

Die Verfassung der Römischen Republik

The «Constitution» of the Roman Republic

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What is a **constitution**?

A **constitution** is the aggregate of fundamental principles or established precedents that constitute the legal basis of a polity, organization or other type of entity, and commonly determines how that entity is to be governed.

Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made, and by whom.

Classification

When these principles are written down into a single document or set of legal documents, those documents may be said to embody
a *written constitution*;

if they are combined in a single comprehensive document, it is said to embody a *codified constitution*.

Modern Constitutions

Codified constitutions are often the product of some dramatic political change, such as a revolution.

States that have codified constitutions normally give the constitution supremacy over ordinary statute law.

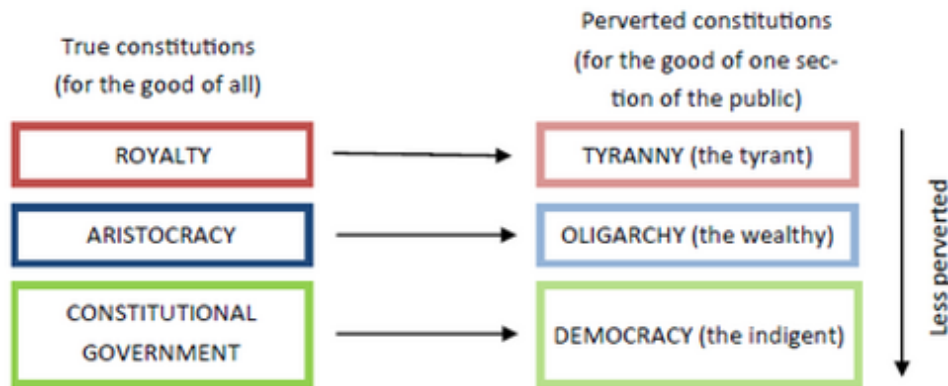
Constitutions may also provide that their most basic principles can never be abolished, even by amendment.

Codified constitutions normally consist of a ceremonial preamble, which sets forth the goals of the state and the motivation for the constitution, and several articles containing the substantive provisions.

Pre-modern constitutions (Ancient)

special codes of written laws

In Ancient Greece codes of written laws are a characteristic feature of many cities (*poleis*).



Constitutions considered by Aristotle and his school:

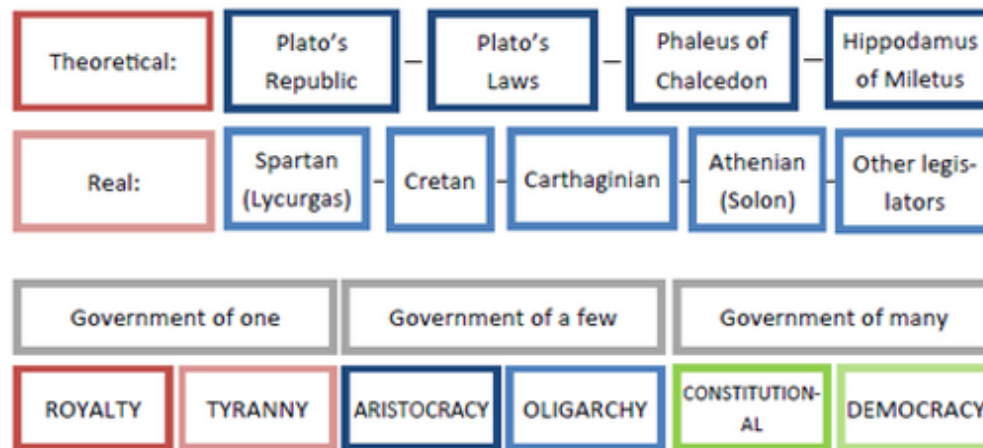


Diagram illustrating the classification of constitutions by Aristotle

Etymology

The term *constitution* comes through French from the Latin word ***constitutio***, used for regulations and orders such as the imperial enactments (*constitutiones principis: edicta, mandata, decreta, rescripta*).

A ***constitutio*** is any legislative enactment by a Roman emperor.

“What the emperor ordained (*principi placuit*) has the force (vigor) of a statute (*lex*)” (D. 1.4.1 pr.)

or

“...is applied as if it were a statute (*legis vicem obtinet*)” (Gaius 1.5)

SOURCES

Historical knowledge of Ancient Rome is drawn from a vast array of **primary sources**, broadly categorized into five main types:

Literary texts: histories, biographies, letters, essays ..., by several authors like Cicero, Livy, Tacitus, Cassius Dio, Appian....

Archaeology: physical ruins of monuments (e.g., Colosseum), houses (e.g., Pompeii), roads, private and public buildings....

