

## *Introduction*

As Caesar crossed the Rubicon and quickly took control over Italy, he was faced with an urgent problem – how to legitimise his position as *de facto* ruler of Rome. Both consuls had followed Pompey to Greece, which seriously limited Caesar's options, since only they could preside over a consular election or appoint a dictator. To overcome this obstacle Caesar had the senate and augurs issue a decree that was then ratified by the assembly, exceptionally allowing a praetor to nominate a dictator. Caesar's ally, the praetor M. Lepidus, could therefore appoint him to his first dictatorship and in turn enable him to preside over his own election to the consulship of 48.<sup>1</sup> It was transparently a fudge that deceived no one in Rome; Cicero calls it illegal and compares it to the way Sulla had gained his dictatorship in 82. Still, the fact that Caesar went to this length to achieve a veneer of legitimacy is telling.

A similar preoccupation with procedure is noticeable among Caesar's opponents, the 'government in exile'. According to Dio, at the height of the civil war in 48 there were two sets of magistrates representing the two sides in the conflict, but only those appointed by the Caesarians in Rome were 'normal' officials elected according to established rules. Those of the senatorial side, which had fled to Thessaly, merely had their tenure extended as proconsuls, propraetors, proquaestors etc. The reasons for this arrangement are intriguing; for as Dio further explains, although they had 'appropriated a small piece of land for the taking of auguries, in order that these might seem to take place under some form of law, so that they regarded the people and the whole city as present'; 'they had not appointed new magistrates for the reason that the consuls had not proposed the *lex curiata*'.<sup>2</sup> The latter was in political terms a formality, a ritual performed by thirty lictors in Rome, which granted (or enabled) the

<sup>1</sup> Cic. *Att.* 9.9.3 (SB 176); 9.15.2 (SB 183); Caes. *Civ.* 2.21.5. Vervaeke 2004: 80–3.

<sup>2</sup> Cass. Dio 41.43.1–3 (Loeb), cf. Stasse 2005: 398–400; Fiori 2014: 104–6, with lit.

*imperium* of senior officials.<sup>3</sup> Still, it mattered sufficiently to stay the hand of the rulers of the empire during one of the most dramatic confrontations the republic had yet experienced. As Dio observed, the senators in Thessaly were ‘very careful about precedents’ and ‘anxious that the acts rendered necessary by the exigencies of the situation should not all be in violation of the strict requirements of the ordinances’ (41.43.4 Loeb).

Five years later the dictator was gone and Rome was again engulfed in civil war. At that point Cicero unleashed a fierce campaign against Antony, which caused such a stir in the senate that hostile rumours suggested that he was preparing to seize the *fascēs* and make himself dictator. In his final Philippic oration, Cicero strongly denies the accusation, declaring that he is no Catiline but on the contrary the staunchest defender of the *res publica*. But he then changes tactic and points out the formal obstacles such an adventure would face, asking his audience: ‘Under what auspices should I, an augur, receive these *fascēs*? How long should I possess them? To whom should I hand them over?’<sup>4</sup> In other words, a serious allegation of planning a coup is publicly rebutted by reference to the procedural difficulties involved in an attempt of this nature.

Examples such as these illustrate how even in times of extreme political turmoil when any semblance of normality had disappeared formal procedure was still painstakingly observed. As such they reveal an almost obsessive concern about due process, which seems detached from any underlying political principle. Thus, Vervaeke noted that although Sulla had gained power by ‘unrestrained atrocities, brutal force and sheer terror’, the terms of the *lex Valeria* which formalised his position ‘still responded to legalistic scruples and the need of public legitimacy’.<sup>5</sup> Similarly, Caesar carefully notes in the *De bello civili* (3.1) that his second consulship – achieved through civil war – met the statutory interval between offices required by the *leges annales*.

This attention to proper form and procedure, even in the midst of complete social and political breakdown, reminds us that when studying Roman politics we enter a world where power was not just negotiated but also conceptualised in ways quite different from those with which we are now familiar. Therefore, to understand their political institutions and processes on their own terms requires a conscious leap of the imagination.

<sup>3</sup> On the nature of the *comitia curiata* and its resolutions, see Nicholls 1967; Develin 1977b; Hermon 1982; Stasse 2005; Humm 2012; Fiori 2014: 102–14.

<sup>4</sup> *Phil.* 14.14: ‘Quibus auspiciis istos fascis augur acciperem, quatenus haberem, cui traderem?’

