



Hegemonic sovereignty: Carl Schmitt, Antonio Gramsci and the constituent prince

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ABSTRACT *This article argues that Schmitt's concept of sovereignty and Gramsci's notion of hegemony represent two distinct variations on a single theme, namely the idea of the political as the original instituting moment of society. Both Schmitt and Gramsci focused on the sources, conditions, content, and scope of the originating power of a collective will. While the former located it in the constituent power of the sovereign people, the latter placed it in the popular–national will of the modern hegemon. Both thinkers explored the complex and perplexing relationship between radical founding acts and modern democratic politics in a secular age, that is of democratic legitimacy, where with the entrance of the masses into the political sphere, the references to ultimate foundations of authority and to an extra-social source of political power had begun to appear more dubious than ever. The last section of the article develops a notion of hegemonic sovereignty defined as an expansive and positing democratic constituent prince, aiming, through founding, total decisions, at the overall, radical, explicit, and lucid institution of society. The article briefly shows how the concept of hegemonic sovereignty can solve some problems pertaining to Schmitt's notion of sovereignty and to Gramsci's theory of hegemony. In so doing, the article seeks to establish the mutually reinforcing qualities of the two concepts.*

We may thus conclude that the first prerogative (*marque*) of a *sovereign prince* is to give law to all in general and to each in particular.

Jean Bodin¹

And no matter how far, in success and failure, events and circumstances were to drive them apart, the Americans could still have agreed with Robespierre or the ultimate aim of revolution, the constitution of freedom, and on the actual business of revolutionary government, the foundation of a republic.

Hannah Arendt²

I am autonomous only if I am the origin of what will be and I know myself as such.

Cornelius Castoriadis³

What might be the intellectual affinities between Antonio Gramsci and Carl Schmitt? Is it possible to find a common ground for comparing two thinkers with such contrasting biographies, political values, and commitments? How can we legitimately bring together Gramsci, once the General Secretary of the Italian Communist Party who died after being imprisoned in the fascist jails of Mussolini, and Schmitt, member of the National-Socialist party and the notorious 'Crown Jurist' of the Third Reich, who during the period of his dangerous flirting with fascism believed that Bolshevism represented a mortal danger to European civilization? Even if we leave aside their divergent political beliefs, are we not still running the risk of underplaying another significant difference, that of their worldviews? Schmitt, after all, was a conservative, authoritarian statist, deeply concerned with matters of authority, discipline and hierarchy, who at one time professed the need for an active political role on the part of the Catholic Church against the rampant materialism of liberalism and Marxism. Gramsci, meanwhile, was a fervent anti-Catholic, who revolted against the political and symbolic influence of the Vatican, and who, with his theory of factory councils and worker self-management, sought to subvert the instituted relations of social hierarchy and cultural subordination and to elaborate a theory of a stateless autonomous society. Finally, how can we neglect the fact that whereas Gramsci affirmed modernity and its emancipatory content, Schmitt belonged to a circle of 'reactionary modernists', which Jürgen Habermas has succinctly dubbed the 'young conservatives'?⁴

There are so many obvious and substantial differences between Gramsci and Schmitt that it is not surprising that as of today there is no systematic comparison of their thought. And, yet, there are certain interesting similarities between the two thinkers that should not be totally overlooked, similarities that go well beyond a simple contrast between the two most famous heirs of Hobbes and Machiavelli. For example, they shared an understanding of democracy as homogeneity and as the identity between the rulers and the ruled; an awareness that a minimal definition of democracy presupposes a collective will and a political unity; and a comparable 'polemical' view of the political, which involves, in certain extreme cases, the elimination, 'liquidation', Gramsci would say, of the enemy. One can also find an analogous fascination with the concrete situation and the conjunctural, and a penetrating critical attitude toward liberalism and parliamentarism.⁵ Most importantly, the work of both Gramsci and Schmitt is characterized by a steady and continuous effort to salvage the concept of the political from the oblivion to which orthodox Marxism and economic or moral liberalism had relegated it. Both thinkers strove to re-establish its pivotal position as a distinct realm of human experience and as an independent domain of investigation with its own internal laws. Further, from a broader historical point of view, notwithstanding the different intellectual and cultural contexts in which they worked, both were directly and actively involved in the political events of their days, facing the same historical predicaments of a rapidly changing European society: the crisis of classical, nineteenth century liberalism, the rise of fascism, the solidification of the Soviet republic, the onslaught of the Great Depression, and the ascent of a new form of social state. Finally, both also

confronted similar theoretical questions regarding the tense and intricate relationship between will and reason, legality and legitimacy, the ethical and the political, means and ends, pluralism and identity, state and society.

It is, however, their thoughts on foundations and the creation of new political and social orders that I will discuss. I want to argue that Schmitt's concept of *sovereignty* and Gramsci's notion of *hegemony* represent two distinct variations on a single theme, namely the idea of the political as the original instituting moment of society. Both Schmitt and Gramsci focused on the modern sources, conditions, content, and scope of this originating power of a collective will, which the former located in the constituent power of the sovereign people and the latter in the popular–national will of the modern hegemon. Further, both explored the complex and perplexing relationship between radical founding acts and modern democratic politics in a secular age, where with the entrance of the masses into the political sphere, the references to ultimate foundations of authority and to an extra-social source of political power had begun to appear more dubious than ever.

I. Carl Schmitt: sovereignty

The 'Sovereign', Schmitt proclaimed, in one of his most famous definitions, 'is he who decides about the exception'.⁶ In this sentence, the constitutive mark of sovereignty seems to be the discretionary power of an unlimited supreme authority that is above and outside the restraints of the existing legal order. The sovereign's will can break the normal juridical constraints and transgress the established constitutional structures and normative regulations. This groundless, arbitrary, and unbounded political authority emerges from its latent semi-existence during the single moment of the exception to boldly reassert itself through a pure, final decision against all juridical restrictions imposed by the rule of law and the separation of powers. Against the formalistic, universal, general, and abstract qualities of legal positivism and the rule of law, which aspires to replace the central authority and the rule of men with the impersonal function of a set of procedural mechanisms and legal determinations in order to impose effective limits on political power, Schmitt sought to re-define sovereignty as the contingent, unpredictable subjective moment of the concrete manifestation of an undetermined will, which in the form of a decision, and like a miracle, is able to overstep the legal and institutional limits.⁷

Consequently, the distinguishing trait of sovereignty appears to be its absolute, unlimited, and undivided power that defies all rules, regulations, and institutional boundaries. This unbounded primordial power of the sovereign is a constant reminder of the intricate relationship between politics, will, and force. According to this view, Schmitt regarded the doctrines of the rule of law and the separation of powers as among the most ambitious attempts to carry out this project of depoliticization and neutralization, that is, to fragment and dissolve sovereign power altogether by excluding the element of personal arbitrary, extra-legal will from the realm of the political.⁸ Liberalism exemplifies this project as it strives to reduce politics to a predetermined and petrified system of abstract, rational

norms. Despite this liberal, utopian attempt to de-personalize and ‘pacify’ the political by excluding the elements of personal discretion, violence, and arbitrary power, Schmitt was convinced that the inexorable presence of sovereignty would prevail as the final subordination of reason to force, normalcy to exception, norms to command, and regularity to total discretion.⁹

It is this strong emphasis on the absolute discretionary aspects of sovereignty that has led many critics to argue that Schmitt advocated a de-formalized law, legal nihilism, and the total elimination of the general and abstract norm in favor of an arbitrary, irrational, groundless personal decision, and that he sought to replace the ordinary situation with a permanent state of exception.¹⁰ Schmitt is interpreted as a disillusioned conservative, fascinated by the irrational, who glorified violence and war as expressions of an authentic life, and who fought against the alienating confines of the ‘iron cage’ of modern, technical, disenchanting civilization.¹¹ Against this crisis of traditional European culture, Schmitt is seen as proposing ‘a discretionary emergency dictatorship’ and ‘a neo-absolutist presidency’.¹² Some have gone so far as to suggest that Schmitt’s anti-liberal and anti-pluralistic existentialist notion of sovereignty is inherently totalitarian and that his theory of the ‘total qualitative state’ was in fact a theoretical embellishment and anticipation of one of the most repressive state systems that modern times have known.¹³

Nothing reveals the lack of ordinary scholarship from which Schmitt’s legacy suffers in the English-speaking world more than these widespread commonplaces. In fact, Schmitt conceives of sovereignty in a completely different way. As I shall try to argue, Schmitt did not define the sovereign in terms of a groundless, irrational will contained in an arbitrary personal decision of a plebiscitarian president. Although sometimes he alluded to the relationship between the exception, the personified decision, and sovereignty, his attention was rather captivated by something far more interesting and intriguing than the mere expression of naked, irrational, discretionary power. In order to clarify this crucial point I need to revisit a very significant distinction that Schmitt made in one of his early historical works. In *Die Diktatur*, originally published in 1921, Schmitt distinguishes between two forms of dictatorship: commissarial dictatorship and sovereign dictatorship.

The commissarial dictator is appointed by a higher political instance and has a very specific task to accomplish, namely, the elimination of enemies in the case of a crisis that threatens the survival of the state. In these moments of emergency, a commissarial dictatorship is appointed to suspend, if necessary, the existing legal order, to eliminate the threat, and to restore the previous normal conditions.¹⁴ The dictator has unrestrained power to achieve its designated end and there are no ethical, moral, or legal limits that constrain its actions. Not only can it suspend the existing legal system in its entirety, but it also can operate literally outside of it, in an extra-legal, normless vacuum. The singularity of this type of dictatorship, according to Schmitt, is found in the fact that ‘all is justified that appears to be necessary for a concretely gained success’,¹⁵ that is, a return to the *status quo ante bellum*. Despite its unlimited discretionary power,

however, commissarial dictatorship remains a form of constituted politics that has been specifically designed to protect the established constitutional order in cases of emergencies and high peril. Its functions are usually carefully enumerated and prescribed in the institutional matrix of the political régime.¹⁶ In that sense, it faces strict time and task limits and it is always subordinated to the higher political authority that has appointed it. It can suspend the constitution but it cannot alter it. Its only purpose is to end the crisis and restore normal times. In other words, Schmitt's concept of the commissarial dictatorship might also be described, in Clinton Rossiter's terms, as a 'constitutional dictatorship'.¹⁷

By contrast, sovereign dictatorship, while also representing a form of commission or delegation, has a totally different aim: to establish a new political and legal order or to draft a new constitution. What is important to keep in mind is that this new order is born out of nothingness and, as such, it represents a total rupture with the previous system of legality.¹⁸ It cannot be reduced or traced back to any anterior procedure, institution, or fundamental norm. It constitutes a new revolutionary form of legitimacy based on completely new grounds. It signifies the beginning of a new political régime. Therefore, the decision that has founded this new order is contingent and indeterminate, it 'emanates from nothingness' and it is 'created out of nothingness'.¹⁹ Sovereign dictatorship (either a person or a collective entity) refers precisely to this singular and extraordinary moment of the self-institution of society. It expresses the constituent power that decides to alter the form of its political existence.²⁰

A careful reading of the distinction between commissarial and sovereign dictatorship should dispel some standard misinterpretations of Schmitt, which tend to conflate his concept of dictatorship and sovereignty. According to these interpretations, the defining mark of Schmitt's sovereign is its extra-legal, unconditioned, and absolute will.²¹ These interpretations cannot be correct for the main reason that the criterion of a discretionary will and a boundless decision happens to be primarily the defining characteristic of the commissarial dictatorship and not of the sovereign. In fact, to be more precise, the act of breaking the instituted political and juridical order appears to be the sole distinguishing mark of dictatorship. This crucial difference disappears completely from the prevailing critical assessments of Schmitt's work that hint to an eventual conflation of dictatorship and sovereignty. The problem seems to stem from Schmitt's unfortunate and misleading term 'sovereign dictatorship', which has led to many misinterpretations and bitter debates over his understanding of sovereignty. I hope to make clear that Schmitt was far from confusing the concepts of dictatorship and sovereignty, and that one can speak of dictatorship as a form of sovereignty only metaphorically.

In order to discern what Schmitt thought to be the real essence of sovereignty, one has to look beyond a mere groundless will and a pure, unconstrained act of extra-legal force. While dictatorship represents a break with the established juridical and normative system, sovereignty is the foundation of such a system.

