

## **Schmitt and the Sovereignty of Roman Dictators: From the Actualization of the Past to the Recycling of Symbols<sup>1</sup>**

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### **Abstract**

The aim of this article is to analyze the complex roots of Carl Schmitt's theory on dictatorship in the classical world through the lens of classical receptions. It argues that Schmitt was deeply engaged with the classical tradition in formulating his theory on dictatorship. Knowingly or unknowingly, Schmitt legitimates his theory through a foundation in both the Roman idealization of the virtuous dictators of the early Republic as well as the long tradition of the narrative of the enlightened sovereign as a guarantor of law, present in both Greek and Roman antiquity and in the subsequent European tradition. Schmitt skillfully repurposed the Roman historical tradition on dictators but glossed over the traditional antipathy of Roman republicanism towards sovereign rule. The claim that this article is presenting is that even though it has been overlooked by earlier scholars, Schmitt was both directly and indirectly influenced by the classical tradition of

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dictatorship and utilized their mythical and symbolic dimensions in the later Roman and the subsequent European legal and political traditions. The reason for this omission was that Schmitt, like his contemporaries, belonged to one of the last generations to be groomed in the classical tradition of literature.

## Introduction

The aim of this article is to analyze the complex roots of Carl Schmitt's<sup>2</sup> theory on dictatorship<sup>3</sup> in the classical world through the lens of classical receptions.<sup>4</sup> Knowingly or unknowingly,

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<sup>2</sup> Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall* (München, Beck, 2009); David Cumin, *Carl Schmitt* (Paris, Cerf, 2005); Gopal Balakrishnan, *The Enemy: An intellectual portrait of Carl Schmitt* (London, Verso 2000); Andreas Koenen, *Der Fall Carl Schmitt* (Darmstadt, Wissenschaftliche Buchhandlung, 1995). For an outline of the extensive literature on Schmitt, see Volker Neumann, 'Carl Schmitt (1888-1985),' in *Festschrift 200 Jahre Juristische Fakultät der Humboldt-Universität zu Berlin*, ed. Stefan Grundmann et al., (Berlin, De Gruyter, 2010), 733-754.

<sup>3</sup> Carl Schmitt, *Die Diktatur* (Berlin, Duncker und Humblot, 1921), translated in English as Carl Schmitt, *Dictatorship*, transl. Michael Hoelzl and Graham Ward (Polity Press, Cambridge 2014); Carl Schmitt, *Der Hüter der Verfassung* (Berlin, Duncker and Humblot, 1996 [1931]); Wilfried Nippel, 'Carl Schmitts 'kommissarische' und 'souveräne' Diktatur. Französische Revolution und Römische Vorbilder', in *Ideenpolitik*, ed. Harald Bluhm et al. (Berlin, Akademie Verlag, 2011); 105-140; Hendrik Hamacher, *Carl Schmitts Theorie der Diktatur und die intermediären Gewalten* (Neuried, ars una Verlag, 2001); Andreas Kalyvas, 'Hegemonic Sovereignty: Carl Schmitt, Antonio Gramsci and the constituent,' *Journal of Political Ideologies* 5 (2000), 343-376; John McCormick, 'The dilemmas of dictatorship: Carl Schmitt and constitutional emergency powers,' *Canadian Journal of Law and Jurisprudence* 10 (1997), 163-188. On the theories of dictatorship, see E. E. Kettlet, *The Story of Dictatorship: From the Earliest Times till Today* (London, Ivor Nicholson and Watson, 1937); Alfred Cobban, *Dictatorship: Its History and Theory* (New York, Haskell House Publishers, 1939); Franz Neumann, 'Notes on the Theory of Dictatorship,' in *The Democratic and the Authoritarian State: Essays in Political and Legal Theory*, ed. Herbert Marcuse (New York, The Free Press, 1957), 233-256; Raymond Aron, *De la dictature* (Paris, René Julliard, 1961); Alan Axelrod and Charles Phillips, *Dictators and Tyrants: Absolute Rulers and Would-Be Rulers in World History* (Facts on File, 1995); Andrew Arato,

Schmitt legitimates his theory through a foundation in both the Roman idealization of the virtuous dictators of the early Republic as well as the long tradition of the narrative of the enlightened sovereign as a guarantor of law, present in both Greek and Roman antiquity and in the subsequent European tradition.<sup>5</sup> The claim that this article is presenting is that even though it has been overlooked by earlier scholars,<sup>6</sup> Schmitt was both directly and indirectly influenced by the classical traditions of dictatorship and utilized their mythical and symbolic dimensions in the later Roman and the subsequent European legal and political traditions.<sup>7</sup> The reason for this omission was that Schmitt, like his contemporaries, belonged to one of the last generations to be groomed in the classical tradition of literature. The political and theoretical scholarship from Macchiavelli to the 19<sup>th</sup> century that he analyzed was written by people with similar backgrounds and educations, who felt it to be natural to develop their ideas using the classics as a frame of reference. Thus even though Schmitt's works on dictatorship have only a few references to the classics, they are to a large degree its products. However, Schmitt's interpretation was far from

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'Good-bye to Dictatorship?,' *Social Research* 67 (2000), 925-955; Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (New Brunswick, Transaction Publishers, 2004); Melvin Richter, 'A Family of Political Concepts: Tyranny, Despotism, Bonapartism, Caesarism, Dictatorship, 1750-1917,' *European Journal of Political Theory* 4 (2005), 221-248.

<sup>4</sup> See, for example, Lorna Hardwick and Christopher Stray (eds.), *A companion to classical receptions*, (London, Blackwell, 2008).

<sup>5</sup> Andreas Kalyvas, 'The Tyranny of Dictatorship: When the Greek Tyrant Met the Roman Dictator,' *Political Theory* 35 (2007), 412-442. For earlier works on this genre, see Chantal Millon-Delson, 'Dictature et despotisme, chez les Anciens et chez les Modernes,' *Revue Française D'Histoire des Idées Politiques*, 6 (1997), 245-251; Claude Nicolet, 'Dictatorship in Rome,' in *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism*, ed. Peter Baehr and Melvin Richter (Cambridge, Cambridge University Press, 2004).

<sup>6</sup> Notable exceptions are Wilfried Nippel, 'H. Hamacher: Carl Schmitts Theorie der Diktatur,' in *H-Soz-u-Kult* (September, 2004); Andreas Kalyvas, 'Hegemonic sovereignty: Carl Schmitt, Antonio Gramsci and the constituent prince?' *Journal of Political Ideologies* 5 (2000), 343-376.

