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FRED K. DROGULA

The *Lex Porcia* and the Development of Legal Restraints on Roman Governors

One of the most important Republican inscriptions that came to light in the twentieth century is the *lex de provinciis praetoriis* (RS 12), which was originally referred to as the *lex de piratis persequendis* or, more simply, as the ‹Piracy law›. Although the heading of this statute is lost and the surviving portions deal almost exclusively with the Roman *provinciae* of Macedonia and Asia, leading scholars – in particular Ferrary and Crawford – have identified it as a formal *lex de provinciis praetoriis* that recorded the provincial assignments given to praetors in 100 BC.[1] This *lex* has been of great interest to historians not only for the light it sheds on Roman provincial assignments, but also because it cites some of the contents of a *lex Porcia*, which was proposed by a praetor named M. Porcius Cato and passed in or before 100 BC. This *lex Porcia* represents a significant change in Roman provincial administration because it seems to be one of the earliest known attempts by the Roman state to establish specific regulations for the conduct of its provincial commanders, and in doing so it represents an important evolution of Rome's conception of its own dominions. In this paper I will examine the new restraints that the *lex Porcia* imposed on provincial commanders, and will consider why the Romans believed it necessary to place these particular controls on their governors at that specific time.

Because it is impossible to identify securely which M. Porcius Cato sponsored the *lex Porcia*, there is some debate regarding the actual year in which this *lex*-within-a-*lex* was passed. Ferrary has argued that it dates to around 121 BC because that is the only year in which (or shortly before which) a M. Porcius Cato is known to have held

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[1] Ferrary 1977, 645–654 demonstrated that the text dated to 100 BC (see also: Pohl 1993, 216–224; Crawford 1996, 236; de Souza 1999, 108 and 114; Gordon – Reynolds 2003, 224–225). Dmitriev 2005, 85 defines the *lex* more narrowly as a *lex de Cilicia Macedoniaque provinciis*. For bibliography on the *lex Porcia* and the *lex de provinciis praetoriis*, see Crawford 1996, 231–233 (more recent discussions are cited below).

the praetorship.[2] While this is true, one must take account of the huge gaps in the praetorian *fasti* for this period: Broughton was able to suggest only 70 names for the 132 praetorships that would have been held between 121 and 100 BC (53 %), but Brennan has reduced this pool of identifiable praetors to a mere 41 names, or 31 % of the minimum number of men who would have held the office during those twenty-one years.[3] Since nearly 70 % of the men who held the praetorship between 121 and 100 BC cannot be identified securely, and since the Porcian clan was influential enough to win several high offices in the second century BC, one must allow – as many scholars now do – that another, otherwise unknown M. Porcius Cato may have held the praetorship in 101 or 100 BC.[4] Furthermore, Lintott has argued that, because the *lex de provinciis praetoriis* does not identify the consular year in which the *lex Porcia* was passed (a detail that «would have been both necessary and sufficient for a law of previous years»), the *lex Porcia* must have been passed in the same year as the *lex de provinciis praetoriis* (100 BC).[5] Brennan also noted the unceremonious language used to cite the *lex Porcia*: «the casual manner in which the Cnidus inscription gives the date of Cato's measure suggests that it came in the same year as the law [i.e. the *lex de provinciis praetoriis*] itself.»[6] While it is thus possible that the *lex Porcia* was passed (as Ferrary suggests) twenty years before the *lex de provinciis praetoriis*, it seems more likely that the two laws were contemporaneous, a position that – as will be argued below – is strengthened by events described in the *lex de provinciis praetoriis*.

The *lex Porcia* provides strong evidence that the Roman government was imposing stricter controls on its provincial commanders at the end of the second century BC. Before the passage of the *lex Porcia*, Roman commanders were subject to very few restrictions on their use of *imperium* and their exercise of authority within their *provin-*

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[2] Ferrary 1998, 151–167. This is the M. Porcius Cato who was consul in 118 BC (MRR I 527) and who must have been praetor in or before 121 BC according to the requirements set out by the *lex Villia annalis*. The only other praetor by that name who is known to have held office in the second century BC (before the passage of the *lex de provinciis praetoriis*) was Cato the Elder, who was praetor in 198 BC (MRR I 330). Another M. Porcius Cato won election to the praetorship of 152 BC, but died either before taking office (Cic. Tusc. 3.70 and Gell. 13.20.9) or while in office (Livy Per. 48). Daubner 2007, 9–20 concurs with Ferrary, but Crawford 1996, 260 is more hesitant.

[3] MRR I 521–575; Brennan 2000, 723–757, esp. 742 f.

[4] Members of the *gens Porcia* were achieving high offices throughout the second century and into the first century (around the time of the *lex de provinciis praetoriis*), including: M. Porcius Cato (pr. 198, cos. 195, censor 184), P. Porcius Laeca (pr. 195), L. Porcius Licinus (pr. 193, cos. 184), M. Porcius Cato (pr. desig. c. 152), M. Porcius Cato (pr. by 121, cos. 118), C. Porcius Cato (pr. by 117, cos. 114), L. Porcius Cato (pr. by 92, cos. 89), M. Porcius Cato (pr. c. 92) (for all references, see MRR I). Lintott 1981a, 192 accepts that the proposer of the *lex Porcia* was probably the son of the M. Porcius Cato who was consul in 118 BC, and that this Cato held office in the same year as the passage of the *lex de provinciis praetoriis* (cf. Lintott 1981b, 54). Brennan 2000, 471 and 525, concurs.

[5] Lintott 1976, 81 (cf. 1999, 212).

