

## **POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY**

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“Sovereign is he who decides the exception.” Among serious students of political philosophy, at least on the Right, these may be the most famous words of the twentieth century. That sentence opens this work, *Political Theology*, which consists of four linked essays, bound by the theme that most exercised Carl Schmitt in the early 1920s—the edge cases of sovereignty. In the post-World War II decades, such questions seemed very remote and theoretical, part of the turmoil of a benighted age we had left behind. But we were wrong, about all of it, and Schmitt was right, that this topic is universal and timeless. Thus, from Schmitt we can learn much that we can be sure will be directly applicable to the 2020s.

*Political Theology*, published in 1922, is generally regarded as background and backdrop for Schmitt’s 1927 *The Concept of the Political*, in which Schmitt more precisely lays out his own mature political positions, including the friend-enemy distinction and the need of a legitimate state to bring stability and order. Yet this book should not be under-rated; in particular, *Political Theology* contains the essence of Schmitt’s core political theory, decisionism, which rejects that any system can contain within itself all tools necessary for governance, and thus ultimately one supra-legal authority must decide questions not covered by existing law. “[T]he decisionist implements the good law of the correctly recognized political situation by means of a personal decision.”

In his 1921 work *Dictatorship*, Schmitt had explored states of emergency, states of siege, and states of exception (which for him are not identical, though they are similar), primarily through a historical lens. These are the crucial “recognized political situations” on which he focuses in *Political Theology*; thus this book underpins and reinforces Schmitt’s analysis in his earlier book, even as it departs from it in some ways. Exceptions result where there exists a constitutional order or other legal form of government, but it is incapable of meeting some unexpected contingency, and a political problem has therefore torn through the legal norms of governance. A gap has appeared in the law, and it must be filled; this filling is inherently political. This is true regardless

of whether the constitutional order itself provides some mechanism for addressing exceptions; the Weimar Constitution famously did, but an ambiguous one, creating no end of interpretive headaches, and in any case, for Schmitt, an exception is always possible, if not inevitable, and it ruptures any formal legal structure.

As with most of Schmitt's works, the great upheavals in Germany at the time lie mostly unmentioned in the background, but can be glimpsed in the interstices. Here, Schmitt was living within the early, tumultuous years of the Weimar Republic, though before hyperinflation and depression, and he spent a great deal of time thinking about how, and within what frame, decisions could be made in a polity faced with exceptional situations—and everyone expected such situations. He was very much aware of the threat to the Republic posed by extremes of left and right, and this rumbles beneath the surface of his analysis.

Schmitt begins by focusing on the definition of sovereignty—not in its “routine” form, but in the “borderline case.” But the definition resulting is to be one of general application, not simply one created ad hoc for a particular emergency. Not every emergency is an exception; only when there is the exercise of “unlimited authority, which means the suspension of the entire existing order” is an exception created. “In such a situation it is clear that the state remains, whereas law recedes.”

Out of the gate, Schmitt explicitly rejects that how to address an exception can ever be entirely derived from “a general norm, as represented by an ordinary legal prescription.” This is the crux of Schmitt's rejection of the then-dominant strain of legal thought in Europe. The “preformed law” does not and cannot address the exception, which is necessarily “a case of extreme peril” such as “a danger to the existence of the state.” When this happens, what is called for is not the incapable norm, which offers only a dead end, but a decision. Who makes the decision is sovereign—and it quickly becomes clear that for Schmitt, the sovereign is both he who decides whether there is a state of exception, and what to do about it. The decision is therefore really two decisions, within one sovereign—and this is the correct definition of sovereignty.

Regardless of its ultimate origin, God, the estates, or the people, sovereignty only exists in relation to a concrete situation. The question of sovereignty has been blurred by liberalism, which attempts to substitute mere procedures, mechanisms such as separation of powers, for

clear lines of decisional authority. These are just more ultimately futile attempts to substitute legal norms, a legal frame, in order to squeeze sovereignty out of the political picture. But when an exception exists, sovereignty bursts back into the frame. “The decision frees itself from all normative ties . . . and becomes in the true sense absolute. . . . [T]he norm is destroyed in the exception. . . . There exists no norm that is applicable to chaos. For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation actually exists.”

