



Between Exception  
and Normality:  
Schmittian Dictatorship and  
the Soviet Legal Order

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- '[B]etween capitalist and communist society there lies the period of the revolutionary transformation of the one into the other. Corresponding to this is also a political transition period in which the state can be nothing but the revolutionary **dictatorship of the proletariat.**'

Karl Marx, *The Critique of the Gotha Programme*

# Carl Schmitt, *Dictatorship*

	Commissary Dictatorship	Sovereign Dictatorship	Proletarian Dictatorship
Principal	The current ruler: Senate, monarch	The people	The people
Grounds	Constitution	Constituent power	The course of history
Circumstances	'Self-defense' of the current legal order: war, insurrection	Transition to a new legal order: revolution	Transition to a non-legal order: proletarian revolution
Agent (commissar)	Roman dictator, royal commissar	Constituent Assembly, people's commissars	Proletariat

XIXth century

XXth century

		1917	1921	1924	1926 1930s
Proletarian Dictatorship	Marx and Engels	Lenin	Stuchka	Pashukanis	Stalin, Vyshinsky
Extralegal	✓(?) Use of law and state as permitted / or inevitable means; no legal ends.	✓(?) Use of law and state as necessary means; no legal ends.	X Temporary 'Soviet law'.	✓(?) Use of private law allowed for a limited time, but not necessary; also 'technical rules' still present; no legal ends.	X A system of distinct Soviet law; recognition of value of socialist legality.
Temporary	✓	✓	✓	✓	✓(?) Transition not imminent
Transition to a Non-Legal Order	✓	X(?) 'Rules of social intercourse' remain.	✓	X(?) 'Technical rules' remain.	X(?) 'Moral rules' remain.

# Explanation: law and coordination

- Law is needed not just for **control** (the general need to prevent directly harmful and encourage directly beneficial behaviour), but also for **coordination** (enabling people to anticipate the conduct of others and thus more successfully achieve their objectives either personally or in cooperation with others)

Tom Campbell, *The Legal Theory of Ethical Positivism*

- Law is a particularly useful coordination instrument because of its '**seamlessness**', '**forms and modes of application and enforcement**', and '**legislative capacities**'

John Finnis, *Law as Coordination*

- Dictatorships **require** coordination:
  - (i) To effectively deal with the emergency via self-defence or revolutionary action
  - (ii) To maintain the functioning of everyday life in areas not affected by emergency (contracts, marriages, petty crimes, etc.)

**-> There is a practical need for law even in dictatorship**

- “Without a legal system and a legal order—without Law with a capital L—the Stalinist regime could neither control the social relations of the people nor keep the economy going nor command the political forces in the country as a whole. **It was rediscovered that law is not a luxury but a necessity**, that at the very least it satisfies a basic need for some outlet for the feelings of justice, of rightness, of reward and punishment, of reciprocity, which exist in all people. Stalin did not want the Russian people merely to obey; he wanted them also to believe in the rightness of the order which had been established. This fact breathed in every word of Soviet legal literature from the statutes and cases to the treatises and law reviews.”

Harold Berman, *Justice in the USSR: An Interpretation of Soviet Law*