In the first case, the emphasis is on the moment of violation and transgression of an established legal order. In the second case, it is on the moment of the original foundation and creation of a new legal order. While the nature of dictatorship, for Schmitt, consists of being unlimited, unconditional, and arbitrary, totally free from the prescribed legal norms, the essence of sovereignty resides in something entirely different, mainly, in its creative, instituting power to set new systems of fundamental laws, to instaurate new political and social orders, and to bring into being novel constitutions. Hence, a first conclusion is that one of the unique characteristics of sovereignty is its power to create new constitutions.

Each time Schmitt addresses the moment of the sovereign decision and its relationship to the established juridical system he stresses this instituting and norm-positing aspect. Even in his most obscure and ambivalent text, *Political Theology*, which is a favourite of Schmitt's detractors, to argue their cases, Schmitt, *contra* Hans Kelsen, affirms that 'after all, every legal order is based on a decision, and also the concept of the legal order, which is applied as something self-evident, contains within it the contrast of the two distinct elements of the juristic—norm and decision. Like every other order, the legal order rests on a decision and not on a norm'. He adds several pages later that 'the circumstance that requires a decision remains an independent *determining moment*'.²² In a subsequent book, Schmitt described the instituting essence of the sovereign decision much more clearly. According to his theory of decisionism, 'it is not the command as command, but the authority or the sovereignty of an ultimate decision given in a command, which constitutes *the source of all law*, that is, of all the norms and all the orders that follow from it Consequently the sovereign decision can be juridically explained neither from a [i.e., antecedent] norm nor by a concrete order because for decisionism it is the decision that *grounds* both the norm and the order. The sovereign decision is *an absolute beginning*, and *the beginning* (understood as *αρχή*) is *nothing else than a sovereign decision*. It springs out of a normative nothingness and from a concrete disorder'.²³

In this later, more mature version of decisionism, Schmitt views the norms and rules (and institutions as well) as having no other ground than the groundless instituting sovereign will. A true sovereign decision is never subsumed under any rule or norm because, in fact, it constitutes their ultimate origin. The instituting sovereign decision cannot be reduced or traced back to anything external or posterior to itself.²⁴ Note here how emphatically Schmitt stresses the positing and founding dimension of the decision that is able genuinely to institute new legal and institutional orders. Obviously, Schmitt departs from more traditional definitions of sovereignty as an absolute authority or a supreme power of domination. The emphasis here is based on the instituting and originating aspect of the sovereign will more than on the repressive and coercive function of a command. The sovereign is less an absolute commander than a founder. The mission of the sovereign is not to command or to exercise some degree of power, but rather to set the rules and to determine the fundamental

laws. As Ernesto Laclau has correctly observed, ‘the moment of the decision, the moment of madness, is this jump from the experience of undecidability to a *creative act* As we have said, this act cannot be explained in terms of any rational underlying mediation. This moment of decision ... [is] something left to itself and unable to provide its grounds through any system of rules transcending itself’.²⁵ The defining characteristic of the sovereign decision, therefore, is not its breaching potentialities; it is its original and genuine instituting powers.

It is important to bear in mind this original and radical instituting dimension of sovereignty in order to dispel some important myths concerning Schmitt’s distinction between sovereignty and dictatorship. With a few isolated exceptions, Schmitt is very categorical and systematic when it comes to this difference. In one of his most lucid and academic works, *Verfassungslehre*, which is also one of the most neglected in the English-speaking world, Schmitt revisited once more his notion of sovereign dictatorship. He asserted that in modern, secular, democratic societies although it is usually a sovereign dictatorship which has to lay down the fundamental law of the land, frequently in the benign form of a Constituent Assembly, without any constraint or control from pre-existing instituted mechanisms and authorities, it remains nonetheless subordinated to the supreme authority of the people, the true, uncontestable sovereign, which has delegated and authorized it to act according to its own interests.²⁶ Thus, Schmitt claimed, from ‘another perspective, [sovereign dictatorship] remains a dictatorship, that is, a *mandate*. *It is not the sovereign*, but acts in the name and in behalf of the people, who can at any time disavow its proxy with a political action’.²⁷ The real sovereign in a democracy can be but one and this is the people. The sovereign dictatorship ‘is not the subject or holder of the constituent power, but only its delegate [Sovereign dictatorship] is the only constituted power’ through which the people can sometimes choose to express itself.²⁸ The people, therefore, is for Schmitt the ultimate sovereign authority because it is the unique holder of the constituent power, that is, of the power to create a new constitutional and political order.²⁹ In other words, because ‘all power resides in the *pouvoir constituant* of the people’, the people is the only legitimate entity that can make the sovereign decision.³⁰ Accordingly, as the sovereign dictatorship is but a form of delegation it should never be confused with the real supreme power, the sovereign, which has appointed it.³¹ In modern times, only the people can be the sovereign. Modernity and democracy are intrinsically connected.³² Consequently, a sovereign dictatorship, like that of the Soviets in Russia or of the *Fascio* in Italy, will always remain a form of dictatorship. They will never become sovereigns *tout court*.³³

From this analysis we can now infer a second conclusion: sovereignty is not only defined with respect to its power to create a new constitution but it is also distinguished, in modern times, by its identification with the will of the people.³⁴ This last clarification can help us to better understand Schmitt’s original and seminal redefinition of sovereignty. The sovereign is the one who has ‘the power

and the authority to take a concrete, total decision on the type and form of the political existence, that is, to determine the existence of a political unity in its entirety'.³⁵

In other words, the sovereign is the constituent subject who has appropriated even greater amounts of the instituting ground-power of society for the purpose of radically founding the legal and political order. Schmitt's concept of sovereignty, therefore, refers less to the discretionary power of an irrational personal will and more to the creative form-giving power of the multitude and to the democratic power of a politically conscious people to take a constituent total political decision for the self-institution of society. Indeed, the essential mark of popular sovereignty is that 'it lays at the origins of any political event, [it is] the source of all the energy that is exteriorized in ceaselessly new forms, that creates from within constantly new forms and organizations, but which never submits its own political existence in a definitive political form'.³⁶ Based on this seminal notion of a popular sovereign will, Schmitt is able to formulate one of the most powerful and explicit theories of democratic legitimacy, a theory that is absent from the work of other eminent political thinkers of his time, as for example, Max Weber or even Hans Kelsen. For Schmitt, a constitution is democratic only when it is directly derived from the direct and immediate expression of the constituent power of the popular sovereign will.³⁷

It is with this conceptual apparatus that Schmitt was able to criticize, from a radical democratic position, the French revolution for stopping short of the radical possibilities it gave birth to and for not developing further the democratic revolution it had initiated. The problem was that the revolutionary constitution was designed and formulated by the sovereign dictatorship of the Constituent Assembly instead of being directly created by the sovereign people. But, according to Schmitt, 'in a democracy, it would have been more logical to let the people to decide by itself: the constituent will of the people cannot in fact be represented without transforming democracy in an aristocracy. But in 1789 the issue was not to produce a democracy, but a liberal constitution of the bourgeois rule of law'.³⁸

From the three general characteristics of the constituent power—being one and indivisible, unalienable and untransferable, and unable to be represented—it logically follows that the sovereign dictatorship is but a form of delegation under the absolute and total control of the sovereign people, which remains the true and uncontested holder of the constituting power.³⁹

From this brief examination of the concept of sovereignty it must be clear that only by a metaphor, therefore, can one speak of dictatorship as sovereignty. Hence, Schmitt avoided the conflation of sovereignty and dictatorship mainly because of his innovative dialogue with Emmanuel Sieyès's concept of the *pouvoir constituant*, which threw him into a thrilling venture into the democratic and popular origins of the instituting ground-power of a modern, godless society.⁴⁰ Similarly, he was able to wrestle with the political and legal consequences of the displacement of the sovereign power from the Monarch to the People.⁴¹ Instead of avoiding or suppressing this event, Schmitt explored the

political implications of the rise of popular sovereignty, and particularly the consequences of the fact that ‘the decisionistic and personalistic element in the concept of sovereignty was lost ... [because] the unity that a people represents does not possess this decisionistic character’.⁴² In other words, Schmitt directly addressed the problem of the origins of political authority in the case of a sovereign who is transformed into a multitude and who has lost its specific personal properties.⁴³

Here, we can find a preliminary explanation for the reasons that drove Schmitt to insert the discretionary aspect of dictatorship into his discussion of sovereignty, and for why sometimes he phrased it in terms of the exception. It is only in the moment of an organic crisis, to use Gramsci’s term, where the closure of the social explodes to bring about a dislocation among the different structural levels of the social, including the legal system, that Schmitt thinks that there is the possibility of an immanent radical change of the political organization of society. I take Schmitt’s reference to the exception as describing this moment of crisis, this openness and contingency that provides the available space for the re-activation of the constituent power that up to this moment remained in a dormant and subterranean form. As Renato Cristi has quite rightly observed, according to Schmitt, ‘sovereignty became visible only during exceptional circumstances, when a constitution was destroyed and another was born. In these circumstances, sovereignty showed up under the guise of constituent power’.⁴⁴ Consequently, Schmitt’s recourse to the exception does not indicate an essential feature of the sovereign but rather describes one of its fundamental social and political presuppositions.⁴⁵ Precisely because sovereignty is the *ex nihilo* creation of a new legal and constitutional order it can only operate in a juridical and normative vacuum. It cannot be constrained by any antecedent rule since there is not yet such a new rule. If the constituent will was determined by the previous order or if it derived its legitimacy from it, it would not have been a constituent power but rather a constituted power. In this case, we would not speak about the creation of a new constitution but simply the transformation or revision of an already existing one.⁴⁶

The exception, then, is the condition of possibility of sovereignty, not its essence.⁴⁷ The old legal system, for Schmitt, must be annulled for the constituent popular will to manifest its new fundamental, total collective decision. The exception is a reminder that while the old system is abrogated, the new one is not yet in place.⁴⁸ There is a total break between the two moments for which Schmitt equivocally uses the term exception.⁴⁹ The sovereign subject ignores the law but only to make possible the ‘instauration’ of a new one. The sovereign will of the people is not beyond the law; it is below the law, it is its origin. This formulation is a more sophisticated re-statement of the old, fundamental principle of democracy as self-determination, according to which the people is the unique author of its laws. Since the law is the creation of the people, it is dependent upon and subordinated to its will and thus vulnerable to being changed by its volitions and decisions. The sovereign constituent people may do so over, above, or contrary to the existing law. Paradoxically enough given

Schmitt's conservative allegiances, his concept of sovereignty, as Andrew Arato has correctly pointed out, hinges on left-wing radicalism and a radical revolutionary position, despite its plebiscitarian form.⁵⁰

The relationship between the exception and the sovereign, which I have tried to describe as an external one, points to an additional aspect of Schmitt's theory of sovereignty, which has also been neglected. If the sovereign defines what is law by a creative decision, it cannot be extinguished or abolished once the decision is taken. The subject cannot be subordinated to its object. Therefore, the sovereign subject remains both below and next to the constituted powers as an omnipotent potential force of innovation, change, alterity, and, most importantly, of democracy.⁵¹ It is irreducible to the instituted political structures and cannot be consummated by the established legal procedures that determine and regulate social life in normal times. Stated in more abstract terms, the instituting society can never be absorbed or exhausted by the instituted society. The latter cannot assimilate or completely integrate the former. A self-transparent, rational society, meaning the total appropriation of the creative, meaning-giving power of the constituent democratic subject from the instituted powers, would signify the end of history, the disappearance of politics, and the pure formalization of democracy. As the creator cannot be consumed by its creations, so the constituted object—the constitution—cannot assimilate the constituent subject—the people. Exactly because in Schmitt's political theology 'constituent power is the secularized version of the divine power', as Ulrich Preuss has pointed out, the *demos* can 'create an order without being subject to it'.⁵² The constituted society is always subject to the subterranean pressure of the democratic, constituting society.

Schmitt's insistence on locating the constituent power of a democratic sovereign will outside and below the established legal order is also indicative of his fear that 'the people sink from the political condition back into the unpolitical, [and] lead a merely cultural or merely economic or merely vegetative life, and serve another politically active people'.⁵³ Once more, the problem of democratic agency re-emerges at the centre of Schmitt's political thought in the form of an anxiety concerning the subterranean survival of the 'apocryphal' acts of sovereignty in moments of ordinary politics.⁵⁴ Today, in the context of regulating everything by means of rules, procedures, and instituted mechanisms, few are willing to claim that the constituting power of the popular will is originary and irreducible, that it cannot be conditioned and constrained by an existing legal system, and that it necessarily maintains itself outside the framework of instituted, formal powers. In fact, the popular power from which the constitution is born and from which it takes its democratic legitimacy is increasingly dismissed as a dangerous prejudice, a myth, or an unpleasant factual datum, and constituted powers are more and more frequently elevated to the centre of political theory. Schmitt's investigations can be a starting point for re-thinking problems bearing on the survival of the sovereign constituent power of the popular will within constituted powers and of the relationship between substantive and formal democracy.