<sup>7</sup> Michael Salter, *Carl Schmitt: Law as politics, ideology and strategic myth*, (London and New York, Routledge, 2012), 248-255.

neutral, he used the malleability of the Roman tradition to suppress the traditional antipathy of Roman republicanism towards single rule.

Schmitt's theory of dictatorship is a theory about the exercising of unrestrained power in a particular situation such as a state of emergency. Through the appointment of a dictator, a magistrate with nearly unrestrained powers, the state is able to defend itself against enemies both within and without. Schmitt divided dictatorships into two categories, commissarial and sovereign dictatorships. The aim of the commissarial dictatorship was to protect the constitution by suspending it, but the possibility of that suspension was included in the constitution as an emergency measure. In contrast, the purpose of sovereign dictatorship was to make a new constitution, to reorganize the state completely. This would lead to a contradiction in the constitutional situation, since the legitimacy of this action could not rest within the abrogated old constitution.<sup>8</sup>

The way in which Schmitt utilized the classical tradition was a continuation of late nineteenth-century classicism, the contemporary uses of the classics. This tendency sought political and ideological models from ancient Greece and Rome, in much the same way that the architecture of the time imitated and was inspired by classical precedents.<sup>9</sup> In the case of Schmitt's dictators, this idealization of classical precedents led to a misrepresentation of history in order to provide a fitting precedent for the theory of sovereign dictatorship.

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<sup>8</sup> References to this and subsequent paragraphs may be found within the corresponding chapters.

<sup>9</sup> As described already by Salvatore Settis, *Futuro del 'classico'*, (Torino, Einaudi 2004).

Within the Roman historical tradition, there were actually two traditions of dictatorship that provided the models for Schmitt's distinction between commissarial and sovereign dictatorships. The first was the tradition of dictatorship from the Roman early and middle Republic, from 500-200 BC, which is known only from an idealized annalistic historiography. Even for the Romans, the events of that time were known half from legend, half from history. The dictators of this era were without fail virtuous and good military commanders who had saved Rome from peril. The second tradition of dictatorship was that from the late Republic, when the dictators Sulla and Caesar had used the powers of their office to eradicate their opponents and to transform Roman society and the state to their liking. While the aims and powers of the latter tradition were the model for Schmitt's sovereign dictator, he remains mute about the historical reality behind the tradition. While the earlier tradition was known only from snippets of idealized historiography, the latter provided ample evidence of the rampant slaughter, looting, dispossession, lawlessness, and rape that went with the actions of, for example, Sulla. These sovereign dictators did transform Rome and create a new constitution for the Republic, but their actions equally led to massive suffering and, ultimately, the downfall of the Republic. On all this, though amply discussed in the literature to which he refers, Schmitt remains silent.

Schmitt is considered one of the most important critics of liberalism in the twentieth century, mostly known as a theorist of sovereign power, but equally because of his connections with the Nazi regime in Germany.<sup>10</sup> As with many similar figures, Schmitt has undergone a kind of apotheosis in which his writings have been detached from their original context and are often

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<sup>10</sup>Of this massive literature see, for example, *Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (1998); John McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge, Cambridge University Press, 1997).

seen as purely theoretical studies.<sup>11</sup> Schmitt has by and large been seen as a proponent of very modern reactionary tendencies that have been defined as a type of radical conservatism.<sup>12</sup>

The relationship between Schmitt's theories and the classical tradition was close and convoluted. Not only was he well versed in the tradition himself, but the classical tradition also strongly influenced the early modern political discourse that he was writing about, complicating the distinction between the various layers of influences. Ideas like popular sovereignty, plebiscitary democracy, and the sovereign power of the ruler were all much discussed within the Roman political and legal tradition. For Schmitt, as for innumerable others, the classics provided a set of tools or building blocks for the development of legal and political theory. That tradition also guided their theories to a certain extent in ways that are discernible only through an

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<sup>11</sup> While generally his later works were more theoretical while the earlier were more historically and legally oriented, even some of his early works were highly theoretical. Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, transl. George Schwab (Chicago, University of Chicago Press, 2005 [1922]).

<sup>12</sup> On Schmitt and his role in the contemporary discussions, see Renato Cristi, *Carl Schmitt and Authoritarian Liberalism: Strong State, Free Economy* (Cardiff, University of Wales Press, 1998); J. Z. Muller, 'Carl Schmitt, Hans Freyer and the radical conservative critique of liberal democracy in the Weimar Republic,' *History of Political Thought* 12 (1991), 696–715; Jeffrey Herf, *Reactionary Modernism: Technology, Culture, and Politics in Weimar and the Third Reich* (Cambridge, Cambridge University Press, 1984). Schmitt's critics have often labeled him a decisionist and nihilist; see, for example, W. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge, MA, MIT Press, 1994); David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford, Clarendon Press, 1997), Richard Wolin, 'Carl Schmitt, the conservative revolutionary habitus and the aesthetics of horror,' *Political Theory*, 20 (1992), 424–447. On the discussions around Schmitt, see Andreas Kalyvas, 'Who's afraid of Carl Schmitt?' *Philosophy and Social Criticism*, 25 (1999), 86–125.

understanding of the tradition. Like many of his contemporaries, such as Hannah Arendt, Schmitt worked through the reinterpretation and rereading of the classical tradition.<sup>13</sup>

Whilst general scholarship on single rule has tended to draw parallels between dictatorship and tyranny,<sup>14</sup> understanding the convergences and differences of these historical traditions is crucial for an appreciation not only of Schmitt but also the historical tradition upon which his works relied. These parallels and convergences between Schmitt and Roman antiquity have not been discussed in earlier studies, despite the fact that there is an enormous and ever growing amount of literature on Schmitt.<sup>15</sup> Notwithstanding this avalanche of scholarship, Antiquity's influences on Schmitt's historical understanding have received little attention in scholarship.<sup>16</sup>

By analyzing the historical reconstructions presented by Schmitt and the Roman sources as narratives, the present article seeks to demonstrate how the formulation of a narrative becomes a constitutive force that has normative effects. Within the study of Roman constitutionalism, the normativity of historiography has already been increasingly recognized, as the understanding of history was often the defining element in what was considered legitimate and what was not.<sup>17</sup>

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<sup>13</sup> On the reuse of the Roman Republican political and constitutional tradition, see Joy Connolly, *The Life of Roman Republicanism* (Princeton: Princeton University Press, 2015).

<sup>14</sup> Kalyvas, *Tyranny*, 413.

<sup>15</sup> By some estimates, there is a new book written on him coming out each month. Neumann, *Schmitt*, 733.

<sup>16</sup> The remarkable exception is Nippel, *Schmitt*.

