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Why Dictatorial Authority Did Good, and not Harm, to the Roman Republic

Dictatorship and Constitutional Change in Machiavelli

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NOTES • DISCUSSIONS • BOOK REVIEWS

Why Dictatorial Authority Did Good, and not Harm, to the Roman Republic. Dictatorship and Constitutional Change in Machiavelli

MARC DE WILDE

1. Introduction

In the first book of his *Discourses on Livy*, Machiavelli devotes an important chapter to the Roman dictatorship,¹ which has received increasing attention in recent scholarship.² Interestingly, Machiavelli's judgment of the Roman dictatorship is remarkably positive: he suggests that dictatorship was essential for protecting the Roman republic and its liberty. Indeed, his main thesis is that "dictatorial authority did good, and not harm, to the Roman republic" (*Discourses*, I, 34, 1). At first sight, such a positive appraisal of dictatorial authority—a concept which we have come to associate with twentieth-century experiences of authoritarianism and tyranny—seem to contradict the prevailing interpretation of Machiavelli as an important

¹ Machiavelli 1998, I, 34. Hereafter abbreviated as "*Discourses*," and cited with book and chapter numbers within the text. I have compared the English translation with the Italian text published by G. Inglese: Machiavelli 1984.

² Recent studies on Machiavelli's theory of dictatorship include Barbuto 2007; Geuna 2015; Pasquino 2013; Pedullà 2011. The renewed interest in Machiavelli's theory of dictatorship can perhaps be explained by the fact that after 9/11, governments across the globe have increasingly resorted to emergency powers. In this context, Machiavelli's theory of dictatorship has become relevant for providing a model for legally constraining state responses to emergencies (cf. Geuna 2015, 227, n. 6). Thus apart from the more specialized studies mentioned above, several scholars discussing the general problem of emergency powers in liberal democracies have revisited Machiavelli's theory of dictatorship. Examples include Ferejohn and Pasquino 2004 (on Machiavelli especially 211–3 and 233–4); Gross and Ní Aoláin 2006 (on Machiavelli 25–36 and 113–35); Lazar 2009 (on Machiavelli, 509–14); Levinson and Balkin 2010 (on Machiavelli, 1799–801); Saint-Bonnet 2001 (on Machiavelli 183–9).

thinker of republican liberty (for instance, Skinner 1981, 48–77). It may not be a coincidence either that until recently, Carl Schmitt—himself a one-time advocate of authoritarian government—appears to have been the only one interested in Machiavelli's theory of dictatorship (Schmitt 2014, 3–4).

However, we should not confuse the dictatorship to which Machiavelli refers with its twentieth-century namesakes. Indeed, it was not until the end of the eighteenth century, that the term “dictatorship” came to be associated with tyranny and authoritarianism (Nicolet 2004, 264; Nolte 1972, 900).³ Moreover, Machiavelli seems to have something different in mind when he praises dictatorship as an effective means for protecting the republic and its liberty. He suggests that the Roman dictatorship was successful *because* it was limited by law and public morality. More particularly, he emphasizes the importance of *constitutional* limitations to dictatorial authority. He thus observes that the Roman dictator “could not do anything that might diminish the state, as taking away authority from the Senate or from the people, undoing the old orders of the city and making new ones, would have been” (*Discourses*, I, 34, 9). Hence, instead of referring to tyranny or despotism, Machiavelli seems to conceive of dictatorship as a *limited* authority, which is constrained by law and public morality, as well as limited by the existing constitution (cf. Lefort 1986, 509–10).

In view of these limitations, recent commentators have suggested that Machiavelli should be regarded as a proponent of “constitutional dictatorship” (for instance, Lazar 2009, 121; Levinson and Balkin 2010, 1799; Mansfield 1996, 256; Pasquino 2010, 31). The term “constitutional dictatorship” was first used by Clinton Rossiter to describe the tradition that considered dictatorship a legal and necessary means to protect the state in times of crisis (Rossiter 1948). What made dictatorship “constitutional” was the fact that it was both regulated and limited by the existing constitution. On Rossiter's interpretation, the purpose of constitutional dictatorship was essentially conservative: the dictator had a limited authority to end the crisis and restore the situation of normality. Among other things, this implied that he could make no alteration in the constitutional structure of the state that could not be reversed with the restoration of normal times. In particular, he was not allowed to introduce a more authoritarian form of government that would remain in place after the crisis had ceased, nor to permanently limit or abolish the rights and liberties of the people. As Rossiter summarized it, the aim of constitutional dictatorship was “the complete restoration of the *status quo ante bellum*,” and this implied “as complete a return as possible to the political and governmental conditions existing prior to the initiation of the constitutional dictatorship” (*ibid.*, 7 and 306). Hence, a defining characteristic of constitutional dictatorship was that the dictator could do anything, except change the constitution itself.

Rossiter frequently refers to Machiavelli as belonging to the tradition of constitutional dictatorship.⁴ Perhaps this explains why in recent literature Machiavelli is

³ For the history of the concept of dictatorship compare also: Arato 2013; Cobban 1939; Münkler and Llanque 2006; Nippel 2010 and 2012; Sartori 1987.

