

CONTRA EL LIBERALISMO: DE GELZER A MEIER, PASANDO POR CARL SCHMITT

# Against Liberalism: from Gelzer to Meier, by Way of Carl Schmitt

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## Abstract

Although united by their common hostility towards liberal democracy, which led both Gelzer and Meier to interpret the Late Republic as a society akin to their ideas, the former was driven by a conservatism without theoretical support, while the latter's construction was based on the postulates of Carl Schmitt.

## Keywords

Liberalism, Mommsen, Ideology, Democracy.

## Resumen

Aunque Gelzer y Meier estaban unidos por su común hostilidad hacia la democracia liberal, que les condujo a interpretar la Tardía República como una sociedad semejante a sus propias ideas, el primero se apoyaba en un conservadurismo carente de respaldo teórico, mientras que el segundo hizo descansar su interpretación sobre los postulados de Carl Schmitt.

## Palabras clave

Liberalismo, Mommsen, Ideología, Democracia.



It will come as no surprise to many that in books dealing with ancient politics there is the shadow of modern politics, of the convictions of their respective authors, who project into the past their phobias and phobias, their utopias or dystopias, interpreting the available sources to paint the picture they want to see. In this chapter we will show how strongly their political ideas have influenced these two historians, Gelzer and Meier. In the case of the former, his protestations of impartiality, of submission to the sources, his exclusive and scrupulous use of Latin and Greek terms, only really serve to make the anti-liberal tendency in the historian's work less evident, but no less relevant. In Meier's case, the theoretical reflection is much more sophisticated and explicit, which will allow us to trace in detail his debt to the postulates of Carl Schmitt. The reader should not expect to find here an extensive review of Gelzer's and Meier's scientific output. Our aim is much more modest: to bring to light and study the anti-liberal plot that lies beneath *Die Nobilität* and *Res publica amissa*.

## Gelzer

Few books have had a comparable influence on the historiography of republican Rome as Gelzer's short *Habilitationsschrift*<sup>1</sup>. Its author, who was a professor at the University of Frankfurt from 1919 until his retirement in 1955 (later emeritus), and vice-chancellor of the university for a brief period (1924-25), devoted the rest of his work as a historian to detailed biographies of the protagonists of the Late Republic in books of solid scholarship: Caesar (1921), Pompey (1949) and Cicero (1969). As for the influences that can be perceived in *Die Nobilität*, Ridley has pointed out the main ones<sup>2</sup>: firstly, his own family tradition, since Gelzer belonged to the Bernese patriciate, several of his ancestors had been professors at various universities,

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1. Although exaggerated, Riess's statement is eloquent: «Bis heute bauen die Altertumswissenschaften auf diesem Werk auf; die althistorische Sozialgeschichte nach 1968 wäre ohne diese Schrift nicht denkbar», Riess, 2014, p. X. In the same sense, Baltrusch, 2012: «epochemachende Habil.-Schrift». Its reception in the English-speaking world was somewhat slow, Baldson, 1974. In 1969, however, R. Seager described it as: «a work which was to change the entire shape of Roman historiography», *apud* Gelzer, 1969, p. XI.

2. Ridley, 1986. See the detailed and well-balanced analysis by Strauß, 2017, p. 185-205.

and everything indicates that he chose a research topic with which he was quite attuned<sup>3</sup>; secondly, his professors in Basel (Alexander Körte and F. Münzer – although the relationship between the two was distant, Münzer is the most cited author in *Die Nobilität*<sup>4</sup>) and in Leipzig, namely U. Wilcken and R. Heinze. Gelzer reviewed Münzer's book, pointing out the essential agreement between the two, namely that the accession of plebeian lineages to the consulship served only to reinforce the aristocratic character of the regime<sup>5</sup>. He also strongly emphasised the crucial point on which they disagreed: Münzer speaks of a democratic party and contrasts the people with the aristocracy, which was never the case in Rome<sup>6</sup>. Heinze's influence was certainly more important. Particularly noteworthy is *Ciceros politische Anfänge* (1909), a book in which nobles and clients abound, although he still refers to the *populares* as «democrats». From Heinze he learned the importance of sticking to the terms that appear in the sources, avoiding all kinds of modernisms that were so much to Mommsen's taste; for this reason, in particular, he criticised and rejected the early studies of socio-economic history written by Robert von Pöhlmann. (1852-1914) and Karl Julius Beloch (1854-1929); third in this short list of authors who left their mark on the young Gelzer is someone who, unlike the earlier Münzer and Heinze, was not his teacher, but to whom he dedicated the most ardent praise in *Die Nobilität*: Fustel de Coulanges, not for *The Ancient City*, but for the few pages dedicated to patronage in Rome in *Les origines du système féodal*<sup>7</sup>. For Fustel, patronage explained the paradoxical fact that Rome, apparently a democracy, was in reality an aristocracy. It is worth reproducing here the brief words that Fustel dedicated to this topic:

Rome était la réunion de deux ou trois cents familles, autour de chacune desquelles des milliers d'hommes se groupaient. Cette démocratie apparente était une échelle de patrons et de clients. La clientèle n'était pas dans la loi ; elle ne touchait pas à la constitution politique ; mais elle régnait dans la société. Ne touchant pas à la constitution politique, elle n'engendra pas un régime féodal ; elle fit seulement de cette société républicaine la société la plus aristocratique qui fût jamais<sup>8</sup>.

In this brilliant paragraph we find not only the reference to clientelism, but the recognition that this very institution governed society outside the law. This was what Mommsen, always so attentive to the legal norm, had failed to see: that it was possible for a society to be governed by institutions lacking, if you will pardon the pun, any institutional recognition. In

3. Knowledge of how the Bernese patriciate governed did not influence Gelzer at all, according to Bleicken, 1977, p. 26, but it did, in Meier's opinion (Meier, 1977, p. 33).

4. In the *Antrittsrede* that Gelzer delivered to enter the Berlin Academy, when recalling his professors, Münzer is not among them, Ridley, 1986.

5. Gelzer, 1920, p. 198.

6. «Eine demokratische Partei in unseren Sinn, deren Führer Caesar gewesen wäre (Münzer 49,1; 360) gab es nicht», Gelzer, 1920, p. 199.

7. Gelzer, 1969, p. 62.

8. Fustel de Coulanges, 1890, p. 224.

Rome, it was not the Senate or the laws it made for itself that ruled, but traditional customs and usages, articulated through these «relations of trust and proximity» (*Nah- und Treuverhältnisse*) which form the backbone of Gelzer's reconstruction. Gelzer learned from Coulanges, but also from Tocqueville, that the functioning of a political constitution is conditioned by its social structure<sup>9</sup>. As he himself pointed out:

Aus diesen Werken (scil. Tocqueville and Fustel de Coulanges) wurde mir klar, wie das Funktionieren einer politischen Verfassung durch die jeweilige soziale Struktur bedingt ist. Dieser Gedanke war damals durch die Autorität von Mommsens staatsrechtlichen Betrachtungsweise in Deutschland ziemlich verschüttet<sup>10</sup>.

