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I.

The Dictatorship and the Fall of the Roman Republic

Von

Marc de Wilde

Es gibt eine Tendenz in der Literatur, die Diktaturen Sullas und Caesars als „leere konstitutionelle Hüllen“ und „republikanische Diktaturen nur dem Namen nach“ zu deuten, die „sich zwar gegenüber Diktaturen früherer Perioden parasitär verhielten, von ihnen jedoch institutionell getrennt“ waren. Im Gegensatz zu diesen populären Ansichten zeigt dieser Artikel, dass Sulla und Caesar nicht nur am Anschein der republikanischen Diktatur, sondern an ihren wesentlichen Eigenschaften, wie sie traditionell verstanden wurden, festhielten. Es war sogar die Hervorhebung des republikanischen Charakters und der gesetzlichen Grenzen ihrer Macht, die es beiden Diktatoren ermöglichte, ihre immer umfangreicheren Kompetenzen zu legitimieren. Ihre Diktaturen sind deswegen als frühe Beispiele eines gesetzlichen coup d'état zu begreifen, die in späteren Perioden mehrmals imitiert wurden.

1. Introduction:

The Roman dictatorship has often been praised as one of the most successful systems of emergency government. As Clinton Rossiter enthusiastically claimed, the 'splendid genius of the Roman people grasped and solved the difficult problem of emergency powers in a manner quite unparalleled in all history, indeed so uniquely and boldly that a study of modern crisis government could find no more propitious starting point than a brief survey of the celebrated Roman dictatorship'¹). The problem to which Rossiter referred was that emergency powers could easily be abused as they were both more extensive and flexible than regular powers. A government could thus invoke the emergency as a mere pretext for violating rights or even for establishing a more authoritarian regime. On Rossiter's view, the Romans had successfully solved this dilemma: the dictator's emergency powers had been sufficiently wide and flexible to be effective, yet they had also been sufficiently constrained to prevent their abuse. For this reason, Rossiter maintained, scholars

¹) C. Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies*, New York 1963, p. 15.

of modern crisis government had to turn their attention to the Roman dictatorship. It could serve them as a model for designing a modern regime of emergency powers that promised to be most successful.

Rossiter's call has not remained unnoticed. Most contemporary studies of crisis government contain more or less extensive analyses of the Roman dictatorship, which are considered relevant to the practical question of how emergency powers should be organized in the present. However, there is something awkward about these studies. They tend to focus exclusively on the dictatorships of the Early and Middle Republic, and conspicuously ignore those of the first century B.C. Rossiter himself mentions the dictatorships of the first century only in passing and observes somewhat hastily that 'Sulla and Caesar each assumed the title of dictator, but except in name there was no similarity between their dictatorships and those of the old Republic', a claim for which no arguments are given²). Likewise, more recent studies suggest that these later dictatorships were 'empty constitutional shells' and 'republican dictatorships in name only', and that they were 'institutionally separate from, even if parasitic upon, those of earlier periods'³). In none of these studies, however, the dictatorships of the first century are analyzed in detail; instead, it is merely assumed that they differed from the more successful earlier dictatorships, and, hence, that they have little relevance, if any at all, to contemporary studies of emergency government.

This approach, however, seems historically inaccurate. The assumption that the dictatorships of Sulla and Caesar were no genuine dictatorships, but 'republican dictatorships in name only' is incorrect, for in both cases, the defining characteristics of the republican dictatorship were, in fact, consciously maintained. Both dictators were keen on legitimizing their power by observing the traditional forms of the dictatorship. Sulla, for instance, maintained a formal procedure of appointment, emphasized the duty of abdication, named a master of the horse, and kept 24 lictors in accordance with custom. Caesar, too, tended to observe the traditional forms of the dictatorship, at least

²) *Ibid.* p. 26.

³) O. Gross/F. Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice*, Cambridge/UK 2006, p. 82; N.C. Lazar, *States of Emergency in Liberal Democracies*, Cambridge/UK 2009, p. 120. In some analyses, in which the Roman dictatorship is expressly invoked as a model for modern practices of emergency government, the dictatorships of the first century are not even mentioned at all. Compare, for instance, B. Ackerman, *The Emergency Constitution*, *Yale Law Journal* 113 (2004), 1046–1047; J. Ferejohn/P. Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, *International Journal of Constitutional Law* 2:2 (2004), 210–239.

initially, by having himself appointed with such customary titles as *comitiorum habendorum causa* and *rei gerundae causa*, and respecting the duty of abdication. These were not merely outward appearances, but essential characteristics of the dictatorship as it had traditionally been understood: for instance, the duty of abdication guaranteed the limited and temporary nature of the dictatorship and was, therefore, crucial for its republican spirit⁴). Thus, the assumption that the dictatorships of the first century were ‘republican dictatorship in name only’ seems inaccurate, as both dictators consciously situated themselves within the republican tradition and invoked this tradition to legitimize their power.

This does not mean, however, that the dictatorship of Sulla and Caesar were identical to those of the Early and Middle Republic. Instead, there were significant differences. For instance, Sulla was granted the dictatorship ‘to write the laws and restore a constitution to the state [*legibus scribendis et rei publicae constituendae causa*]’, a competence that was unprecedented in the history of the dictatorship. Moreover, he was invested with this vast power for an indefinite term; the traditional six months’ restriction was excluded. In his turn, Caesar followed Sulla’s example by gradually stretching formal limitations to his power. In 49 B.C., he was appointed to a dictatorship ‘for overseeing elections’, a limited and temporary power which he laid down after a mere 11 days. In 48, he was accorded a second dictatorship, this time for a year, a term that was unusual but not unprecedented⁵). In 46, he received his third dictatorship: now he was designated dictator for ten years, a term unheard of in the history of the dictatorship. Finally, in 44, weeks before he was murdered, he adopted the dictatorship for life. He had thus managed to gradually transform the temporary powers of the dictatorship into a permanent authority, which was no longer compatible with the republican constitution.

That the studies mentioned above tend to ignore these later developments of the Roman dictatorship is not only deplorable for reasons of his-

⁴) U. von Wilcken, *Zur Entwicklung der römischen Diktatur*, Berlin 1940, p. 5.

⁵) The *Fasti Capitolini* record one-year dictatorships for the years 333, 324, 316, 315, 309 and 301 B.C. However, Fritz Bandel has questioned the authenticity of these one-year dictatorships. He believes that they may be later additions, included in the *Fasti* to harmonize the difference between magistracy and calendar years; F. Bandel, *Die römischen Diktaturen*, Napels 1987, p. 83, n. 4. However, for the years 316 and 315 B.C., evidence that these dictators did indeed remain in office for a year is stronger, as the *Fasti* are confirmed by Livy (9,22,1 and 9,24,1). As all six examples of one-year dictatorships fall in the final quarter of the fourth century, a period of Roman expansion, it is not unlikely that attempts were made to transform the exceptional magistracy of the dictatorship into a regular magistracy subject to the annuity principle.

torical accuracy. For much can be learned, not only from the dictatorship's initial success, but also from its ultimate failure. Thus, analyzing the dictatorships of Sulla and Caesar may help us to understand how an institution of emergency government could be turned against the very constitutional order it was established to protect. It shows us, more particularly, how the dictatorship was used to gradually establish a more authoritarian form of government from within the constraints of the republican constitution, while maintaining the semblance of legality. Here, my hypothesis is that the Roman dictatorship was instrumental for making this transition towards a more authoritarian constitution possible: indeed, it was by maintaining at least the semblance of the republican dictatorship that Sulla and Caesar managed to legitimize their ever increasing competences. Hence, on my view, instead of ignoring the dictatorships of the first century, scholars of modern crisis government should be particularly attentive to them, as they provide one of the first examples of a legal *coup d'état*, a regime change by legal means, which has been frequently imitated in later periods.

2. Sulla's Dictatorship: Republican Magistracy or Failed Monarchy?

Ever since antiquity, there has been a debate over the nature of Sulla's dictatorship and whether it should be considered a republican magistracy or a kind of monarchical power and, thus, a first step in the political developments that would eventually lead to the fall of the Roman Republic. Most ancient sources describe Sulla's dictatorship as a 'tyranny'; this is especially true of Greek authors such as Plutarch and Appian, whose writings contain the most detailed descriptions of his dictatorship⁶). Appian, for instance, notes that 'there had been autocratic rule of the dictators before, but it was limited to short periods. But under Sulla it first became unlimited and so an absolute tyranny'. He even claims that the Romans, after centuries of republicanism, had 'resorted to kingly government again'⁷). Similar judgments can be found in Seneca and Tacitus, who also tend to characterize Sulla's dictatorship as either a tyranny or a monarchy⁸). However, we should be careful not to take such testimonies at face value, as they were written long after the events, when the Republic had already collapsed and the image of Sulla had

⁶) Plut. Sull. 30; App. bell. civ. 1,98–99.

⁷) App. bell. civ. 1,99.

⁸) Sen. clem. 1,12,1; Tac. ann. 2,38,3.

been deformed for propagandist purposes, first by the *populares*, then by Caesar and Augustus⁹).

By contrast, if we consider the few republican sources that have survived, a more complex picture emerges: Cicero, for instance, is convinced that Sulla's dictatorship is unjust and a 'tyranny', but he also emphasizes that it is established by law and thus, strictly speaking, not illegal. Referring to L. Valerius Flaccus, the interrex who proposed the law on the basis of which Sulla was appointed, Cicero notes that 'in all other states, when tyrants are set up, all laws are annulled and abolished, [while] in this case, Flaccus by his law established a tyrant in the Republic [*hic rei publicae tyrannum lege constituit*]'¹⁰). Cicero's phrase is clearly ironic, as it echoes the very title that defined Sulla's competence as a dictator¹¹). Yet it is also revealing, for it characterizes the Sullan dictatorship as a kind of *legal* tyranny and distinguishes it from tyrannies that are outside or contrary to law. Here, instead of an outright tyranny or monarchy, the more disturbing figure emerges of a tyranny that is established by legal means, a tyranny that may be violent and oppressive, but that remains within the formal boundaries of the existing constitution.

This raises the question to what extent Sulla's dictatorship was, indeed, in accordance with the republican constitution. Following Plutarch and Appian, modern scholars have argued that Sulla's dictatorship should be considered a failed attempt to overthrow the republican constitution and to 'implant in Italy the autocracy of the great oriental monarchies'¹²). Others, by contrast, have pointed out that Sulla only intended to reform the republican constitution, strengthening the senate's authority and cancelling the popular reforms of the Gracchi¹³). Although, over the years, more nuanced interpretations have been proposed, the focus of the debate has remained largely the same: should Sulla's dictatorship be considered a republican magistracy or a 'failed monarchy'? Thus, authors such as Francois Hinard, Arthur Keaveney, and Frédéric Hurlet emphasize the similarities between Sulla's dictatorship and earlier dictatorships, arguing that, as a dictator, Sulla tended to observe the republican

⁹) F. Hurlet, *La Dictature de Sylla: Monarchie ou Magistrature Républicaine? Essai d'Histoire Constitutionnelle*, Brussels 1993, p. 8.

¹⁰) Cic. leg. agr. 3,2,5 (trans. J.H. Freese).

¹¹) The exact words of Sulla's title – *rei publicae constituendae causa* – are repeated in Cicero's phrase. However, contrary to that title, Cicero suggests that Flaccus's law restored not a constitution, but a tyranny to the republic.

¹²) J. Carcopino, *Sylla ou la Monarchie Manquée*, Paris 1931, p. 43.

¹³) C. Lanzani, *Lucio Cornelio Silla Dittatore*, Milan 1936; E. Valgiglio, *Silla e la Crisi Repubblicana*, Florence 1956.

constitution, although he adapted it to changed political circumstances¹⁴). By contrast, others, such as Kunkel, Wittmann, and Nicolet, stress the unprecedented character of Sulla's dictatorship and suggest that, even though it was intended to revive a republican magistracy and maintained some of its formal characteristics, it constituted an altogether new kind of authority¹⁵).