⁴ He is quoted on the title page as well as in the text itself. Rossiter 1948, 15 (note), 23, 28 and 301–2. In his work, Rossiter does not present a detailed analysis of Machiavelli's theory of dictatorship. However, he cites Machiavelli to support his own theory that constitutional dictatorship is subject to well-defined legal limitations (*ibid.*, 301), temporal constraints (*ibid.*, 23) and public morality (*ibid.*, 28).

often described as a proponent of the idea of constitutional dictatorship. Thus, Mansfield identifies Machiavelli as “the author of the idea of constitutional dictatorship” (Mansfield 1996, 256). Levinson and Balkin even portray him as “perhaps the most important theorist of ‘constitutional dictatorship’ in the West” (Levinson and Balkin 2010, 1799). In a similar vein, Pasquino argues that the “central point of chapter 34 of book I is the thesis of the necessary *constitutionalization* of a power capable of facing the exception, since in its absence, the republic would either ruin itself to save its constitution, or it would destroy its constitution not to ruin itself” (Pasquino 2010, 31–2, italics added). According to Pasquino, this implies that the dictator could do “anything against citizens while not being able to do anything against the constitution” (ibid., 31). Geuna, too, emphasizes the constitutional limitations to dictatorial authority, arguing that for Machiavelli, it “takes the form of a magistracy whose purpose is to preserve, to keep intact, the constitutional order put in danger by the emergency situation. Its purpose is not to alter or innovate it” (Geuna 2015, 235). Likewise, Lazar observes that “the dictator trope in the history of political thought since Machiavelli has been surprisingly uniform. In a nutshell, this trope invokes the following claim: the dictator could do anything at all to advance the task he had been set except change the constitution” (Lazar 2009, 120). In these readings, the emphasis is on the dictatorship’s conservative purpose and constitutional limitations: since the dictator’s task is to protect the existing constitution, he may do anything except change the constitution itself.

There is much to be said in favour of this interpretation. As we have seen, Machiavelli himself emphasizes the constitutional limitations to dictatorial authority. More particularly, he suggests that the Roman dictator was not allowed to take away or diminish the authority of the Senate or the people. However, he never claims that the dictator was not allowed to make any changes to the constitution at all. Indeed, I believe that the interpretation proposed by Geuna (2015), Lazar (2009), Pasquino (2010) and others is insufficiently nuanced, in so far as it holds that, according to Machiavelli, the dictator is not allowed to change the constitution under any circumstances. Although based on careful readings of the chapter on dictatorship and adjacent chapters in the *Discourses* (I, 33–5), this interpretation does not systematically examine references to dictatorship elsewhere in the text. As I will try to demonstrate below, interpreting Machiavelli in this broader context will bring to light the more dynamic aspects he attributes to dictatorship. More particularly, he suggests that, to protect the constitution, dictators are sometimes required to initiate legal reforms aimed at making the constitution more stable and effective. I will thus show that for Machiavelli, the fact that dictatorial authority was limited by law did not preclude it from contributing to constitutional change.

2. Machiavelli’s Theory of Dictatorship

In his *Discourses*, Machiavelli begins by explaining that the aim of dictatorship is to protect the republic from “urgent dangers” (*Discourses*, I, 33, 2). He observes that it is characteristic of republics that their governmental institutions tend to function slowly: they depend on the continuous consultation and coordinated efforts of various magistracies and assemblies, and it takes time to reconcile their diverse views. Hence, republican government tends to act in *il moto tardo*, that is, in “slow motion” (*Discourses*, I, 34, 12; cf. Geuna 2015, 228). For instance, in the Roman

republic, the consuls had to consult the Senate and they could veto each other's decisions. Moreover, to prevent arbitrary exercises of power, the tribunes could intervene and citizens could appeal to the popular assemblies. Normally, such procedures of collective decision-making functioned well, as they ensured that the diverse social and political interests were taken into account. However, in case of "urgent dangers," they proved to be harmful to the republic, as they prevented quick and resolute emergency responses. Hence, in those cases, the regular procedures of collective decision-making were temporarily suspended, and power was concentrated in the hands of one man: the dictator.

As Machiavelli explains, it was characteristic of the Roman dictator that he could "make decisions without consulting others and carry them out without anyone having the right to appeal" (*Discourses*, I, 33, 2). More particularly, in contrast to other magistrates, the dictator did not have a colleague of similar rank who could veto his decisions. Nor could the tribunes intervene or citizens appeal to the popular assemblies. Instead, the dictatorship temporarily suspended the tribunes' power to interpose their person to obstruct political acts (*intercessio*) or to lend aid (*auxilium*) to individuals threatened with arbitrary or excessive exercises of power by magistrates. The citizens' right of *provocatio*, the appeal against heavy sentences to the popular assemblies, was suspended as well. Even the advisory role of the Senate was temporarily diminished (although dictators rarely ignored the Senate's advice). This explains why Machiavelli defines the dictator's power as a discretionary authority "to decide by himself regarding remedies for that urgent danger, and to do everything without consultation, and to punish everyone without appeal" (*Discourses*, I, 34, 9).

Of course, the temporary suspension of consultation and appeal could easily lead to abuses of dictatorial power. However, Machiavelli argues that dictatorial power could not be abused as long as it was accorded "in ordinary ways [*in vie ordinarie*]." As both Geuna and Pasquino rightly emphasize, the notion that emergencies should not be confronted "through extraordinary ways," but "through ordinary ways," is a guiding principle of Machiavelli's theory of dictatorship (Geuna 2015, 235; Pasquino 2010, 15–6). More particularly, for Machiavelli, it is crucial that a dictator is appointed "according to public orders [*secondo gli ordini publici*], and not by his own authority" (*Discourses*, I, 34, 5). By contrast, if dictatorial authority is granted in an *extraordinary* way, for instance, if a dictator appoints himself or is allowed to maintain his powers after his term expires, it will be harmful to the republic. As Machiavelli explains, such extraordinary concessions to dictatorial power are always harmful because of the precedent they establish, "[f]or although the extraordinary mode may do good then, nonetheless the example does ill; for if one sets up a habit of breaking the orders [*una usanza di rompere gli ordini*] for the sake of the good, then later, under that coloring, they are broken for ill" (*Discourses*, I, 34, 16). Hence, according to Machiavelli, it is crucial for a republic to have legal provisions that recognize and regulate the dictatorship in advance. If such provisions are lacking in a republic, "it is necessary either that it be ruined by observing the orders or that it break them so as not to be ruined [*è necessario o servando gli ordini, rovinare o per non ruinare rompergli*]" (*Discourses*, I, 34, 14).

