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# **CARL SCHMITT AND THE CRISIS OF LIBERAL MODERNITY: STATE OF EXCEPTION, ILLIBERALISM, AND CONTEMPORARY RELEVANCE**

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## **ABSTRACT**

Carl Schmitt's legal and political theory, though deeply controversial, continues to resonate in the age of resurgent authoritarianism and executive overreach. This paper critically explores three core aspects of Schmitt's thought. First, it analyzes his formulation of the State of Exception, which posits sovereignty as the power to transcend legality during emergencies, thereby undermining the primacy of law and threatening fundamental rights. Second, it examines Schmitt's philosophical alignment with illiberalism, especially his disdain for pluralist democracy, parliamentary deliberation, and liberal constitutionalism. Far from being a mere theorist of legal realism, Schmitt actively sought a model of statehood grounded in unity, homogeneity, and friend-enemy distinctions. Third, the paper investigates Schmitt's modern relevance, offering a novel reflection on how his ideas inform - and at times legitimize - contemporary trends in global politics, particularly in India. There, the centralization of power, the instrumental use of emergency laws, and the marginalization of dissent reflect the risks Schmitt warned of, and at times championed. This paper integrates original criticisms and contextual insights, arguing that while Schmitt diagnoses real weaknesses within liberalism, his proposed solutions are fundamentally incompatible with international human rights law and the ethical imperatives of modern constitutionalism.

## 1. Introduction

Carl Schmitt is one of the most polarized theorists of twentieth-century legal and political philosophy. An avowedly critical adherent of liberalism, Schmitt's own legacy is tarnished by his connection to National Socialism, but his theoretical work continues to exert important influence across ideological divides. His trenchant formulation, "Sovereign is he who decides on the exception" - underscores the liberal devotion to legality by affirming the priority of decision over norm, of authority over deliberation.<sup>1</sup> This radical inversion of constitutional logic on its head unsettles the basic assumptions of democratic rule. International human rights law is built on those very assumptions. The idea that law should be reliable, especially in emergencies, is exactly when rights ought to matter most. Yet Schmitt flips that expectation.

The essay follows looks at three strands of his thought. First, the "state of exception" as the true core of sovereignty. Second, Schmitt as a kind of architect of illiberalism and the anti-pluralist state. And third, how his ideas continue to matter today - both in the wider rise of authoritarianism and in the more specific context of India's use of emergency powers. My aim is to place critique and context side by side, to see how Schmitt functions not only as a historical figure but also as a recurring tool used to justify attacks on legality and rights.

This is not a distant concern. Around the world, democracies have begun to normalise states of emergency. They lean on executive discretion to manage terrorism, public health crises, even mass protests. India shows this pattern clearly. Its record with constitutional emergency powers, together with recent centralisation and populist majoritarianism, makes Schmitt feel uncomfortably close. He reads less as an interwar theorist of dictatorship and more as a warning about how liberalism's gaps can be turned against itself.

Still, even if Schmitt was sharp in exposing the weaknesses of liberal proceduralism, his remedies remain normatively questionable. They do little for the vulnerable. They do nothing to preserve a just constitutional order. For that reason, an intellectual engagement with Schmitt is indispensable for human rights scholars.

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<sup>1</sup> Klaus Günther & Andreas Philippopoulos-Mihalopoulos, Introduction: Carl Schmitt and the Problem of the Realization of Law, in *Carl Schmitt's Early Legal-Theoretical Writings* (Cambridge Univ. Press 2019), available at [https://discovery.ucl.ac.uk/id/eprint/10178397/1/Zeitlin\\_introduction.pdf](https://discovery.ucl.ac.uk/id/eprint/10178397/1/Zeitlin_introduction.pdf).

## 2. The State of Exception

Carl Schmitt's most enduring and unsettling contribution to modern legal theory is his formulation of the State of Exception. Famously articulated in *Political Theology* (1922), the core assertion - "Sovereign is he who decides on the exception"<sup>2</sup> - distills his political philosophy into a radical critique of legal normativity. By this, Schmitt does not merely identify who the sovereign is, but also unveils the hidden architecture of all legal systems: that the law is ultimately dependent on a decision that transcends it. In situations of emergency, the legal order does not guide or control power; rather, it is suspended by it.

