

part of a religious commentary, but for the most part they would have learnt from the daily practice of political life and from what was said by orators on controversial issues. A further source of education for them from the early second century BC onwards was the annals of Rome, which, even in the works of the early Roman historians (c.200 BC), contained stories of political crises, some of which seem shaped, if not invented, to explain difficult constitutional problems. This to a great extent foreshadows how scholars since the Renaissance have studied the Republic. We read the texts of laws and decrees of the senate, we study the fragments of learned commentaries to be found in antiquarian sources, but frequently our best guide to constitutional practice is to read in ancient narratives what actually happened over a period, and, where there was conflict, to discover, as far as we can, in what terms the issues were formulated at the time.

It may be helpful to differentiate between possible approaches to the constitution of the Republic. One is an analysis of how things worked in the last two centuries of the Republic, which can be achieved by a positivistic study of political history. A second is to trace developments from their origins in the early Republic or even before. This will inevitably have a large component of myth, as it does in our basic sources, Livy and Dionysius of Halicarnassus, both on account of the lack of sound information available to the earliest Roman annalists and because those who wrote history tended to have a contemporary political agenda. A third approach is to theorize about the nature of the constitution. Whatever the merits of his actual achievement, Polybius deserves the credit for being the first to have actually attempted to put Roman political behaviour in a conceptual framework. Without such a framework we are likely to lose our way in a mass of data; with the aid of one we may make fruitful comparisons with other constitutions. It is significant that the best known and fundamental modern attempt to give an account of the constitution, Theodor Mommsen's *Romisches Staatsrecht*, is highly theoretical, in spite of the assembly of source-material in the footnotes.

All three approaches will be used in what follows. In view of the uncertainties about the origins of the Republic, I will commence the story, homERICALLY, in the middle—that is, in the first half of the second century BC, where one can tread on fairly solid ground, thanks to the existence of Polybius' analysis and of a major part of the annalistic tradition in surviving books of Livy.

Additional Note: Because this is a book about politics and public life I do not discuss here what were for lawyers important sources of private law—the edicts of magistrates and the legal opinions of those skilled in the law (*responsa prudentium*). Regarding the former, in addition to the general freedom conferred on magistrates to exercise their authority in the public interest (to be discussed in