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Roman dictatorship in the French Revolution

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ABSTRACT

This article seeks to explain why the Roman dictatorship, which had served as a positive model of constitutional emergency government until the French Revolution, acquired a negative meaning during the Revolution itself. Both Montesquieu and Rousseau regarded the dictatorship as a legitimate institution, necessary to protect the republic in times of crisis. For the French revolutionaries, the word ‘dictatorship’ acquired negative connotations: it became a rhetorical tool for accusing their political opponents of authoritarian rule. This article argues that Carl Schmitt’s distinction between commissarial and sovereign dictatorship is unhelpful for understanding why the dictatorship was rejected by the French revolutionaries. Instead, it shows that it was the early identification with Montesquieu’s *aristocratic* dictatorship, which caused the delegates of the National Assembly to reject it as a threat to popular sovereignty. The exception was Marat, who proposed to establish a *popular* dictatorship à la Rousseau to purge the state from counterrevolutionary forces. However, Marat’s proposal found little support with his fellow-Jacobins, as it allowed the Girondins to accuse them of a conspiracy against the Convention. This caused the Jacobins to reject the dictatorship altogether and to propose alternative models of emergency government.

KEYWORDS

Dictatorship; French Revolution; Montesquieu; Rousseau; Schmitt

Introduction

The word ‘dictatorship’ has a pejorative meaning for most of us. It refers to the authoritarian rule of one person or a small group, without effective constitutional limitations. Dictators usually come to power through force or fraud and they maintain themselves through intimidation, terror, and the suppression of civil liberties.¹ However, the word ‘dictatorship’ has not always had such negative connotations. Until the eighteenth century, it was primarily used in a descriptive manner: it referred to the Roman magistracy of the dictator who was appointed for a limited term of six months, to defend the republic against external or internal enemies. If the dictatorship was invoked in a normative manner, its positive connotations were emphasized: thus, early-modern writers as diverse as Machiavelli, Bodin, Montesquieu and Rousseau regarded the Roman dictatorship as a positive model of constitutionally regulated emergency government.² They believed that the dictatorship had been essential for protecting the Roman Republic in times of crisis, and they suggested that the constitutions of modern republics should provide for similar forms of emergency government. More particularly, these writers distinguished dictatorship from tyranny: while tyrants imposed their personal will on the political community without effective constitutional limitations, dictators

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were appointed according to constitutional rules and required to lay down their powers as soon as the crisis had passed. Hence, as long as the dictatorship remained a temporally and constitutionally limited authority, it could not degenerate into tyranny.³

Before the French Revolution, the word ‘dictatorship’ mostly appeared in the margins of legal and political discourse, and it was – with but a few exceptions – primarily employed as a reference to the Roman magistracy.⁴ It was only in the course of the Revolution that it became central to the political debate: it no longer served as an erudite reference to the Roman past, but it was now regarded as a real possibility. Especially after the French monarchy had been abolished in the Fall of 1792, it was expected that a dictator might fill the power vacuum left by the royal government. Moreover, from the beginning of the Revolution, the word ‘dictatorship’ evoked negative connotations: for the revolutionaries, it became a powerful rhetorical tool to criticize their political opponents, who were accused of authoritarian rule.⁵ Thus, Lafayette, Mirabeau, Danton and Robespierre were all accused of aspiring to a dictatorship – an accusation which they denied in the strongest terms. The exception was Marat, who openly demanded the establishment of a dictatorship to punish ‘bad citizens’ and to purge the state from counterrevolutionary forces. However, as Marat acknowledged, his proposal for the creation of a dictatorship found little support with his fellow-revolutionaries and even had adverse effects, as it allowed the Girondins to accuse Robespierre, Danton and himself of a conspiracy against the Convention. The desire to keep power in the hands of the Convention explains why this accusation became such an effective weapon for delegitimizing one’s political opponents: they were effectively accused of seeking personal rule at the expense of the people and their legitimate representatives in the Convention.⁶ While pre-revolutionary writers like Montesquieu and Rousseau had carefully distinguished the dictatorship from tyranny and despotism, the French revolutionaries came to use these words interchangeably.⁷

In this article, my aim is to explain why the Roman dictatorship, which had served as a positive model of constitutional emergency government until the French Revolution, acquired negative connotations for the French revolutionaries. I will argue that Carl Schmitt’s distinction between ‘commissarial’ and ‘sovereign dictatorship’ is unhelpful for understanding why the dictatorship was ultimately rejected by the revolutionaries.⁸ According to Schmitt, the Jacobins had embraced the model of a ‘sovereign dictatorship’, to prepare the way for a new constitution.⁹ However, as I will explain below, the Jacobins never used the term ‘sovereign dictatorship’, and they seem to have focused instead on conceptions that differed from the sovereign model. Thus, as early as 1790, Lafayette was accused of aspiring to a dictatorship that served to defend the aristocracy against the people. It was Montesquieu’s conception of an *aristocratic* dictatorship that caused the delegates of the National Assembly to reject it as incompatible with a constitution based on popular sovereignty. By contrast, after the flight of the king, Marat advocated a *popular* dictatorship à la Rousseau, suggesting that the dictator would act on behalf of the people, whose sovereign authority he could not appropriate. By that time, the dictatorship had obtained such negative connotations that the Jacobins feared that Marat’s proposal would backfire on them. Hence, instead of advocating a ‘sovereign dictatorship’, as Schmitt had claimed, the Jacobins rejected the dictatorship altogether and turned to alternative models of emergency government.

Montesquieu’s aristocratic dictatorship

Montesquieu considered the Roman dictatorship a legal and legitimate institution necessary to protect the republic in times of crisis. Exploring the conditions for political liberty in ‘aristocratic republics’, he gave a positive account of the dictatorship.¹⁰ Rather than regarding it as a despotic institution, he considered it characteristic of a republic’s moderate government. In his view, a moderate government presupposed the existence of a strong aristocracy, and in Rome, the aristocracy was represented by the Senate. However, as Montesquieu explained, ambitious politicians had attempted to take away the Senate’s authority and seize power on behalf of the people. They had thereby disturbed the balance of powers, threatening the stability of the republic and its moderate government.

Against this background, Montesquieu believed that dictators were appointed on behalf of the Senate to defend the aristocracy against the people.¹¹ Their aim was to protect the republic's mixed constitution and to restore the balance between its aristocratic and popular elements. As Montesquieu explained, political liberty could only exist under a moderate government, in which 'power checked power'. The Roman dictatorship served to check the power of the people and, more particularly, that of the plebeian politicians who claimed to represent it. Hence, for Montesquieu, the dictatorship's aim was to prevent the people from taking away or reducing the Senate's authority and to restore the balance of powers, which guaranteed political liberty in the republic.¹²

Montesquieu first discussed the Roman dictatorship in his *Considerations on the Causes of the Greatness of the Romans and their Decline* (1734). He introduced it in a chapter on the social struggles between patricians and plebeians, which had 'always existed' in Rome.¹³ As Montesquieu observed, after the Tribune had been established, the plebeians had used it to attack the patricians and remove their prerogatives. This had caused continuous contention between the plebeians, who were 'supported, or rather, animated by their tribunes', and the patricians, who were represented by the Senate and 'fearful that the populace would elevate some tribune to tyranny'.¹⁴ In this struggle, the Senate had various means at its disposal to defend its prerogatives and prevent a 'tyranny of the people'. One of these was the creation of a dictator. As Montesquieu explained:

[t]o defend themselves, the patricians were in the habit of creating a dictator – which succeeded admirably well for them. But once the plebeians had obtained the power of being elected consuls, they could also be elected dictators – which disconcerted the patricians.¹⁵

Montesquieu gave the example of the dictatorship of Publius Philo. In 339 BC, Publius had used his dictatorship to carry through three laws that were very advantageous to the plebeians and prejudicial to the patricians.¹⁶ Montesquieu shared Livy's opinion that Publius's 'popular dictatorship [*dictatura popularis*]' had undermined the stability of the republic: in his view, the harm caused by the dictator had, from the perspective of the patricians, outweighed the expansion of the empire that had resulted from his military victories.¹⁷