The State of Exception is, for Schmitt, the moment where the essence of sovereignty is revealed. It is not an anomaly but the defining test of the political. In contrast to liberal theorists like Hans Kelsen, who sought to conceptualize law as a system of norms devoid of political content, Schmitt insisted that every legal system rests on political decisions and must be understood as such<sup>3</sup>. When a crisis erupts—war, rebellion, natural disaster, or internal disorder—the sovereign authority must decide whether the normal legal order continues to apply. This decision is not based on law, but constitutes the condition of possibility for law itself.

This school of thought carries serious consequences for both legal certainty and for individual rights. Under international human rights law, the problem is especially sharp. The system, through international instruments like the International Covenant on Civil and Political Rights (ICCPR), does permit governments to suspend some rights during emergencies. But those suspensions are supposed to be narrow: they must be bounded by law, proportionate to the crisis, and free of discrimination. And the ICCPR makes one thing very clear. Article 4 says that certain rights cannot be touched at all, even in an emergency—among them the right to life, the protection from torture, and the basic recognition of every person before the law.<sup>4</sup>

Schmitt's theory, however, dispenses with the constraints of proportionality and necessity. For him, the decision in the exception is not norm-bound; it is an assertion of existential authority for the preservation of the political community. In this way, Schmitt undermines the

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<sup>2</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab trans., Univ. of Chi. Press 2005) (1922).

<sup>3</sup> David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford Univ. Press 1999).

<sup>4</sup> *International Covenant on Civil and Political Rights* art. 4, Dec. 16, 1966, 999 U.N.T.S. 171.

universality of human rights by subordinating them to the will of the sovereign. The law, in his view, is valid only to the extent that it does not obstruct the survival of the state.

What distinguishes Schmitt's concept of the exception from merely emergency governance is its anti-normative core. While liberal legalists strive to build constitutional frameworks that regulate emergency powers through sunset clauses, judicial review, and legislative oversight, Schmitt believes such regulation is inherently flawed. Law, in his model, cannot contain its own suspension. A legal order that pretends to legally regulate its own non-application is, for Schmitt, engaged in self-deception. As he writes: "The exception is more interesting than the rule. The rule proves nothing; the exception proves everything."<sup>5</sup>

This foundational insight has become even more relevant in the contemporary political landscape. As Giorgio Agamben has argued, the state of exception has become a permanent feature of modern governance, rather than a temporary aberration. Drawing on Schmitt, Agamben contends that the legal-political order increasingly governs by suspending normal legal protections, often in the name of security, bio-politics, or public order<sup>6</sup>. Under this paradigm, individuals can be placed outside the law not because they are enemies of the state, but because they have become legally unclassifiable—as seen in the treatment of Guantanamo Bay detainees, stateless persons, or suspected terrorists under preventive detention regimes.

This normalization of exception is not limited to Western democracies. In India, the Unlawful Activities (Prevention) Act (UAPA), the Armed Forces Special Powers Act (AFSPA), and expansive executive powers under the Disaster Management Act during COVID-19 demonstrate a Schmittian dynamic. The legal architecture of the Indian Constitution contains an emergency provisions framework (Articles 352–360), which has historically been invoked to devastating effect, as seen during the Emergency of 1975–77. During that time, all fundamental rights except Article 21 were suspended, and even habeas corpus was denied through the infamous ADM Jabalpur case<sup>7</sup>. The judgment, widely regarded as a judicial capitulation, eerily echoed Schmitt's claim that "to produce law, authority does not need to be

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<sup>5</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab trans., Univ. of Chi. Press 2005) (1922).

<sup>6</sup> Giorgio Agamben, *State of Exception* (University of Chicago Press 2005).

<sup>7</sup> Additional Dist. Magistrate v. Shukla, AIR 1976 SC 1207 (India).

based on law.”<sup>8</sup>

Yet this example also opens a space for a critical departure from Schmitt. The Indian Supreme Court in later years overruled ADM Jabalpur in *K.S. Puttaswamy v. Union of India*, reaffirming the centrality of fundamental rights even during exceptional situations<sup>9</sup>. This jurisprudential shift signals that the constitutional order can, in principle, resist the slide into executive absolutism that Schmitt theorizes as inevitable.