However, these interpretations have ignored an important possibility: Sulla may himself have respected the republican character of the dictatorship and intended to re-establish the existing constitution, yet, by deviating from the tradition, he created a dangerous precedent, showing to his successors how a more authoritarian regime could be established by legal means. This is suggested by the fact that, towards the end of the Republic, elements of the Sullan dictatorship – the appointment by popular decree, the absence of a fixed term, and the title *rei publicae constituendae causa* – were copied by Caesar and Octavian, and used to justify exceptional grants of power, which violated republican principles. To determine to what extent Sulla's dictatorship did indeed contribute to undermining the republican constitution, we need to examine, first, whether the legal conditions under which it was granted were constitutional. Secondly, it is necessary to analyze whether the manner in which Sulla exercised his dictatorial power was in accordance with republican principles. Finally, we should consider how his dictatorship was imitated in subsequent years, and establish whether, and to what extent, it contributed to the fall of the Republic.

3. Sulla's Dictatorship for Restoring the Constitution

By the end of 82 B.C., when Sulla was made dictator, the Republic was on the verge of collapse, ravaged as it was by years of war. For almost a decade, Rome had suffered from two related conflicts: First, it had been at war with some of its former Italian allies, who, frustrated that they had been refused the Roman citizenship, had risen in revolt. Secondly, a civil war had erupted, caused by the growing competition between Sulla and Marius, spokesman of the conflicting ideologies of *optimates* and *populares*. In 88, the tribune Sulpicius, in close collaboration with Marius himself, had a law enacted by which the prestigious military command against Mithridates, which had origi-

¹⁴) A. Keaveney, *Studies in the dominatio Sullae*, *Klio* 65 (1983), 193–198; Fr. Hinard, *Sylla*, Paris 1985, p. 224–225; Hurler, *Dictature de Sylla* (n. 9), p. 169–170.

¹⁵) C. Nicolet, *Dictatorship in Rome*, *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism*, ed. P. Baehr/M. Richter, Cambridge/UK 2004, p. 270; W. Kunkel/R. Wittmann, *Staatsordnung und Staatspraxis der römischen Republik: Zweiter Abschnitt Die Magistratur*, Munich 1995, p. 703.

nally been granted to Sulla, was transferred to Marius. Thereupon, Sulla had led his legions against Rome, where he had Marius and Sulpicius declared public enemies, and regained his command. However, after Sulla left for Greece to conduct the military campaign against Mithridates, the Marians once more took control over the city. This led Sulla to march against Rome for a second time. In 82, he succeeded in defeating the combined enemy armies during the famous battle at the Colline Gate.

After defeating his enemies Sulla became the sole *de facto* holder of power in the Republic. Both consuls had perished and the senate had lost many of its members. In this context, Sulla decided to revive the dictatorship. His decision was unexpected: the dictatorship had not been deployed for 120 years, and, although it had never been formally abolished, it appeared to be an institution of the past¹⁶). Yet there was a certain logic to Sulla's decision: after years of civil war, his main objective was to restore a functioning government to the state and, more particularly, the senate's authority¹⁷). For this purpose, he needed to reform the constitution, a task that was believed to be outside the scope of any ordinary magistracy. Moreover, it required an authority that was not limited in time, but rather dependent on the task involved. For these reasons, the dictatorship seemed a logical choice. Traditionally, dictators had been appointed for exceptional tasks and they had held their powers for as long as their task required¹⁸). Their authority overrode that of other magistrates, except the tribunes¹⁹). By adopting the dictatorship, Sulla would be well equipped for his task: he could take as much time as he needed to reform the constitution, and he could do so without the interference of other politicians.

¹⁶) The astonishment over Sulla's decision is reflected in ancient sources, which emphasize that the dictatorship had not been deployed for a long time. Appian even claims that the dictatorship had been in abeyance for 400 years; App. bell. civ. 1,98. Compare also Plut. Sull. 33 and Vell. 2,28,3.

¹⁷) K. Christ, Sulla: Eine römische Karriere, Munich 2003, p. 122–123; Kunkel/Wittmann, Staatsordnung (n. 15), p. 703 and 711.

¹⁸) Several sources mention a six months' term (Cic. leg. 3,9; Liv. 3,29,7; 23,22,2–11 and 23,2; App. bell. civ. 1,3,9). The existence of this term, however, does not exclude the principle that the dictator's term was primarily dependent on his task. There are, thus, several examples of dictators who were allowed to keep their powers even after their six months' term expired. This question is discussed more extensively below.

¹⁹) The dictator's decisions were probably brought under the tribunes' veto by 363 B.C., and subjected to the *provocatio ad populum* by 300 B.C. Cf. A. Lintott, The Constitution of the Roman Republic, Oxford 2009, p. 111.

Apart from these advantages, there may have been other, more sinister reasons why Sulla preferred the dictatorship. During the civil war, he had violated some of the Republic's most ancient and sacred laws. By turning his army on Rome, he had twice transgressed the *pomerium*, the ancient boundary encircling the city, which was believed to be sacred and which no soldier was allowed to pass. More importantly, he had cleansed the city from his political opponents, massacring Roman citizens without legal proceedings. As a proconsul, however, he did not have the power over life and death. Nor was he allowed to suspend the right of due process, to which every Roman citizen was entitled. Although the massacre of Roman citizens was eventually given a legal basis in the Lex Valeria de proscriptione, it did not prevent the impression that Sulla had risen to power by violating the law. In view of this, it is not impossible that he also aspired to become a dictator to acquire immunity for crimes committed in the past. This, at least, is suggested by Plutarch, who mentions that, after his appointment to the dictatorship, 'an act was passed granting him immunity for his past acts, and for the future', as well as the 'power over life and death'²⁰).

Although Sulla intended to legitimize his power by adopting a traditional magistracy, his dictatorship deviated from earlier ones in several respects. This is, first of all, true of the procedure by which he was appointed. Traditionally, dictators had been appointed by a consul; they were appointed by any one of the consuls after the senate had decided that a dictator was required. By contrast, in 82, both consuls were dead and the senate was depleted. Therefore, Sulla suggested that he be appointed by an interrex on the basis of a law. This had the additional advantage of involving the *comitia*, thereby giving the impression that the Roman people consented to his dictatorship²¹). Sulla may have had a precedent in mind: in 217, after Hannibal had destroyed the Roman legions at Lake Trasimene, a dictatorship was created by popular election²²). In both cases, the absence of the consuls was solved by founding the dictatorship directly on the people's authority. Yet, there was also an important difference: contrary to the dictator of 217, Sulla was not elected, but appointed²³). In this respect, the procedure of 82 was more faithful to custom than that of 217, as it maintained the principle of dictatorial appointment²⁴).

²⁰) Plut. Sull. 33.

²¹) Nicolet, Dictatorship in Rome (n. 15), p. 269.

²²) Liv. 22,8,6.

²³) Joachim Jahn, Interregnum und Wahldiktatur, Kallmünz 1970, p. 162.

²⁴) Cf. Kunkel/Wittmann, Staatsordnung (n. 15), p. 705. Focusing not on the principle of appointment, but on the role of the interrex, Jahn comes to a different

Secondly, Sulla's dictatorship differed from earlier dictatorships in that it lacked a fixed term. The traditional restriction *in sex menses* was excluded. Appian even claims that Sulla was made a 'dictator for life' and that his dictatorship was, therefore, indistinguishable from a 'kingly government'²⁵). Appian's claim, however, should not be misread as a description of the legal conditions of Sulla's dictatorship; rather, it should be read as a political judgment, a reflection on the significance of his dictatorship for later developments. More particularly, Appian appears to have projected Caesar's 'dictatorship for life' of 44 B.C. back into the past, to explain the political significance of Sulla's dictatorship in light of Caesar's. This explains why Appian, when discussing the content of the Lex Valeria, does mention a term, if not a fixed one: Sulla was to keep the dictatorship 'until such time as he should firmly re-establish the city and Italy and the government generally, shattered as it was by factions and wars'²⁶). In other words: Sulla's term was dependent on his task: he was entrusted with the dictatorship for as long as his task required, and he was expected to abdicate as soon as he had completed his task.

In being granted dictatorial powers for an indefinite term, Sulla's dictatorship resembled the so-called 'smaller dictatorships'²⁷). From the fourth century onwards, dictators had been appointed not only for military tasks, but also for specific tasks in the domestic sphere, such as organizing elections in the absence or incapacity of regular magistrates, or conducting religious festivals. Unlike the dictatorships *rei gerundae causa* and *seditionis sedandae causa*, these smaller dictatorships were probably not bound to the six months' term or to any fixed period at all, but dependent on the task involved²⁸). As the task was specified in the *titulus*, a fixed term was believed to be superfluous: the dictatorship was granted for as long as the task required, which, in most cases, was much shorter than six months. Just like these smaller dictatorships, Sulla's had a specific title, namely 'to write the laws and to restore a constitution to the republic'. This explains why he was granted the dictatorship for an indefinite term: his term was dependent on his task, which was specified in his *titulus*, and it lasted for as long as was necessary to successfully complete

conclusion: from a purely formal perspective, the appointment by the interrex was defensible, yet it was unprecedented and contrary to the *mos maiorum*; Jahn, *Interregnum* (n. 23), p. 165.

²⁵) App. *bell. civ.* 1,3; 1,4; 1,99.

²⁶) *Ibid.* 1,99.

²⁷) Cf. L.F. Janssen, *Abdicatio: Nieuwe Onderzoekingen over de Dictatuur*, Utrecht 1960, p. 165.

²⁸) *Ibid.* p. 140–142.

this task. It is significant that Sulla did indeed observe his duty to abdicate²⁹). Although the exact date of his abdication is unknown, it is likely that he exercised the dictatorship for a year, or at most eighteen months³⁰), and that he abdicated forthwith after his task – to restore the constitution – had been completed.

A final aspect of Sulla's dictatorship by which it differed from earlier ones was its far-reaching competence. The very title *legibus scribendis et rei publicae constituendae causa* was unprecedented³¹). There had been dictators before, who had proposed legislation, which had sometimes altered the constitution in significant ways³²). Yet, in these cases, legislative initiatives had remained secondary to the dictator's military task. However, Sulla's competence was different: here, the legislative task had become the dictatorship's main focus and the dictator was specifically authorized to restore the constitution. This shift of emphasis can be explained from the changed geopolitical context: While in the fourth and third centuries, the Republic had still been a relatively small city-state, in the course of the second, it had grown into a vast Mediterranean empire with many new provinces. The territorial expansion had made constitutional reforms necessary to keep the Republic governable. Therefore, Sulla was charged with an assignment that must have

²⁹) App. bell. civ. 1,3 and 1,103; Plut. Sull. 34,3.

³⁰) E. Badian, *From the Gracchi to Sulla*, *Historia* 11:2 (1962), 230. Compare also Hurlet, *Dictature de Sylla* (n. 9), p. 67.

³¹) Nicolet and Hurlet recognize a precedent in Cicero's famous fragment, entitled 'The Dream of Scipio'. Here, Cicero suggests that in 129 B.C., in the aftermath of the murder of Tiberus Gracchus, Scipio Aemilianus had aspired to become a dictator 'to restore order in the commonwealth [*rem publicam constituas*]'. More specifically, he had hoped to deploy this 'constituent' dictatorship to revoke the Gracchian legislation and thus remove the causes of civil strife. However, in 129, no dictator was appointed, but refuge was taken instead to the *senatus consultum ultimum*. Moreover, as Cicero wrote the fragment much later, probably after 54, it is not unlikely that he invented the episode of Scipio's dictatorial aspirations with the example of Sulla's dictatorship in mind: in that case, Scipio's dictatorship did not serve as a model for Sulla's, but rather, conversely, Sulla's dictatorship served as a model for Scipio's. Cic. rep. 6,12. Cf. Hurlet, *Dictature de Sylla* (n. 9), p. 107–108 and C. Nicolet, *Le De republica et la Dictature de Scipion*, *Révue des études latines* 42 (1964), 230.

