

# America's "State of Exception"

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In January 1933, Adolf Hitler was appointed as Germany's chancellor. The horror that the Nazis unleashed in the subsequent 12 years made their movement synonymous around the world with the most unspeakable brutality and depravity. Hitler's counterrevolutionary dictatorship crushed all opposition with mass incarceration, mass deportation and ultimately mass murder, including entire populations of Jews, Roma and other minorities. The failed Nazi war of conquest reduced Europe to ruins and left permanent scars on human culture and civilization as a whole.

The pseudo-legal framework under which these crimes were carried out was the so-called "state of exception" (*Ausnahmezustand*), a concept introduced by lawyer and Nazi party member Carl Schmitt (1888–1985) in the 1920s.

A reactionary jurist from a privileged Catholic background, Schmitt reacted with hostility to the liberal and constitutional reforms of the Weimar era after World War I, expressing himself in terms of a deep hatred of Protestantism, "cosmopolitanism" and especially anything he associated with Jewish culture.

According to Schmitt's "state of exception" theory, democratic and parliamentary norms cease to operate in the "exceptional" situation of a national emergency. In such an emergency, the survival of the legal order depends not on any norm but on the decisions of the executive, who, Schmitt wrote, "is he who decides on the state of exception."

Following the Reichstag fire in February 1933, which was utilized by the Nazis to incite anti-communist hysteria, President Paul von Hindenburg issued the Reichstag Fire Decree suspending basic democratic rights. A month later, the German parliament passed what is now known as the Enabling Act—with the legal assistance of Schmitt—which codified Hitler's powers to act unilaterally without constitutional limits.

The construction of the Dachau concentration camp began the same month. Under the new framework, the Communist Party (KPD) was banned, its elected representatives were all imprisoned and the Nazis unleashed a ferocious crackdown on all socialist and working class opposition.

Because Hitler was supposedly the expression of the "will of the people" and the "will of the nation" with a mandate to save the country from an emergency, Schmitt went on to claim that law itself is nothing more than "the plan and the will of the leader." This concept became known as the "leader principle" (*Führerprinzip*).

In the Night of Long Knives at the end of June 1934, Hitler orchestrated a purge of political opponents within and outside the Nazi movement. Hundreds of high-level political leaders were murdered without charges, evidence or trial. Schmitt celebrated the

killings in an August 1934 article claiming that Hitler was the "highest judge" who "defends the law from the most fatal abuse if, at a moment of danger, he creates unmediated justice."

As the Nazis themselves demonstrated, the indefinite "state of exception" and the "leader principle" could be used to justify absolutely anything. During the Nuremberg Trials at the end of the war, US Supreme Court Justice Robert Jackson accused the Nazi leaders of being "surprised that there is any such thing as law ... Their program ignored and defied all law."

Eighty years later, Schmitt's sinister theories have been revived in the form of a blitz of personal decrees issued by US President Donald Trump in the first two months of his presidency.

Immediately upon taking office, Trump announced a "national emergency" and asserted extraordinary wartime powers to defend the "sovereignty" of the country from "an invasion of the United States through the southern border." On this basis, he issued an order requiring "US military forces to carry out directed missions called for by the President."

Thousands of active-duty soldiers have already been dispatched to the southern border, supposedly to defend the country from an "invasion" of undocumented "aliens." Invoking the same legal arguments that were used to justify the internment of Japanese Americans during the Second World War, Trump has demanded that US military bases be transformed into internment camps for the millions of refugees and immigrants that are expected to be seized in militarized raids against urban centers.

On February 18, Trump issued an executive order claiming that he "shall provide authoritative interpretations of law for the executive branch," a direct invocation of the "leader principle." Official White House channels broadcasted Trump's statement, "He who saves his country does not violate any law." Vice President JD Vance echoed: "Judges aren't allowed to control the executive's legitimate power."

Trump's White House Press Secretary Karoline Leavitt declared on February 12 that court orders by federal judges against Trump were an "attempt to thwart the will of the people." On March 5, when she was being questioned by a reporter about planned tariffs, she snorted: "Are you the president? It's not up to you!"

Trump's executive order blitz makes clear that it was no accident that Elon Musk, who funded the Republican Party's 2024 electoral campaigns to the tune of \$290 million, gave multiple belligerent Hitler salutes at Trump's January 20 inauguration ceremony.

