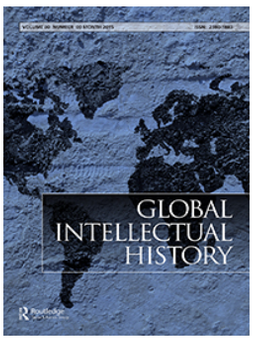

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REVIEW ESSAY

'The laws are in charge of the magistrates': reply to Edelstein, Sullivan and Springborg

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I am very grateful that my book is being discussed in this symposium and I much appreciate the fact that Professors Edelstein, Sullivan and Springborg took the time and energy to engage with my scholarship. I would also like to thank Richard Whatmore, Rosario Lopez and the other editors of *Global Intellectual History* for their help with the symposium.

Professor Edelstein puts forward a number of interesting questions and subtle challenges. They concern (1.) the relationship between positive constitutional law and what Edelstein calls 'extrinsic' normative criteria, such as natural law or justice; (2.) the question of constitutional change and ultimate constitutional authority, which can be articulated as a tension between popular sovereignty and constitutional norms; (3.) the relationship between the Greek concept of natural law and Roman political and legal thought; (4.) the question of how emergency powers and constitutionalism fit together (if they do); and (5.) the issue, similar to the first one, of how Bodin elevates norms internal to the positive order to a higher constitutional dignity.

Edelstein thinks that the criteria I use in the book to delineate the conception of Roman constitutionalism are not sufficiently sensitive to account for a fault line within constitutionalism itself. My four criteria for a working concept of constitutionalism are that constitutional norms be entrenched, politically important, normatively important, and recognizably legal. The idea is that constitutional norms should be of a juridical nature, but less malleable than other legal norms, and that they should have normative value by expressing a correct political theory. Much hinges on this because these norms are politically important in that they will govern the institutions through which political power is exercised. Now Edelstein believes that the norms picked out by these criteria are really of two different kinds. The criteria will yield what he calls 'extrinsic norms used to evaluate constitutional practices', such as natural law or justice or Cicero's concept of *ius* (as opposed to statute, *lex*). But they will also yield constitutional norms that do not have this 'extrinsic' quality, Edelstein writes, and he points to the Roman citizens' right of appeal or due process, the *provocatio ad populum*, as an example. The right of appeal, while clearly endowed with normative pull, derived this normative power 'from its traditional place in Roman political life', from being part of a 'constitutional *practice*'. The normativity of *provocatio* was thus according to Edelstein of a nature intrinsic to Roman constitutional practice, while the evaluation of legislation by means of natural law was extrinsic to it.

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What should we make of this distinction between extrinsic and intrinsic constitutional norms? One might draw an analogy here with the way Edmund Burke contrasted French revolutionary ideas about universal natural rights unfavourably with the liberties of the English. The latter, Burke thought, were an '*entailed inheritance* derived to us from our forefathers, and to be transmitted to our posterity; as an estate belonging to the people of this kingdom without any reference whatever to any other more general or prior right'.[1] We might therefore claim, with Burke, that we simply happen to inherit certain constitutional practices and that this is where the normative buck stops – no further questions allowed, no reference 'whatever' to any more basic normative claim. Is it this Burkean, 'intrinsic' view that we encounter in the Roman sources? Does the normative authority of Roman constitutionalism come from within, or from without?

There is an interesting tension in the Roman sources when it comes to the status of the right of appeal (*provocatio*). As I argue in the book (76f.), although *provocatio* was enshrined in statute (*lex*), this was interpreted in all our sources – not just Cicero – as the codification in statute (*lex*) of a higher-order norm (*ius*). Livy, for example, thought that mere statutes could codify higher-order norms which owed their normative weight not to their positive enactment but to the fact that they were part of the constitutional commitments presupposed by the Roman Republic's continued existence as a constitutional order. Now this is intrinsic, in a sense, but even in the historians we encounter a palpable sense in which this kind of *ius* has normative weight for reasons that are not exhausted by reference to mere inheritance or constitutional practice. A violation of the right of appeal, even if technically valid, amounts to an abrogation of the constitutional order itself and is considered unjust – Cicero went so far as to claim that the civil wars of the late Republic had been triggered by struggles over the constitutional validity of legislation (*de iure legum*).[2] The defense of *provocatio*, then, cannot rest on Burkean grounds alone.

Indeed, Cicero himself – who as a politician cannot be accused of consistency – sought at times to defend the Burkean pedigree of measures aimed *against* the right of appeal (see, e.g. his *Defense of C. Rabirius* 33f.) but *provocatio* proved remarkably resistant against both positivist and Burkean attacks. I suspect that this was because it was always defended on both Burkean and what Edelstein calls extrinsic grounds. Here is Cicero in a forensic speech on his own behalf claiming that the right of appeal was

> constitutional (*iuris*) in this state even during the rule of the kings, that it was handed down to us by our ancestors, and lastly that this is the essential trait of a free state: that nothing can be taken away from the status or the property of a citizen without trial in the Senate, before the People, or before judges appointed for the issue at hand.[3]

There is always a sense in our sources that the 'intrinsic', Burkean appeal alone simply won't do. A reference to the very purpose of the state – a reference, that is, to a 'more general or prior right' than mere inheritance or practice – is implicit even in the historiographic and forensic evidence we have from the late Republic, and it is this line of argument which we find fully fleshed out in Cicero's mature political philosophy. In the *Republic*, the *Laws*, and *On Duties*, Cicero engages with Edelstein's challenge, that is to say with the difficult relationship between intrinsic and extrinsic normativity, between Burke and universal natural law.

Now this reliance on Cicero does open up my account to Edelstein's objections pertaining to the relationship between Cicero and Greek natural-law theory (3.). Realizing that Burkean tradition will always remain vulnerable to a demand for justification, Cicero in his philosophical writings seeks to give a justification for certain basic constitutional norms that is not simply intrinsic to Roman tradition, but appeals to reason. His political theory is an argument against an anti-universalist sophistic skeptic who denies the possibility, or at least the rationality, of justice. Against this skeptic, Cicero (or his mouthpiece, Scipio) argues that there cannot be a state (*res publica*), properly understood, in the absence of justice. By justice Cicero understands, not personal virtue, but a set of constitutional norms (*ius*) that is of an entirely juridical nature. Cicero famously argued for a universal natural law, or moral realism, in a Stoic vein, and it is of course this aspect of Cicero's argument which to Professor Edelstein's mind undermines my claim that there is something specifically Roman about Roman constitutional thought. Stoic philosophy, Edelstein writes, 'provided an essential detour on Cicero's path to Roman constitutionalism', and he suspects that Cicero was pretty much the only thinker on that path, or at least the first: 'it seems unlikely that many others followed this same path independently'.