Thus Schmitt, in a bit of subtlety, rejects the Weberian definition, much favored by today’s libertarians (and recently endorsed by Elon Musk) that the state is that entity with a monopoly on violence, a monopoly on coercion. Rather, what defines sovereignty, and therefore ultimately the state, because no state can exist if it is not sovereign (though the state may be suspended, rather than destroyed, during a period in which it lacks sovereignty), is the monopoly to decide—to produce law that is not based in law. This is not extra-legal; the sovereign making the decision is making law (and will necessarily re-establish an order, a set of norms, at some point). It just takes place outside the formerly supreme legal norms. “The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become torpid through repetition.”

Schmitt admits that sovereignty as reflected in public law, something that first began to be studied by Jean Bodin in the sixteenth century (as Schmitt analyzes at length in *Dictatorship*), has not developed logically or linearly. He says that most definitions focus on sovereignty being the “highest, legally independent, underived power”—but that this definition is wholly inadequate, because “infinitely pliable,” and because it blurs legality and power, in essence begging the question whether the sovereign’s power is derived from law. This definition relies on “tautological predicates,” and is therefore inferior to Schmitt’s own.

Schmitt then turns to an extended attack upon Hans Kelsen, a German legal scholar of his time. He was a legal positivist, who advanced theories of sovereignty centering around legal norms, where “the state is nothing else than the legal order itself.” Kelsen, in typical Schmittian

fashion, merely stands in as an exemplar of the positions Schmitt wants to abuse. Kelsen implicitly denies that an independent decision must be made by an individual man, instead positing that the system of norms can invariably generate a decision dictated by the norms, which are “positively given.” Schmitt rejects this as form of question-begging which essentially negates the question of sovereignty and disregards that the state can be separate from the existing law. Kelsen pretends that the law itself is sovereign; he believes the state may make the law, but it is the law that is sovereign, not the state. And for Kelsen, the state was obliged in some vague way to reflect the desires of the people in the content of its laws, at the same time eliminating any personal elements in the concept of the state. For Schmitt, this is all a jumbled and offensive contradiction in terms (at one point, he snidely, or arrogantly, refers to a confusion among his opponents as “another expression of those eternal mix-ups that are responsible for making the history of philosophy so monotonous”). He also attacks Kelsen as “neo-Kantian,” meaning endorsing Kant’s view that “emergency law was no law at all.” But on the contrary, says Schmitt, emergency law is the most law-like of all law, because it embodies the raw essence of the decision, which is the beating heart of sovereignty.

Kelsen naturally did not believe in, or did not want to believe in, the exception. He thought a system of positive law could be constructed such that all questions could be answered within the system. Schmitt thought not only that this was impossible, but that an individual, a person, must ultimately be the solution to problems that superseded the system. For Schmitt, one cannot leave out, or ignore, the personal element in law. Such ignoring is what the “liberal constitutional tradition” attempted; it does not work. Rather, Schmitt endorses the famous phrase of Thomas Hobbes (of whom he was a great admirer): “*auctoritas non veritas facit legem*”; it is authority, not truth, that makes the law. Hobbes is thus, in Schmitt’s analysis, a decisionist. He recognized that “What matters for the reality of legal life is who decides.” The important question is who is competent to do so; this cannot be answered, in states of exception, by looking to legal norms.

Only in the third chapter, itself titled “Political Theology,” does Schmitt (who was putatively Catholic but had a very troubled relationship with his religion) actually turn to theology, and really, he uses it as

a springboard, not a serious attempt to completely theologize modern theories of state and power. Nonetheless, this chapter also opens with a famous line, “All significant concepts of the modern theory of the state are secularized theological concepts. . . .” Schmitt means this in a dual sense—more obviously, that the historical development of the theory of the state flows directly from theological concepts, such as God as the “omnipotent lawgiver” (something explicit in Hobbes), and less obviously, that the “systematic structure” of modern theories is theological in nature. So, most notably, “The exception in jurisprudence is analogous to the miracle in theology.”