David Dyzenhaus offers a compelling counterpoint to Schmitt by arguing for a model of “legal constitutionalism” wherein even exceptional measures must be justifiable through principles of legality and rationality. In his view, the state of exception is not outside the law but a test of the law’s integrity.<sup>10</sup> The failure of courts, as in the ADM Jabalpur case, reflects not the futility of legality, but the abdication of the legal system’s moral responsibilities.

While Schmitt is right in exposing the limits of normativity under stress, his solution—vesting absolute authority in a sovereign decision—is incompatible with human rights protections, which require law to function precisely when politics becomes most volatile. If the exception becomes the rule, rights become permissions, and the law devolves into a façade.

Schmitt’s state of exception thus stands as a theoretical double-edged sword: it diagnoses the fragility of legal systems but also tempts sovereign overreach. As such, Schmitt’s insight should not be treated as a license for discretionary authoritarianism, but as a critical lens through which to strengthen emergency legality and bolster the resilience of human rights frameworks.

### 3. Carl Schmitt as an Advocate of Illiberalism

Carl Schmitt is remembered as one of the sharpest critics of liberalism in modern legal thought. The description is not misplaced. His writings cut deeply into liberal commitments, attacking not just procedural democracy or the rule of law, but also the very belief in pluralism and the attempt to keep politics from swallowing everything. Some recent scholars have tried to soften him, suggesting that Schmitt should be read as a keen analyst of liberalism’s flaws rather than

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<sup>8</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab trans., Univ. of Chi. Press 2005) (1922).

<sup>9</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161 (India).

<sup>10</sup> Dyzenhaus, D. (2006). *The Constitution of Law: Legality in a Time of Emergency*. Cambridge University Press, pp. 3–22.

as an apologist for authoritarianism. But when looked at the bulk of his political writings, and the company he kept, it is hard to escape the conclusion that his project was always tilted toward illiberal ends.

Schmitt's critique of liberalism can be understood on several levels. First, he rejects the liberal commitment to neutrality, dialogue, and norm-based governance. In *The Concept of the Political* (1932), Schmitt famously asserts that "the specific political distinction to which political actions and motives can be reduced is that between friend and enemy."<sup>11</sup> This assertion is perhaps the most radical of all, for it refuses to perceive politics as the subject of public debate or democratic bargaining, and instead, recognizes it as an existential struggle for the chance of conflict. Hence, it need not be said that the ideals of liberalism, especially tolerance and compromise, are at the very least, naïve, or, at the very worst, hypocritical. As Schmitt argues, a political entity that cannot distinguish its enemies from its friends is a political entity that cannot survive.

This conceptualization of politics is not merely descriptive but normative. Schmitt's insistence on homogeneity as the precondition of democracy—where the people constitute a unified political identity—is a rejection of liberal pluralism. In liberal democracies, legitimacy is derived from procedural fairness and the protection of dissenting voices. For Schmitt, such a model is politically impotent. He warns that parliamentary systems, which rely on open debate and shifting majorities, are unable to sustain true political unity or act decisively in times of crisis.<sup>12</sup> Thus, his theory becomes a subtle endorsement of authoritarian decisionism—rule by a unified will rather than by fragmented deliberation.

In *Legality and Legitimacy* (1932), Schmitt sharpens this critique by attacking the Weimar Republic's reliance on legal formalism. He distinguishes between legality—compliance with procedural norms—and legitimacy, which he roots in substantive political unity and will. For Schmitt, a legal system that permits the democratic rise of parties that aim to destroy democracy (such as the Nazi Party in Weimar) demonstrates its own self-destructive logic.<sup>13</sup> Liberalism, in his view, is unable to defend itself from existential threats because it refuses to define the enemy or suspend the rules that allow its demise.

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<sup>11</sup> Schmitt, C. (2007). *The Concept of the Political* (G. Schwab, Trans.). University of Chicago Press. (Original work published 1932), p. 26.

<sup>12</sup> Schmitt, C. (2008). *The Crisis of Parliamentary Democracy* (E. Kennedy, Trans.). MIT Press.

<sup>13</sup> Schmitt, C. (2004). *Legality and Legitimacy* (J. Seitzer, Trans.). Duke University Press.

This line of reasoning positions Schmitt as a philosopher of illiberal realism. His political theory anticipates and legitimizes the suspension of liberal norms in favor of executive sovereignty, national homogeneity, and existential self-defense. As such, he emerges not merely as an analyst of liberal failure, but as a strategic theorist for regimes seeking to consolidate power outside the bounds of constitutional constraint.