<sup>17</sup> The importance of narratives in Roman historical writing and their conception of constitution and law has been recognized in Jill Harries, *Law and Empire in Late Antiquity* (Cambridge, Cambridge University Press, 1999), as well as in recent studies such as Geoffrey S. Sumi, *Ceremony and Power: Performing Politics in Rome between Republic and Empire* (Ann Arbor, University of Michigan Press, 2005), Matthew B. Roller, *Constructing Autocracy: Aristocrats and Emperors in Julio-Claudian Rome* (Princeton, Princeton University Press, 2001), and Ittai Gradel, *Emperor Worship and Roman Religion* (Oxford, Oxford University Press, 2002).

The understanding of narratives is here thus both historical and legal, as narratives of constitutional relevance explain not only the events and their explanations,<sup>18</sup> but also how this narrative could influence the shared conviction of the constitutional possibilities available.

### Schmitt's Roman Dictators

Schmitt's theory of dictatorship was developed through a number of works, starting from the 1916 article *Diktatur und Belagerungszustand*, continuing with the 1921 book *Die Diktatur*, and later still in the 1922 book *Politische Theologie*, and other works.<sup>19</sup> Schmitt defined dictatorship as unrestrained power in an unusual situation:

Dictatorship is the exercise of state power freed from any legal restrictions, for the purpose of resolving an abnormal situation---in particular, a situation of war and rebellion. Hence two decisive elements for the concept of dictatorship are on one hand the idea of a normal situation that a dictatorship restores or establishes, and on the other the idea that, in the event of an abnormal situation, certain legal barriers are suspended in favour of resolving this situation through dictatorship.<sup>20</sup>

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<sup>18</sup> The understanding of the narrativity of history is a contested issue, to put it mildly. For some references, see Ann Rigney, 'History as Text: Narrative Theory and History', in Nancy Partner and Sara Foot (eds.), *Sage Handbook of Historical Theory* (London, Sage 2012) 183-201; Frank Ankersmit, *Meaning, Truth, and Reference in Historical Representation*. (Ithaca, Cornell UP 2012); Alun Munslow, *Narrative and History* (Basingstoke, Palgrave MacMillan 2007); Paul Ricoeur, *Time and Narrative*. Volumes I-III. (Chicago, University of Chicago Press 1990); David Carr, *Time, narrative, and history*, (Bloomington, Indiana University Press, 1986).

<sup>19</sup> Carl Schmitt, 'Diktatur und Belagerungszustand,' *Zeitschrift für die gesamte Strafrechtswissenschaft* 38 (1916); Carl Schmitt, 'Diktatur,' in *Staatslexikon im Auftrage der Görresgesellschaft* (Freiburg, Herder, 1926), 1:1448; Schmitt, Dictatorship; Schmitt 1985.

<sup>20</sup> Schmitt, Diktatur, 1448, translated in Michael Hoelzl and Graham Ward, 'Translator's introduction,' in Schmitt, Dictatorship, xxiii.



The core of Schmitt's theory was the division between commissarial and sovereign dictatorship. The purpose of commissarial dictatorship was to uphold and to protect the constitution and the state from whatever dangers or obstacles it might face. Its aim was a return to the normal state of affairs using unrestrained executive power. Commissarial dictatorship was therefore an emergency measure enshrined in the constitution. Thus even though it involved the suspension of the constitution, such a suspension was not only defined within the constitution itself but its timeframe and aims were also limited. In *Die Diktatur*, he uses early modern examples of delegated dictatorial power as the historical background for his discussion.<sup>21</sup>

Sovereign dictatorship, by contrast, was aimed at reforming the state and the constitution. The sovereign dictator was thus a revolutionary, a leader who sought to bring about a new order. Because this power necessarily contained the abrogation of the constitution, its legitimation could hardly be derived from that same constitution. In fact, the powers of the sovereign dictator could not be derived from any existing institution or rule. Instead, Schmitt regarded the constituent power of the people as the foundation for this form of dictatorial power. Schmitt's theory of constituent power was to a large degree derived from a critique of Sieyès's idea of the *pouvoir constituant* and the debates about this concept following the French revolution.<sup>22</sup>

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<sup>21</sup> Schmitt, *Dictatorship*, 1-33.

<sup>22</sup> Schmitt, *Dictatorship*, 112-131, esp. 121-128 on the *pouvoir constituant*; Hofmann, *Legitimät*, 54, Kalyvas, *Hegemonic*, 346-350; Nippel, *Schmitt*, 117-119. On the concept, see also C. Klein, *Theorie et pratique du pouvoir constituant* (Paris, Puf, 1996); Pasquale Pasquino, 'Die Lehre vom 'pouvoir constituant' bei Emmanuel Sieyès und Carl Schmitt,' in *Complexio Oppositorum: Uber Carl Schmitt*, Berlin, Duncker und Humblot, Helmut Quaritsch (1988), 371-385. On the theories of Sieyès, see Emmanuel Sieyès, *Qu'est-ce que le Tiers Etat?* (Geneva, Librairie Droz, 1970).

Both of the dictators, the commissarial and the sovereign, were characters that had their roots in ancient Roman history. Prior to the French revolution even the term dictator was a purely historical term referring to the Roman magistrate of *dictator*. As Schmitt noted, ever since the humanists of the Renaissance, scholars had developed their ideas through the classical tradition, but before the nineteenth century they did not develop the constitutional theory of dictatorship any further than that found in the Roman tradition. One of the reasons why there was little in the way of development of the theory of dictatorship was that early modern theory of sovereignty had no use for it. Thus even though the distinction between commissarial and sovereign dictatorship would have been evident from historical developments themselves, early modern authors, with the exception of Machiavelli, had no interest in the change from democracy to Caesarism. Schmitt argues that because ‘historical judgment is always dependent on the experience of its contemporary context’ and theorists of absolute monarchy relied on the idea of the power of the king being based on the grace of God, the background of dictatorship in popular sovereignty was not interesting for them.<sup>23</sup>

The Roman dictator was an extraordinary magistrate who held supreme executive and military power, without being restricted by an appeal or *provocatio* (a citizen’s right to appeal to the people in instances of capital offences). Dictatorship was an emergency measure that was used in a time of crisis. Unlike other Roman magistrates, the dictator had no colleague and was solely responsible for all the affairs of state. However, historically it is unclear what the powers of the dictator actually meant at any given time. Historical accounts mention that dictators were either nominated by a magistrate with the commanding power of *imperium* (such as a consul or a

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<sup>23</sup> Schmitt, Dictatorship, 1-2.