[6] Brennan 2000, 471.

cia. Indeed, the early Romans would have deemed it unnecessary and inappropriate to restrain their commanders in any way; consuls were expected to crush Rome's enemies, and in this pursuit any form of regulation would have been counter-productive. For example, although the consul P. Cornelius Scipio had been given the *provincia* of fighting Carthaginian forces in Spain in 218 BC, he did not hesitate to pursue Hannibal from Transalpine Gaul to Italy, because he understood his primary duty to be the destruction of Rome's foes.[7] Likewise, the consul C. Claudius Nero (cos. 207 BC) secretly – and on his own initiative – left his *provincia* fighting Hannibal in southern Italy when he received intelligence of Hasdrubal's arrival in the north. Taking a huge risk, Nero slipped away from his command in Bruttium and raced to his colleague's *provincia* in northern Italy so that – by doubling their forces – the two consuls could destroy Hasdrubal and his army.[8] In both cases, Rome's consuls understood their *provinciae* as being a war against a particular enemy, and therefore any actions that facilitated the destruction of that enemy were permitted to them. In this respect, Roman commanders possessed tremendous independence and freedom of action – they were not bureaucrats to be micro-managed, but rather autonomous military juggernauts to be unleashed. Although the senate certainly gave commanders some instructions (*mandata*) – at the very least the name of the enemy or place to be conquered – the vagaries of war and the difficulties of communication required that those commanders be allowed full discretion to direct military operations as conditions required.[9] Indeed, it was not unheard of for consuls to ignore directions from the senate when those directions ran counter to the commanders' own assessment of the situation.[10] As Rome was expanding its reach across the Mediterranean, therefore, it was not interested in (and probably did not think of) placing limitations on the scope of its commanders' activities – the Roman people cared more about results than the manner in which those results were achieved. Although reckless, incompetent, or corrupt commanders could be punished for their misdeeds as violations of unwritten ‹natural

[7] Polyb. 3.49.1–4 and 61.1; Livy 21.32.1–5; Sil. Ital. 4.51–52; App. Hann. 5; Zon. 8.23.

[8] Livy 27.43.1–51.13; Val. Max. 7.4.4; Sil. Ital. 15.544–600; App. Hann. 52.

[9] Eckstein 1987, 320f., emphasizes that Roman generals were dispatched to fight fluid and unpredictable wars, and «in such situations, it was *expected* of the magistrate/general that he would make the crucial decisions himself, based on his own perceptions and volition» (emphasis original). On the original meaning of *provincia* (ἐπαρχεία) to mean a ‹task› rather than a territory, see: Lintott 1981b, 53–58; Bertrand 1982, 167–175 and 1989, 191–215; Richardson 2008, 1–62.

[10] In one tradition, the consuls of 223 BC (C. Flaminius and P. Furius Philus) deliberately delayed opening a dispatch from the senate – which they knew contained instructions to lay down their commands (on account of bad omens) and return to Rome – until after they had fought a major battle against the Insubres Gauls (Livy 21.63.12, 22.3.4, Plut. Marc. 4.3, 6.1; Zon. 8.20). Flaminius would again ignore the instructions of the senate in his second consulship in 217 BC (Livy 21.63.12). Similarly, when the senate instructed the consul M. Popillius Laenas (cos. 173 BC) to desist from his cruel treatment of the Statelliates in Liguria, Laenas ignored the senate's instructions, and even resisted the senate's efforts to reverse his actions (Livy 42.7.3–9.6).

law›,[11] in general the Romans were content to give their commanders a free rein in the conduct of their campaigns.

Only with the gradual acquisition of its empire did Rome begin to change this attitude. As enemies were subdued and became subjects, and as conquered lands were absorbed into Rome's dominion, the Roman senate and people gradually took a greater interest in the treatment its friends and allies received from Roman commanders. By the early second century BC, therefore, Rome began requiring its commanders to show restraint in their treatment of allies, and in particular to limit their greed and profiteering.[12] At first, we hear of the Romans appointing special tribunals to investigate complaints by provincials,[13] but starting in 171 BC they began using *recuperatores* (small panels of judges) to help provincial allies recover property that had been extorted from them by Roman officials.[14] In 149 BC, the Romans passed the *lex Calpurnia repetundae*, which facilitated the recovery of provincial property from former governors by establishing a permanent court with fixed procedures (a *quaestio perpetua*), and this *lex* was strengthened by subsequent *repetundae* legislation, most particularly the *lex Acilia* influenced by Gaius Gracchus, which doubled the fines imposed on the guilty

[11] In 291 BC the consul L. Postumius Megellus was – upon leaving office – prosecuted and condemned for using soldiers as laborers on his private land (Livy Per. 11; Dion. Hal. 17–18.4); in 172 BC a former consul was censured by the senate for harming a friendly tribe, and escaped condemnation only through the collusion of a friendly praetor (Livy 42.22.2–8); in 136 BC the former consul Mancinus – who had avoided the destruction of his army in the previous year by concluding a disgraceful treaty with the Numantines – was handed back to the enemy in chains (Cic. Off. 3.109; App. Ib. 83; Livy Per. 56); in 104 BC the former consul M. Junius Silanus was prosecuted (but acquitted) for his dismal leadership against the Cimbri in 109 and 108 BC (Ascon. 68 and 80C); and in 103 BC the former consuls Cn. Mallius Maximus and Q. Servilius Caepio were condemned and exiled for their poor military performance against the Cimbri and Teutones at the battle of Arausio in 105 BC (Auct. Ad Herenn. 1.24; Cic. de Or. 2.107–109, 124f., and 197–203, Brut. 135, Balb. 28; Val. Max. 4.7.3).

[12] The Romans may have imposed some minor regulations on governors in the second century BC, such as limiting the number of slaves a governor was permitted to take with him to his command (see Lintott 1981a, 176). Two inscriptions from Colophon (SEG 39.1243 and 1244) suggest that provincial governors were specifically instructed to respect the autonomy of free states, but the dates of these decrees are uncertain, and they may even date to the first century BC. See: Robert – Robert 1989, 13 (Polemaios decree, Col. 2, ll. 51–61) and 64 (Menippos decree, Col. 2, ll. 1–18); Ferrary 1991, 557–577; Lintott 1992, 12–14 and 1993, 62f.; Ager 1996, 459–461; Lehmann 1996, 7–13 (esp. 12f.); Eilers 2002, 132–137; Rowe 2002, 127–130; Sánchez 2010, 41–60.