It is this distinction between ordinary and extraordinary grants of dictatorial power that enables Machiavelli to distinguish dictatorship from tyranny, and to claim that "no dictator ever did anything but good to the Roman republic"

(*Discourses*, I, 34, 6). More particularly, it leads him to reject the opinion of an unnamed writer—who may perhaps be identified as Dionysius of Halicarnassus⁵—that dictatorship was the cause of tyranny in Rome. This writer referred to the fact that the first tyrant in Rome—presumably Sulla—had commanded it under the dictatorial title, and thereby paved the way for Caesar, who had given his tyranny a semblance of legality by assuming the title of dictator. Machiavelli rejects this opinion by suggesting that force, not titles, had allowed Caesar to establish his tyrannical rule: “it is forces [*forze*] that easily acquire titles [*nomi*], not titles forces” (*Discourses*, I, 34, 4, trans. modified). As Pedullà (2011, 588) explains, the distinction between *nomi* and *forze* enables Machiavelli to distinguish the ancient republican dictatorships, which were limited by the constitution, from the dictatorships of the first century, which were dictatorships *in name* only, but in fact tyrannical *forces*.⁶ More particularly, Machiavelli suggests that Caesar had merely misused the title of dictator to give his unconstitutional power an appearance of legality, and that it was the irregular length of Caesar’s command, rather than the title of dictator, by which he had managed to make Rome servile. This leads Machiavelli to conclude that, as long as dictators were appointed in ordinary ways, they always did good to the republic, while extraordinary grants of dictatorial power would hurt the republic and serve as a pretext for establishing tyrannical rule.

3. Limitations to Dictatorial Power

The observation that dictatorship, if accorded in an ordinary way, cannot harm the republic, leads Machiavelli to specify three restrictions on dictatorial power, which prevent its abuse. First, the dictator’s ability to harm the republic does not depend on his title and legal capacity, but on the material means available to him, as well as the support of others. However, as Machiavelli argues, in a good republic, where the laws are strictly observed, no-one is able to acquire the amount of personal wealth and support that enables him to obtain the kind of extra-ordinary power

⁵ Although the identity of the writer remains uncertain, several commentators have suggested that Machiavelli refers to Dionysius of Halicarnassus. For instance, according to Nippel, Machiavelli “rejects the opinion of an ancient author, probably Dionysius of Halicarnassus, that the dictatorship, as demonstrated by the cases of Sula and Caesar, would inevitably lead to tyranny” (Nippel 2012, 36. Cf. Geuna 2015, 232, n. 28). For a different reading: Pedullà 2011, 581ff.

⁶ In a similar vein, Geuna observes that Machiavelli’s makes a “clear-cut distinction between names and things,” which enables him to recognize Caesar as a tyrant, who had merely misused the title of the dictator to legitimize his tyranny. He concludes that for Machiavelli, “classical Roman dictatorship, the magistracy to which the Romans resorted consistently from 501 BC to the Punic Wars, has nothing to do with the tyranny of Sulla and Caesar, who had merely used the classical term to legitimize their power. But beyond the names, the reality of the powers at play was profoundly different. Thus those writers who perceived some continuity between these two institutional forms—first of all, Dionysius of Halicarnassus—were completely mistaken.” Geuna 2015, 232. Although I agree with Pedullà and Geuna that Machiavelli uses the distinction between *nomi* and *forze* to distinguish classical Roman dictatorship from the tyranny of Sulla and Caesar, I am not fully convinced by the claim that he did not see any continuity between these institutional forms. As I will argue below, Machiavelli’s understanding of Sulla’s dictatorship, in particular, was in fact more nuanced: although he acknowledges that the irregular lengths of military commands under Sulla (and Marius) paved the way for the establishment of Caesar’s tyranny (*Discourses*, III, 24, 12), he never claims that Sulla’s dictatorship was not a genuine dictatorship in both *name* and *force*.

that may be turned against the republic itself (*Discourses*, I, 34, 8). Machiavelli does not explain why this is so, but elsewhere in the *Discourses*, he suggests that in a good republic, public officials are primarily selected for their ability and merit, not for their wealth or support, and citizens and officials are trained by the laws to observe the public good, instead of promoting their own faction's particular interests. This implies that if the laws function properly, those who will be appointed dictator will not be wealthy, but able, and they will focus not on the interests of their own faction but on the public good (*Discourses*, III, 25).

To illustrate this limitation to dictatorial power Machiavelli discusses the example of Lucius Quinctius Cincinnatus. In 458 BC, this former general, who had retired to the countryside, had been appointed dictator to protect Rome from an invasion by the Sabines. He proved to be exceptionally able, defeating the enemy in a mere sixteen days, after which he laid down his dictatorship and returned to his plough (Livy 1919–1967, vol. 3, 26, 28). In his depiction of the famous episode, Machiavelli emphasizes Cincinnatus's poverty. He thus refers to the fact that when senators approached Cincinnatus with the request that he became dictator, he was "at his small villa, at which he labored with his own hands" (*Discourses*, III, 25, 6 and 8). His lieutenant, master of the horse Lucius Tarquinius, is even said to have "served in the military on foot because of his poverty" (*Discourses*, III, 25, 10). For Machiavelli, this illustrates that in a good republic, public officials are selected not for their wealth, but for their ability. Indeed, he even suggests that Cincinnatus's integrity is directly related to his poverty: "for a good and worthy man, such as Cincinnatus was, four *jugera* of earth was enough to nourish him" (*Discourses*, III, 25, 11). Moreover, he emphasizes that after defeating the Sabines, Cincinnatus chose not to distribute the spoils of war among his troops, so that they remained primarily loyal to the republic, not to their commander. This example is intended to illustrate that the dictatorship was not abused so long as dictators did not seek personal wealth that allowed them to buy the loyalty of their troops.⁷

