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# RE-CONSTRUCTING THE POLITICAL SYSTEM OF REPUBLICAN ROME

## A re-consideration of approach and methodology

KAJ SANDBERG

### Introduction

In his review of Andrew Lintott's monograph *The Constitution of the Roman Republic* Henrik Mouritsen is remarkably harsh, styling it "an unashamedly old-fashioned book". The work, in his view, belongs in a nineteenth-century tradition of institutional history and represents a return to an obsolete paradigm of political history. According to Mouritsen the political institutions of republican Rome are best viewed in, as he puts it, "a broader historical and social perspective", contrasting Lintott's effort with Claude Nicolet's classic *The World of the Citizen in Republican Rome*.<sup>1</sup> Mouritsen's views reflect notions that are far from uncommon in current scholarship on the politics of the Roman Republic. Whereas nowadays the constitutional basis for the operation of the state machinery is all but neglected,<sup>2</sup> most of

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\* I owe a great debt of gratitude to Mr. Kaius Tuori (University of Helsinki) and, in particular, to Dr. Jyri Vaahtera (University of Turku), for their most valuable comments on earlier drafts of this paper.

<sup>1</sup> H. Mouritsen, *JRS* 91 (2001), 221; A. W. Lintott, *The Constitution of the Roman Republic*, Oxford 1999. C. Nicolet's work *The World of the Citizen in Republican Rome*, Berkeley – Los Angeles 1980, is an English translation (by P. S. Falla) of *Le métier de citoyen dans la Rome républicaine*, Paris 1976.

<sup>2</sup> Though republican Rome never possessed a constitutional code in the modern sense, it is clearly all justified to speak of a Roman 'constitution'. Political life in the Roman republic was, as Adalberto Giovannini observes ("Magistratur und Volk. Ein Beitrag zur Entstehungsgeschichte des Staatsrechts", in W. Eder (Hrsg.), *Staat und Staatlichkeit in der frühen römischen Republik. Akten eines Symposiums, 12.–15. Juli 1988, Freie Universität Berlin*, Stuttgart 1990, 406), "durch eine Anzahl von unantastbaren

the attention is almost invariably directed towards the non-formal aspects of political life.

The Great Shift of Focus took place in the early 20th century, and has undoubtedly contributed to enhance our understanding of Roman society, but it seems to me that the excessive emphasis on extra-constitutional aspects sometimes leads to reasoning that simply defies common sense. Mouritsen himself provides a striking example of this phenomenon. Reproaching Lintott for making an analytical distinction between the magistracies and the Senate, he argues that such a separation "may strike many readers as artificial, given that they all [scil. the magistrates and senators] belonged to the same social class and in practice were identical".<sup>3</sup> As if it were of no significance whatever in what particular capacity a political agent was acting! Would any scholar of (say) modern American history venture anything similar? For instance, would anyone contend that an analytical distinction between the constitutional powers of the US Congress and the Supreme Court in the mid-19th century is largely irrelevant, as these institutions tended to represent the same strata in society, or because some individual judge had been a senator or a representative earlier in his career? Yet no one would deny that modern American politics is also heavily affected by countless extra-constitutional factors. Future scholars studying the current era might well take a keen interest in the influence of private and corporate wealth, the lobbying culture, the role of the media etc., but does anyone sincerely believe that any approach to American politics disregarding the formal powers of the political institutions could yield valid results?

As for scholars who largely disregard the constitutional and legal framework of political life in the Roman Republic, overly stressing its informal features, they seem to be curiously oblivious of the well-known yet frequently overlooked fact that formalism was an intrinsic trait of Roman culture.

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Grundsätzen bestimmt, die teils aus der Tradition geerbt, teils in Gesetzen ausdrücklich festgelegt waren. Diese unabänderlichen Grundsätze bildeten in ihrer Gesamtheit ein festes System, das man doch als 'Verfassung' in heutigen Sinne des Wortes bezeichnen darf."

<sup>3</sup> Mouritsen 2001, 221.

### Roman formalism and *ius publicum*

It is certainly no exaggeration to assert that formalism permeated Roman public life. The best known and most widely cited examples illustrating the rigidity of Roman formalism are found in what, for convenience, might be termed the religious realm, even if we should immediately note that such a categorization is anachronistic.<sup>4</sup> Performance of religious rites and divination of signs were actually key elements in all public life. A mere sacrifice was a very complex affair, as in addition to all the rites involved – which had to be flawlessly performed – there was a formula that had to be uttered exactly in the prescribed fashion. Any error, any slip from the set formula that is, called for a renewal of the whole rite.<sup>5</sup>

Legal life and the administration of justice were also characterized by marked, if not extreme, formalism. Legal transactions as well as litigation required the observance of carefully specified external forms. Unless clothed in these forms, which usually involved the utterance of solemn *formulae* or other *verba certa*, the will of the parties did not take effect. Moreover, a judge needed the *verba legitima* in order to make his verdict binding.<sup>6</sup>

It is also amply attested that the Romans had a profound concern for the correct conduct of matters pertaining to formal political procedures and the operation of the political institutions. It is clear from the evidence we

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<sup>4</sup> The distinction between religious and political life, which in fact were closely intertwined, is all modern and purely conventional. Reflecting the modern separation of religious and secular matters it was early further affirmed by the organization of a number of successive very influential handbooks on Roman antiquities. Already in W. A. Becker's and J. Marquardt's *Handbuch der römischen Alterthümer*, Leipzig 1843–1846, the *Staatsverfassung* was treated separately from the *Gottesdienst*. The same is true of its later version, Th. Mommsen's and J. Marquardt's collaboration *Handbuch der römischen Alterthümer*, Leipzig 1871–1888, where *Staatsrecht* is presented apart from *Sacralwesen*.

<sup>5</sup> See above all Plin. *nat.* 28,10–11, with commentary in M. Beard et al., *Religions of Rome II. A Sourcebook*, Cambridge 1998, 129. See also T. Köves-Zulauf, *Reden und Schweigen. Römische Religion bei Plinius Maior*, München 1972, 21–34 as well as J. A. North, "Conservatism and Change in Roman Religion", *Papers of the British School at Rome* 44 (1976) 1–12 esp. 1–5.