However, in Montesquieu's view, a *patrician* dictatorship could also become a threat to the republic if it violated constitutional limitations. Montesquieu illustrated this point with the dictatorship of Sulla. When Sulla was appointed dictator in 82 BC, he attempted to remove the causes of disorder in the republic. He initiated a series of laws to restore the authority of the Senate, tempering the power of the people and regulating that of the tribunes.¹⁸ However, as Montesquieu observed, in spite of his successes Sulla had used his power in ways that would make it impossible for Rome to preserve its liberty in the long run. He had ruined all military discipline in the Asian expedition, accustoming his army to cruelty and rapine. He had even led his armies against Rome itself, and, after its conquest, distributed the lands of citizens among his soldiers. Most problematically, he had introduced the proscriptions, putting a price on the heads of citizens who had not supported him.¹⁹ 'After that', Montesquieu explained, 'it was impossible to adhere to the republic, for with two ambitious men disputing for victory, those who were neutral and partisans only of liberty were sure to be proscribed by whoever won'.²⁰ Even after Sulla had abdicated from his dictatorship, his soldiers continued to watch over his safety. It was thus the threat of violence, not the laws, which protected the former dictator.²¹ As Montesquieu explained, Caesar would follow Sulla's example by leading his armies to Rome and 'ascend[ing] to sovereign power arms in hand'.²²

Montesquieu returned to the dictatorship in the chapter on 'Laws Relative to the Nature of Aristocracy' in his *Spirit of the Laws* [*De l'esprit des lois*, 1748].²³ He explained that when an exorbitant authority was given to a citizen in a republic, it could easily be abused, because such authority was not foreseen in the laws and could not be checked. The exception was when the constitution of a republic provided for a magistracy with exorbitant power to maintain itself. This was the case in Rome with its dictators and in Venice with its state inquisitors. On Montesquieu's understanding, these were 'terrible magistracies which violently return[ed] the state to liberty [*magistracies terribles, qui ramènent violement l'État à la liberté*]'.²⁴ The differences between these magistracies could be

explained by the fact that in Rome, the dictatorship served to protect the ‘remnants of its aristocracy against the people’, while in Venice, the state inquisitors served to defend its aristocracy against the nobles. Therefore, the Roman dictator was installed ‘for only a short time’, because ‘the people act [ed] from impetuosity, and not from design’. The dictator’s task was ‘to intimidate, not to punish, the people’.²⁵ By contrast, Venice’s state inquisition was a ‘permanent magistracy’, because, unlike the people, the nobles were continuously and secretly conspiring against the republic.²⁶ While the Roman dictator served for a *limited* term, the Venetian state inquisitors possessed a *permanent* authority to prevent the nobles from seizing power in the republic.

Montesquieu’s reference to Venice’s state inquisitors is important, because it allows us to identify his sources. In his *Considerations* and *Spirit of the Laws*, he had mentioned only ancient sources – Cicero, Livy and Appian – to support his interpretation of the Roman dictatorship. However, the reference to Venice’s state inquisitors suggests that he consulted at least one later source: thus, in his *Discourses on Livy*, Machiavelli had also compared the Roman dictatorship with Venice’s state inquisitors.²⁷ As Machiavelli had observed, in both Rome and Venice, the ‘public orders’ of the republic had provided for an emergency authority that in urgent needs could decide without further consultation. In this context, Machiavelli had emphasized the constitutional limitations to the dictatorship: as long as dictators were appointed ‘according to public orders, and not by their own authority’, they could not hurt the republic.²⁸ In a similar vein, Montesquieu suggested that dictators were appointed according to constitutional rules, and required to lay down their powers as soon as the crisis had passed. Indeed, the very aim of the dictatorship was to protect the republic’s constitution – and, more particularly, to protect the ‘remnants of its aristocracy’ – by preventing the people from taking away the authority of the Senate. The creation of a dictator thus temporarily ‘removed the republic from the hands of the people’, but only ‘to return the state to liberty’.²⁹ As Montesquieu concluded, the constitutional limitations to the dictator’s power, and the fact that it did not extend beyond the task for which he had been appointed, prevented it from being turned against the republic itself.

Rousseau’s popular dictatorship

While Montesquieu understood the dictatorship as a necessary institution to protect *aristocratic* republics, Rousseau presented a very different conception: in his view, the dictatorship served to defend a constitution based on *popular* sovereignty.³⁰ Rousseau devoted a separate chapter of his *Social Contract* (1762) to the Roman dictatorship.³¹ In it, he gave a positive account of the dictatorship, claiming that it had effectively protected public freedom.³² However, like Montesquieu, Rousseau realized that the dictatorship could easily be abused and turned against the constitution itself: this was the case when the pretext of a crisis was invoked to silence the laws and to seize power in the state. Therefore, Rousseau proposed several limitations to the dictator’s authority. He argued that only the ‘greatest dangers’ could justify the suspension of the laws: ‘only the greatest dangers can counterbalance the danger of disturbing the public order, and one should never suspend the sacred power of the laws except when the salvation of the fatherland is at stake’.³³ Moreover, the charge of protecting the public safety had to be provided for in a ‘special act’, and entrusted only to the ‘worthiest person’. Finally, it was crucial that its duration was ‘fixed to a very brief term which [could] never be extended’. Like Montesquieu, Rousseau emphasized the constitutional limitations to the dictatorship, arguing that if it was maintained after the crisis had passed, it risked becoming ‘tyrannical or vain’.³⁴

Rousseau recognized that the authority to protect the public safety could differ according to the nature of the crisis. In minor crises, it sufficed to increase the activity of the regular government: in those cases, governmental power was temporarily concentrated in one or two of its members who, although they remained bound by the laws, could decide about the laws’ administration without interference from others. This was the case in Rome when the Senate issued the *senatus consultum ultimum*, authorizing the consuls to take all the necessary measures to protect the republic from harm.³⁵ However, in major crises, when the laws themselves became an obstacle to the effective

protection of the fatherland, a 'supreme chief [was] named, who silence[d] all the laws and provisionally suspend[ed] the Sovereign authority'.³⁶ Here the main example was the Roman dictator who was no longer bound by the laws and whose decisions were not subject to appeal to the popular assembly. Rousseau's reference to the 'silencing of the laws' and the 'provisional suspension of sovereign authority' recalled Montesquieu's formulation that the 'sovereign bowed before the dictator and the most popular laws remained silent'.³⁷ However, unlike Montesquieu, Rousseau did not believe that the dictatorship 'temporarily removed the republic from the hands of the people'.³⁸ Instead, he suggested that throughout the dictatorship, the people maintained the highest authority in the state. Rather than serving as an aristocratic bulwark *against* the people, Rousseau defined the dictatorship as an 'important commission', exercised *on behalf* of the people.

Both Montesquieu and Rousseau distinguished the dictatorship from sovereignty: the dictator did not himself possess sovereign authority, but he acted on behalf of the sovereign, who had entrusted him with the charge of protecting the republic.³⁹ However, while Montesquieu identified the aristocracy as the sovereign authority, Rousseau believed it was the people who held the highest authority in the state. For Rousseau, the hallmark of the people's sovereignty was the authority to make laws. To prevent a dictator from taking away or reducing the people's sovereignty, he proposed to make a distinction between, on the one hand, the dictator's time-limited authority to *suspend* the laws and, on the other, the people's sovereign authority to *make* the laws. By creating a dictatorship, the popular assembly did not give up its legislative authority. According to Rousseau, this implied that the dictator could merely 'silence the laws', but not issue laws himself. Hence, the dictator had a constitutionally limited authority: he could provisionally suspend the popular assembly's legislative authority, but he could not exercise it himself. As Rousseau explained, 'the magistrate who silences it cannot make it speak; he dominates it without being able to represent it; he can do anything, except make laws [*il peut tout faire, excepté des lois*]'.⁴⁰ Instead of removing the republic from the hands of the people, as Montesquieu had claimed, Rousseau concluded that, throughout the dictatorship, the people maintained the highest authority in the state, namely the authority to make laws, which the dictator could not appropriate.