However, it is necessary to dive a little deeper to understand to what extent Gelzer's political ideas, despite his declared devotion and respect for the sources, had a decisive influence on his work. Canfora has written a penetrating analysis of the influences that underpin Gelzer's book, underlining the central importance of the so-called «theory of elites» in his work, in particular, the ideas of Gaetano Mosca and Robert Michels, for whom the oligarchy determines, politically and sociologically speaking, the totality of the social body: society identifies itself with its ruling class<sup>11</sup>. Canfora envisages an indirect influence, due to the enormous impact these publications had at the time, in particular Michels' *Soziologie des Parteiwesens in der moderne Demokratie*, which came out in Leipzig in 1911, a year before *Die Nobilität*. It is unlikely, however, that Gelzer felt any interest in such proposals, which were undoubtedly too theoretical for his taste and excessively anchored in the experience of modernity<sup>12</sup>. In his case, we have to think of a simpler conservative ideology, deeply illiberal and rooted in evangelical Protestantism. It is telling that Gelzer's father unequivocally condemned the French Revolution and that he himself acknowledged that this global rejection of the entire nineteenth century had a major influence on his work as a historian<sup>13</sup>.

In this respect, Gelzer's activity during the National Socialist period sheds some light on the matter. We have no reason to doubt that Gelzer «deeply hated» Nazism, but his profound conservatism and strong patriotic sentiment found some resonance in the troubled

9. Meier, 1977, p. 34. On the influence of Tocqueville's *L'ancien régime et la révolution* upon Gelzer see Strauß, 2017, pp. 198-201 who detects in both authors a shared melancholy for the vanished traditional hierarchies.

10. Gelzer «*Memoriabilien*», p. 8 in Strauß 2017, p. 226.

11. Canfora, 1991, pp. 195-196.

12. Bleicken, 1977, p. 27 dismisses any influence on *Die Nobilität*, including Tocqueville and Münzer, except Heinze and, in a very nuanced manner, Fustel de Coulanges.

13. Strasburger, 1977, p. 81. Fezzi, 2012 gives good reasons to believe that Guglielmo Ferrero's *Grandezza e decadenza di Roma* (1902-1907) may have been the link between Mosca and Gelzer. In Gelzer's own words: «Als Junge hatte ich für die vaterländische Geschichte begeistert. In Reaktion gegen die widerwärtige Geschichtsfälschung der freisinnigen Schulmeister galt meine Liebe dem ancien régime» («Habitationsakte Freiburg», quoted by Strauß 2017, p. 198).

society of those years. An interesting example is the so-called «*Aktion Ritterbusch*», which was set up in 1940 by Paul Ritterbusch on behalf of the Ministry of Education and Science and officially known as the *Kriegseinsatz der Geisteswissenschaften*. It consisted of an initiative that brought together five hundred academics, especially university professors – among them, notably, Carl Schmitt or Hans Gadamer – in order to build a «new spiritual order of Europe»: the various disciplines were to contribute towards a racially hierarchical Europe. Salvador Mas notes that the *Kriegseinsatz* was a grandiose project, which should have spanned from A (*Altertumswissenschaft*) to Z (*Zivilrecht*)<sup>14</sup>. Under the direction of H. Berve and J. Vogt, two volumes were published in the field of antiquity studies: *Das neue Bild der Antike* (1942) and *Rom und Karthago* (1943). Gelzer participated in both, in the first with a contribution on Caesar; and in the volume on Carthage, with a text in which, surprisingly, he indicates that the race of both contenders played no role in the Punic Wars<sup>15</sup>. From the same period is the lecture that Gelzer gave on 8 May 1942 at the *Institut für Kultur- und Universalgeschichte* at the University of Leipzig, later published as «*Römische Führungsordnung*», and not reproduced in the *Kleine Schriften*, probably because of its lack of scientific value, although it has historiographical value. Gelzer's main concern – as can also be seen in his biography of Caesar – is the problem of nationalities, inherited from the 19th century, and he suggests tackling it by transferring to the contemporary world the Roman way of commanding by grouping the different peoples and nations that share the same space into a single order headed by a *Führerstaat*<sup>16</sup>. What must be maintained in any event is the distance between the oligarchy and the rest: he points out that in the Republic there were very few *homines novi*, i.e. the *nobilitas* did not need the influx of new blood. («So fehlte es der Nobilität nicht an Blutauffrischung»)<sup>17</sup>. Gelzer imagined the society of the Late Roman Republic as an ideal regime in keeping with his own convictions, a regime in which the essential fact that government is vested in a hereditary aristocracy, to which the people blindly obey, is never called into question.

There was no room for democracy in Rome, no democratic party, therefore, but rather, at most, a few demagogues, i.e. politicians who had been displaced by the *optimates*, who had lost all real political influence and sought to gain a foothold by using plebiscites against the action of the Senate<sup>18</sup>. The popular actions are nothing more than initiatives of certain politicians who had been excluded by the *optimates* and denied real political influence<sup>19</sup>. There were no ideological fissures in the ruling oligarchy, only diverse strategies in the struggle for power. At one point, he goes so far as to use coarser language against these demagogues: «This cancer of social-revolutionary fermentation could only be removed by severe intervention to the extent that

14. Mas, 2015, pp. 175-177. See also Mas, 2014. Baltrusch, 2012 col. 451, notes that National Socialism left little trace in Gelzer's writings, despite his prominent position at the University of Frankfurt.

15. Mas, 2015, p. 178.

16. Gelzer, 1942, pp. 232, 238.

17. Gelzer, 1942, p. 225.

18. Gelzer, 2014, p. 60.

19. Gelzer, 2014, pp. 47, 60 (here, in n. 32, he refers directly to Meier, 2017).

exceptional military measures had to be taken to overcome the emergency»<sup>20</sup>. This absence of democracy is an idea that Gelzer tirelessly repeats. Thus, for example:

Es gab keine demokratische Ideologie, wie sie zuerst in Nordamerika und durch die Französische Revolution auch in Europa zum Durchbruch gelangte, die dieses optimistische Prinzip der Gesellschaftsordnung hätte beseitigen wollen. ‚Demokraten‘ und gar eine ‚demokratische Partei‘, die in neuern Darstellungen der römischen Republik seit dem 19. Jahrhundert herumgeistern, konnte es also nicht geben<sup>21</sup>.

