

Are we headed towards high noon for democracy?

[Henry Ergas](#) 12:00AM January 18, 2019

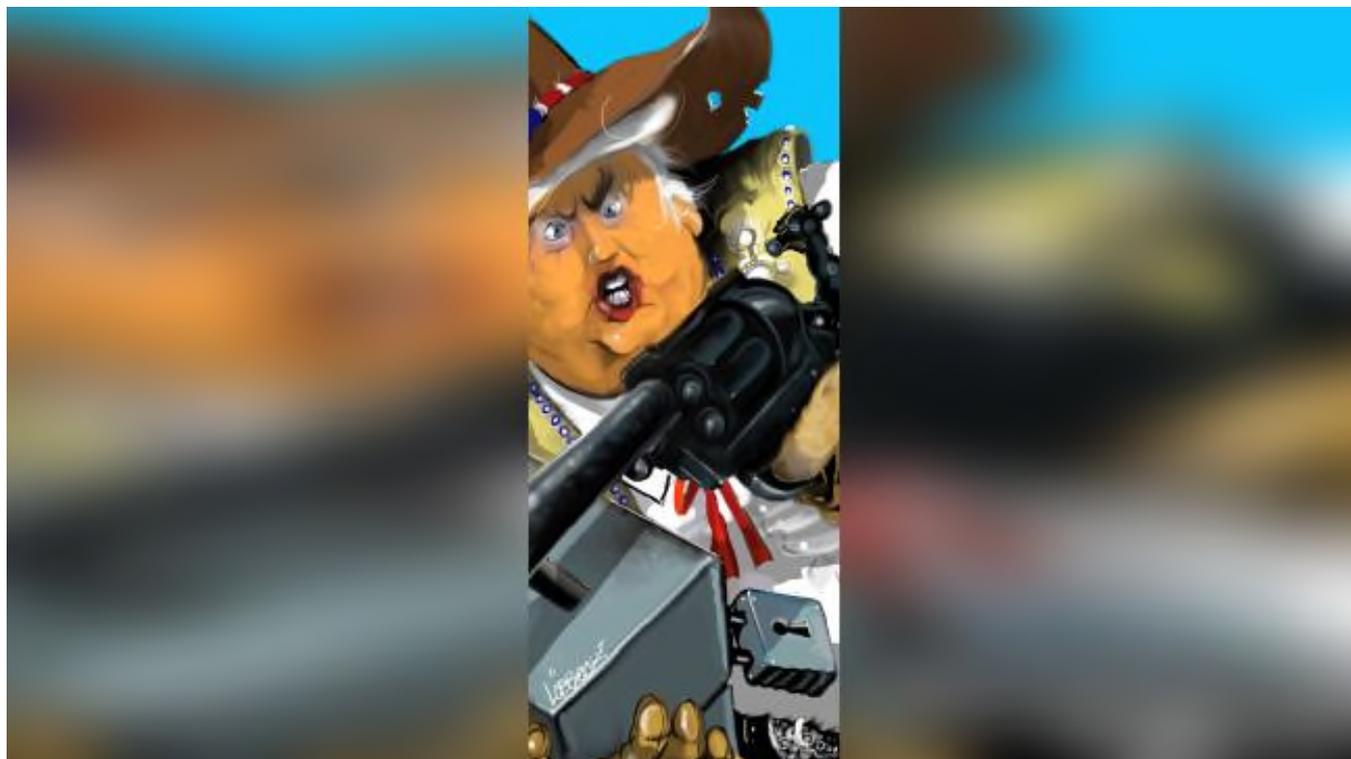


Illustration: Eric Lobbecke.

In 1923, as the Weimar Republic struggled with chaos, the German polymath Carl Schmitt wrote a short but enormously influential book, *The Crisis of Parliamentary Democracy*. Schmitt later destroyed his reputation through his collaboration with the Hitler regime. But if his work is increasingly cited, it is because its contemporary resonance is undeniable.

To say that is not to suggest that today's circumstances resemble those that drove Europe into the horrors of totalitarianism. Yet with the US government plunged into a shutdown that only a presidential declaration of a state of emergency is likely to end, and Britain in a crisis that seems - irresoluble, Schmitt's warnings cannot simply be dismissed.

The notion of “liberal democracy”, he argued, was fundamentally ill-conceived. Liberalism and democracy had certainly been allies in the battle to rein in the power of monarchs. But that accomplished, the tensions between them had burst to the surface and would inevitably worsen as societies developed.