praetor) after the Senate had first approved it, or, more rarely, elected by the *comitia centuriata*. Originally, there was a strict time limit of six months to a dictator's tenure, but later it could be extended at the end of this term. However, it was customary for the dictator to resign as soon as his task was complete. The originally military nature of dictatorship may be demonstrated by the fact that he would as his first task appoint a *magister equitum* (literally, master of the horse) as his second in command. While the earliest accounts mention that a dictator would be free from all restraints, in the accounts from the middle republic onwards the decisions of the dictator were liable to be vetoed and submitted to *provocatio*.<sup>24</sup>

There were actually two traditions of Roman dictatorship, one coming from the Early and Middle Republic (traditionally from roughly the 500-200 BC) and the other from the last century of the Republic, the first century BC. Of the first tradition of Roman dictatorship, we know mostly about the Roman wars, in which dictators might be selected in a desperate moment to ward off enemies. A famous example is the story of Cincinnatus, who in 458 BC was called from his small farm to lead Rome's defense against invading neighbors. The story goes that Cincinnatus was plowing the field when an embassy came to fetch him. He promptly raised an army, conquered the enemies of Rome, resigned, and returned to his modest farm to finish plowing his field just over two weeks later. Idealized in the annalistic tradition and especially in

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<sup>24</sup> Mommsen, *Römische Staatsrecht* 2.141; Livius 8.33.8, 22.8, 27.6.5. Regarding the idea of development in the Roman constitution, see Jochen Bleicken, *Die Verfassung der Römischen Republik*, 7th ed., (Paderborn, 1995); Andrew Lintott, *The Constitution of the Roman Republic* (Oxford, Oxford University Press, 1999). On the *provocatio*, see A. W. Lintott, 'Provocatio: From the Struggle of the Orders to the Principate,' in *Aufstieg und Niedergang der römischen Welt* 1,2 (1972), 226-267; Michel Humbert, 'Le tribunat de la plèbe et le tribunal du peuple, remarques sur l'histoire de la provocation ad populum,' *Mélanges de l'École Française de Rome* 100 (1988), 431-503.

Livy's history of Rome, Cincinnatus and men like him were hailed as ideal Roman magistrates, people with no interest in power itself and who thought only of the well-being of the state.<sup>25</sup> This early tradition of dictatorship was by and large a constitutional emergency measure meant for grave military situations where it was necessary to give nearly unlimited power to one man for the duration of one season's campaigning. Because normally there were at least two Roman magistrates of each rank that were capable of vetoing each other's decisions, appointing just one would resolve any issues in the chain of command.

The second Roman tradition of dictatorship in the late Republic was markedly different. While the earlier annalistic tradition of dictatorship mostly concerned military matters, the new dictators like Sulla<sup>26</sup> and Caesar<sup>27</sup> were engaged mostly with civil wars. What the new dictators could or should do was a matter of debate, as there had, after all, been no dictators since the Hannibalic wars. There was thus very little precedent to which one could refer in order to decide what the powers and duties of a dictator were. Both Sulla and Caesar used their dictatorial

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<sup>25</sup> The sheer volume of literature on Roman dictatorship is immense. For a sample, see Friedrich Bandel, *Die römischen Diktaturen* (Breslau, 1910); D. Cohen, 'The Origins of the Roman Dictatorship,' *Mnemosyne* (1957), 303-320; Arthur Kaplan, *Dictatorships and 'Ultimate' Degrees in the Early Roman Republic 501-201 BC* (New York, Revisionist Press, 1977); Marc de Wilde, 'The Dictatorship and the Fall of the Roman Republic,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 130 (2013), 1-39; *ibid.* 'The Dictator's Trust: Regulating and Constraining Emergency Powers in the Roman Republic,' *History of Political Thought* 33 (2012), 555-577.

<sup>26</sup> Ernst Badian, *L. Sulla: The Deadly Reformer* (Sydney, 1970); Karl Christ, *Sulla: eine römische Karriere* (Munich, 2002); Federico Santangelo, *Sulla, the Elites and the Empire* (Leiden and Boston, Brill, 2007).

<sup>27</sup> Standard works are Matthias Gelzer, *Caesar: Der Politiker und Staatsmann* (Stuttgart, Franz Steiner 2008 [1983]); Christian Meier, *Caesar* (Berlin, Severin und Siedler 1982), while more interesting are Luciano Canfora, *Julius Caesar: The People's Dictator* (Edinburgh, EUP 2007) and W. Jeffrey Tatum, *Always I am Caesar* (Malden, Blackwell 2008).

powers to consolidate their power during and after the civil wars of their time. In the case of Sulla, this power was used to set about the wholesale murder of his opponents. Both Sulla and Caesar sought to refashion the Roman state and constitution, embarking on widespread reforms and settlement programs, transforming the Roman world politically, legally, and economically. The dictatorship of Sulla was even titled *dictator legibus faciendis et reipublicae constituendae causa* (roughly translatable as ‘dictator for the making of laws and the foundation of the republic’). Sulla’s dictatorship and his actions were nominally legitimate, meaning that they were approved by both the Senate and the assembly of the people. Both of these were, of course, at that time, drastically reduced by the civil war and the elimination of Sulla’s opponents, making them little more than his tools. The stated motive of Sulla’s dictatorship was to free Rome from tyrants. However, historians like Plutarch have provided an account of his reign that is largely a narrative of terror. For example, when the Senate was assembled by Sulla to discuss matters of state after the defeat of his opponents in the civil wars, he simultaneously arranged for the execution of prisoners of war at the Circus Maximus. When a senator inquired about the commotion and the bloodcurdling cries, Sulla merely replied that ‘some criminals are being punished on my orders.’ Some six thousand Roman citizens, who were Sulla’s prisoners of war, were executed without trial at that time. The case of Caesar was in many ways different, but it could be said equally that his aim was the wholesale transformation of Rome and its constitution, although his transgressions of the constitution, such as his appointment of dictatorship for life, were more an *ad hoc* abrogation of the existing rules than their transformation. While Sulla was conservative, Caesar’s political support came from the *populares* and many of his reforms rewarded them. Both Sulla and Caesar were political and legal actors whose careers were based on exceptional actions, crossing the borders of conventional behavior. After the murder of

Caesar, Mark Antony completely abolished dictatorship in Rome by a law introduced as part of the political settlement between the parties.<sup>28</sup>

Schmitt described how these two traditions of dictatorship were politically different, though they were understood to be theoretically identical. However, it is clear that for Schmitt, the Roman origins of dictatorship were central to understanding the theoretical development of the idea.<sup>29</sup> *Die Diktatur* contains a long excursus on the historical tradition of Roman dictatorship, which Schmitt divides into three phases. He refers to the extensive debate concerning whether the original dictatorship was mostly a tool against the plebeians in the struggle between the orders in the early and middle Republic and concludes that it was mostly used for giving extraordinary powers to military commanders in times of war, making him an extraordinary magistrate with the commanding power (*imperium*) of a king. In later developments the dictators were subject to the veto of the tribune of the plebs. The last dictators of this type were appointed during the Punic wars. While there were no dictators between the years 202 and 82 BC, Schmitt considers that their function was taken over by the use of *Senatusconsultum ultimum*, a decree of the Senate that provided unlimited, extraordinary powers that could be used against Roman citizens who were a threat to the constitutional order. In contrast to these orders, the dictatorial powers