³²) For instance, In 434 B.C., the dictator *rgc* M. Aemilius Mamercinus had proposed a law for shortening the duration of the censorship to 18 months (*Lex Aemilia de censura minuenda*) and in 287, the dictator *rgc* Q. Hortensius initiated a law, which gave plebiscites the force of law (*Lex Hortensia de plebiscitis*). Liv. 4,24,4–7; Gai. inst. 1,3. Compare the chapter on the 'Legislative activities of dictators' in: M. Hartfield, *The Roman Dictatorship*, Berkeley 1982, p. 276–279.

been beyond the imagination of earlier dictators: to reorganize the senate, to introduce a new system of courts, and, perhaps most importantly, to provide for a functioning administration, both in Rome herself and in her provinces³³).

This does not mean, however, that Sulla was entrusted with an ‘unlimited constituent power’ as some have claimed³⁴). Apparently, this belief goes back to Theodor Mommsen, who, in his influential handbook on Roman constitutional law, refused to discuss Sulla’s dictatorship under the heading of republican dictatorships, placing it instead in the category of what he called ‘exceptional constituent powers [*ausserordentliche constituierende Gewalten*]’³⁵). However, instead of being granted an unlimited constituent power, Sulla appears to have been entrusted with a limited power only, namely a power to re-establish the existing constitution, which had proved to be dangerously ineffective in previous years. Sulla’s power was thus not unlimited, nor was it a genuine ‘constituent power’ – at least, not in the sense it is nowadays understood, as a founding power. Rather, it was a limited power to initiate constitutional reforms that had become necessary. More particularly, Sulla appears to have been authorized to make the republican constitution more stable and effective, not to change the existing constitutional regime.

However, to understand what the title ‘*rem publicam constituere*’ means, it is necessary to consult the sources. Most consistent in his use of the phrase is Cicero. He tends to employ the phrase in combination with ‘*rem publicam conservare*’ and ‘*rem publicam tueri*’³⁶). He thereby suggests that ‘restoring a constitution’ is in line with, if not the same as, ‘preserving’ or ‘protecting’ a constitution. More particularly, for Cicero, the phrase ‘*rem publicam constituere*’ refers to the re-establishment of a constitution that has become corrupted over time, for instance, a monarchy that has turned into a tyranny³⁷). In addition, it has the connotation of making a constitution ‘stable enough to endure for ages’³⁸). If we follow Cicero, then, the authority granted to Sulla does not refer to an ‘unlimited constituent power’, nor does it refer to a power that merely seeks to restore the constitution to its original state. Rather, it designates the more subtle authority to re-establish the existing constitution

³³) Hurlet, *Dictature de Sylla* (n. 9), p. 104–105.

³⁴) Nicolet, *Dictatorship in Rome* (n. 15), p. 270; Hurlet, *Dictature de Sylla* (n. 9), p. 93.

³⁵) T. Mommsen, *Römisches Staatsrecht*, Graz 1952, vol. 2, p. 703–704.

³⁶) Cic. rep. 1,11; 1,65; 2,64.

³⁷) *Ibid.* 1,65.

³⁸) *Ibid.* 3,7; 6,12.

by changing it, making it more stable and effective by adopting constitutional reforms that have become necessary over time.

The irregularities of Sulla's dictatorship – the fact that he was appointed on the basis of a popular decree, without the traditional six months' restriction, and for the unprecedented task 'to write the laws and to restore a constitution to the state' – have led some to conclude that it had little in common with earlier dictatorships and that it was contrary to the republican constitution. My analysis shows that this conclusion is untenable. Sulla's dictatorship was neither a 'popular dictatorship', nor a dictatorship for life, and it was least of all a license to radically alter the existing constitution (an 'unlimited constituent power'). Instead, it was an essentially limited authority, granted to re-establish the existing constitution, making it more stable and effective through necessary reforms. However, to answer the question whether, and to what extent, the Sullan dictatorship was in accordance with the republican constitution, we need to consider not only its legal characteristics and conditions as we have done so far. It also requires that we analyze how Sulla exercised his dictatorial powers in practice. This will be the topic of the next section.

4. Sulla's Dictatorship in Practice: Legislation and Constitutional Reforms

As soon as Sulla had become dictator, he started to carry out an ambitious program of constitutional reforms. Its main purpose was to eradicate the causes of civil war and to restore a functioning government to the state. On Sulla's view, this required, among other things, that the senate's authority was reaffirmed and that the powers of the tribunes were drastically curbed – after all, it had been a tribune, Sulpicius, who had proposed the law transferring the military command from Sulla to Marius, thereby provoking the civil war between them. In addition, the promagistracies needed to be reformed as they had become the basis of a virtually uncontrolled military power which had been turned against Rome several times in previous years, not only by Sulla himself, but also by his enemies. Beyond that, Sulla's program of legislation aimed at adapting the Republic's administration to the changed geopolitical context. Most importantly, to provide for capable administrators in the newly acquired provinces, the number of magistrates had to be increased.

Instead of discussing Sulla's legislative program in detail, I will limit myself to analyzing the most important laws, and determine whether, and to what extent, they protected or undermined the republican constitution. Among the

most important was the Lex Cornelia de tribunicia potestatis³⁹), which drastically reduced the powers of the tribunes. Originally, the tribunate had served to protect individual citizens from arbitrary acts or decisions on the part of magistrates or assemblies. However, over the years, the tribunes had acquired far wider powers, including the right to summon the senate and to pass legislation by bringing bills directly before the people. Thereby, the character of the tribunate had changed: it had evolved into the main instrument of social reform and plebeian emancipation. Thus, in the fifty years leading up to Sulla's dictatorship, several tribunes had used their powers to introduce social reforms, often bypassing the senate. In some cases, their agitation had seriously threatened the peace and stability of the Republic, as had been the case with the Gracchi, and also, more recently, with Sulpicius. On Sulla's view, these tribunes had contested the pre-eminence of the senate, which he considered the foundation of the Republic's stability⁴⁰).

To prevent the tribunate from again becoming a threat to the Republic's stability and peace, Sulla drastically curbed the tribunes' powers. They were deprived of their right to summon the senate and to initiate legislation that ran contrary to the senate's express wishes. Their power of *intercessio* was reduced as well, so that it could no longer be deployed for collective purposes, but only when the rights of individuals were at stake⁴¹). Most importantly, Sulla's law prescribed that, henceforth, nobody who held the tribunate would be eligible for any other magistracy. Thereby, the tribunate effectively became a 'dead-end'; it ensured that no one of ability or ambition would ever seek to hold the office again⁴²). By thus reducing the powers of the tribunes, Sulla at-

³⁹) Most of Sulla's laws are modern reconstructions (mostly stemming from the 19th century). In this case, Theodora Hantos doubts whether a Lex Cornelia de tribunicia potestatis did indeed exist. Although she confirms that Sulla regulated the tribunes' powers, she believes that he may have done so not in a separate law, but in a law that regulated the powers of magistrates more generally. T. Hantos, *Res publica constituta: Die Verfassung des Dictators Sulla*, Stuttgart 1988, p. 144.

⁴⁰) A. Keaveney, *Sulla: The Last Republican*, London 1982, p. 169.

⁴¹) *Ibid.* p. 170. Since Sulla did not curtail the tribunician *intercessio* in so far as it served to protect individuals from illegal or arbitrary acts by magistrates (*auxilium ferre*), Hantos argues that it was not limited, but, rather, restored and improved, in that the conditions were created under which it could be deployed more effectively. Analyzing passages in Cicero's *Verrem* (II 1,155) and *de legibus* (3,22), she concludes that Sulla prohibited the *intercessio* only in so far as it was used to provoke or justify violence (in Cicero's words: *iniuriam facere* instead of *auxilium ferre*). Hantos, *Verfassung des Dictators Sulla* (n. 39), p. 142–143.

⁴²) Cf. D. Shotter, *The Fall of the Roman Republic*, London 1994, p. 46.

tempted to restore the tribunate to its earlier form. It was again to become an office, the main function of which was to protect the rights of individual citizens⁴³). In that respect, Sulla's law on the tribunate did not aim at introducing a new balance of power in the Republic, but rather at restoring the old balance, which had been disturbed by the ever more extensive powers acquired by the tribunes in previous years.

The tribunate had not been the only magistracy to have jeopardized the stability and peace; this was also true of the promagistracies. In the previous forty years, considerable extensions of *imperium* had been granted to promagistrates, which had enabled them to remain longer at their posts and establish personal bonds with their troops. In some cases, republican armies had proved to be more loyal to their commanders than to the Republic itself. This was true of the armies of Marius and Cinna, but also of Sulla's own. To prevent the dangerous precedent Sulla had himself set by marching on Rome – a precedent already followed by Cinna – from being imitated, Sulla took several measures. First, he initiated the Lex Cornelia de maiestate, which prohibited promagistrates from leading their armies outside their provinces and making war without the senate's express permission, defining such acts as treason. Secondly, he had a law enacted, which increased the number of praetors to eight, thereby providing for a sufficient pool of men who could take over prorogued *imperia* after the term of a promagistrate had expired. Finally, he proposed a law authorizing the greater use of *privati cum imperio*, who could replace promagistrates, when no regular magistrates could be found to take over their commands. The aim of these measures was to prevent dangerous concentrations of power in the hands of individuals and, more particularly, to prevent promagistrates from turning their armies against Rome once again.

The measures intended to check a dangerous accumulation of power in the hands of promagistrates found their parallel in a series of laws in the domestic sphere, meant to prevent ambitious politicians from acquiring too much power or rising to power too rapidly⁴⁴). Most importantly, Sulla initiated the Lex Cornelia annalis, which contained a regulation that the different magistracies could only be held in a certain order⁴⁵). With this law, he revived the Lex Villia annalis of 180 B.C., which had fallen in disuse in the course of the second century⁴⁶). Moreover, Sulla laid down minimum ages for each office,

⁴³) Keaveney, Sulla (n. 40), p. 169.

⁴⁴) *Ibid.* p. 173.

⁴⁵) Thus, to become eligible for the consulship, it was required that one had been a praetor, and to hold the office of praetor, one first needed to have been a quaestor.

⁴⁶) Hantos, Verfassung des Dictators Sulla (n. 39), p. 38.

so that nobody could reach the consulship before the age of 42. Two other measures were taken, one requiring an interval of two years between the different magistracies, the other prescribing that the same office could not be held again until an interval of ten years had elapsed. Finally, it was determined that nobody could hold more than one magistracy at the same time. The purpose of these reforms was to check perilous accumulations of power in the hands of ambitious politicians, such as Marius, who had held the consulship no less than seven times. As they largely contained provisions that had already been in force in the past⁴⁷⁾, they were clearly meant to revive elements of the existing constitution, rather than introduce new ones.

The same cannot be said of Sulla's reforms of the senate, which, contrary to his other measures, constituted a breach with the past. Sulla strongly believed that the pre-eminence of the senate over other organs of the state was the best guarantee for peace and stability in the Republic⁴⁸⁾. Contrary to the (pro-) magistracies, which had become stepping stones for individual power, the senate was a corporate body, which acted as a whole and could be expected to rein in its more ambitious members⁴⁹⁾. For Sulla, creating a stable and ordered system of government required that the senate's primacy within the state was restored. The grim toll of years of civil war had left the senate depleted and by 81 B.C., some 125 places were left unoccupied. Sulla filled these vacancies and, in addition, decided to add another three-hundred members to ensure that the senate would be well-equipped for the greater role it was to play in government⁵⁰⁾. The additional three-hundred were recruited from among the *equites*, apparently to enhance support for Sulla's reforms in the senate and to make it slightly more representative of the different interests in Roman society. Moreover, to ensure that, for the future, there would be a sufficient number of senators, Sulla raised the number of quaestors from eight to twenty⁵¹⁾.