Epigraphy: inscriptions on monuments, altars, tombstones....

Numismatics: Roman coins (*denarius*)

Papyrology: papyri

But before....

Republican Rome had a special code of written laws.

The Romans initially codified their laws in 450 BC as the Twelve Tables (*lex Duodecim Tabularum*)

The *Twelve Tables* stated the rights and duties of the Roman citizen.

The Tables are a sequence of definitions of various private rights and procedures.

They generally took for granted such things as the institutions of the family and various rituals for formal transactions.

The provisions were often highly specific and diverse.

the *Twelve Tables* (*lex Duodecim Tabularum*)

Around 450 BC, the first *decemviri* (“Ten men”) were appointed to draw up the first ten tables.

In 450 BC, the second *decemviri* started to work on the last two tables.

In 449 BC, the second decemvirate completed the last two codes and the Law of the Twelve Tables was formally promulgated.

According to Livy 3.57.10 the Twelve Tables were inscribed on bronze, and posted publicly, so all Romans could read and know them.

the *Twelve Tables* (*lex Duodecim Tabularum*)

Table 1	Procedure: for courts and trials
Table 2	Further enactments on trials
Table 3	Execution of judgments
Table 4	Rights of familial heads
Table 5	Legal guardianship and inheritance laws
Table 6	Acquisition and possession
Table 7	Land rights and crimes
Table 8	Torts and delicts (Laws of injury)
Table 9	Public law
Table 10	Sacred law
Table 11	Supplement I
Table 12	Supplement II

The «constitution» of the Roman Republic

The «**constitution**» of the Roman Republic was a set of uncodified norms and customs which, together with various written laws, guided the procedural governance of the Roman Republic.

unwritten norms and customs (*mos maiorum*) + written laws (*leges*)
in Polybius: ἔθῃ καὶ νόμιμα

The «**constitution**» evolved substantively and significantly (thanks to *leges*) over the almost five hundred years of the republic.

It operated under a series of laws that were added from time to time, but Roman law was not reorganized into a single code until the Codex Theodosianus (438 AD) and the Corpus Iuris Civilis.

Codex Theodosianus (438 AD)

The ***Codex Theodosianus*** («Theodosian Code») is a compilation of the laws of the Roman Empire made by the Roman emperors from 311 until 437. A commission was established by Theodosius II on 26 March 429 and the compilation was published by a *constitutio* of 15 February 438. It went into force in the eastern and western parts of the empire on 1 January 439.

Corpus Iuris Civilis (534 AD)

The ***Corpus Iuris Civilis*** («Body of Civil Law») is the modern name for a collection of fundamental works in jurisprudence, enacted from 529 to 534 by order of Roman Emperor Justinian I.

The work as planned had three parts: the ***Codex*** is a compilation of imperial enactments to date; the ***Digesta*** or ***Pandectae*** is an encyclopedia composed of mostly brief extracts from the writings of Roman jurists; the ***Institutiones*** is a student textbook.

In this sense, the **Roman “constitution”** is a sort of *uncodified constitution*.

Uncodified constitutions are the product of an “evolution” of laws and conventions over centuries.

By contrast to codified constitutions, uncodified constitutions include both written sources – e.g. constitutional statutes enacted by the Parliament – and unwritten sources – constitutional conventions, observation of precedents, royal prerogatives, customs and traditions.

The constitution of the United Kingdom is a notable example of an uncodified constitution; it is instead written in numerous fundamental acts of a legislature, court cases, and treaties.

Sources for the **Roman Republican “constitution”**

The primary sources for understanding this constitutional structure include:

a. Contemporary and near-contemporary accounts

Polybius (*The Histories*): he provides the most famous contemporary analysis of the Roman system in Book VI. He famously classified Rome as a «mixed constitution» where monarchical (consuls), aristocratic (Senate), and democratic (assemblies) elements perfectly balanced each other.

Cicero (*De Re Publica*): The great Roman statesman idealized the Republican constitution, interpreting the roles of the Senate, magistrates, and the people from the perspective of an active late-Republican politician.

Sources for the **Roman Republican “constitution”**

b. Later historical syntheses

Livy (*Ab Urbe Condita*): Writing during the reign of Augustus, Livy authored a monumental history of Rome from its founding. Books 1 through 10 trace the early constitutional struggles (the Conflict of the Orders) and the formation of the Republic's magistracies.

Dionysius of Halicarnassus (*Roman Antiquities*): A Greek historian of the Augustan era whose early books offer detailed descriptions of Rome's founding institutions, the tribal assemblies, and early societal hierarchies.