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<sup>28</sup> Plutarch *Sulla* 82; De Wilde, *Dictatorship*, 4-22; Frédéric Hurlet, *La dictature de Sylla: Monarchie ou magistrature républicaine?* (Brussels, Institut historique belge de Rome, 1993); Martin Jehne, *Der Staat des Dictators Caesar* (Köln, Böhlau, 1987); Theodora Hantos, *Res publica constituta: Die Verfassung des Dictators Sulla* (Stuttgart, 1988). On the other extraordinary commands, see Giuliano Crifò, 'In tema di senatus consultum ultimum,' *SDHI* 36 (1970), 1-15; Antonio Guarino, 'Senatus Consultum Ultimum,' in *Sein und Werden im Recht: Festgabe für Ulrich von Lübtow*, eds. W. C. Becker, M. Schnorr von Carolsfeld (Berlin, 1970), 281-294. Kurt von Fritz, 'Emergency Powers in the Last Centuries of the Roman Republic,' in *Schriften zur griechischen und römischen Verfassungsgeschichte und Verfassungstheorie*, (Berlin 1976), 388-406.

<sup>29</sup> Schmitt, *Dictatorship*, 2.

given to Sulla in 82 BC and Caesar in 46 BC were different in scope and purpose, having, according to Schmitt, only the name in common with the old dictatorship.<sup>30</sup> This interpretation was hardly Schmitt's own: the dispute over whether there were sufficient continuities between the Early and Middle Republican dictatorships and the Late Republican dictatorships of Sulla and Caesar began long before him and continues to the present day. For example, Mommsen's *Staatsrecht* (*Roman public law*, a standard work on the Roman constitution even today) separated these into the categories of regular magistracies and exceptional emergency powers, respectively.<sup>31</sup>

The fact that Schmitt spent a fair amount of energy explaining the Roman tradition of dictatorship may be due to the popularity that Roman history enjoyed at the time. Debates on Caesar, Pompey, and Augustus at the end of the nineteenth and the beginning of the twentieth centuries in Germany were not purely historical discussions, they were also constitutional debates on the limits of imperial power and the role of military command in society. Thus when they were discussing ancient Rome and the leaders of Rome, they were also debating the precedents and models for Imperial and Weimar Germany. The emergence of modern historical writing about the history of ancient Rome only accelerated this development. Theodor

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<sup>30</sup> Schmitt, *Dictatorship*, 230-231. For a comparison with more recent views, see De Wilde, *Dictatorship*.

<sup>31</sup> De Wilde, *Dictatorship*, 1-6. Nippel, Schmitt, 130-131 the theory about the fundamental continuity of the tradition of dictatorship was only popularized by Wilcken in 1940 [Ulrich von Wilcken, *Zur Entwicklung der römischen Diktatur*, (Berlin 1940)], who argued that formally the later dictatorships were nearly identical and thus based on the same roots, apart from the elements that placed them above the existing constitutions. See also De Wilde, *Trust*, 556. Recent scholars on the Roman Republic have pointed out how the whole concept is misleading as the political entity as well as the society go through such fundamental changes that there is little to bind them together beyond the Romans' own belief in unity. See Harriet Flower, *Roman Republics* (Princeton, Princeton University Press, 2010).

Mommsen's hugely influential *Roman History* gave, for all its critical credentials, a heroic picture of ancient Rome. Chief among Mommsen's heroes was Julius Caesar, who is treated as an almost superhuman character. One of the primary reasons why scholars at the turn of the century were interested specifically in Caesar and Pompey was the fact that they personified the direct link that existed between the people and the leader. Such a leader used his connection with the people to further popular reforms, bypassing the political machinery. Debates on Caesar and the late Roman Republic reflected a longing for a strong leader and the fear of tyranny that coexisted with it. Because the historical record of the late Republic was dominated so much by the writings of Cicero, attitudes towards Cicero's own political ideas were an integral part of that debate. For example, Mommsen was openly hostile towards Cicero and the conservative ideas he represented. It is clear that historical neutrality was very far removed from these debates.

Mommsen and Eduard Meyer, whose positions were diametrically opposed, were the primary antagonists in this discussion. While Mommsen saw in Caesar a conquering hero that elevated Rome to the leading power in the world, Meyer considered the victory of Caesar over Pompey as the final downfall of the Republic and the introduction of despotism. Because the idealistic writings of Cicero about Pompey's leadership were the foundation of Meyer's theory, the battle for the history of the late Roman Republic was ultimately a battle over Cicero.<sup>32</sup>

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<sup>32</sup> Theodor Mommsen, *The History of Rome*, vols. I-V, transl. William Purdie Dickson, numerous editions between 1861-1894; Eduard Meyer, *Caesars Monarchie und das Prinzipat des Pompeius*, 3rd ed., (reprint Darmstadt, 1974 [1919]); Zvi Yavetz, *Julius Caesar and his Public Image* (Ithaca, Cornell University Press, 1983); Herbert Grziwotz, *Der moderne Verfassungsbegriff und die 'Römische Verfassung' in der deutschen Forschung des 19. und 20. Jahrhunderts* (Frankfurt a.M., 1986). Compare[with what?], for example, J.-P. Borle, 'Pompée et la dictature,' *Les études classiques* 20 (1952), 168-180. A similar debate emerged on the historical understanding of Augustus and his role as a political model. Ines Stahlmann, 'Vom Despoten zum Kaiser. Zum deutschen Augustusbild im 19. Jahrhundert,' in *L' Antichità nell'Ottocento in Italia e Germania*, eds. K. Christ, A. Momigliano (Bologna 1988), 318; Otto