Schmitt's entanglement with Nazism underscores this reading. After Hitler's rise to power in 1933, Schmitt swiftly aligned himself with the Nazi regime, even defending the Röhm purge as a legitimate sovereign act outside the law. He supported the Führerprinzip (leader principle) and advocated for the removal of Jewish jurists from the German legal academy. As David Dyzenhaus notes, "Schmitt's thought did not merely coexist with National Socialism—it actively enabled and legitimated it."<sup>14</sup>

Some scholars, such as Benjamin Schupmann, have sought to rehabilitate Schmitt by arguing that his early writings contain a defensible theory of constrained constitutionalism. According to this view, Schmitt's critique was directed not at liberalism per se but at "mass democracy"—a regime in which procedural mechanisms become detached from substantive political identity. Schupmann reads Schmitt as warning against a situation in which democracy becomes purely mechanical, and thereby open to populist capture.<sup>15</sup> However, this charitable reading struggles to account for the explicit authoritarianism of Schmitt's later writings and actions. Even if his critique of positivism is taken seriously, his proposed alternatives remain unambiguously illiberal.

Indeed, Schmitt's rejection of norm-based governance places him at odds with the fundamental architecture of international human rights law. Section 2 (Page 8,9) The liberal order imagined in the wake of World War II aimed to limit state authority through binding rules, enforceable rights, and institutional restraints. Schmitt's theory, on the other hand, conceptualizes law as an instrument of sovereign will to be molded or suspended as appropriate to maintain political cohesion. Such a perspective stands in opposition to the notion of inalienable rights or human dignity's universality.

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<sup>14</sup> Dyzenhaus, D. (1997). *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar*. Oxford University Press, pp. 97–104.

<sup>15</sup> Houben, L. (2019). Carl Schmitt: The Ultimate Illiberal? *European Constitutional Law Review*, 15(3), 599–608.

The illiberal tendencies of Schmitt's work are perhaps best highlighted in his theory of the Dual State, as formulated by Ernst Fraenkel but foreshadowed by Schmitt's normative and prerogative state distinction. In this theory, the state is divided: one half through formal legality (laws, procedures, courts), and the other through discretion and arbitrary coercion, frequently in the guise of national security or public order.<sup>16</sup> The Nazi state was the ultimate expression of this dualism, and Schmitt supplied its intellectual framework.

Authoritarian regimes have been quick to borrow from Schmitt. In Hungary, Orbán's idea of "illiberal democracy," echoes Schmitt's claim that democracy doesn't need liberalism at all. Putin's Russia follows a similar script. One may argue that in India, majoritarian politics and populist executive power are beginning to carry the same marks. Institutions are argued to continuously lose their independence, dissent is branded as dangerous, and laws like the UAPA or sedition statutes are, at times, applied in ways that privilege loyalty to the state over legality itself.

But Schmitt isn't only a convenient villain. His attacks on liberal formalism sting because they expose something real. Liberal regimes often struggle to deal with actors who challenge the system itself, and in doing so they risk betraying their own values. It wants to fight back, but it does not want to betray its own principles. That tension has troubled even stable democracies, and Schmitt forces us to face it.

Still, his solution is a dead end. Schmitt distrusted pluralism. He thought unity could only be built by pushing people out. He saw rights not as limits on power but as obstacles. That logic edges naturally toward illiberalism. His theology of politics makes the weaknesses of liberalism visible, but it gives nothing constructive in return, only the claim that survival is what matters, and that law survives only by serving the state.

In a time when illiberal democracies are multiplying and executive power looms larger than ever, Schmitt's work functions both as a caution and as a mirror. It warns us of what happens when law bends entirely to politics, and it presses us to imagine how legal frameworks can be strengthened without losing their moral anchor.

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<sup>16</sup> Fraenkel, E. (2017). *The Dual State: A Contribution to the Theory of Dictatorship*. Oxford University Press.