II. Antonio Gramsci: hegemony

Hegemony is one of those perplexing concepts that has generated an enormous body of secondary literature and has been the cause of many heated controversies. Undoubtedly, Gramsci's erratic and unsystematic use of this concept as well as his obscure and vague definitions have contributed to this situation.⁵⁵ I will not attempt in this section to take a position in this dispute; neither will I try to articulate a comprehensive clarification of this concept, as I did in the case of Schmitt's notion of sovereignty. I will instead focus on one particular but crucial aspect of hegemony that has eluded the attention it deserves. I will mainly concentrate on the relationship between Gramsci's attempt to develop an original theory of proletarian political organization in his *Prison Notebooks* and how after falling under the spell of Machiavelli's *The Prince* he substantially reformulated and amended the core elements of his theory of hegemony. In other words, I will seek to recover, by bringing to the fore the distinction between the ancient and the modern prince, the instituting and founding dimension of hegemony.⁵⁶

There is no doubt that in its earlier elaborations, hegemony, a concept that Gramsci might have taken directly from Lenin, refers primarily to the tactical and instrumental need of building inter-class alliances and of constructing a unitary political bloc under the political and ideological leadership of the working class capable of challenging the dominant position of the ruling class.⁵⁷ In the *Prison Notes*, however, hegemony takes the rather stronger form of a moral and intellectual leadership and of a radical transformation of the partial identities of dispersed groups that are absorbed into a new, broader, and superior political entity.⁵⁸ In other words, hegemony as leadership cannot be solely political. It entails the building of a broader political alliance, the formation of a new consent, the expanding of one's social basis of support, and political mobilization against the ruling class. And it has to have a substantive, ethical, and cultural-symbolic content. In order to resolve diversity into unity and to create an effective, homogeneous, cohesive collective entity able of acting as a single person, the hegemonic class has to elaborate and disseminate new values, worldviews, and meanings that will ultimately affect the deep cognitive and interpretative structures of individuals and will create a radically different substantive popular-national will. Hence, the hegemonic party, the modern prince, is also an educator and a moral reformer. Its task is to generate universalistic and general political principles that not only will overcome the narrow, particular, and immediate sectarian needs and corporatist interests of the parties composing the alliance, but will also create a new, original collective identity.⁵⁹ Hegemony involves the transformation of a fragmented people into a new effective political force.

Though manifestly persuasive as a reading of Gramsci's theory of hegemony, this interpretation, nonetheless, is partial and incomplete.⁶⁰ What is missing is the instituting aspect of hegemony. As I will try to show, Gramsci substantially expanded his conceptual framework to include not only an argument about

collective identity formation, but also a seminal theory of new foundations and origins. This modification, I believe, was considerably influenced by Gramsci's encounter with Machiavelli's *The Prince*. On this view, hegemony involves the construction of a new (type of) state, of the instauration of a new political reality, and the struggle 'to lay the foundations for the new order'.⁶¹

Hegemony, in Gramsci's notes on Machiavelli, designates the instituting and creative acts of the modern prince, i.e., the Communist Party. Contrary to Anne Showstack Sassoon's interpretation of 'hegemony as a relationship of compromise',⁶² I maintain that what Gramsci mainly appropriated from Machiavelli's work was the symbolic and mythical figure of the heroic legislator and the great founder. Echoing Machiavelli, Gramsci declared that 'the active politician is a creator, an initiator'.⁶³ But a creator and an initiator of what? A creator of a new political and social order and an initiator of new beginnings.⁶⁴ Unlike Machiavelli's prince, Gramsci's modern prince is not a person, a concrete, demiurgic individual, but a productive collective subject, the instituting revolutionary will of the political party that has the effective and expansive power radically to re-institute the social against existing structural relations of subordination and exploitation.⁶⁵ The modern prince is this political party, 'which has the aim of *founding a new type of State*'.⁶⁶

Hence I am inclined to redefine hegemony as a collective strategy of new beginnings and a struggle aimed at bringing about an extraordinary change in institutions as well as in the symbolic and cultural structures of society. Hegemony is the politics of the self-institution of the social. It is struggle over the instauration of new political and social orders out of the creative and cooperative activity of the individuals, organized politically as a collective power. As Gramsci openly states, 'from the moment in which a subaltern group becomes really autonomous and *hegemonic, thus bringing into being a new form of state*, we experience the concrete birth of a need to construct a *new intellectual and moral order*, that is, a *new type of society*'.⁶⁷ This new, and crucial, originating and productive aspect of hegemony becomes more apparent when Gramsci, in making this argument, enlarges the range of the creative potential of the popular will to include the radical transformation of the existing political, social, and symbolic structures, and appropriates Machiavelli's distinction between diplomacy and politics, which is comparable in a sense to Weber's distinction between the politician who lives 'from politics' and the charismatic one who lives 'for politics'.⁶⁸

On the one hand, diplomacy 'sanctions, and tends to conserve, situations ... it is only creative metaphorically, or by philosophical convention'.⁶⁹ On the other hand, politics, hegemonic politics, is 'a creative moment ... a moment in which the effectiveness of the political will—turned to awakening new and original forces rather than merely to calculating on the traditional ones, which were seen as incapable of being developed and reorganized—had revealed all its potentiality not only in the *art of founding a State from within*, but also in that of mastering international relations'.⁷⁰ A hegemonic strategy, according to Gramsci, aside from moral and intellectual leadership, the construction of a new collective

subjectivity, and the dissemination of a novel worldview, must also aim at the 'creation and organization of new forces which would disturb and transform the traditional equilibrium'.⁷¹ Hegemony is the politics of radical and total change and the transformation of the instituted reality in its totality. Here, the accent is put on the 'original *ex novo* creation'⁷² of new political institutions, norms, and social structures that emerge directly from the lucid, creative will of the revolutionary political subject, which affirms and manifests its value-positing powers. Politics is ontological creation and radical otherness. Against the economism and historical determinism of orthodox Marxism that reduces being to being-determined, Gramsci counterposes the originating power of the collective will of an organized popular force.⁷³

However suggestive this interpretation of hegemony as a founding strategy might be, it still faces some important hermeneutic problems. Gramsci frequently describes the moment of foundation as one of naked violence and mute force rather than, as I claim, of consensus, persuasion, and direct collective participation. It is by means of dictatorship rather than with hegemony that the creation of new political, social, and moral orders is made possible. The founding moment is one of domination, not of voluntary consent. Thus, it seems that Gramsci suggests that it is only by force and coercion that new states and political orders can be erected. He might be alluding to Machiavelli's description of the founder in *The Prince* in terms of power, command, and domination, but perhaps also to the tradition of Marxism that has emphasized violence and force, in the institutional form of the proletarian dictatorship, as the mechanism of creating a communist society.

For Gramsci, Machiavelli understood the laying down of new foundations to be a predominantly personal and repressive activity rather than a strategy of moral persuasion and democratic mobilization or of a consensual process involving the active and autonomous participation of the broader masses.⁷⁴ Gramsci accepted Luigi Russo's categorization, according to which *The Discourses*, a treatise about normal times and peaceful, consensual reproduction of existing political systems, is foremost a study of hegemony, defined now as 'the moment of the universal and liberty', whereas *The Prince*, a book about the extraordinary event of new beginnings and foundations, is mostly an inquiry into dictatorship and 'the moment of authority and the individual'.⁷⁵ This reading is reinforced by another passage in which Gramsci compares Bodin with Machiavelli. Precisely because his 'question is not that of founding new territorially united (national) state ... but of balancing the conflicting social forces within this already strong and well-implanted State', Bodin was 'interested in the moment of consent, not in the moment of force'.⁷⁶ Here the allusion is clear. Hegemony, which is consent, is concerned with normality, preservation, and maintenance of the already existing.⁷⁷ By contrast, dictatorship, an exceptional-extraordinary moment, which is brute force, provides the means for the institution of a new social order and the imposition of a new state. Dictatorship as a political form of domination is the ultimate source of new beginnings. Hegemony, on the other hand, as a form of will-formation and voluntary

consent, is the origin of the *ex ante* legitimation of the arbitrary foundations of a new régime. Hegemony consolidates what dictatorship has created out of an act of coercion and repression. Thus, while dictatorship institutes, hegemony preserves. Dictatorship is the principal political form that embodies the creative power of history.

Thus, although the moment of founding has not escaped the attention of Gramsci's commentators, it has been attributed to dictatorship rather than to hegemony.⁷⁸ But why should this difference matter? Why should the alleged connection between the creation of new political orders and dictatorship be so important? Why cannot the modern prince simply be a lion? To answer this question we need to revisit Gramsci's understanding of dictatorship. We can start with the locus of hegemony. Gramsci did not place hegemony as a strategy of power through consent and culture solely in civil society; he recognized that a stable and legitimate state, what he called the 'integral state', should not cease to continue to lead society and to strengthen its basis of consent. Even after having appropriated the state machine, the victorious hegemonic group or alliances of groups should keep on exercising leadership over the entire society in the form of moral and intellectual education. In fact, the integral state should blend domination and hegemony, coercion with consent and cultural leadership.⁷⁹ For Gramsci, if a state fails to continue playing a hegemonic role it will soon be reduced to a formal mechanism of pure, congealed coercion, a mere bureaucratic device designed to issue sanction-bearing injunctions. It will be vulnerable to a 'crisis of authority'. In the final analysis it will not differ at all from a dictatorship.⁸⁰ Dictatorship, Gramsci argues, is force divorced from consent, violence emptied of any substantive and ethical end, that is, a state that rules without hegemony.

Here Gramsci departs from Lenin's understanding of the dictatorship of the proletariat. Lenin understood proletarian dictatorship in terms similar to those of Schmitt.⁸¹ It is not a lack of legitimacy but a discretionary, absolute, extra-legal power that defines dictatorship. A dictatorship, Lenin said, 'means nothing more nor less than authority untrammelled by any laws, absolutely unrestricted by any rules whatever, and based directly on force [The dictatorship of the proletariat] is a dictatorship because it is the authority of the people over [its enemies], and authority unrestricted by any law'. The Soviets, which Lenin once saw as the most adequate political form in which to realize the proletarian dictatorship, 'recognized *no* other authority, *no* law, *no* standards, *no* matter by whom established. Authority—unlimited, outside the law, and based on force in the most direct sense of the world—[this] is dictatorship'.⁸² Gramsci, by contrast, emphasizes as the defining mark of dictatorship the meaningless and purposeless use of domination with no other end than its own self-preservation and self-reproduction (or the protection of particular sectarian interests of a minority). In Weberian terms, Gramsci's concept of dictatorship denotes a state or central political organization, in the narrow organizational and bureaucratic meaning, a mere juridico-political mechanism, which holds the monopoly of the means of physical violence within a specific territory without however having

secured their legitimate use. Dictatorship indicates a legitimation deficit. In other words, for Gramsci, dictatorship is a state without legitimacy.

This sharp distinction between hegemony and dictatorship explains Gramsci's gradual abandonment of the idea of the dictatorship of the proletariat in favor of the more appealing, but also more enigmatic, notion of the 'hegemony of the proletariat'.⁸³ It is here, I think, that Christine Buci-Glucksmann, in her otherwise pioneering study on Gramsci, is mistaken. She wrongly maintains that although they are not identical, dictatorship and hegemony are nonetheless 'closely linked' to form a 'dialectical relation[s]' in which 'hegemony *qualifies* the proletarian dictatorship'.⁸⁴ Not only does this interpretation fail to notice the crucial difference between Lenin's and Gramsci's formulations of dictatorship, it also misses the gradual and subtle, but steady, shift in Gramsci's writings from dictatorship to hegemony.