Let me deal with the last point first. I think Edelstein is entirely correct that Cicero was the first on the path to Roman constitutionalism based on natural law. Cicero himself points out that his philosophical approach to the law had not previously been undertaken.[4] And when it comes to Roman law, although there are signs that many important late republican jurists had good knowledge of Stoicism, which had become part of common educated culture, there is not all that much impact of Stoic philosophy on legal doctrine – as opposed to terminology and general inspiration – up to the postclassical jurists.[5] There is therefore something specifically Ciceronian to Roman constitutional thought. Cicero was indeed the first to provide a philosophical defense of Roman constitutionalism, and the subsequent enormous influence of Roman constitutional thought that I document in Part III of my book is indebted to Cicero's defense; but it is also indebted, to a lesser degree, to the traces of constitutional thought found in the historians and the *Corpus iuris*.

As for the influence of Stoicism on Cicero himself, I think that Edelstein is correct that Cicero's attempts to justify basic constitutional norms by appealing to reason owe something important to the Stoics. Does this mean that what we are dealing with is Cicero's adaptation of Greek philosophy rather than Roman political thought? There is a well-worn view in classical scholarship that Cicero is not much of an original thinker but a mere synthesizer of Greek ideas. However, this view – at least when it comes to political and legal philosophy – has persuasively been laid to rest. Cicero is, rather, a thinker of quite some originality who managed to draw out important implications of existing Roman political and legal ideas in a systematic and influential way.[6] In doing so he used and adapted important Greek ideas, but the Greek influence is less pronounced in his political theory than in his ethics and metaphysics.

In the institutions and constitutional arguments of the late Roman Republic there existed already what I call an 'inchoate constitutionalism', where even deeply traditional aspects of the Roman order such as *provocatio* were justified on normative grounds that went far beyond an appeal to Roman tradition and *mos maiorum*. Precisely because *provocatio* was formally on a par with other legislation (*leges*), but was felt to be of much greater, indeed fundamental, normative weight, the protagonists in the constitutional struggles of the late Republic reached for justifications that stretched into the

realm of normative reasons that concerned the Republic's very nature and conditions of existence. Cicero thought the right of appeal an 'essential trait of a free state' (*On his House* 33) – nota bene *any* free state. The very sentiment can also be found in Livy, who called the right of appeal 'the sole bulwark of liberty'. As I show in Part I of the book, these views were widespread. The crisis of the late Republic, that is, made it clear that both 'intrinsic' as well as 'extrinsic' normative claims had ultimately to be justified in a uniform way. Cicero, realizing this, sought to provide an answer by drawing out and making explicit what was already implicitly contained in the late republican legal order: an underlying political theory that sought to justify any political order qua legal order. This feature of *legality*, I think, cannot be explained by reference to the Greek Stoics.

The idea of natural law as an external standard dictated by right reason is certainly Stoic, but for the Greek Stoics this standard is a principle to achieve happiness, rather than anything specifically legal as it is for Cicero. For Cicero, constitutional norms have to be justified by reference to natural law – either by saying that these norms simply *are* natural law, or that they advance a practicable approximation of natural law.[7] For the Greek Stoics, right reason demanded that the Stoic sage lead a life according to nature, which meant a virtuous life. This was a eudaimonist ethical doctrine teaching that virtue was the highest good (*summum bonum*). By stark contrast, nowhere does Cicero indicate that obedience to his laws will produce ethical outcomes along these virtue-ethical lines. This is because Cicero's view of the citizens' good life (*beata vita*) is not really a eudaimonist one, which should alert us to the crucial difference between his juridical notion of natural law and the Stoics' virtue-ethical natural law. Cicero did not develop his views on the highest good until his *On Ends*, but what results from that work is ultimately a kind of academic skepticism, not Stoicism.

Now I tend to think that *pace* certain classicists (Glucker and Steinmetz), Cicero did not simply convert to natural-law dogmatism in the *Republic* and the *Laws* only to convert back to skepticism in *On Ends*, nor do I believe with other classicists (Görler and Jed Atkins) that Cicero always remained a (however crypto-) skeptic. Rather, we should read him with Hugo Grotius and other early modern thinkers as remaining a skeptic with regards to ethics and the highest good, all the while working in the *Republic*, the *Laws* and *On Duties* to insulate certain natural constitutional norms from skepticism. This interpretation has the advantage that it allows us to read the passages where Cicero talks about the good life in a way that does justice to the very non-eudaimonist, non-Stoic ring they have.[8] I think this interpretation also helps us understand that states, according to *On Duties*, come about genealogically through sociability, but what gives them their *normative* validity in Cicero's eyes is their role in enforcing justice and letting us keep property, which is for the Greek Stoics ultimately a mere indifferent.[9] This sheds a particular, but not very Stoic kind of light on the conception of natural law at work here and the political and legal theory sustained by it. Cicero moves far away from the Stoics also in that his natural law holds not just for the wise, but for all humans.[10]

To put it differently, while the idea of a rationalist natural law is certainly of Stoic origin, Cicero's *elaboration* of it in the *Republic* and the *Laws* – what it consists in for Cicero – is deeply Roman and juridical.[11] What remains of the Stoic view is shaped by Cicero and given a specifically juridical expression.[12] Justice, that is, needs to be articulated and spelled out in law, it is not a disposition to act in a certain way. Cicero's natural law is

normative qua law, in other words, not a principle one would want to adhere to achieve virtue and happiness. As Jacob Klein explains, if 'the eudaimonist framework of earlier Stoicism is neglected, it becomes easier to regard the prescriptions of natural law not simply as principles to which one must adhere in order to live a life that is happy because rational, but as a source of obligation in their own right'. Therefore, 'Cicero's treatment obscures our view of early Stoicism, but it helps to explain how the doctrine preserved in his accounts inspired later, diverse articulations of natural law theory'.[13]