<sup>5</sup> Vervaeke 2004: 75, who also observed that Marius refused to enter Rome in 87 until the *comitia* had formally undone the law that had driven him into exile, *App. BC* 1.70; *Plu. Mar.* 43.2.

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Political systems, in antiquity as well as today, develop conventions and practices which may appear paradoxical and illogical to outsiders, but are taken for granted and regarded as natural by those who view it from within. The Athenians famously would not have recognised modern representative systems as ‘democratic’, while their use of the lot to fill public offices nowadays strikes most people as eccentric, as does the Spartan practice of ‘voting by shouting’. Even in the modern world, where universally embraced democratic ideals have led to a high degree of ‘homogenisation’ of political systems, otherwise comparable countries still display features which cause bafflement among foreign observers.<sup>6</sup>

As frameworks for day-to-day government and administration, political systems are rarely questioned by those who operate within them, certainly not with regard to their basic principles. A government’s legitimacy is generally accepted as long as it conforms to the rules and procedures which are themselves justified by tradition and custom. Rome was no different in this respect. The overriding concern among Roman politicians was the observance of correct procedure, a feature that is often seen as an expression of a distinctive Roman type of formalism, apparent also in their religious practices. It could also be argued that the emphasis placed on ‘formalities’ is characteristic of societies with poorly developed ‘Staatlichkeit’. The Romans had no ‘state’ in the modern sense and only a limited set of public institutions. In their place we find the *res publica*, the shared public interests, which were to a great extent upheld through a dense web of rules and procedures scrupulously observed even when they seemed to serve no ‘rational’ purpose. The mass of accumulated rules and conventions served to regulate who could claim legitimacy, which is key to any political system. By defining who could wield power, how they could do it and for how long, they safeguarded the common interest against the ‘law of the jungle’. The more complex and detailed the rules, the less the risk of uncontrolled power; in the same way as the gods were ‘tied’ through ritual and procedures, so were those who governed in the temporal sphere.

This study will explore aspects of Roman notions of legitimacy and the often paradoxical expressions they found in the world of ‘real’ politics. They created striking incongruities between political practices and

<sup>6</sup> For example, although coalition governments have long been the norm in most European countries since the war, the 2010–15 coalition government in the UK was greeted as an anomaly and potential threat to basic principles of accountability. Conversely, the fact that British majority governments regularly take office with only a minority of the vote behind them (unthinkable in most other European states) rarely causes much debate or affects the perceived legitimacy of a government and its legislation.

constitutional principles, which often stood in glaring contrast to each other. Thus, part of the inspiration comes from my previous work on political participation in the late republic, which suggested a discrepancy between the constitutional role of the *populus* and the small crowds which in practice represented it.<sup>7</sup> To capture the logic behind these apparent contradictions we need to question our preconceptions about what a political system should look like and how it functions. Any attempt to ‘defamiliarise’ Roman politics and recover a more genuinely Roman understanding of their system of government faces basic obstacles, however. The process of ‘normalisation’ began already in antiquity under the influence of Greek experiences and theorising. It is therefore natural to start our survey with Polybius who laid the foundations for this approach with his ‘interpretatio graeca’, and then turn to Cicero, who embraced the Greek models while at the same time modifying them in important ways.

Moving on from that discussion, we will then look at the political institutions and their articulations, which seem to reflect a uniquely Roman conceptualisation of power and legitimacy. Most importantly, the *populus* occupies a central but also highly complex role in this system. Its role in the political process was highly formalised, reduced almost to abstraction. As noted, the aim is to get closer to the Romans’ own understanding of their political system and the logic that informed it. The problem is that when we analyse it in conventional terms and try to identify the location(s) of power, we are confronted with a basic indeterminacy that seems to be integral to the Roman ‘constitution’ itself. As part of this survey we will then consider the historical evolution of the institutions during and after the so-called Struggle of the Orders, in many respects the formative period of the republic. Special attention is given to a little-known reform of the assembly that introduced an element of lottery in elections which illustrates the particular rationale that shaped these procedures.

While the first section looks at institutions and their underlying principles, the second turns to actual practice – what happened in Roman politics on a day-to-day basis? The central question is again the location of power and the long-debated issue of the influence of the people. In line with recent scholarship it will be argued that the assemblies functioned as civic ‘rituals’ rather than decision-making bodies. However, following the ‘communicative turn’ attention has now shifted from the assemblies to the public meetings, *contiones*, which are now seen as the main fora for popular

<sup>7</sup> Mouritsen 2001; 2015a.