Similarly, in a brief analysis of the *Rhetorica ad Herennium*, he points out (or bemoans?) the fact that the democracy born of the USA and the French Revolution, by annihilating all state privilege (*Standesvorrecht*), led to equality among citizens<sup>22</sup>.

Gelzer's interpretation of Caesar decisively confirms this anti-liberal interpretation. In Mommsen's dazzling and enthusiastic portrayal, Caesar had succeeded in putting an end to the corrupt regime of the late Republic and replaced it with a new one that made absolute rule compatible with the free development of the people<sup>23</sup>. Mommsen's almost superhuman Caesar, who tried to create a nation-state with a liberal constitution in Italy at the end of the first century BC, becomes an equally extraordinary but very differently oriented figure in Gelzer. There is no trace of a liberal constitution in Gelzer's version, which focuses exclusively on Caesar's far-sightedness, which encompassed not only Italy but the whole empire, in contrast to the myopia of the Roman oligarchy, which still thought in terms of the city-state. The founding of colonies in Hispania or the fact that he opened the Senate of Rome to the Italic oligarchies are sufficient proof of this imperial vision<sup>24</sup>. His negative view of Cicero stems from the same idea<sup>25</sup>: Cicero failed to realise that the dominion over the provinces routinely exercised by the Senate should be transformed into a new state (*Reichsregiment*) with bureaucratic structures. Only a true statesman like Caesar could have understood this in time, and Caesar was decisively so, even if some have begrudged him the title<sup>26</sup>. Gelzer turns just one sentence from a letter from Caesar to Metellus Scipio into a veritable political programme for the reform of the state<sup>27</sup>. The letter contains peace proposals and in it Caesar pledges to ensure «order in Italy, peace in

20. In reference to the agrarian *rogatio* of Rullus, Gelzer, 2014, p. 69 (our own translation).

21. Gelzer, 2014, p. 43.

22. Gelzer, 1955, p. 213 n.19.

23. Mommsen, 1983, pp. 23-24.

24. Gelzer, 1968, pp. 217, n. 4; 232 n. 1; 273; 291, and 297-298; cfr. Gelzer, 2014, p. 330, n. 100.

25. Gelzer, 2014, pp. 370-371.

26. Gelzer, 1954, wrote here against the monograph published by his pupil H. Strasburger, *Caesar im Urteil seiner Zeitgenossen*. C. Schmitt, however, in 1982, mocked the title of Gelzer's biography of Caesar, *Caesar, der Politiker und Staatsmann*: «Questo lo trovo ridicolo: como se dicesi Carlo Magno como automobilista» Schmitt, 2012, 153. The state, for Schmitt, was as much a chimera in the time of Caesar as motor vehicles were in the time of Charlemagne.

27. «Plänen zur Umgestaltung des Staates», Gelzer, 1954, p. 301.

the provinces and welfare in the Empire» (... *quietem Italiae, pacem prouinciarum, salutem imperii* ... Caes. *BCiv.* 3.57.4). This is what Gelzer calls «eine Ordnung des Friedens und der Sicherheit»<sup>28</sup>. It is an incidental phrase in the account of Caesar, but one to which Gelzer attaches inordinate importance, quoting it several times in his biography of the dictator<sup>29</sup>. The fact that Caesar does not mention the city of Rome here is sufficient proof for Gelzer of the Roman general's far-sightedness. No less important is the fact that Caesar was committed to ensuring order. Caesar was never a democrat, because there was no place for democracy in Rome. Gelzer has transformed Mommsen's liberal *avant la lettre* into a conservative who places public order and the defence of the established order above all else.

## Meier

Historiographical developments in the twentieth century remained along the lines set by Gelzer and Münzer – a clearly defined oligarchy ruled all – but with an essential discrepancy in the conception of «political parties». While Münzer spoke of *Adelsparteien*, Gelzer, denying the existence of parties in Rome, referred to «relations of loyalty and proximity» (*Nah- und Treuverhältnissen*). Over the years, he strongly criticised the various attempts to trace the existence of groups or lineages acting in a permanent and concerted manner in politics. In his view, this idea was merely a projection of modern parliamentarism back to antiquity and therefore to be condemned as anachronistic (as he states very clearly in his review of Scullard's book)<sup>30</sup>.

Christian Meier (1929-), Professor of Ancient History in Munich from 1981 to 1997, who was a student of H. Strasburger and M. Gelzer in Freiburg, even coined a term to refer to authors who defended the existence of stable political groupings: *Faktionsthese*, pointed out as their main representatives R. Syme, H.H. Scullard, L. Ross Taylor and E. Badian<sup>31</sup>. For Meier, «parties» are temporary groupings, depending on the situation, personal relations and interests at any given moment, but certainly not on the content, or on ideology<sup>32</sup>. Alliances are not permanent: they do not form factions or «parties» in Syme's sense, because there are too many intersecting interests, and groups or cliques dissolve and reconstitute themselves in a state of continuous flux. Beyond this divergence, Meier shares with Gelzer or Syme the fundamental idea that outside the oligarchy there is no politics, as he summed up in his famous *dictum*: «Those who dedicated themselves to politics belonged to the aristocracy and those who belonged to the aristocracy dedicated themselves to politics»<sup>33</sup>. Since politics could not exist

28. Gelzer, 1954, p. 301.

29. Gelzer, 1968, pp. 217 n.4, 232 n.1, 273, etc.

30. Gelzer, 1950, p. 209.

31. Meier, 2017, pp. 14 and 181-182; cfr. Gago, 2021, p. 211. Badian replied in a long review of Meier's biography of Caesar, considering it closer to theology than to history, because of its excess of determinism and rhetoric and lack of prosopography, Badian, 1990.

32. Meier, 2017, pp. 174, 182, 189. This view is still widely held today (e.g. Volk, 2021, p. 66 with the apposite quotation from Meier, 2017).

33. Meier, 2017, p. 47, «Wer Politik trieb, gehörte zum Adel, und wer zum Adel gehörte, trieb Politik».

outside the oligarchy, and the oligarchy shared a common ideology, a different constitution, an alternative, was not imaginable. The Late Republic was a time of «*Krise ohne Alternative*» and the system eventually collapsed without anyone being able to think of what could replace it until it had already been completely destroyed. No other social group, neither the peasantry, nor the urban plebs nor the *equites* ever thought of challenging the fundamental principle of the *res publica*, i.e. the unanimous acceptance of the rule of the aristocracy articulated through the Senate. Those excluded from politics demanded privileges, legal protection or improvements in their living conditions, but they never demanded Rome's rule for themselves.