<sup>6</sup> For formalism in Roman law, see W. W. Buckland, "Ritual Acts and Words in Roman Law", in *Festschrift für Paul Koschaker zum 60. Geburtstag I*, Weimar 1939, 16 ff.; G. MacCormack, "Formalism, Symbolism and Magic in Early Roman law", *Tijdschrift voor Rechtsgeschiedenis* 37 (1969) 439 ff.; P. M. Tiersma, "Rites of Passage. Legal Ritual in Roman Law and Anthropological Analogues", *Journal of Legal History* 3 (1988) 9 ff.

have that errors of form frequently made void political actions. For instance, if such errors occurred during an election, the magistrates elected had to lay down office and the election had to be held anew. The annalistic tradition has preserved the memory of many occurrences of magistrates who, having been elected or appointed *vitio*, were substituted.<sup>7</sup> Even if a *magistratus vitio creatus nihilo setius magistratus*,<sup>8</sup> and even if the names of consuls elected *vitio* were included in the *fasti consulares*, such magistrates always had to abdicate.<sup>9</sup> In legislation there were also fixed rules that had to be carefully followed. Indeed, statements as to the legality of the actions of the parties involved in law-making were, it seems (on the evidence we have), a regular feature of the preambles to Roman laws.<sup>10</sup> In the *lex Quinctia*, a consular law of 9 BC which alone preserves the text of an entire *praescriptio legis*, this key element is expressed in the phrase *consules populum iure rogaverunt populusque iure sceivit*.<sup>11</sup> In the epigraphically best preserved preamble, belonging to the so-called *Lex Gabinia Calpurnia de insula Delo* of 58 BC, the same element is rendered [*A. Gab*]iniu[s *A. f. L. Calpurnius L. f. Piso co(n)s(ules) populum*] iuure r[ogaverunt populusq(ue) iuure sceivit].<sup>12</sup>

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<sup>7</sup> See, for instance, Liv. 5,17,2 f. (military tribunes 397 BC), 6,27,5 (censors 380), 6,38,9 (consul 368), 8,15,6 (dictator and *magister equitum* 337), 8,17,3 f. (dictator and *magister equitum* 332), 8,23,14 (dictator and *magister equitum* 326), 9,7,14 (dictator and *magister equitum* 320), 10,47,1 (tribunes of the plebs 292), 22,33,12 (dictator and *magister equitum* 217), 23,31,13 (consul 215), and 30,39,8 (plebeian edils 202). See also *Fast. Cap. s. a. 162 BC: P. Cornelius P. f. Cn. n. Scipio Nasica C. Marcius C. f. Q. n. Figulus vitio facti abdicarunt. In eorum loc(o) facti sunt P. Cornelius L. f. L. n. Lentulus Cn. Domitius Cn. f. L. n. Ahenobarb(us)*.

<sup>8</sup> Varro *ling.* 6,30.

<sup>9</sup> See J. Linderski, "The Augural Law", *ANRW* II 16.3 (1986), 2163 n. 48 and 2165 n. 54 as well as J. Vaahtera, *Roman Augural Lore in Greek Historiography. A Study of the Theory and Terminology* (Historia-Einzelschriften 156), Stuttgart 2001, 23 with n. 74.

<sup>10</sup> The texts of extant republican laws, preserved in bronze or (more rarely) in stone, are now conveniently collected and commented (along with extensive bibliographies) in *RS* = M. H. Crawford (ed.), *Roman Statutes I–II* (Bulletin of the Institute of Classical Studies, Supplement 64), London 1996. This work replaces older collections of law texts in C. G. Bruns & O. Gradenwitz, *Fontes iuris Romani antiqui*<sup>7</sup>, Tübingen 1909; S. Riccobono et al., *FIRA = Fontes iuris Romani anteiustiniani I–III*, Firenze 1940–1943 and P. F. Girard, *Les textes de droit romain*, Paris 1937.

<sup>11</sup> Apud Frontin. *aq.* 129 (*RS* 63).

<sup>12</sup> *CIL* I<sup>2</sup> 2500 = *RS* 22, line 1 f. Also the preamble of the *Lex Fonteia* (*RS* 36), a law belonging to the period of the second triumvirate, partially survives in Greek translation.

In Greek versions of Roman law texts *iure*, it seems, translates either δικάως or κατὰ τὸ δίκαιον.<sup>13</sup>

*Ius* was clearly at the very core of the conceptualization of a much formalized political life. And the mere existence of a concept such as *ius publicum* puts modern efforts to play down the constitutionality of the Roman Republic in a very odd light. To the Romans this concept, along with that of *mos maiorum*, was a key concept when it came to the *res publica*. There are also, in our sources for the Republic, references to persons who are specifically described as well versed in *ius publicum*.<sup>14</sup> Such references do not only attest to the existence of a distinct body of organized knowledge pertaining to the constitution, but also that this knowledge did matter. That the constitution was important, and that there was a strong tradition of legalistic thinking attached to it, is also evident from the fact that a number of antiquarian scholars are known to have written treatises on political institutions and, indeed, their *powers*. The production of C. Sempronius Tuditanus and M. Iunius Congus included works on the magistracies. The Augustan scholar L. Cincius wrote about the assemblies, *De comitiis*, and about the powers of the consuls, *De consulum potestate*. Only fragments, in many cases mere titles of works, survive of this scholarly literature, but their implications are all clear.<sup>15</sup>

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Only minute fragments survive of other preambles: *Lex agraria* of 111 BC (*CIL* I<sup>2</sup> 585 = *RS* 2): --- *princi]pium fuit, pro tribu Q. Fabius Q. f. primus scivit*; *Lex Cornelia de XX quaestoribus* of 81 BC (*CIL* I<sup>2</sup> 587 = *RS* 14): --- *principium fuit, pro tribu ---*; *Lex Antonia de Termessibus* of 71–68 BC (*CIL* I<sup>2</sup> 589 = *RS* 19): *C. Antonius M. f. Cn. Corne[lius ---] – C. Fundanius C. f. tr(ibunus) pl(ebis) de s(enatus) s(ententia) plebem --- preimus scivit*; *Veleia Fragment II* (*RS* 29): --- *co[---] plebes<q(ue)> i[ure scivit ---]*.

<sup>13</sup> *CIL* I<sup>2</sup> 2500 = *RS* 22, line 39; *Lex Fonteia* (*RS* 36), frgg. (a) + (b), face (i), line 5. For Roman political language in Greek guise in general, see H. J. Mason, "The Roman Government in Greek Sources. The Effect of Literary Theory on the Translation of Official Titles", *Phoenix* 24 (1970) 150–159 and, above all, Id., *Greek Terms for Roman Institutions A Lexicon and Analysis* (American Studies in Papyrology 13), Toronto 1974, 126. See also my own observations in K. Sandberg, *Magistrates and Assemblies. A Study of Legislative Practice in Republican Rome* (Acta Instituti Romani Finlandiae 24), Rome 2001, 45 f.