[13] For example, in 204 BC a special tribunal was sent (appointed by the city prefect) to investigate complaints brought by the Locrians against their former governor (Livy 29.8.1–9.12, and 16.4–22.12). For discussion, see: Gruen 1968, 13–15 and Lintott 1972, 241–243 and 256.

[14] Livy 43.2.1–12. In 170 BC, ambassadors from several peoples in Spain complained of having suffered extortion from at least three different Roman commanders (two went into voluntary exile, the third was acquitted). Livy suggests that more former governors would have been accused of extortion, but the praetor who was given jurisdiction over these cases prevented further cases by leaving Rome for his province. See Richardson 1986, 114f.

and increased the likelihood of condemnation by placing equestrians on the jury.[15] By the middle of the second century BC, therefore, the Romans were making a serious effort to improve their treatment of their subjects by placing limits on their provincial governors' ability to engage in profiteering through extortionary practices.

Nearly fifty years after the *lex Calpurnia* began regulating profiteering in the provinces, the *lex Porcia* placed an entirely new and unprecedented type of restriction on Roman commanders by limiting their freedom of movement. Although no actual text of the *lex* has thus far been discovered, two sections of it have been preserved in other statutes. The first appears in the *lex de provinciis praetoriis*:

μήτε τις τούτοις τοῖς πράγμασιν ὑπεναντίως τοῖς ἐν τῶι νόμωι ὃν Μάαρκος Πόρκιος Κάτων στρατηγὸς ἐκύρωσε πρὸ ἡμέρων γ' τῶν Φηραλίων ἐκτὸς τῆς ἐπαρχείας ἐκτασσέτω μήτε ἀγέτω τις [vv] μήτε πορευέσθω τις δι' ἃ ἑκάσ[τοτε] ἐπάξει εἰδὼς δόλωι πονηρῶι μήτε τις ἄρχων μήτ' ἀντάρχων ἐκτὸς τῆς ἐπαρχείας, ⟨ἐφ'⟩ ἧς αὐτὸν ἐπαρχείας κατὰ τοῦτον τὸν νόμον εἶναι δεῖ ἢ δεήσει, εἰ μὴ ἀπὸ συγκλήτου γνώμης, πορευέσθ⟨ω⟩ μήτε προαγέτω, εἰ μὴ διαπορείας ἕνεκεν ἢ δημοσίων χάριν πραγμάτων, τούς τε ἑαυτοῦ κωλυέτω {εἰδὼς} ἄνευ δόλου πονηροῦ.

«No one, in contravention of those measures which are in the statute which M. Porcius Cato as praetor passed three days before the Feralia, is knowingly with wrongful deceit to draw up (an army) or march or travel outside his province, for whatever reason or whenever he shall arrive, nor is any magistrate or promagistrate to travel or proceed outside the province in command of which province it is or shall be appropriate for him to be according to this statute, except according to a decree of the senate, except for purposes of transit or for reasons of state, and he is without wrongful deceit to restrain his staff.»[16]

The second surviving portion of the *lex Porcia* is contained in the *lex Antonia de Termessibus* of 68 BC:

nei quis magistratus proue magistratu legatus ne[u] quis alius meilites in oppidum Thermesum Maiorum Pisidarum agrumue Thermensium Maiorum Pisidarum hiemandi caussa introducito, neiue facito, quo quis eo meilites introducat quoue ibei meilites hiement, nisei senatus nominatim, utei Thermesum Maiorum Pisidarum in hibernacula meilites deducantur, decreuerit; neu quis magistratus proue magistratu legatus neu quis alius facito neiue inperato, quo quid magis iei dent praebeant ab ieisue auferatur, nisei quod e⟨o⟩s ex lege Porciadate praebere oportet oportebit.

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[15] CIL I^2 2.583 ll. 74 and 81 (RS 1–2, ll. 74 and 81); Cic. Brut. 106, Verr. 2.2.15, 2.4.56, 3.195, 4.56, Off. 2.75; Tac. Ann. 15.20.3. For bibliography on the *lex Calpurnia*, see RS 39–40. On the development of the standing courts (*quaestiones*), see: Gruen 1968, passim; Sherwin-White 1972, 83–99 and 1982, 18–31; Stockton 1979, 230–235; Lintott 1981a, 177–185, and 1999, 157–162; Williamson 2005, 301–306.

[16] *Lex de provinciis praetoriis*, Cnidos Copy, Col. III, ll. 3–15 (trans. Crawford).

«No magistrate or promagistrate or legate or anyone else is to introduce soldiers into the town of Termessus Maior in Pisidia or into the territory of Termessus Maior in Pisidia for the purpose of wintering nor see that anyone introduce soldiers thither or that soldiers winter there, unless the senate shall have decreed with mention of the town's name that soldiers be brought into winter quarters in Termessus Maior in Pisidia; nor is any magistrate or promagistrate or legate or anyone else to see, or order, that they in fact give or provide anything or that in fact anything be taken from them, except what it is or shall be appropriate for them to give or provide according to the Lex Porcia.»[17]