A second restriction on dictatorial power, which prevented it from being turned against the republic, was the limited term for which dictators were appointed. Machiavelli observes that a "dictator was appointed for a [limited] time, and not perpetually, and so as to obviate the cause by means of which he was created" (*Discourses*, I, 34, 9). As is well known, Roman dictators were appointed for a maximum term of six months—a term that is also mentioned in Livy.⁸ Machiavelli does not mention the six months' limitation; instead, he suggests that dictatorial authority should not be granted for more than one year. He thus observes that it is always dangerous when "a free authority is given for a long time—calling a long time one year or more" (*Discourses*, I, 35, 4). However, Livy had suggested that the dictator's term was primarily dependent on the task for which he had been appointed, such that he was expected to abdicate at once after completing his task,

⁷ Elsewhere, I have argued that the virtues Cincinnatus displayed as a dictator, in particular his willingness to make his own private interests subservient to the public good, were part of the so-called *fides publica*, the requirement of "public trust" (de Wilde 2012, 555–77). Machiavelli frequently refers to this requirement, also in relation to dictatorship (cf. *Discourses*, III, 20 and 30, 12).

⁸ The six-month limitation is mentioned in Livy 1919–1967, vol. 3, 29, 7; 9, 34, 12 and 23, 22, 11.

preferably long before his term expired.⁹ Machiavelli is aware of the relationship between the dictator's term and his task. Elsewhere in his *Discourses*, he observes that dictators acquired more fame the sooner they resigned. By abdicating before their term expired, they avoided the "semblance of ambition" and demonstrated their integrity (*Discourses*, I, 30, 11). In Machiavelli's view, it was the dictator's respect for his limited term, which followed from the limited task he had been set, on which the legality of the dictatorship primarily depended.

To illustrate these temporal restrictions on dictatorial power, Machiavelli once again refers to the example of Cincinnatus. As we have seen, Cincinnatus had laid down his dictatorship at once after completing his task, after a mere sixteen days. In doing so, he demonstrated his respect for the limited, republican nature of his power. However, in this context, Machiavelli focuses not on Cincinnatus's dictatorship, but on his consulate. In 460 BC, Cincinnatus had refused the Senate's express wish to prolong his consulate after his one-year term expired. Machiavelli emphasizes the contrast between Cincinnatus's refusal and the prolongation of public offices and military commands under Marius, Sulla and Caesar: "If that goodness and prudence had been in all Roman citizens, the custom of prolonging magistracies would not have been allowed to be introduced, and from those one would not have come to the prolongation of commands, a thing that in time ruined the republic" (*Discourses*, III, 24, 7). For Machiavelli, the question of the army's loyalty once again appears to be decisive. The prolongation of military commands had enabled Marius, Sulla and Caesar to win the personal loyalty of their troops and turn them against the republic: "Because of this, Sulla and Marius could find soldiers who would follow them against the public good; because of this, Caesar could seize the fatherland" (*Discourses*, III, 24, 12). Hence, Machiavelli concludes that dictatorial power could not be abused as long as it remained subject to temporal limits.

A final limitation on dictatorial power follows from its relation to the republican constitution. As we have seen, Machiavelli had defined the dictator's authority as a discretionary power to take any measure he deemed fit to meet the urgent danger for which he had been appointed. However, the dictator's discretionary power was not unbounded: it was limited by the republic's constitution. Here, it is important to note that Machiavelli does not himself use the term "constitution"; instead, he refers to the *ordini publici*, which may be translated as "the public ordering of the state."¹⁰ More particularly, Machiavelli argues that the dictator "could not do anything that might diminish the state [*in diminuzione dello stato*], as taking away authority from the Senate or from the people, undoing the old orders of the city [*disfare gli ordini vecchi della città*] and making new ones, would have been" (*Discourses*, I, 34, 9). The language is important here: the dictator was not allowed to *take away* the authority of the Senate and the people (*i.e.*, the tribunes and the popular assembly), let alone *undo* (*disfare*) these ancient institutions or create new ones. However, this does not mean that he could not *alter* or *restore* these

⁹ Examples of quick abdication are mentioned in *ibid.*, 3, 29, 7 (16 days); 4, 34, 5 (16 days); 4, 47, 6 (8 days), and 6, 29, 10 (20 days); 9, 34, 13 (20 days), and 23, 23, 7 (1 day).

¹⁰ As Pocock explains, the term *ordini publici* denotes "those fundamental ordinances which give the polity its form by determining the distribution of the several political functions and powers." Pocock 1975, 254.

institutions. Instead, Machiavelli's phrase suggests that the dictator could alter governmental institutions—for instance, alter their composition or tenure—as long as he did not *diminish* or *take away* their authority.

