



ROMAN DICTATORSHIP: SOME OBSERVATIONS

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The relevance of the relationship between the powers granted by states of emergency and the transition to authoritarianism and dictatorship is perhaps self-evident to any student of political science aware of history and contemporary events.

We will define authoritarianism broadly as a regime maintaining obedience through the use of the fear of coercion, and thus the foundation of the state is not legal authority but rather power exercised through an informal dictate. Dictatorship will be defined as the exercise of a like dictate, except under a public, systematic and formalised power rather than a hidden one.

Both types of regimes are characterised by elites of converging interests as well as the use of crisis in order to justify the power of the regime, and the loss of individual liberties. As such, these states have been characterised as crisis states which function in a high perpetual state of emergency despite professing outward belief in rights and the will of the people.

Thus, the struggle to preserve the sanctity of sovereign laws over arbitrary mandates of power depends precisely on the separation between normal legal and political procedures and those of the state of emergency.

It is precisely this struggle and conundrum over the distinction between the state of emergency and the normal rule of law which is made evident by the historical case of the Roman Republic and the transformation that occurred in its state of emergency procedures.

This will allow us to demonstrate such transformation as exemplified by the early institution of Dictatorship and the *Senatus Consultum Ultimum*, what they demonstrated of Roman politics and law in terms of the blurring between the previously strict lines of the state of emergency and normal legal procedure, and taking special note of the incident of the Catiline Conspiracy.

Roman Dictatorship

Arguably the original and thus most famous state of emergency in western political history, Roman Dictatorship presents the first ever attempt at addressing what in political philosophy ever since Aristotelian thought has been the problem of equity; equal applications of the law in all circumstances may be inherently unjust or inadequate, hence calling for a temporary suspension or alteration of laws and legal procedure

In principle, the dictatorship in Republican Rome was magistral office like no other exercising for a limited period of six months the power of *imperium* or in other words supreme administrative and

coercive power in order to immediately deal with an external state of crisis, though it was restricted both legally and through political and religious precedent.

Nevertheless, the description alone cannot do the office justice unless it is situated in its proper historical, legal and functional contexts before one can even approach its ultimate political dimension.

The first paradox brought about by trying to put Roman Dictatorship in a proper historical context is how it could have even arisen in Rome in the first place. It is no great mystery that the city of Rome ever since the foundation of the Republic in 509 BC was weary of monarchy, which it had violently deposed, so much so that word king itself was an insult and a much despised word.

Yet, in the office of the dictator one seemingly finds the closest conjuring to monarchy that could be conceived in a republican government, as the dictator wielded the war powers of the monarchy, superseding those of the consuls and initially having command over all other magistrates.

If one takes Livy's *Histories* at face value, the mere purpose of the office as a means of averting crisis and fulfilling a function which could not be carried out by the elected magistrates provides proper justification for the installment of the office in 509 BC, less than ten years since the institution of the Republic in the first place.

The dates themselves cause an issue, as it would have been a precarious action indeed for the people of Rome to have reinstated virtually in every way but name the monarchy they so desperately deposed less than ten years before.

In *The Origin of Roman Dictatorship*, D. Cohen seeks to explain and rationalize the origins of this extraordinary office both in terms of an interregnum, positing that it served as a transition from monarchy to republican government, but also a religious function in the early Republic which required the highest authority. Similar offices were to be found in the other city states of Latium, such as Alba and Caere, though with year-long terms of office.

In particular, the act of religious purification carried out by dictators and last performed in 363 BC in the driving of a nail ceremony (a religious rite likely of early Indo-European origins) as a response to a pestilence carried out by Manlius Imperiosus demonstrated the high-sanctity of the office, above that of the Pontifex Maximus (head priest).

The sanctity of the office is further exemplified by the custom of silence which other magistrates were meant to obey before the dictator, and in conjunction with the dictator's role as a saviour figure, one can understand how the Roman people accepted the existence of such an office in the early years of the Republic.

Beyond this period, and especially following the course of the Punic Wars in the Middle Republic, the office of the dictator lost further and further independence vis a vis the Senate and its authority to overreach the imperium of the Consuls, and eventually tribunes could veto the dictator's measures just as those of the consuls.

Having approximated the origin of Roman Dictatorship, situating it in terms of Roman constitutional law is necessary. The procedure appointing the dictator appears at first sight as a simple consultation, whereby the Senate would agree that a state of emergency existed give leave of the consuls to appoint a dictator in order to deal with it.

The dictator's powers were thus to deal with the specific state of emergency at hand; whether it was an insurrection or an invasion, yet the dictator was also charged with recruiting, assembling and leading the army to deal with the threat at hand. At this point, the legal aspect of the appointment is significant, because after the consuls had chosen a candidate for dictator, the *Lex curiata de imperio* granting the dictator his power of imperium had to be passed by the assembly of the people of Rome.