<sup>14</sup> Cic. *Mil.* 70: *iuris publici, moris maiorum, rei denique publicae peritissimus* (Cn. Pompeius Magnus); Cic. *Brut.* 267: *cum auguralis tum omnis publici iuris antiquitatisque nostrae bene peritus fuit* (Ap. Claudius Pulcher).

<sup>15</sup> The fragments of antiquarian and legal writers who wrote on constitutional matters are collected in F. P. Bremer, *Iurisprudentiae antehadrianae quae supersunt* I–II, Leipzig

## The Great Shift of Focus and its consequences

Formal political actions were, as we have seen, required to be performed *iure*. Do we always know what that entails, in actual fact? Or what it meant if they were done *vitio*? Is it justified to presuppose that modern scholarship has been able to craft a reasonably sound model of the working of the political system of republican Rome, in any specific period? It will be argued here that the scholarly exploration of this system was interrupted prematurely long ago, and that prevailing models are essentially built upon pioneer work that did not undergo adequate scrutiny before *Staatsrecht*, in its classic form, turned into an increasingly unfashionable field of research.

It is an indisputable fact that current notions of the nature and structure of the political system of republican Rome are largely based on research done in the 19th century, when the study of republican politics focused extensively on political institutions and their formal interaction. This was the era of the *Isolierung* of Roman (public) law, which was explored by scholars like Rubino, Becker and Marquardt.<sup>16</sup> The greatest of the pioneers in the field of Roman public law was, of course, Theodor Mommsen, who in addition to producing a huge amount of analytical research, authored one of the most imposing scholarly syntheses ever created. In his *Römisches Staatsrecht* he did not only amass the results of the research in the field, but in effect codified the Roman constitution as a unified system of positive law.<sup>17</sup> This monumental work still constitutes the foundation for our perception of the legal and institutional structure of the political system of republican Rome. Even if numerous subsequent surveys of the political system of the Roman Republic have appeared, and even if

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1896–1901. For a discussion of their efforts, see E. Rawson, *Intellectual Life in the Late Roman Republic*, London 1985, 234 and 247 f.

<sup>16</sup> For the early study of Roman public law, see e.g. A. Giovannini, "Magistratur und Volk. Ein Beitrag zur Entstehungsgeschichte des Staatsrechts", in W. Eder (Hrsg.), *Staat und Staatlichkeit in der frühen römischen Republik. Akten eines Symposiums, 12.–15. Juli 1988, Freie Universität Berlin*, Stuttgart 1990, 406–36 and Id., "De Niebuhr à Mommsen. Remarques sur la genèse du "Droit public"", *Cahiers du Centre G. Glotz* 3 (1992) 167–176. See also Y. Thomas, *Mommsen et l'"Isolierung" du droit*, Paris 1984.

<sup>17</sup> For a thorough discussion of Mommsen's *Staatsrecht*, see J. Bleicken, *Lex publica. Gesetz und Recht in der römischen Republik*, Berlin 1975, 16–51. Another important discussion is G. Crifò, "A proposito della ristampa del *Droit public romain* di Mommsen", *Studia et Documenta Historiae et Iuris* 52 (1986) 485–91.



such works continue to be published regularly, the constitutional model of the Roman Republic created by Mommsen and his predecessors remains largely intact.<sup>18</sup> The analysis of the political institutions and their formal interaction, found in Mommsen's *magnum opus*, has to a remarkably small degree been modified by later research. Does this mean that the nineteenth-century scholars got it all right?

The protracted scholarly neglect that has befallen the political system of the Roman Republic can no doubt be ascribed to the fact that entirely new concerns occupy the minds of scholars interested in Roman politics. The Great Shift of Focus was a major change of paradigm that took place in the early decades of the 20th century, following upon the publication of Matthias Gelzer's study *Die Nobilität der römischen Republik*.<sup>19</sup> This immensely influential work, the main theses of which were further elaborated by Friedrich Münzer in *Römische Adelsparteien und Adelsfamilien*,<sup>20</sup> brought about an entirely new conception of the working of Roman politics. Since then it has been more or less universally maintained that the structures of political power in republican Rome are found not

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<sup>18</sup> The first two volumes of Mommsen's *Staatsrecht* appeared in their first edition already in 1871. A bibliography of important post-Mommsenian treatises of the political system of republican Rome should include at least the following items: E. von Herzog, *Geschichte und System der römischen Staatsverfassung* I, Leipzig 1884; A. H. J. Greenidge, *Roman Public Life*, London 1901; E. Meyer, *Römischer Staat und Staatsgedanke*, Zürich 1948; F. De Martino, *Storia della costituzione romana* I–V, Napoli 1951–67; H. Siber, *Römisches Verfassungsrecht in geschichtlicher Entwicklung*, Lehr 1952; U. von Lübtow, *Das römische Volk. Sein Staat und sein Recht*, Frankfurt 1955; A. Burdese, *Manuale di diritto pubblico romano*, Torino 1966; J. Bleicken, *Die Verfassung der römischen Republik. Grundlagen und Entwicklung*, Paderborn 1975; F. Càssola & L. Labruna, *Linee di una storia delle istituzioni repubblicane*, Napoli 1979; W. Kunkel, *Staatsordnung und Staatspraxis der Römischen Republik* (Handbuch der Altertumswissenschaft Abt. 10. Rechtsgeschichte des Altertums III.2), herausgegeben und fortgeführt von H. Galsterer et al., München 1995; J. M. Rainer, *Einführung in das römische Staatsrecht*, Darmstadt 1997; Lintott 1999 (above n. 1).

<sup>19</sup> M. Gelzer, *Die Nobilität der römischen Republik*, Leipzig 1912 (= Id., *Kleine Schriften* I, Wiesbaden 1962, 17–135). Note also M. Gelzer, *Die Nobilität der römischen Republik*, 2. durchges. Auflage mit Vorwort von J. von Ungern–Sternberg, Stuttgart 1983. For an English translation, by R. Seager, see *The Roman Nobility*, Oxford 1969 (repr. Oxford 1975).