With Gramsci's concept of dictatorship in mind, we can better evaluate the implications of his allusions to dictatorship as the only founding and instituting political force. If it is true that Gramsci ascribes the founding moment to coercion, where the stronger group imposes by force a new social and political form without the voluntary and active consent of the other classes, particularly the subordinated ones, then in this case, any state-form is derived from an indistinguishable original, naked act of domination. Illegitimacy is inserted in the organizational matrix of any state from the very moment of its original creation.⁸⁵ Precisely because the ultimate source of the new state is a groundless dictatorial will, it completely lacks legitimation. The founding act is one of repression and force. It is irrelevant whether the act of foundation is carried out through a violent uprising of an organized minority or through a broad popular mobilization. It is equally irrelevant whether the new state is created by an initiative 'from above' by those in the government or from a revolt from 'below', by the excluded and oppressed. It is also inconsequential for the normative content of the new order whether it overthrew a government based on consent or an unpopular ruling caste. The only decisive factor is the factual establishment of a new order by violent and repressive means. It does not make a real difference if it arises from of reactionary usurpation, military coup d'état, or democratic revolution.

As Machiavelli advised his prince, once in a position of domination and after having liquidated its enemies, 'then you have to force them [i.e., the people] to believe'.⁸⁶ Hegemony functions as the source of legitimacy for a political order that did not have it in the moment of its creation. It sanctifies an original act of force and domination with the necessary normative resources for its future peaceful and legitimate reproduction. It is obvious that with this version of hegemony we are left with no normative criteria to evaluate and choose between 'good' or 'bad' foundations, valid or invalid origins of novel social orders. This descriptive approach considerably impairs the possibility of social and political critique, as it fails to produce any meaningful criteria that would enable us to distinguish between free and oppressive forms of creating new states or new régimes. If this version is correct, and Gramsci did indeed accept that every

political authority comes from the same origin—sheer might—then, according to this reading, by divorcing the foundations of a new state from moral and ethical considerations and by reducing it to the repressive act of a dictatorship, he stripped communism of its aura of kinship with reason, emancipation, and democracy, and thus left a tremendous normative gap at the centre of his political theory. The founding of a new communist society would appear as just another historical fact of a violent foundation of a new order. Communism would lose its entire emancipatory and universalistic content to become simply another shift in the structures of power.⁸⁷ How can we argue, from Gramsci's perspective, for the normative and political superiority of a communist society?

But is it not Gramsci himself who, in another context, pejoratively commented that 'up to now all transformations in the mode of living and existing have occurred through brutal coercion on the part of the dominant social group against all the productive elements in society'?⁸⁸ Will the communist party, the new prince, repeat the same pattern, or it will adopt a new strategy of instituting the social in accord with its proclaimed ends? Will the revolutionary means be compatible with the emancipatory and democratic ends or will they, once more, be based on coercion, force, and repression? Does the modern prince refer to a dictatorship that has to create new political structures through domination and repression? Is Gramsci regressing back to a Leninist version of the proletarian dictatorship? In Gramsci's own words, the modern prince is the organizational entity of the working class 'whose aim is to conquer a State, or to found a new type of State'.⁸⁹ In this case, however, how can we account for his clear and explicit identification of the political party as the modern prince with a hegemonic project, defined as the creation of a popular-national will capable of laying new political, moral, and intellectual foundations?⁹⁰ Is the party, like the state, a mixture of coercion and consent?⁹¹ Is it another version of the synthesis of force and persuasion, hegemony and dictatorship, exactly like the centaurian nature of the state?

What are we supposed to do with these erratic, antinomic, and constantly shifting terminological formulations? Here, I would like to sketch an argument that might suggest a solution out of these conceptual dilemmas and normative impasses.⁹² Gramsci, I believe, hinted at a distinction that, however obscure, could, properly reconstructed, answer the above questions: it is the distinction between the modern and the ancient prince. In fact, Gramsci made an extremely insightful distinction between ancient and modern forms of state founding that enabled him to differentiate between a pre-modern authoritarian, coercive, and repressive way of creating a new order and a democratic, consensual, and ethical one, which is the only one appropriate for modern societies. As I hope to establish, while he was attracted to the ancient prince, he ultimately rejected it in favor of the modern hegemon. Thus, I will claim that Gramsci appropriated from Machiavelli's ancient prince only its instituting and founding power of political action. He did so in order to insert it into his concept of the new prince, that is, of the hegemonic collective party of the popular masses.⁹³

Let us recall, to begin with, that Machiavelli's ancient princes, the heroic, mythical founders of ancient times, were concrete individuals and charismatic leaders. Hegemony was exercised by virtue of the charismatic attributes of a single person. I will call this form of hegemony *charismatic hegemony* (founding + charisma). Charismatic hegemony means that the founding of a new (type of) state requires consent, but consent based neither on violence or persuasion. It is instead grounded in the masses' belief in the extraordinary and revolutionary qualities of the leader. In other words, leadership is purely affective and emotional. However impressive this form of hegemony is, it is very unstable by nature. The power of the single leader does not have enough duration to accomplish the task of setting new foundations. As the source of all creative power is included in one single personal will, the generation of recognition and consent—based solely on the exceptional and extraordinary personal attributes of the charismatic leader upon whom the masses put their faith for a radical change—is extremely weak and vulnerable. It quickly wears out and exhausts itself.

Faced with this situation of a sudden crisis of authority and before having accomplished the founding task, the charismatic leader of ancient times has only one available strategy in order to carry out the project of radical transformation: to revert to pure force and to replace charismatic hegemony with dictatorship and domination until the power base of the new authority is consolidated. As Weber said, charisma exists only *in statu nascendi*, a notion Gramsci seems to have accepted as well.⁹⁴ It has soon to give way to violence and sheer force. Thus the much more efficient form of dictatorship replaces hegemony.⁹⁵ This inescapable transition from hegemony to dictatorship as a means of founding a new order is best seen in Gramsci's comments on Machiavelli's conclusion that in the final analysis the ancient charismatic legislator, the 'unarmed prophet', needs to turn into an 'armed prophet' to accomplish his founding project.⁹⁶ We could also read from this perspective Machiavelli's suggestive, for our interpretation, discussion of Savonarola's failed transition from charismatic hegemony to force and dictatorship that not only destroyed his founding project but ultimately cost him his life.⁹⁷

Now, once this inevitable passage is accomplished, charismatic hegemony gives way to the *instituting dictatorship*.⁹⁸ Instituting dictatorship (founding + force) is a form of instituting the political by means of coercion and domination. This creative power of dictatorship is always oppressive, usually personalistic, and thus purely authoritarian. However, for Gramsci this particular historical form of personal dictatorship, the ancient hegemon with its instituting will, is not possible under modern conditions. The political, social, and cultural environment of modernity does not permit the creation of a new state out of the force and domination that an individual can exercise over the entire social field. In the modern world, new orders cannot be founded exclusively on the creative will of a single dictator manifested through command and domination, for the appropriate social-historical preconditions are lacking. Instituting dictatorship is an anachronistic strategy of new beginnings.⁹⁹

There are three fundamental reasons for discrediting this ancient form of founding. First, sociologically speaking, there is the new reality imposed by modern civil society. Here let's recall Gramsci's famous assessment about the structural transformation of civil society, its growing complexity, its high levels of differentiation brought about by the growth of intermediary voluntary associations and intersubjective relations. Under these conditions, it is impossible to adopt a strategy of radical change pursued through dictatorial means. Modern civil society has formed a quasi-independent sphere where consent and persuasion have become a necessity that cannot be neglected.¹⁰⁰ Nor can modern civil society be stormed like a medieval castle by the military forces of a heroic prince. If Lenin's proletarian dictatorship—a collective rendition of the ancient prince that preserved the mixture of force and founding—was possible it was because Tsarist Russia was a pre-modern society.

Secondly, from the perspective of the symbolic, modernity is the age of democratic and liberal revolutions through which the masses have emancipated themselves from traditional forms of subordination and exploitation and have conquered a space in which their presence and voice can be expressed. They have changed the symbolic and social relations of power. They have composed a new reality that any radical, transformative political project has to take into account. Modernity is also the age of generalized individualism, in which individuals have become legal subjects with formal rights. Even religion has weakened its hold on the symbolic universe. Godless modernity is the age of human immanence and no political strategy can avoid the world-historical event imposed by the entry of the masses into politics. None can neglect the new political participants, as they were ignored in ancient times. As Nadia Urbinati correctly shows, 'democracy', for Gramsci, 'is a hegemonic world, its opposite is *domination*, feudalism'.¹⁰¹ Finally, politically speaking, modernity has depersonalized power. The king has been dethroned and his body appropriated by the people, the new *body politic*. Political actors can be only collective organizations, never concrete individuals. For Gramsci, 'the protagonist of the new Prince could not in the modern epoch be an individual hero, but only the political party'.¹⁰² The communist party is a collective legislator, the modern, anonymous, faceless founder of new states.

All of these structural sociological, political, and cultural transformations have affected the nature of dictatorship. They have divested it of its instituting dimension with which Machiavelli was so fascinated. Dictatorship was the pre-modern and undemocratic form of new foundations. In the modern age, however, it has become a strictly repressive and unproductive institution. 'The contemporary dictatorships,' Gramsci observes, 'have legally abolished even modern forms of autonomy' of the subordinated classes (i.e., parties, trade unions, and various cultural associations) and 'they have tried to incorporate them in the activity of the State: the legal centralization of the whole national life within the hands of the dominant group becomes "totalitarian"'.¹⁰³ Claude Lefort has nicely captured this difference between the ancient and the modern prince. The revolutionary party cannot create a new communist society from a

pure act of violence and domination without the actual consent and effective participation of the popular masses, that is, without hegemony. For Gramsci, ‘the will of the modern prince’, Lefort acutely observes, ‘cannot but create a new state that does not resemble the previous ones that we know; the finality of the revolutionary class and that of the party cannot but coincide with the consciousness of the finality of humanity [The modern prince] formulates a particular strategy which objective is to obtain and maintain the consent of the masses, to convince them of the legitimacy of the actions they have to follow and of the utility of the sacrifices’.¹⁰⁴ For Lefort, the main difference between the two princes is that the ancient could resort to oppression and dictatorship to create a new order, while the modern can rely only on an expansive popular will and democratic mobilization. In other words, the modern prince will either create a new order democratically through consent and popular participation or it will not be a prince at all. The age of dictatorial founding princes is gone. Modernity does not allow for creative individual violence. The foundation of a new state must be hegemonic, that is, popular and participatory. It must be an act of collective self-legislation.

In his notes on Machiavelli, Gramsci approaches this ancient instituting prince in a way similar to an archeologist examining an old fossil—with interest and enchantment but at the same time with distance and cold observation. Gramsci’s aim is not to resurrect a dead form of founding power. Hence his disagreement with Lenin’s strategy. He is instead interested in retrieving and recovering the instituting dimension of the political action of the ancient prince, but free from its dictatorial elements, in order to ‘democratize’ it in the form of a new type of political–popular organization. With the concept of hegemony, Gramsci attempts to fuse moral leadership, will-formation, and popular acts of new beginnings within a modern historical context. The main task of the revolutionary philosopher, the democratic philosopher, is to formulate a modern, democratic version of founding acts and novel orders based on a wide participation and voluntary consent. This new formulation is a popular political party and its hegemonic, instituting ends. The challenge that Gramsci confronts is to propose a democratic instituting will and a democratic collective-identity, appropriate for modern revolutionary politics and the social structures of capitalist, Western societies. The new prince has the instituting qualities of the ancient mythical founders without, however, retaining their dictatorial mantle. The modern prince is the instituting subject of the modern area. Hegemony is the radical and conscious self-institution of a modern society. It is only now that the contemporaneity of hegemony has been made explicit that it is possible to grasp the true meaning of hegemony: a political entity is hegemonic when it has managed to articulate a radical strategy of new beginning based on the expansive popular will of a democratically organized people that strives to establish an autonomous society (founding + active popular will).