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influence. After a critical assessment of the tenets of this theory, it will be suggested that Roman politics, like most other historical polities, was controlled by the elite, albeit an elite that extended well beyond the narrow confines of the senate. The office-holding class was, moreover, in many ways distinct from that of other aristocratic societies, displaying ‘meritocratic’ features that may have helped to consolidate Roman society during what has become known as the ‘middle republic’. In this context the question of ‘political culture’ also becomes significant, suggesting as it does that the ‘secret’ of Rome’s success may be sought outside the political sphere, in social, economic, and not least military structures.

Finally, no study of Roman politics can avoid dealing with the ‘fall of the republic’, and one of the themes explored in the third section will be the impact of the political system itself on the catastrophic series of events that led to the advent of monarchy. It will be argued that intrinsic weaknesses in the political structure contributed to the growing instability of the later period. In this context the notion of ‘political instability’ will have to be considered as well as the question of ‘periodisation’, which has a direct impact on the conceptualisation of the process leading up to the ‘fall’. Was there a ‘late republic’, and if so, what did it look like? The question involves a discussion of the nature of political conflict in the last century, including the modern ‘two-party’-model of ‘optimates’ and ‘populares’ which will be examined in some detail since it lies at the heart of the conventional ‘crisis narrative’ of the late republic.

Needless to say, this study makes no claim to presenting a full picture of ‘Roman politics’ (however one defines that) covering all relevant topics. It is by necessity selective, and issues are chosen primarily for their exemplary qualities and ability to illustrate aspects of Roman public life and governance that have perhaps not previously been viewed from this particular perspective. It is therefore essentially an attempt to draw attention to elements that question our preconceptions about political structures and processes, and thereby contribute to a discussion about how one studies a polity like the Roman republic.

## CHAPTER I

*Senatus Populusque Romanus*  
*Institutions and Practices*

In its essential features the Roman republic may seem deceptively familiar, broadly conforming to the ‘standard’ city-state structure found across the ancient Mediterranean. In most polities a tripartite structure can be reconstructed, composed of popular assembly(ies), council(s) and a variety of magistracies. Within this simple scheme the interrelations between the institutions and their internal structures and procedures may vary, creating different balances of power between rulers and ruled, elite and populace. The Roman version of these institutions, the *comitia*, the senate and the magistrates, thus fits into a known pattern, even if there were additional complications in the form of specifically plebeian institutions, which have no parallel in the ancient world. Despite its apparent familiarity the Roman system nevertheless presents questions as regards the distribution and exercise of power, especially in relation to the role of the people; for, while the popular assemblies had the final say in all matters of legislation and public appointments, they were at the same time subject to the authority of powerful magistrates. Similarly, the senate, although formally an advisory body, clearly wielded decisive influence over public policy and administration.

Until recently scholars resolved these contradictions by assuming that the elite effectively neutralised the powers of the assembly through clientelistic networks which acted as instruments of social control. This theory has since been challenged, and will be returned to later.<sup>1</sup> Others have therefore proposed that in the absence of comprehensive patronage and bonds of obligation, the people did indeed act as a free and active political agent, exercising their constitutional powers in ways that almost made Rome comparable to classical Greek democracies.<sup>2</sup> While most scholars have not

<sup>1</sup> See below pp. 94–5.

<sup>2</sup> Millar 1984; 1986; 1989; 1995; 1998; followed by e.g. Lintott 1987; Wiseman 1999. More sceptical, Gabba 1990; North 1990; Harris 1990; Eder 1991; Jehne 1995a; Hölkeskamp 2000; 2010; Mouritsen 2001; Ward 2004. Overview of debate Marcone 2005; Hurllet 2012.

gone that far, they still tend to identify the assemblies as a popular power base, which might be neutralised by external factors or – in their absence – function more or less as intended.

It is at this point that the conceptual models which we – consciously or not – employ to make sense of Roman institutions become important. Traditionally, historians have followed a systematic constitutional approach and analysed the formal distribution of powers in the Roman state. The legal approach reached its pinnacle in Mommsen's *Römisches Staatsrecht*, but in recent years this line of inquiry has come under increasing criticism for its formalism and lack of consideration of extra-legal factors influencing the institutions.<sup>3</sup> But to understand the roots of this conceptual model we have to go further back, to the earliest surviving attempt to analyse the Roman system which was produced by Polybius.