Deism rejected miracles; in the same way, constitutional liberalism rejected “the sovereign’s direct intervention in a valid legal order.” “The rationalism of the Enlightenment rejected the exception in every form.” Schmitt notes that it is primarily by examining the thinking of the Enlightenment’s critics that we can see this—notably Joseph de Maistre and Juan Donoso Cortés. Schmitt makes an explicit link between Kelsen-type conceptions of the state as “natural-scientific,” which ignores that “[t]he difference between the substance and the practice of law . . . cannot be grasped with concepts rooted in the natural sciences,” and democracy, which “is the expression of a political relativism and a scientific orientation that are liberated from miracles and dogmas and based on human understanding and critical doubt.” This is not a compliment to democracy, because in a correct view of political life, miracles, in the form of the exception, do exist, whether we like it or not, and democracy’s rejection of this is a fatal error. Democracy, inherently self-crippled, is therefore inherently inadequate.

Deism has faded from the scene, leaving no analogizable connection to an omnipotent lawgiver. In its place concepts such as the general will became viewed as sovereign, “which means that the people became the sovereign,” resulting in the loss of the “decisionistic and personalistic element in the concept of sovereignty.” But when this element was removed, the state, meant to stand in for God, could no longer be a unity, and all theistic analogies to the state failed—even though they are central for understanding the development of thinking on sovereignty, and even though, especially in America, the concept that the voice of the people is the voice of God substituted for a while. It is no coincidence, although the exact causal relationship is opaque, that atheism became

commonplace, especially among political thinkers, at the same time that the constituent power (something Schmitt also discusses at length in *Dictatorship*) came to be viewed as residing in the people, "which means that the democratic notion of legitimacy has replaced the monarchical."

Finally, Schmitt turns to the implication of this changed notion of legitimacy, examining (without quite exactly endorsing, and sometimes characterizing as "extremist") the view of several "counterrevolutionary" figures. These are de Maistre, Louis de Bonald, and Donoso Cortés. The common thread among these men is that the deficiencies of democracy, tied to eternal principles of politics, including Schmitt's own decisionist philosophy, strongly imply that dictatorship is the only viable alternative. (It is interesting that this is necessarily a sovereign dictatorship, in Schmitt's frame of commissary and sovereign dictatorships, whereas in *Dictatorship* Schmitt expressed more sympathy for commissary dictators.) Schmitt admires these men, not only for the substance of their thought, but for rejecting "everlasting conversation" as a substitute for concrete political action (he wrote a whole book attacking such conversation, *Political Romanticism*), realizing that their times (the eighteenth and nineteenth centuries) needed a decision.

These men viewed much of politics through a theological lens, or rather through analogies to theology, including doctrines such as papal infallibility and concepts such as the depravity of man. They realized that the liberalism of their time had no idea what it wanted; it was essentially incoherent. "Donoso Cortés considered continuous discussion a method of circumventing responsibility and of ascribing to freedom of speech and of the press an excessive importance that in the final analysis permits the decision to be evaded." "The essence of liberalism is negotiation, a cautious half measure, in the hope that the definitive dispute, the decisive bloody battle, can be transformed into a parliamentary debate and permit the decision to be suspended forever in an everlasting discussion." In Schmitt's evocative summation, Donoso Cortés saw "humanity as a boat aimlessly tossed about on the sea and manned by a mutinous, vulgar, forcibly recruited crew that howls and dances until God's rage pushes the rebellious rabble into the sea so that quiet can prevail once more." The apocalyptic nature of this is something Schmitt does not endorse; his is a drier analysis, and his goal is avoiding the apocalypse, although it was visited on Germany in due

course. De Maistre and his philosophical allies opposed not only the eternal conversation, but also the attempt to turn political problems into technical/managerial problems. This attempt also evades “the core of the political idea, the exacting moral decision.” Politics requires decision, not mere administration (perhaps the total politicization of today’s administrative state flows from this reality). The decision, in all circumstance and all times, must be made, and someone must make it.