Meier devoted many pages and much effort to demonstrating that there was no «equestrian justice», contrary to what Gelzer had argued. To admit this, Meier believes, would be tantamount to recognising a split between the Senate and the *equites*, something impossible in his conception. Therefore, the cases that we know of are isolated exceptions and the sources that express themselves in this sense are contaminated (in particular Posidonius)<sup>34</sup>. Only three cases of miscarriages of justice are known, which to Meier seems few and far between. In the end, equestrian justice failed to achieve its goal: instead of surveillance of the senators (which Gaius Gracchus had wanted), a new agreement was reached between the two groups, the cost of which was paid by the provincials<sup>35</sup>. As for the urban plebs as an «alternative», neither is it possible to think of them: they lacked a dynamic of their own and were merely a useful instrument. He goes so far as to state that «[n]o one of the popular tribunes had in mind as a priority the welfare of the urban masses»<sup>36</sup>, a surprising and very revealing judgement of intent: How could Meier have known the intentions of all the «popular» tribunes of the Late Republic? Did he meet with each of them to ask them about it? Evidently, he could not have done so; this is simply a statement whose truthfulness is inferred from the conceptual framework that Meier himself has established. Things happened in a certain way because they had to happen that way and not another way. His argument is that Tiberius Gracchus was thinking exclusively of the peasantry and that Gaius' ambition went much further because he had «eine umfassende Konzeption zur Neuordnung des Staates». All the other tribunes simply proposed advantages for the urban plebs in order to mobilise them to achieve the tribune's goals, i.e. pure manipulation. The urban plebs esteemed and honoured the Senate and the *principes* and accepted their guidance as a matter of course. It was never opposition to the Senate<sup>37</sup>.

Meier is aware that, legally speaking, the people, in Rome, are sovereign and that the elections can amend or introduce any rule they like without any hindrance or precaution. However, in his view, all interpretations of Late Republican politics from a narrowly juridical perspective are doomed to failure because the rules and conventions of an «organic» constitution (*gewachsenene*), unlike the formal statements of a «well-founded» (*gestiftete*) constitution,

34. Meier, 2017, p. 77. In line with Gelzer and Münzer, Meier points to Rutilius Rufus as the source of Posidonius.

35. Meier, 2017, p. 79.

36. Meier, 2017, pp. 109-110.

37. Meier, 2017, pp. 110-112, 124-125.

cannot be taken in an abstract sense<sup>38</sup>. So, for instance, the tribunician *veto* was in principle unrestricted, but there were mechanisms that ensured it did not cause an institutional paralysis<sup>39</sup>. The people did, in principle, have the power to decide on everything, but in reality, there were a number of things that could not even be thought of being changed. The Senate's concessions to certain demands served more as an escape valve, a way of relieving social tensions at critical moments.

### Christian Meier and Carl Schmitt: preliminary notes

Naturally, what in Gelzer is a conservatism without theoretical support, in Meier becomes a much more articulated, more solid construction, which relies directly on the contributions of «elite theory». The reference to Gaetano Mosca's «political class» is explicit, albeit without direct quotation: «So erkannten sie [the Roman citizens] auch –freilich gegen erhebliche Zugeständnisse– die Führung der adligen classe politica an»<sup>40</sup>. However, it is worth elaborating a little further. The deepest ideological roots of Meier's ideas, although not the only ones, are, in our opinion, in the work of Carl Schmitt, one of the most influential political scientists in the heart of twentieth century European conservative thought, although, since the 1970s, some of his ideas were also used and recovered by the post-Marxist left<sup>41</sup>.

Meier openly acknowledged his debt to the thinker from Plettenberg, for it was precisely the Schmittian notion of the political that Meier strove to historicise, situating its origins in Greek archaism<sup>42</sup>. However, so far Schmitt's deep imprint on *Res publica amissa*, not so explicit, but equally crucial as far as the ultimate theoretical foundation of the book is concerned, has not been emphasised in the same way<sup>43</sup>. The friendship and close relationship between the two is well known. Meier recalls being summoned to Schmitt's house in Plettenberg to face the test he used to give his guests, which consisted of asking them a question, leaving them to think about it overnight and finally hearing their answer in the morning. As Meier recalls, they did not meet in person until 1967, i.e. the year following the publication of *Res*

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38. Failing to realise the differences between the two types of constitution is what Hölkeskamp sees as Fergus Millar's main weakness (Hölkeskamp, 2019, p. 40).

39. Meier, 1968.

40. Meier, 2017, p. 203 and again at p. 191.

41. A good general introduction to Schmitt is the biography by Balakrishnan, 2002. Also useful is Meierheinrich & Simons, 2016. In turn, Müller's book, 2003, traces Schmitt's influence on European thought very well, covering the most disparate ideological currents, from conservatism to Marxism.

42. Meier, 1988a, and in a very summarised form in Meier, 1988b, p. 550, with the emphasis on the notion of citizen, which is defined in opposition to the rest: slaves, foreigners, etc. Cfr. Demont, 2011, with Müller, 2003, p. 267 nt50.

43. None of the reviews of the book (16 according to *L'Année Philologique*) mentions Schmitt. It is worth noting that Meier himself, although years later, explicitly acknowledged this influence, placing *Res publica amissa* in the «Fragehorizonte, die etwa Carl Schmitt, zum Teil im Gefolge Max Webers, aufgerissen hatte», Meier, 1997, p. 261.

*publica amissa*<sup>44</sup>, but the fact is that already in this book he demonstrates an extensive and precise knowledge of the writings of the famous political scientist. By then, Schmitt, who had refused to sign the denazification certificate after the war, was living in a regime of ostracism, without any public presence in Germany, but very alert to what was going on in Europe. It was only in Franco's Spain that he was able to find recognition and develop a certain institutional activity, above all within the *Centro de Estudios Políticos*<sup>45</sup>.

In order to recognise Schmitt's influence, it is necessary to pause for a moment to analyse, succinctly, those aspects of his thought whose traces we later find in Meier's work. We will refer specifically to two central ideas in Schmittian reflection: decisionism, on the one hand, and, on the other, his anti-liberal conception of democracy.

### Decisionism and sovereignty

«The exception thinks about the general with energetic passion»<sup>46</sup>. For Schmitt, the exception is not merely an intellectual curiosity but reveals the true nature of the system. It is precisely the extreme, exceptional cases that clearly show how and by whom the key concepts are applied. His best-known dictum, «the sovereign is he who decides on the state of exception»<sup>47</sup>, is the result of an excavation of the canonical definition of sovereignty as the «absolute and perpetual power of a republic». Schmitt locates in Bodin himself the thesis that the power to repeal existing law is the true mark of sovereignty<sup>48</sup>.

Decisionism and sovereignty are inextricably linked for Schmitt. When one tries to regulate the decision on the exceptional case through the implementation of a whole series of rules and limits, one is only postponing a decision on where sovereignty resides, which «legally» manifests itself as the monopoly, not of coercion or violence, but of the decision. This decision is an extra-normative element, not merely declaratory but constitutive. In this respect, Schmitt takes a stand against Locke («the Law gives authority») and in favour of Hobbes (*Auctoritas, non veritas, facit legem*)<sup>49</sup>.