Trampling on the fundamental constitutional separation of powers—assigning to Congress, not the president, the "power of the purse"—Trump is carrying out a massive wave of firings aimed at

undoing a century of social reforms, from environmental regulation to retirement security, public education and public health. To this end, he has proclaimed the so-called “Department of Government Efficiency,” headed by Musk, which has now effectively commandeered every agency and department of the government by hijacking their finances and computer systems.

The abduction and disappearance of Columbia University student leader Mahmoud Khalil on March 8 marked a further escalation of Trump’s efforts to overturn the Constitution and establish a police state. Khalil is a legal US resident and has not been convicted of any crime that would plausibly justify his deportation. Trump not only published all-capital-letters racist incitement on government channels directed against Khalil, who is Palestinian, he also boasted there would be “many more to come.”

Each outrage against basic democratic norms by the Trump regime is carefully calculated to set a precedent, laying the groundwork for further outrages in an unending cascade. Every time a court order is entered against Trump, he responds with two more flagrant violations of basic democratic norms.

Over the weekend, Trump invoked the Alien Enemies Act, based on the fictitious declaration that the US is at “war” with the Tren de Aragua gang and the Venezuelan government, to proclaim the power to unilaterally deport immigrants without any court proceeding.

The White House directly flouted a court order not to transport immigrants to El Salvador, where far-right strongman Nayib Bukele has promised to house them in the government’s huge and notoriously brutal Center for Confinement of Terrorism. Trump has already floated the idea that US citizens can be transported there as well.

In a filing Sunday, the Trump administration argued that the deportations “are not subject to judicial review” because they are being carried out as part of the president’s “war powers.”

This is not just a “defiance of the courts”; it is the “defiance of the Constitution.” If the executive violates an individual’s constitutional rights, the courts are supposed to provide a remedy, a check on executive power. If the executive ignores the outcome, the Constitution becomes a dead piece of paper—not just for immigrants, but for the entire population.

The hateful campaign now underway against transgender people has likewise been pulled straight from the Nazi playbook. In May 1933, in the wake of the Enabling Act, Nazi thugs attacked and burned the library and records of the Institute for Sexual Research in Berlin, which had pioneered studies regarding gay and transgender people. This attack marked the first of the infamous wave of Nazi book burnings.

In February, Vance traveled to Europe to promote German Neo-Nazi party leader Alice Weidel. In a subsequent Fox News interview, Vance declared, “Americans decide who gets to join our national community,” a choice of words doubtless intended to evoke the concept of a “national community” (*Volksgemeinschaft*) championed by Schmitt, which he invoked to justify excluding “non-Aryans” from political life. Reviving the Nazi campaign against “degenerate art,” Trump appointed himself chairman of the Kennedy Center in Washington D.C. and carried out a purge of its board.

Just as was the case in Germany in the 1930s, the attempt to establish a dictatorship in America today is a social product of capitalism. The ongoing mass murder of the population of Gaza proves that the forces now in control of the American state are capable of brutality to rival the Nazis and worse.

However, unlike Hitler in 1933, Trump does not enjoy the support of a mass fascist movement. On the contrary, the attempt now underway to impose a dictatorship will inevitably collide with powerful democratic traditions in the US, rooted in the American Revolution, the Civil War to abolish slavery, the civil rights movement that destroyed Jim Crow and above all in the powerful history of struggle by the American working class, which is composed of immigrants from around the world.

The attempt to impose a dictatorship is the culmination of a protracted historical process that included the acquiescence of the Democrats to the theft of the 2000 election, the assertion of dictatorial wartime powers under the “war on terror” and the normalization of torture, military commissions, mass surveillance and assassination under successive Democratic and Republican administrations. This process accelerated under former President Joe Biden with the efforts to criminalize popular student protests against the Gaza genocide.

Trump’s “Operation Dictatorship” expresses the interests of the capitalist oligarchy, which is determined to bring the political framework of the American government into line with the effective dictatorship it already enjoys over social and economic life.

The interests of this oligarchy are reflected in the conduct of both of America’s political parties, as expressed in the vote by top Democratic Party leaders Friday to remove all congressional spending directives, effectively giving Musk and Trump a green light to intensify their operation.

The mass movement that is required to halt and reverse this operation necessarily must express above all the interests of the working class across all borders, leading all progressive elements in society behind it in a struggle to eliminate the fascist menace at its source—the capitalist system.



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