The larger context of this issue was the debate about the role of leadership that emerged in German historical and political discussions in the late nineteenth and early twentieth centuries. Much of the debate revolved around the idea of the leader as a charismatic national figure that transcended politics. As in the case of Mommsen and Meyer, much of that debate took place through historical writing, where examples and parallels from ancient and more recent history were used as justifications and legitimations. In addition to Schmitt, other influential scholars like Max Weber took part in this debate. Weber, in his 1919 *Politik als Beruf* and later in the posthumous *Economy and Society* discussed the issue of charisma and leadership extensively. What makes these discussions interesting for our purposes was the role that Caesarism played in them. Weber saw charisma as a great revolutionary force that could transform traditional societies. While much of Weber's writings on charisma were based on the idea of religious influence, on the political level Weber furthered the concept of a charismatic leader (*Führer*) who dominates with popular support, where he utilized the concept of plebiscitarity (*plebiszitäre Führerdemokratie*). While Weber's ideal types of leadership contained numerous types of charismatic leaders, ranging from religious prophets to military commanders and Caesarian leaders, the point was the transformative capacity of the leader, much like Schmitt's sovereign dictator. Scholars like Nippel have pointed out that one of the reasons behind the success enjoyed by Hitler in overturning the Weimar constitution was the prevailing sense of crisis and the longing for a strong, transformative leader that would resolve the crippling political and

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Hahn, 'Das Kaisertum,' *Das Erbe der Alten VI*, (Leipzig 1913), 74-77. On the late Republic, see Erich Gruen, *The Last Generation of the Roman Republic* (Berkeley, University of California Press 1995).

economic crisis with the use of extraordinary measures.<sup>33</sup> What separated the Schmittian idea of transformative sovereignty from the Weberian one was its close connection with the ancient Roman world.

### **Parallel Worlds of History and Theory**

Though Schmitt's theories have been seen in recent debates as purely theoretical constructions, they may equally be seen as a curious parallel universe to the ancient Roman world. Schmitt's clearly detailed knowledge of the classical world was only strengthened by the fact that Western political and legal discourse was so focused on classical, especially Roman examples. These historical examples functioned as cultural markers that contained allusions to the virtues and values that the past represented or was supposed to represent. The role of example and exemplarity as precedent and justification was equally important in the Roman way of government and the use of Roman precedents in later legal and political thought. The *exempla* were often in the form of narratives about virtuous ancestors, the *maiores*, and as such had both a historical and normative character. While the Roman constitution was based on example and precedent, the *mos maiorum* ("the custom of the ancients"), Roman constitutional authority was very important in later key turning points of political thought like the French Revolution.<sup>34</sup>

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<sup>33</sup> Wilfried Nippel, 'Le leadership charismatique', in Catherine Colliot-Thélène and Philippe Portier (eds.), *La métamorphose du prince: Politique et culture dans l'espace occidental* (Presses Universitaires du Rennes, 2014), 108-117.

<sup>34</sup> Michael Peachin, 'Exemplary Government in the Early Roman Empire', in Olivier Hekster et al. (eds.), *Crises and the Roman Empire: Proceedings of the Seventh Workshop of the International Network Impact of Empire (Nijmegen, June 20-24, 2006)* (Leiden, Brill 2007), 75-93; Andrew Wallace-Hadrill, 'Mutatio morum: the idea of a cultural revolution', in T. Habinek and A. Schiesaro (eds.) *The Roman Cultural Revolution* (Cambridge: CUP, 1997) 3-22.

A closer examination reveals how much Schmitt's theoretical concepts appear rooted in classical foundations. In his *Political Theology*, Schmitt developed the idea of popular sovereignty,<sup>35</sup> which was also an important theme in classical Roman law, where the power of the emperor was seen to be rooted in the people. In fact, in the Roman tradition the idea that the Roman state existed as a separate entity was an alien one, the *Senatus Populusque Romanus* was just that, the Senate and the people of Rome. Ever since the eviction of the kings, the Roman Republic had been founded on the principle of popular sovereignty, but a peculiar version of it. The Roman constitution, or what passed as the constitution, was not democratic but rather a mixed form of oligarchy and plebiscitary rule, a mixed constitution that was in a constant and contested process of change.<sup>36</sup> Equally, the theme of plebiscitary democracy, so central to Schmitt's thought, also had Roman foundations, though in a somewhat convoluted manner. The Romans had, in addition to the Senate, several legislative assemblies, of which the popular assembly was given the right to pass plebiscites that would have had the power of law in 367 BC. The struggle of the orders that pitted the plebs against the senatorial elite for much of the early and middle republic was about finding the balance of power between the oligarchs and the people. The resolution of that

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<sup>35</sup> While the analysis in *Die Diktatur* was mostly about the relationship of dictatorship and popular will in the postrevolutionary debates, in *Politische Theologie* the sovereign has become an abstraction. Schmitt, *Theology*, 9-11; Kalyvas, *Hegemonic*, 349-350.

<sup>36</sup> Livy saw already the XII Tables as expressions of popular sovereignty with regard to laws (7.17.12), but how early were such sentiments is impossible to know. On the constant constitutional change, see Luigi Capogrossi Colognesi, *Law and Power in the Making of the Roman Commonwealth*, (Cambridge: CUP, 2014). On Roman constitutional theory and praxis about the role of the people, there is ample literature, for example, Wolfgang Kunkel and R. Wittmann, *Staatsordnung und Staatspraxis der römischen Republik II*, *Handbuch der Altertumswissenschaften X.3.2.2.*, (München, Beck, 1995); Lintott, *Constitution*; Henrik Mouritsen, *Plebs and Politics in Late Republican Rome*, (Cambridge, Cambridge University Press, 2001); Karl-Joachim Hölkeskamp, *Rekonstruktionen einer Republik: Die politische Kultur des antiken Rom und die Forschung der letzten Jahrzehnte*, *Historische Zeitschrift, Beihefte Neue Folge* 38, (München, Oldenbourg, 2004).

conflict was a system of constitutional safeguards, where the plebs were protected by the tribunes of the plebs, who were sacrosanct and could veto any decision by any magistrate, and the legislative power of the plebeian or popular assembly. Another direct connection between the people, the law, and the ruler was the process of selecting the emperor through acclamation, which also fascinated Schmitt.<sup>37</sup> What is noteworthy is that these historical examples were, even for the Romans themselves, normative in character, that is, ways to define the fundamental characteristics of the Republic and the *mos maiorum* that governed it. The emphasis on the continuity with the past and the willingness to alter the narrative of the past to conform to present expectations was as much a Roman as it was a later European tendency. The memory of the past was changed in subtle ways to conform to the present and the claim to immutability masked fundamental changes both in society and culture.<sup>38</sup>

One form of sovereign power that was central to Schmitt's thought, namely, the idea that the will of the sovereign was law and formed law, was also founded on Roman constitutional thought. The idea that the sovereign was a guarantor of law and justice represents an important parallel between Schmitt and Roman constitutional theory and practice. In Roman legal experience, the emperor became the supreme judge to whom people from all walks of life and all parts of the empire could appeal. In theory and, at times, even in practice, the Roman emperor represented a combination of legal aid and supreme court, an ever present and omnipotent figure who would

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<sup>37</sup> Lintott, *Constitution. On the role of the emperor*, the best guide is still Fergus Millar, *The Emperor in the Roman World 31 BC-AD 337* (London, Duckworth, 1977).