44. Meier, 2014, p. 120. On the other hand, he places the beginning of his friendship with B. Koselleck, an attentive reader of Schmitt, ten years earlier, in 1956 (ibid.). Meier dedicated a specific study to Schmittian concepts (in particular «*das Politische*») in which he includes extracts from the epistolary exchange between them from 1968 onwards, Meier, 1988b.

45. On Schmitt's influence on Spanish legal thought, not only during Franco's regime, see López García, 1996.

46. Schmitt, 2009a, p. 2.

47. Schmitt, 2009a, p. 13.

48. Schmitt, 2009a, p. 15.

49. On the monopoly of the decision, Schmitt, 2009a, p.18; the contrast between Locke and Hobbes, in Schmitt, 2009a, p. 33. Schmitt's definition of the state can be easily inferred from these assumptions: Schmitt 1934, p. 19: «Darin liegt das Wesen der staatlichen Souveränität, die also richtigerweise nicht als Zwangs- oder Herrschaftsmonopol, sondern als Entscheidungsmonopol juristisch zu definiert ist».

## Political and democratic Monism

Just as well-known as his dictum on sovereignty is Schmitt's definition of the concept of the political. For the German jurist, the criterion that determines the political is the act of differentiating between friend and foe. The meaning of this distinction is to mark the maximum degree of union and separation between human communities, that which transforms them into «politics»<sup>50</sup>. Although Schmitt states that the concept of the state presupposes the concept of the political, this statement can be extrapolated to any community that is political in nature<sup>51</sup>. Any such community, be it a *polis* or a *res publica*, is constituted on the basis of one or more decisions that will define the substantive content on which the community relationship is to be articulated. This implies the inclusion of those with whom a set of fundamental principles is shared and the exclusion of those with whom there is no such link, the enemies. In other words, a decision is being taken that concerns the unity of the «state», which has the obligation to relativise or cancel the appearance of degrees of association or dissociation of a «political» intensity within its boundaries.<sup>52</sup>

This implies that, although liberal regimes appropriate the term «political» in the name of pluralism and «party politics», its actual use within a community is dangerous. If internal antagonisms become «political» and there is a «primacy of internal politics», the logical consequence is civil war, due to the very nature of the concept of «enemy», and thus the self-destruction of the political community<sup>53</sup>. For Schmitt, the political criterion is radically polemical. Concepts, ideas and words have a polemical meaning because they are linked to a concrete, real antagonism. In other words, they are built up *against* something<sup>54</sup>. And this antagonism is political when it is articulated and defended against those who do not share it, the enemy. This enemy can be internal or external, but it is always public. It is the *hostis* versus the *inimicus*, the *πολέμιος* versus the *εχθρός*; the one who has the substantial potentiality to oppose the community in a combative and existential way<sup>55</sup>. Against this enemy, the state retains *ius belli*, the ability to declare war and dispose of people's lives, to kill for the community or to die for it. In normal circumstances, the state directs this prerogative outwards, but it always has the possibility of establishing the enemy within, fracturing its unity in order to kill inwards. This is one of the paradoxes of civil wars, for, in order to maintain the principle of internal unity, the state, the citizen body is fractured and the public enemy, the *hostis* and the *πολέμιος*, is driven out with the intention of killing him. The fate of unity is being decided by force of arms<sup>56</sup>.

50. Schmitt, 2009b, pp. 56-57.

51. Schmitt, 2009b, p. 49.

52. Schmitt, 2009b, pp. 62, 69.

53. Schmitt, 2009b, p. 62.

54. Schmitt, 2009b, pp. 60-61.

55. Schmitt, 2009b, pp. 58-59.

56. Schmitt, 2009b, pp. 74-76. On the Schmittian origin of the modern «criminal law of the enemy» (*Feindstrafrecht*), which bears in its own name the mark of its origin, but applied to the fight against terrorism,

## Schmitt in *Res publica amissa*

There is no shortage of quotations from Schmitt's works in *Res publica amissa*, although some are certainly not very relevant, such as, for example, a reference to the *Nomos of the Earth*, on the usefulness of outward expansion in resolving internal social tensions<sup>57</sup>. On other occasions, they are of greater importance. Thus, referring to the figure of Tiberius Sempronius Gracchus, Meier takes directly from Schmitt the concept of *Verfassungsmässige Verfassungsänderungen*, i.e. provisions contrary to the constitution, but which do not entail its reform because they refer to a specific, isolated case and are adopted to ensure the political survival of the community<sup>58</sup>.

On at least one occasion, Meier conceals the fact that he is quoting Schmitt, which is intriguing to say the least. Referring to the so-called *Senatus Consultum Ultimum*, he states the following: «Er (the Senate) nahm damit ein wichtiges, wenn nicht das wichtigste Stück Souveränität in Anspruch, die Entscheidung über den Ausnahmefall»<sup>59</sup>. This sentence refers directly to the famous beginning of Political Theology, which we have already mentioned: «Sovereign is he who decides on the state of exception»<sup>60</sup>. However, it is not this quotation to be found in the footnotes, but a reference to von Lübtow, who, logically, in this passage does refer directly to Schmitt's work<sup>61</sup>. Schmittian exceptionalism constitutes one more argument within the general scheme of the work, but not an essential element. To find the latter, it is necessary to look elsewhere.

It is indeed necessary to delve a little deeper into Schmitt's work in order to find the axis that links it with *Res publica amissa*. We are referring to Schmitt's notion of democracy, which is diametrically opposed to what he calls the liberal-bourgeois conception, which he severely criticises. Democracy, in his view, requires substantial equality, based on a variety of factors (language, history, common traditions, a common goal), in a way that can vary from case to case; thus, in the Athenian case, those who participated in it were free Hellenes, excluding barbarians and slaves. Schmitt categorically rejects the secret ballot as anti-democratic: through it, the citizen expresses their opinion in a private way and what is obtained in the end is the sum of a set of private opinions, which is something very different from a true public opinion. The latter is the modern form of acclamation and does not need parties to express itself. However, the existence of parties is inevitable in a democracy, but they are on the same level as demagogues, the press or the cinema; they are merely ways of influencing public opinion and should not have any kind of constitutional recognition. In reality, these parties do not serve to debate between different alternatives but to structure and convey the opin-

see López Barja, 2007, p. 297.