This yields a standard of justice that is external, in a sense, in that it can be brought to bear on legislation; but it is also internal, in that it is a standard formulated exclusively in *legal* terms. Right reason, for Cicero, demands that there cannot exist a political order, a *res publica*, without positive law (*lex*) that complies with natural constitutional law (*ius*). This means that certain principles of *ius* that are essential to the purpose of the state cannot be subverted even by valid *lex* – but on balance I would say that these principles are not confined to what Edelstein calls 'internal' ones. For Cicero, these principles pertain to the very essence of what it *means* to generate valid law, or, to put it pretentiously, to the very conditions of possibility of law. It seems crucial to Cicero's project to level the difference between internal and external principles by applying the criterion of rational justifiability to both equally. The constitutional core principles of natural law protect substantive claims of justice, such as a kind of substantive due process and justifiable expectations in the realm of property rights and corrective justice, on pains of the dissolution of the state. Constitutional *ius* incorporates impartiality and sheds doubt on the validity of bills of attainder (*privilegia*) and legislation stained by violence. In Cicero's famous definition of the state (*res publica*), agreement about the constitutional core (*ius*) *creates* a people (*populus*) in the first place: 'the commonwealth is the property of the people (*res populi*)', but there is 'no people unless it's bound by agreement on law (*ius*)'.[14]

This leads us back to Edelstein's second challenge, the question of the extent of the authority of the people and the 'need for a constituent power' (2.). With great perspicacity Edelstein points to the fundamental ambiguity inherent in Roman constitutional practice, the fact that the Roman assemblies could be seen, in the abbé Sieyès's influential terminology, as both constituted and constituent powers. Edelstein recognizes that this is the great 'unresolved issue', the late 'Republic's Achilles heel', and 'the driving force that separates constitutionalism from constitutional practice'. I very much agree. But I believe that Edelstein – with Mommsen – misunderstands the solution Cicero offered to this ambiguity. It was a solution that, like much of Cicero's constitutional thought, was already inherent in one strand of Roman constitutional thought, but it was Cicero who gave it full theoretical expression. Edelstein thinks that '[e]ven the Romans seemed to sense the need for a constituent power somewhere upstream', which is why they grounded *provocatio* in popular statute, and 'even Cicero acknowledged the primary – if not ultimate – authority of the people (*res publica res populi*)'. Edelstein ends by noting that '[j]ust how far this authority extended was up for grabs'. But while it is very true that as a matter of political history, the extent of the authority of the *comitia* was indeed 'up for grabs' in the late Republic, and *some* Romans did look for a constituent power somewhere, especially in the assemblies,[15] the characterization of Cicero as a thinker of constituent power seems to me very misleading. Far from thinking that the people needed to act as a constituent power, Cicero put forward the very radical claim that there could not be a people in the relevant sense without there being first a core of constitutional norms to agree upon. For Cicero, *ius*

has primary and ultimate authority. Due to its jusnaturalist justification, *ius* has priority; it can be recognized and agreed upon by rational beings, which gives us the people. No *ius*, no agreement on *ius*; no agreement on *ius*, no people. This makes the very idea of the people or any other natural person as a constituent power superfluous and indeed impossible. It is an inconsistent idea, according to Cicero, because it puts the voluntarist cart before the rationalist horse; certain core principles of *ius* have to be acknowledged, otherwise there will either never be a people in the first place, or, as Cicero thought happened in the late Republic, an existing *populus* loses sight of the constitutional core and dissolves into civil war. Cicero's *Republic* and *Laws* were written in response to this dissolution and the *Laws* pretended to bring into the open the hitherto implicit constitutional core of the Roman Republic.

Dan Edelstein assumes, with some of our Roman sources, and with Carlo Sigonio, Sieyès, Mommsen and Schmitt – Schmitt, with characteristic dishonesty, claimed to have been the first to notice this feature of Roman constitutional argument – that there simply has to be a constituent power somewhere 'upstream' when it comes to justifying the authority of the constitutional norms. Sulla in 82 BC most probably carried the title *dictator legibus scribundis et rei publicae constituendae*, and for Sigonio no less than for Mommsen the dictators of the last century of the Republic – Sulla, Caesar, the triumvir Augustus – had held extraordinary 'constituent' powers. As such, they might have even been authorised to legislate, although this is by no means certain (the *legibus scribundis* part was never properly exercised and there was always recourse to the *comitia*). But it was precisely this option, of appointing magistrates with such constituent powers, which was one of the most contested features of late republican constitutional argument. Cicero the constitutional thinker (as opposed to politician),[16] arguing that constitutional law (*ius*) created the people in the first place and was prior to both the people and to the magistrates, sought to foreclose the very possibility of justifying constitutional authority by reference to constituent powers.

The argument in *favour* of constituent power usually seeks, in David Dyzenhaus's words, to locate the authority of constitutional norms 'in an exercise of constituent power by an entity outside the legal order, one which should then retain the legally unlimited authority to remake the constitution'.[17] Such 'accounts suppose that the idea of constituent power is an adequate substitute for both the ancient idea of natural law and the modern idea of social contract'.[18] This is the challenge we encounter in Rousseau. As Edelstein puts it, 'if a political body has the authority to bestow a constitution on itself, why should that authority not extend to modifying it?' Edelstein thinks that this creates a conceptual problem for my account; I think that it created a conceptual problem for the inchoate constitutionalism we encounter in the late Republic – the problem Cicero set out to solve in his theoretical work. It is precisely because Cicero denied that 'the people' could possibly be a 'political body' in the absence of *ius* that he thought that there had to be a constitutional core that had authority on its own, qua natural law. In this regard, Cicero's constitutional core is analogous to Hobbes's natural laws, which also get their authority from the fact that right reason prescribes them.

Edelstein briefly raises an important question here as to the revisability of this constitutional core. He points out that for us, the process for amending the constitution 'is usually baked in: a classic example is Article 5 of the U.S. Constitution'. This does show the possibility of constitutional change, although the bar to change is very high. But in

this case one should say that constituent power, or sovereignty, lies in Article Five and the constitutional rules, because it is only under and according to the Constitution *itself* that final legislative authority is created. There is no constituent power, no 'people', prior to the constitutional norms. When we compare this outlook to Cicero's and Hobbes's, it would seem at first sight that for them, the natural-law underpinnings of their political theories are entirely immutable. But there is a very subtle sense that Cicero might actually allow for some malleability – he seems to accept that between the time of writing and some indefinite future, there will be a process of convergence between various constitutional systems, and this entails that these systems be revisable, at least on the margins.[19] The important point, however, is that now it is not a 'political body' or 'the people' or a 'constituent power' that can claim the authority to change the constitutional core, but normative reason herself, which will unfold and draw out implications from the constitutional core. Cicero seems to grant, that is, that his own insight, both normative and empirical, is too limited to put forward a definitive constitutional core.[20] But he is confident that the constitutional norms he argues for are of the highest epistemic quality achievable at least at the time of writing. It is this epistemic quality which lends the constitution its normative pull and merits entrenchment. One might therefore call the resulting view *epistemic* constitutionalism.