Liberal institutions — parliamentarianism, the rule of law, the separation of powers — existed to temper the democratic impulse, channelling it into an “endless conversation” that readily led to dead-ends. However, whenever they gathered explosive force, the pressures of democracy — the brute, often inchoate, expression of the popular will — were not so easily corralled.

As liberalism collided with the popular will, one had to overwhelm the other, hurtling the system towards “the state of exception” — that is, the suspension of business-as-usual. And, as Schmitt put it in another famous work, *Political Theology*, when the chips are down, “sovereign is he who decides on the exception”.

In other words, the ultimate ruler in any political system is the actor who, once consensus has worn so thin as to make the system unworkable, can impose an outcome by invoking emergency powers.

With the conflict between liberalism and democracy growing ever starker, Schmitt argued, we would enter an age of states of emergency, eroding liberalism’s foundations.

Of course, reliance on a “constitutional dictatorship” need not be fatal to the political system. On the contrary, as long ago as the Greek city states there was a form of temporary absolute rulership, the *aesymnetes*, that served to restore order when factional strife had torn a city apart.

And every schoolchild learns (or used to learn) the noble legend of Cincinnatus, the aged Roman farmer who was called from the plough by

his embattled countrymen and given despotic authority to repel the threat of tyranny. After 16 days of absolute power, in which he saved Rome, the reluctant ruler gladly relinquished the sword and returned to his rural home.

Cincinnatus, whose humility was proverbial, may seem as unlike Donald Trump as anyone can be; but the Roman institution of the dictatorship, as emergency rule was called, reflected circumstances not entirely dissimilar to those of today's US.

Like its American counterpart, the Roman republic was marked by an extreme division of powers, with myriad points at which collective decisions could be vetoed. Action required unity of purpose across the republic's distinct, often competing, bodies; but that unity was periodically shattered by bitter divisions between patricians and plebeians.

When the result was to paralyse the state, the republic resorted to a *dictatura rei gerundae causa* — a dictatorship "to ensure things get done", ending the paralysis and allowing a return to normality.

The example of the Roman dictatorship was well known to the founders of the American republic. After all, Machiavelli had written that "of all the institutions of Rome, this one deserves to be counted among those to which she was most indebted for her greatness and dominion", a view Alexander Hamilton echoed in *The Federalist Papers*.

And if the founders thought the constitution they produced foresaw any and every emergency, that was because the powers granted to the president vested (as Hamilton put it) so much "energy in the executive" that crises could be resolved by relying on the president's constitutional responsibility to "take care that the laws be faithfully executed" and to "protect each State ... against invasion and ... violence".

Nor were those expectations incorrect. Thomas Jefferson did not believe he had the formal authority to buy the Louisiana territory in 1803 but he went ahead regardless, exercising the executive's prerogative to act in the nation's urgent and compelling interests.

From then, a long line stretches through to Barack Obama who, as the Brookings Institution's Philip Wallach shows in a recent book, relied on prerogative powers to respond, without (and in several cases against) statutory basis, to the global financial crisis.

Those actions are hardly free of costs and risks. Rather, as Clinton Rossiter, the foremost American scholar of the emergency powers, concluded many decades ago, emergency powers are "an inevitable and dangerous thing" that have never been invoked to address domestic discord "without permanent alteration in the governmental scheme, always in the direction of an aggrandisement of the power of the state".

And even if they tackle the crisis, those powers do nothing to recreate the consensus needed for the system to function, merely leaving the problems to fester.

Yet for all those limitations, it is clear that declaring an emergency offers Trump a way out. There is, however, a fundamental question as to whether Theresa May has any such options.

Despite isolated precedents, the answer is probably not. Rather, recent weeks have seen a permanent erosion in the British Prime Minister's power, not least through the loss of the control the government so painstakingly acquired, nearly two centuries ago, over parliament's order of business.

Now at the mercy of a party she leads but does not command, and of a parliament that grants her confidence but not authority, May lacks the means to overcome the contradiction between the will of the people,

expressed in the referendum, and that of their representatives. Moving in two directions at once, like surf water whose incoming waves have had their thrust enfeebled by a mighty undertow, her government is constantly pushed towards rocks on which it must founder.

Schmitt thought May's predicament would become increasingly common. And the only outcome that could follow, he argued, was for the state of emergency to become the norm: one way or the other, the exception had to become the rule, permitting government to continue functioning. With liberal constitutionalism's twin ancestral homes both in dire straits, Schmitt's time may finally have arrived.