Although Sulla's reforms of the senate, and, more particularly, his decision to raise the number of senators to 600, were far-reaching, they were not revolutionary. Their purpose was to restore the senate's authority, which had

⁴⁷⁾ Cf. *ibid.* p. 34–5 and 42.

⁴⁸⁾ Christ, Sulla (n. 17), p. 122; Kunkel/Wittmann, Staatsordnung (n. 15), p. 711; Keaveney, Sulla (n. 40), p. 169.

⁴⁹⁾ Keaveney, Sulla (n. 40), p. 180.

⁵⁰⁾ Sulla's use of his dictatorial powers for filling the vacancies in the senate had a precedent in the dictatorship of M. Fabius Buteo, who, in 216 B.C., was elected dictator 'to draw up a new list of the senate [*senatus legendi causa*]', replenishing the senate ranks which were depleted from losses at Cannae. Cf. Liv. 23,22,10–11.

⁵¹⁾ Kunkel/Wittmann, Staatsordnung (n. 15), p. 708; Keaveney, Sulla (n. 40), p. 174–175.

been weakened by the growing power of individual magistrates. In this respect, Sulla does not appear to have overreached the powers granted to him: his reforms did not aim at radically changing the existing constitution, but at making it more stable and effective. His 'progressive' reforms of the senate thus complemented his more conservative measures with regard to the (pro) magistracies and tribunate. While Sulla revived ancient laws and customs to limit the powers of individual magistrates, for instance, by curbing the tribune's legislative powers, he took more progressive measures to strengthen the senate's authority by extending its membership and making its composition more diverse. Both these more progressive and conservative measures served the same aim of restoring the balance of power in the Republic and, thereby, laying the foundations for a constitution that would be more defensible and effective.

In sum, our analysis of Sulla's legislation and constitutional reforms suggests that, in deploying his dictatorial powers, the dictator respected the republican character of the constitution. However, there is one law, to which this conclusion cannot be applied so easily. More than any other, Sulla's dictatorship has come to be associated with the *Lex Cornelia de proscriptione*, the law by which he legalized the massacre of his political opponents. To determine whether, and to what extent, his dictatorship contributed to undermining the republican constitution we should now consider this most controversial law.

5. Sulla's Dictatorship in Practice: The Proscriptions

When Sulla had won the Battle of the Colline Gate and become the sole *de facto* ruler in Rome, he set out to systematically cleanse the city from his political adversaries. This was achieved by so-called 'proscriptions', formal lists containing the names of 'public enemies [*hostes*]' who could be killed with impunity. Several authors have pointed out that the proscriptions had already started before Sulla became a dictator, and that they were initially based on a law of the interrex, the *Lex Valeria de proscriptione*. This has led some to conclude that the proscriptions were not part of Sulla's dictatorship at all: they were not dependent on his dictatorship as they had already started before it, and they were not based on his dictatorial authority as they had been authorized by a law⁵²). However, this interpretation seems too formalistic. Instead, I argue that the proscriptions were an essential part of the Sullan dictatorship, because they had the effect of creating an atmosphere of general terror, in which any political opposition to the dictator's measures became

⁵²) *Ibid.* p. 177; Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 707.

virtually impossible. Although based on a law, it was left entirely to Sulla's own discretion whose names were to be included in the proscription lists, the very identification of public enemies being considered part of the dictator's emergency powers.

Sulla published his first proscription lists when he was still a proconsul⁵³). Yet the proscriptions were given their legal basis under the dictatorship itself. As soon as he had been appointed dictator, Sulla replaced the Lex Valeria with a law of his own, the Lex Cornelia de proscriptione, in which the proscriptions were regulated in more detail. Several historians have attempted to reconstruct the Lex Cornelia on the basis of scattered remarks in the sources⁵⁴). Its main provision seems to have been a clause granting legal immunity to anyone who killed the proscribed⁵⁵). In addition, a reward was offered to anyone who killed a proscribed person, and his possessions were to be confiscated and publically sold⁵⁶). Anyone who aided a proscribed person was liable to be condemned to death. The families of the proscribed were not allowed to mourn their dead, and their names were to be forgotten⁵⁷). Finally, there appears to have been a provision that regulated the status of the *liberi proscriptorum*: thus, the sons and grandsons of the proscribed lost the right of inheritance and they were also debarred from the right of seeking public office⁵⁸). As François Hinard has argued, the Lex Cornelia did not simply condemn those who had been proscribed to death; rather, it deprived them of any legal status whatsoever, such that they were left entirely unprotected by law⁵⁹).

It is uncertain how many fell victim to the proscriptions. According to Plutarch, the first list contained the names of 80, the second and third, the names

⁵³) Cf. Plut. Sull. 31,3–5; App. bell. civ. 1,11,95. The first proscription lists were published in November 82. Sulla was appointed dictator a month later, in December.

⁵⁴) M. H. Crawford, *Roman Statutes*, London 1996, vol. 2, p. 747; Fr. Hinard, *Les Proscriptions de la Rome Républicaine*, Rome 1985, p. 67–100; Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 707; Hurlet, *Dictature de Sylla* (n. 9), p. 177–178. For an inventory of sources, compare G. Rotondi, *Leges publicae populi Romani*, Hildesheim 1990, p. 349.

⁵⁵) Cic. leg. 1,15,42; Cic. Verr. II 1; Plut. Sull. 31,4.

⁵⁶) Suet. Iul. 11,2; Vell. 2,28,3; App. bell. civ. 1,11,95; Cic. S. Rosc. 126. Cf. Crawford, *Roman Statutes* (n. 54), vol. 2, p. 747.

⁵⁷) As Hinard has observed, this duty to forget (*damnatio memoriae*) proved to be effective, in that the large majority of victims is unknown to us. Their names have not been recorded in the sources. In some cases, the proscriptions even appear to have caused families that had played an important role in public life to fall into obscurity for several generations. Hinard, *Sylla* (n. 14), p. 213.

⁵⁸) Plut. Sull. 31,4; Vell. 2,28,4.

⁵⁹) Hinard, *Proscriptions* (n. 54), p. 35–36.

of 220 each⁶⁰). Appian mentions higher numbers: he believes that about 40 senators and 1600 knights were proscribed⁶¹). What is certain is that the victims belonged mainly to the social and political elite. As a rule, the rank and file seem to have been spared, but those who had served in a higher capacity or belonged to any of the leading families that had supported the Marians invariably found their names on the lists. The young Caesar, for instance, who was married to a daughter of Cinna, was proscribed. This was also true of many members of the equestrian order, who were suspected of having lent material aid to Marius and Cinna, or profited from their regime. Their possessions were considered ‘spoils of war’ and reverted to the victor: Sulla himself⁶²). To encourage the killings, a bounty was offered for every head brought in: the victims were decapitated and their heads were inspected after which the prize money was paid. Moreover, the assassins were given the opportunity to buy up the possessions of their victims at low prices, which made the killings a lucrative business. Certain people even appear to have been killed purely for their wealth⁶³).

Throughout the Italian peninsula, murders, exile, and confiscations became the order of the day. It is difficult to contemplate the horror of these killings. According to Appian, victims were often taken ‘unawares, were killed where they were caught, in their houses in the streets, or in the temples. (...) Others were dragged through the city and trampled on, none of the spectators daring to utter a word of remonstrance against these horrors. Banishment was inflicted upon some and confiscation upon others. Spies were searching everywhere for those who had fled from the city, and those whom they caught they killed’⁶⁴). As Plutarch suggests, the killings led a poisonously corrupt atmosphere that turned innocent bystanders into silent collaborators and undermined the moral foundations of the Republic: for instance, by proscribing anyone who had harbored and saved a proscribed person, Sulla made ‘death the punishment for such humanity, without exception of brother, son or parents, but offering any one who slew a proscribed person two talents as a reward for his murderous deed, even though a slave should slay his master, or a son his father’⁶⁵). By encouraging slaves to kill their masters and sons their fathers, the proscriptions damaged the very moral fabric of Roman soci-

⁶⁰) Plut. Sull. 31,3.

⁶¹) App. bell. civ. 1,9,95.

⁶²) Keaveney, Sulla (n. 40), p. 150.

⁶³) *Ibid.* p. 151.

⁶⁴) App. bell. civ. 1,11,95 (trans. H. White).

⁶⁵) Plut. Sull. 31,4 (trans. B. Perrin).

ety. They undermined the ties of family, friendship and loyalty, and replaced them with the duty of a single and supreme allegiance to the state and the dictator himself.

In sum, the proscriptions should be considered an essential part of Sulla's dictatorship. They appear to have been designed with the specific purpose of making the dictatorship more effective by methodically destroying political adversaries and preventing any political opposition. Although the proscriptions were regulated by law, they had the effect of robbing the proscribed of their legal status. Here, the law itself was used to place certain categories of people outside of the legal order, leaving them without any legal protection at all. Although there had been state-sponsored violence against Roman citizens before – for instance, the *hostis*-declarations against the Gracchi – the use of formal lists by which entire classes of citizens were outlawed was unheard of in the history of the Republic. It violated fundamental principles of the republican constitution, notably the principle that capital punishments could only be imposed in a *quaestio* that had been established by law⁶⁶). In this respect, we can only conclude that the Sullan proscriptions, though meant to protect the Republic from its enemies, had, in fact, the opposite effect: they undermined the republican constitution by systematically placing an entire category of citizens outside of the law.

However, for a balanced judgment of the significance of Sulla's dictatorship, we need to consider one final aspect: the manner in which it came to an end.

6. Sulla's Abdication

In all likelihood, Sulla abdicated toward the end of 81 or, at the latest, in the summer of 80⁶⁷). By then, he had been a dictator for a year to eighteen months. Sulla's voluntary abdication has often been called an enigma⁶⁸). Why would a dictator, who had acquired supreme power for an indefinite term, give up his power voluntarily? Why would he take the risk of becoming a private citizen again, liable to being prosecuted for the many killings he had been responsible for as a dictator? Puzzled by these questions, Appian called Sulla's abdication

⁶⁶) Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 707.

⁶⁷) The first position is defended by Badian, the second by Twyman. Cf. E. Badian, *Additional Notes on Roman Magistrates*, *Athenaeum* 48 (1970), 8–14; B.L. Twyman, *The Date of Sulla's Abdication and the Chronology of the First Book of Appian's Civil War*, *Athenaeum* 54 (1976), 77–97.

⁶⁸) For instance, E. Badian, *Lucius Sulla: The Deadly Reformer*, Sydney 1970, p. 26; Hurler, *Dictature de Sylla* (n. 9), p. 168.

‘incredible’ and even ‘paradoxical beyond anything’⁶⁹). What he could not understand was that the dictator seemed ‘afraid of nothing’, even though he had been responsible for the massacre of so many, and his enemies, in so far as they had survived, were bent on revenge⁷⁰). This also astonished Plutarch, who explained Sulla’s voluntary abdication by the fact that ‘he put more confidence in his good fortunes than in his achievement’, emphasizing the risk he took of being held to account for the great number of citizens he had slain⁷¹).