In this context, Machiavelli makes an important distinction: he suggests that a dictator could deprive *individual* magistrates of their powers (for instance, if they used their powers to undermine the republic), but could not take away the authority of the magistracy itself: for instance, he could deprive an individual senator of his rank, but he could not annul the senatorial order, nor could he make new laws. In this connection, Machiavelli emphasizes the difference between the dictator's limited authority and the unlimited, legislative authority of the *Decemviri*, or the Ten, who were appointed in 451 BC to codify the laws and whose appointment had suspended the other magistracies (*Discourses*, I, 35, 8). As Machiavelli explains, if a dictator was appointed, "the Senate, the consuls, the tribunes, remaining in their authority, came to be like a guard on him [*sua guardia*] to make him not depart from the right way" (*Discourses*, I, 35, 6–7). As these magistrates kept their authority, they could prevent the dictator from abusing his powers. They could not formally prevent the dictator from using his coercive powers, for, as we have seen, his powers were not subject to consultation or appeal. However, they could serve as a kind of guard on him, for the dictator could accomplish little without their active support. For instance, the dictator remained dependent on the Senate and the popular assemblies for legislation, as he could not make new laws himself. Hence, elsewhere in his *Discourses*, Machiavelli refers to several dictators who were forced to abdicate or to refrain from certain coercive measures, because they lacked the support of the Senate or the people (cf. *Discourses*, I, 5, 15–17; I, 31, 16 and III, 1, 23).

The remark that a dictator could not "make new laws [*fare nuove leggi*]" is made once and almost in passing. However, it is of crucial importance, for it influenced later theories of dictatorship. For instance, in his *Social Contract*, Rousseau claims that the dictator could "do everything, except make laws [*peut tout faire, excepté des lois*]" (Rousseau 2014, IV, 6, 4). However, apart from the fact that Rousseau's claim appears to be historically inaccurate,¹¹ it is doubtful whether Machiavelli himself believed that Roman dictators could not legislate. Instead, the context in which he makes his remark that a dictator could not "make new laws" suggests a more nuanced understanding: he thus observes that the dictator was not allowed to annul a decree of the Senate or replace it with his own (*Discourses*, I, 35, 6). More generally, he was not allowed to make new laws that took away or diminished the authority of the Senate or the people. But this does not imply that the dictator could not make any new laws at all. Rather than categorically rejecting every kind of dictatorial legislation as Rousseau does, it is more likely that Machiavelli intended to exclude only those laws that deprived the Senate or the people of their authority. In other words: according to Machiavelli, a dictator *could* make new laws as long as he did not undermine the *ordini publici*, i.e., the existing magistracies and their competences.

¹¹ Hartfield (1982, 276–9) gives several examples of dictators who promulgated legislation. Technically, these laws were proposed by dictators and passed by the popular assembly. Hence, they depended not only on the will of the dictator, but on the will of the people. However, the initiative belonged to the dictator, and the popular assembly could not amend, but only accept or reject the dictator's legislative proposals.

4. Dictatorship and Constitutional Change

The belief that the dictator “could do anything at all to advance the task he had been set except change the constitution itself” (Lazar 2009, 120) has become a predominant theme in the literature on Machiavelli’s theory of dictatorship. Thus, in his influential study of dictatorship, Schmitt argued that for Machiavelli, “everything depend[ed] on how dictatorship was embedded in constitutional guarantees [*es kommt nur darauf an, die Diktatur mit verfassungsmässigen Garantien zu umgeben*]” (Schmitt 2014, 4 and 1994, 6). Although the dictator could take all the necessary measures to respond to an emergency without being dependent on others, Schmitt emphasized that he lacked the power to legislate or alter the constitution: “The dictator cannot change the laws, neither can he suspend the constitution or the organisation of office; and he cannot ‘make new laws [*fare nuove leggi*]’” (Schmitt 2014, 4 and 1994, 6–7). More particularly, it was characteristic of the Machiavellian dictator that he could not diminish the authority of the “old orders,” which continued to exercise a kind of control. Therefore, Schmitt concluded that, for Machiavelli, dictatorship was essentially “a constitutional instrument of the Republic [*ein verfassungsmässiges Institut der Republik*]” meant to protect republican liberty (Schmitt 2014, 4 and 1994, 7). More particularly, Schmitt suggested that the kind of dictatorial authority defended by Machiavelli was a “commissary dictatorship,” aimed at protecting the existing constitution, not a “sovereign dictatorship,” aimed at changing it.

Following Schmitt, more recent commentators emphasize that Machiavelli’s theory of dictatorship should be primarily understood as an attempt to *constitutionalize* the republic’s responses to emergencies and “extraordinary events [*accidenti straordinari*]” which have not been foreseen by the legislator. For instance, John McCormick observes that “Machiavelli promotes the institution of the dictator as a *legal and constitutional* means of dealing with *accidenti* and preserving a mixed regime” (McCormick 1993, 887, emphasis added). More particularly, he believes the dictatorship should be understood as an alternative to those “prudent men,” who occasionally resort to extra- or supra-legal means of defending the regime (ibid. 898). Like McCormick, Gabriele Pedullà identifies the republic’s capacity to respond to “extraordinary events” within a constitutional framework as a central concern of his theory, and he suggests that Machiavelli’s dictatorship should be regarded as a instrument for coping with extraordinary events without violating the republic’s delicate system of checks and balances. As Pedullà observes, it is characteristic of Machiavelli’s approach to dictatorial authority that “the exception [...] is *constitutionalized* and brought back within very precise confines” (Pedullà 2011, 577). Geuna (2015, 235), too, emphasizes that, for Machiavelli, the aim is to propose *constitutional* remedies to emergency situations. More particularly, the notion that emergencies should not be confronted “through extraordinary ways,” but through “ordinary ways,” implies that dictatorial authority should be subject to well-defined constitutional limitations.

