Schmittian Instincts at Odds with Neoliberalism

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"When somebody is the president of the United States, the authority is total. And that's the way it's gotta be. It's total."
(President Donald Trump, April 13, 2020)

Carl Schmitt is now regularly referenced in discussions of President Trump's extraordinary and probably unprecedented claims to unchecked executive power. The President's knee-jerk hostility to the administrative state, however, has helped spare Americans the worst consequences of his Schmittian legal instincts. Yet that hostility has come with its own high price.

A "Schmittian President"?

Lawfare's Quinta Jurecic was perhaps the first to ask, just a few weeks after Trump's 2016 electoral victory, whether US citizens had elected their "first Schmittian President". In the meantime, a veritable cottage industry on Trump's alleged Schmittianism has emerged, with commentators on both the left and right joining in. Writing in the *New York Review of Books,* Tamsin Shaw found clear parallels between Attorney General William Barr, a right-wing Catholic and Trump appointee who has diligently whitewashed the President's most outlandish legal claims, and Schmitt's own mix of legal decisionism and clerico-fascism. For their part, conservatives have pushed back against liberal and left-wing critics, highlighting Trump's refusal to exert dictatorial authority on the scale Schmitt likely would have endorsed. The *National Review*'s Aaron Sibarium recently claimed that even those emergency powers Trump has exercised under the Covid-19 crisis have entailed little more than encouraging Americans to follow health guidelines laid down by the Center for Disease Control (CDC). Indeed, those political decisions having the greatest *existential* life-or-death significance have often been left to Governors and local officials.

Admittedly, Trump's latest Twitter-fired political jeremiads, calling for the "liberation" of states subject to "stay-at-home" orders issued by Democratic Governors, have further confused matters, not the least because many Republican-run states are pursuing the same policies. And never mind that presidential calls for popular insurrection against state governments are probably unconstitutional. Trump's odd vision of "total authority", it seems, not only allows him to outsource emergency governance to state and local officials, but then to pillory them for simply following CDC recommendations. At any rate, it remains difficult to imagine Schmitt, who played a decisive legal role in the disastrous 1932 *Preußenschlag* that destroyed Weimar democracy's last remaining center-left state government, abiding Trump's advice to the Governors to "call your own shots".

Trump's confused Covid-19 response has encouraged both the liberal Jurecic and conservative Sibarium to claim that the President's Schmittian instincts have been fortuitously checked by his obvious character flaws. According to Sibarium, Trump "is too narcissistic to flex his muscle when the public good requires it, too obsessed with self-image", and Americans have been luckily spared the worst consequences of the President's Schmittian dark side. In a recent *Atlantic* piece co-authored with Benjamin Wittes, Jurecic describes Trump as a "lazy authoritarian" who adores the glamor of Schmittian emergency rule but not the careful attention to policy details it potentially demands. Trump's ominous Schmittian pronouncements are repeatedly undermined by his disinclination for hard work and preference for watching Fox News while ordering out for fast food. In the final analysis, Trump "represents an executive that eyes the Schmittian executive enviously before ducking and taking cover", typically passing the buck to others and avoiding hard political decisions.

Leviathan or Neoliberalism?

However useful, such analyses risk personalizing and thus trivializing a structural contradiction at the heart of Trump's Administration: the President's Schmittian instincts sit uneasily and probably inconsistently alongside his basically neoliberal view of government. Trump's lackadaisical approach to the details of real-life public policy is not just a personal foible. Rather, it rests on a deep skepticism about the capacity of government to do anything right, at least when it comes to the modern administrative state's efforts to provide social security, education, healthcare, and, yes, protection from disease and illness. Of course, Trump is no neoliberal when it comes to advancing global free trade or open borders for goods and services. Yet he remains at heart a neoliberal in his deep hostility to the administrative state's efforts to check and regulate capitalism and other core traits of modern life. Precisely that hostility has served as the necessary glue for his alliance with mainstream Republicans who otherwise find his high-wire political antics unsettling, yet still share his longstanding preference for rolling back "intrusive" government regulations.

Schmitt understood that the sort of emergency dictator he had in mind presupposed an effective and indeed "strong state", a "Leviathan", outfitted with an imposing bureaucratic apparatus and a properly trained corps of loyal civil servants ready to serve as its institutional backbone. No fan of modern democracy or a progressive social welfare state, Schmitt correctly acknowledged that effective emergency executive rule required some core traits of modern stateness.

In sharp contrast, Trump has regularly sought to undermine the US federal state's capacity to grapple effectively with a host of social, environmental, and health challenges. In advancing *that* agenda, there is little evidence of undue presidential narcissism or laziness. Trump's politically canny picks for the Supreme Court, Neil Gorsuch and Brett Kavanaugh, were selected as much for their hostility to the modern administrative and regulatory states as their conservative views on abortion and same-sex marriage (David A. Kaplan, *The Most Dangerous Branch: Inside the Supreme Court's Assault on the Constitution*, 2018, pp. 41-44.). As the journalist Michael Lewis has documented, Trump has successfully fomented chaos and disorder within the federal bureaucracy, chiefly as a way of disabling its regulatory machinery (Michael Lewis, *The Fifth Risk*, 2018). To the extent that a semblance of "order" can be identified, it tends to favor privileged private interests and their political allies, many of whom now conveniently oversee administrative agencies originally intended to regulate *them*. In Trump's Administration, the (corporate) foxes, it turns out, really are in charge of the (regulatory) chicken coops.

Exacerbating the very real health crisis

Lewis presciently predicted in 2018 that a government bent on purging competent civil servants and scientific experts would necessarily fail in its basic performance of a broad array of essential – yet high-risk – tasks. While reassigning a few of its members, Trump in fact disastrously fired the US pandemic response team as a budget-cutting measure. The Administration's efforts at overseeing the Covid-19 response are now being coordinated by none other than Jared Kushner, presidential son-in-law and real estate mogul. As late as March 10th of this year, Trump – still in open denial about Covid-19 – demanded drastic cuts to the CDC budget, something he had similarly called for every previous year. (Fortunately, Democrats had been able to resist the cuts.) The deeply unsatisfactory and arguably inept CDC response to the present crisis, which has left millions without access to proper medical equipment or reliable Covid-19 tests, is hardly unrelated to the President's animosity to the administrative state. In the CDC, Food and Drug Administration (FDA), and other federal public health-related agencies, morale is low, with many federal employees eager to jump ship for better-paying jobs in the private sector.

Now aggressively calling for "reopening" the states and promising that "normal life will return soon", Trump and his sustained attack on the administrative state have left Americans woefully unprepared for any return to normalcy. While his over-the-top

Schmittian legal rhetoric plays to his hardcore authoritarian political base, Trump is simply exacerbating the very real health crisis that Americans – and many others worldwide – now face.

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