Of course, Appian and Plutarch had interpreted Sulla’s dictatorship as a kind of monarchical power. From that perspective, it was, indeed, difficult to comprehend why Sulla had decided to lay down his powers voluntarily. However, as I have argued, instead of regarding the dictatorship as a monarchical power, Sulla, as a rule, seems to have respected the republican character of his magistracy, in that he observed the formal limitations to his power and intended to make the republican constitution more stable and effective. This explains why he must have felt compelled to resign from the dictatorship once his task had been completed. Traditionally, a dictator was required to abdicate as soon as he had completed the task for which he had been appointed. The duty to abdicate was essential to the republican spirit of the dictatorship. It was the very principle that guaranteed the ephemeral character of the office and prevented it from evolving into a non-republican, monarchical power⁷²). In accordance with the republican tradition, Sulla appears to have abdicated at once after completing his task of writing the laws and restoring the constitution. In doing so, he showed his respect for the republican spirit of the dictatorship: far from considering it a monarchical power to be disposed of at will, he emphasized that it was limited in time and dependent on the task involved⁷³).

Still, Sulla’s strong commitment to republican values does not explain why he was prepared to take the risk of becoming a private man again, liable to being prosecuted by his enemies. Here, the sources suggest an explanation: apparently, he did not fear prosecution, because he was convinced that he had done nothing wrong and had not abused his powers. Both Plutarch and Appian describe how, after his abdication, Sulla walked to the forum unprotected with only a few friends, ‘exposing his person freely to all who wished to call him

⁶⁹) App. bell. civ. 1,12,103.

⁷⁰) *Ibid.* 1,12,103.

⁷¹) Plut. Sull. 34,3.

⁷²) Cf. Wilcken, *Entwicklung* (n. 4), p. 5.

⁷³) Cf. Hurlet, *Dictature de Sylla* (n. 9), p. 168.

to account'⁷⁴). By emphasizing that he was prepared to take responsibility for his actions as a dictator, he may have thought of a precedent: that of Gaius Maenius, the dictator of 314 B.C., who had resigned from the dictatorship to be able to defend himself in court as a private man against claims that he had overreached his competence⁷⁵). The risk Maenius had taken in exposing himself to criminal prosecutions, which he could easily have avoided by remaining a dictator, was much admired as a sign of his selfless commitment to the Republic. In all likelihood, it was this reputation of selflessness to which Sulla aspired as well.

Apparently, Sulla's trust in his own right was not unfounded. According to the sources, though walking the streets unprotected, he was never attacked by his enemies, nor was he prosecuted. Appian explains this by pointing out that the former dictator still inspired awe in the minds of the onlookers, and that his enemies had been taken by surprise by his sudden abdication. Yet, betraying his uncertainty, the Greek historian proposes other explanations as well: 'Perhaps they were ashamed to call him to account, or entertained other good feeling toward him, or a belief that his despotism had been beneficial to the state'⁷⁶). The latter explanation is difficult to accept, for it implies that even Sulla's victims had come to regard his despotism (read: the proscriptions) as beneficial to the state. Yet, it may also be indicative of a belief that was Sulla's own: that the proscriptions had been necessary and justified, as they had not been aimed at wreaking vengeance on private enemies, but at punishing 'public enemies', who had to be rooted out for the sake of the Republic itself⁷⁷). As Appian suggests, the onlookers may have embraced Sulla's belief, thereby accepting the very proscriptions that had terrorized them, as well the dehumanizing discourses which had made these killings possible in the first place.

Traditionally, the selfless commitment to the Republic was believed to be part of the dictator's *fides* or trust. What has not been recognized in the literature is that Sulla's abdication, too, can be explained as an expression of trust. Both Appian and Plutarch emphasize the risk Sulla took in giving up the dictatorship voluntarily and suggest that, in doing so, he testified to his trust. The very fact that he abdicated of his own free will, without being compelled

⁷⁴) Plut. Sull. 34,3. Cf. App. bell. civ. 1,12,104.

⁷⁵) Maenius had investigated the involvement of Roman nobles in a foreign conspiracy. His enemies had claimed that as a dictator *rgc*, he had not been authorized to deploy his powers against Roman citizens in Rome itself. Voluntarily exposing himself to these claims, Maenius was gloriously acquitted. Liv. 9,26,18.

⁷⁶) App. bell. civ. 1,3.

⁷⁷) Cf. Keaveney, Sulla (n. 40), p. 152.

to do so, was considered an expression of trust. By laying down his powers voluntarily and exposing himself to any one who wished to call him to account, Sulla showed that he was worthy of the trust invested in him: he made it clear that he was prepared to make his own private interests (security from his enemies) subservient to the public good (restoration of the Republic), and that he would not abuse the dictatorship by keeping it longer than his task required. In return, he expected that he would not be attacked or wrongly accused. More than anything, this trust-relation between the former dictator and the Roman people seems to have encouraged Sulla to lay down his powers voluntarily and expose himself to the risk of being prosecuted⁷⁸).

7. Caesar's Trust

In spite of his intentions, Sulla's dictatorship failed to guarantee a lasting peace and stability. Instead, the Republic entered a period of sustained crisis, in which the conflict of parties flared up at regular intervals. Although, the dictatorship was sometimes considered to cope with these crises, it was, in the end, avoided. In 63, when the Catalinarian conspiracy was discovered, Cicero was not made dictator, but refuge was taken in the *senatus consultum ultimum*, which authorized the consul to take all the necessary measures to defend the Republic. And in 52, when anarchy reigned in the streets of Rome, Pompey was elected consul without a colleague after having expressly refused the dictatorship. Apparently, the memory of the Sullan proscriptions, which had left deep scars across Roman society, prevented the dictatorship from being again deployed⁷⁹). This only changed in 49, when Caesar became the first after Sulla to lead an army against Rome and bring the Republic to its knees. Yet even Caesar, in adopting the dictatorship, did all he could to avoid the

⁷⁸) Appian tells us that Sulla was once reviled by a boy: 'As nobody restrained this boy he made bold to follow Sulla to his house, railing at him; and Sulla, who had opposed the greatest men and states with towering rage, endured his reproaches with calmness, and as he went into the house said, divining the future either by his intelligence or by chance, "This young man will prevent any future holder of such power from laying it down"' (App. bell. civ. 1,12,104). In this passage, Appian suggests that the boy, by harassing the former dictator, undermined one of the moral foundations of the dictatorship itself: if a dictator could no longer trust that he would not be attacked once he laid down his powers, he would have no incentive to resign from the dictatorship at all. Trust, then, was the moral condition which guaranteed that the dictatorship remained a limited, republican office. As Appian implied, a 'later holder of such power', i.e., Caesar, had lacked this trust, and he had, therefore, kept the dictatorship for life.

⁷⁹) Nicolet, Dictatorship in Rome (n. 15), p. 272.

impression that he was a new Sulla. As the exact antithesis of Sulla's cruelty, he propagated the message of his own clemency, thereby seeking to dissociate his dictatorship from the painful memory of the proscriptions⁸⁰).

When Caesar crossed the Rubicon in January 49, he acted illegally, disobeying an express ruling by the senate. In his *Bellum civile*, he later would justify his rebellious deed: he claimed that he had been forced to enter into Italy, because his enemies, in spite of his frequent attempts to negotiate, had violated his rights and the rights of the tribunes who had interfered on his behalf⁸¹). That he had been *forced* to act, he explained, was due to his trust. As John Barry shows in his admirable dissertation, Caesar attempted to prove the legitimacy of his extra-legal actions by consciously grounding it in a notion of *fides*⁸²). He suggested that he had acted from concern for the Republic's welfare, making his own private interest secondary to the public good. Whereas his enemies had intimidated the senate and refused to negotiate, he had himself continued to seek a peaceful solution. Although technically illegal, his actions had thus been legitimate, as they had been guided and motivated by his trust.

To demonstrate his trust Caesar adopted a policy of *clementia*, showing a remarkable moderation and restraint toward enemies he had defeated⁸³). This policy of *clementia* was first implemented during the siege of Corfinium in February 49, when Caesar decided to spare the lives of his captives and release them unharmed. He suggested that his decision was informed by his trust: the *fides* required him to protect those dependent on his power⁸⁴). He even implicitly compared his own treatment of the Pompeians with Camillus's treatment of the Faliscans, the most famous example of *fides* in Roman history⁸⁵). Thus, when the Pompeian troops had rebelled against their com-

⁸⁰) *Ibid.* p. 273.

⁸¹) *Caes. civ.* 1,22.

⁸²) J. Barry, *Fides in Julius Caesar's Bellum civile: A Study in Roman Political Ideology at the Close of the Republican Era*, Baltimore 2005, p. 6.

⁸³) As Barry explains, 'in order for his strategy of mercy to be effective, it was necessary that it be seen to depend on his *fides* – on his honor, in other words, rather than his power. If it were seen merely as the kind of *beneficium* that fell within any powerful man's discretion, something that could be taken away as easily as it had been given (especially in a civil war), then it would fail its object'. *Ibid.* p. 11.

⁸⁴) Caesar emphasizes this motif when he claims to have restored a sum of 6.000.000 sesterces to the vanquished enemy commander 'in order that he may not be thought more self-controlled in dealing with men's lives than with their property' (*Caes. civ.* 1,23).

⁸⁵) *Liv.* 5,27.

mander, L. Domitius Ahenobarbus, and offered to open the gates and hand over their captive, Caesar had spurned the advantage, fearing that his troops might take the opportunity of a nocturnal entry as a license to plunder the town⁸⁶). Thereby, he had inspired a change of heart among the Pompeians: they became willing to submit themselves to the proconsul, surrendering not to his power, but to his trust⁸⁷).

By showing his *clementia*, Caesar made it clear that he differed from Sulla. In Rome, it was feared that his victory would result in cruelty and proscriptions as under Sulla⁸⁸). To damper on these fears, Caesar consciously propagated the message of his own moderation. This is suggested by a letter he wrote to Balbus and Oppius (which has been preserved in Cicero's correspondence): 'I am indeed glad that you express in your letter such hearty approval of the proceedings at Corfinium. I shall willingly follow your advice, all the more willingly because I had of my own accord decided to show all possible clemency and to do my best to reconcile Pompey. Let us try whether by this means we can win back the good will of all and enjoy a lasting victory, seeing that others have not managed by cruelty to escape hatred or to make their victories endure, except only L. Sulla, whom I do not propose to imitate'⁸⁹). While Sulla had, indeed, managed to make his victory endure by physically eliminating his enemies, Caesar claimed to follow a different strategy: his aim was to secure a lasting victory over his enemies by showing moderation and clemency, thus winning the hearts of the Romans instead of terrorizing them into submission.

However, not everyone was convinced of Caesar's trust. Interestingly, Cicero raises the question of Caesar's trust explicitly in a letter to Atticus dated February 18,49: 'how far is [he] to be trusted [*quanta fides ei sit habenda*]?'⁹⁰). Cicero is not inclined to answer the question affirmatively: in spite of Caesar's spectacular display of clemency at Corfinium, he doubts the sincerity of his motives. After news of Domitius's surrender at Corfinium has reached him, he explains to his friend that he does not believe Caesar when he claims to be striving for reconciliation with Pompey, adding that 'all this piling up of clemency may simply be a prelude to the cruelty we feared'⁹¹). However, such doubts do not prevent him from writing to the pro-

⁸⁶) Caes. civ. 1,20–21.

⁸⁷) Cf. Barry, Fides (n. 82), p. 301.

⁸⁸) Cf. Gelzer, Caesar: Politician and Statesman, Oxford 1969, p. 189.

⁸⁹) Cic. Att. 174c (9,7c,1) (trans. D.R. Shackleton Bailey).

⁹⁰) *Ibid.* 153 (8,3,2).

⁹¹) *Ibid.* 160 (8,9a,2).

consul himself a month later, ‘applauding his clemency at Corfinium’⁹²). To this, Caesar replies by stressing once more that he abhors cruelty and that by releasing those captured at Corfinium he had been guided by sincere motives: ‘I am not disturbed by the fact that those whom I have released are said to have left the country in order to make war against me once more. Nothing pleases me better than that I should be true to my nature and they to theirs’⁹³). As Caesar suggested, he had released his enemies to remain faithful to own nature. In other words: his act of clemency was to be taken as a signal of his trust.