This emphasis on the necessary constitutionalization of dictatorial authority leads Pasquale Pasquino to conclude that the Machiavellian “dictator could do anything against citizens while not being able to do anything against the constitution” (Pasquino 2010, 31). In a similar vein, Geuna argues that the purpose of Machiavellian dictatorship is to preserve and keep intact, not to alter or to innovate the

constitution (Geuna 2015, 235). As we have seen, this limitation—that the dictator can do anything except *change* the constitution itself—defines the very idea of *constitutional* dictatorship (Rossiter 1948, 7). However, I believe that this interpretation is insufficiently nuanced: most importantly, it does not explain why Machiavelli, elsewhere in his *Discourses*, refers to several examples of dictators who used their dictatorial authority to alter the republican constitution, sometimes in quite significant ways. This important fact has been overlooked in the literature, but I believe it is crucial for understanding Machiavelli's theory of dictatorship. More particularly, there are several passages where he suggests that the dictator's task of protecting the existing constitution does not prevent him from initiating legal reforms to make the constitution more stable and effective. Indeed, on Machiavelli's view, protecting the *existing* constitution may even require such reforms, especially if the balance of power in the republic has been disturbed. Of course, this does not mean that the dictator is free to ignore the constitutional limitations to his authority, but it does imply that, for Machiavelli, the dictatorship is part of a more dynamic conception of the constitution than is implied in the view that the dictator "can do anything, except change the constitution itself" (and, again note: Machiavelli himself does not use the term "constitution," but *ordini publici*, public ordering of the state). More particularly, in view of unforeseen "extraordinary events," the dictator is allowed to initiate legal reforms to *alter* the public ordering of the state as long as he remains faithful to its underlying principles.

In some cases, Machiavelli discusses these constitutional reforms without mentioning that they were initiated by a dictator. He thus refers to the important legislative compromise of 367 BC that opened up the consulate to the people, while creating the new institution of the praetorate, without mentioning that these reforms were initiated by a dictator: Camillus (*Discourses*, I, 5, 10 and 60, 2). But in other cases, Machiavelli is more explicit in attributing constitutional reforms to dictators. This is true of the reforms of the censorship which were initiated by the dictator Mamercinus in 434 BC. Machiavelli thus explains that the legislator had initially made the mistake of setting the censor's tenure at five years, "but after not much time, it was corrected by the prudence of Mamercus [sic] the dictator, who *by a new law* reduced the said magistracy to eighteen months" (*Discourses*, I, 49, 4). Here Machiavelli expressly refers to a dictator who not only issued a "new law [*nuova legge*]," but a law altering an important public office. At first glance, the limitation of the censors' tenure may seem a relatively minor constitutional reform, but, as Machiavelli himself emphasizes, it was decisive for maintaining the freedom of the Republic and preventing its moral corruption (*Discourses*, I, 49, 2–3).

However, elsewhere in the *Discourses*, Machiavelli refers to an even more important example of constitutional reforms initiated by a dictator. Thus, in 82 BC, Sulla was appointed dictator with the authority "to write the laws and restore a constitution to the state [*legibus scribendis et rei publicae constituendae causa*]."¹² Among other things, he deployed his dictatorial authority to alter the composition of the Senate, adding 300 additional members, who were recruited mainly from the equestrian order.¹³ Machiavelli does not explicitly mention Sulla's

¹² Machiavelli refers to Sulla several times (*Discourses*, I, 37, 19–20; III, 8, 14–5; 24, 12).

¹³ On Sulla's constitutional reforms compare Keaveney 1982, 169–75 and de Wilde 2013, 6–16.

reforms of the Senate. A reason for this might be that these reforms are not discussed in Livy's First Decade, which is of course Machiavelli's main source. On the other hand, Machiavelli also refers to other sources, which do mention Sulla's reforms.¹⁴ Hence, a more plausible explanation for Machiavelli's silence on Sulla's reforms is that he does not believe they violated the limitations to his dictatorial authority. As we have seen, contrary to the interpretation proposed by Schmitt (2014), Geuna (2015), Pasquino (2010) and others, for Machiavelli, the dictatorship did not *preclude* changes to governmental institutions as long as they did not *take away* or *diminish* their authority. Sulla's reforms of the Senate did not violate the dictatorship's limitations, since they were aimed, not at *diminishing*, but at *strengthening* the Senate's authority.¹⁵ Here was an example of a dictatorship that significantly altered a governmental institution, yet remained constitutional nonetheless.

The same cannot be said of Sulla's reforms of the tribunate, which were intended to *diminish* the tribunes' competences. Sulla thus used his dictatorship to curb the powers of the tribunes, which had served as the main instruments of plebeian emancipation in previous years. Among other things, he deprived the tribunes of their right to summon the Senate and initiate legislation contrary to the Senate's wishes, and reduced their power of *intercessio*, so that it could no longer be deployed for collective purposes. He also promulgated a law prescribing that nobody who had held the tribunate would be eligible to any other magistracy, thereby effectively making it a dead-end (Keaveney 1982, 170; de Wilde 2013, 13). At first glance, Sulla's reforms of the tribunate appear to be at odds with the constitutional limitations to dictatorial authority as Machiavelli defines them in his chapter on dictatorship (*Discourses*, I, 34, 9–10), for by drastically reducing the tribunes' powers Sulla had clearly "taken away authority from the people." It is therefore remarkable that Machiavelli avoids this conclusion. Instead, he criticizes the tribunes for their ambition to obtain ever more public offices for the plebs and their support of anyone strong enough to get the better of the nobility (*Discourses*, I, 5, 11). It is thus likely that Machiavelli did not see any contradiction between his understanding of the dictatorship's limitations and the fact that Sulla had deployed his dictatorial powers to *diminish* the power of the tribunes.