In Cicero's view, all powers are constitutional due to the underlying *ius* – constituent *ius*, as it were. He makes this very clear in the passage that is usually adduced by reason-of-state theorists, where he famously says that for the highest magistrates, 'let the safety of the people be the highest law'.[21] It is not just that this – in the context – defines an authority exclusive to military command in the field (*militiae*). The phrase is also preceded by the overarching claim that just as 'the magistrates are in charge of the people', 'the laws are in charge of the magistrates'.[22] It is of course true that, as Edelstein points out, Cicero the politician acted against the Catilinarians according to the most ruthless reason of state. He also, as an orator and politician, had defended extraordinary commands, something that was cleverly exploited by his enemy Clodius. As I write in the book (113), the opportunist Cicero is simply forced to argue *ad hominem* that Clodius is not a credible opponent of extraordinary powers himself. Cicero's lack of principle as a politician betrays of course both the limits of his own virtue and, more importantly, the institutional weaknesses of an implicit constitutionalism Cicero sought to remedy with the explicit constitutionalism offered in the *Laws*. But this only shows that the problems Cicero addresses in the *Republic* and the *Laws* are real and of a constitutional nature. Concerning Caesar's ten-year series of dictatorships given to him by the Senate in 46 BC, Edelstein writes that 'the justification for naming a dictator was clearly constitutionally sanctioned'. But this is wrong. A dictator had to be nominated by a consul, abide by a time limit of six months, and was constrained by *provocatio* in the city (64-74). It was Sulla who first did away with all these constraints, in a way that was of tenuous formal validity, but unconstitutional, as our evidence affirms: *lege*, but not *iure*. Contemporaries could and did in fact tell the two apart, and some, with Cicero and other thinkers of the constitutional tradition I identify in the book, identified those extraordinary powers not sanctioned by *ius* as a key causal factor in the collapse of the Republic. Constitutionalism arose in answer to this collapse.[23]

I entirely agree with Edelstein on his fifth point and am grateful to him for strengthening my argument by extending it to Bodin's views on the Salic law. Edelstein points out

that Bodin did not ponder constitutional amendment and thought that the 'sovereign cannot modify the conditions of sovereignty'. This is true, and it has to do, I think, with the fact that Bodin, like Cicero, thought that it was the intrinsically juridical character of sovereignty which made such modification difficult. It is the very purpose of sovereignty to uphold and guarantee contractual relationships, even contractual relationships the artifical person of the sovereign itself is a party to (287). This creates a conceptual constraint on sovereignty, so that for Bodin the sovereign has power as sovereign only insofar as he has a legal warrant. We have gotten used to Bodin's definition of sovereignty, which locates the essential criterion for sovereignty in the sovereign's power to legislate. The sovereign is whoever makes the law. But we might not be sufficiently attuned to an important implication of this conception of sovereignty, contained in Cicero and Bodin and particularly salient in Hobbes's thought: that the sovereign has sovereign authority, not by virtue of being mighty, holding power or coercing its subjects, but by virtue of making *law*, where law-making is necessarily governed by principles of legality (*ius*).[24] These principles resist modification. The sovereign, to speak with Michael Oakeshott, is therefore 'emancipated from the past' and 'ancient custom',[25] but this emancipation is always negotiated by a constitutional core of norms that provides the conditions of sovereignty and is prior to it. Justified by *recta ratio*, these constitutional norms are the real sovereign: constituent *ius*.

Where does this leave virtue? Edelstein thinks that Montesquieu's view of virtue as the 'spring' of republics in *The Spirit of the Laws* should not be neglected. This is not the occasion to embark on a lengthy interpretation of Montesquieu. However, it seems to me that Montesquieu, in *The Spirit* no less than in the *Considerations*, is as suspicious of the virtue-driven politics of the *early* Roman Republic as he is interested in the *late* Republic precisely for its inchoate constitutionalism, its constitutional thought. The famous chapter on the constitution of England is replete with Roman examples and the distance between England and Roman republican institutions not as wide as the gap between England and ancient virtue. Montesquieu's view of virtue in *The Spirit* is, to my mind, on balance pejorative.[26] Virtue can be a dangerous passion, Montesquieu believes, and is itself in 'need of limits' to prevent abuse of power.[27] I believe that Judith Shklar was correct to emphasize that Montesquieu thought the ancient republics in general were 'exceptionally fragile' due to their dependence on 'customs, habits, and attitudes of the citizens' – i.e. virtue – rather than on explicit legal institutions.[28] But the Roman Republic, Montesquieu writes in *The Spirit*, 'had admirable institutions', and emerges therefore as a special case.[29] We should not forget that Montesquieu's concept of representation, too, was drawn at least in part from Roman practices.[30] With regard to the Roman Republic, then, *The Spirit* remained true to the view expressed in the *Considerations*, a view that found its influential way verbatim into the *Encyclopédie*. In short, it looks to me as if Montesquieu would have agreed with John Adams's assessment that virtue 'is as precarious a foundation for liberty as honour or fear: it is the laws alone that really love the country'.[31]

Professor Sullivan agrees with Professor Edelstein that there is a distinction to be made between 'important reflections on the Roman constitution which do not rely on natural rights … , but which still promote important and influential features of constitutionalism such as institutions and safeguards', on the one hand, and constitutional thought that explicitly appeals to 'a transcendent natural law', on the other. I take this distinction to

be analogous to the distinction discussed above between 'intrinsic' and 'extrinsic' constitutional principles. While Edelstein thinks that I do not sufficiently distinguish between the two, Sullivan reckons that my focus is too narrow to include constitutional thought that does without appeal to higher-order norms. She believes that it is this narrow focus that leads me to exclude Machiavelli from the strand of Roman constitutional thought I am concerned with in the book. Sullivan recommends that we consider 'intrinsic' constitutional theories that rest on Burkean, or positive, grounds, such as the English settlement of 1688 or indeed the ideas Machiavelli drew from the Roman republican order. This would result in a broader perspective, one that draws the boundaries of constitutionalism such that it would still exclude virtue-based theories, but include theories that are institutional in outlook but not natural-law based. This, she believes, would allow us to include Machiavelli, which would be desirable, in Sullivan's view, since she considers natural-law based constitutionalism overly abstract and too narrow. Machiavelli was concerned with institutional solutions to problems of political instability, Sullivan claims, and therefore belongs to a tradition concerned with the rule of law, a tradition 'so important … , that its lessons should not be restricted to the most abstract form of constitutionalism – the one that explicitly appeals to natural law'.