<sup>20</sup> F. Münzer, *Römische Adelsparteien und Adelsfamilien*, Stuttgart 1920. The work has recently appeared in an English translation by T. Ridley, an edition including most valuable additional material: *Roman Aristocratic Parties and Families*, Baltimore 1999.

primarily in the political institutions, but in the fabric of social bonds traversing Roman society. Though political life at Rome articulated itself within a well-defined formal system featuring a range of institutions with carefully specified powers, the political behaviour of the Romans – on this view – was ultimately determined by social factors. In this model the fundamental determinants of political life were *amicitiae*, mutual loyalties (among peers), and *clientelae*, relationships founded on the dependence of the humbler citizens on the leading families of Rome. According to this interpretation of the nature of political power the formal interaction between the political institutions was of no more than secondary import, as Roman politics was essentially a contest between various *factiones* within the ruling aristocracy, the *nobilitas*.<sup>21</sup>

The Gelzerian approach to Roman politics, which immediately was recognized as a major breakthrough, soon gained additional impetus from subsequent developments in political historiography. In his ground breaking studies of British eighteenth-century politics and society, Lewis Namier stressed the importance of looking beyond the constitutional framework of the British state by comprehensively analyzing the underlying sociological structure of its political life and, above all, of the individual MP's, their connections and economic interests.<sup>22</sup> In the classical field the prosopographical method, as it was termed by Namier, was further established in 1939 by another landmark study, Ronald Syme's work *The Roman Revolution*.<sup>23</sup> At this point the method had really come to its own. Subsequent study of the political history of the Roman Republic has, to a great extent, assumed the form of prosopographical research focusing on careers, political alliances and other groupings within the nobility. Howard Scullard's study *Roman Politics* (1951) is, despite its title, essentially a prosopographical survey. The same is true of a number of other influential works by, among others, Filippo Càssola, Erich Gruen and Robert

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<sup>21</sup> For the impact of Gelzer's ideas, and their background, see R. T. Ridley, "The Genesis of a Turning-Point. Gelzer's Nobilität", *Historia* 35 (1986) 474–502 and C. Simon, "Gelzer's "Nobilität der römischen Republik" als "Wendepunkt"", *Historia* 37 (1988) 222–40.

<sup>22</sup> L. Namier, *The Structure of Politics at the Accession of George III*, 2 vols., London 1929; Id., *England in the Age of the American Revolution*, London 1930.

<sup>23</sup> R. Syme, *The Roman Revolution*, Oxford 1939.

Develin.<sup>24</sup>

No one would reasonably deny that politics, in any historical society, must be studied as comprehensively as possible. It is, therefore, remarkable that the study of the extra-constitutional aspects of Roman politics is not currently being supplemented by more research focusing on the legal and institutional foundation of political life. Despite some efforts during the past decades, notably by Fergus Millar, to restate the importance of the constitution and of the due operation of the formal institutions in the political system,<sup>25</sup> it is not as of yet possible to detect a significant renewed interest in the basic institutional structures of the Roman Republic.<sup>26</sup> A resurgence of this kind of research is, in my opinion, badly needed.

I believe that a fresh look at the political system of the pre-Sullan Republic – with all ideology, prejudice and dogma set aside – is likely to provide valuable new insights. There seems to be a large amount of arbitrary assumptions and unfounded preconceptions to get rid of in the very foundations on which the current scholarly understanding of this system rests. Some of these elements are derived from an excessive reliance on the

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<sup>24</sup> H. H. Scullard, *Roman Politics, 220–150 BC*, Oxford 1951 (second edition, London 1973); F. Càssola, *I gruppi politici romani nel III secolo a.C.*, Trieste 1962; E. S. Gruen, *Roman Politics and the Criminal Courts, 149–78 BC*, Cambridge, Mass. 1968; Id., *The Last Generation of the Roman Republic*, Berkeley – Los Angeles 1974 (reprint with new introduction, Berkeley – Los Angeles 1995); R. Develin, *The Practice of Politics at Rome, 366–167 BC* (Collection Latomus 188), Bruxelles 1985.

<sup>25</sup> See, in particular, F. Millar, "The Political Character of the Classical Roman Republic, 200–151 BC", *JRS* 74 (1984) 1–19; Id., "Politics, Persuasion, and the People before the Social War (150–90 BC)", *JRS* 76 (1986) 1–11; Id., "Popular Politics at Rome in the Late Republic", I. Malkin & W. Z. Rubinson (eds.), *Leaders and Masses in the Roman World. Studies in Honor of Zvi Yavets*, Leiden – New York 1995, 91–113 and Id., *The Crowd in Rome in the Late Republic*, Ann Arbor 1998.

<sup>26</sup> For a survey of the discussion, which to a considerable extent has focused on the role of the people, see M. Jehne, "Zur Debatte um die Rolle des Volkes in der römischen Politik", Id. (Hrsg.), *Demokratie in Rom? Die Rolle des Volkes in der politik der römischen Republik* (Historia Einzelschriften 96), Stuttgart 1995, 1–9. See also E. Gabba, "Democrazia a Roma", *Athenaeum* 85 (n.s. 75, 1997) 266–71. Among later contributions to the debate we should note K.-J. Hölkeskamp, "The Roman Republic. Government of the People, by the People, for the People?", *Scripta Classica Israelica* 19 (2000) 203–23; H. Mouritsen, *Plebs and Politics in the Late Roman Republic*, Cambridge 2001, and A. M. Ward, "How Democratic Was the Roman Republic?", *New England Classical Journal* 31 (2004) 101–19.

rich sources for the last decades of the Republic,<sup>27</sup> others from the cumulative efforts of nineteenth-century scholars, who sometimes were overly keen to recover new data for historical scholarship.

### **Nineteenth-century scholarship**

As is well known, the 19th century was an immensely dynamic era in the history of science and scholarship, also in that of the humanities and classical scholarship. Most importantly, the era saw the birth of modern critical history, and entirely new disciplines, such as archaeology and anthropology, developed. During the course of the professionalization of scholarship, as it became necessary to demarcate various disciplines from each other, methodology was extensively discussed and refined. The scholarly discussion also essentially attained its current organization as the great periodicals were founded and scholars started to meet at recurring conferences. All this, in combination with the fact that the number of scholars multiplied, led to a rapidly increasing growth of the sheer amount of scholarly works published each year. Moreover, a lot of new evidence for the Ancient World became known. This was not only the age of the great "expansion of the past", as stunning archaeological discoveries were made and linguistic research provided the keys to the primary sources for pre-classical cultures, but the written sources for classical antiquity were also supplemented in a very conspicuous way. Evidence that up to this point had been largely inaccessible to the scholarly community, notably the vast epigraphic material of the Graeco-Roman world, was published in the great *corpora* which still provide classical scholars with the bulk of their documentary sources. And before the century came to its close Greek (and to a lesser extent Latin) papyri from Egypt were systematically excavated for and published.