Rousseau deplored the fact that the dictatorship was not used when the survival of the republic was truly at stake. He gave the example of the failure to appoint a dictator to suppress the Catilinarian conspiracy in 63 BC. Instead of creating a dictator, the Senate had issued the *senatus consultum ultimum*, authorizing the consuls to take all the necessary measures to prevent the republic from harm. As Rousseau explained, Cicero, who was the acting consul at the time, was legally constrained in his powers to suppress the conspiracy: although he was temporarily authorized to act without prior consultation of the Senate, he remained bound by the laws. Crucially, he lacked the authority to impose capital punishment on Roman citizens without a formal trial. By contrast, had a dictator been appointed, the laws would have been suspended, and he would easily have crushed the conspiracy. Hence, in Rousseau's view, Cicero, who had ordered the summary execution of the conspirators, was 'justly called to account for the blood of Citizens he shed in violation of the laws; a charge that could not have been levelled at a Dictator'.⁴¹ Thus, in 58 BC, Cicero was exiled for having executed Roman citizens without a formal trial. Although the Senate eventually allowed him to return from his exile, Rousseau concluded that he received a 'pardon', not an acquittal.

Like Montesquieu, Rousseau believed that the dictatorship was essential for preserving political freedom in the republic, arguing that 'a Dictator could in some cases defend the public freedom without ever being in a position to threaten it'. He shared Montesquieu's view that 'Rome's chains would be forged not in Rome itself, but in its armies'.⁴² For Rousseau, this explained why the republic offered only 'feeble resistance' when Sulla and Caesar ordered their troops to march against Rome.⁴³ Having conquered Rome, Sulla had himself appointed dictator to restore the republic. He used his dictatorship to initiate a law proscribing his political opponents as 'enemies of the republic'. Following Sulla's example, Caesar led his armies against Rome and, after its conquest, obtained a dictatorship. Unlike Sulla, he did not proscribe his opponents, but he prevented political opposition by extending his dictatorship. Against this background, Rousseau's remark that dictators defended

the public freedom ‘without ever being in a position to threaten it’ is puzzling. Perhaps he did not regard the dictatorships of Sulla and Caesar as genuine dictatorships at all. This is suggested by the last paragraph of his chapter, where he explained that if the dictatorship was extended beyond its term, or beyond the crisis for which it had been established, it became ‘tyrannical or vain’.⁴⁴ Both Sulla and Caesar had extended the dictatorship beyond its traditional six months’ term: in 44 BC, Caesar had even obtained a ‘dictatorship for life’, a *dictatura perpetua*. As Rousseau suggested, by extending their term beyond traditional limitations, these dictators had managed gradually to transform the temporary powers of the dictator into a *permanent* authority, which was no longer compatible with the republican constitution.

Dictatorship in the French Revolution

As Ernst Nolte observes, the French Revolution ‘meant for the word “dictatorship” a transition from the sphere of literature into the sphere of life’.⁴⁵ While before the Revolution the word ‘dictatorship’ had mainly served as an erudite reference to the Roman magistracy, it now became central to debates about the future of the revolutionary state.⁴⁶ According to Nolte, ‘the precondition for introducing the Roman paradigm in political practice was the fall of the monarchy, yet this fall was in turn the work of men, who had nourished themselves with the works of Roman history and rhetoric’.⁴⁷ In fact, the dictatorship had been introduced in the political debate as early as 1790, although it would come to play an increasingly important role after the monarchy was abolished in the fall of 1792. From the outset, however, the word ‘dictatorship’ was used in a pejorative sense: the French revolutionaries invoked it to denounce their political opponents, who were accused of aspiring to personal rule at the expense of the people and their representatives in the National Assembly. As I will argue in this section, they understood the dictatorship primarily through Montesquieu’s conception of an *aristocratic* dictatorship and Rousseau’s conception of a *popular* dictatorship. Thus, in the early phase of the Revolution, they identified it with Montesquieu’s *aristocratic* dictatorship, which they considered incompatible with a constitution based on popular sovereignty. The exception was Marat, who proposed to establish a *popular* dictatorship à la Rousseau. However, as we will see, the Jacobins would ultimately reject both versions of dictatorship and turn to alternative models of emergency government.

One of the first to be accused of aspiring to a dictatorship was Lafayette. In the summer and fall of 1790, Mirabeau frequently invoked the terms ‘dictatorship’ and ‘dictator’ to attack Lafayette, both in interventions in the Assembly and in secret notes sent to the court.⁴⁸ As Mirabeau suggested, Lafayette had abused his position as commander of the national guard to seize power for himself at the expense of the people. In a note of 1 June 1790, he complained that Lafayette controlled the ‘Parisian army’ and, through Paris, also a large part of the national guard of the kingdom. This allowed him to influence both the ministers and the legislature: ‘if ministers devoted to his ambition do not refuse him any means of influence, will he not be the most absolute, the most formidable dictator?’⁴⁹ On 2 October, Mirabeau repeated his accusations in the Assembly, warning his fellow-delegates that Lafayette had obtained a ‘new dictatorship’: being without rivals, he had at his disposal a ‘police force more active than that of the ancien régime’ itself.⁵⁰ As Mirabeau explained, Lafayette wanted to establish a ‘dictatorship under a king’, thereby reducing the people to the ‘most shameful form of slavery’.⁵¹ Lafayette seems to have contributed to these suspicions by describing himself vaguely as a kind of military dictator.⁵² More particularly, as Christian Bruschi suggests, he may have aspired to a dictatorship à la Montesquieu, which served to maintain the remnants of the aristocracy against the people.⁵³ However, from Mirabeau’s perspective, Lafayette’s dictatorship lacked the positive connotations of Montesquieu’s: rather than restoring the balance of powers, it constituted a threat to the people’s liberty.

Once the French revolutionaries had started using the word ‘dictatorship’ to accuse their political opponents of threatening the people’s liberty, speakers of the different factions sought to outdo each other with the accusation. The accusation of aspiring to a dictatorship soon turned against Mirabeau

himself. On 28 February 1791, after rejecting the proposal for a law on emigration as an attempt to 'establish a dictatorial inquisition', Mirabeau was himself accused by Goupil of a dictatorship. The way he had attempted to impose his will on his fellow-delegates was denounced by Goupil as a 'kind of dictatorship of M. de Mirabeau in this Assembly'.⁵⁴ Mirabeau defended himself against Goupil's accusations: 'All my life, I have fought against despotism, and I will [continue to] fight against it for the rest of my life'.⁵⁵ In this debate, the word 'dictatorship' was used as a synonym for despotism: it referred to illegitimate attempts to curb the influence of the people and their representatives in the Assembly. While Montesquieu and Rousseau had carefully distinguished the dictatorship from tyranny and despotism, Goupil and Mirabeau used these words interchangeably. Moreover, the accusation against Mirabeau had little to do with the military nature of the Roman dictatorship. Had Lafayette been accused of abusing his position as commander of the national guard to establish a military dictatorship, there was no such association in the case of Mirabeau: lacking military power, he was merely accused of imposing his personal will on the Assembly.

In the winter of 1791–1792, Robespierre gave several speeches at the Jacobin Club in which he protested against the Girondin proposal for a declaration of war against German princes who had supported the emigrants. Robespierre feared that the declaration of war would serve as a pretext for the Girondins and the court to propose all kinds of counterrevolutionary measures. This reminded him of the tactics of the Roman patricians, who had declared wars and suspended the laws, to quell the demands of the plebeians.⁵⁶ In particular, Robespierre feared that the Girondin proposal would lead to the establishment of a military dictatorship: 'It is during war that the executive power deploys its most formidable energy and that it exercises a sort of dictatorship that can only smother the emerging liberty'.⁵⁷ In this context, Robespierre referred to the decree on the state of siege of 8 July 1791.⁵⁸ Although this decree appeared to be primarily directed against foreign enemies, Robespierre feared it might also be deployed to suppress the revolutionary movement itself. In a state of siege, all constitutional powers of civil authorities were temporarily transferred to the military. The state of siege thus suspended the separation of powers and, implicitly, also the right of citizens to natural judges. As Robespierre observed, the decree on the state of siege 'silenced the laws that protected the rights of citizens'. He warned that in case of war, a 'new Caesar' among the generals (a reference to Lafayette) would abuse this decree to seize dictatorial power and turn it against the people.⁵⁹ In this context, Collot d'Herbois also referred to Lafayette as a 'new Sulla'.⁶⁰

