*, it is that moderns should distinguish between commissary and sovereign dictatorships. A commissary dictatorship is one where a ruler, whether king or parliament, grants great, yet circumscribed, authority to an individual to accomplish goals set by the ruler, within the existing political order, with the goal of maintaining that order. A sovereign dictatorship is where the political will of a nation is delegated to an assembly, or an individual, to establish an entirely new order; limits are not to be found, and the maintenance of the existing order is not a goal. Schmitt further distinguishes between dictatorship, of either type, and "arbitrary despotism," which seeks no larger political goal. From this flow certain crucial conclusions, notably about the Weimar Constitution, with which Schmitt was, unsurprisingly, particularly concerned. (An Appendix, first published in the second edition of 1928 but first delivered in 1924 as a lecture, directly addresses the Weimar Constitution in detail, whereas the original edition of *Dictatorship* ends with only a relatively brief set of thoughts on that critical document.)

Dictatorship, however, did not spring fully formed from Schmitt's mind, nor was it simply a reaction to postwar chaos and uncertainty as to who controlled the German state at any given moment. (Although this book makes no direct reference to the turmoil of 1919 and 1920, no doubt the extremely unsettled circumstances surrounding him focused Schmitt's attention. A Communist regime briefly took control of Munich, where Schmitt had lived since 1915, and violence directed at overthrowing the existing order, the Weimar Republic, declared in November, 1918, was everywhere in postwar Germany. Mostly this was violence from the Left, but it also came from the Right, notably

the Kapp Putsch.) The “state of siege,” a limited suspension of constitutional provisions by a locally-commanding military officer, had been permitted under the nineteenth-century Imperial Constitution. This allowed a commander actually under literal siege to temporarily take over and administer all branches of local civilian government, voiding the separation of powers, in order to address a present emergency. In theory this power was quite limited, but in practice during the World War the use of the state of siege had gradually expanded to excessive proportions, permitting the military to swallow local legislative and judicial functions entirely at times. While working in the Bavarian state apparatus during the war (he was medically exempt from fighting, but volunteered for the army, who eagerly used his legal skills), Schmitt had worked closely on administering instances of this and related matters, such as martial law, and in both 1916 and 1917 he had published articles on the state of siege. *Dictatorship* therefore more broadly applies these narrow learnings, in order to historically and intellectually analyze the political reality of exceptions to the rule of a governing constitution.

The first half of the book is a historical tour de force, in which Schmitt is essentially showing off his erudition, tracing the development of the theory of dictatorship through history. None of this is polemic and, frankly, you have to be quite interested, not to say dedicated, to stay focused and absorb the material. We begin with a dense theoretical analysis of constitutional state theory. Until the nineteenth century, any talk of dictatorship meant a discussion of the Roman practice of extraordinary magistrates, appointed by the Senate for a limited (usually six-month) period. Such dictatorships were usually directed at streamlining processes to win an existential war, or at suppressing internal turmoil, and while the practice changed over time, ending in the mutated and near-permanent dictatorships of Sulla and Julius Caesar, focus on dictatorship as an institution ended with Rome. Apologists for the absolute monarchs of the sixteenth and seventeenth centuries did not analogize their rule to the Roman practice, which was nonetheless sometimes discussed in detail in “modern” texts such as Niccolò Machiavelli’s *Discourses on Livy*, with reference to a similar practice sometimes used in Venice. Analyses such as Machiavelli’s did not treat dictators as sovereign, however; they had extraordinary powers, but some other institution was sovereign, the Senate in Rome or the

Great Council in Venice. In practice, sovereignty was distinct from dictatorships; or put another way, technically at least, all dictatorships were regarded as commissary.

This is just the launching point for a deep dive into Renaissance history, analyzing how the theory of dictatorship has changed over time. Schmitt explores the emergence of the modern state through the development of executive power and its limitations, discussing several very diverse thinkers. On the one end, he cites the monarchomachs, who opposed absolute kingly rule and upheld organic limits on all princes, such as Junius Brutus, who wrote *Vindiciae contra tyrannos* (“Defenses Against the Tyrants”). On the other end, he cites Thomas Hobbes, who endorsed the absolute sovereignty of the prince. In all cases, however, the key question is “whose decision carries the day in the end, and by what authority?” And the answer was never “the people”; it might be an absolute prince, or the estates, or a combination, but no suggestion was made in early state theory that the right of decision lay with the people as a body. Again, dictatorship was, for all practical purposes, a historically-irrelevant curiosity. Nobody suggested that monarchs, possessors of sovereignty, were dictators.