The knowledge of the Ancient World increased enormously during the course of the 19th century. New data were recovered in an unprecedented way. There was, obviously, a strong sense of progress, and

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<sup>27</sup> I do not believe that data concerning constitutional practices in the last decades of the Republic, after Sulla's revision of the constitution, are necessarily indicative of earlier conditions. For my empirical method, see Sandberg (above n. 13) 20 ff. and K. Sandberg, "Consular Legislation in Pre-Sullan Rome", *Arctos* 38 (2004) 135–39.

this left a conspicuous mark on classical studies. There was an increasing emphasis on recovering and, indeed, reconstructing what had been lost. The lost titles of Greek and Roman authors now reappeared on the shelves in the scholarly libraries, in the many fragment collections that were published. Fragment collecting, culminating in the heyday of *Quellenforschung*, became a most fashionable pursuit among classical scholars.<sup>28</sup> Not only were fragments of historiography and other kinds of literature searched for, the *testimonia* for the legal and political systems were also collected. The constitution of republican Rome attracted a great deal of interest, especially in the German states where constitutionalism was an emerging political force. Liberal intellectuals perceived the Roman constitution – which defined and, most importantly, circumscribed the powers of the magistrates – as a model for their own states. Mommsen's *Staatsrecht*, reflecting the liberal values of its author, is also a most interesting document of German nineteenth-century history.<sup>29</sup>

The laws of the Roman Republic also attracted a lot of attention in the 19th century, again no doubt mirroring the fascination for the idea of popular sovereignty and a *libera res publica*. However, with the exception of a fairly limited epigraphic record pertaining exclusively to the Late Republic, the sources for the legislation of the republican period consist primarily of scattered mentions and more or less vague reports in historiography and other kinds of literature from the Late Republic and the Empire. On the basis of this meagre material the legislation of the Republic was reconstructed in stunning detail. Laws were given names and contents, and their authors were identified on the basis of the most inconclusive data.<sup>30</sup> Yet, known by their by now conventional names (of which only a fraction are actually recorded in the primary sources), given in the format familiar from the Justinian Code and other legal sources, the comitial laws of the Republic entered into the common consciousness of the classical

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<sup>28</sup> The search for fragments and the reconstruction of lost works had, as Glenn Most points out, become systematic already with Bentley, but it was only in the early 19th century, with the schools of Welcker and Boeckh, that this industry really came into its own, see his preface to the volume G. W. Most (ed.), *Collecting Fragments – Fragmente sammeln*, Göttingen 1997, viii.

<sup>29</sup> See, à propos, A. Heuss, *Theodor Mommsen und das 19. Jahrhundert*, Kiel 1956; H. Grziwotz, *Der moderne Verfassungsbegriff und die 'römische Verfassung' in der deutschen Forschung des 19. und 20. Jahrhunderts*, Frankfurt 1986.

<sup>30</sup> See, for instance, my examples in Sandberg (above n. 13) 85–93 and *passim*.

scholars of the period. An inventory of these statutes, compiled by the Italian scholar Giovanni Rotondi, soon evolved into something akin to a canon of Roman laws.<sup>31</sup> By collecting relevant passages Rotondi inarguably made an important contribution towards the study of Roman politics in general and legislation in particular, but in his endeavour to summarize modern research (the efforts of nineteenth-century scholarship) he admitted items of speculation and conjecture too freely. By providing generations of scholars with inaccurate data concerning the activity of the magistrates of the Republic, he also contributed to blur the interpretation of the political system of republican Rome.

### **Magisterial activity as a key to the republican constitution**

The main difficulty facing scholars working on problems pertaining to Roman public law is that there never was a proper collection of the rules and conventions pertaining to political life. The concept itself of assembling such regulations into a written authoritative code was not alien to the Roman world. Many Roman *coloniae* and *municipia* were in fact granted charters which in great detail specified the powers and duties of their magistrates, the procedures for the meetings of their councils and electoral assemblies etc.,<sup>32</sup>

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<sup>31</sup> G. Rotondi, *Leges publicae populi Romani*, Milano 1912. A count of comitial statutes mentioned by name in the *Digesta* yields only about 35 laws, most of which belong in the last decades of the Republic or the Early Empire. The rest of the legal sources, historiography and other literary sources do not provide many additional law titles. As for the epigraphic record, a few inscriptions mention laws by name, but only two fragmentary *indices* of republican laws survive: *Lex Cornelia de XX quaestoribus* (CIL I<sup>2</sup> 587 = RS 14): [*Lex Cornelia*] *de XX q(uaestoribus)*; *Lex Antonia de Termessibus* (CIL I<sup>2</sup> 589 = RS 19): [*Lex Antonia*] *de Termesi(bus) Pisid(is) Mai(oribus)*. Neither preserves the full name of the law. In the former case the restoration is based on Tacitus' report (*ann.* 11,22,6) that the number of quaestors was raised to twenty *lege Sullae*. The conventional reconstruction of the latter *index* rests on the fact that a certain C. Antonius M. f. is mentioned first in the prescript's listing of the tribunes who put the law before the *plebs*. Rotondi's canon contains well beyond seven hundred laws and bills, all of which carry a name; no less than 544 carry a name embodying the *gentilicium* of the (actual or supposed) proposer. For a lengthy discussion of the classical and modern designations of Roman statutes, see Sandberg (above n. 13) 64 ff. See also my inventory of recorded and reconstructed law titles, *ibid.*, 152–173 (Appendix II).

<sup>32</sup> These kinds of documents, which contain most detailed provisions on administration

but the Roman state itself lacked anything of the sort. Moreover, in surviving ancient literature there is very little explicit testimony concerning the rules and conventions that applied in political life. There is no Roman work comparable to the *Athenaion politeia*, a detailed description of the political system of fourth-century Athens recovered from a papyrus found in Egypt in 1890.<sup>33</sup> Polybius' partially preserved account of the Roman constitution, in the sixth book of his history, is not specific concerning constitutional technicalities, representing primarily a treatise on the idea of the mixed constitution in the tradition of Greek political theory. Cicero's dialogues *De re publica* and *De legibus*, which deal with the ideal constitution, obviously contain a range of very valuable data, but neither provides detailed information on the actual political system.

All modern reconstructions of the Roman republican constitution must rest, first and foremost, on the observations that can be made of the operation of the state machinery. The main body of evidence offering this kind of data is constituted by accounts of political life in historiographical sources. For the Late Republic there is a considerable amount of invaluable information on the political system also in other kinds of literature, such as in the many letters and speeches of Cicero, as well as in a number of epigraphic documents which in a few cases offer intriguing insights. Generally speaking, information of relevance for political and constitutional history is both fragmentary and scattered, dispersed throughout the written record that has come down to us. It is practically impossible to conceive of a systematic and all-comprehensive collection of this kind of data, as the information in question qualitatively ranges from explicit statements concerning central political institutions to more or less inconclusive allusions on all kinds of secondary matters. In fact, Mommsen's *Staatsrecht* represents a most admirable effort to collect and deal with the myriad of details in a systematic manner. As far as I know, no one has attempted

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and jurisdiction, have been recovered especially in Spain and Italy. The best known charter is the so-called Flavian municipal law. Our knowledge of this law, which was previously based primarily on the *Lex municipii Salpensani* and the *Lex municipii Malacitani* (inscriptions from Spain), was augmented by the discovery in 1981 (in the province of Seville) of a new, fuller version, the *Lex Iritana* which was published by J. González in *JRS* 76 (1986) 147–243.