#### 4. Carl Schmitt's Relevance in Modern Context

Carl Schmitt is not just a name from Weimar Germany, nor simply a faded theorist linked with fascism. His ideas still circulate and shape how politics and law are argued over today. You can see traces of him in the justifications offered by illiberal regimes in Eastern Europe, and again in the language of populist constitutionalism across parts of the Global South. In both settings, his way of thinking is used—sometimes directly, sometimes without attribution—to defend stronger executive power, to shut out dissent, and to place national unity above individual rights. This persistence tells us something about the weak points within liberal constitutional systems themselves, and about the limits of international human rights law. Schmitt matters today not because he survived by chance, but because the cracks he pointed to have never fully closed.

One of the most pervasive ways in which Schmitt has influenced modern governance is through the normalization of emergency powers. The post-9/11 world has witnessed a global expansion of what Agamben, building on Schmitt, calls a “permanent state of exception.”<sup>17</sup> Under this model, legal norms are formally maintained but materially suspended under the guise of national security, bio-crisis management, or counter-terrorism. In the United States, indefinite detention at Guantanamo Bay and expansive surveillance under the Patriot Act reflect a shift toward executive governance via exception.<sup>18</sup> Similar patterns are observed in the UK, France, Turkey, and beyond.

However, Schmitt's enduring impact is not limited to crisis jurisprudence. His theory of homogeneity as a precondition of democracy has been resurrected by populist regimes that treat pluralism as pathological. Leaders such as Viktor Orbán in Hungary, Recep Tayyip Erdoğan in Turkey, and even Vladimir Putin in Russia have embraced what might be called a Schmittian political form: a rejection of liberal universalism in favor of political unity, cultural cohesion, and the authority of a “true” people against internal and external enemies.<sup>19</sup>

India presents a compelling and urgent context in which to test the contemporary resonance of Schmitt's theories. The Indian constitutional order, with its written guarantees of fundamental rights, federal structure, and checks and balances, is argued to appear as a textbook liberal

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<sup>17</sup> Agamben, G. (2005). *State of Exception* (K. Attell, Trans.). University of Chicago Press.

<sup>18</sup> Cole, D. (2003). *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*. The New Press.

<sup>19</sup> Müller, J. W. (2016). *What is Populism?* University of Pennsylvania Press.

democracy. Scholars have argued that over a past few decades, India has witnessed a centralization of political authority, a decline in judicial independence, and a resurgence of majoritarian nationalism. These trends are apprehended to echo Schmitt's dual themes of sovereign discretion and the friend–enemy distinction.

The language of emergency within the Indian Constitutional provisions: Articles 352 to 360, was historically tested during the Emergency declared by Prime Minister, Indira Gandhi from 1975 to 1977. During this period, civil liberties were suspended, political opponents imprisoned, and the press censored. The Supreme Court's decision in *ADM Jabalpur v. Shivkant Shukla*, which denied the right to habeas corpus, has since been condemned as a judicial endorsement of Schmittian sovereignty, where the state's preservation overrides legality.<sup>20</sup>

While India has not formally declared a national emergency since then, the logic of exception has, nonetheless, been argued to return through the back door. The Unlawful Activities (Prevention) Act (UAPA), National Security Act (NSA), and Public Safety Acts in various states give the executive expansive detention powers without trial. During the COVID-19 pandemic, the Disaster Management Act and Epidemic Diseases Act were invoked in ways that effectively sidelined legislatures and courts.<sup>21</sup> This administrative bypassing of democratic procedures is argued to reflect a governance ethos that Schmitt would find familiar, where legality is subordinated to the exigencies of decision.

Furthermore, the conceptual distinction between friend and enemy—central to Schmitt's political ontology—has found renewed application in India's contemporary political discourse. Terms such as "anti-national," "urban Naxal," and "tukde tukde gang" have been used not just as rhetorical tools but as political exclusionary tools. These terms do more than signal disagreement; they work to strip opponents of legitimacy, turning dissent into something framed as a threat to the nation itself.<sup>22</sup> Both construct membership in the political community as tied closely to cultural and religious identity, rather than to equal citizenship.

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<sup>20</sup> A.D.M. Jabalpur v. Shivkant Shukla, AIR 1976 SC 1207.

<sup>21</sup> Gautam, B. (2020). Legal Responses to COVID-19 in India: Navigating the State of Exception. *Indian Journal of Constitutional Law*, 9(1), 1–22.

<sup>22</sup> Narrain, A. (2021). The Legal Construction of the 'Anti-National': Dissent, Sedition, and the Crisis of Free Speech in India. *Economic and Political Weekly*, 56(30), 10–13.