From its opening session on 21 September 1792, the specter of a military dictatorship became a veritable obsession for the deputies of the National Convention.⁶¹ Now Robespierre was himself accused by Louvet and others of aspiring to a dictatorship, or a triumvirate together with Marat and Danton, with support of the Paris Commune. In response to these accusations, Robespierre pointed out that it was 'absurd' and a 'crime' to suggest that he had the ambition to seize power for himself, because he had always combatted such ambitions. He was seconded by Danton and Couthon, who demanded that anyone who dared to propose a dictatorship would be punished by death.⁶² In a key speech before the Convention, Robespierre defended himself against Louvet's accusations:

Of what am I accused? To have conspired to establish a dictatorship or a triumvirate or a tribunate. The opinion of my adversaries does not seem to be well-determined on that point: let us translate all those Roman ideas, a bit disparate, by the word 'supreme power', which my accuser uses elsewhere.⁶³

As Robespierre explained, to establish a dictatorship and to seize 'supreme power', it was necessary not only to overthrow the monarchy, but also to eliminate the legislature. By contrast, as Robespierre pointed out, he had been the first to demand the establishment of a National Convention after the monarchy had been abolished. Moreover, as a regular member of the Convention, he lacked the military and financial resources to establish a dictatorship: 'Should I tell you that to establish a dictatorship, it does not suffice to control Paris, but one has to subject the other 82 departments as well? Where are my funds? Where are my armies?'⁶⁴

However, while denying that he aspired to dictatorship, Robespierre, in the same speech, defended the extrajudicial arrest of suspected 'enemies of the people' as a necessary emergency measure. Instead of relating these arrests to the dictatorship, he invoked the example of Cicero's role in suppressing the Catilinarian conspiracy.⁶⁵ As we have seen, in 63 BC, Cicero had used his emergency powers under the *senatus consultum ultimum* to order the summary executions of Catilina's co-conspirators. As Robespierre explained, Cicero had initially been accused of having violated the laws, but when he had afterwards given account of his administration to the people, and sworn that he had used his power to save the fatherland, the people had applauded him. As Robespierre suggested, just like Cicero's summary executions of Catilina's co-conspirators, the extrajudicial arrests and executions ordered by the Commune in the wake of 10 August had been necessary to save the fatherland and they had been ratified *ex post facto* by the people. In times of crisis, it was allowed, and indeed sometimes necessary, to suspend the laws to protect the public safety: 'Is it then with the criminal code in one's hand that one should assess the salutary precautions that the public safety requires in times of crisis caused by the impotence of these very laws?'⁶⁶ Robespierre would return to the example of Cicero several times in his speeches to justify the transgression of the laws as a necessary emergency measure that was justified by the public safety and ratified by the people.⁶⁷

By rejecting the dictatorship as a model of emergency government and referring instead to Cicero's role in suppressing the Catilinarian conspiracy, Robespierre distanced himself from Rousseau, whom he otherwise admired.⁶⁸ As we have seen, Rousseau had considered the failure to appoint a dictator in response to the Catilinarian conspiracy a 'great mistake'.⁶⁹ In his view, 'a Dictator, with the unlimited authority the laws gave him, would easily have crushed the conspiracy, which was only smothered by a concatenation of happy contingencies'.⁷⁰ While a dictator temporarily 'silenced the laws', the consuls, under the *senatus consultum ultimum*, remained bound by the laws. Therefore, Rousseau concluded that Cicero had been 'justly called to account for the blood of Citizens shed in violation of the laws; a charge that could not have been levelled at a Dictator'.⁷¹ Implicitly rejecting Rousseau's conclusion, Robespierre praised Cicero for placing the public safety above all legalistic considerations, and suggested that his emergency measures had been ratified by the people. Rousseau's preference for the dictatorship did not suit Robespierre's political aims, as it served to protect the *existing* constitution, rather than combatting those forces that opposed revolutionary change. It also allowed Robespierre's political adversaries to accuse him of aspiring to personal rule and associate him with Sulla and Caesar who had abused their dictatorship as a pretext for seizing the state. By contrast, the alternative model of the *senatus consultum ultimum* did not support such allegations, allowing Robespierre to develop a concept of revolutionary legality that was based on the notion that in times of crisis the public safety justified acting contrary to the laws.⁷²

Saint-Just seems to have shared Robespierre's objections against the dictatorship as well as his preference for the alternative model of the *senatus consultum ultimum*. Like Robespierre, he frequently cited the example of Cicero to justify extralegal responses to counterrevolutionary conspiracies.⁷³ Only once, in a report on incarcerated persons, did he associate the revolutionary government with a 'dictatorship of justice': '[t]he development of the revolutionary government, which has established a dictatorship of justice, has declined'.⁷⁴ However, in this context, the phrase 'dictatorship of justice' seems to have served as a metaphor, rather than as a reference to a specific form of emergency government.⁷⁵ Elsewhere, Saint-Just used the word 'dictatorship' in a negative sense, when he justified the elimination of Hébert and Danton by the Committee of Public Safety: 'The aristocracy calls their destruction an act of dictatorship. Brutus and Cassius had been accused of tyranny for having immolated Caesar'.⁷⁶ Robespierre, too, in his final speech before the Convention on 26 July 1794, used the word 'dictatorship' in the pejorative sense, declaring it incompatible with revolutionary principles and suggesting that it had merely served to make him alone responsible for the decisions of the Committee of Public Safety:

the word ‘dictator’ has magical effects: it debases the revolutionary government, it destroys the republic, it makes national justice seem horrible, which it depicts as a useful instrument to a single man, who directs it at will. What terrible usage our enemies make of a word that in Rome only denoted a public function!⁷⁷

After Robespierre’s downfall on 9 Thermidor (27 July), the accusation that he had exercised a dictatorship was repeated by his political opponents to justify his execution, and, by those who had previously supported him, to make him alone responsible for the violent excesses of the Terror.⁷⁸

Among the Jacobins, Jean-Paul Marat seems to have been the only one who adopted the dictatorship as a positive model of emergency government.⁷⁹ The specific model he had in mind was that of Rousseau’s *popular* dictator, who acted as a temporary commissar of the people, to protect a constitution based on popular sovereignty. As early as 30 July 1790, two weeks after the Fête de la Fédération, Marat had argued that a brief dictatorship was necessary to punish ‘bad citizens’ that endangered the public safety:

I tell this with grief: the edifice of the constitution is flawed and will remain so as long as we do not finally take the only means suitable to contain in their duty the enemies of the revolution (...) the establishment of the charge of a dictator, elected by the people in times of crisis, whose authority would have lasted for only three days and whose task would have been to punish necessarily the bad citizens who have endangered the public safety.⁸⁰

As Marat explained, the dictator’s task was to eliminate the ‘enemies of the revolution’ and, more particularly, to purge the state apparatus, including the Assembly itself, from counterrevolutionary forces. Like Rousseau, Marat believed that in major crises, when the salvation of the fatherland was at stake, it did not suffice to increase the powers of the regular government. Instead, the people should ‘elect’ a dictator: as the dictator was no longer subject to the laws, he could punish ‘bad citizens’ without appeal and prevent traitors and conspirators from seizing power in the state. Adopting Rousseau’s model of a popular dictatorship, Marat considered it an important ‘charge’, exercised on behalf of the people, to punish those who had conspired against the people’s liberty.