<sup>33</sup> The work is commonly attributed to Aristotle, but the authorship is in fact a matter of debate. For a commentary on this text, see P. J. Rhodes, *Commentary on the Aristotelian Athenaion Politeia*, Oxford 1993.

anything similar since, that is, largely independently of a pre-existing theoretical model.

A crucial body of evidence, obviously, is constituted by data relating to magisterial activity, a category of material which must be deemed as one of the principal avenues to the republican constitution. As the Senate, technically a mere advisory body, and the popular assemblies met solely at the pleasure of a magistrate, the magistrates were, in a sense, the only true agents in the formal political system. In studying the powers and functions of the magistrates, and their interaction with other institutions, it is always most important to establish *what* is being done, and *by whom*. However, despite the assiduous toil of generations of scholars devoted to Roman public law, this kind of decisive information is not as readily available to scholarship as it should be, and clearly could be. The problem is that scholarly conjecture has been allowed to blend with empirically established data. This state of affairs means that the building blocks present in modern reconstructions of the political system of republican Rome are difficult to separate from each other in order to be tentatively re-arranged in new ways. Sometimes it can be remarkably hard to spot elements representing modern conjecture and to distinguish them from authentic material, or data attested for in the primary sources.<sup>34</sup>

Every attempt to create a model of the political system of republican Rome must by necessity involve reconstruction that does not entirely rest on empirical data. In order to induce coherency in material often consisting of contradicting data, a scholar must sometimes reject some data or make unwarranted assumptions, occasionally even suppositions that are at variance with explicit statements in the primary sources. All this is fully legitimate, provided that it is clear from the argumentation on what grounds it is being made and, above all, that it is made perfectly plain what the testimony of the sources is. By means of an apparatus of notes, or some other kind of appropriate documentation, the scholar offers to other scholars the possibility to control his or her interpretations of the relevant source material. Curiously enough, this option is not present in some of the most important scholarly aids for scholars studying Roman politics in the republican period. The record of magisterial activity in pre-Sullan Rome, or rather, the way it has been documented by modern scholarship, is everything but firmly based on the testimony of the primary sources.

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<sup>34</sup> See Sandberg (above n. 13) 12 f.



Essential aids for anyone wishing to find information about the republican magistrates and their actions (that is, without having to read through the entire literary canon with relevance for the Roman Republic) are various modern *fasti* of these magistrates and, not least, scholarly lists of statutes. As I have pointed out elsewhere, many such tools have admitted elements of conjecture and speculation which have contributed to perpetuate a number of current views of the Roman political system which have no foundation in the primary sources. I contend that our picture of what the various magistrates were typically doing in their year of office has been blurred by a general failure to keep empirically established data in the centre of attention. Robert Broughton's work *The Magistrates of the Roman Republic*,<sup>35</sup> which (especially in the pre-digitized world) fundamentally "transformed the possibilities for research on Roman politics",<sup>36</sup> does provide a most valuable inventory of the evidence for the magistrates of the Republic and their actions, but despite its meticulous documentation it is, in many single instances, overly reliant on earlier scholarly tools, above all the list of statutes in Rotondi's work.

Rotondi's work has only recently been replaced by new lists. The volume of Dieter Flach covers the Early Republic down to the Licinio-Sextian legislation, that of Marianne Elster the Middle Republic.<sup>37</sup> A work by an international team of scholars planned to replace Rotondi's list in its entirety, *Les lois des romains*, is apparently well under way, under the direction of Jean-Louis Ferrary and Philippe Moreau.<sup>38</sup> However, I find it most unfortunate that all these works, which will be indispensable works of reference for years to come, have retained the "nomonomastics" of Rotondi

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<sup>35</sup> T. R. S. Broughton, *The Magistrates of the Roman Republic* I–II, New York 1951–52, with *Supplementum*, New York 1960 (revised edition, Atlanta 1986). For an excerpt from Broughton's autobiography documenting his work on the magistrates, see J. Linderski (ed.), *Imperium sine fine. T. Robert S. Broughton and the Roman Republic*, Stuttgart 1996, 31–33. A few examples of earlier modern *fasti*: J. Seidel, *Fasti aedilicii von der Einrichtung der plebejischen Ädilität bis zum Tode Caesars*, Breslau 1908; G. Niccolini, *I fasti dei tribuni della plebe*, Milano 1934.

<sup>36</sup> J. Briscoe, *JRS* 78 (1988) 268.

<sup>37</sup> D. Flach, *Die Gesetze der frühen römischen Republik. Text und Kommentar*, in Zusammenarbeit mit S. von der Lahr, Darmstadt 1994; M. Elster, *Die Gesetze der mittleren römischen Republik*, Darmstadt 2003.

<sup>38</sup> For a full presentation of the project, see <http://www.enssib.fr/bibliotheque/documents/dessid/rrblecaudey.pdf>

and his generation of legal historians. By presenting the laws by their conventional (but usually reconstructed) names, neatly arranged in chronological order, they do not only give the impression that the evidentiary basis for our knowledge of republican legislation is more substantial than what it actually is, but also contribute to perpetuate many poorly founded notions pertaining to the contents, chronology and authorship of these laws. This is particularly true of reconstructed law titles embodying *gentilicia* of the (supposed) proposers, as the attribution of republican laws entails more difficulties than what has usually been recognized.<sup>39</sup>

### **Political leaders or Lacedaemonian kings?**

A fresh look at the consulship of republican Rome, which after Mommsen's analysis has received very little scholarly attention from the point of view of its constitutional position and development,<sup>40</sup> is no doubt likely to yield important new insights into its historical evolution. In a series of studies I have proposed that the current appreciation of this magistracy, especially in the pre-Sullan period, is not compatible with the evidence we have, but based upon modern surmise involving a host of unwarranted suppositions. I have, above all, suggested that the role of the consuls in civil legislation before Sulla's reforms is much smaller than what is usually thought. A scrutiny of the primary sources cited as evidence for consular legislation in this period yields that such legislation frequently is, in fact, of uncertain authorship or, indeed, altogether conjectural.<sup>41</sup>

There has been a conspicuous bias among modern scholars to connect poorly documented legislation, or even altogether hypothetical laws (usually postulated by modern scholars in order to account for some recorded

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<sup>39</sup> For a discussion of the problems involved, see Sandberg (above n. 13) 41–44.