If Caesar managed to convince Cicero of his trust, the latter’s confidence was bound to fade away as soon as the proconsul expressed his wish to become a dictator. As early as March, Cicero speculates in a letter to Atticus that Caesar might want to adopt dictatorial powers: ‘I imagine he will want a decree of the Senate and another from the Augurs (I shall be hauled up or harried if I am not there) allowing a Praetor either to hold consular elections or to nominate a Dictator, neither of which is legal. But if Sulla could arrange for a Dictator to be nominated by an Interrex, and a Master of the Horse, why not Caesar’⁹⁴). Illegal though it would be, Caesar’s dictatorship would not be intolerable as long as the dictator remained bound by his trust and maintained his policy of clemency. Yet, for Cicero, this was uncertain. A month later, he is visited by Curio, one of Caesar’s closest collaborators, who confirms his worst fears: having met with resistance from the Roman elite, Caesar considered dropping his clemency, since, as Curio frankly explains, ‘it was not by inclination or nature that he was not cruel but because he reckoned that clemency was the popular line. If he lost favour with the public he would be cruel’⁹⁵). As Curio revealed, Caesar had merely assumed his *clementia* for political ends, and he intended to take harsher measures against his adversaries if his authority remained contested.

Caesar could still become a new Sulla, then, and it was with this in mind that Cicero, in the summer of 49, received the news of Caesar’s appointment to his first dictatorship.

⁹²) *Ibid.* 185 (9,16,1).

⁹³) Letter of Caesar to Cicero, quoted in *Ibid.* 185 (9,16,2). In a letter dated March 18 or 19, 49, Cicero directly appeals to Caesar’s trust, arguing that it affects both ‘your trust and the public welfare [*et ad tuam fidem et ad rem publicam pertinet*]’ that Cicero himself is maintained as the most appropriate agent for restoring the peace between Pompey and Caesar. *Ibid.* 178a (9,11a,3).

⁹⁴) *Ibid.* 183 (9,15,2).

⁹⁵) *Ibid.* 195 (10,4,8).

8. Caesar's First Dictatorship: 11 Days (49 B.C.)

In 49, despite having been outlawed by the senate, Caesar still hoped to win over moderates from Pompey's camp, and perhaps even Pompey himself⁹⁶). Thus, when he adopted the dictatorship in August of that year, he took care to prevent the impression that he did not honor the formal limitations to his authority. As both consuls had fled from Italy, he was appointed by the praetor M. Aemilius Lepidus on the basis of a law that had been enacted by the *comitia*⁹⁷). Although Dio emphasizes that the appointment was 'contrary to ancestral custom'⁹⁸), there was in fact a precedent: in 217, a praetor had been involved in the procedure by which Q. Fabius Maximus was made dictator⁹⁹). However, whereas in 217, the praetor's role had remained limited to overseeing Fabius's election, in 49, Caesar was not elected, but appointed. Apparently, he sought to compensate for the lack of consuls by having himself appointed on the basis of a law and invoking the authority of the people, just as Sulla had done¹⁰⁰).

The title of Caesar's first dictatorship is uncertain. In view of the political situation, it is unlikely that it was *rei publicae constituendae causa* as Mommsen has suggested¹⁰¹). As the war with Pompey remained undecided, the task of re-establishing the constitution seemed premature; in fact, it does not seem to have had any priority at all. Instead, Caesar had a more modest aim: to acquire the consulship which he had been refused by the senate. Acquiring the consulship would enable him to conduct the war against Pompey

⁹⁶) Cf. E. Rawson, *Caesar: Civil War and Dictatorship*, The Cambridge Ancient History, vol. 9, *The Last Age of the Roman Republic*, ed. J. A. Crook/A. Lintott/E. Rawson, Cambridge/UK 1992, p. 428.

⁹⁷) *Caes. civ.* 2,21; *Dio Cass.* 41,36.

⁹⁸) *Dio Cass.* 41,36.

⁹⁹) *Liv.* 22,8,6.

¹⁰⁰) As Kunkel and Wittmann have pointed out, there was a difference between the procedures adopted by Sulla and Caesar: while the interrex who had appointed Sulla could be regarded as a genuine substitute for the consul, being invested with full consular powers, the praetor who named Caesar was merely a *collega minor* of the consul. It was, therefore, doubtful whether the praetor could act as a substitute for the consul by appointing the dictator. More importantly, it was Caesar himself who had caused the consuls to flee and who was, therefore, responsible for their absence. From this perspective, Kunkel and Wittmann are right to conclude that the 'legitimacy of Caesar's appointment, which implied the elimination of the acting consuls with the aid of a praetor, stood (...) on weak feet'. Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 713.

¹⁰¹) Mommsen, *Römisches Staatsrecht* (n. 35), vol. 2:1, p. 704. Compare also R. Syme, *The Roman Revolution*, Oxford 1960, p. 52.

as the legitimate head of state, instead of a renegade proconsul who had been accused of treason and declared ‘public enemy’. In view of this, it is likely that Caesar was appointed with the traditional republican title ‘for overseeing elections [*comitiorum habendorum causa*]¹⁰²). This is also suggested by Caesar himself, when he describes his main accomplishment as a dictator as presiding over consular elections, using words that evoke this title [*dictatore habente comitia Caesare consules creatur*]¹⁰³).

The dictatorship ‘for overseeing elections’ belonged to the so-called smaller dictatorships. As we have seen, these dictatorships were not bound to any fixed term, but their term was flexible and dependent on the task: the dictator was to hold his powers no longer than was necessary to complete his task. For the dictatorship ‘for overseeing elections’, this meant that the dictator was required to abdicate forthwith after the elections had been held and the results had been made public¹⁰⁴). Apparently, Caesar observed his duty to abdicate. Although he had been appointed dictator in August, he only returned to Rome in the autumn to exercise his dictatorship. Here, he presided over consular elections in which he was himself elected alongside P. Servilius Isauricus. After completing his task of overseeing these elections, he laid down his power without much delay: he abdicated after a mere 11 days¹⁰⁵). In doing so, he demonstrated his fidelity to the republican ideal of a dictator who achieved as much as possible in the shortest possible time. Also, he may have intended to emphasize that his own dictatorship differed from Sulla’s, which had lasted for at least a year.

The fact that Caesar observed some of the dictatorship’s formal characteristics – maintaining the principle of appointment, adopting the traditional title *comitiorum habendorum causa*, and abdicating after 11 days – suggests that he respected its republican character. However, to determine whether his dictatorship was indeed republican, we should not merely consider these formalities, but also examine how Caesar exercised his dictatorial powers in practice. Here, a different picture emerges: although in the past, the dictatorship ‘for overseeing elections’ had been frequently deployed – a total of 33 examples

¹⁰²) Wilcken, *Entwicklung* (n. 4), p. 15, and Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 713.

¹⁰³) *Caes. civ.* 3,1. For the same reason, Nicolet and Saint-Bonnet are wrong to believe that the title of Caesar’s first dictatorship was *rei gerundae causa*. Nicolet, *Dictatorship in Rome* (n. 15), p. 274 and Saint-Bonnet, *L’État d’Exception*, Paris 2001, p. 68.

¹⁰⁴) Cf. Hartfield, *Roman Dictatorship* (n. 32), p. 199.

¹⁰⁵) *Caes. civ.* 3,2.

has been recorded¹⁰⁶) – never before had a dictator used his powers to preside over his own election to the consulship¹⁰⁷). This practice seemed contrary to republican principles, and, more particularly, the principle that a magistrate – and especially a dictator – could not extend his own authority¹⁰⁸). More problematically, Caesar used the dictatorship to obtain a magistracy which he had failed to acquire by regular means. He only took recourse to the dictatorship after he had failed to obtain a legal ruling that the praetor Lepidus could preside over consular elections. The dictatorship was thus used to skirt legal procedures and, more particularly, to bypass the senate. Of course, this was not the way it was meant to be used, and it ran counter to its republican spirit.

Moreover, in spite of having been appointed for the specific task of overseeing elections, Caesar also deployed his powers to take a series of legislative measures that had nothing to do with elections. Some of these were politically controversial, such those addressing the debt crisis and the law recalling those who had been condemned after Clodius's death. Apparently, in spite of the specific task mentioned in his title, Caesar considered himself invested with a general authority, comparable to that of a dictator *rei gerundae causa*. However, this was not in accordance with republican principles. As Kunkel and Wittmann observe, the extension of the dictatorship *comitiorum habendorum causa* with a legislative task was unprecedented¹⁰⁹). More importantly, it was contrary to custom, as dictators who had been appointed for a specific task had traditionally been allowed to deploy their powers only for the task mentioned in their title¹¹⁰). Perhaps Caesar was aware of this. In fact, by having his legislative initiatives brought before the *comitia* by his aids,

¹⁰⁶) Of these 33 examples, about 20 are sufficiently well-documented to be considered authentic. Hartfield, *Roman Dictatorship* (n. 32), p. 195–196.

¹⁰⁷) Livy mentions one example: in 350 B.C., Camillus organized elections as a dictator *chc*, in which he was himself chosen as consul (Liv. 7,24,11). However, the authenticity of this example is doubtful. As Diodorus mentions other names for the consuls of 349, Hartfield concludes that Camillus may have been a dictator *chc*, but that others were elected consul. Hartfield, *Roman Dictatorship* (n. 32), p. 384–385.

¹⁰⁸) Of course, strictly speaking, the elections prevented Caesar from extending his own authority, as the people, not the dictator, decided who became consul. Moreover, by adopting the consulship, Caesar did not extend, but, rather, changed his authority. Still, the principle that a magistrate was not to extend his own authority had traditionally been interpreted as preventing a magistrate from participating in elections he had been charged to oversee. Cf. Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 692–693.

¹⁰⁹) *Ibid.* p. 714.

¹¹⁰) For instance, in 363 B.C., Manlius Capitolinus Imperiosus, who had been appointed dictator for the specific task of 'driving in the nail' had been forced to resign,

he took care to avoid the impression that they were based on his dictatorial power. Still, he could not prevent the impression that they were, indeed, his initiatives – perhaps not formally, but in practice¹¹¹).

In sum, if we consider Caesar's first dictatorship, we may conclude that, as a rule, he did observe the formal limitations to his authority. In all likelihood, he was keen on demonstrating his respect for the republican character of the dictatorship in order to convince those hesitating between Pompey and himself of the legitimacy of his cause. In this respect, his decision to abdicate after a mere 11 days was of particular significance – it showed that he considered the dictatorship an essentially limited and temporal authority. Yet, in spite of his observation of formal limitations, the manner in which Caesar deployed his dictatorship in practice was at odds with republican principles. Not only did he use the dictatorship for getting himself elected to the consulship, thus skirting regular procedures. He also seems to have overreached his competence by using the dictatorship to legislate, a task that had not been mentioned in his title. For these reasons, we must conclude that Caesar's first dictatorship, though in accordance with formal restrictions, ran counter to republican spirit of this institution.

9. Caesar's Second Dictatorship: One Year (48/49 B.C.)

After Pharsalus everything changed. With Pompey's armies in the East destroyed, Caesar's position in Rome became virtually unassailable, even though the Civil War was to continue for another two years. In September 48, Caesar was appointed to a one-year dictatorship by his colleague, the consul Servilius Isauricus¹¹²). Probably on Caesar's own initiative, Isauricus named M. Antonius his master of the horse – a deviation from the ancient rule that the master of the horse was appointed by the dictator himself¹¹³). The fact that no one appears to have protested against the extension of the dictatorship to a year – which, as both Dio and Plutarch emphasize, was contrary to custom¹¹⁴)

because he had deployed his dictatorial powers to levy troops, a task for which he had not been authorized. Cf. Liv. 7,3,9.