57. Meier, 2017, p. 159 n. 559

58. Schmitt, 1928, pp. 106-107 and Meier, 2017, p. 131 n. 411.

59. Meier, 2017, p. 147.

60. Schmitt, 2009a, p. 13.

61. Von Lübtow, 1955, p. 309, n. 1135. This veiled quotation from Schmitt also attracted the attention of Nippel, 2008, p.122, who went on to point out the scarce presence in Meier of Schmittian reflection on the exception as the touchstone of sovereignty.

ion of the people. This homogeneous *demos* excludes, by definition, ideological pluralism<sup>62</sup>. Ideological dissent threatens the political community, introduces the risk of civil conflict and therefore the dissenter automatically becomes a public enemy (*hostis*), who, as we have already seen, must be pursued and eliminated<sup>63</sup>. Minorities must be assimilated or otherwise persecuted or expelled. As Schmitt points out: «Ein national homogener Staat erscheint dann als etwas Normales; ein Staat, dem diese Homogenität fehlt, hat etwas Abnormes, den Frieden Gefährdendes»<sup>64</sup>.

This is the spectre that Meier relentlessly pursues in the Roman Republic. If for Gelzer to speak of «democracy» in Rome was anathema, the sin, according to Meier, is committed by those who imagine any kind of stable organisation (whether or not it is called a «party») that threatens the extreme, seamless coherence of the Roman Republic's senatorial regime. It was, in Meier's words, a monistic society, a perfect assemblage of aristocracy and people: «Adel und Volk in Rom bildeten eine in Grunde monistische Gesellschaft»<sup>65</sup>. Meier's rejection of the existence of any kind of permanent factions is, as we can see, for a profound reason, it responds to a prior political approach. His perspective calls for a united Senate, to whose rule the Roman people submit freely and unconditionally. A Senate divided into permanent groups or factions would have been unable to command the unreserved loyalty of the people. Precisely because the Senate was not in the hands of one faction, it was exceptionally able to act as if it were a single party. Even Pompey's power, great as it was, was relatively small<sup>66</sup>.

Meier not only rejects that we can speak of political parties in the contemporary sense of the term but also denies the existence of any deep ideological disagreement within an extremely successful consensus-building elite<sup>67</sup>. This consensus permeated every action to the extent that it imbued everyone with a consensual understanding of the intentionality behind each institution. In this way, institutions that represented the people in principle were not articulated as alternative seats of power, as consensus underpinned a system that seemed to contain contradictory principles<sup>68</sup>.

To explain this monistic understanding of the political, Meier sketches a hypothetical conversation between a Greek and a Roman about the prerogatives of the popular assembly. Faced with the Greek's inquisitive questions, the Roman would be able to answer, without perceiving any contradiction, that the assembly can decide on all things, but at the same time that,

62. Schmitt, 1928, pp. 228-230, 239-241; cfr. Müller, 2003, p. 27 & Busolini, 2011. Meier himself, 1988b, p. 548, has underlined Schmitt's condemnation of political parties: «a theory of parties would amount to a stasiology, i.e. a science of civil war» (Meier, 1988b, p. 548, our translation).

63. Schmitt, 1998, p. 75; cfr. Rasch, 2016, p. 320.

64. Schmitt, 1928, p. 231.

65. Meier, 2017, p. 53.

66. Meier, 2017, p. 41.

67. Meier, 2017, p. 57; Meier, 1986, pp. 46-52, 56-61, 248-250, 427-428.

68. Meier, 1986, p. 47.

naturally, it does not have the power to revoke the office of a magistrate<sup>69</sup>. Up to this point the consensus was capable of blocking the emergence of an ideological and political alternative. Whereas in the Greek poleis politics revolved around a constitutional alternation, the Roman *res publica* proved so effective in preventing the «primacy of internal politics», a dangerous thing in Schmitt's view, that the only thing a Roman was able to conceive of as opposed to the existing constitution was the negation of the community, i.e. the *res publica amissa*<sup>70</sup>.

Starting from this premise, the analysis of the crisis of the Republic follows the only coherent path: that of the *Krise ohne Alternative*<sup>71</sup>. In this context, the *populares* not only lose their characterisation as a «party», but also their ideological identity. Their description is blunt: neither do they have a common cause, nor is there an opposition between the people and the Senate as an engine of politics. What exists is a different way of acting: an alternative method of engaging with institutions for those politicians with less support in the traditional seats of power. It is what he calls «acting in a popular way»: *populariter agere*<sup>72</sup>.

Meier acknowledges that he created this new concept of «crisis without alternative» in order to avoid the term «revolution» with which, at least since Mommsen, the Late Republic – or different moments within it – had been designated<sup>73</sup>. In the absence of a new «class» or «social group» ready to replace the one that had hitherto ruled Rome – for the people, Meier argues, were never in a position to play this role – there was no alternative, nor could there be, therefore, revolution. In doing so, he was, of course, rejecting Syme's *Roman Revolution* approach, but more indirectly dismissing any Marxist – or even liberal – analysis of the collapse of the Republic. We can infer from the above that the very notion of «crisis without alternative» is, at heart, radically Schmittian. From the homogeneity of the Roman *demos* necessarily follows a unanimous consensus. There is no «alternative» because there is a unanimous consensus, because everyone accepts the rule of the Senate, which completely excludes the idea of «revolution». Late Republican Roman society thus becomes the historical embodiment of a theoretical construct forged by Schmitt.

69. Meier, 1986, p. 48.

70. Meier, 2017; Meier, 1986, p. 248.

71. Meier, 1986, pp. 422-437.

72. Meier, 2017, pp. 40-44. Meier 1965, p. 579 went so far as listing M. Porcius Cato among *populares* on account of his law (in 62 BC) requiring the candidates to triumph to declare by oath the casualties of both theirs and the enemy's army.

73. Meier, 1996, pp. 491-492: «the term is used here deliberately to counter the widely held view, first advanced by Mommsen, that a revolution was taking place at the time». Gelzer does use the term «revolution» on several occasions, but he also pauses to explain that the revolutionary attempts of the last century of the Republic fit better within the concept of *seditio* than that of «revolution» understood as a new political reconfiguration, Gelzer, 1941, p. 107.

## After *Res publica amissa*

*Res publica amissa* was received with interest in academic circles. In a way, it can be said that it continues to form the backbone of much of the scholarship on late Republican Rome today<sup>74</sup>. There were also criticisms, mainly focused on what Meier does not explain, namely the crisis within a monist society. Brunt was the one who put it most forcefully in his review<sup>75</sup>: «If everyone was happy under the Republic, why did it fall?».