On 22 June 1791, just after the King’s flight, Marat repeated his proposal to establish a dictatorship, associating it with a military tribunate:

A single means remains available for you to pull yourselves out of the precipice in which you have been driven by your unworthy leaders, it is to appoint straight away a military tribune, a supreme dictator to catch the principle known traitors.⁸¹

Marat demanded that the people appoint the citizen who had proved to be the ‘most enlightened, zealous and faithful’ and that they obey his decisions ‘religiously’.⁸² After the insurrection of 10 August, Marat distributed a pamphlet to the citizens of Paris, in which he proposed to install a triumvirate consisting of Danton, Robespierre and himself.⁸³ As he now suggested, the title – dictator, tribune or triumvir – was not important: what mattered was that one man, or a small group, would be temporarily invested with emergency power to eliminate, once and for all, the known traitors and conspirators that threatened the people’s liberty. However, to avoid abuses of such extraordinary power, Marat recommended that

its duration be limited to a few days, and that the citizen deemed worthy of exercising it, be fixed by his feet to a ball and chains, so that he will himself remain, at every instant, under the control of the people, in case he would come to forget his duties.⁸⁴

Like Rousseau, Marat realized that the dictatorship could easily be abused and turned against the people itself. To prevent this, it should be entrusted only to the worthiest person and limited to a very brief term. Moreover, the dictator should remain under the control of the people, who could revoke his dictatorship at will. These were the same limitations that Rousseau had emphasized in his *Social Contract*.⁸⁵

However, in spite of these limitations, Marat’s proposals found little support among his fellow-revolutionaries.⁸⁶ As he explained to the Convention on 25 September 1792,

I should do justice by declaring that my colleagues, in particular Robespierre, Danton, as well as all the others, have constantly rejected the idea, either of a tribunate, or a triumvirate, or a dictatorship. If anyone is guilty of having thrown these ideas to the public, it is me. I believe to be the first writer and perhaps the only one in France since the revolution, who has proposed a military tribune, a dictator, a triumvirate, as the only means to eliminate traitors and conspirators (...) I have thus more than once proposed to give an immediate authority to a man wise and strong, under the name of tribune of the people, dictator, etc.; the title does not matter.⁸⁷

As Marat realized, his proposal to establish a dictatorship had become politically counterproductive: it had allowed the Girondins to invoke the term to accuse Robespierre, Danton and himself of a conspiracy against the Convention. For their part, Danton and Robespierre had fiercely denied these accusations. Danton had protested against being associated with Marat's 'extravagant ideas', and proposed a law that anyone who proposed a dictatorship would be punished by death.⁸⁸ Robespierre, too, in his defense against Louvet, had distanced himself from Marat's 'extraordinary and violent proposals', claiming that they were an obstacle to the revolutionary cause, as they had 'revolted the friends of liberty as much as the partisans of the aristocracy'.⁸⁹ In April 1793, at the initiative of the Girondins, Marat was formally accused by the Convention of having attacked the sovereignty of the people by demanding a dictatorship. Marat's proposal for a popular dictatorship was considered incompatible with revolutionary principles of collective decision-making. However, Marat was eventually acquitted by the Revolutionary Tribunal, which, in its verdict, held that it could not 'impute criminal and counterrevolutionary intentions to the intrepid defender of the rights of the people'.⁹⁰

Interpreting the 'Jacobin dictatorship'

As we have seen, with the exception of Marat, the Jacobins rejected the dictatorship: they invoked it as a polemical term to denounce their political opponents, rather than embracing it as a positive model of constitutional emergency government. However, in spite of the fact that the Jacobins themselves rejected the term, the Jacobin government has often been characterized as a dictatorship by modern scholars.⁹¹ Thus, in his influential monograph on *Dictatorship*, Carl Schmitt argued that, after the constitution had been suspended on 10 October 1793, the Jacobins had effectively exercised a 'sovereign dictatorship'. As Schmitt explained, while the 'commissarial dictatorships' of Montesquieu and Rousseau had served to protect the *existing* constitution, the aim of 'sovereign dictatorship' was to overcome the existing order and make possible a *new* constitution: it

does not *suspend* an existing constitution through a law based on the constitution – a constitutional law; rather, it seeks to create a situation in which a constitution is made possible that it regards as the true one. Therefore [sovereign] dictatorship does not appeal to an existing constitution, but to one that is still to come.⁹²

According to Schmitt, the Jacobins had effectively established a sovereign dictatorship in the fall of 1793: they had suspended the existing constitution and seized dictatorial power to prepare the way for a new constitution.⁹³ Schmitt identified not the Committee of Public Safety but the Convention itself as the bearer of sovereign dictatorship.⁹⁴ As he explained, 'however powerful the Committee of Public Safety became over the years, legally there was no doubt that it was only active as Committee of the Convention, and on its mandate'.⁹⁵ Moreover, for Schmitt, the downfall of Robespierre on 9 Thermidor demonstrated that, in the long run, the Convention had remained the 'decisive institution'.⁹⁶

To support his claim that the Convention had exercised a sovereign dictatorship, Schmitt referred to a speech held by Barère at the Convention on 5 April 1793. In his speech, Barère had justified the establishment of the Committee of Public Safety against critics who claimed that it possessed dictatorial power. As Barère explained, the Committee did not possess dictatorial power because it remained accountable for its decisions to the Convention and it lacked the power to legislate. In his speech, Barère suggested that the Convention should itself be considered the bearer of dictatorship: 'One does not stop talking about dictatorship! I know only one that would be legitimate, that

would be necessary, and that the nation would have wanted: that is the National Convention'.⁹⁷ As Barère explained, through the Convention, the nation exercised a dictatorship over itself, and this was the only kind of dictatorship that a free and enlightened people could support. Referring to this speech, Schmitt observed that '[i]t is striking that Barère, in his speech, calls the National Convention the bearer of dictatorship, because, in the eighteenth-century view of dictatorship the dictator could silence the laws, but he could not issue laws himself'.⁹⁸ As Schmitt pointed out, Barère's conception of a dictatorship of the Convention differed from the eighteenth-century view, as it combined dictatorial and legislative powers, that is, the power to suspend the laws with the power to make new laws. According to Schmitt, this combination of dictatorial and legislative powers was the defining characteristic of sovereign dictatorship.⁹⁹

As we have seen, Rousseau had rejected the combination of dictatorial and legislative powers: in his view, a dictator could do anything, except make laws. Schmitt therefore invoked another source to support his claim regarding the Convention's 'sovereign dictatorship': 'that what was later called the Jacobin dictatorship of the National Convention was already anticipated by Mably'.¹⁰⁰ In his *Rights and Duties of the Citizen* (written in 1758 but published only in 1788), Mably had briefly discussed the dictatorship in a chapter on how republics could preserve their government after recovering their liberty.¹⁰¹ As the history of Rome showed, even wisely constituted governments were sometimes exposed to sudden, unforeseen and urgent events. If the ordinary magistrates proved unable to prevent the 'progress of evil', then recourse should be had to an 'extraordinary magistrate, whose time will be short and whose power is considerable. The imagination of citizens will need then to be struck in a new way, and history has shown how useful a dictatorship was to the Romans'.¹⁰² For Mably, the dictatorship was not primarily directed against external enemies, but against those who corrupted the state from within, magistrates who were led by 'their ambition and their avarice' and citizens who were driven by 'their passions'.¹⁰³ In these passages, Schmitt recognized a 'new conception of dictatorship' as an 'absolute power overruling all existing authorities'. As Schmitt suggested, Mably's conception had paved the way for the 'sovereign dictatorship' of the Convention:

If one combines Mably's concept of dictatorship with his aforementioned statement that during a revolution the representatives of the people must put themselves in charge of the executive, one arrives at the dictatorship that the National Convention exercised in the name of the people. This is no longer a commissary dictatorship of reformation, but a sovereign dictatorship of revolution.¹⁰⁴

However, in his chapter, Mably had not combined the dictatorship with any statement that the representatives of the people had to put themselves in charge of the executive. Instead, he had warned against the risk of crisis government being turned into permanent dictatorship.¹⁰⁵ Quoting Cicero's formula that 'the safety of the people should be the highest law', he explained that in times of war, it was sometimes necessary to have recourse to extraordinary means, even to means contrary to the constitution. According to Mably, having recourse to extraordinary means was not without risks: if the war was won, the people would become 'inebriated with joy' and lose the 'calm [*sang froid*]' required to perceive the shock applied to the 'whole political edifice'.¹⁰⁶ Therefore, Mably proposed a 'fundamental law' prescribing that at the end of each war, the legislative should 'repair the government' and restore it to its proper constitutional functions. In doing so, the legislative would ensure 'that the extraordinary means, if one was forced to employ them, would not be turned into ordinary means of the administration'.¹⁰⁷ Mably even suggested that the Romans would not have fallen prey to some ambitious men, or would at least have postponed the establishment of tyranny¹⁰⁸, had there been a fundamental law ordering them to examine, at the end of each war, 'whether the principles of their liberty had not suffered from any alteration'.¹⁰⁹