The dictator's legal mandate was a popular one, and not senatorial. Indeed, the connection of the office of dictator to the people was also represented in its original title 'magister populi,' which translated to magistrate of the people, or more practically of the infantry in war, whereas the second in command of the dictator was the 'magister equites' or master of cavalry.

Leaving these military vestiges aside, it must be noted that after the carrying out the task demanded of him, the dictator was supposed to relinquish power and after the *Lex Repetundarum* of 300 BC they could be put on trial directly if they had overstepped their mandate in purpose or time.

What this kind of legal precision shows is the ability of Roman law to adapt to states of emergency in that it is able to preserve the rule of law even when limits to power are temporarily suspended. For if one is to believe in the rule of law, a principle by which the laws are universally applicable, public and their power vested in the state and not the individuals; one must precisely have such limitations and controls over states of emergency.

In addition to formal and legal checks on the powers of the Roman Dictatorship, Naomi Lazar points out in her essay *Making Emergencies Safe for Democracy: The Roman Dictatorship and the Rule of Law in the Study of Crisis Government* that informal controls over the dictatorship were just as important; Rome's strong republican political culture, the choice of appointees (men with a long and spotless record), and the Senate's control over the treasury.

Nevertheless, Lazar also points out that 7 of more than 90 dictators passed legislation; the *Lex Ameliana* in 434 BC which enforced term limits on Censors, and the right to hold the consulship for

plebeians in 367 BC by Camillus (5 times dictator and named second founder of Rome); showing that dictators favoured reformism while in office.

Roman Dictatorship, then, as a state of emergency shows a surprising level of continuity and formality on the part of Roman law and politics to adequately deal with states of emergency; which is why all appointed dictators relinquished power after the crisis was averted, whether they were motivated by religious and political precedent, legal restrictions or just the belief in the SPQR.

As such, the self-appointment as dictators at the head of private armies by both Sulla and Caesar in the late Republic demonstrate not the lapse of Roman dictatorship into a authoritarianism due to states of emergency; but rather the abuse of that old title to legitimize the illegal seizure of the state. One can thus conclusively say that it is not in the emergency powers of the Roman Dictatorship that the pitfall of autocracy can be identified.

The Senatus Consultum Ultimum & Catiline Conspiracy

However, the office of dictatorship was not the only response to states of emergency which the Roman Republic employed, as there was another in the form of the *Senatus Consultum Ultimum*, which was not enshrined in Roman law, with a loose definition of its limits at best.

Before an explanation of the emergency procedure can be made, one must take a step back and look at the institutional history of the Senate. Founded in the monarchy, the Senate was originally an advisory body to kings until it gained greater powers and independence to make laws after the deposition of the monarchy in 509 BC.

Membership into the senate came by consular appointment of ex magistrates, until 318 BC when the *plebiscitum Ovinium* took the power away from consuls and gave it to the office of the censor under the condition that once elected, a magistrate was immediately a member of the Senate.

Thus, the it became less exclusive and at the same time gained some elective legitimacy, yet its members enjoyed a mandate for life; an electoral mandate for life which in of itself is characteristic of oligarchical and elitist governments.

In addition to passing laws, the Senate enjoyed control over the treasury and state finances, as well as the ability to give consultations to the consuls which were not binding but by long precedent were obeyed.

It must be noted that the bureaucratic power of the Senate grew after the end of the Punic Wars with

the beginning of the Late Republic period in order to keep up with the overseas territories that had been gained in Iberia, Sicily and the west Balkans.

Likewise, individual Senators became immensely wealthy landowners and property speculators due to the gains of the war.

It is precisely this more numerous and powerful Senate which after the Punic Wars first employed the *Senatus Consultum Ultimum* (SCU). Following the death of Tiberius Gracchus at the hands of an angry mob of patricians accusing him of trying to make himself king while he was passing reforms against huge agrarian estates, the Senate realised both that the Republic's military resources were greater enough to defeat any external threat, and that the disaffected mob of Italian refugees left by the wars constituted the only legitimate threat of insurrection.

In other words, a state of emergency potentially prone to giving power to the people through an elected dictator was insufficient and potentially dangerous to state sovereignty. The fear materialised itself in the form of Gaius Gracchus, the younger brother of Tiberius who worked to finish the earlier reforms as tribune of the plebeians, and who had an armed bodyguard.

In 121 BC the Senate first used the *Senatus Consultum Ultimum* to declare a quasi state of emergency similar to martial law in modern terms, which gave power to the Consuls to deal with the threat after one of Gaius' bodyguards committed a murder. The consul Opimius used the army to apprehend and execute Gaius Gracchus along with several others, leading to a total death count of over 3000 Roman Citizens.