<sup>38</sup> Flower, *Roman Republics*; Alain M. Gowing, *Empire and Memory: The Representation of the Roman Republic in Imperial Culture* (Cambridge, CUP, 2005); Uwe Walter, *Memoria und res publica: Zur Geschichtskultur im republikanischen Rom*, (Frankfurt am Main, Antike, 2004). Of the legal implications of *mos maiorum*, see Jochen Bleicken, *Lex publica: Gesetz und Recht in der römischen Republik* (Berlin; New York: de Gruyter, 1975).

right all wrongs and bring justice to even the lowliest of his subjects.<sup>39</sup> The Roman emperor would become nearly omnipotent in that there were next to no legal restrictions on what the emperor could do. Ideas regarding the unfettered power of the emperor were first introduced into the Roman discussion by Seneca during the time of Nero,<sup>40</sup> but they had been part of Roman elite culture, through Greek and Hellenistic kingship theories, since the late Republic. However, there were, of course, plenty of conventions about what was suitable for the emperor to do. Only very late in their history did the Romans abandon the principle that the emperor's power was derived from the people and that the emperor was selected via a process of acclamation by the people, even though the people were represented by the Roman army.

The parallels between Schmitt and the Roman constitutional tradition were of course not coincidences. Schmitt was a lawyer steeped in the German legal and historical tradition and thus well versed in both matters of the classical world and those of the Romanistic legal tradition.<sup>41</sup> However, he was also approaching the matter through French Revolutionary thought, which was equally captivated by Classical precedents and their implications for political and legal thought.<sup>42</sup>

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<sup>39</sup> Tony Honoré, *Emperors and Lawyers: With a Palingenesia of Third-century Imperial Rescripts 193-305 AD* (Oxford, Clarendon Press, 1994). The two rules by Ulpian laid out the joining of Roman ideas of popular sovereignty and imperial sovereignty: Digest 1.4.1pr. *Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat*; Digest 1.3.31 *Princeps legibus solutus est*.

<sup>40</sup> For example, Seneca, *De Clementia* 1.1.2. On Seneca's theories in their context, see James Romm, *Dying Every Day: Seneca at the Court of Nero*, (New York: Knopf, 2014).

<sup>41</sup> In the standard biographies, there are just some glimpses of this background, for example, Balakrishnan, *Enemy* 13-25.

<sup>42</sup> Nippel, Schmitt, 121-129 on the extent to which contemporaries made parallels between the Late Roman Republic and Revolutionary France, drawing on examples like Cicero's dictum *salus populi suprema lex* (De Legibus 3.8).

Thus Schmitt weaves another layer into a quasi-mythical historical interpretation that plays on symbolic meanings of the past.

Though Schmitt's work mostly operated within a fairly recent historical tradition, that of the nineteenth century and, at best, back to Machiavelli, the strength of the Roman parallels is puzzling. Are we talking about a continuation of the European tradition that hailed from the Roman past or a direct inspiration of Roman literature and law? On the history of interpretations of the tradition of history from Machiavelli onwards, Schmitt outlines an almost constructivistic understanding of history where the events of the past are exploited to advance a contemporary theory, reminding him of 'the biblical and mythological images in which events of the past reappear in a contemporary costume.'<sup>43</sup>

What is clear is that Schmitt utilized the popular memory of early dictators like Cincinnatus to uphold the idea of a popular sovereign. However he remains silent about the other tradition, that of opposition towards and fear of the tyranny to which sovereign rule is prone. As Kalyvas had already noted, Schmitt's distinction between the archaic form of dictatorship that preserved the state and the Sullan form of dictatorship that radically changed it was in fact adopted from Mommsen.<sup>44</sup> The negativity of Sulla's historical memory and the controversial character of the tradition of dictatorship and tyranny in the late Republic may be one of the reasons why Schmitt never delved deeper into the Roman tradition itself. That Roman tradition, especially in the understanding of the late republic and the idealization of the past, was to a large degree the

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<sup>43</sup> Schmitt, *Dictatorship*, 3.

<sup>44</sup> Kalyvas, *Tyranny*, 428.

creation of Marcus Tullius Cicero, one of the most central figures of Roman political and legal thought.<sup>45</sup>

Cicero's writings define much of the current understanding of Roman political culture. In works like the first book of *On the Republic (De re publica)*, Cicero describes the Republic as the product of a shared conviction that prevailed amongst the virtuous aristocrats that guided it about a common good. Within the Roman tradition, the institution of dictatorship coexisted with a fear of tyranny. As noted in the discussions of Cicero's *Republic*, tyranny could take many forms, from the tyranny of an absolute monarch to the tyranny of a mob driven by demagogues. Cicero equated tyranny not with an institution, or an office, but with a way of action. Thus tyranny may even be instituted through legislation:

Of all laws I think that is the most iniquitous and least like a law, which Lucius Flaccus, the interrex, passed in regard to Sulla---that all his acts, whatever they were, should be ratified. For, while in all other states, when tyrants are set up, all laws are annulled and abolished, in this case Flaccus by his law established a tyrant in a republic.<sup>46</sup>

Cicero was, as a traditionalist, not in principle against dictatorship. As a final form of self-defense for the republic, dictatorship could be used to preserve the state, and, at times, extraordinary measures might be needed, such as the *senatus consultum ultimum* against Gracchus, a leader of the *populares*, that legalized killing him. His own actions against the Catilinian conspiracy, where he executed a number of conspirators without trial, was but one

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<sup>45</sup> Manfred Fuhrmann, *Cicero and the Roman Republic* (Oxford, Blackwell 1992); Anthony Everitt, *Cicero* (London, John Murray 2001).