This again suggests that the interpretation of Machiavellian dictatorship proposed by Schmitt, Geuna, Pasquino, and others—that the dictator could do anything except change the constitution itself—is insufficiently nuanced: apparently Machiavelli believed that the dictator could alter the composition, tenure, and even competences of governmental institutions, such as the Senate, the censorship and the tribunate. This can be understood if we relate Machiavelli's views on the dictatorship's limitations to his more general theory that the corruption and decline of a Republic can only be prevented if it is periodically *restored* to its initial

¹⁴ For instance, Sulla's reforms of the Senate are discussed in Livy's *Periochae* (89), to which Machiavelli frequently refers (*Discourses*, II, 8, 13; III, 1, 28; III, 6, 111 and III, 13, 17).

¹⁵ Years of civil war had left the Senate depleted and had undermined the Senate's authority. Sulla intended to restore the Senate's authority by filling its vacant seats, raising its numbers to 600, and making it more representative of the diverse social interests of the Republic. Keaveney 1982, 174–5.

principles by fresh legislation (or the example of prudent men).¹⁶ As examples of such legislation, Machiavelli mentions the laws that established the tribunate and censorship, as well as “other laws that went against the ambition and the insolence of men” (*Discourses*, III, 1, 20). The aim of these laws was to prevent “corruption,” *i.e.*, the rise of factions, that disturbed the balance of power in the republic and threatened the liberty of its citizens (Pocock 1975, 209). Interestingly, Sulla’s constitutional reforms were precisely intended to *restore* the republic to its initial principles and prevent such corruption. This was especially true of his reforms of the tribunate: for instance, by limiting the tribunes’ right of *intercessio*, so that it could no longer be used for collective purposes, Sulla intended to restore the tribunate to its initial principles (the tribunate had originally served to protect individual citizens against illegal or arbitrary acts of magistrates) and to put a check on the ambition of individual tribunes, which had disrupted the balance of power. Hence, although Sulla’s reforms *diminished* the tribunes’ powers, they were intended to *restore* this institution to its initial principles, thereby making the existing constitution more stable and effective.

It is undeniable that in the end, Machiavelli does suggest that Sulla’s dictatorship contributed to constitutional developments that would ultimately lead to the downfall of the Republic. He even suggests that Sulla aspired to tyranny (*Discourses*, III, 8, 14).¹⁷ However, the reason for his judgment is not that Sulla had altered the constitution, but rather that he had violated the temporal restrictions on his authority. Sulla had held the dictatorship for a year, thereby violating the six months’ restriction. More importantly, he had also held successive military commands as a consul and proconsul. According to Machiavelli, this had enabled him to win the personal loyalty of his troops, which eventually forgot the Senate and recognized its commander alone as its head. As we have seen, Machiavelli considers the prolongation of military commands as one of the main causes of the downfall of the republic (the other being social disputes about the Agrarian law), since it had enabled ambitious politicians like Sulla to win the personal loyalty of their troops, who came to support them in actions contrary to the public good (*Discourses*, III, 24, 2 and 11–2). Hence, as Machiavelli suggests, it was not by altering the constitution, but by prolonging his military commands, that Sulla had set the example for those who would overthrow the republic some 40 years later.

¹⁶ Compare Pocock 1975, 204–5 and McCormick 1993, 896–8. McCormick’s interpretation that these “extraconstitutional prudent men” should be considered as an “alternative” to the dictator is not entirely convincing. It is thus interesting to note that two of the “prudent men” mentioned by Machiavelli were in fact dictators: Cincinnatus and Papirius Cursor (cf. *Discourses*, III, 1, 22–3).

¹⁷ Greek and Roman writers had characterized Sulla’s dictatorship as a tyranny. Compare, for instance, Appian 2002, 1, 99 and Cicero 1930, 3, 2, 5. Pedullà suggests that Machiavelli was inspired by a passage in Dionysius of Halicarnassus (1971, 5, 70–7) in identifying Sulla as a “tyrant plain and simple,” while associating the older, republican dictatorships with Dionysius’s notion of an “elective tyranny.” Pedullà 2011, 590. However, on my view, this is not entirely convincing, if only because Sulla was the first dictator to be elected, whereas his predecessors were not elected, but appointed. More importantly, Machiavelli never explicitly identifies Sulla as a “tyrant,” although he does suggest that Sulla “aspired to tyranny” (*Discourses*, I, 34, 2 and III, 8, 14).

5. Conclusion

Machiavelli is often interpreted as the proponent, even the “author” of the idea of constitutional dictatorship, in the sense that he is held to believe that the dictator could do many things, except change the constitution itself. However, as I have tried to demonstrate, Machiavelli’s understanding of constitutional dictatorship is actually more dynamic and complex: He does not exclude dictatorial legislation even if it changes the existing constitution in significant ways. He thus refers to dictators who initiated legislation reforming governmental institutions, and suggests that these reforms were necessary to prevent corruption and restore the republic to its initial principles. Hence, contrary to the interpretation proposed by Schmitt (2014), Geuna (2015), Pasquino (2010) and others, Machiavelli does not believe that the dictator could not change the constitution under any circumstances. Instead, he suggests that the dictator was not allowed to *take away* or *diminish* the authority of the “old orders” of the republic. However, this did not preclude dictatorial reforms of the constitution aimed at *preventing* corruption and *restoring* the balance of power that had been disrupted by the ambition of public officials. Indeed, as Machiavelli suggests, the very fact that the Roman republic survived for so long was due to the frequent renovation of its governmental institutions (*Discourses*, III, 1, 4–5). By contrast, the prolongation of military commands had gradually undermined the authority of the Senate and the people. Machiavelli considered this violation of temporal restrictions as one of the main causes of the republic’s downfall.