Appian (*The Civil Wars*): A 2nd-century AD Greek historian who wrote extensively on the constitutional crises, factionalism, and civil wars that ultimately destroyed the Republic (e.g., the Gracchi land reforms, the rise of Sulla/Caesar).

Sources for the **Roman Republican “constitution”**

c. Legal and Late Antique compilations

Gaius (*Institutiones*): A 2nd-century AD Roman jurist whose legal textbook outlines the framework of Roman law, which was deeply tied to the legislative powers and assemblies of the Republic.

The *Digest* (Part of the *Corpus Iuris Civilis*): Commissioned by Emperor Justinian in the 6th century AD, this massive compilation preserves fragments of laws, decrees, and opinions from early Republican jurists.

Who was Polybius?

Polybius (Πολύβιος, Megalopolis ca. 200 – ca. 118/117 BC) was an ancient Greek historian of the middle Hellenistic period.

He is famous for his *Histories*, a universal history documenting the rise of Rome in the Mediterranean in the III and II cent. BC.

The *Histories* covers the period 264–146 BC, recording in detail events in Italy, Iberia, Greece, Macedonia, Syria, Egypt, and Africa, and documents the Punic Wars and Macedonian Wars among many others.



The stele of Kleitor depicting Polybius, II cent. BC

Polybius

In 170 or 169 BC Polybius was elected hipparchus (cavalry officer), the second-highest position of the Achaean League and often presaged election to the annual strategia (chief generalship).

Polybius's political career was cut short in 168 BC: as a consequence of the final defeat of the Antigonid dynasty in the Third Macedonian War, 1.000 Achaeans (including Polybius) with suspect allegiances were interned in Rome and its surrounding area from 167 BC; Polybius was detained there for 17 years.

Polybius

Polybius remained on cordial terms with Scipio Aemilianus and was among the members of the Scipionic Circle.

- > present at the sack of Carthage (146 BC), which he later described.
- > accompanied Scipio to Spain, acting as his military advisor during the Numantine War (133 BC)



- > the last event mentioned in his *Histories* seems to be the construction of the via Domitia in southern France in 118 BC (died at 82)

The *Histories* (Greek: Ἱστορίαι)

The *Histories* is a universal history which describes and explains the rise of the Roman Republic as a global power in the ancient Mediterranean world.

They were originally written in 40 volumes, only the first five of which are extant in their entirety; the rest are in varying states of fragmentation. The bulk of the work was passed down through collections of excerpts kept in libraries in the Byzantine Empire.

Books I-II are *The Histories'* introduction, describing events in Italy and Greece before 221/0 BC, including the First Punic War, Rome's wars with the Gauls, the rise of the Achaean League, and the re-establishment of Macedonian power in Greece under Philip V of Macedon.

The *Histories* (Greek: Ἱστορίαι)

Books III through V cover the affairs of important states at the time (Ptolemaic Egypt, Hellenistic Greece, Macedon) and deal extensively with the Second Punic War.

Book VI he describes the Roman Constitution and outlines the powers of the consuls, Senate and People.

The other Books describe in detail political and military affairs in the leading Mediterranean states, including affairs in ancient Rome and ancient Carthage, ancient Greece and ancient Macedonia, the Seleucid Empire and Egypt.

The *Histories* (Greek: Ἱστορίαι)

Three discursive books on politics, historiography and geography break up the historical narrative:

- Book VI where Polybius outlines his famous theory of the “cycle of constitutions” (the *anacyclosis*, ἀνακύκλωσις)
- Book XII, where Polybius discusses how to write history and criticises the historical accounts of numerous previous historians
- Book XXXIV, where he discusses geographical matters and the importance of geography in a historical account and in a statesman’s education (this book is almost entirely lost).

Polybius' conception of history

Polybius holds that historians should, if possible, only record events whose participants the historian was able to interview

He was among the first to champion the notion of factual integrity in historical writing.

He defines the historian's job as the analysis of documentation, the review of relevant geographical information and political experience.

His **sources**: he consulted and used written sources, including, for instance, treaty documents between Rome and Carthage in the First Punic War, the history of the third-century Greek historian Phylarchus, and the *Memoirs* of the Achaean politician Aratus of Sicyon.

Polybius' conception of history

A key theme of the *Histories* is good leadership, and Polybius dedicates considerable time to outlining how the good statesman should be rational, well-informed, virtuous and calm.

Other important themes:

- > the role of fortune (τύχη) in the affairs of nations and how a leader might survive bravely these changes of fortune with dignity
- > the educational value of history and how it should demonstrate cause and effect to provide lessons for statesmen
- > that historians should be “men of action” to gain appropriate experience so as to understand how political and military affairs are likely to work out.