Only in the works of Jean Bodin, namely in *The Six Books of the Commonwealth*, Schmitt tells us, did a more subtle understanding of dictatorship emerge. Bodin’s focus was sovereignty of monarchs, but he did touch on dictatorship, and his analysis understands that what is called dictatorship can be fruitfully classified by the degree of sovereignty held by a man called dictator. Bodin distinguished between the Roman dictator, who was not sovereign, and other ancient appointed holders of extraordinary power, such as the Spartan *harmosts*, military governors sent to conquered cities. The former had extraordinary power, to be sure, but it was circumscribed power, to be used only to accomplish goals specified by the actual sovereign, and sharply limited in time. He could act against the laws, as necessary; he could not make new laws, much less alter the arrangement of the state. For a Roman dictator, that would undermine the essence of the system, and in fact be impossible within the system, like wishing a genie grant you more wishes (my example, not Schmitt’s—humor is not his strong point). The Spartan *harmosts*, and others such as the elected tyrants of Macedon, had absolute power to do what they wished with the society over which they ruled, for a time not

set. Bodin was the first to recognize what Schmitt revolves much of his analysis around: sovereignty itself is in large part the power to decide when a state of exception exists for which a dictator is a solution—a concept that would loom very large in Schmitt's later writings.

Hobbes also pointed in a modern direction, through his experience of the Protectorate and its influence on him, which drove the question of whether sovereignty derives from the people, which arguably would imply that any holder of power delegated from the people is necessarily less than wholly sovereign, because the people could withdraw their delegation. Even a Caesar, in this understanding, is not truly sovereign.

The analytical solution to these various struggles (only a brief overview of which I have given here) is to formally distinguish between sovereign and commissary dictatorship. We will come back again to sovereign dictators; a commissary dictator is one given a mandate by a sovereign “to do, in an appropriate manner, what the concrete situation requires, combined with the corresponding authorization to represent the authority of the state.” Only a commissary dictator can exist within the boundaries of any modern theory of the state without exploding the state itself; this is Schmitt's core point.

We're not done with history yet. Having introduced this distinction as a frame, we next turn to a very long exposition of how royal commissars were used until the 1700s, to execute the monarch's will in France and Germany. Schmitt at points seems to suggest these were not, in fact, even commissary dictators to the extent they were not addressing a state of emergency, rather mere administrators, but he leaves the dividing line vague. Such commissars were necessary in days of slow and limited communication, but naturally the key question was always how to circumscribe the powers of a commissar without crippling his needed efforts. (The recent integralist-tinged history of Louis IX, *Before Church and State*, talks at length about the King's commissars, called *enquêteurs*.) As a result, a great deal of law grew up around the practice of these commissars. Schmitt talks at length, again seemingly showing off, about the German military captain Albrecht von Wallenstein, supreme commander of the armies of the Holy Roman Emperor during the Thirty Years War, who seemed to be a dictator with near-absolute powers, but whose powers were strictly circumscribed (and he was ultimately assassinated on the orders of the Emperor, because he had

gotten too big for his britches). In Schmitt's view, actually, Wallenstein was not even a commissary dictator, because there was no state of exception, merely a war being fought, but the point is that none of these men were sovereign, and nobody at the time would have made that mistake—except perhaps Wallenstein, and that didn't work out for him so well.

However, this clean separation between sovereignty and delegated power began to change in eighteenth-century theory, as exemplified by Jean-Jacques Rousseau and the Abbé de Mably. Here emerged the idea that the sovereign could be a dictator appointed by the people, through the general will, embodying a unitary power without any separation of powers. Schmitt does not think much of Rousseau, seeing his thought as full of gaps, but as useful for exploring what Schmitt really cares about—from where comes the “constituent power” that allows legality and power to be bound into one unit?

From this exhaustive history Schmitt distills his theory of what dictatorship is, and within that, what is commissary dictatorship and what is sovereign dictatorship. He states that dictatorship is not the mere suspension of the separation of powers, but rather a suspension with a concrete object, an end to be achieved that is extraordinary. Given this, as I say, he concludes there are two types of dictatorship in the modern world. The commissary dictatorship, which derives from existing law “suspends the constitution in order to protect it—the very same one—in its concrete form.” It is by definition temporary, designed to render itself superfluous; the measures it takes, while outside the normal legal framework, are paradoxically aimed at preserving that framework. And the sovereign dictatorship, for which “the entire existing order is a situation that dictatorship will resolve through its own actions,” “does not suspend an existing constitution through a law based on the constitution . . . rather it seeks to create conditions in which a constitution—a constitution that it regards as the true one—is made possible. Therefore [sovereign] dictatorship does not appeal to an existing constitution, but to one that is still to come.” This latter is the “constituent power,” which supersedes the power of the existing sovereign.

And in whom does the constituent power lie? Well, that's the question, isn't it? In modern theory, which denies that God delegates the constituent power, it must lie in the people—or at least that is the

thrust of nearly all modern thinkers. The constituent power delegates power to a sovereign dictator—but this is necessarily transitional, for the constituent power does not itself transfer to the dictator, who is formed to accomplish a specific task. Thus, “this power is sovereign in a completely different sense from that in which the absolute monarch or a sovereign aristocracy can be said to be ‘sovereign.’” For Schmitt, the best example of this process in pure form is the French Revolution, in particular the Constituent Assembly, which exercised a commissary dictatorship derived from the sovereign dictatorship of the National Convention, and the “people’s commissars” sent out to administer the will of the Assembly—who continued to be used until 1815 and the restoration of the monarchy.