Hence, instead of paving the way for a sovereign dictatorship, as Schmitt had suggested, Mably conceived of the dictatorship as a time-limited authority to protect the republic without changing its constitution. The Jacobins may have regarded Mably's theory of crisis government as a practical alternative to Rousseau's theory. Thus, Michael Sonenscher observes that after the fall of the monarchy, Mably's theory was applied 'to fill the empty space left by Rousseau's own conception of

revolution’.¹¹⁰ It centred on the idea of a *de facto* democracy as the default system of government when a new constitutionally specified system of government had yet to be established.¹¹¹ However, there is no evidence that Mably’s brief remarks about the dictatorship inspired the Jacobins to establish a ‘sovereign dictatorship’ of the Convention. As Wilfried Nippel has pointed out, historical sources do not support Schmitt’s claim that the Convention exercised a ‘sovereign dictatorship’, and the term was not used by Barère himself.¹¹² The aim of Barère’s speech was to *deny* that the Jacobins exercised a dictatorship; hence, it testified to the *pejorative* use of the term, rather than a positive understanding of the dictatorship. If Barère had suggested that the only legitimate form of dictatorship was exercised by a free and enlightened people over itself, it was meant as metaphorical speech, rather than as concrete proposal regarding the institutional form of emergency government.

Moreover, Barère’s call for a dictatorship of the Convention ran counter to the general distrust of dictatorship among his fellow-deputies.¹¹³ Thus, as we have seen, apart from Marat, the Jacobins did not justify their emergency measures in terms of dictatorship, but they referred instead to the example of Cicero’s suppression of the Catilinarian conspiracy. More particularly, they adopted Cicero’s formula that in times of crisis, the *salus populi* became the highest law. As we have seen, Mably had also invoked Cicero’s formula to justify the use of extraordinary means in times of crisis. However, in Mably’s view, the extraordinary means should not be turned into ordinary means of the administration, and therefore, the government had to be ‘repaired’ once the crisis had passed. By contrast, the Jacobins invoked the term *salus populi* – or its French equivalent *salut public* – to justify, among other things, the September massacres, the execution of the king, the establishment of the Convention, the revolutionary tribunals, and the Committee of Public Safety itself, which carried the words *salut public* in its name.¹¹⁴ Hence, instead of adopting the model of a ‘sovereign dictatorship’, as Schmitt had claimed, the Jacobins rejected the dictatorship and adopted the Ciceronian example as an alternative model of emergency government.

Conclusion

In this article, I set out to explain why the Roman dictatorship, which had served as a positive model of constitutional emergency government until the French Revolution, acquired a negative meaning during the Revolution itself. Both Montesquieu and Rousseau had regarded the dictatorship as a legal and legitimate institution necessary to protect the republic in times of crisis. They believed that the dictatorship had been essential for the survival of the Roman republic, and they suggested that modern constitutions should provide for similar forms of emergency government. However, while Montesquieu believed that the dictatorship served to maintain the ‘remnants of the aristocracy against the people’, Rousseau regarded the dictator as a ‘commissar’ of the people, whose task was to defend a constitution based on popular sovereignty. Had Montesquieu claimed that the dictatorship ‘temporarily removed the republic from the hands of the people’, Rousseau suggested that, throughout the dictatorship, the people maintained the highest authority in the state. For that reason, Rousseau emphasized that the dictator could merely silence the laws, but not make laws himself. However, in spite of these differences, Montesquieu and Rousseau both regarded the Roman dictatorship as a temporally and constitutionally limited authority. For that reason, they distinguished the dictatorship from tyranny: unlike tyrants, dictators were appointed for a limited term and their authority did not extend beyond the cause for which they had been appointed. As long as dictators respected the constitutional limitations to their power, the dictatorship could not degenerate into tyranny.

While Montesquieu and Rousseau had advocated the dictatorship as a positive model of constitutional emergency government, it was rejected by the French revolutionaries. As the delegates of the National Assembly started accusing their political opponents of authoritarian rule, they began using the words ‘dictatorship’ and ‘tyranny’ interchangeably. As I have explained above, it was the early identification with Montesquieu’s *aristocratic* dictatorship, which caused the delegates of the Assembly to regard it as a threat to popular sovereignty. Lafayette was the first to be accused of aspiring to a dictatorship at the expense of the people and their legitimate representatives in the Assembly. Soon

others were accused: thus, Mirabeau, Robespierre and Danton were accused of being dictators, and all of them fiercely denied these accusations. The exception was Marat, who proposed to establish a brief dictatorship to punish ‘bad citizens’ and purge the state from counterrevolutionary forces. As I have explained, the model Marat had in mind was that of Rousseau’s *popular* dictator, who silenced the laws to protect a constitution based on popular sovereignty. However, Marat’s proposal found little support with his fellow-Jacobins, as they had allowed the Girondins to accuse them of a conspiracy against the Convention. Danton and Robespierre, in particular, were forced to defend themselves against these accusations: they distanced themselves from Marat’s proposal and emphasized that a dictatorship was incompatible with revolutionary principles of collective decision-making. This caused them to reject the dictatorship altogether, and to propose alternative models of emergency government.

Nevertheless, in spite of the fact that they themselves rejected the dictatorship, the Jacobin government has often been characterized as a dictatorship by modern scholars. Thus, in his influential study on dictatorship, Schmitt claimed that the Jacobins had embraced the model of a ‘sovereign dictatorship’ to prepare the way for a new constitution. Schmitt referred to a speech of Barère, who had identified the Convention as a bearer of dictatorship. As Schmitt explained, Barère’s conception of a ‘sovereign dictatorship’ of the Convention differed from the traditional conception of ‘commissarial dictatorship’ in combining dictatorial with legislative power. However, as I have explained, Barère did not use the term ‘sovereign dictatorship’ in his speech, and his call for a dictatorship of the Convention ran counter to the general distrust of dictatorship among his fellow-Jacobins. Indeed, the very purpose of his speech had been to deny accusations that the Committee of Public Safety had exercised a dictatorship. It thus testified to a negative, not a positive, understanding of the dictatorship. Thus, with the sole exception of Marat, the Jacobins rejected the dictatorship and they referred instead to Cicero’s suppression of the Catilinarian conspiracy as an alternative model of emergency government. Consequently, Robespierre praised Cicero for placing the ‘public safety [*salut public*’] above all legalistic considerations, and he suggested that his emergency measures had been ratified by the people. Instead of advocating a ‘sovereign dictatorship’, as Schmitt had claimed, the Jacobins rejected the dictatorship and adopted the Ciceronian example as an alternative model of emergency government.

Notes

1. According to a modern definition of dictatorship that can be found in the *Encyclopedia Britannica*: <https://www.britannica.com/topic/dictatorship> (consulted on 25 February 2020).
2. On this tradition of ‘constitutional dictatorship’ see, e.g. Rossiter, *Constitutional Dictatorship*; Levinson and Balkin, ‘Constitutional Dictatorship’, 1790–1866; Nippel, ‘Saving the Constitution’, 29–49.
3. Bobbio, *Democracy and Dictatorship*, 160. For a conceptual history of dictatorship in relation to tyranny and despotism, see Arato, ‘Conceptual History of Dictatorship (and its Rivals)’, 208–80.
4. Nolte, ‘Diktatur’, 900.
5. Vetter, ‘Dictature’; Bruschi, ‘Dictature’, 210; Nippel, ‘Carl Schmitts’, 121.
6. Soboul, ‘Some Problems’, 59.
7. Bobbio, *Democracy and Dictatorship*, 159–60.
8. Schmitt, *Die Diktatur*, 133–4. Translated as Schmitt, *Dictatorship*, 118–19 (trans. modified). Schmitt’s *Diktatur* is hereafter cited with page numbers of the German original preceding those of the English translation.
9. *Ibid.*, 145/127.
10. Montesquieu, *De L’esprit des lois*, book 2, chapter 3 (245–6). Translated as Montesquieu, *The Spirit of the Laws*, 2, 3 (16). Montesquieu’s *De L’esprit des lois* is hereafter cited with page numbers of the French original preceding those of the English translation.
11. *Ibid.*, 2, 3 (245/16).
12. Bruschi, ‘Dictature’, 205.
13. Montesquieu, ‘Considérations sur les causes de la grandeur des Romains et de leur décadence’, chapter 8 (111–116). Translated as Montesquieu, *Considerations on the Causes of the Greatness of the Romans and their Decline*, 8 (83–9). Montesquieu’s ‘Considérations’ are hereafter cited with page numbers of the French original preceding those of the English translation.
14. *Ibid.*, 112/84.