### Polybius and the Roman Political System

No study of Roman politics can ignore Polybius (*c.* 200–120 BCE), not just because of his status as a contemporary source, but also because of the lasting impact his approach has had on subsequent – ancient and modern – analyses of the Roman constitution. A Greek statesman from Megalopolis, Polybius was exiled to Rome in 167, where he spent the following seventeen years, developing close ties with the leading men of the time. During his exile he began work on a monumental history of Rome that would trace her conquest of the Mediterranean world in forty books, the first five of which survive intact, the rest only in fragments of varying length. The work is remarkable for its 'factual' style of reporting, which makes it a prime example of pragmatic, 'didactic' historiography.<sup>4</sup> The approach is analytical rather than rhetorical, always looking for general causes behind historical occurrences. Polybius' discussion of the political system, presented in the fragmentary book six, offers the first, indeed only, original attempt to subject Roman institutions to theoretical analysis. Polybius' impact can hardly be overestimated and his legacy arguably lives on to the present day; many scholars still regard Polybius' model as the best guide to understanding the Roman constitution.<sup>5</sup>

The central tenets of Polybius' analysis are well known and need only be broadly outlined. Essentially, the Roman political system is presented as

<sup>3</sup> Mommsen 1887; cf. the papers collected in Nippel and Seidenstecker eds. 2005.

<sup>4</sup> See e.g. Walbank 1972: 66–96; Champion 2004.

<sup>5</sup> Millar 1984: 2; Lintott 1999: 8, 16–26, 214–19; Welwei 2002; Rogers 2002; Polverini 2005. See also Nicolet 1973; 1983.

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the embodiment of the ‘mixed constitution’, blending elements of monarchy, oligarchy, and democracy into a single, well-balanced entity.<sup>6</sup> The internal stability ensured by the mixed system allowed Rome to direct her energy outwards towards military expansion, thereby explaining her remarkable drive and success. According to Polybius, the purpose of his work was to explain Rome’s conquest of the civilised world to a Greek audience – although he may also have hoped to impress his Roman hosts. In antiquity constitutions were generally assumed to hold the key to the success or failure of states since they determined their degree of stability and upheaval, freedom and tyranny, and it was this linkage that provided the rationale for Polybius’ constitutional digression. Moreover, given the traditional Greek ideal of the golden mean, a ‘mixed’ constitution that blended different types of government and balanced opposing interests against each other was – in analogy to the doctrine of the bodily humours – naturally deemed the best, and the only guarantee of long-term stability.<sup>7</sup> Therefore, since Rome’s military superiority was indisputable, it followed logically that it must have a matching superior constitution, which from a Greek perspective meant a mixed constitution.

This premise lends Polybius’ analysis a certain aprioric aspect but, as importantly, the particular version of the ‘mixed constitution’ he presents is in many respects unusual, not just in its application of Greek theory to Roman institutions but also in the way he uses his theoretical models. Polybius’ basic framework was provided by the traditional tripartite division of constitutions into monarchy, democracy, and oligarchy that can be found already in Herodotus’ constitutional debate, and even earlier in Pindar.<sup>8</sup> Later it became a standard fixture of Greek political thinking and theorists further refined the model by dividing each of them into good and bad forms. The terminology and categories varied, but in Polybius’ work the positive forms appear as monarchy, aristocracy, and democracy, and their negative versions as tyranny, oligarchy, and ochlocracy (mob rule). The constitutional archetypes were considered to be in a permanent state of flux, invariably degenerating into their negative forms and causing upheavals that would lead to their eventual replacement by another type of government. In Polybius’ model the different types succeeded each other in a fixed cyclical movement, the *anakyklosis*, which represented a variant of the Platonic idea.

<sup>6</sup> On the theory of the ‘mixed constitution’ see e.g. von Fritz 1954; Nippel 1980; Lintott 1997; Blösel 1998.

<sup>7</sup> Hahn 1995; 9 suggested Polybius drew on a mix of different Greek philosophical traditions.

<sup>8</sup> Hdt. 3.80–2; Pind. *Pyth.* 2.86–8.