As is readily apparent, these fragments of the *lex Porcia* place two different types of restrictions on provincial governors. First, the law strengthens the anti-extortion regulations of the *lex Calpurnia* by making governors responsible for the actions (that is, crimes) of their subordinates, and by establishing clear limits on quantities of goods and services governors could requisition from provincials. This certainly was intended to close loopholes in the *lex Calpurnia* that could be (and probably were) used by governors to avoid prosecution for extortion by demanding money from provincials through intermediaries or in the guise of official requisitions. Second – and more important for the current study – the *lex Porcia* required that governors remain inside their *provinciae* during their terms by specifically prohibiting a commander to draw up an army outside his *provincia*, to lead men outside his province, or to travel outside of his *provincia* (other than transit to and from Rome). Naturally, the *lex Porcia* allowed that the senate could decree exceptions to these regulations, and it also recognized that a commander might have legitimate cause to leave his *provincia*, and such departures were authorized under the proviso that they were to be made only ‹for reasons of state› (δημοσίων χάριν πραγμάτων). While this exception was a potential loophole for unscrupulous commanders, it was also a treacherous one, since the strong prohibitions on leaving one's *provincia* may have shifted the burden of proof to the defendant in a trial, requiring the defendant to prove that his departure from his *provincia* in contravention of the law was indeed done for the good of the state. As Lintott described it, «the *lex Porcia*, by laying down rules for the conduct of officials, created a new range of offences».[18] The *lex Porcia* was, therefore, a drastic departure from the established tradition of allowing commanders free rein to direct their own actions in the field. If commanders were indeed military juggernauts to be unleashed, the *lex Porcia* stipulated that they be unleashed into a fenced-in yard.

Not only does the *lex Porcia* represent a significant change in the Roman practice of military command, but also it demonstrates an important development in Rome's thinking about its empire, and in particular about its ‹permanent› *provinciae*. Origin-

[17] *Lex Antonia de Termessibus*, Col. II, ll. 6–17 (trans. Crawford). Ferrary 1985, 439–342 and Crawford 1996, 332 concur that 68 BC is the most likely date for this statute.

[18] See Lintott 1981a, 196.

ally, there had been nothing permanent about Rome's provincial commands (*provinciae*) – the senate continually assessed Rome's military priorities and dispatched its armies against whatever enemies it deemed the most important at that particular time.[19] A *provincia*, therefore, was a short-term military commitment that rarely lasted more than a few months. This temporary quality of the *provincia* began to change, however, as Rome took possession of the territories it had seized from Carthage in the first two Punic Wars. After taking control of the islands of Sicily, Sardinia, and Corsica, and later of substantial territory in Spain, the Romans regularly and continually dispatched *imperium*-bearing commanders – often with considerable armies – to protect and supervise these overseas possessions. As a result of this long-term commitment to exercise permanent control over these territories – as well as over subsequent acquisitions in Africa, Macedonia, and Asia – the Roman notion of the *provincia* expanded to include the idea of the ‹permanent› *provincia*: an ongoing regional command that the senate intended to assign annually (or biennially) to one of its consuls or praetors.[20] Very gradually, the acquisition of these permanent *provinciae* would cause three changes in the way Rome viewed its empire. First, the perpetual assignment of particular regions as *provinciae* would cause the word ‹*provincia*› to expand its definition to mean ‹a specific territory› as well as the traditional ‹military campaign›.[21] Thus the senate could assign to one commander the *provincia* of ‹war against the Ligurians›, and to another commander the *provincia* of ‹Sicily› or ‹Nearer Spain›.[22] Furthermore, many of these permanent *provinciae* were at least partially defined by clear boundaries, which increased the identification of the permanent *provincia* as a particular territory distinguishable from other territories.[23] Second, the acquisition of permanent *provinciae* caused Rome to expand greatly its use of praetors as provincial commanders, increasing that college by 500 % in the forty-four years from 241 to

[19] For the purposes of this discussion, I am considering only extra-urban *provinciae*; praetors were frequently assigned the supervision of courts in Rome as their *provinciae*, but these lay outside the current study.

[20] See Brennan 2000, 182–190 (esp. 188), who presents this as the development of a «fixed roster of provinces» that he refers to as the *ordo provinciarum*.

[21] On the growing tendency to identify permanent *provinciae* as geographic spaces, see: Hermon 1996, 8; Baronowski 1988, 450; Bertrand 1989, 191–215; Eck 1995, 19; Lintott 1999, 101; Richardson 2008, 10–62.

[22] See Livy 39.38.1–3, quoted in full below.

[23] For example: the *provinciae* of Sicily, Sardinia, and Corsica are defined by their obvious limits as islands; the first commanders in Nearer and Farther Spain were instructed by the senate to establish a border separating their two *provinciae* (Livy 32.28.11); Roman senatorial legates reorganized the territories comprising the state of Carthage and the kingdoms of Macedonia and Pergamum into the permanent *provinciae* of Africa, Macedonia, and Asia, which often included changing or confirming the borders separating the *provinciae* from other, independent states (ILS 67; Vell. 2.38.2; App. Lib. 135 [Africa]; CIL I^2 2.626; ILS 20; Cic. Att. 13.4.1, 30.2–33.3; Strabo 8.6.23; Val. Max. 7.5.4 [Macedonia]; and CIL I^2 2.646–51; Strabo 13.4.2, 14.1.38; Vell. 2.38.5 [Asia]).

197 BC.[24] Praetors rarely appear as provincial (military) commanders before the First Punic War, but by the end of the second century BC, praetors were receiving the majority of annual provincial assignments.[25] There was a direct and obvious correlation, therefore, between the rising number of permanent *provinciae* and the increasing use of praetors as provincial commanders. Third, this correlation gradually fostered the notion that praetorian *provinciae* were lesser commands that differed from consular *provinciae*. Although the praetorship had always been a secondary office compared to the consulship, the difference was originally so small that former-consuls had not considered it a demotion or diminution of their *dignitas* to hold a praetorship.[26] As the number of praetors grew, however, and when the *lex Villia annalis* of 180 BC firmly established praetors as Rome's junior commanders, the prestige and status of the praetorship decreased significantly relative to the consulship, a disparity that was evident in their provincial assignments.[27] In the second century BC, consuls always received the most important and glorious military campaigns as their *provinciae*, while praetors were given whatever responsibilities remained – usually the permanent *provinciae* that Rome was committed to supplying with *imperium*-bearing commanders even if no military activity was expected. The difference was important – although both offices held *imperium*, consuls received highly desirable wars that offered prestigious and profitable campaigning, whereas praetors were normally assigned to *provinciae* that were mostly pacified (the two Spanish *provinciae* being a notable exception), forcing most praetors to act as protectors and supervisors rather than as conquerors.[28] Naturally, consuls did hold commands in permanent *provinciae* on occasion, but only when major uprisings or wars made those *provinciae* more attractive than any other military campaign. For example, major revolts in Spain, large-scale slave revolts in

[24] Brennan 2000, 85–89 argues convincingly that the second praetor – the *praetor inter peregrinos* – was created in or around 241 BC in part to provide a regular governor for Sicily. In 227 BC the Romans increased the number of annual praetors to four to provide additional governors for Sicily, Sardinia, and Corsica (Livy Per. 20, Dig. 1.2.2.32), and in 197 BC two further praetors were added to provide commanders for the two new Spanish provinces (Livy 32.27.6).