The risk here is not only a slow erosion of democratic values, rather it is the possibility that law itself becomes little more than a cover for the exercise of political will. Traditionally, the Indian judiciary has been seen as a counterweight to executive authority, a space where constitutional values could be asserted against majoritarian pressures. In recent years, however, it has been criticised for its hesitation to act in cases involving dissent, free speech, and the protection of minorities.<sup>23</sup> Schmitt's warning—that constitutional courts are powerless when political forces turn against the constitution—feels disturbingly relevant in this moment.

But, of course, Schmitt's value in the Indian context also throws open a key normative challenge: Are liberal democracies able to deal with existential threats—both internal and external—without forsaking their commitment to legality, pluralism, and rights? Though Schmitt would assert that sovereignty calls for the capability to act outside the confines of law, liberal constitutionalists would say that authentic legitimacy emerges from abiding by legal and ethical restrictions, even during crises. David Dyzenhaus, for example, promotes the ideology "legality in a time of emergency" which does not compromise law to politics but instead insists that emergency action be justified within a legal order based on constitutional norms.<sup>24</sup>

Indian Constitutional trajectory has, often, demonstrated a tendency to push back against the Schmittian philosophy. In the case, *K.S. Puttaswamy v. Union of India*, the Supreme Court of India has struck down excessive state surveillance and affirmed privacy as a right grounded in dignity, autonomy, and democracy. By doing so, the Court rejected the idea that rights are gifts that can be withdrawn at the sovereign's whim. It underscored instead that rights operate as constitutional brakes on power.

The tension between Schmitt's realism and constitutional idealism continues to shape our present moment. His arguments are not confined to authoritarian contexts. Versions of his reasoning appear even within liberal democracies, especially those struggling under the weight of populism, widening inequality, and the politics of security. Schmitt was perceptive in pointing out the fragility of liberal proceduralism. But his answer—rooted in unity, decisionism, and exclusion—remains deeply corrosive.

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<sup>23</sup> Krishnaswamy, S. (2022). The Supreme Court and the Crisis of Constitutionalism in India. *Indian Law Review*, 6(1), 1–28.

<sup>24</sup> Dyzenhaus, D. (2006). *The Constitution of Law: Legality in a Time of Emergency*. Cambridge University Press.

In today's world, Schmitt is still a relevant philosophical figure because illiberal actors often fall back upon his ideas and also he challenges the liberal school of thought to challenge and confront its own blind spots. For scholars and defenders of constitutional democracy, engaging with him is not just an historical exercise. It is necessary political work. His writing exposes where liberal systems are weakest, but it also pushes us to think about how legal and constitutional structures can survive stress without collapsing into the "state of exception." To ignore that challenge is to concede too much to the very logic we seek to resist.

## **5. Conclusion**

Carl Schmitt's writings repeatedly highlight an uncomfortable truth: liberal legalism often falters when faced with moments of grave external threat. His idea of sovereignty—as the authority to decide on the "exception"—strikes at the very heart of constitutional order. That idea tears into constitutional order. It shows that liberal democracies, however committed to legality, sometimes step outside it simply to survive. The danger lies in Schmitt's answer. By placing the sovereign will above the law, he opens the door to rule by discretion rather than rule by principle - a direct reversal of democratic ideals.

Schmitt never attempted to conceal his disdain for pluralism or universal rights. He valued unity, sameness, and stark political realism instead. This rejection stripped him of credibility as a democratic thinker, yet it also gave his theories a darker afterlife. Authoritarian regimes drew on his ideas, using law not as a shield of justice but as a weapon of control. We still see traces of that legacy: emergency laws used to silence dissent, constitutional checks slowly hollowed out, and entire groups branded as "enemies" within.

India's constitutional experience is argued to capture this tension well. Courts and civil society have, at certain points, pushed back against the logic of exception. Yet recent trends show just how narrow the gap can be between lawful governance and executive overreach. The struggle against Schmitt's ideology is ongoing.

So why read him today? His critique should remind us that legal frameworks need to be sturdier, more rooted in rights, and accountable to democracy even in moments of crisis. The rule of law cannot just be a technical shell. It has to carry substance - principle, participation, and above all, protection for the vulnerable.