This view faces several problems, both as an interpretation of constitutionalism and as an interpretation of Machiavelli. As for the former, I deal almost exclusively with 'intrinsic' constitutional arguments in Part I of my book, but, as I try to explain above in my reply to Dan Edelstein, I believe that ultimately both 'intrinsic' as well as 'extrinsic' constitutional norms had to be justified in a uniform way. As I describe in Part II of the book, Cicero realized that the crises of the late Republic urged such a uniform, more fundamental, response. Incidentally, it seems to me that Professor Sullivan herself resorts to 'extrinsic' justifications: witness her claim that some 'reflections on the Roman constitution' are worthy of consideration because they 'promote important and influential features of constitutionalism such as institutions and safeguards'. But why do institutions and safeguards matter? As I argue in the book, political stability is certainly a goal, but there are conceptually distinct considerations of justice and the normative importance of legality that play a crucial role in the constitutional arguments put forward in the late Republic as well as in Cicero's constitutional thought. The inchoate constitutionalism displayed in the late Republic already contained a demand for justification that could not simply be met by 'intrinsic' arguments alone. Some 'intrinsic' institutions and safeguards were on normative grounds deemed more important than others, which is why I think the Roman constitutional tradition deserves to be seen as the matrix from which a distinct *normative* constitutionalism emerged. Such a constitutionalism is difficult to conceive without an appeal to underlying moral norms, without an appeal, that is, to natural law based on moral realism as defended by Cicero.[32] By contrast, Machiavelli regards institutions and law as purely instrumental – Romulus, Numa and others forced many necessities upon Rome by legislation, so that the city could be maintained 'full of as much virtue as has ever adorned any other city or republic'.[33] The law is instrumental in achieving virtue, and virtue is needed in order to achieve *grandezza* and the preservation and expansion of the state. *La gloria del mondo* provides the ultimate justification.[34]

As for Machiavelli, Sullivan writes that his 'institutional focus' would deserve our attention. She believes that Machiavelli is a constitutionalist, interested in maintaining constitutional equilibrium and institutional 'resilience' in a way similar to Polybius and Cicero.

It is true, of course, that Machiavelli, in chapter 2 of the first book of the *Discorsi*, gives an entirely Polybian account of the origin of political orders and the importance of achieving constitutional equilibrium – but this is because he simply copied most of that chapter from Polybius, book six.[35] The chapter doesn't fit neatly into the *Discourses*, for, as I argue in chapter 4 of my book, the underlying assumptions and normative outlook of Machiavelli and Polybius, who I believe belongs firmly in the camp of Roman constitutionalist thought, are very different.

But even if one were to grant that we should bracket the underlying normative purpose of constitutional stability, or presume, for the sake of argument, that stability alone is the end of government sought by Polybius, Cicero and Machiavelli alike, I still very much doubt that Machiavelli should be included in the Roman constitutional tradition as described in my book. In chapter 18 of the first book of the *Discourses*, a chapter Professor Sullivan finds particularly salient in this regard, Machiavelli deals with the corruption of the political order in the late Republic, a situation he tellingly describes as a time 'when the citizens have become bad'. Corruption, that is, means citizens that are no longer virtuous. The laws are of no help, because it is the entrenched orders or institutions themselves which, precisely due to their solidity, contribute to the corruption of the citizenry. Reform of these institutions, be it piecemeal or at one fell swoop, is quasi impossible. Machiavelli's conclusion, which I find very difficult to square with a constitutionalist mindset, is that in view of the impossibility of maintaining or recreating a republic once its citizenry has lost virtue, 'it would be necessary to turn it more toward a kingly state than toward a popular state, so that the men who cannot be corrected by the laws because of their insolence should be checked in some mode by an almost kingly power. To wish to make them become good by other ways would be either a very cruel enterprise or altogether impossible, such as I said above that Cleomenes did'.[36]

We may note in passing that Machiavelli's institutional order is here explicitly summoned to promote the goal of shaping a virtuous citizenry, but it is of course Augustine's 'pagan virtue' we are talking about, not the Peripatetic or Stoic road to *eudaimonia*. Apart from kingly power, what other way is there to make the citizens 'become good'? If the citizenry were somewhat less corrupted than in the late Republic, one might try, Machiavelli explains in *ad hoc* manner, to follow the examples of Cleomenes and Romulus: Cleomenes 'killed the ephors so as to be alone, and … Romulus for the same causes killed his brother and Titus Tatius the Sabine and then [they] used their authority well'.[37] It is instructive to compare Machiavelli's admiration of Cleomenes with Polybius, who thought that Cleomenes had 'overthrown the ancient polity at Sparta and changed the constitutional kingship (*ennomos basileia*) into a tyranny'.[38] It is equally instructive to compare Machiavelli with Cicero, who thought Romulus, actuated by 'the appearance of benefit', 'did wrong' by acting in an extra-legal way.[39]

Machiavelli, of course, thought of Romulus as a successful and therefore admirable founder and lawgiver. It is hard not to agree with Patrick Riley that 'rarely has the word "lawgiver" had so little legal content'.[40] Romulus's founding acts on Machiavelli's view cannot be judged by moral or legal standards, which simply amounts to a version of the idea of constituent power, and is subject to the very problems. Roman law is hardly ever mentioned. In the last resort, it is virtue that counts. A corrupted citizenry is by definition without virtue, and when Machiavelli describes 'kingly power' under the Principate, it is again the ethical quality of the ruler, his virtue, that makes all the

difference: in the times 'governed by the good [emperors]' one 'will see a secure prince in the midst of his secure citizens, and the world full of peace and justice'. A virtuous ruler produces good order, 'the Senate with its authority, the magistrates with their honours, the rich citizens enjoying their riches, nobility and virtue exalted' and 'all rancor, all license, corruption, and ambition eliminated', 'in sum, the world in triumph, the prince full of reverence and glory, the peoples full of love and security'.[41]

My differences with Vickie Sullivan's interpretation of Machiavelli seem to me to stem from my view of constitutionalism as a normative and specifically legal idea. Machiavelli, it is true, does at times betray an intense institutional focus – but his institutions and magistracies are supposed to track the waxing and waning of virtue and change accordingly. They are best thought of as themselves extra-legal and sensitive to the fact that emergencies and extra-legal reordering of the political order are frequently necessary. Malleability, not entrenchment, is what enables them to live up to the permanent existential upheaval that characterizes Machiavelli's politics. For the same reason Machiavelli's institutions cannot be law-governed in the way the constitutional tradition I analyze in the book requires. Political order for Cicero is necessarily *legal* order where the constitutional 'laws are in charge of the magistrates' and the institutions.[42] For Machiavelli, law and the principles of legality play no comparable role. I should have made it clearer in the book that the relevant distinction is between constitutionalism, developed as a diagnosis and response to the fall of the Roman Republic and conceived as an essentially juridical notion, on the one hand, and virtue-based and *ad hoc* institutional solutions on the other. As for Machiavelli's influence on Trenchard and Gordon, Sullivan is probably right that I do not give Machiavelli's impact on Cato enough credit. It seems to me, however, that Cato is far more of a Hobbesian than a Machiavellian, operating with a notion of the state of nature and a corresponding view of the importance of legality and the state as securing pre-political interests, a view that is in tension with Machiavelli's elevation of glory and preservation of the state at all costs.