For Meier, the answer is both complex and very simple. Complex, because it is the result of a long process of crisis where reality outstrips the problem-solving capacity of political institutions, and simple, because it is the natural reaction of a body politic declaring an internal enemy<sup>76</sup>. From the perspective of the *res publica*, it is the coherent way of acting. When its existence is threatened by an internal danger, whoever retains sovereignty – in this case, the Senate – takes the decision to declare *hostis* to the aggressor, something that will be done systematically against many of the politicians who embrace the *populariter agere*. For Meier this act is overtly partisan, but it works only because of the unquestioned legitimacy of the taker<sup>77</sup>. For the promoters of the *bella ciuilia*, men like Caesar and Sulla, the willingness to attack the system was the consequence of their *Aussenseiter* nature and their personal interests: in no case did they have a cause to defend<sup>78</sup>. Only from this relative amorality and detachment from what was shared by all, and always forced by their personal circumstances, can we understand their willingness to attack a system for which they had no substitute<sup>79</sup>. Meier contrasts the difference between a Caesar who analyses the conflict in personal terms and thus allows neutrality, versus the *res publica*, which has an absolute conception of the enemy in terms that fit perfectly with Schmitt's conception of *hostis*<sup>80</sup>. Thus, in the *Krise ohne Alternative* described by the German historian, the regime disintegrates, but it is never delegitimised, since the opposite was impossible on the basis of its premises<sup>81</sup>. The corollary of the Senate's absolute legitimacy is to be found, in our view, in the unsupported assertion that Caesar's rebellion was universally condemned by Roman society<sup>82</sup>. Once again, this is an apodictic

74. Jehne, 2020, p. 26: «Au commencement était la *Res publica amissa*» is illustrative. To draw a general picture of the influence, direct and indirect, that Meier has exerted is no easy task. See Hölkeskamp, 2019, p. 42 n. 10, criticising the relative disinterest of a part of the English historiography.

75. Brunt, 1968.

76. Regarding the failure of republican institutions, overtaken by a reality for which they were not prepared, Meier, *Caesar*, 1986, p. 435.

77. Meier, 1986, p. 55

78. Meier, 1986, pp. 15, 435.

79. Meier, 1986, p. 431: «Ob er aber etwas besseres wußte als das Bestehende, ist durchaus unklar».

80. Meier, 1986, pp. 18-19, 433. Meier's view of Caesar is far removed from Gelzer's: in reality, the inordinate honours bestowed on him only reveal the dictator's inability to cope with a «crisis without alternative»; cf. 2008.

81. Meier, 1986, p. 248.

82. Meier, 1986, p. 16: «Einheilig ist Caesars bewaffneter Einfall in Rom und Italien verurteilt worden».

assertion, without any support in the sources (quite the contrary, if we grant a minimum of credibility to Caesar's *Bellum civile*), which relies only on the axiom of the monistic society.

In 2015, Meier published a long article with the ambitious title *Die Ordnung der römischen Republik*. It seems striking, given the date, that he makes no reference to the intense international debate on «democracy in Rome» that had been going on since the late 1980s. Fergus Millar is not mentioned once. In reality, these absences are justified, because the article is more a reflection on its own postulates, it is based on them and does not want to look beyond them. So, we are back to the old axioms. Once again, the legitimacy of the upper class, of the aristocracy, to lead the community was never questioned. At one point he goes so far as to suggest that Rome was a representative regime: elections served to confer a «kind of representation» on the Senate. He therefore speaks of a «*Senatsregimen*». Once again, the Roman order («*die römische Ordnung*») was an organic constitution («*gewachsene Verfassung*»), i.e. it was built up over time, not the work of a few founding legislators. The contrast with Greece is very much present. The Roman citizenry, unlike the Athenians, never made the decisions. In Greece it is different, because there the concept of the Just was introduced and the possibility of discussing who should rule was opened up. This was the perspective of Polybius, who, of course, did not understand anything. Meier acknowledges that the Roman aristocracy was well acquainted with Greek political ideas, but it was forbidden to draw lessons from them for Rome<sup>83</sup>.

Although the article is contained within the premises of *Res publica amissa*, one can see an attempt to go a little further and find an explanation for the consensus that Meier assumes and takes for granted as an immutable reality that needs no justification. Now, in 2015, he introduces a concept that may help to explain this enormous solidity. «*Das Überkommene*», – «that which overwhelms us, that which takes hold of us», with a religious origin (fear of divine punishment), but which ends up being observed by tradition<sup>84</sup>. This, which is imposed and dominates, gives legitimacy to this «organic» constitution, making any alternative unthinkable in practice<sup>85</sup>.

## Gelzer and Meier vs. Mommsen

There is a hidden line that unites Gelzer and Meier: both reject the liberal state, albeit from different perspectives. Gelzer does so from an evangelical conservatism that looks back with nostalgia on the Ancien Régime and disapproves of the bourgeois revolutions of the nineteenth century<sup>86</sup>. He criticises Mommsen (and Pöhlmann), because their works are tinged with nineteenth century liberal (or socialist) concepts. It is necessary to recover the uniqueness («*Ei-*

83. Meier, 2015, pp. 595, 624, 634, 635, 669.

84. A term he uses three times in Meier, 2015, pp. 691, 655, 692.

85. «Es herrschte Übereinstimmung darüber, dass die Ordnung so, wie sie überkommen war, richtig, modern formuliert: dass sie legitim war», Meier, 2015, p. 694.

86. Gelzer was for a long time an active member of the «Bekennenden Kirche» (Srauß, 2017, p. 193 n. 278).

*gentumlichkeit*) of Rome, which in Gelzer's view means the idea of a Rome that is above all «conservative»: «die politische Haltung der Römer konservativ war und darum organisch»<sup>87</sup>. Meier, in turn, criticises and rejects Gelzer's absolute submission to the sources, because it seems to him to lack theoretical sophistication: it is not enough to use Latin or Greek terms, it is above all important to specify what they mean; therefore, reflection on the concepts is of crucial importance<sup>88</sup>. His, in particular, rests firmly on Schmitt's critique of political liberalism.

The rejection of Mommsen is absolute and unqualified: «Dass das von Theodor Mommsen konstruierte System des „Staatsrechts“ im alten Rom keine Entsprechung hatte ist *communis opinio*»<sup>89</sup>. Barber has recently raised his voice forcefully against this idea, denying that Mommsen's reconstruction was purely legalistic-formalist<sup>90</sup>. However, it would seem strange if both Gelzer and Meier had completely misunderstood Mommsen. Strange and even suspicious, because it could only be attributed to ill will on their part<sup>91</sup>. Barber refers to the juvenile Mommsen of the *History of Rome*, which was practically forgotten in academic circles at the beginning of the twentieth century, while Gelzer and Meier naturally refer to *Public Law*. Barber's efforts to show a continuity, almost an identity, between the two works are futile. Suffice it to recall that, while in the former, political parties form the backbone, in the latter there is not scarcely any mention of the *optimates* and *populares*<sup>92</sup>. Likewise, contrary to Mommsen, for Gelzer, the Senate was, if not legally, then at least de facto, the most important body and its will prevailed over that of the magistrates<sup>93</sup>. Even if we confine ourselves to the *Römische Geschichte*, there is an essential difference. For Mommsen the politicians of the Late Republic were either incompetent, short-sighted or exclusively self-interested. In this limited sense, his proposals bear a certain resemblance to the ideological homogeneity advocated by Meier. However, there are two important differences. The first is that Meier does not attribute this monotony to the pettiness of politicians, but to structural reasons why an alternative was not even conceivable. What for Mommsen is a horror, something to be condemned and which must disappear, for Meier, as for Gelzer, is the closest image of his historically realised polit-

87. Gelzer, 1941, p. 107.

88. Gelzer, 1977, pp. 51-52.

89. Meier, 2015, p. 690. This rejection of Mommsen and Meier's consequent belittling of the law was the main criticism of him in Blecken, 1968, in his review. Gelzer left clear his disagreement with Mommsen from the very beginning of *Nobilität* (the *Vorbemerkung*).