[25] Before the First Punic War, praetors are only attested as holding military *provinciae* in four years: 350, 349, 295, and 283 BC (MRR I 128f., 178, 188). See also Brennan 2000, 725f. By the time Asia was annexed in 129 BC, Rome had seven permanent *provinciae* in addition to wars fought elsewhere, so it needed most of its six annual praetors to hold *provinciae* for at least part of each year.

[26] MRR I 128, 130, 139, 164, 175, 176, 178, 180, 182, 188, 191, 208, 211, 225.

[27] The *lex Villia annalis* regulated the minimum age for holding particular offices; the praetorship could be held at age thirty-nine, but the consulship could not be held until age forty-two (see Evans – Kleijwegt 1992, 181–195). On the changing the relationship between consuls and praetors, see Brennan 2000, 605.

[28] The *Fasti Praetorii* (Brennan 2000, 723–757) demonstrate that praetors overwhelmingly received permanent (i.e. previously conquered) *provinciae* as their provincial commands, rather than wars or major campaigns of conquest in territory not previously annexed to the Roman empire.

Sicily, and major wars in Asia would all draw consuls to those permanent *provinciae*, but as soon as the fighting was done, each *provincia* was handed off to a praetor, who was left with the less glorious task of maintaining the peace and supervising provincials.[29] Ancient authors recognized this difference: Livy writes that a consular commander was dispatched to Spain in 195 BC specifically because a tremendous war had broken out there, and he remarks that in 178 BC, Sardinia – which had already been assigned to a praetor – was instead made a consular *provincia* because of the magnitude of the war being fought there.[30] The lower priority and lesser status of praetorian *provinciae* are made clear in many of Livy's descriptions of annual provincial allotments. For example, he writes about 184 BC: «At Rome, in the beginning of this year, when the question of the provinces for the consuls and praetors came up, the Ligurians were decreed to the consuls, *since there was war nowhere else*. Of the praetors, Gaius Decimius Flavus received the civil jurisdiction, Publius Cornelius Cethegus that between citizens and aliens, Gaius Sempronius Blaesus Sicily, Quintus Naevius Matho Sardinia and the additional task of investigating cases of poisoning, Aulus Terentius Varro Nearer Spain, Publius Sempronius Longus Farther Spain.»[31]

Livy's account indicates that the senate followed two different processes in assigning provincial commands: first, the senate considered which wars were the most pressing and prestigious, and these – wherever they might be – were given to the consuls; second, the senate looked at what urban tasks and standing *provinciae* most needed new magistrates/commanders, and assigned these to the praetors.[32] Consular commands,

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[29] Major wars or uprisings bring consuls to Spain in 195 BC (Livy 33.43.5; App. Ib. 39–41; Plut. Cat. Mai. 10), from 153 to 151 BC (App. Ib. 45–55; Polyb. 35.1.1–4.14), and from 145 to 134 BC (Cic. de Or. 1.181; App. Ib. 65, 70f., 76–80, 83–89; Livy Per. 52–57; Val. Max. 1.6.7, 2.7.1, 6.4.2, 9.3.7; Vell. 2.1.3–5; Diod. 33.1.4, 33.21). Consuls were sent to defeat major slave revolts in Sicily in 132 BC (Cic. Verr. 2.3.125; Livy Per. 59; Diod. 34/35.2.20–23; Val. Max. 2.7.3, 6.9.8) and 101 BC (Diod. 36.10; Flor. 2.7.11–12). Consuls were sent to the *provincia* in Asia to fight Mithridates in 88 BC (Plut. Sull. 7.1–10.2, Mar. 34.1–35.4; App. BC 1.55–63, Mith. 22 and 30; Diod. 37.29.2; Livy Per. 77) and in 74 BC (Plut. Luc. 6–7; App. Mith. 72; Cic. Mur. 33). Once a consular commander had subdued a major war in a permanent *provincia*, that *provincia* was no longer as desirable, so it was handed off to praetors. Thus Dio notes that, when Asia ceased to be a theater of warfare against Mithridates, the Romans «restored the province of Asia to the praetors» in 69 BC (36.2.2, καὶ διὰ τοῦτο τότε τε ἐς τοὺς στρατηγοὺς τὴν ἀρχὴν τῆς Ἀσίας ἐπανήγαγον).

[30] Livy 33.43.1–2, *quoniam in Hispania tantum glisceret bellum ut iam consulari et duce et exercitu opus esset*, and 41.8.3, *[evenit] Mummio Sardinia, sed ea propter belli magnitudinem provincia consularis facta.*

[31] Livy 39.38.1–3 (translation E. T. Sage; my emphasis): *Romae principio eius anni, cum de provinciis consulum et praetorum actum est, consulibus Ligures, quia bellum nusquam alibi erat, decreti. Praetores C. Decimius Flavus urbanam, P. Cornelius Cethegus inter cives et peregrinos sortiti sunt, C. Sempronius Blaesus Siciliam, Q. Naevius Matho Sardiniam et ut idem quaereret de veneficiis, A. Terentius Varro Hispaniam citeriorem, P. Sempronius Longus Hispaniam ulteriorem.*