If this reading is sound, Gramsci’s ambivalences can be approached from a different angle. His confusing references to the relationship between domination and the founding moment apply to a particular historical form of instituting

dictatorship that has been extinguished in modern times.¹⁰⁵ They do not describe a transhistorical model, an ideal that the modern prince should adopt. On the contrary, they shed light on the differences between ancient and modern strategies of radical transformation and political creation. This interpretation can also help illuminate the underlying cause of Gramsci's gradual estrangement from Lenin's proletarian dictatorship, which Gramsci believed constituted an anachronistic and pre-modern political strategy for the founding of a new state that was superseded by modernity. Not only could it not be applied to Western developed societies, but it could also not address sufficiently the question of the normative grounds of the communist project. Lenin's repressive path to communism, reminiscent of the ancient prince, suffers from a huge legitimation deficit. With the modern prince, Gramsci attempts to articulate an alternative strategy of foundations, both modern and democratic, that is, hegemonic, 'in deliberative contrast to a violent and minoritarian seizure of power'.¹⁰⁶ This interpretation also sheds light on another crucial issue: Gramsci's explanation of the failure of Italian liberalism to create a new state during the nineteenth century. Gramsci attributes this failure to its inability to adopt a hegemonic strategy, that is, to found a new political order upon a broader social consensus and with the active contribution of the masses. Instead, the Italian liberals opted for a dictatorial strategy of colonization and oppression: creation of a new unitary territorial state by means of violence, coercion, exploitation, and hierarchy. For Gramsci this failing was an obvious reminder that under modern conditions there is one only way to form either a new state or a new régime: the hegemonic politics of the democratic new prince.

III. Hegemonic sovereignty

Now that the two concepts of sovereignty and hegemony have been clarified and disentangled from some misrepresentations and partial readings, it is possible to examine the ways in which the work of Schmitt and Gramsci can be read simultaneously. From Schmitt's perspective, hegemony could be reinterpreted as a struggle among different collective subjects over the appropriation of the constituent power, which enables them to take the fundamental decision about the political form of the existence of a people.¹⁰⁷ From Gramsci's point of view, the sovereign could be redefined as the hegemonic power of a collective will capable of original political creations and able to found a new political, social, and moral order based on the autonomous action of the popular-national masses.¹⁰⁸ Finally, *hegemonic sovereignty* could be defined as an expansive and positing democratic constituent prince, aiming, through founding, total decisions, at the overall, radical, explicit and lucid institution of society so as to give itself freedom and to trace for itself the limits thereof. In the following part of this section I will briefly show how the concept of hegemonic sovereignty can solve some problems pertaining to Schmitt's notion of sovereignty and to Gramsci's theory of hegemony. In so doing, I hope to establish the mutually reinforcing qualities of the two concepts.

Many commentators on Schmitt's theory have paid attention to his underlying 'constitutional foundationalism'.¹⁰⁹ One of the main presuppositions of his concept of sovereignty is the existence of a concrete, collective political unity with the will to make fundamental decisions. This will, according to Schmitt, cannot be contained, derived, or determined by the established constituted powers. Because it is the source and the foundation of the entire legal and constitutional order it must not only exist outside the instituted reality, but it also has to be prior to any subsequent juridical norm and legal procedure. In this case, the constituent subject remains a pre-constituted or non-constituted subject. It is here that we can locate one of the central dilemmas and paradoxes of Schmitt's theory. Either the people is capable of a political will and able consciously and lucidly to take unitary actions and make founding decisions but only as a part of the constituted powers, that is, subordinated to the superior authority of the established system of norms, or it is outside and below them as their unadulterated, transcendental origin and their supreme head but condemned to stay in an indefinite, disorganized, and formless state of being that can hardly assert and express itself. In other words, either the people is a determined actuality or a determining potentiality. In the first case, it can act, but not as a sovereign or an original and free constituent subject; in the second case, it is considered to be the true and ultimate sovereign power, but only in a metaphorical and fictional form!

This primordial, transcendental collective will, the unformed (*formlos*) form of all forms,¹¹⁰ located outside any norm and deliberative activity, *in natura naturans*, is reminiscent of the Hobbesian pre-political state of nature. It impedes the people from acting intentionally and reflectively as its sovereign power demands. How can this shapeless and disordered entity then, become 'capable of political action' and 'conscious of its unity'?¹¹¹ How can this 'unformed, unfixed' constituent popular subject act in concert and make fundamental decisions about its political existence?¹¹² Schmitt is aware of this problem. His sovereign risks being reduced to a mere fiction. He recognizes that 'the force as well as the weakness of the people follow from the fact that it is not a formed instance, endowed with the delimited competences and executing the public tasks according to a regulated procedure. As a people with the will to exist politically it is above any institutionalization and any normativism. As an unorganized power, it can neither be below. As long as it simply exists and wants to continue existing, its vital force and its energy are inexhaustible and always capable of finding new forms of political existence. Its weakness is due to the fact that it must decide on fundamental questions concerning its form and its political organization without being itself formed or organized. It is for this reason that the manifestation of its will can be easily misrecognized, taken as the opposite of what it means, or distorted'.¹¹³

There are two possible solutions to this problem. According to Peter Caldwell, Schmitt sought to resolve this paradox by an 'affirmation of the president's immediate and legitimating connection to the sovereign ... [that] merely opened the gate for the eventual Nazi takeover'.¹¹⁴ Thus, Caldwell stresses the transition from the concept of the constituent power of the people to a personified

extra-legal will operating in a constitutional and normative void. The president absorbs the people and usurps its constituent power. This interpretation, however, has to be qualified considerably. In a rare moment of self-criticism, Schmitt acknowledged that his earlier version of sovereignty had strong metaphysical connotations due to his theory of political theology.¹¹⁵ In an effort to break away from these metaphysical references, however, Schmitt rejected the solution that Caldwell suggests, that is, of a determining representative or interpreter of the popular will. This resolution would have undoubtedly endangered the principle of the sovereignty of the constituent power of the people.¹¹⁶ As Renato Cristi has keenly noticed, ‘Schmitt disengaged this metaphysical interpretation from constitutional theory proper. That interpretation, he now admitted, belonged to political theology. This seems to me’, Cristi correctly adds, ‘an attempt by Schmitt to distance himself from his earlier conservative revolutionary stance which assumed constitutional discussions under politico–theological considerations’.¹¹⁷

Precisely because of this reluctance to compromise the principle of democratic legitimacy, Schmitt suggested a second solution. He alluded to a different, broader definition of politics as the attempt ‘to create homogeneity and to shape the will of the people with methods uncommon in the liberal tradition of the past century’.¹¹⁸ Although he soon recognized that these methods had been predominantly élitist, he understood the importance of antecedent struggles for democratic will-formation in civil society. In stark opposition to the liberal postulation of isolated individuals as the primordial ground of politics, Schmitt, in accordance with democratic theory, confronted the vexing issue of collective will-formation. Echoing Gramsci’s notion of a war of position, he suggestively asserted that ‘everything depends on how the will of the people is formed’¹¹⁹ and noted the importance of ‘who has control over the means with which the will of the people is to be constructed: military and political force, propaganda, control of the public opinion, through the press, party organizations, assemblies, popular education, and schools. In particular only political power, which should come from the people’s will, can form the people’s will in the first place’.¹²⁰ However suggestive these references might be they did not permit Schmitt to successfully and convincingly confront this problem. The paradox remained at the centre of his constitutional and political theory.

Schmitt’s recognition that the identity of the supreme collective is not naturally given and does not flow automatically from the social and structural location of the masses in the realm of production, has affinities with Gramsci’s conscious break with essentialist theories of class consciousness, characteristic of some predominant versions of Marxism. For both Schmitt and Gramsci, the sovereign subject of political action cannot be identified with one social class. It does not exist at the economic level to be duplicated at the political level. The sovereign people is not an economic category. It is a political project to be constructed. Hence, one can find in both thinkers the common idea that the popular subject is not originally supplied but always produced by antecedent political struggles. The subjectivity of the popular sovereign is always the

product of historical, political, and symbolic practices. The sovereign itself is a contested object of political struggles.

Probably because of the specific strategic problems that the Left was facing, Gramsci was better attuned than Schmitt to questions pertaining to the particular mechanisms of collective identity formation. His theory of hegemony was designed to solve the problem of a collective will capable of coherent political action. A hegemonic strategy, for Gramsci, involves the cultural and moral struggle to create a popular constituent subject. Politics is also a 'cultural battle to transform the popular "mentality"'.¹²¹ Compared to Schmitt's error of restricting the scope of the sovereign power strictly to constitution-making, an error that deprived him of the conceptual and theoretical resources to solve the paradox of the constituent will, Gramsci's idea of an 'expansive hegemony' was better positioned to address the question of the political construction of a national-popular will through a complex process of articulations and re-articulations unfolding in the symbolic and ideological realms and aiming at the creation of a 'collective man'.¹²² Schmitt did not notice what Gramsci calls 'the importance of the "cultural aspect"' of politics. Although he could have agreed with Gramsci that 'a historical act can only be performed by "collective man"', he did not realize that this recognition 'presupposes the attainment of a "cultural-social" unity through which a multiplicity of dispersed wills, with heterogeneous aims, are welded together with a single aim, on the basis of an equal and common conception of the world, both general and particular'.¹²³ In other words, Schmitt overlooked and underestimated the important factor of ideology. His concept of sovereignty is hopelessly severed from the symbolic and ideological aspect of politics.

By inserting at the core of his concept of hegemony the idea of an ideological struggle for the construction of a sovereign will, Gramsci can in many different respects rectify Schmitt's inability to develop a theory of the supreme collective subjectivity. In a sense, Schmitt remained trapped within a narrow legalistic framework that tended to reduce the people to the juridical category of the constituent subject.¹²⁴ He failed to see that the people could express its instituting will in many different forms, equally extraordinary and productive, apart from directly creating a new constitution. Schmitt was unable to perceive the people beyond juridical categories, as those, for instance, generated on the ideological and cultural fields. Thus, he was inclined to accept that in those transitional, exceptional cases of an organic crisis where the legal system has been destroyed and there is not something ready to replace it, as a legal category the people, which must act precisely at this extraordinary moment, has to disappear as well. For Gramsci, however, the collective will is not solely a juristic notion. It is also a moral, intellectual, ideological, and political category. It is moreover a cultural project. In other words, Gramsci politicized, contextualized, and problematized what Schmitt did not: the sovereign will. Thus, his concept of hegemony not only can deliver Schmitt's theory of sovereignty from its foundational spell, it can also expand the scope and content of the instituting dimension of democratic politics so as to include the ideological, moral, intellectual, and economic

presuppositions of democratic founding acts and popular new beginnings. Consequently, even in those moments of legal uncertainty and normative emptiness, the people can continue to exist not in pre or un-constituted forms, but rather in particular politically organized shapes, such as political parties, social movements, and hegemonic blocs.

If Schmitt's concept of sovereignty is confronted with the vexing issues of the transcendental origin of the constituent will and its rather questionable capacity, as an un-constituted power, for conscious and reflective action, Gramsci's theory of hegemony faces a different but equally important problem that is related to his vision of a homogeneous, totally pacified, monolithic society, the 'regulated society', which will come as the culmination and full success of the hegemony project.¹²⁵ A regulated society, for Gramsci, signifies the overcoming of the two 'circumstances of justice' as well as the final removal of the fact of domination and human exploitation. It is the leap from the realm of necessity to the realm of collective freedom. As a self-ruled and self-reconciled society, the state will be gradually absorbed by an increasingly expanding and democratically organized civil society finally to wither away. Political authority will dissolve into a transparent self-administration secured by a stable hegemonic ideology. What Gramsci probably had in mind was the ideal of a factory society, an ideal that he developed in his pre-prison writings, where the entire social field would be organized as an immense productive unity.¹²⁶

This transition from the ethical or integral state (hegemony + coercion) to the regulated society (pure hegemony) takes two forms. On the one hand, the abolition of private property and market competition and the elimination of social classes would eradicate the economical-structural causes of social inequality that led to political subordination. For Gramsci, as for the majority of the Marxists of his day, the main source of political domination was understood in terms of economic inequalities. Unfortunately, here Gramsci reverts back to a form of crude social determinism according to which political dispossession is a mere reflection, an echo, of economic dispossession. Hence, once the means of production are re-appropriated by the larger productive masses, the means of political power will be similarly re-appropriated by the citizens. On the other hand, the gradual expansion and successful diffusion of a hegemonic worldview would yield a universal and substantive conception of the good with which the entire new society would be able to identify. The same values, meanings, and collective representations, within a comprehensive ideological framework, would define and inform the actions and beliefs of the individual members. This fusion of an ethical system with the dominant social norms and rules would ultimately dispense with the need of a formal and abstract legal order. Precisely because the social norms would be internalized to such a high degree as to be automatically, spontaneously, and instinctually obeyed, the state, as a juridical structure supported by a coercive mechanism of law enforcement, would progressively become completely useless. Obedience to the hegemonic worldview and its ensuing ethical imperatives would be impulsive, willful, and uncoerced. The regulated society, for Gramsci, is a society beyond law.

