

Salus Populi Suprema Lex Esto: Constitutional Fidelity in Troubled Times

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Security and freedom

How should a democracy respond to imminent or potential threats to its security? If extraordinary measures are taken to counter such threats what role should be played by the courts, particularly when a government resorts to arguments of ‘necessity’ to justify those measures? An assertion of ‘the imperative demands of national safety’ based on the maxim *salus populi suprema lex esto* does not simply mean that a blank cheque is given to the legislature and the executive to exercise extraordinary powers without constitutional constraints. Latham CJ in *Gratwick v Johnson*¹ commented that the maxim ‘is sometimes only a statement of a principle which should guide legislators in determining whether they will make a particular law’.² He added:

Presumably all laws made by parliaments are thought by their supporters to be justified by a concern for the welfare of the people. The maxim, so understood, is a wise political observation – not a legal criterion of constitutional validity. From a legal standpoint, the maxim really represents a doctrine of political necessity, which in time of crisis may justify extraordinary action – as, for example, under the royal prerogative in time of imminent national danger. But the prerogative is itself part of the common law. The view that *salus populi* can abrogate all law belongs

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1 (1945) 70 CLR 1.

2 Ibid, 11.

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