¹¹¹) Cf. M. Gelzer, Caesar (n. 88), p. 290.

¹¹²) Mommsen is uncertain whether Caesar was appointed by the consul (Mommsen, *Römisches Staatsrecht* (n. 35), vol. 2:1, p. 704, n. 3), and, indeed, Dio, suggests that he was not appointed, but elected (Dio Cass. 42,20,2). However, the fact that the consul named his master of the horse makes it probable that he also appointed the dictator himself (*Ibid.* 42,20,1).

¹¹³) Cf. Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 714.

¹¹⁴) Plut. Caes. 51,1; Dio Cass. 42,20,3 and 42,21,2.

– testifies to his strong position. In view of this, it is significant that the augurs objected against Antonius's appointment as master of the horse, because it violated the traditional six months' restriction. Apparently, they did not dare to attack the dictator himself, choosing his master of the horse as the more vulnerable target instead¹¹⁵).

The title of Caesar's second dictatorship is unknown; it is not mentioned in the sources. That it was again a dictatorship *comitiorum habendorum causa* is unlikely, because the dictator, who had been appointed in his absence, was still waging war overseas and not expected to return to Rome soon. Nor is it likely that his title was *rei publicae constituendae causa* as Mommsen has claimed. In view of the ongoing war in Africa, there does not seem to have been any opportunity yet for restoring the constitution. Instead, Caesar was probably granted the dictatorship with the traditional title *rei gerundae causa*¹¹⁶). As this title referred to the highest military authority, it best fitted his needs. Moreover, it had the additional advantage of enabling the dictator to frame the civil war as a foreign war, or rather: as a series of foreign wars, fought against non-Roman enemies (traditionally, the dictatorship *rei gerundae causa* referred to the task of defending the republic against foreign enemies, whereas the *seditionis sedandae causa* was deployed to fight domestic enemies).

Although unusual, there had been one-year dictatorships before¹¹⁷). Caesar's was thus not unprecedented. More important than the traditional six months' term was the assessment whether the circumstances that had necessitated the dictatorship required its continuation. In view of the military situation, this appears to have been the case, as it could not be expected that the war in Africa would be concluded before the Spring of the next year. Since the traditional six months' term seems to have been related to the length of the military season, which, in the early Republic, lasted no longer than the Summer¹¹⁸), it was not unjustified that in a changed geopolitical context, when wars were no longer fought in Italy, but overseas, involving military campaigns throughout the year, the maximum term was likewise extended¹¹⁹). What is crucial, though,

¹¹⁵) Dio even notes that, in doing so, the augurs 'brought upon themselves a lot of ridicule, because, after having decided that the dictator himself should be chosen for a year, contrary to all precedent, they were now splitting hairs about the master of the horse'. Dio Cass. 42,21,2.

¹¹⁶) Wilcken, *Entwicklung* (n. 4), p. 18.

¹¹⁷) This appears to have occurred at least six times, in 389, 333, 324, 316, 315, 309 and 301 B.C.

¹¹⁸) Cf. Mommsen, *Römisches Staatsrecht* (n. 35), vol. 1:4, p. 161.

¹¹⁹) Caesar may also have intended to bring the dictatorship in line with the other magistracies by adopting the annuity principle. A similar development seems to have

is that Caesar, in contrast to Sulla, maintained a fixed term¹²⁰). As the sources do not mention that he overstayed his term, it is most likely that he abdicated when his 12 months' term expired, that is, in September 47. By then, he had been elected to the consulship of the following year¹²¹).

All in all, Caesar's second dictatorship does not seem to have been at odds with republican principles, even though it lasted longer than the traditional term of six months. By adopting the title *rei gerundae causa*, Caesar revived the dictatorship's most ancient title – a title that had not been used for almost two centuries. Moreover, by having himself appointed by a consul, he restored the traditional procedure, which he had himself violated in the previous year. Most importantly, he was granted the dictatorship for a fixed term, and he appears to have abdicated when this term expired. This suggests that he still respected the temporal limitations to his power, which, more than anything, defined its republican character. Although his one-year dictatorship transgressed the traditional six months' restriction, it does not seem to have violated its underlying principle, *i.e.*, that the dictatorship was to last no longer than the dictator's task required. Rather, it was in the spirit of the republican constitution that the dictatorship was flexibly adapted to the political and military crisis which had made it necessary in the first place.

10. Caesar's Third and Fourth Dictatorships: Ten Years (46–45 B.C.)

Yet replacing the six months' term by a one-year term, though perhaps not unjustified, proved to be a fateful step. Once the six months' term was no longer self-evident, more radical extensions of the dictatorship became possible. In April 46, after his victory at Thapsus, Caesar was once more entrusted with the dictatorship, this time for the unprecedented term of ten years. Formally, he was appointed to a one-year dictatorship, but as he was simultaneously named *dictator designatus* for the following nine years, he was, in fact, authorized to keep the dictatorship continuously for an entire decade¹²²). Not even Sulla had been invested with such immense powers, for the old dictator, though not bound to any fixed term, had been required to abdicate after completing his task. By contrast, Caesar made the dictatorship independent

occurred in the final quarter of the fourth century, when the dictatorship was six times extended to a year. Cf. note 5.

¹²⁰) Cf. Kunkel/Wittmann, *Staatsordnung* (n. 15), p. 714.

¹²¹) Wilcken, *Entwicklung* (n. 4), p. 19.

¹²²) This follows from Hirtius (?), who describes Caesar as a *dictator tertio, designatus quarto*, Bell. Hisp. 2.

of his task. Although, formally, it was to be renewed every year, it was not required that the dictator was reappointed, for he had already been designated for the following years. Thereby, Caesar departed from a duty that had been central to the republican understanding of the dictatorship: that a dictator was to abdicate at the completion of his task¹²³).

Contrary to the customary procedure, Caesar was not appointed by a consul, but by the senate¹²⁴). Sulla had not been appointed by a consul either, nor had Caesar when he received his first dictatorship. Instead, the first had been appointed by an interrex, the second by a praetor. Yet, in both cases, the irregularities were mitigated by having the dictator appointed on the basis of a law. By contrast, in the case of Caesar's ten-year dictatorship, no such law was enacted and only the senate was involved. In view of the enormous powers bestowed on the dictator, a *senatus consultum* seemed a narrow legal basis: an unspecific authority to decide military and state affairs was conferred on Caesar for an entire decade without the people having been consulted. Moreover, there was no necessity to avoid the customary procedure of appointment by a consul. Caesar could have had himself appointed by his colleague, the consul M. Aemilius Lepidus, yet he probably preferred appointment by the senate, because it allowed him to be named *dictator designatus* – something a consul could not have done¹²⁵).

In all likelihood, the titles of Caesar's third and fourth dictatorships were the same as that of his second: *rei gerundae causa*¹²⁶). This is most likely, not only because it was, as Wilcken emphatically argues, 'the most extensive and prestigious, and, hence, for the victor of Thapsus, the lord of the empire, the only fitting [title]'¹²⁷), but also because hostilities continued and Caesar's priority remained the military defeat of his enemies. Hence, Caesar probably preferred the traditional title *rgc* as it entailed the highest military authority. Thus, Mommsen's claim that Caesar's third and fourth dictatorships were *rei publicae constituendae causa* seems unfounded¹²⁸). In fact,

¹²³) Kunkel/Wittmann, Staatsordnung (n. 15), p. 715.

¹²⁴) Dio Cass. 43,14,2–4.

¹²⁵) As Kunkel and Wittmann explain, 'as long as the dictator was appointed by any of the consuls, the notion of designation had no place in the dictatorship. For, prior to the appointment, there was no designation, and with the appointment, the one appointed had already become dictator'. Kunkel/Wittmann, Staatsordnung (n. 15), p. 715.

¹²⁶) Compare Wilcken, Entwicklung (n. 4), p. 20 and Kunkel/Wittmann, Staatsordnung (n. 15), p. 715.

¹²⁷) Wilcken, Entwicklung (n. 4), p. 20.

¹²⁸) It was Mommsen who included the title *rei publicae constituendae causa* in the *Fasti*.

Caesar spent most of his third dictatorship in Spain, conducting a military campaign against the legions of Pompey's elder son, Cn. Pompeius, leaving domestic affairs to his new master of the horse Lepidus¹²⁹). In view of these ongoing military activities, Caesar's task can hardly have been to restore the constitution. Instead, his third and fourth dictatorships were probably modeled after his second, which had been a one-year dictatorship *rei gerundae causa* as well.

As Caesar was to receive a new dictatorship every year, he had to abdicate at the end of each term. Interestingly, there is evidence that he did indeed abdicate in April 45, when his fourth dictatorship expired¹³⁰). However, although probably meant to evoke the memory of the early republican dictatorships, Caesar's abdication had in fact become an empty gesture. As he had already been named *dictator designatus* for the following years, his new term automatically started at the beginning of the next year, so that he did not have to be re-appointed. Thereby, the duty to abdicate had lost its function: it no longer served as an effective constraint on the dictator's powers. By abdicating Caesar showed that he was prepared to lay down his powers voluntarily, yet he could not be forced to lay down his powers, nor was there any check on whether his dictatorship was still required. Instead, it was automatically continued. Thus, while the traditional duty to abdicate was maintained, it had lost its function as an effective constraint on the dictator's power.

In sum, with the dictatorship for ten years Caesar acquired an authority that was at odds with republican principles. Although he kept some of the dictatorship's formal characteristics – having himself appointed for a fixed term, with the traditional title *rei gerundae causa*, and respecting the duty to abdicate – these formalities no longer functioned as effective constraints on his power. By having himself named *dictator designatus*, Caesar circumvented temporal restrictions on the dictatorship, turning it into an authority that was automatically continued. By abdicating, he did not give up his power, but merely paved the way for obtaining yet another dictatorship. Most importantly, by accepting the dictatorship for ten years, he made his dictatorial powers independent of his task. He thereby violated a principle that had been essential for the republican understanding of the dictatorship: that a dictator was to abdicate forthwith after his task had been completed.

¹²⁹) Rawson, Caesar (n. 96), p. 437.

¹³⁰) Corpus inscriptionum latinarum 1 (2), p. 28.

11. Caesar's Fifth Dictatorship: The Dictatorship for Life (44 B.C.)

In April 45, when news reached Rome that Caesar had defeated the armies of Pompey's son Cn. Pompeius near the Spanish town of Munda, the senate decided to offer him new privileges and honors. The most important of these was the dictatorship for life¹³¹). Although he was probably designated *dictator perpetuus* by the end of 45¹³²), he assumed his new title in February 44. In a document of February 9, 44, he is still described as 'dictator for the fourth time (...) and designated dictator for life'¹³³). However, on February 15, he officially bore his new title, as is expressly attested by Cicero¹³⁴). By assuming the dictatorship for life, Caesar effectively put an end to all hopes that he would voluntarily lay down his powers once his task would be completed¹³⁵). Indeed, he now openly declared that Sulla had proved to be politically illiterate when he had resigned from his dictatorship¹³⁶). By expressly denying the duty to abdicate, Caesar rejected the principle that had guaranteed the dictatorship's limited character and prevented it from turning into a permanent power. The very notion of a dictatorship for life seemed incompatible with the republican constitution. It essentially amounted to a monarchical power, even though the much hated title of *rex* was avoided¹³⁷).

