The authority behind a law was that of the populus Romanus or plebs Romana voting in an assembly: `Titus Quinctius Crispinus the consul lawfully asked the people, and the people lawfully resolved." Polybius reports that the people had the right to make or rescind any law (6.14. to) and, he implies, no other body. The authority behind a senatus consultum under the Republic was different and less absolute. The decree stated the senate's view on a question put to it, usually recommending a certain course of action to the magistrate who consulted it and perhaps to other magistrates as well. In executing the decree the magistrate enjoyed the legal and moral standing consequent on senatorial approval. Although it was dangerous to consider a decree of the senate to be a justification for overriding a law, if there was no conflict with a law, a magistrate, who executed a decree of the senate, added to it his authority as one elected by the people, and this had obvious implications for those subject to him.

A source of public law which was less defined, but essential, was tradition and precedent. Many of the fundamental rules of the constitution were not based on written statutes, for example, the annual election of two consuls, the convening of different types of assembly for different purposes, the very existence and functions of the senate. However, although these elements of the constitution were not based on specific legislation, they may well have been referred to in written laws or senatus consulta as existing institutions. They would also have been mentioned in the books of the religious colleges, especially those of the augurs, which were concerned with rules for assemblies. When Cicero was considering in March 49 BC the elections which Caesar planned to hold, he refers to the authority of books ('nos autem in libris habemus . . .') for his assertion that while consuls could preside over the elections of consuls or praetors, praetors could not preside over the election of either consuls or praetors. These books are generally and plausibly identified with augural commentaries, which collected previous augural decisions. There were also the commentaries on constitutional practice written in the later second century Bc by C. Sempronius Tuditanus, which would not have any special authority in themselves but doubtless exploited augural lore. Hence we have evidence in the late Republic for written exegesis and consolidation of unwritten constitutional tradition a In other words, there were rules which were written down but did not derive their authority from the writing in which they were recorded.

Constitutional tradition (instituta, mos, consuetudo) had under the Republic an enormous spectrum ranging from basic unwritten laws- ius, even if not scriptum-to what one may term mere mos, the way things happened to be done at the time. We may be reminded of the English Common Law, especially in so far as this was held to be the charter for a particular relationship between the crown, parliament, and the people.10 However, this parallel cannot be pressed, for one reason in