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References

- Appian. 2002. *Roman History. The Civil Wars*. Trans. H. White, vol. 3. Cambridge, MA: Harvard University Press.
- Arato, A. 2013. Conceptual History of Dictatorship (and its Rivals). In *Critical Theory and Democracy*. Ed. E. Peruzzotti and M. Plot, 208–80. London: Routledge.
- Barbuto, G. M. 2007. Machiavelli e la dittatura nella Roma antica. In G. M. Barbuto, *Antinomie della politica: Saggio su Machiavelli*, 95–104. Naples: Liguori.
- Cicero. 1930. *On the Agrarian Law*. Trans. J. H. Freese. Cambridge, MA: Harvard University Press.
- Cobban, A. 1939. *Dictatorship. Its History and Theory*. London: Jonathan Cape.
- Dionysius of Halicarnassus. 1971. *Roman Antiquities*. Trans. E. Cary, vol. 3. Cambridge, MA: Harvard University Press.
- Ferejohn, J. and P. Pasquino. 2004. The Law of Exception. A Typology of Emergency Powers. *International Journal of Constitutional Law* 2: 210–39.
- Geuna, M. 2015. Machiavelli and the Problem of Dictatorship. *Ratio Juris* 28(2): 226–41.
- Gross, O. and F. Ní Aoláin. 2006. *Law in Times of Crisis. Emergency Powers in Theory and Practice*. Cambridge: Cambridge University Press.
- Hartfield, M. E. 1982. *The Roman Dictatorship. Its Character and its Evolution*. Berkeley, CA: University of California Press.

- Keaveney, A. 1982. *Sulla: The Last Republican*. London: Croom Helm.
- Lazar, N.C. 2009. *States of Emergency in Liberal Democracies*. Cambridge: Cambridge University Press.
- Lefort, C. 1986. *Le travail de l'oeuvre Machiavel*. Paris: Gallimard.
- Levinson, S., and J. M Balkin. 2010. Constitutional Dictatorship. Its Dangers and its Design. *Minnesota Law Review* 94: 1790–866.
- Livy. 1919–1967. *History of Rome*. Trans. B. O. Foster. Cambridge, MA: Harvard University Press.
- Machiavelli, N. 1998. *Discourses on Livy*. Trans. H. C. Mansfield and N. Tarcov. Chicago, IL, and London: University of Chicago Press.
- Machiavelli, N. 1984. *Discorsi sopra la prima deca di Tito Livio*. Introduction by G. Sasso, preface and notes by G. Inglese. Milan: Biblioteca Universale Rizzoli.
- Mansfield, H. C. 1996. *Machiavelli's Virtue*. Chicago, IL: Chicago University Press.
- McCormick, J. P. 1993. Addressing the Political Exception. Machiavelli's "Accidents" and the Mixed Regime. *The American Political Science Review* 87(4): 888–900.
- Münkler, H. and M. Llanque. 2006. Diktatur. In *Der neue Pauly. Enzyklopädie der Antike, Rezeptions- und Wissenschaftsgeschichte*. Ed. H. Cancik, H. Schneider and M. Landfester. Consulted online on 26 June 2016: https://doi.org/10.1163/1574-9347_dnp_e1309080.
- Nicolet, C. 2004. Dictatorship in Rome. In *Dictatorship in History and Theory. Bonapartism, Caesarism, and Totalitarianism*. Ed. P. Baehr and M. Richter, 263–78. Cambridge: Cambridge University Press.
- Nippel, W. 2010. *Dictatorship*. In *The Classical Tradition*. Ed. A. Grafton, G. W. Most, and S. Settis, 267–8. Cambridge, MA: Harvard University Press.
- Nippel, W. 2012. Saving the Constitution. European Discourses on Dictatorship. In *In the Footsteps of Herodotus. Toward European Political Thought*. Ed. J. Coleman and P. M. Kitromilides, 29–49. Florence: Olschki.
- Nolte, E. 1972. Diktatur. In *Geschichtliche Grundbegriffe*. Ed. O. Brunner, W. Conze, and R. Koselleck, vol. 1, 900–24. Stuttgart: Ernst Klett.
- Pasquino, P. 2010. Machiavel: Dictature et *salus rei publicae*. In *Raison(s) d'état(s) en Europe: Traditions, usages, recompositions*. Ed. B. Krulic, 11–34. Bern: Peter Lang.
- Pasquino, P. 2013. Between Machiavelli and Carl Schmitt. Remarks on Rousseau's Dictatorship. *Storia del pensiero politico* 2: 145–54.
- Pedullà, G. 2011. *Machiavelli in tumulto: Conquista, cittadinanza e conflitto nei Discorsi sopra la prima deca di Tito Livio*. Rome: Bulzoni.
- Pocock, J. G. A. 1975. *The Machiavellian Moment. Florentine Political Thought and the Atlantic Republican Tradition*. Princeton, NJ: Princeton University Press.
- Rousseau, J.-J. 2014. *The Social Contract and Other Later Political Writings*. Ed. V. Gourevitch. Cambridge: Cambridge University Press.
- Rossiter, C. L. 1948. *Constitutional dictatorship: Crisis government in the modern democracies*. Princeton, NJ: Princeton University Press.
- Saint-Bonnet, F. 2001. *L'état d'exception*. Paris: Presses Universitaires de France.
- Sartori, G. 1987. Dittatura. In G. Sartori, *Elementi di teoria politica*, 51–85. Bologna: Il Mulino.
- Schmitt, C. 1994. *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*. Berlin: Duncker und Humblot.
- Schmitt, C. 2014. *Dictatorship. From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle*. Trans. M. Hoesl and G. W. Ward. London: Polity.
- Skinner, Q. 1981. *Machiavelli*. Oxford: Oxford University Press.
- Wilde, M. de. 2012. The Dictator's Trust. Regulating and Constraining Emergency Powers in the Roman Republic. *History of Political Thought* 33: 555–77.
- Wilde, M. de. 2013. The Dictatorship and the Fall of the Roman Republic. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 130: 1–39.