<sup>40</sup> Among the few original studies devoted specifically to the consulship we should note E. De Ruggiero, *Il consolato e i poteri pubblici in Roma*, Roma 1900 (rist., Roma 1968) and A. Giovannini, *Consulare imperium* (Schweizerische Beiträge zur Altertumswissenschaft 16), Basel 1983.

<sup>41</sup> See Sandberg (above n. 13) 45–96; see also Sandberg (above n. 27) 140 ff. Also Richard Mitchell observed that consular legislation is frequently most dubious, see *Patricians and Plebeians. The Origin of the Roman State*, Ithaca – London 1990, *passim*.

innovation), with consuls or other curule magistrates. As I have demonstrated, these kinds of laws actually make up a significant share of legislation attributed to such magistrates. Whereas the classical authors are quite consistent in representing the tribunes of the plebs as the principal law-makers of the entire pre-Sullan Republic, the record of consular activity in surviving historical accounts is essentially a record of feats in war. This is certainly no mere reflection of a historiographical tradition significantly preoccupied with martial *res gestae*, because it is all clear that the supreme magistrates of much of this period spent most of their year in their military provinces. However, the scholarship of the 19th century, transmitted by Rotondi and other scholarly aids, has brought into circulation a number of very dubious consular statutes that, having taken on a life of their own, are hard to cancel from the collective awareness of scholars. It is evident that this body of hypothetical laws has influenced scholarly views of the political system, perpetuating the (in my view) erroneous notion, that consuls before the Sullan reforms were significantly engaged in civil legislation, which was passed in the centuriate assembly or in a tribal assembly at the disposal of curule magistrates.<sup>42</sup>

I have shown that consuls and other curule magistrates of the pre-Sullan period cannot be connected with procedure in the legislative popular assemblies, unless we deal with legislation concerning military matters or foreign relations.<sup>43</sup> This, I contend, suggests that the consuls' formal role in civil affairs was much limited in the centuries preceding the last century BC, if not *de iure* at least *de facto*. That is, I do not share Richard Mitchell's view that the dichotomy *domi-militiae* reflects an original feature of the Roman

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<sup>42</sup> I have endeavoured to demonstrate that, before the Sullan revision of the constitution, the *comitia centuriata* was an exclusively military assembly possessing no civil competence, and that the only tribal assembly was the *concilium plebis*, which met solely under tribunician presidency, see above all Sandberg (above n. 13) 105–10 as well as (containing a lot of new argumentation) Sandberg (above n. 27) 148–53. See also K. Sandberg, "The concilium plebis as a Legislative Body during the Republic", in U. Paananen et al., *Senatus populusque Romanus. Studies in Roman Republican Legislation* (Acta Instituti Romani Finlandiae 13), Helsinki 1993, 74–96 and "Tribunician and Non-Tribunician Legislation in Mid-Republican Rome", in C. Bruun (ed.), *The Roman Middle Republic. Politics, Religion and Historiography, c. 400–133 BC. Papers from a Conference at the Institutum Romanum Finlandiae, September 11–12, 1998* (Acta Instituti Romani Finlandiae 23), Rome 2000, 121–40.

<sup>43</sup> See, for instance, Sandberg (above n. 13) 58 ff. and (with additional argumentation) Sandberg (above n. 27) 141 ff.

political system, that the consuls lacked civil competence, and that civil legislation always was an exclusively tribunician domain. In my opinion it is not possible to discard the traditions, conspicuously present in all surviving Roman historiography, of a political struggle between patricians and plebeians, which also serves well to explain many particularities in the constitution of the Classical Republic. I have argued that, during the course of the Conflict of the Orders, the sphere of action of the consuls was increasingly confined to the military realm of public life, whereas they in civil life gradually lost their initiative to the tribunes of the plebs. It was, I believe, only the Sullan revision of the constitution that made the consulship a predominantly civil office. Only at this point did it become customary for the consuls, and for all the praetors, to permanently reside at Rome during their year in office.

The prevailing current model of the Roman consulship prior to Sulla's reforms appears to be a modern construct made necessary by a widespread preconception that plebeian officials cannot have been responsible for the bulk of the legislation already before the *lex Hortensia* of 287 BC. Mitchell is quite right in observing that such a view is altogether arbitrary, and should be substituted with a model which better accords with the evidence.<sup>44</sup> Moreover, as this presumption is largely based on the reluctance to accept that the Roman aristocracy relied on plebeian officials for legislation, it is interesting to note that no scholar has ever cast into doubt the historicity of the tribunician *ius intercessionis*, which was undeniably a *telum acerrimum* in Roman political life.<sup>45</sup> The tribunes of the plebs were not entitled to lead the Roman legions, but early became key figures in domestic politics. It is significant that Augustus, creating the basis for the Emperor's power, resolved to make the *tribunicia potestas*, and not the *imperium consulare*, a perpetual element of this power base.

Not fully appreciating the fact that the political system of republican Rome did not constitute a single unitary hierarchy but actually consisted of two parallel organizations, scholars have been too prone to regard the consuls as the ancient Roman counterparts to modern political leaders. Of course, it is inevitable that analogies always influence the historical interpretation of the past, but maybe we should make a more conscious effort not to view republican Rome with modern eyes. Is it really necessary

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<sup>44</sup> Mitchell, *Patricians and Plebeians*, 191.

<sup>45</sup> Liv. 3,55,1. See my remarks in Sandberg (above n. 13) 142.

to postulate consular participation and supervision in all areas of public life? A consideration of the constitutional experience of classical Sparta could no doubt provide potentially fruitful points of comparison.

As is well known, in the Lacedaemonian state the powers of the dual kingship were much limited in the civil realm of public life, especially in time of peace. The political initiative largely rested with the ephors, five annually elected magistrates whose extensive powers included the right to check the royal exercise of power. In the martial realm, however, the powers of the kings were almost unlimited. This kind of constitution is clearly echoed in Polybius' representation of the political system of Rome, which he perceived as a mixed constitution, where the powers of the exponents of the monarchic element, i.e. the two consuls, were effectively checked by the other elements in the constitution in the city, but practically unlimited in the field.<sup>46</sup> There are other interesting parallels between Sparta and Rome. In Sparta the meetings of the Apella were originally presided over by the kings, but later this popular assembly met under the presidency of the ephors. That is, laws and other enactments passed by the popular assembly, which just like the Roman assemblies could only approve or reject the proposals put before it, normally originated with the ephors, and not the kings. In Rome this is paralleled by the domination of the tribunes in legislation. It is also interesting to note that Sparta too had a council of elders, the Gerousia, which much like the Roman Senate (the very words share a similar formation) had a central position in policy making and possessed important judicial functions.<sup>47</sup>

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<sup>46</sup> Pol. 6,12. For a detailed commentary of Polybius' account of the Roman political system, see F. Walbank, *A Historical Commentary on Polybius I*, Oxford 1957, 635–746.