In this future society, where hegemony rules without dictatorship, the political, along with the state, would become a remnant of a past age. The regulated society would become what Schmitt has correctly described as a de-politicized society where the rule over individuals would be replaced by the administration of things. To put it in other terms, the instituting power will absorb the instituted power. Contrary to the liberal aspiration to eradicate the constituent power of the people, Gramsci aspired by contrast to eliminate the constituted powers. Against the excesses of pure liberal legality, he counter-poses an equally extreme model of substantive democratic legitimacy, according to which the will of the people will be in a continuous, uninterrupted actuality, in a state of everlasting presence. In Schmitt's terms again, the constituent power of the people will move from the margins of the constituted powers to occupy the entire field of the social. The apocryphal acts of sovereignty will become the radiating moments of a restless popular will. Paradoxically, as Schmitt correctly understood, this absorption of the political by the social ultimately dissolves sovereignty, a political category *par excellence*.

As Andrew Arato and Jean Cohen have correctly pointed out, 'this notion [i.e., of a regulated society] comes perilously close to the self-deluding Marxian utopia of a society without institutions ... [and] without a modern structure of rights and liberties carving out autonomous spaces'.¹²⁷ Under these conditions, substance entirely eliminates the form, legitimacy abolishes legality, the good consumes the right, and a harmonious unanimity circumvents plurality and conflicts. All traditional forms of intermediary links and mediations will disappear along with political society. Society will become one with itself. Law as a medium of social integration and regulated interaction among individuals and groups recedes from Gramsci's idealized and unrealistic vision of an undifferentiated, fully rational, and self-transparent society.

There is no doubt that this utopian vision contains some authoritarian aspects.¹²⁸ But to go as far as Richard Bellamy and Darrow Schecter and to argue that Gramsci's model of the regulated society 'risk[s] becoming "totalitarian"',¹²⁹ or to argue, as Joseph Femia has, that the 'totalitarian side of Gramsci's thought is not an inexplicable aberration; to the contrary, it flows naturally from the Marxist preference for unity over particularity The totalitarian potential of this dream of "oneness", of a world without division, should be obvious', is too exaggerated and even misleading. These scholars fail to take into account Gramsci's individualism, his recognition of disagreements, and his deep and honest emancipatory and humanistic values.¹³⁰ Besides, it is not obvious that the quest for unity is a totalitarian dream in and of itself. Nor is it so obvious that pluralism automatically goes together with democracy and political liberty. In fact, pluralism and its ensuing principle of *divide et impera* has been used in the past to fragment and weaken the will of the people by all various types of tyranny.¹³¹ Gramsci knew that democracy, as popular self-determination, could not be sustained in either a disorganized and dispersed public sphere or in an oppressive and coercive state of affairs.¹³² It is not Gramsci's vision of an absolute and immediate democracy, characterized by the

identity between the rulers and the ruled, that produces the totalitarian spell; rather it derives from the dissolution of the social into the political and of the private into the public. The real danger in Gramsci's case does not come from a totalitarian state that aspires to control society or from a dictatorship that exercises absolute power and unlimited domination over the public and the private, but rather from his over-culturalistic, immoderate ethical approach and his optimism about ideology forming a total collective identity. Gramsci uncritically trusted the positive and productive power of ideology and naively asserted the efficacy of a moral and intellectual hegemonic prince in constructing and reproducing at its will new subjects and identities. But his theory is not open to the charge of totalitarian terror. It is instead vulnerable to the authoritarian excesses of ethical reformism similar in a sense to those we witness today in the various forms of communitarianism.

Paradoxically enough, Schmitt, a thinker associated with fascism, totalitarianism, legal nihilism, and even dictatorship, elaborated a political and constitutional theory that enabled him to avoid a conflation of the political and the social, legality and legitimacy, identity and representation. His political realism, similar in many respects to that of Gramsci, provided him the necessary resources to escape the extreme conclusion of the latter. In fact, if properly reconstructed, the idea of a hegemonic sovereignty could salvage the latter's concept of hegemony from its shortcomings by inserting it into a broader context that can account for conflicts, the distance that separates the political from the social, and the unavoidable gap between the instituted and the instituting. For this, a void makes it impossible for any hegemonic project fully to unite the social field around a substantive collective will.

The impossibility of hegemony lies, for example, in the failure to achieve a complete identity between the rulers and the ruled.¹³³ For Schmitt, the vision of an absolute democracy was a pure fiction. A minimum of political authority will always persist. For this reason, he recognized that there is no modern state whatsoever that could dispense with the anti-democratic principle of representation.¹³⁴ A democratic, hegemonic project has to negotiate this relationship but cannot overcome it. Likewise, Schmitt's theory of the political as the friend/enemy distinction is a reminder of the inexorable and ineradicable nature of conflicts, which no overall, comprehensive ideological worldview will ever succeed in removing from social relations. The political will never be totally eradicated. In Gramsci's terms, hegemony will always fail to become entirely hegemonic. A residue of political inequality will persist independently of the abolition of economic exploitation or private property. What Schmitt's work helps us realize is that the 'collective man' will remain an unstable and frail arrangement, an open and contested area of political antagonisms. The conflictual process of articulations and re-articulations operates in an irreducible field of forces, which can be contained and tamed but never abolished. Schmitt's pragmatism could make hegemony conscious of its limits and of the obstacles it faces. The presence of the enemy is an immanent threat that keeps the political constantly fluid and exposed. At times, Gramsci shared the same political

realism and recognized that the ‘first element is that there really do exist rulers and ruled, leaders and led. The entire science and art of politics are based on this primordial, and (given certain general conditions) irreducible fact’.¹³⁵ His utopianism, however, led him to believe that a complete abolition of unequal relations of power and conflicting views was possible.

Finally, Schmitt recognized that if the constituent power of the sovereign people were to express itself continuously it would inevitably dissolve into its formless and disorganized existence. The creation of a constitution alongside the establishment of a relatively stable system of legal rules is a necessary means for the concretization, stabilization, and survival of the constituent will. In other words, contrary to Gramsci, Schmitt realized that permanent and uninterrupted self-affirmation of the constituent power would paradoxically mean its eventual abolition. To continue to exist, the sovereign needs to be at a distance from actual politics. The omnipotence of the popular sovereign requires a relative repudiation of his omnipresence. It would be more correct to say, therefore, that while Gramsci attempted to replace the abstract, procedural formalism of liberal legality with the substantive, democratic principle of legitimacy, Schmitt sought to strike a balance between the two.¹³⁶ His concept of the constituent power constantly and uneasily travelling within, below, and next to the constituted powers testifies to Schmitt’s effort to reconcile the instituted with the instituting society. His distinction between the Constitution (*Verfassung*) and Constitutional laws (*Verfassungsgesetz*) was part of this mediating project.

Before ending this comparative discussion it should be mentioned that toward the end of his life, while still in prison, Gramsci contemplated the idea of a Constituent Assembly as a solution to the problem of fascism.¹³⁷ Taking into account his previous critique of liberal constitutionalism and constituent assemblies ‘as a vague and confused myth of the revolutionary period, an intellectual myth’,¹³⁸ of his description of the liberal constitution as ‘a codification of disorder and anti-human chaos’, a ‘juridical fiction of the impartial and superior sovereignty of law ... [that] was, in reality, the beginning of the dictatorship of the propertied classes, their “legal” conquest of the supreme power of the State’,¹³⁹ and his earlier insistence on the role of the Soviets and the dictatorship of the proletariat, this shift, I believe, is a key element for understanding the instituting dimension of hegemony.¹⁴⁰ In fact, I would like to suggest that this change, rather than expressing an occasional tactical response to the specific political situation of Italian politics, reflects a deeper political and philosophical transformation related to the requirements for a hegemonic, thus democratic and popular, radical founding strategy of the modern prince.¹⁴¹ As the instituting and founding content of hegemony took a clearer shape, Gramsci, in many different parts of his prison notes, started closely re-examining and re-evaluating the role of a Constituent Assembly as a potential form of hegemonic politics and democratic founding, breaking with his previous, purely instrumental, understanding of the legal order.

Much like Schmitt, Gramsci was inclined to define the constituent power as the ‘moment of an intensively collective and unitary national development of the

Italian people'.¹⁴² He even criticized Gioletti's party for 'wanting a Constituent Assembly without a Constituent Assembly, that is without the popular-political mobilization which leads to the convocation of a Constituent Assembly. They want a normal parliament to function as a Constituent Assembly, reduced to its minimal term and domesticated'.¹⁴³ Here the similarities with Schmitt are striking. Gramsci is alluding to the fact that only the constituent subject or a constituent assembly that should be shaped and lead by the modern prince could create a new constitution. As he suggestively put it, 'the "*Costituente*" represents an organizational form with which are expressed the most important demands of the working class' and prepares the ground for the founding of a new democratic order.¹⁴⁴ It is unfortunate that we do not have more information about what Gramsci might have thought about the relationship between the hegemonic prince and the constituent subject. What is a legitimate ground for speculation, however, is that, because in this same period he was deliberating about the need to re-create a new communist party no longer tied to the proletariat but open to different and broader social and intellectual forces, he might have well thought about the modern prince as the main vehicle for the incarnation of the constituent power, and as the central political force for the institution of a new Italian democratic republic based on the sovereign will of the popular masses.

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Notes and references

1. J. Bodin, *On Sovereignty* (Cambridge: Cambridge University Press, 1992), p. 56 (emphasis added).
2. H. Arendt, *On Revolution* (Harmondsworth: Penguin Books, 1963), p. 141.
3. C. Castoriadis, 'Institution of society and religion', in David Ames Curtis (Ed.), *World in Fragments: Writings on Politics, Society, Psychoanalysis, and the Imagination* (Stanford, CA: Stanford University Press, 1997), p. 329.
4. A. Gramsci, 'Hegemony of western culture over the world culture', in *Selections from the Prison Notebooks*, edited by Q. Hoare and G. N. Smith (New York: International Publishers, 1971). See also N. Urbinati, 'Detecting democratic modernity: Antonio Gramsci on individualism and equality', *Philosophical Forum*, 29/3-4 (1998), pp. 168-181; J. Herf, *Reactionary Modernism: Technology, Culture, and Politics in Weimar and the Third Reich* (Cambridge: Cambridge University Press, 1984); J. Habermas, 'Introduction', *Observations on 'The Spiritual Situation of the Age'* (Cambridge, MA: MIT Press, 1985), p. 24; and J. Z. Muller, 'Carl Schmitt, Hans Freyer and the radical conservative critique of liberal democracy in the Weimar Republic', *History of Political Thought*, 12/4 (1991), pp. 696-715.
5. Not to mention the significant influence that George Sorel's theory of the myth has exercised on both thinkers.
6. C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Cambridge, MA: MIT Press, 1985 [1922]), p. 5.
7. Schmitt, *ibid.*, p. 36.