[32] Livy frequently describes consular *provinciae* as ‹wars› and praetorian *provinciae* as ‹territories›: 39.45.1–7 (183 BC), 40.1.1–5 (182 BC), 40.18.3–7 (181 BC), 40.35.1–4 (180 BC), 40.44.3–7 (179 BC), 41.8.1–6 (177 BC), 41.14.4–9 and 15.5–8 (176 BC).

therefore, were chosen for their importance and prestige, whereas praetorian commands were generally chosen from a preexisting list of necessary commitments. Furthermore, since the consular monopoly on prestigious military commands ensured that praetors rarely held anything but permanent *provinciae* that were in a state of relative peace (again, the two Spanish *provinciae* were a notable exception), the correlation between praetorians and ‹lesser› *provinciae* became fairly strong – permanent *provinciae* were less desirable because they normally offered fewer opportunities for enhancing one's reputation and status. Although this difference was nowhere codified in law, the distinction between a consular and praetorian *provincia* was certainly taking shape.

This gradual separation of Rome's *provinciae* into two basic categories sets the context for the *lex Porcia*, since there are good reasons to suspect that the new regulations imposed by the *lex* did not (or were not) applied equally to both types of *provincia*. Indeed, there are several reasons to believe that the *lex Porcia* was primarily aimed at the praetorian commanders of permanent *provinciae*, which is to say that praetors, propraetors, and praetors *pro consule* would have felt the weight of the *lex* far more heavily than their consular colleagues.[33] In the first place, the requirement that a commander had to remain inside the boundaries of his own *provincia* was only relevant if the commander's *provincia* was (in fact) geographically defined. This was usually the case with praetorian commanders, since the permanent *provinciae* they normally received consisted of specific territories that were at least partially defined by identifiable borders. Even the permanent *provinciae* in Spain and Macedonia, which had permeable ‹outer› borders that praetors freely crossed in order to campaign against neighboring tribes, were recognizable as particular and defined territories.[34] Praetors, therefore, would have felt the full weight of the *lex Porcia*'s stipulation that (with certain exceptions) commanders were to remain inside their *provinciae*, because they usually held permanent *provinciae*, which had at least some defined and enforceable borders. On the other hand, it would have been very difficult to apply this aspect of the *lex Porcia* to consular *provinciae*, since those commands were rarely circumscribed by geographic definitions. Consuls normally received wars against specific enemies as their *provinciae*, and therefore their primary responsibility was the conquest of a mobile enemy rather than the supervision of a particular

[33] For the purposes of this discussion, a ‹praetorian› *provincia* is the command given to a praetor or a prorogued praetor, even if the praetor was prorogued *pro consule*. Similarly, a ‹consular› command is one given to a consul or prorogued consul, but not to a praetor prorogued *pro consule*.

[34] On the borders in permanent *provinciae*, see n. 23 above. Vanderspoel 2010, 258 has recently written, «Macedonia was a recognized territory and had been one for a long time. The Macedonians and their neighbours, and Rome too, knew what was Macedonia and what was not.» The same could – in practice – be said of all the overseas territories that Rome held year after year.

territory.[35] On those occasions when consuls were assigned to permanent *provinciae*, their primary objective was still warfare: they were expected either to subdue a major uprising in that area, or to use a permanent *provincia* as a base of operations for waging war against a nearby foreign enemy.[36] Consular commanders, therefore, held a fundamentally different type of *provincia* from their praetorian colleagues; consular *provinciae* were campaigns that could include territory but were not limited by it, whereas the specific territories normally assigned to praetorian commanders defined both the full extent of the *provincia* and (after the *lex Porcia*) the limits of the commander's military authority. Although we cannot know the intent of the senators who promulgated the bill,[37] the *lex Porcia* – in practice – must have fallen disproportionately upon the shoulders of praetorian commanders, since their *provinciae* were most easily defined by geography.

Second, the *lex Porcia*'s prohibition on leaving one's *provincia* early – that is, before the end of one's tenure of the *provincia* – probably did not apply to most consular commanders at that time, because consuls were generally permitted to return to Rome as soon as their assigned enemy had been vanquished. Since consuls normally received wars or other campaigns as their *provinciae*, they could justifiably claim that a major victory had brought their war – and therefore their *provincia* – to a successful conclusion (although senatorial and popular opinion could weigh in on the issue of whether the task was truly completed or not).[38] For example, when a consul of 123 BC,

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[35] Although consular commanders were not required to remain within any geographic borders, they were expected to fight the enemies assigned to them by the senate. Thus the senate did not complain when the consul M. Porcius Cato (cos. 195 BC) – having been assigned to suppress a major war in Nearer Spain – freely crossed the boundary of that *provincia* in order to fight his enemies in the adjacent-but-separate *provincia* of Farther Spain (see Richardson 1986, 88), but the senate was outraged when it learned that the consul C. Cassius Longinus (cos. 171 BC) had left his *provincia* in Gaul and was travelling with his army to Macedonia (Livy 43.1.4–12).

[36] For example, between 110 and 105 BC consuls were given the permanent *provincia* of Africa in order to wage war against Jugurtha in Numidia (MRR I 543, 545, 549, 550, 554, and 556). Likewise, in the first century BC, Roman commanders were given a variety of different permanent *provinciae* as bases of operation against Mithridates, but their campaigns ranged all over the East: in 88 BC L. Cornelius Sulla was given the *provincia* of Asia but campaigned mainly in Greece (MRR II 40, 48, 55, 58, and 61); in 74 BC, L. Licinius Lucullus received the provinces of Cilicia and (probably) Asia, although he campaigned in Bithynia, Pontus, and Armenia, and even planned an invasion of Parthia (MRR II 101, 111, 118, 123, 129, 133, 139); in 66 BC Cn. Pompeius Magnus received Cilicia, Bithynia, and Pontus, but he also led campaigns in Armenia, Syria, Commagene, and Judaea (MRR II 155, 159, 163f., 169f.). For consuls receiving permanent *provinciae* to suppress uprisings, see above n. 29.