Faced with the problem of endemic political instability Greek theorists came up with a number of solutions. In Plato's ideal constitution the state was ruled by an enlightened guardian, whose benevolent reign would overcome the conflict between rich and poor. Later he moved towards a mixed system which combined elements of the different constitutions. Aristotle, on the other hand, while in principle accepting Plato's elevation of kingship, also developed a less utopian ideal, the so-called *Politeia*, which blended oligarchic and democratic features. Although presented as the perfect form of democracy, Aristotle's 'polity' was in practice closer to a moderate oligarchy. This constitution was intended to bring an end to political upheaval and class conflict by offering a measured compromise between the interests of the elite and the populace. In Aristotle's analysis the polis was naturally torn between the well-to-do (*euporoi*) and the indigent (*aporoï*). By focusing on the structural causes of political instability and stressing the significance of economic inequality, Aristotle's solution thus remained firmly rooted in the social reality of contemporary Greek poleis. The conflict between rich and poor was to Aristotle the root cause of instability, and his solution involved a broad compromise between the two groups and the application of balanced, bipartisan policies that respected the concerns of both sides.

Polybius' 'mixed constitution' is a very different creature from Aristotle's 'Polity'. To Polybius the *anakyklosis* did not reflect the instability caused by the competing interests of different social groups but was entirely ethical in nature. It was brought about by the moral corruption of the rulers which inevitably followed within 'pure' systems, leading to their overthrow and replacement. Thus, as Nippel observed, with Polybius Greek constitutional theory lost its sociological dimension, and it was this analytical shift which enabled Polybius to combine all three 'positive' archetypes, kingship as well as aristocracy and democracy.<sup>9</sup> The inclusion of monarchy altered the character of his model, for while monarchy evidently existed as a constitutional type, it did not reflect the rule of any particular group in society in the same way that democracy and oligarchy did. Monarchy is in a sense the primitive default option that emerges when an open, participatory political process has broken down and power is left in the hands of a single individual. To Aristotle monarchy was therefore essentially tyranny, although he accepted that the enlightened rule of one man, defined as kingship, in theory represented an ideal and possibly supreme form of government. While elite and masses were

<sup>9</sup> Nippel 1980: 145.

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the given constituents of any ancient society, whose – self-interested – rule was conceptualised as oligarchy and democracy, respectively, there could in the nature of things be no specific constituency behind a monarchy. Polybius’ notion that an effective ‘mixed constitution’ required a monarchical element is therefore based on a mechanistic construction of the problem. Kingship was included in order to create a correspondence between the perceived problem – the constitutional cycle – and the solution – the ‘mixed constitution’, which combined all the ‘pure’ forms and neutralised their individual weaknesses. Or, in other words, since monarchy was part of the problem – the *anakyklosis* – it must also be part of the solution, i.e. the ideal constitution. This schematic logic, however, remains divorced from socio-economic considerations of the causes of political instability.

In this context the example of Sparta, the classic Greek paradigm of a ‘mixed’ constitution to which Polybius explicitly – and favourably – compared Rome, becomes significant. Sparta’s unique combination of monarchy, democracy, and oligarchy meant that in order to carry that comparison through a monarchical element had to be found also in Rome. That was obviously difficult in a system founded on the explicit disavowal of all things regal, and Polybius’ attempt at identifying kingship in the role of the Roman consuls remains weak. It ignores a number of features: that there was more than one consul, that they held equal powers, were elected by the assembly for one year only, held no legislative powers, answered to the senate which could issue instructions, and might be held responsible for their actions after their time in office. Some Romans, as we shall see, may have interpreted the consuls as the inheritors of the king’s *imperium*, but that did not make their role monarchical, especially since they also saw the office as deliberately conceived in opposition to the ousted kings.

Polybius’ ‘monarchical’ consuls highlight the mechanical nature of his approach, which shows little direct engagement with the nuts and bolts of the Roman institutions and their practical functioning. Each element of the constitution is identified as the embodiment of one of the conventional Greek archetypes. Thus, while the consuls are made to represent kingship, the assembly is labelled the democratic element and the senate the oligarchic. That approach differs radically from that found in Aristotle, for whom the basic distinction in any society was that between the wealthy who had sufficient means to take active part in government and those without. Oligarchy was therefore defined as the rule of the well-to-do, while democracy existed when poorer people held power despite their lack of resources. Crucially, Aristotle did not operate with an either/or distinction, since each type represented a continuum of constitutional forms;