15. Ibid., 113/88, n. 6. Montesquieu's observation that dictators were 'elected [*élus*]' is historically inaccurate: in Rome, dictators were appointed, not elected. They were appointed by the consuls after the Senate had called for the establishment of a dictatorship. Kunkel and Wittmann, *Staatsordnung*, 668.
16. The laws initiated by Publilius included one that the decisions of the plebs should be binding on all Roman citizens; another, that the Senate should ratify the measures proposed at the *comitia centuriata*; and a third, that at least one censor should be chosen from the plebs. Livy, *Ab urbe condita*, 8, 12, 14–16.
17. Ibid., 8, 12, 17. In her monograph on the Roman dictatorship, Mariane Hartfield observes that Publilius's dictatorship is 'problematic in many ways'. She emphasizes the military character of his dictatorship (arguing that the dictator was probably appointed to counter the rebelling Latins), but she also suggests that it may have served as a 'smoke-screen to divert attention away from the plebeian agitators and toward a common enemy'. Although Hartfield mentions the laws of Publilius only briefly, she concludes that '[a]ny scholar who accepts the authenticity of this dictatorship must attempt to reconcile the dictator's intended military action with his non-military but legislative activities'. Hartfield, *Roman Dictatorship*, 401–4.
18. Montesquieu, *Considerations*, 123/101.
19. When he was appointed dictator, Sulla initiated a law on the proscription of 'enemies of the republic', the *Lex Cornelia de proscriptione*. The main provision of this law was a clause granting legal immunity to anyone who killed a proscribed person. A reconstruction of Sulla's law can be found in Crawford, *Roman Statutes*, vol. 2, 747. On Sulla's proscriptions see, e.g. Keaveney, *Sulla*, 148–68 and Hinard, *Proscriptions*, 67–100. On the relation between Sulla's dictatorship and the proscriptions see De Wilde, 'The Dictatorship and the Fall of the Roman Republic', 16–19.
20. Montesquieu, *Considerations*, 124/102.
21. Ibid., 124/102.
22. Ibid., 126/104.
23. Montesquieu, *Spirit of the Laws*, 2, 3 (244–7/15–17).
24. Ibid., 2, 3 (245/16).
25. Ibid., 2, 3 (245–6/16). Montesquieu's understanding of the dictatorship as being directed against the people was popularized by an article in the *Encyclopédie*, written by Louis de Jaucourt. As Jaucourt explained: 'this magistracy had to be exercised with splendor, because it was about intimidating the people, the mobs, and the enemies'. Jaucourt, 'Dictateur', 957.
26. Montesquieu, *Spirit of the Laws*, 2, 3 (245–6/16).
27. Machiavelli, *Discourses on Livy*, I, 34, 3 (74).
28. Ibid., I, 34, 1 (75).
29. Montesquieu, *Spirit of the Laws*, 2, 3 (245/16) and 11, 16 (419/177).
30. The analysis of Rousseau's theory of dictatorship presented in this section is in part based on my 'Silencing the Laws', 1107–24.
31. Rousseau, *Du contrat social ou principes du droit politique*, book IV, chapter 6 (455–8). Translated as Rousseau, *Of the Social Contract or Principles of Political Right*, IV, 6 (138–40). Rousseau's *Social Contract* is hereafter cited with page numbers of the French original preceding those of the English translation.
32. Ibid., IV, 6, 8 (457/139).
33. Ibid., IV, 6, 3 (455–6/138).
34. Ibid., IV, 6, 11 (458/140).
35. Ibid., IV, 6, 5 (456/139).
36. Ibid., IV, 6, 4 (456/138).
37. Montesquieu, *Spirit of the Laws*, 11, 16 (419/177).
38. Ibid., 11, 16 (419/177).
39. In this respect, their conceptions of dictatorship differed from that of Grotius, who had emphasized that the dictator himself possessed sovereign authority. Grotius, *De jure belli ac pacis*, I, 3, 12–13. On the relationship between dictatorship and sovereignty see Tuck, *The Sleeping Sovereign*, 70–2.
40. Rousseau, *Social Contract*, IV, 6, 4 (456/138–9).
41. Ibid., IV, 6, 10 (457/140).
42. Ibid., IV, 6, 8 (457/139). Cf. Montesquieu, *Considerations*, 117/91.
43. Rousseau, *Social Contract*, IV, 6, 8 (457/139).
44. Ibid., IV, 6, 11 (458/140).
45. Nolte, 'Diktatur', 907.
46. Bruschi, 'Dictature', 210 and 217.
47. Nolte, 'Diktatur', 907.
48. Vetter, 'Dictature', 3; Nippel, 'Carl Schmitts', 122.
49. Note of Mirabeau, 1 June 1790, in Mirabeau, *Notes à la cour*, 40. Also quoted in Vetter, 'Dictature', 2–3.
50. Mirabeau to the Assembly, 2 October 1790, in *Archives Parlementaires*, vol. 19, 402. The *Archives Parlementaires* are hereafter cited as AP.
51. Note of Mirabeau, 24 October 1790, in Mirabeau, *Notes à la cour*, 138. Cf. Vetter, 'Dictature', 3.