Professor Springborg, in her learned and detailed remarks, puts a number of questions to me. She wonders whether my account of a Roman tradition of constitutional thought represents simply what she calls a 'triumphalist grand narrative', and asks whether or not my account is compatible with rival accounts, such as those provided by John Pocock and Quentin Skinner. Most importantly, she believes that my book fails to consider areas that would have been in her view key to my inquiry, such as the Byzantine Empire, the Islamic Empires, and the Holy Roman Empire.

Let me begin with Springborg's first point, whether my book constitutes a 'triumphalist grand narrative'. I have to admit that I lack enthusiasm for the term 'grand narrative', since it seems to jeopardize any attempt at pursuing long-term intellectual history. For reasons I have tried to present elsewhere, I think that the history of ideas is in fact particularly suitable for such long-term inquiries that go beyond historical parochialism, given the nimble way in which concepts and arguments, at least in favourable circumstances, are able to escape from their original contexts and travel across historical and geographical boundaries.[43] In my view, 'grand narratives' are simply what historians produce when they seek to explain significant historical phenomena retrospectively from their vantage point.[44] Of course, any such historical account, whatever its scale, will have to live up to standards of evidence, which is to say that it will have to be true. A 'grand narrative',

like a small-scale map, will have to provide a good description of the terrain it covers, and this requires for the scale to be adequate to the object we seek to investigate.[45]

What is the terrain I sought to describe in my monograph? Malcolm Schofield has put it well in his review: *Crisis and Constitutionalism* is about opening up the 'big question about what later generations really took to be so important about the Roman Republic'.[46] My research led me to believe that there was something specific about the answer to this question – something specific to the Roman Republic – that was obscured by other small-scale maps of the history of political thought, such as those provided by John Pocock in his *Machiavellian Moment* or by Quentin Skinner in his scholarship on the 'neo-Roman' conception of liberty. Pocock had obscured it by bringing too broad a concept to the task, that of 'classical republicanism', lumping Greek and Roman thinking on politics together. Skinner had obscured it by seeking to identify distinctly 'neo-Roman' properties that require a specific, highly participatory self-governing structure in opposition to the juridical constitutional thinking which I think constitutes the most characteristic, as well as most interesting, Roman answer to the crises and eventual collapse of the late Republic.

To the extent that Pocock's and Skinner's accounts are inconsistent with mine, they must be incompatible. This is simply the result of the fact that I think what my book provides is indeed, first and foremost, an intellectual *history* of a quite specific concept of constitutionalism. I disagree, that is, with Springborg's characterization of my book as 'forensic' political theory. As history, it seems to me incompatible at various points with Pocock's account, as I indicate throughout the book.[47] Professor Springborg is certainly correct that my historical account of this Roman constitutional tradition contains normative elements. The thinkers described in the book put forward normative arguments, of course, and they thought that their constitutional ideas provided the necessary preconditions of any just and stable large-scale polity, whatever its precise political structure. They also thought that this insight had been gained from the historical experiment that was, in their view, the Roman Republic. I do not in the book defend the normative claims of the investigated thinkers on their merits, although I do not hide my sympathies for many of their arguments. I suspect that my disagreements with Skinner are more of a normative nature and that our respective historical accounts, where they overlap, are largely consistent with one another. The normative disagreement lies in the fact that I find the constitutional tradition described in my book more persuasive and more coherent than 'neo-Roman' or 'republican' alternatives of non-domination and non-arbitrary rule. I also think that my historical account goes at least some distance to show that the historical influence of this tradition, at least until the late eighteenth century, can be explained by the fact that many of the thinkers portrayed found it persuasive and coherent as well. The kind of intellectual history I aim at is therefore best described as 'a complex mix of the empirical and the normative in that the past is a resource for making claims about both how it was thought things should work and how those normative ideas in fact worked'.[48]

Is my account of Roman constitutional thought triumphalist? For a tradition of thought developed in the context of the collapse of a political order, the term strikes me as an inadequate misnomer. To my mind, these constitutional ideas represent a rather modest, almost defeatist, rescue operation in the debris of the *res publica amissa*, the view that only the search for the causes of failure will enable one to find the preconditions for stability. Far from leading a triumphal procession on a *quadriga* into the city after a spectacular victory in the field, Roman constitutional thought resembles rather one of

those defeated generals of the Republic who were usually at least not disadvantaged in their future careers.

Any account of the future career of Roman constitutionalism, Springborg believes, must include the Byzantine Empire, the Islamic Empires, especially the Abbasid and Cordoba Caliphates, and the Holy Roman Empire. She finds fault with my account because of what she deems my failure to consider those 'large swathes' of history. But this criticism is misguided because it rests on an odd and imprecise view of what the object of my investigation is. Springborg at times writes as if 'constitutionalism' should cover everything from cuneiform steles to Islamic Jurisprudence to private Roman law, which is impossibly broad and far too vague; in one passage she claims that in my book I 'chart' 'the history of the Roman Empire'. But I do no such thing. As I explain in the Introduction, I seek to investigate the history of a concept of constitution that developed out of the crises of the late Roman Republic. This concept – which includes the idea of normative constitutional principles that are entrenched, hierarchically superior to mere legislation, justified by reference to an underlying political theory, and of a juridical nature – is quite specific to Roman political thought, as I argue strenuously throughout the book. In tracing the afterlife of the concept in Part III of my book, have I simply missed large swathes of history?