<sup>46</sup> Cicero, *De Lege Agraria* 3.11.5 *Omniū legū iniquissimā dissimillimāque legis esse arbitror eam quā L. Flaccus interrex de Sulla tulit, ut omnia quaecumque ille fecisset essent rata. Nam cum ceteris in civitatibus tyrannis institutis leges omnes exstinguantur atque tollantur, hic rei publicae tyrannum lege constituit.* Translation by N. H. Watts (Loeb).

instance where magistrates of the late Roman republic were given or simply took extraordinary liberties in dealing with real or supposed enemies of the state, even though they were nominally protected by the provisions of the Roman constitution. The tyranny of the dictator was a form of controlled, or legal, tyranny.<sup>47</sup>

On the whole, Roman political culture was traditionally against any kind of monarchical ruler or sovereign. The legacy of the expulsion of the kings and the institution of the republic made even the word king politically poisonous even half a millennia later. However, due to their growing involvement in the Greek world in the third and second century BC, the Romans became aware of the Greek and Hellenistic tradition of kingship. Buoyed by texts like Xenophon's *Cyropaedia*, the idea of the good king and the enlightened sovereign began to appeal to some Romans. Furthermore, many of the Roman rulers of the Greek East were addressed with royal epithets and given royal honors by their subjects. At the same time, the narrative tradition of Greek and Hellenistic tyrants, such as the legendary tyrants of Syracuse, and their equally legendary cruelty and excess, served as potent warnings against the dangers that sovereign rule could present to the cherished liberty of the Roman people.<sup>48</sup>

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<sup>47</sup> Kalyvas, *Tyranny*, 426, 432. See also Jean-Louis Ferrary, 'Cicéron et la dictature,' in *Dictatures, Actes de la Table ronde de Paris, 27-28 février 1984*, ed François Hinard (Paris, De Boccard, 1988), 97-105. On Cicero's actions, see A. Drummond, *Law, Politics and Power: Sallust and the Execution of the Catilinarian Conspirators* (Stuttgart, 1995).

<sup>48</sup> Elizabeth Rawson, 'Caesar's Heritage: Hellenistic Kings and their Roman Equals,' *Journal of Roman Studies* 65 (1975), 149-152; Kalyvas, *Tyranny*, 428. On the Greek tradition of tyranny, see Sian Lewis, *Greek Tyranny* (Exeter, Bristol Phoenix Press, 2009); Aristotle, *Politics* 5.1313a-1315b.



This dilemma of the late Roman Republic probably influenced Schmitt's theory of dictatorship. A small clue can be found in one of the first footnotes of *Die Diktatur*, where he maintains a very post-modern view of historical objectivity. He claimed that both Mommsen's and Meyer's works were influenced by contemporary political considerations. Mommsen was clearly pro-Caesar, while Meyer supported Pompey. Pupils of Mommsen and Meyer debated the role of a dictator in the Roman constitution in a discussion that was for Schmitt a clear reference to the contemporary debate over the power of the military in Germany at that time. While Mommsen had introduced the distinction between Republican and Caesarian dictatorship, others sought to prove that there was a clear separation between military and civilian powers in the Roman constitution.<sup>49</sup>

Schmitt's solution was to construct a historically inspired ideal type. He clearly knew the various historical traditions of sovereignty and dictatorship from Aristotle, Livy, and Cicero, but mentions none of them. The reason is probably not that the whole Roman historical tradition operated through the distinction between the good commissarial and bad sovereign dictatorship. It is more likely that the tradition, which Schmitt disentangles, quotes sources and names to the point of excess. His solution was to strip away the superfluous historical details and retain only the essential, and in the process reduce the historical framework to a kind of ideal type. Both Schmitt and his audience were familiar with this tradition and expounding it would have been redundant, and invited historical criticism.

Reflecting the use of the classical tradition as a surrogate stage upon which contemporary debates were presented in classical garb, Schmitt's dictatorship operated on a complicated

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<sup>49</sup> Schmitt, *Dictatorship*, 232.

narrative foundation. It is evident that much of European political thought, up to the French revolution, was observed and classified through the lens of the historical tradition regarding Roman dictatorship. While objectifying the past to serve as an idealized continuation of a convenient juxtaposition of various forms of dictatorship, historical examples are organized as a foundational narrative for the political theory that Schmitt was seeking to legitimize.

### **Conclusions**

Symbols and myths are powerful elements in legal, historical, and political discourse. The purpose of this article was to analyze the complex interaction between the historical, mythical, and symbolic dimensions of Carl Schmitt's theory of dictatorship and the classical Roman tradition of history. Comparing Schmitt's writings on dictatorship with Roman historical sources and the earlier historiographical tradition, on the surface it is evident how Schmitt both uses the legitimacy of the Roman tradition to address contemporary concerns but also criticizes his predecessors of the same bias. However, what emerges is a picture of a multi-layered process where historical figures and symbols are being recycled and repurposed again and again to reconfigure the legal and political legacy of Roman dictatorship for new usages.

There were numerous ancient and modern traditions of dictatorship and tyranny in the classical world, as can be seen in ancient authors like Aristotle, Cicero, Livy and in modern historical debates on sovereign rule in Antiquity. Schmitt's theory of dictatorship was informed and influenced by not only his reading of ancient sources, but also by contemporary historical debates on Antiquity and the symbolic value of the past. As a scholar, Schmitt was acutely aware

of the central role played by myths and symbols in legal discourse as constitutive and legitimating elements.

This article has argued that Schmitt's theories utilized a number of sometimes contradictory narrative traditions of dictatorship and sovereign rule in the ancient world. In his works, Schmitt used the cultural references that these had both in the classical world and the Western political and legal tradition. Furthermore, the classical tradition functioned as a kind of parallel narrative to Schmitt's theoretical framework.

Schmitt's theory of dictatorship was based on the division between commissarial and sovereign dictatorships. The idea of a dictatorship was that it would be an emergency measure that operated within the constitution where unrestricted power was given to a magistrate to protect the state from serious threats. A commissarial dictatorship would operate by temporarily suspending the constitution, but the suspension would be carried out according to measures enshrined within it. In contrast, a sovereign dictatorship would aim at reorganizing the state and remaking the constitution itself. This theory rested to a large degree on a creative reinterpretation of the two Roman traditions of dictatorship. The first tradition was that of the idealized dictators of the early Roman Republic, who, according to annalistic historiography, had saved Rome during troubled times. These men were without fail virtuous, ideal characters that were above politics and self-interest. The second tradition of dictatorship, of the late Republic, was much more controversial, as dictators like Sulla or Caesar had operated largely on the basis of self-interest and their own desire for political power. Schmitt uses the historical memory of the "good" dictators to present

an ideal version of commissarial and sovereign dictators, a precedent suitable for his own political agenda.

Myths and symbols have a tendency to make the writing of history complicated. That is due to the fact that they often carry so much inherent baggage that any analysis can be skewed or may even end up wandering around a hall of infinite mirrors. Thus the historical memory of Roman dictators, quasi-mythical, heroic figures that exerted a profound influence on European political and legal thought, were transformed in Carl Schmitt's thinking, making him a mythogenetical political and legal philosopher in his own right.

Schmitt's historical understanding and influences have been (apart from a few exceptions) overlooked. However, Schmitt's theories of dictatorship were grounded in a particular reading of history, both of the history of the ancient Roman world and the intellectual history of scholarship. Within these traditions, the concept of dictatorship has a strong symbolic and even mythical dimension, since the classical past, by its very definition, operates in a nearly mythical register.