However, the constituent power being located in the people poses a challenge for the modern state. After all, popular sovereignty as the basis for rule is extremely dangerous, because it can be used to justify any revolutionary action, including claims made by the true enemy, the so-called dictatorship of the proletariat. Not that Schmitt focuses directly on the dictatorship of the proletariat; at first glance, its mention in the book’s title seems out of place. But gurgling beneath the surface of Schmitt’s analysis of constituent power is a seeking for how a constitutional order can avoid the horrors of Communism.

So finally we come to modern Germany, the state of siege, and the Weimar Constitution. Schmitt struggles to rationalize the change of the nineteenth-century state of siege, a practical measure not by any means crucial to the survival of the nation, into the broader need for recognition of the state of exception during an emergency (both technical terms to Schmitt, *Ausnahmezustand* and *Notfall*) that existentially threatens the nation. The point of the state of exception, of course, is that normalcy is not a choice; the nation can’t just simply pretend there is no problem. Someone must decide what is to be done. Such existential threats from within are a modern problem, not faced in Germany during the age of parliamentary democracy—though repeatedly faced in France throughout the nineteenth century, as in the June Days of 1848, suppressed by the commissary dictator Louis-Eugène Cavaignac. At this point in his career, Schmitt was more clearly on the Right than in his earlier work, yet not as much on the Right as he became later. How the legitimate German state could preserve itself was his concern; he had no more

truck with the Kapp Putsch than he did with the Munich Communists, and he rejected the idea that the Weimar Constitution was illegitimate because it was, in effect, the output of a sovereign dictatorship.

In this final chapter, Schmitt explores the application of martial law (something, as I say, he had administered during the war), distinguishing the jurisprudence and legal form (both very important to Schmitt) of summary courts martial from courts established under martial law. The former easily shades into a “measure,” governed by political goals, as opposed to “law.” Martial law is by definition an authorization to take “necessary measures.” Therefore, when martial law is declared inside a nation, when a state of emergency is recognized, any limits on the power to administer justice must either be pre-existing, or set by the administrators of law themselves; martial law is thus a type of commissary dictatorship, and it is a contradiction in terms to set limits for its administration externally on the fly. This going on inside one’s own country is extremely dangerous, because, Schmitt implies, it can lead, or tends to lead, to the establishment of a sovereign dictatorship (either in the form of an individual, or more likely in the form of some “national assembly”), the suspension of the constitution, and its replacement, all without any intent whatsoever by those who initially declared a state of emergency that necessitated martial law.

And at the end of this last chapter, and in the lengthy Appendix, Schmitt applies his frame to the then-current German situation. The 1919 Weimar Constitution, in Article 48, granted explicit authority to the President of the Reich to, on his own authority without legislative input, take “emergency measures” to protect the Constitution. This was asking for trouble, though perhaps understandable in the circumstances. Foreseeing problems, the Constitution contemplated the Reichstag passing a law to refine, systematize, and limit this power—which it never did. Schmitt says that this was not an oversight: “Maybe no government has any great interest in attaining juridical precision on a matter like the state of exception.”

Much of Schmitt’s analysis here turns on hyper-technical questions, which are frankly fascinating to me but I will not detail here, about whether certain limitations embedded in Article 48, tied to specific constitutionally-guaranteed rights, implied that no other limitations existed. Article 48 grants a commissarial dictatorship—but Schmitt’s

concern, never expressed directly, is not only with the ambiguities involved, but with the possibility that this commissarial dictatorship could, in practice, be used to establish a sovereign dictatorship. Arguably that is exactly what happened, ten years later, but that is a story for another day. Schmitt blames this (for him, potential) problem on an over-optimistic view of the stability of the state; because "In the transition from princely absolutism to the civil legal state, it was taken for granted that the solid unity of the state had finally been secured. . . . One can outline the instrument of execution and thereby establish guarantees of civil liberty. Then the state of siege is indeed fictional. But, if this is not true, then powerful associations will emerge again in the state and the whole system will collapse as a result." No matter that Schmitt saw such threatening "associations" as primarily Communist in nature; he saw the future clearly enough.

And so to return to America, and the possibility that Caesar is in our own future. In Schmitt's frame, Caesarism is not sovereign dictatorship, except if Caesar establishes a new form of constitutional government, replacing the old. Otherwise, Caesarism is merely despotism. "Being limited is, by definition, in the nature of the state of exception; its true purpose is to be dissolved, so that it remains an exception." We might call this Good Caesar and Bad Caesar, or in my own Foundationalist frame, the question whether our own Caesar will restore some form of mixed government based on a formal or informal constitution, or rule by decree forever. As can be seen in the history of the Roman Empire, the former can be stable, even optimal; the latter not so much. It may seem like "powerful associations" that threaten the state are lacking; this will not remain so for much longer, if it is true even now, nor will we lack for states of exception. What will result from those, perhaps Carl Schmitt would have been able to predict.