And there Schmitt leaves us. What can we derive for application today? No surprise, Schmitt offers a clear philosophical basis for Caesarism, something about which I have written twice recently. We await only the appearance of an exception, and the man who will declare it to be an exception. Whether and when that will happen, we will see. Certainly, the feeling of a hollow core, of drift, of merely waiting for the irruption of circumstance to demand a decision, permeates all of our politics. But the future will reveal itself.

More abstractly, Schmitt’s analysis fruitfully lets us consider the rule of law. In the West, far back into medieval times, the rule of law has long been seen as the objective of good governance, something nearly sacrosanct, if often honored in the breach (though Enlightenment liberalism has long falsely attempted to claim for itself the creation of the rule of law). It is necessarily true, however, that Schmitt rejects that the rule of law is the paramount commandment of governance; the sovereign who decides on, and what to do about, the exception necessarily, if only for a moment, stands outside the existing law, and thus above it. If one admits, or claims, as does Schmitt, that a pre-existing system of legal norms can never answer all political questions, the rule of law can never be actually supreme. We can hope that the decision will be just, but that is not immediately Schmitt’s concern. This seems to fly in the face of what we tend naturally to believe, especially in the Anglosphere, inheritors of the common law and the limited monarchy. What nice person can oppose the rule of law?

However, let’s think about it, not within Schmitt’s framework, which is clear enough, but within the America of 2021, soon 2022. We have no rule of law. We are governed by anarcho-tyranny, most notably that of the federal government, but also present on many lower levels of government, down to the municipal. Nothing better exemplifies this than the regime’s approach to the Wuhan Plague.

One might wonder if this is an example of Schmitt's philosophy in practice—the rule of law has been suspended by our sovereigns as a response to a relatively minor disease; whether competently or justly is irrelevant. It is certainly true that legal norms have been regularly and grossly violated by the regime in their unhinged and stupid reactions to the Plague, and this is a type of exception. But we lack a decision, even an attempted decision. The very inconsistency and irrationality of responses to the Plague show that there is no sovereignty here, only anarcho-tyranny mediated through the managerial bureaucratic state. True, our terrible ruling class has substituted their rule, the rule of men, for the legal norms that used to govern America. (Or rather the rule of women; hyper-feminization is perhaps the single most important, and most destructive, characteristic of modern Western politics, and the prime reason for our enormously destructive and stupid response to the Plague.) But the mere breaking of norms does not automatically lead to a decision in Schmitt's sense. A different plague, one that unlike this one was actually more dangerous than past plagues, might be the occasion for the rise of a real decisionist, or a real Caesar, but this is not it—the erosion of norms, of the rule of law in America, simply shows the massive cracks in the foundation of our civilization. It has no more meaning than that.

Will Schmitt's philosophy come directly into practice in America? Of course, but not through a path that can be identified today. Who could act as sovereign, in Schmitt's sense, today in America? Nobody. Political power is fractured; no one person, or even group, could deliver enough power to decide on the exception. True, manipulative and blocking power resides in organs such as the regime media and the Lords of Tech, and our anarcho-tyrannical federal regime (mostly incompetent, but nonetheless dangerous, for now, until it evanesces) retains physical power. But if Joe Biden, or one of his hidden puppeteers, or our corrupt Congress or Supreme Court, or the regime media, declared that an exception existed, does anyone believe anyone but their partisans, their ideological compatriots and dependent clients, would recognize that as anything but an empty and irrelevant declaration made by fools? I think not. Schmitt, himself, would sneer and say something nasty about it, then look around for from where the real power was about to burst forth.



We should remember, though, that Schmitt did not promise that decisionism would necessarily produce good decisions. Perhaps his love for the thought of Donoso Cortés, with his focus on human depravity, suggests he thought it would mostly produce the opposite. Schmitt, after all, is analyzing, not prescribing. Ultimately, and most of all, choices must be made, and we must hope that they are, and work for them to be, good choices. Thus, for Schmitt, a political actor staying passive during a time of upheaval is a, perhaps the, mortal sin. We on the Right would do well to remember this truth.