[37] Giovannini – Grzybek 1978, 44–47 believed that the *lex Porcia* was intended to restrain commanders, particularly in the East. Richardson 1986, 168–171 suggests that «[t]he problems of controlling the extension of warfare beyond provincial boundaries» may have led to legislation (including the *lex Porcia*) to restrain provincial commanders.

[38] Livy, for example, frequently refers to province as being ‹completed› (*provincia confecta*) when the consular commander had vanquished his enemy, thereby accomplishing the goal for

Q. Caecilius Metellus (Baliaricus), defeated the pirates inhabiting the Balearic islands and resettled the islands in such a way as to prevent a resurgence of piracy, the *provincia* was effectively completed and finished – no successor was assigned to continue campaigning in those islands after Metellus returned to Rome.[39] Even if a consul held a permanent *provincia* as part of a larger military command (such as holding Asia to fight Aristonicus or holding Africa to fight Jugurtha), he did not have to remain in that *provincia* until the end of his term – Manlius Aquillius (cos. 129) returned from Asia early enough in 126 BC to celebrate a triumph on November 11th (nothing is known about his successor), and L. Calpurnius Bestia (cos. 111) was sent to Africa to fight Jugurtha, but returned to Rome before the end of his consulship – and before any successor had been named – in order to hold elections for his successors.[40] Naturally, not all consuls were fortunate or skilled enough to defeat their assigned enemies decisively within their term of command, and some of Rome's enemies – particularly those who lived in nomadic or semi-nomadic tribes – posed intermittent threats, which could be defeated by one consul only to reappear several years later (such as the Gauls in the north). Nevertheless, the fact that Pompey was able to ‹complete› his three-year special command against pirates in only a few months in 67 BC, and then swiftly move on to another *provincia* in Asia against Mithridates, demonstrates that consular commanders could bring their *provinciae* to an end at any time in their tenure by defeating their assigned enemy.[41] Praetors, on the other hand, rarely held a *provincia* that they could claim to have ‹completed› in this way. Since most praetors held permanent *provinciae*, which involved the never-ending protection and supervision of Roman territory, they would have found it very difficult to claim that they had ‹completed› the command. For example, when the praetorian commander Q. Fulvius Flaccus claimed in 180 BC that his *provincia* in Nearer Spain had been ‹completed› by his defeat of a Celtiberian army, the senate rejected his claim on the grounds that the *provincia* still required Roman protection and the presence of a Roman commander.[42] Therefore, the new regulation in the *lex Porcia* that commanders should not leave their *provinciae* early would have had little effect on a consular commander, who

which he (and his army) had been sent. For example: 28.24.7 (armies are normally disbanded once war is won), 28.28.7 (expectation that a consul and his army leave a *provincia* once it is subdued), 37.2.5 (a consul has completed his *provincia* by defeating a Ligurian army, so he is ordered to transfer his army to another military theater), 38.50.3 (a consul completes his *provincia* by defeating the enemy in battle), 40.28.8 (the consul returned to Rome after defeating the Ligurian army), 41.12.3 (consul defeated an enemy uprising in Sardinia, and left the island to attack the Ligurians), 45.38.14 (consular armies are normally dismissed once their *provincia* is completed).

[39] Livy Per. 60; Strabo 3.5.1; Flor. 1.43. Lintott 1981b, 54 points out that the *lex Porcia* is the earliest known statement that a Roman commander should not leave his *provincia* without the permission of the Roman senate or people.

[40] For references, see MRR I 509 and 540.

[41] For references, see MRR II 146.

[42] Livy 40.35.3–36.4.

could return to Rome if and when he had completed the war that had been assigned to him. Praetors, on the other hand, would have been far more confined by the new law, because they could not ‹complete› a territorial possession.

Third, the prohibition against peculation was also less relevant in a consular province, since the consuls normally conducted campaigns of conquest, which offered plenty of legitimate booty.[43] It was the praetorian commanders of previously subdued territories – who often had little opportunity to obtain legitimate booty – who would have been most tempted to acquire profit through illicit means.[44] At least eight praetors are known to have been prosecuted for extortion between 149 and 100 BC, which is a high number considering that in this period the activities of praetors in their provinces are rarely mentioned by surviving sources.[45] Indeed, Brennan has argued that the great wealth of Asia and Sicily was a powerful temptation for Roman commanders, for which reason the senate was careful not to let any Roman commander remain too long in those provinces.[46] The praetor L. Hortensius is a good example of this: while holding command of a fleet in 170 BC, Hortensius sacked the peaceful city of Abdera on Crete and sold its inhabitants into slavery for profit, much to the horror of the senate, which censured Hortensius and sent legates to locate and free the enslaved Abderans.[47] In the five years (105 to 101 BC) immediately preceding the promulgation of the *lex Porcia*, four praetors were accused of extortion, whereas only a single consul was charged with the same crime,[48] which means that praetors were statistically more likely to be prosecuted for extortion than consuls.[49] All Roman commanders were culturally driven to seek career-enhancing prestige and wealth from

[43] The taking of plunder from a conquered enemy was considered extremely praiseworthy, and victorious generals proudly displayed their spoils in their triumphs. The more plunder a commander stripped from his enemy, the greater the renown and distinction of his triumph (see Beard 2007, 147–153, and Itgenshorst 2005, 59f., 80f., 192–196, 209f.).

[44] Harris 1979, 77, «the opportunities for self-enrichment open to provincial governors and their immediate subordinates were very extensive even in peaceful conditions.»

[45] See Gruen 1968, 304–310.

[46] Brennan 2000, 233. He argues that Sicily was usually reassigned annually in the second century BC, and that Asia was probably reassigned every two years after its acquisition.

[47] Livy 43.4.8–13, 43.7.5–8.7.