90. Barber, 2022.

91. «One wonders how could this (ie. that legal equality was purely theoretical and that both Gelzer and Mommsen agreed on the iron rule of the aristocracy in real life) escaped a century of readers», Barber, 2022, p. 216 n. 477. The answer he himself gives (i.e. that the German classics are read little and badly) is clearly unsatisfactory; it might be valid for the world of the Anglosphere, but certainly not for Gelzer and Meier, who repeatedly confess their profound disagreement with Mommsen. Strauß comes up with a more complex and satisfactory explanation (see below).

92. López Barja, 2005. As Simon, 1988, p. 236 has shown, one important novelty in Gelzer's work lies in that he has completely abandoned the notion of «political parties» as applicable to the Roman Republic.

93. Meier, 1977, p. 48.

ical ideal. The second, which derives from the first, is that, in Mommsen's view, there is the possibility of one of the aristocrats rising above the prevailing mediocrity, a true politician. This is what Julius Caesar was, in his view. For Meier, on the other hand, there was nothing extraordinary about his figure, because not even he was able to bring about regime change: the all-powerful dictator finally proved to be incapable.

From a very different point of view, Strauß has minimised the differences between Mommsen (in this case, with reference to the *Staatsrecht*) and Gelzer's *Nobilität*. He considers that both agreed in emphasising the absolute dominance of the aristocracy (for legal equality meant nothing in this context) and that both were equally uninterested in what the economic foundations of this dominance were. In his view, Gelzer's insistence on the social does not suffice to confront him with a Mommsen supposedly focused on 'public law' issues, because the third volume of the *Staatsrecht* (*Bürgerschaft*) presents a model of stratified Roman society with which Gelzer was in substantial agreement<sup>94</sup>. However, he acknowledges that the *Klientelthese* did represent a novelty, although, as Simon had already pointed out, it took many years for it to make its way, as the reviewers of *Nobilität* at the time hardly noticed it<sup>95</sup>. The exaltation of Gelzer as a «new paradigm» began after the Second World War and was probably due to the desire to find in it an answer at a time when hierarchies of all kinds had begun to be questioned<sup>96</sup>.

## Conclusions

Ultimately, the reconstruction advocated by Meier is openly ahistorical. He himself has acknowledged at various points how exceptional the Roman case is. This is understandable for Gelzer, whose view of history is clearly idiographic, but incomprehensible for Meier, who favours a nomothetic approach. His attempts at explanation end up being unsatisfactory. On the one hand, as Brunt asked, if everyone was happy with the Republic, why did it fall? Meier's answer is itself a renunciation of any attempt at explanation: the «accumulation of subordinate events», what he calls «*processualiter*»<sup>97</sup>. Moreover, from the absence of separation of the state as an abstraction, i.e. from the lack of a principle of political representation, he infers the impossibility of an alternative taking shape, but Meier himself acknowledges that such an alternative did exist in archaic Greece, sustained by certain layers of the population (mainly peasants) who built isonomy and democracy by overthrowing the democratic regime. Clearly, in this case, the fact that the political regime was not representative did not in any way prevent alternation of power.

It is rather contradictory that Meier questions the formal existence of a state in Rome and at the same time relies precisely on Schmitt's theoretical framework, which all revolves around

94. Strauß 2017, pp. 220-221. Yet he perceives in Gelzer an «anti-Mommsen-Reflex» (p.165).

95. Simon, 1988, p. 237 and Strauß, 2017, pp. 211-214.

96. Strauß, 2017, p. 221.

97. Meier, 2017, p. 43\*.

the modern notion of the state. Meier is well aware of this difficulty. On some occasions, he sees no compelling reason not to extend Schmittian conceptualisation of the political to other communities that are not states, such as the *polis* or the *res publica*<sup>98</sup>. On other occasions, however, he expresses reservations about this kind of transposition. Thus, referring to the reforms of Tiberius Gracchus, he points out, as we have already seen, that his measures were «constitutionally unconstitutional fractures that were constitutionally disregarded», i.e. measures that did not alter constitutional law but only in the specific case, a fully Schmittian concept, which is accompanied by the following note of caution: «it cannot be assumed that other [Schmittian] manifestations of sovereignty fit with the “organic” constitution»<sup>99</sup>.

Naturally, the main difference between Gelzer and Meier concerns clientelism. As we have already seen, for the former clientelism serves to explain how a supposedly democratic regime, in which the magistrates were elected and the people voted on the laws, was in reality a perfect oligarchy, the uncontested domain of the *nobilitas*. For the second, on the other hand, with the disorderly growth of the citizen body and the empire, the relatively compact clienteles on which the power of the aristocracy had originally rested, had lost importance or disappeared altogether<sup>100</sup>. Nor were families internally so close-knit that they functioned as political subjects. Clientelism was an important factor for social cohesion, but not a decisive one. Nevertheless, both coincided in their rejection of liberalism, understood as a political doctrine which places the rights of the individual at its centre. Gelzer, as we have shown, felt a juvenile distaste for the French Revolution. Meier's thoughts were more sophisticated and rooted on Schmitt's criticism of Hobbes: the individualism of Hobbes in Schmitt's opinion seemed to open an unbridgeable and unacceptable gap in the political community<sup>101</sup>. These internal fractures, which form the essence of liberal democracies, are abhorrent to the consensus regime envisaged in *Res publica amissa*.

98. Meier, 1988b.

99. Meier, 2017, pp. 130 and 131, n. 411, quoting Schmitt, 1928, pp. 99ss and 196ss. Meier recalls that Schmitt forbade him to use the term «state» for Ancient History without at least a corresponding qualification, Meier, 1988b, p. 553.

100. Meier, 2017, pp. 174 and 176.

101. Slomp, 2009, pp. 48-49.

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