8. For a polemical refutation of Schmitt's critique of the rule of law and the division of powers, see W. Scheuerman, 'The rule of law under siege: Carl Schmitt and the death of the Weimar Republic', *History of Political Thought*, 14/2 (1993), pp. 265–280.
9. C. Schmitt, *The Concept of the Political* (New Brunswick, NJ: Rutgers University Press, 1976 [1932]), pp. 61, 69–71.
10. This is Scheuerman's interpretation of Schmitt in his *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge, MA: MIT Press, 1994).
11. R. Wolin, 'Carl Schmitt, the conservative revolutionary habitus and the aesthetics of horror', *Political Theory*, 20/3 (1992), pp. 438–444. See also D. Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford: Clarendon Press, 1997), and John McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997). For an incisive and convincing but brief response to this type of interpretation, see P. Hirst, 'Carl Schmitt: political decisionism and romanticism', *Representative Democracy and its Limits* (Cambridge: Polity Press, 1990), pp. 128–137. See also my review essay, 'Who's afraid of Carl Schmitt?', *Philosophy and Social Criticism*, 25/5 (1999), pp. 86–125.
12. W. Scheuerman, 'The unholy alliance of Carl Schmitt and Friedrich Hayek', *Constellations*, 4/2 (1997), p. 176, and J. McCormick, 'The dilemmas of dictatorship: Carl Schmitt and constitutional emergency powers', *Canadian Journal of Law and Jurisprudence*, 10/1 (1997), p. 175.
13. R. Wolin, 'Carl Schmitt, political existentialism, and the total state', *Theory and Society*, 19/4 (1990), p. 409.
14. C. Schmitt, *Die Dictatur* (Berlin: Duncker und Humblot, 1994 [1921]), p. xvi.
15. Schmitt, *ibid.*, p. xviii.
16. Schmitt, *ibid.*, pp. 1–2.
17. C. L. Rossiter, *Constitutional Government in the Modern Democracies* (Westport, CT: Greenwood Press, 1948).
18. Schmitt, *op. cit.*, Ref. 14, pp. 127–148.
19. Schmitt, *ibid.*, p. 23 and *op. cit.*, Ref. 6, pp. 32, 66.
20. Schmitt, *op. cit.*, Ref. 14, p. 146.
21. This interpretation of sovereignty informs the recent work of Giorgio Agamben. Brilliant and original as Agamben's discussion of Schmitt might be, it is nonetheless based on a total misinterpretation of the concept of sovereignty. Agamben neglects completely the link between constituent power and sovereignty, thus missing the instituting and democratic dimension of Schmitt's notion of the sovereign will: Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998).
22. Schmitt, *op. cit.*, Ref. 6, pp. 10, 30 (emphasis added).
23. C. Schmitt, *Über die drei Arten des rechtswissenschaftlichen Denkens* (Berlin: Duncker und Humblot, 1993 [1934]), pp. 21, 23–24 (emphasis added).
24. U. Preuss, *Constitutional Revolution: The Link Between Constitutionalism and Progress* (New Jersey: Humanity Press, 1995), pp. 2–5.
25. E. Laclau, 'Deconstruction, pragmatism, hegemony', in C. Mouffe (Ed.), *Deconstruction and Pragmatism* (London and New York: Verso, 1996), pp. 54–55.
26. C. Schmitt, *Verfassungslehre* (Berlin: Duncker und Humblot, 1989 [1929]), p. 26.
27. Schmitt, *ibid.*, pp. 59–60.
28. Schmitt, *ibid.*, p. 59.
29. For a historical and conceptual examination of the concept of the constituent power and its relationship to democracy, see C. Klein, *Theorie et pratique du pouvoir constituant* (Paris: Puf, 1996). Although Klein does not hide his disagreements with Schmitt, he recognizes that it was Schmitt's work that salvaged and renewed the idea of the constituent power from the oblivion that the prevailing jurisprudence of his days had placed it.
30. Schmitt, *op. cit.*, Ref. 6, p. 51.
31. Schmitt, *op. cit.*, Ref. 26, p. 49.
32. Schmitt, *ibid.*, pp. 48–50.
33. Schmitt, *ibid.*, pp. 81–82.
34. See the section entitled 'The subject of the constituent power', *ibid.*, pp. 77–82.
35. Schmitt, *op. cit.*, Ref. 26, pp. 75–76.
36. Schmitt, *ibid.*, p. 79.
37. Schmitt, *ibid.*, ch. 9.
38. Schmitt, *ibid.*, p. 80.
39. I discuss the democratic elements of Schmitt's constitutional theory in my 'Carl Schmitt and the three moments of democracy', *Cardozo Law Review*, forthcoming.

40. E. Sieyès, *Qu'est-ce que le Tiers état?* (Geneva: Librairie Droz, 1970). See also Sieyès's speeches in the Constituent Assembly in F. Furet and R. Halevi (Eds.), *Orateurs de la révolution Française*, Vol.1, *Les Constituants* (Paris: Gallimard, 1989), pp. 1002–1035. For the relationship between Sieyès and Schmitt, see P. Pasquino, 'Die Lehre vom "pouvoir constituant" bei Emmanuel Sieyès und Carl Schmitt', in Helmut Quaritsch (Ed.), *Complexio Oppositorum: Uber Carl Schmitt* (Berlin: Duncker und Humblot, 1988), pp. 371–385.
41. Schmitt, *op. cit.*, Ref. 6, p. 51.
42. Schmitt, *ibid.*, pp. 48, 49.
43. It is at this point precisely that he introduces the theory of political representation in the form of a strong, plebiscitarian president. This is not the occasion to take up this issue. Suffice it to say, however, that the president can never be a sovereign. Schmitt, contrary to today's theorists of representation, was fully aware of the absolutist and anti-democratic origin of the concept of representation and of its aristocratic effects for a liberal, parliamentary system. The president only expresses, at a symbolic level, the unity of the people and can act as a neutral power able to defend the constitution in those exceptional moments of perils. As such, the argument that Schmitt envisioned a political system in which the president would be the ultimate sovereign is wide of the mark. What seems more probable is that Schmitt conceived the institution of the presidency as a particular embodiment of a constitutional, commissarial dictatorship. C. Schmitt, *Der Hüter der Verfassung* (Berlin: Duncker and Humblot, 1996 [1931]), pp. 132–159.
44. R. Cristi, *Carl Schmitt and Authoritarian Liberalism: Strong State, Free Economy* (Cardiff: University of Wales Press, 1998), pp. 34, 117.
45. I have developed in more details the crucial difference between decisionism in the moment of extraordinary, higher lawmaking and decisionism in normal politics in my critique of Scheuerman's recent book on Schmitt: A. Kalyvas, 'Carl Schmitt and modern law', *Telos*, forthcoming.
46. Schmitt, *op. cit.*, Ref. 26, pp. 88–89.
47. Noberto Bobbio has also alluded to this interpretation: N. Bobbio, *Democracy and Dictatorship* (Minneapolis, MN: University of Minnesota Press, 1989), pp. 162–163.
48. Here, note the striking similarities with Hans Kelsen: H. Kelsen, *Pure Theory of Law* (Berkeley, CA: University of California Press, 1967), pp. 118–119.
49. However, Schmitt himself has acknowledged that a total break is conceivable only when the creation of a new constitution is accompanied by a change of the subject of the constituent power, as for example from the King to the People. In all the other cases, it remains a 'constitutional minimum' that indicates a form of continuity. I would like to thank Andrew Arato for bringing to my attention this point. This point is similar to Derrida's notion of the 'minimal reminder': J. Derrida, *Limited Inc.* (Evanston, IL: Northwestern University Press, 1988), pp. 51–52.
50. A. Arato, 'Forms of constitution making and theories of democracy', *Cardozo Law Review*, 17/2 (1995), pp. 202–204.
51. Schmitt, *op. cit.*, Ref. 26, pp. 238, 242–246, 251.
52. U. Pruss, 'Constitutional powermaking for the new polity: some deliberations on the relations between constituent power and the constitution', *Cardozo Law Review*, 14/3–4 (1993), p. 14.
53. Schmitt, *op. cit.*, Ref. 26, p. 79.
54. Schmitt, *ibid.*, p. xiv.
55. See Perry Anderson's poignant critique of Gramsci's theory of hegemony, in 'The antinomies of Antonio Gramsci', *New Left Critique*, 100 (1977), pp. 5–78.
56. In so doing, I depart from more standard interpretations according to which Gramsci, in his notes on Machiavelli, developed exclusively a political-cultural theory of collective identity formation. Although I agree that Gramsci's theory of the new prince represents a deepening and broadening of his original, earlier formulation of hegemony, which he presented in his writings on the Southern question, I differ in the characterization of the nature and direction of this progression. For the origins and the gradual evolution of the concept of hegemony, see W. L. Adamson, *Hegemony and Revolution: A Study of Antonio Gramsci's Political and Cultural Theory* (Berkeley, CA: California University Press, 1980), pp. 169–170.
57. A. Gramsci, 'Some aspects of the Southern question', in *Pre-Prison Writings*, edited by Richard Bellamy (Cambridge: Cambridge University Press, 1994), pp. 313–337. Adamson has persuasively argued that, although Leninist in its origins, the Gramscian concept of hegemony gradually acquired a totally new content: Adamson, *op. cit.*, Ref. 56, pp. 169–173.
58. Bobbio locates this change around 1926 and he correctly relates it to Gramsci's discovery of Machiavelli. But Bobbio fails to pay attention to the instituting dimension of hegemony. He rather views it as a cultural-intellectual reform of existing habits, customs, and meanings: N. Bobbio, 'Gramsci and the concept of civil society', in C. Mouffe (Ed.), *Gramsci and Marxist Theory* (London: Routledge and Kegan Paul, 1979), p. 39. For Mouffe too, 'the concept of hegemony first appeared in Gramsci's work

- in 1926 in *Notes on the Southern Question* ... [But] it is only later in the *Prison Notebooks* that hegemony in its typically gramscian sense is to be found': C. Mouffe, 'Hegemony and ideology in Gramsci', in Mouffe, *ibid.*, pp. 178, 179.
59. B. Fontana, *Hegemony and Power: On the Relation between Gramsci and Machiavelli* (Minneapolis, MN: University of Minnesota Press, 1996), pp. 116–139; N. Urbinati, 'From the periphery to modernity: Antonio Gramsci's theory of subordination and hegemony', *Political Theory*, 26/3 (1998), p. 370; and E. Laclau and C. Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London: Verso, 1985).
 60. I also distance myself from the interpretation of hegemony as the 'cement' of society. According to this version, hegemony is purely a force of social integration, reproduction, and preservation of an existing social formation.
 61. Gramsci, *op. cit.*, Ref. 57, pp. 165, 194, 173.
 62. A. S. Sassoon, 'Hegemony, war of position, and political intervention', in A. S. Sassoon (Ed.), *Approaches to Gramsci* (London: Writers and Readers, 1982), p. 111. On another occasion she described hegemony as a process of collective will formation: A. S. Sassoon, *Gramsci's Politics* (London: Hutchinson, 1980), p. 151.
 63. Gramsci, *op. cit.*, Ref. 4, p. 172.
 64. For a brilliant discussion of Machiavelli's theory of new beginnings and radical foundings, see Louis Althusser's recently published notes on Machiavelli, 'Machiavel et nous', in *Louis Althusser: Ecrits philosophiques et politiques*, vol. II (Paris: Stock/Imec, 1995 [1972–1986]), pp. 46, 96, 104, 113–119, 125–126, 134, 143–144.
 65. Gramsci, *op. cit.*, Ref. 4, p. 147.
 66. Gramsci, *ibid.*, p. 147.
 67. Gramsci, *op. cit.*, Ref. 4, p. 388 (emphasis added). It is interesting here to note an important difference between Schmitt and Gramsci. Contrary to Schmitt's confinement of the creative potential of sovereignty to the legal structure of society and to the creation of a new constitutional order, Gramsci expands the scope of this collective, organized intervention to include many different social fields, such as, the cultural, the symbolic, and the moral.
 68. M. Weber, *Political Writings*, edited by P. Lassman and R. Speirs (Cambridge: Cambridge University Press, 1994), p. 216.
 69. Gramsci, *op. cit.*, Ref. 4, pp. 173–174.
 70. Gramsci, *ibid.*, p. 174 (emphasis added).
 71. Gramsci, *ibid.*
 72. Gramsci, *ibid.*, p. 130.
 73. Gramsci, *ibid.*, pp. 408, 412–413.
 74. Machiavelli, 'The Prince', *Selected Political Writings* (Indianapolis, IN: Hackett Publishing Company, 1994), ch. 6, p. 20.
 75. A. Gramsci, *Quaderni del Carcere*, Vol. 3 (Turin: Giulio Einaudi, 1975), p. 1564.
 76. Gramsci, *op. cit.*, Ref. 69, p. 142.
 77. Gramsci, *ibid.*, p. 383. Similarly, in one of his critical comments on Croce, Gramsci rejects the unconditional praise of the consensual and the moral in moments of transition and founding. 'In his [i.e., Croce's] two books, *The History of Italy* and *The History of Europe*, it is precisely the moments of force, struggle, of misery that are omitted [Croce] excludes the moment of struggle, the moment in which conflicting forces are formed, assembled, and deployed, the moment in which one system of social relation dissolves and another is forged in fire and steel, the moment in which one system of social relations disintegrates and declines while another emerges and affirms itself': *op. cit.*, Ref. 75, Vol. 2, pp. 1316, 1227.
 78. This interpretation is adopted by both Urbinati and Fontana: Urbinati, *op. cit.*, Ref. 59, pp. 376, 385, and Fontana, *op. cit.*, Ref. 59, pp. 129–130, 132. Adamson has distinguished between 'hegemony-maintenance' and 'hegemony-creation' but without examining the particular characteristics of the second type. He is rather inclined to interpret it as a mere seizure of power: Adamson, *op. cit.*, Ref. 56, pp. 174, 176.
 79. It is therefore more correct to say that whereas hegemony is located both outside and inside the state, domination appears to be strictly within the state: Gramsci, *op. cit.*, Ref. 69, p. 263.
 80. Gramsci, *ibid.*, p. 239 and Bobbio, *op. cit.*, Ref. 61, p. 35.
 81. For Gramsci, therefore, it is not the transgression and violation of an existing juridical order that defines dictatorship, as in Schmitt's case. Here we find another intriguing difference between Schmitt and Gramsci. Where Schmitt defined dictatorship as a discretionary, unlimited, and groundless extra-legal will, Gramsci understood it as the exercise of sheer force, lacking a moral, intellectual, or ethical content. This discrepancy is suggestive of a broader difference between the two thinkers.