As the sources suggest, Caesar was designated *dictator perpetuus* on the basis of a decision by the senate¹³⁸). The traditional procedure of appointment by a consul was thus ignored as had also happened when Caesar was made dictator for ten years. The title of Caesar's fifth dictatorship is uncertain. As Mommsen concedes, it cannot have been *rei publicae constituendae causa*, since that title indicated a finite task, which was incompatible with the notion of a lifelong dictatorship¹³⁹). The same argument excludes other titles that referred to specific tasks, more particularly, those of the smaller dictatorships. Yet, it is unlikely that Caesar was granted the dictatorship without any title at all. Never before had a dictator been appointed without a title, and, although Caesar's fifth dictatorship was in many ways unprecedented, it seems to have

¹³¹) Dio Cass. 44,8,4; App. bell. civ. 2,16,106.

¹³²) Appian records the senate's decision under the year 45.

¹³³) Joseph. ant. jud. 14,10,7.

¹³⁴) Cic. Phil. 2,78.

¹³⁵) Cf. Gelzer, Caesar (n. 88), p. 320.

¹³⁶) Suet. Iul. 77: *Sullam nescisse litteras, qui dictaturam deposuerit*.

¹³⁷) Gelzer, Caesar (n. 88), p. 320.

¹³⁸) Cf. Dio Cass. 44,8,4; App. bell. civ. 2,16,106.

¹³⁹) Mommsen, Römisches Staatsrecht (n. 35), vol. 2:1, p. 714.

required a title to justify its necessity. In all likelihood, then, the title of Caesar's dictatorship was the least specific of all: *rei gerundae causa*. This was the same he had held, first, for a year, then, for 10 years, and finally, for life. That the title of Caesar's dictatorships remained the same is suggested by the sources, which do not mention any change in the dictator's task and competence, but merely refer to the fact that it was gradually extended over time¹⁴⁰).

By assuming the dictatorship for ten years, Caesar had already taken a decisive step: the dictatorship could no longer be considered an exceptional institution, but had acquired a more or less permanent character. Yet, he had maintained the semblance of a republican magistracy by adopting the principle of annuity, which also characterized the other republican magistracies. Now, by accepting the dictatorship for life, Caesar dropped the principle of annuity, so that there remained no temporal limitation to his authority whatsoever. He thereby removed any semblance that his dictatorship was still a republican magistracy. In this respect, Caesar's dictatorship for life differed profoundly from Sulla's. Whereas the latter, though appointed without a fixed term, was required to abdicate at the completion of his task – a duty which he faithfully fulfilled – the former assumed the dictatorship without any temporal restriction whatsoever. More than anything, this absence of temporal limitations made Caesar's dictatorship incompatible with the republican constitution. It enabled him to establish an indefinite, supreme and personal rule, which was contrary to republican principles.

That Caesar accepted the dictatorship for life was probably the direct reason for his assassination on the Ides of March 44. Even if a conspiracy against the dictator had already taken form, it was enhanced after Caesar had expressed his intention to hold on to his power for as long as he lived¹⁴¹). Whether Caesar also aspired to transform his dictatorship into a veritable kingship, as the conspirators feared, remains uncertain¹⁴²). The dictator did accept many honors which had traditionally belonged to kings¹⁴³). However, he also appears to have expressly refused the kingship on several occasions¹⁴⁴). In the end, how-

¹⁴⁰) Cf. Wilcken, *Entwicklung* (n. 4), p. 25.

¹⁴¹) *Ibid.* p. 26.

¹⁴²) An overview of the discussion about Caesar's monarchical aspirations can be found in: H. Gesche, *Caesar*, Darmstadt 1976, p. 154–179.

¹⁴³) Rawson, *Caesar* (n. 96), p. 463.

¹⁴⁴) For instance, as many sources record, during the Lupercalia, Caesar publically refused the royal diadem, which Antonius had offered to him, demanding that it be taken instead to the Temple of Jupiter Capitolinus, who was to be regarded as the only king in Rome. Cic. *Phil.* 2,85–87; Dio Cass. 44,11,2–3; App. *bell. civ.* 2,16,109; Plut. *Caes.* 61. Gelzer suggests that Caesar may have designed the whole scene himself in

ever, the propaganda of the conspirators and Caesar's heirs, which has blurred the dictator's image in the sources, makes it impossible to recover the truth about his ultimate intentions. Here, the judgment of Ronald Syme remains most plausible: 'Caesar was slain for what he was, not for what he might become. The assumption of a dictatorship for life seemed to mock and dispel all hope of a return to normal and constitutional government'¹⁴⁵). Indeed, Caesar was slain as a dictator for life, not for aspiring to the kingship, but for having realized absolute power. For the conspirators that was quite enough.

12. Conclusion:

The Dictatorship and the Fall of the Roman Republic

Caesar's dictatorship for life was the turning point. After that, ambitious politicians in Rome would settle for no less than absolute power. The Civil War continued, but once the last republican armies had perished at Philippi, it became a war between those who claimed Caesar's political inheritance – a war, that is, for supreme and personal power. Yet Caesar's heirs were no longer prepared to walk the dangerous path of the dictatorship. Soon after the dictator's death, the consul M. Antonius had a law enacted that made the dictatorship illegal, proclaiming anyone who proposed or supported it an outlaw (*sacer*) and putting a price on his head¹⁴⁶). As Cicero suggested, the Lex Antonia was specifically meant to prevent another dictatorship for life¹⁴⁷), yet it did not merely outlaw the Caesarian dictatorship, but the dictatorship as such. In doing so, it proved to be remarkably effective: never again would a dictatorship be deployed in Rome. When Augustus was offered the dictatorship in 22, he vehemently rejected it¹⁴⁸). Aware of the political fate of his adoptive father, he realized that, from now on, he had to go masked, avoiding both the word 'king' and 'dictator'. He was thus able to acquire supreme power, and even found a monarchy, by affecting to have remained a plain citizen¹⁴⁹).

Still, although the dictatorship itself became a taboo, its constitutive elements survived. Remarkably, it was not Caesar's dictatorship, but Sulla's

order to put an end to speculations about his monarchical aspirations, which had proven to be politically damaging. Gelzer, *Caesar* (n. 88), p. 321. For other interpretations of this scene compare: L. Canfora, *Julius Caesar: The Life and Times of the People's Dictator*, Berkeley 2007, p. 281–286.

¹⁴⁵) Syme, *The Roman Revolution* (n. 101), p. 56.

¹⁴⁶) Dio Cass. 44,51,2–3; Cic. Phil. 1,3 and 2,91; Liv. perioch. 116.

¹⁴⁷) Cic. Phil. 1,4.

¹⁴⁸) Dio Cass. 54,1,1–4.

¹⁴⁹) Nicolet, *Dictatorship in Rome* (n. 15), p. 275.

that provided the model¹⁵⁰). Thus, in the Lex Titia of November 27, 43, Antonius, Octavian and Lepidus were named *triumviri rei publicae constituendae causa*¹⁵¹). By adopting the Sullan title, they assumed an exceptional authority to restore the constitution and stabilize the Republic. Yet, theirs was an even more absolute authority than Sulla's had been, for, unlike their predecessor, they claimed the power to legislate by decree, to exercise jurisdiction without any right of appeal, to nominate magistrates of their choice, and to carve up the world between themselves¹⁵²). Even the proscriptions were revived. In their announcement of the new proscriptions, the triumvirs implicitly referred to Sulla, promising that they would not make as many victims as he had done, yet explaining that 'necessarily three persons will have more enemies than one'¹⁵³). Among these, predictably, was Cicero, who had survived the dictatorships of Caesar, but now fell victim to the rage of Antonius, whom he had publically denounced as an enemy of the Republic.

By then, however, the Republic was already dead. It had died slowly, when Caesar obtained ever increasing competences as a dictator. If a time of death must be determined, it was the day when Caesar assumed the dictatorship for life. By doing so, he rejected the duty of abdication, a principle that had guaranteed the dictatorship's limited and temporal character and prevented it from evolving into a non-republican, monarchical power. However, Caesar's dictatorship for life was only the conclusion of a development that had already started some three decades earlier. Thus, in 82, Sulla had been invested with the unprecedented authority to write the laws and restore a constitution to the Republic, and it was left to his own discretion when he would lay down his powers. Although he did indeed deploy his vast powers to strengthen the republican constitution, his authoritarianism set a dangerous precedent: in spite of his own republican intentions, he showed how a more authoritarian regime could be established from within the constraints of the republican constitution. Here, the proscriptions proved to be particularly damaging: although intended to save the Republic from its enemies, they terrorized the people into submission, thereby crippling the very liberties on which the Republic depended.

When Caesar adopted the dictatorship in 49, he was still keen on convincing moderates of the legitimacy of his cause; he abdicated after 11 days, thus

¹⁵⁰) Cf. Wilcken, *Entwicklung* (n. 4), p. 30.

¹⁵¹) App. bell. civ. 4,2,5.

¹⁵²) C. Pelling, *The Triumviral Period*, *The Cambridge Ancient History*, vol. 10 *The Augustan Empire, 43 B.C.- A.D. 69*, ed. A. K. Bowman, E. Champlin/A. Lintott, Cambridge/UK 1996, p. 1.

¹⁵³) App. bell. civ. 4,2,10.

displaying his commitment to republican values. Irregularities crept in only gradually. In 48, after his victory over Pompey, Caesar was accorded a second dictatorship, this time for a year. Although unusual, his one-year dictatorship was not unprecedented, nor was it unjustified in view of the military situation. Most importantly, he did indeed abdicate when his term expired, thus showing that he still considered the dictatorship a limited power. This changed in 46, when Caesar was granted his third dictatorship. Although, formally, he was appointed to another one-year dictatorship, he was also designated dictator for the following nine years, so that, in practice, he was authorized to keep the dictatorship for an entire decade. He thereby departed from a duty that had been central to the republican understanding of the dictatorship: that the dictator was to abdicate at once after completing his task. Finally, in 44, by having himself appointed *dictator perpetuus*, he rejected the duty of abdication altogether. Thereby, he made it clear that a return to normality was no longer to be expected.

What lessons can be drawn from the way in which the dictatorship contributed to the fall of the Republic? First, I believe it is important to realize that it was, indeed, the *republican* dictatorship, with its venerable traditions and formal characteristics, that was essential for legitimizing the gradual transition towards a more authoritarian regime. It contributed to the belief that the Republic was protected and stabilized, not actually overcome. For instance, Sulla used the dictatorship to give the systematic liquidation of his political opponents a semblance of necessity; it was framed as an emergency measure, aimed against ‘public enemies’ and necessary to protect the Republic. Secondly, it is important to understand that there was no grand scheme or plan to undermine the republican constitution and to establish a more authoritarian regime. Rather, this happened only gradually and largely independent of the dictators’ own intentions. It was the result of *ad hoc* decisions and responses to specific crises. For instance, as an analysis of Sulla’s legislation suggests, he intended to strengthen the republican constitution, yet, by adopting a virtually unlimited power and imposing a regime of terror, he inadvertently contributed to undermining the constitution he had meant to protect.

Finally, we should not make the mistake to conclude that the dictatorship *caused* the fall of the Republic. In the end, only a variety of causes – political, social, military, economic – explains why the Republic collapsed. Nor can we conclude that the dictatorship made the Republic’s fall possible, for this could also have occurred without the dictatorship (indeed, initially, it was the gradual extension of proconsular power, rather than dictatorial power, which constituted the main threat to the republican constitution). However, what we

can conclude, is that the dictatorship contributed to *legitimizing* the transition towards a more authoritarian regime. Paradoxically, it was the very observation of the dictatorship's ancient customs and formalities that gave the dictator's ever increasing competences an appearance of legality. For instance, Caesar, at least initially, maintained a formal procedure of appointment, formal titles and competences, and even fixed terms. However, formalities were not enough. Instead, the whole system of formal guarantees was bound to break down as soon as the dictator's power was no longer dependent on a sincere commitment to republican values. It was, thus, a violation of trust, rather than formal guarantees, which explains why the dictatorship was ultimately turned against the very constitution it was established to defend.