<sup>47</sup> Recent years have seen a substantial flow of publications on political institutions and the constitutional development of the Lacedaemonian state. A short bibliography of relevant works may include the following titles: D. A. Miller, "The Spartan Kingship. Some Extended Notes on Complex Duality", *Arethusa* 31 (1998) 1–17. L. Thommen, *Lakedaimonion Politeia. Die Entstehung der spartanischen Verfassung* (Historia Einzelschriften 103), Stuttgart 1996; E. Baltrusch, *Sparta. Geschichte, Gesellschaft, Kultur*, München 1998; M. Meier, *Aristokraten und Damoden. Untersuchungen zur inneren Entwicklung Spartas im 7. Jahrhundert v. Chr. und zur politischen Funktion der Dichtung des Tyrtaios*, Stuttgart 1998; P. Oliva, "Politische Praxis und Theorie in Sparta", W. Schuller (Hrsg.) *Politische Theorie und Praxis im Altertum*, Darmstadt 1998, 30–42; N. Richer, *Les éphores. Études sur l'histoire et sur l'image de Sparte (VIIIe–IIIe siècle avant Jésus-Christ)*, Paris 1999; G. Cuniberti, "Lakedaimonion Politeia", *SIFC* 18 (2000) 99–111; M. Kōiv, "The Origins, Development and Reliability of the Ancient

There can be no doubt that Polybius' whole understanding of monarchic power, which he recognized in the Roman dual consulship, is extensively based on his perception of the Spartan kingship. Before the inception of the Hellenistic age, Sparta was clearly the most famous and best known of the small number of contemporary monarchies in the Greek world. Its peculiar constitution had attracted the curiosity of other Greeks long before Polybius' time. In the early fourth century BC the Athenian writer Xenophon wrote a treatise of the Spartan political system.<sup>48</sup> This system figured prominently also in works on political theory which were undoubtedly familiar to Polybius. In fact, in the first known proper discussion of the mixed constitution, in Aristotle's *Politica*, Sparta is singled out as a particularly good example of a state with this kind of constitution.<sup>49</sup> His pupil Dicaearchus of Messana wrote a now lost discussion of the mixed constitution, entitled *Tripolitikos*, which probably was focusing primarily on the Lacedaemonian state.<sup>50</sup>

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Tradition about the Formation of the Spartan Constitution", *Studia Humaniora Tartuensia* 1.3 (2000) (<http://www.ut.ee/klassik/sht/2000/koiv2.pdf>), 27 pp.; S. Link, *Das frühe Sparta. Untersuchungen zur spartanischen Staatsbildung im 7. und 6. Jahrhundert v. Chr.*, St. Katharinen 2000; S. Sommer, *Das Ephorat. Garant des spartanischen Kosmos*, St. Katharinen 2001; E. Lévy, *Sparte. Histoire politique et sociale jusqu' à la conquête romaine*, Paris 2003.

<sup>48</sup> A new edition of the *Respublica Lacedaemoniorum* is S. Rebenich, *Xenophon. Die Verfassung der Spartaner*, Darmstadt 1998. Also a new commentary has been published recently: M. Lipka, *Xenophon's "Spartan Constitution". Introduction, Text, Commentary*, Berlin 2002.

<sup>49</sup> Aristot. *pol.* 2,1265b–1266a. For a discussion, see R. A. De Laix, "Aristotle's Conception of the Spartan Constitution", *Journal of the History of Philosophy* 12 (1974) 21–30.

<sup>50</sup> Walbank (above n. 46) 639 ff. There is a vast scholarly literature dealing with Polybius' account of the political system of Rome, and with the theory of the mixed constitution in antiquity. Important discussions include K. von Fritz, *The Theory of the Mixed Constitution in Antiquity. A Critical Analysis of Polybius' Political Ideas*, New York 1954; G. J. D. Aalders, *Die Theorie der Gemischten Verfassung im Altertum*, Amsterdam 1968; P. Catalano, "La divisione del potere in Roma", *Studi in onore di G. Grosso*, Torino 1974, 667–91; C. Nicolet, "Polybe et les institutions romaines", *Polybe. Neuf exposés suivis de discussions*, Vandœuvres – Genève 1974, 209–65; W. Nippel, *Mischverfassungstheorie und Verfassungsrealität in Antike und früher Neuzeit*, Stuttgart 1980; C. Nicolet, "Polybe et la "constitution" de Rome. Aristocratie et démocratie", C. Nicolet (éd.), *Demokratia et aristokratia: À propos de Gaius Gracchus. Mots grecs et réalités romaines*, Paris 1983, 15–35; Millar (above n. 25) 1–19; A. W. Lintott,

## Conclusion

In this paper I have discussed current scholarly approaches to the politics of the Roman Republic, arguing that the constitutional and legal basis for political life does not receive the attention it deserves. I have also argued that the prevalent models of the political system of the pre-Sullan Republic, which still largely rest on nineteenth-century pioneer work, are built upon inadequate foundations. Not only are they overly reliant on data pertaining to post-Sullan conditions, they also rest heavily on notions which clearly represent preconceptions and modern conjecture. A fresh look at the political system of the pre-Sullan Republic, focusing exclusively on the actual evidence, is likely to provide interesting new insights.<sup>51</sup>

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"Democracy in the Middle Republic", *ZSS* 104 (1987) 34–52; Id. 1999, 16–26 and 214–25. See also, G. M. Rogers, "Introduction. Polybius Was Right", F. Millar, *Rome, the Greek World, and the East I. The Roman Republic and the Augustan Revolution*, edited by Hannah M. Cotton & Guy M. Rogers, Chapel Hill – London 2002, xi–xvi. For my own views of Polybius' account, see Sandberg (above n. 13) 29–33 and Sandberg (above n. 27) 154–157.

<sup>51</sup> As the director of the Institutum Romanum Finlandiae (the Finnish Institute at Rome) from August 2006, I will lead a research project on the political system of the pre-Sullan Republic.