The answer depends on whether this specific concept of constitutionalism was ever taken up in the traditions Springborg would have liked me to pay more attention to. I think that as far as the Byzantine Empire is concerned, Anthony Kaldellis has recently given us reason to agree with Springborg. Kaldellis makes a convincing case that the Byzantines themselves understood their state as a continuation of the Roman Republic.[49] This Byzantine republic had at its head a particularly prominent magistrate, the emperor, who held lawful power, delegated to him by the people. Originally this delegation had happened by way of the *lex regia* (cf. *Crisis and Constitutionalism*, 246f.), which had passed into the Greek Byzantine tradition.[50] This, Kaldellis argues, allowed for the Easter Roman empire to be governed by an ideology indebted to Cicero's definition of *res publica*. Kaldellis thinks that the empire was perceived as a constitutional republic, an *ennomos politeia*, where political power was ultimately based on popular sovereignty. Popular sovereignty here took the form of popular support, expressed in acclamation, or lack thereof, expressed in riots and revolt. I doubt that this form of popular sovereignty owes all that much to Cicero's constitutional thought, but Kaldellis is convincing that when it comes to political ideology, the republican heritage exerted a kind of ideological constraint on the emperors, at least sometimes. To what extent this deserves to be called, with Springborg, the 'legal practice' of the Eastern Roman empire, is not clear to me; from what she says it would seem that by this expression she means the private law contained in Justinian's compilation and reworked into shortened Greek versions such as the *Basilica* and the *Hexabiblos*. But as with Pomponius's *Enchiridion*, which I treat in the book (241-247), what the *Corpus iuris* offers for the tradition I am interested in is, not legal practice, but constitutional reasoning, mostly by private law analogies.[51]

Where the Islamic Empires and the Holy Roman Empire are concerned, I am far more skeptical of the force of Springborg's criticism. Springborg writes that especially the Abbasids 'accomplished an antiquity transformation that goes unmentioned in Straumann's account'. She briefly mentions why they go unmentioned, namely because I treat 'the ancient Greek tradition of Platonic and Aristotelian ethics and politics as separate from

the Roman civil law tradition of Cicero'. But, she writes in a half-sentence, this won't do, because Cicero was 'profoundly influenced by Aristotle' and Greek ethics and politics. I must admit that, having spent a substantial book arguing that conventional wisdom about 'classical Greco-Roman republicanism' has it wrong and that Roman constitutional thought marked an important, interesting and influential departure from Greek ideas about politics, I was rather disheartened to read that Springborg simply assumes, without argument or evidence, the conventional wisdom to be true. Everything else she says about the importance of what she calls the 'antiquity transformation' in Baghdad and Cordoba depends on assuming away the originality of Roman constitutional thought, since, as she must know, the relevant Roman texts were not transmitted through Baghdad and Cordoba. One might add that even if one were to grant that my book is entirely wrong and Cicero and the other authors treated merely exponents of, say, Aristotelian 'classical republicanism', it would still be very hard to understand how Baghdad and Cordoba matter. Aristotle's *Nicomachean Ethics* was translated into Arabic twice in ninth-century Baghdad, and these translations may yield about a dozen emendations of our Greek text.[52] Most importantly, Aristotle's *Politics* was not transmitted via the Caliphates.[53] The relevance of the *Organon* – let alone texts concerned with astrology, astronomy, falconry, medicine or math – for the tradition of constitutional thought described in my book is more than doubtful.[54]

In the case of the German part of the Holy Roman Empire, it is not until the sixteenth century that Roman law, in the form of the *mos Italicus*, assumed far-reaching relevance. The *Corpus iuris* could and did lend some support to princely claims of power vis-à-vis intermediary powers and feudal lords, but it is important to remember that in the struggles over the sources of law in the Empire and the validity of Roman law (*Unde Jus Publicum hauriendum?*), it was Johannes Limnaeus's estate-friendly position which was to prevail until 1806.[55] According to Limnaeus, the public law of the Roman-German Empire was entirely different from that used by the Romans of yore and the Roman law therefore not a valid source of the public law of the Empire.[56] Thus, although I am emphatically not concerned with positive legal history in my book, but with constitutional *thought* and argument (18), the public law of the Holy Roman Empire of the German nation would seem to lie in any case outside the purview of the Roman constitutional tradition.

It may very well be – in fact, it is almost certain – that I have overlooked important strands of Roman constitutional thinking. But any investigation into the afterlife of this tradition needs to be disciplined by a firm grasp of its specific traits. It was these traits, after all, which made the tradition so convincing in the eyes of those who looked to erect large-scale, stable republics that did not depend on virtue, avoided arbitrary rule, were empirically tested and managed to pass 'unwounded' between 'those that contend, on one side for too great Liberty, and on the other side for too much Authority'.[57]

Notes

1. Burke, *Reflections*, 33. Original emphasis. This fails to do justice to Burke, whose view is of course more complex than this short quote suggests. The most important reason for Burke's insistence on the value of inheritance is epistemological: Burke famously thinks that no one person's 'stock of reason' can produce the insights that the accumulated, 'latent wisdom' of custom provides. This is an argument about the limits of individual rationality, not simply an

argument from custom. Rather, custom is suspected to harbour some epistemic value, and over time this value can be harvested (and, presumably, mere prejudice discarded). It is just that custom provides a kind of empirically tested reason in the aggregate; but this will still have to stand up to some kind of epistemic scrutiny.