52. In private conversations, Lafayette compared himself to George Washington and defined his authority as a 'Kind of Dictatorship such as Generalissimo'. His membership of the 'Society of Cincinnati' also contributed to suspicions that he aspired to a military dictatorship: in 458 BC, Cincinnatus, a former Roman statesman who had retired to his farm, had been made dictator to save Rome from foreign invasion. He had defeated the enemy in a mere sixteen days, after which he had laid down his dictatorship and returned to his plough (Livy, *Ab urbe condita*, 3, 26–8). Invoking the example of Cincinnatus, Lafayette claimed that, once the king and assembly had agreed on a solution for the country's ills, he planned to retire to his own vine and fig tree, as had the American Cincinnatus (a reference to George Washington). Gottschalk and Maddox, *Lafayette*, 104–5; Nippel, *Ancient and Modern Democracy*, 167, n. 102; Nippel, 'Carl Schmitts', 121–2, n. 68.
53. Bruschi, 'Dictature', 207.
54. Mirabeau to the Assembly, 28 February 1791, in AP, vol. 23, 574.
55. Ibid., 574. Cf. Vetter, 'Dictature', 3–4.
56. Nippel, *Ancient and Modern Democracy*, 167.
57. Speech of Robespierre at the Jacobin Club of 18 December 1791. Robespierre, *Oeuvres*, vol. 8, 48.
58. *Décret du 8 juillet 1791 concernant la conservation et le classement des places de guerre et postes militaires*, in Duvergier, *Décrets*, 82–98.
59. Speech of Robespierre at the Jacobin Club of 18 December 1791, in Robespierre, *Oeuvres*, vol. 8, 49. See also the speech of Robespierre of 2 February 1792, in *ibid.*, 88. Robespierre's fears were perhaps not unfounded: almost a century later, the constitutional lawyer Théodore Reinach would conclude that the decree on the state of siege had contained the 'seeds of the entire mechanism of modern dictatorship'. Reinach, *L'état du siège*, 92–3.
60. Speech of Collot-d'Herbois at the Jacobin Club of 8 July 1792, quoted in Robespierre, *Oeuvres*, vol. 4, 274.
61. Vetter, 'Dictature', 5.
62. AP, vol. 52, 131 (25 September 1792).
63. Speech of Robespierre at the Convention of 5 November 1792, in Robespierre, *Oeuvres*, vol. 9, 79.
64. Ibid., 80.
65. Cicero's role in suppressing the Catilinarian conspiracy was a popular theme during the French Revolution: it was invoked in public speeches, pamphlets, and plays. Kaiser, 'Catilina's Revenge', 189–216.
66. Speech of Robespierre at the Convention of 5 November 1792, in Robespierre, *Oeuvres*, vol. 9, 87–8.
67. See, e.g. Robespierre to the Convention, 5 February 1794, in Robespierre, *Oeuvres*, vol. 10, 358–9.
68. Bruschi, 'Dictature', 216; Nippel, 'Carl Schmitts', 126.
69. Rousseau, *Social Contract*, IV, 6, 9 (457/139–40).
70. Ibid., IV, 6, 9 (457/140).
71. Ibid., IV, 6, 10 (457/140).
72. Bruschi, 'Dictature', 216.
73. See, e.g. Saint-Just, *Oeuvres*, 483, 704 and 1032.
74. Ibid., 667.
75. Edelstein, *Terror of Natural Right*, 225, n. 31 and Bruschi, 'Dictature', 216.
76. Saint-Just, *Oeuvres complètes*, 816. It is sometimes suggested in the literature that in a joint session of the Committees for Public Safety and for Security in June 1794, Saint-Just had proposed that Robespierre should be made dictator, a proposal that was accepted by Robespierre, but rejected by a large majority. However, as no notes were taken of this session, it remains uncertain whether Saint-Just actually proposed a dictatorship. It cannot be excluded that the story of Saint-Just's proposal was a later invention, which served to exclude the other members of the Committees from sharing responsibility for Robespierre's decisions. The sources that are invoked to support the view that Saint-Just proposed a dictatorship – the notes of Baudot and the *Mémoires* of Barère – do not seem sufficiently reliable on this point: for instance, Baudot suggests that Saint-Just and Robespierre acted on instructions of the English, who believed that a dictatorship could pave the way for a return of the Bourbons. Marc-Antoine Baudot, 'Notes historiques', 173–4 and Barère, *Mémoires*, vol. 1, 91–101. For the view that Saint-Just proposed a dictatorship see, e.g. Lyons, 'The 9 Thermidor', 127 and Nippel, *Ancient and Modern Democracy*, 168, n. 116.
77. Robespierre to the Convention, 26 July 1794, in Robespierre, *Oeuvres*, vol. 10, 577.
78. Robespierre was denounced as a new 'Caesar' and a 'modern Catilina'. Ibid., 590–591.
79. Vetter, 'Dictature', 5; Bruschi, 'Dictature', 210; Nippel, 'Carl Schmitts', 125; Cobban, *Dictatorship*, 61.
80. Marat, *Oeuvres*, 139.
81. *L'amie du peuple*, 22 June 1791, in *ibid.*, 170.
82. Ibid., 170.
83. Bruschi, 'Dictature', 213.
84. *L'amie du peuple*, 28 and 29 September 1792, in Marat, *Oeuvres*, 240.
85. Cf. Rousseau, *Social Contract*, IV, 6, 3 (456/138) and 11 (458/140). Rousseau had also argued that in the early days of the Roman Republic, the prevailing 'morals' had guarantees that dictators did not overstay their term (*ibid.*, IV, 6, 6 (456/139)). In a similar vein, Marat believed that 'only the virtue of the dictator can (...) ensure that the man invested with this terrible power will abdicate from it at a fixed term'. Gueniffey, *Politique de la Terreur*, 75–6.

86. According to Soboul, the 'desire to keep revolutionary power in the hands of the people probably explains the lack of success met by Marat's repeated proposals for the nomination of a tribune of the people or a dictator'. As Soboul explains, especially among popular militants, there was a strong feeling that revolutionary power had to be concentrated at the bottom, that is, in the assemblies, and that it could not be delegated to a dictator without alienating the people's sovereignty. To illustrate this sentiment, Soboul refers to a meeting of the general assembly of Panthéon-Français on 13 March 1793: when a citizen declared 'we are threatened with a dictator', the whole assembly rose and swore to put a dagger into 'any dictator, protector, tribune, triumvir, moderator, or other, whatsoever his name may be, who would attempt to destroy the sovereignty of the people'. Soboul, 'Some Problems', 59–60.
87. Marat to the Convention, 25 September 1792, in AP, vol. 52, 138. Quoted in Vetter, 'Dictature', 5.
88. Danton to the Convention, 25 September 1792, in AP, vol. 52, 131.
89. Robespierre to the Convention, 5 November 1792, in *Oeuvres*, vol. 9, 80.
90. Quoted in Gottschalk, *Marat*, 160. While rejecting his proposal for a dictatorship, Danton had also defended Marat, explaining that he had been driven by sincere patriotic intentions and the 'vexations which this citizen ha[d] experienced'. Danton to the Convention, 25 September 1792, in AP, vol. 52, 131.
91. See, e.g. Cobban, *Dictatorship*, 67; Soboul, 'Some Problems', 64; Bouloiseau, *Jacobin Republic*, 229. The view that the Jacobins exercised a dictatorship is nuanced by Gueniffey, who observes that the power of the Committee of Public Safety remained provisional and divided: certain competences escaped its control, or were shared with the other committees. Moreover, according to Gueniffey, 'if there [was], in effect, a dictatorship, it [was] a dictatorship with parliamentary legitimation', the continuation of which remained dependent on a majority in the Convention. Gueniffey, *Politique de la Terreur*, 270.
92. Schmitt, *Dictatorship*, 134/ 119.
93. *Ibid.*, 145/ 127. Referring to Schmitt's distinction between commissarial and sovereign dictatorship, Norberto Bobbio defends a similar interpretation: 'The French National Convention, which decided on 10 October 1793 to suspend the Constitution of the same year (never to be restored), and which established a provisional revolutionary government until the arrival of peace is an exemplary case of the second type of dictatorship'. Bobbio, *Democracy and Dictatorship*, 162–3.
94. Schmitt, *Dictatorship*, 148/130.
95. *Ibid.*, 148/130.
96. *Ibid.*, 149/130.
97. Barère to the Convention, 5 April 1793, in *Mémoires*, vol. 2, 324.
98. Schmitt, *Dictatorship*, 148/129–30.
99. *Ibid.*, 126/110–11: 'When a relationship emerges that makes it possible to give the legislator the power of a dictator, to create a dictatorial legislator and constitutional dictator, then the commissary dictatorship has become a sovereign dictatorship'.
100. *Ibid.*, 113/96.
101. Mably, *Des droits et des devoirs du citoyen*, 213–23.
102. *Ibid.*, 218.
103. *Ibid.*, 215.
104. Schmitt, *Dictatorship*, 114/96.
105. Sonenscher, *Sans-Culottes*, 398.
106. Mably, *Des droits et des devoirs du citoyen*, 219–20.
107. *Ibid.*, 220. In his book, Mably gave a contemporary example of extraordinary means being turned into ordinary means of the administration: he criticized the government of the Dutch United Provinces for having transformed 'a dictatorship that should be limited to short and difficult times into an ordinary magistracy'. Mably referred to the so-called 'stadhouder', who had led the Dutch armies in their revolt against Spain, and who had remained the supreme military commander after the Dutch had become independent. According to Mably, the stadhouder was a 'lion cub kept to its chain, but he [could] break out and become a lion. Let us speak without metaphor: everything invites this prince to ruin the liberty of his fatherland'. *Ibid.*, 121.
108. In his *Observations on the Romans* (1751), Mably suggested that Caesar had established a 'tyranny' by having himself appointed 'perpetual dictator': 'Under the title of perpetual Dictator, this General became an absolute Monarch, and the Romans did not have other means than assassination to punish him for his tyranny and to avenge themselves'. By contrast, Mably praised Sulla for having 'the audacity to abdicate from the sovereign power he had held under the title of perpetual Dictator'. Mably, *Observations sur les Romains*, 96 (Sulla) and 117 (Caesar).
109. Mably, *Des droits et des devoirs du citoyen*, 221.
110. Sonenscher, *Sans-Culottes*, 403.
111. See, e.g. Mably, *Des droits et des devoirs du citoyen*, 40–3.
112. Nippel, 'Carl Schmitts', 120.
113. *Ibid.*, 121.
114. *Ibid.*, 127.

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