- Schmitt uses predominantly a legalist language whereas Gramsci prefers a purely political–ethical vocabulary.
82. Vladimir Lenin, quoted by H. Draper, *The 'Dictatorship of the Proletariat' from Marx to Lenin* (New York: Monthly Review Press, 1987), p. 90.
 83. Gramsci, *op. cit.*, Ref. 60, pp. 311, 316.
 84. C. Bucu-Glucksmann, *Gramsci and the State* (London: Lawrence and Wishart, 1980), pp. 182–183. Leo Trotsky has been proven more perceptive by taking note of the important difference between hegemony and dictatorship: L. Trotsky, *History of the Russian Revolution*, Vol. 1 (London: Gollancz, 1965 [1934]), p. 296.
 85. It would seem in this case that Gramsci was anticipating Derrida's recent discussion, itself inspired by Walter Benjamin, about the intricate relationship between violence, force, and foundations. For Derrida, 'since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without a ground': J. Derrida, 'Force of law: the "mystical foundation of authority"', in D. Cornell, M. Rosenfeld, and D. G. Carlson (Eds.), *Deconstruction and the Possibility of Justice* (London: Routledge, 1992), pp. 14, 35–36.
 86. Machiavelli, *op. cit.*, Ref. 74, ch. 6, p. 20.
 87. Adamson, *op. cit.*, Ref. 56, pp. 224–225, 237.
 88. Gramsci, *op. cit.*, Ref. 75, Vol. 3, p. 2161.
 89. Gramsci, *op. cit.*, Ref. 4, p. 253.
 90. Gramsci, *op. cit.*, Ref. 57, pp. 132–133.
 91. This is the interpretation that Perry Anderson alludes to: Anderson, *op. cit.*, Ref. 55, p. 32.
 92. One first, tentative line of argument is the distinction between the foundation of new territorial state and the creation of new régimes. In the first case, the one that Machiavelli studies in *The Prince*, the only effective means is coercion. In the second case, the one that Gramsci faces, persuasion and consent are quite sufficient. There is no reason to resort to pure force. However interesting this explanation might be, it is nonetheless unconvincing for two reasons. First, because Machiavelli did not discuss violence only in relation to totally new territorial states. He included in his analysis the case of creating new forms of political organization within a pre-existing territorial state. In this case too, he referred to violence as the most qualified method. Secondly, Gramsci did not exclude from his inquiry the foundation of entirely new territorial states. In his explanation of the failure of the liberal attempt in the Italy of the nineteenth century to create a new territorial state, he emphasized its lack of persuasion and consent and the excessive reliance on violence and domination. The liberal failure was due to the choice of coercion rather than hegemony as the best strategy of founding a new state. I owe this distinction to Nadia Urbinati, who has my thanks.
 93. Gramsci, *op. cit.*, Ref. 4, p. 129, and also *Prison Notebooks*, Vol. 2, edited by Joseph A. Buttigieg (New York: Columbia University Press, 1996), pp. 378–379. For a seminal discussion of the influence of Machiavelli in Gramsci's re-definition of hegemony as the founding of new states, see C. Lefort, *Le travail de l'oeuvre Machiavel* (Paris: Gallimard, 1972), p. 242.
 94. M. Weber, *Economy and Society*, Vol. 2, edited by Guenther Roth and Claus Wittich (Berkeley, CA: University of California Press, 1978), p. 1121.
 95. Gramsci, *op. cit.*, Ref. 4, p. 129.
 96. Gramsci, *ibid.*, p. 173.
 97. Machiavelli, *op. cit.*, Ref. 74, p. 20.
 98. For the impossibility of charisma providing secure and permanent foundations of hegemony, see Sassoon, *op. cit.*, Ref. 62, p. 152.
 99. Therefore, Gramsci advances two arguments. First, charismatic hegemony will naturally and inexorably transform itself into something else. Secondly, as charismatic hegemony cannot carry out its instituting will by itself, it can take only two forms. In ancient times, it could become a form of instituting dictatorship. In modern times, it can only transform itself into Caesarism. The first option, as we already have seen, is not possible anymore. For Gramsci, modernity signifies the eradication of the personal instituting will based exclusively on force, violence, and domination (Gramsci, *op. cit.*, Ref. 4, pp. 129–130, 147). What is left, therefore, is Caesarism. Gramsci in fact devotes extensive attention to this modern transformation of charismatic hegemony. Caesarism, in Gramsci's eyes, seems to represent the failure of the individual, charismatic version of hegemony to stabilize itself and its further inevitable transmutation into a new political form of authority when the solution of dictatorship is historically foreclosed. As a result, in modernity, there is really only one solution: Caesarism. Although the Caesarist authority does not rule by moral or intellectual leadership, it is still a form of consent. Caesarist authority succeeds in avoiding a direct and indiscriminate use of naked violence because its supremacy is based on an unhappy and reluctant alliance among groups and fractions that do not have any other choice but to compromise, negotiate, and bargain in a insecure and tense balance of power, despite their conflicting

- and antagonistic interests (Gramsci, *ibid.*, pp. 129–130, 147). The Caesarist leader, in a sense, has to lead its allies, not by creating a new collective will, but by playing off and strategically exploiting their mutual weaknesses and their inability to defect from the coalition. Hence, Caesarism is located between hegemony and dictatorship. From the first it takes the elements of consent and recognizes the need for alliances. The leader cannot rule by sheer domination. But it lacks the creative and substantive will of a collective instituting popular force. Caesarism cannot create or found new orders. Or, as Gramsci acknowledges, precisely because of its roots in charismatic hegemony, in its early stages it could still play a creative role. But as it evolves and matures it loses these remains of creativity (Gramsci, *ibid.*, p. 222). On the other hand, it is also close to dictatorship because it lacks a universal moral, intellectual, and philosophical project that would empower it to create novel political structures and institutions. The allied forces follow the leader for prudential, instrumental, and utilitarian reasons alone, hoping to advance better their sectarian and particular, immediate interests. They do not compose a popular–national will, nor are they absorbed into a broader, substantive unity. There is no leading worldview. There is only an expedient balance of different self-interests. In this case also we can discern, according to Gramsci, the traces of a charismatic power, although in the more mundane and customary form of a strong leader capable of keeping in the same bloc antinomic and centrifugal forces. One of the fundamental political characteristics of Caesarism is that because of its charismatic origins it is sustained by ‘the particular solution in which a great personality is entrusted with the task of “arbitration” over a historical–political situation characterized by an equilibrium of forces heading towards catastrophe’ (Gramsci, *ibid.*, p. 219).
100. J. Cohen and A. Arato, *Civil Society and Political Theory* (Cambridge, MA: MIT Press, 1992), pp. 150–155.
 101. Urbinati, *op. cit.*, Ref. 4, p. 171.
 102. Gramsci, *op. cit.*, Ref. 4, p. 147.
 103. Gramsci, *op. cit.*, Ref. 75, Vol. 3, p. 2287.
 104. Lefort, *op. cit.*, Ref. 100, pp. 245 and also 246.
 105. In like manner, the charismatic version of hegemony has been converted into Caesarism.
 106. Adamson, *op. cit.*, Ref. 56, p. 237.
 107. Schmitt, *op. cit.*, Ref. 26, p. 36.
 108. Gramsci, *op. cit.*, Ref. 4, pp. 129–131.
 109. P. C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of the Weimar Constitution* (Durham, NC and London: Duke University Press, 1997), pp. 96–107 and Cristi, *op. cit.*, Ref. 44, pp. 71, 144–145.
 110. Schmitt, *op. cit.*, Ref. 14, p. 142.
 111. Schmitt, *op. cit.*, Ref. 26, pp. 21, 60.
 112. Schmitt, *ibid.*, p. 251.
 113. Schmitt, *ibid.*, pp. 82–83.
 114. Caldwell, *op. cit.*, Ref. 109, pp. 117, 119.
 115. Schmitt, *op. cit.*, Ref. 26, pp. 79–80.
 116. Schmitt, *ibid.*, p. 80.
 117. Cristi, *op. cit.*, Ref. 44, p. 122.
 118. Schmitt, *The Crisis of Parliamentary Democracy* (Cambridge, MA: MIT Press, 1992 [1923]), p. 16.
 119. Schmitt, *ibid.*, p. 27.
 120. Schmitt, *ibid.*, p. 29.
 121. Gramsci, *op. cit.*, Ref. 4, p. 348.
 122. Gramsci, *ibid.*, pp. 349, 429.
 123. Gramsci, *ibid.*, p. 349.
 124. This Gramscian reading of Schmitt informs, for example, Mouffe’s selective appropriation of Schmitt: Mouffe, ‘Carl Schmitt and the paradox of liberal democracy’, in David Dyzenhaus (Ed.), *Law as Politics: Carl Schmitt’s Critique of Liberalism* (Durham, NC and London: Duke University Press, 1998), p. 173.
 125. Gramsci, *op. cit.*, Ref. 4, p. 263.
 126. Gramsci, ‘The factory worker’, *op. cit.*, Ref. 57, pp. 151–154, and also 163–167, 184, 199.
 127. Cohen and Arato, *op. cit.*, Ref. 100, p. 158.
 128. Cohen and Arato, *ibid.*, pp. 156–159.
 129. For a convincing but brief critique of those views that consider Gramsci’s political theory as inherently totalitarian, see Sassoon, *ibid.*, Ref. 62, pp. 224–225, and also, more recently, Urbinati, *op. cit.*, Ref. 4.
 130. J. Femia, ‘Gramsci and the question of totalitarianism’, *Philosophical Forum*, 29/3–4 (1998), p. 165.
 131. Daniel Lazare, ‘America the undemocratic’, *New Left Critique*, 232 (1998), p. 27.
 132. R. Bellamy and D. Schecter, *Gramsci and the Italian State* (Manchester: Manchester University Press, 1993), p. 162.
 133. Schmitt, *op. cit.*, Ref. 26, pp. 276–282.

134. Schmitt, *ibid.*, pp. 204–208.
135. Gramsci, *op. cit.*, Ref. 4, p. 144.
136. For Gramsci's position on legality, see 'Legality', *op. cit.*, Ref. 57, pp. 230–233, and *op. cit.*, Ref. 4, pp. 246–253. Schmitt, on the other hand, argued for the subordination of legality to legitimacy but not for its abolition. His objective was to supplement pure 'functional', procedural liberal legality with democratic legitimacy: C. Schmitt, *Legalität und Legitimität* (Berlin: Duncker und Humblot, 1932), pp. 29, 33–34, 90–91.
137. According to the famous Lisa Athos Report, Gramsci, in his private discussions with his prisonmates, referred to the need for a Constituent Assembly: L. Athos, *Memorie: In carcere con Gramsci* (Milan: Feltrinelli Editore, 1973), pp. 81–103. These discussions have also been mentioned by other prisoners. See M. P. Quercioli, *Gramsci Vivo: Nelle testimonianze dei suoi contemporanei* (Milan: Feltrinelli Editore, 1977), pp. 193–240.
138. A. Gramsci, *Selections from Political Writings: 1910–1920*, edited by Quintin Hoare (London: Lawrence & Wishart, 1977), pp. 34–35.
139. Gramsci, *op. cit.*, Ref. 57, p. 88.
140. See J. Cammet, *Antonio Gramsci and the Origins of Italian Communism* (Stanford, CA: Stanford University Press, 1967), pp. 182–186 and P. Spriano, *Antonio Gramsci and the Party: The Prison Years* (London: Lawrence & Wishart, 1979), pp. 68–69, 119–128.
141. Buci-Glucksmann, *op. cit.*, Ref. 84, pp. 238–239.
142. Gramsci, *op. cit.*, Vol. 3, Ref. 75, p. 2004.
143. Gramsci, *ibid.*, Vol. 2, p. 989 and also p. 1167.
144. Athos, *op. cit.*, Ref. 137, p. 88.