2. *Philippics* 8.7.
3. *On his House* 33, my trans.
4. *On the Laws* 1.14.
5. Vander Waerdt, "Philosophical Influence on Roman Jurisprudence?"
6. For an interesting recent defense of Cicero's originality, see Woolf, *Cicero*. See also the literature referenced in *Crisis and Constitutionalism*, ch. 4, and Zetzel, "The Attack on Justice"; id., "Cicero on the Origins of Civilization."
7. I try to remain agnostic on this in the book, since what is most important for my argument is the fact that on both interpretations, constitutional norms represent a higher standard (178–181). But I think that for Cicero, it is the constitutional framework itself for which the *recta ratio* of the prudent man with proper foresight (the *prudens*) is the metaphor. This need not entail that all existing constitutional orders are identical; it is merely the case that they *will* eventually converge in some indefinite future (*Republic* 3.33: *nec erit alia lex Romae,alia Athenis, alia nunc, alia posthac*—notice the tense). The idea serves as a normative ideal, something reason would eventually arrive at if normative thought were to continue for an infinite amount of time. Nor need it entail that all norms will be identical, only the underlying most constitutional ones.
8. See, e.g., *Republic* 4.3; 5.8, where Cicero has Scipio talk about the *beata civium vita* so that it be *opibus firma, copiis locuples, gloria ampla*, and, last (and least?), *virtute honesta*.
9. *On Duties* 2.73: *etsi duce natura congregabantur homines, tamen spe custodiae rerum suarum urbium praesidia quaerebant.*
10. All generic distinctions between human beings are removed: *Laws* 1.29-30. For this Romanized Stoic natural law, see also Straumann, "*Appetitus societatis*," 58–62.
11. It obviously matters a great deal that Roman law already in the Republic became a specialized discipline independent from religion or politics, which resulted in a very unique autonomy, quite unlike in any other pre-modern society; see Schiavone, *The Invention*, 3–4.
12. See Vander Waerdt, "Zeno's Republic," 287: Greek Stoic natural law is 'constituted by the sage's rational disposition, not by a code of rules or legislation'. Therefore, it is 'a dispositional rather than rule-following model of natural law'. But see Mitsis, "The Stoics and Aquinas," arguing that even the early Stoa had a model of legal norms. However, we do not have statements relating to the content of natural law norms until the time of Cicero, which raises problems for Mitsis's view.
13. Klein, "Stoic Eudaimonism," 80. This is why it may be prudent to let the history of the idea of a rule-based natural law begin with Cicero rather than with the Greek Stoics. Cf. Striker, "Origins"; Inwood, "Commentary."
14. *Republic* 1.39: *est igitur res publica res populi*. 3.45: *populus non est … nisi qui consensu iuris continetur*. Whether this really is a definition may be doubted. It is, I believe, at least partly an empirical explanation of the nature of a stable state drawn from history. Cicero claims that injustice causes instability, because people are able to identify injustice and object to it. I will try to develop this elsewhere.
15. Livy 7.17.12 reports the view of this strand of positivist constitutional thought: 'that whatever was the last order that the People made that should have the force of law', which can be interpreted either as an expression of popular sovereignty or the thin end of the constitutionalist wedge. See *Crisis and Constitutionalism*, Part I, esp. 34–39, 119–129. I do not think, incidentally, that I simply 'wave aside' difficult questions about the relationship between popular sovereignty and constitutionalism, as Michelle Clarke charges in her review of my book—all of Part I should be read as an investigation into this question. See Clarke, "Review Straumann," 124.
16. Cicero was of course as much of an opportunist as a politician as any, and happy to take both sides of the argument almost at once when defending his policies. But as a theorist he was

more careful, and came down unambiguously against the positivist strand of constitutionalism.
17. Dyzenhaus, "Constitutionalism in an Old Key," 253.
18. Ibid., 254.
19. See Cicero, *Republic* 3.33. Cf. above, n. 7.
20. See Cicero, *Laws* 2.14.
21. Cicero, *Laws* 3.8.
22. Ibid., 3.2.
23. Note that this, incidentally, ventures against the standard Schmittian view of constitutionalism as unprepared to deal with emergencies. Rather, the constitutional tradition represents a very longstanding engagement with and response to the challenge of crisis and emergencies.
24. See Dyzenhaus, "Hobbes on the Authority of Law," 198, n. 38, arguing that Hobbes is committed to the view 'that all acts of sovereignty must comply with the law to be recognizable as acts of sovereignty'. See also Malcolm, "Thomas Hobbes: Liberal illiberal."
25. Oakeshott, *Lectures*, 244.
26. See, e.g., Montesquieu, *Spirit*, bk. 5, ch. 2, 42f.
27. Ibid., bk. 11, ch. 4, 155.
28. Shklar, *Montesquieu*, 78f.
29. Montesquieu, *Spirit*, bk. 11, ch. 16, 177.
30. Many thanks to Rob Howse for this suggestion.
31. Adams, *A Defence*, 491.
32. The idea of popular sovereignty and constituent power provides a non-juridical alternative, as we have seen above. Sullivan points out, correctly, that the U.S. Constitution does not make mention of natural rights. But in the Declaration of Independence, John Adams and the *Federalist Papers* this language is of course present, and as I argue above, constitutional rights and natural rights are not in tension, let alone mutually exclusive. Rather, the issue is whether or not the former are justified in terms of the latter.
33. *Discourses* 1.1.5, 9.
34. *Discourses* 1.10.6, 33.
35. For a convincing explanation of how Machiavelli knew Polybius, see Monfasani, "Machiavelli, Polybius, and Janus Lascaris."
36. *Discourses* 1.18.5, 51f.
37. *Discourses* 1.18.5, 51f. There is an unacknowledged tension between Machiavelli's stress on acting alone and Polybius's and Cicero's emphasis on the gradual development of Rome's constitutional equilibrium (a tension imported into the *Discourses* by virtue of the Polybian chapter 2 of the first book).
38. Polybius 2.47.3, trans. W. R. Paton.
39. *On Duties* 3.41.
40. Riley, "The (Non-) Legal Thought of Niccolò Machiavelli," 361. Cf. Fassò, *Storia*, 39.
41. *Discourses* 1.10.5, 33.
42. *Laws* 3.2.
43. See Straumann, "Roman Ideas on the Loose"; id., "The Energy of Concepts."
44. See Danto, *Analytical Philosophy of History*, ch. 8.
45. For the present journal, given its global aspirations, something along the lines of 1:35,000,000 might be adequate.
46. Schofield, "Review Straumann," 226.
47. I also object to Professor Springborg's view that the term *historia* 'in its ancient use did not fundamentally distinguish between history and stories'. She claims that this is a view defended by Reinhard Koselleck, but I cannot find him making the claim (the section on antiquity in the relevant *Geschichtliche Grundbegriffe* article is written by Christian Meier, who says no such thing). For clarification, see, e.g., Brock, "Review Woodman"; Lendon, "Historians without History."
48. Dyzenhaus, "The Safety of the People is the Supreme Law."
49. Kaldellis, *The Byzantine Republic*.

50. Ibid., 100f.
51. See, for the influence of Roman *public* law on later public-law thinking, Johnston, "The General Influence." For the importance of Roman private law for early-modern political thought, see my *Roman Law in the State of Nature*; and Lee, *Popular Sovereignty*.
52. See Schmidt and Ullmann, *Aristoteles in Fes*.
53. For the possible dissemination of some political ideas of Aristotle in the early-modern Indo-Islamic context, see Syros, "A Note on the Transmission."
54. See, for the translated subjects, Gutas, *Greek Thought, Arabic Culture*, 1, 185f., 193–196.
55. Stolleis, *Geschichte des öffentlichen Rechts*, 146–154.
56. Limnaeus, *Juris publici Imperii Romano-Germanici*, bk. 1, ch. 3.
57. Hobbes, *Leviathan*, 4.

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