This went against the *Lex Valeria* and *Lex Porcia* which forbid the execution of citizens without a trial, and trials without the right of appeal. When put on trial for his crimes, Opimius agreed that he had broken the law but justified his actions based on the SCU as it gave him greater powers of imperium under a state of emergency and with Senatorial decree. Opimius' acquittal would serve to set a precedent for future use of the SCU despite it not being a written law nor having any previous precedents.

Framing the legality of the SCU was difficult for the Romans themselves, not least of which Cicero who helped expand and define its powers and even used it in the course of his consulship. Indeed, the way in which Cicero defined the SCU by the example of Opimius' act was that magistrates could indeed overstep the written laws under senatorial decree in a state of emergency and in the defence of the country.

Yet, the authority of the decree and thus the act itself lay in the hands of the Senate, not the magistrates themselves as their power depended on the Senate's prior approval. In other words, the

Senatus Consultum Ultimum meant that a temporary state of war was declared against internal threats to the Republic, but without a temporal restriction, a clear definition of what constituted an emergency, nor a religious or political precedent as was the case with Dictatorship.

The most scathing critique that one could make, and justly so, is that the SCU served as little more than a means of carrying out extra-judicial killing, as was demonstrated by the killing of another tribune in 100 BC, whose executor Cicero defended in a trial 37 years later.

It would be an understatement to say that the SCU demonstrates a direct step in the extra-legal and political use of emergency measures, but before that can be done one must look at the most famous case of the use of the SCU which demonstrates to the fullest its legal limitations; the case involving Cicero himself that of the Catiline Conspiracy.

The events are described most poignantly by Livy as such: "L. Catiline failed twice in the consular elections. He conspired with the praetor Lentulus, with Cethegus and many others, in order to assassinate the consul and the senators, to oppress the Republic and set fire to the city. An army was prepared in Etruria, but thanks to Cicero's watchfulness the conspiracy was discovered." (Livy 102).

Although there is much to be questioned with this pithy description of events on the part of Livy, not the least of which that it was a description made by Catiline's enemies after his defeat, there is some truth. It is indeed true that Cataline did fail to win elections and pass reforms, and that he plotted to overthrow the Republic during Cicero's consulship with an army of 10.000 to 20.000 armed men.

Those prominent politicians with whom he plotted with were indeed caught with incriminating written evidence proving the necessity of the state of emergency which had already been declared.

Yet, it was Cicero's response at this point in the course that is puzzling. Instead of having the prisoners immediately executed, Cicero proceeded to put their fate up to a vote by the Senate, thus showing that he saw the act of executing them as being founded on weak legal grounds, and furthermore that their fate was the responsibility of the Senate.

In response to this, Julius Caesar responded in a speech calling for the life imprisonment of the conspirators, rejecting not the evidence of their crimes but the authority of the Senate to sanction their killing without a trial, even in a time of crisis. Caesar's response can't be seen as a rejection of the emergency powers, but rather a rejection of Cicero's interpretation of Roman law and especially the Senatus Ultimum Consultum giving the Senate authority to determine life and death in emergency situations.

Regardless, Cicero acquired a majority vote in Senate and had the conspirators executed, but when Caesar and several other senators tried to leave the senate house in order to protest the vote, Cicero

had them threatened by his armed guards, which was illegal but permissible under the SCU. The last SCU employed was that against Caesar in 49 BC, which started a civil war that would bring the end of the Roman Republic.

Ultimately, the SCU demonstrates exactly what one would expect from emergency measures granting limitless power to a single branch of government and robbing the others of their sovereignty, as it took away the authority of elected magistrates and gave supreme authority to the Senate.

The problem is indeed obvious from a legal standpoint as the Senate has the power to declare a state of emergency, determine the scope of threat needed to justify the measures taken, and judge legality of events. In a historical sense, the SCU served as a means of permanently silencing political opposition and the very threat of it created such fierce factionalism that it regularly incited murder.

Yet all this was carried out on the legal basis of a mere senatorial consultation for which there was not even a written law. Such extreme laxity of political procedure demonstrates directly how the laws and functions of the state can be hijacked by political elites and lead to authoritarianism and autocracy.

Conclusion

While these examples may be brief and their impact minimal of the modern question of the role of states of emergency in the rise of authoritarianism, the capacity to learn from them is undeniable.

In sum, Roman Dictatorship provides neither the precedent for resembles in any way the conception of dictatorship established at the beginning, whereas the SCU proves a tentative step toward the path of autocracy in loose interpretation and limits.

The conclusion that can be made from this is that without a sacrosanct guarantee of rights protection and the independent mandates of political offices, the rule of law can be disintegrated from within the government and a democratically elected state can transform into authoritarianism.

The photo shows, "Cicero Denounces Catiline," by Cesare Maccari, painted in 1889.