[48] See Gruen 1968, 306f., who identifies the following: T. Albucius (pr. 105) was condemned in 104 BC, C. Memmius (pr. 104?) was acquitted in 103 BC, L. Valerius Flaccus (pr. 103) was acquitted in 103 BC, C. Servilius (pr. 102) was condemned in 101 BC, and C. Flavius Fimbria (cos. 104) was acquitted in 103 BC.

[49] If all six praetors were sent to extra-urban *provinciae* in this period, the four-to-one ratio of extortion cases means that praetors were 3.3% more likely to be prosecuted for extortion. If, however, the Romans followed their usual practice of retaining one or two praetors (usually the urban and peregrine praetors) in the city to exercise judicial and administrative functions, the smaller number of praetors in extra-urban *provinciae* makes the discrepancy in prosecution rates increase to between 6% and 10%. Furthermore, since only fourteen of the thirty men who would have held the praetorship during this period are known, it is possible that even more praetors were prosecuted for extortion.

their provinces, but – because praetors generally received fewer opportunities to win legitimate plunder – they had to seek profit from the peaceful provincials under their authority, making them more susceptible to charges of extortion, and therefore more likely to run afoul of the *lex Porcia*.

The new regulations imposed by the *Lex Porcia*, therefore, fell much more heavily upon praetorian commanders than upon their consular colleagues. One may well ask, however, why the senate chose to increase its control over junior provincial commanders in 100 BC. Naturally, it is tempting to connect the *lex Porcia* to the major political events occurring in Rome at that time, particularly the activities of L. Appuleius Saturninus and C. Servilius Glaucia, who – together with Gaius Marius – were responsible for a wide variety of legislation between 103 and 100 BC.[50] While this association is possible, it seems unlikely. There is nothing particularly *popularis* about these laws, and it is hard to imagine that a member of the (generally conservative) Porcian clan would have sponsored the *lex Porcia* as a piece of *popularis* legislation. Nor is it likely that the *lex Porcia* was an optimate reaction to the unprecedented career of Gaius Marius, who in 100 BC was at the peak of his power and holding his sixth consulship.[51] While it is probable that the senate would have liked to prevent the recurrence of such a career, the provisions of the *lex Porcia* would have done little to squelch the political behavior that led to Marius' repeated consulships and extended campaigns.

In fact, the *lex de provinciis praetoriis* – which cites the *lex Porcia* so prominently – provides the best clues with which one might uncover why the senate wished to impose greater checks on the activities of praetorian commanders in 100 BC. In addition to establishing specific guidelines for the behavior of commanders and their staffs and companions in the eastern provinces (and perhaps in all praetorian provinces), the *lex de provinciis praetoriis* makes some important changes to the organization of Rome's two permanent *provinciae* in the East.[52] While our knowledge regarding the extent of this reorganization is limited by the fragmentary nature of the inscription, the surviving portions demonstrate that in 100 BC Rome was redefining the borders of its provinces in Asia and Macedonia, as well as establishing a new praetorian province in Cilicia:

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[50] For example, both Ferrary 1977, 619–660 and Avidov 1997, 35 associate these radical tribunes and Antonius' piracy command at the end of the second century BC.

[51] For a summary of the debate on whether the *lex de provinciis praetoriis* was *popularis* or optimate, see RS 237.

[52] *Lex de provinciis praetoriis* Cnidos Copy, Col. III, ll. 14–15. In addition to the regulations set forth in the *lex Porcia*, the *lex de provinciis praetoriis* set down further regulations including the levying of food for the army (Cnidos Copy, Col. II, ll. 12–31), details concerning tax collection (Cnidos Copy, Col. IV, ll. 5–30), the responsibilities of a consul, praetor, quaestor, or promagistrate should he abdicate from his magistracy (Cnidos Copy, Col. IV, ll. 31–42), care of public money (Delphi Copy, Block C, ll. 4–8), the taking of public oaths (Delphi Copy, Block C, ll. 8–15), and fines for magistrates who fail to act in accordance with the law (Delphi Copy, Block C, ll. 19–30).

«The praetor, propraetor or proconsul who may hold or shall hold the province of Macedonia according to this statute or plebiscite or according to a decree of the senate, is to travel at once to the Chersonese and the Caenice which Titus Didius took by force in war. And he who has the Chersonese and the Caenice as his province is to hold this province along with Macedonia.»[53]

«Nothing is enacted in this statute to the effect that the praetor or proconsul holding the province of Asia should not hold Lycaonia or that the province of Lycaonia should not be his, just as it was before the passage of this statute. The senior consul is to send letters to the peoples and states to whom he may think fit, to say that the Roman people ⟨will have⟩ care, that the citizens of Rome and the allies and the Latins, and those of the foreign nations who are in a relationship of friendship with the Roman people, may sail in safety, and that on account of this matter and according to this statute they have made Cilicia a praetorian province.»[54]

Two things are striking about these passages. First, they indicate that Rome has adopted a much more aggressive policy of expansion in the East, since the borders of its two eastern *provinciae* have been expanded considerably, and a third *provincia* has been created. The expansion of Asia is particularly unusual, because it is a complete reversal of Roman policy. Previously, Rome had had sought to reduce the size of its Asian *provincia* by giving away much of its Pergamene inheritance to allies, and Rome had not initiated any major military activity in the East since the suppression of Aristonicus.[55]

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[53] *Lex de provinciis praetoriis*, Cnidos Copy, Col. IV, ll. 5–30 (trans. Crawford): στρατη[γὸς] ἀν[τι]στράτηγος ἀνθύπατός τε, ὅς ἄ[ν] κατὰ [τοῦτ]ον [τ]ὸν νόμον ἢ ψήφισμα ἢ συνκλήτου δόγμα [τὴν] Μακεδονίαν ἐπαρχείαν διακατέχηι διακαθέξε[ι, ε]ὐ[θὺ]ς εἰς Χερσόνησον Καινεικήν τε ἣν Τίτος Δ[είδιο]ς πολεμῶν δορίκτητον ἔλαβεν πορ[ευέ]σθω. οὗ τε ἐπαρχεία Χερσόνησός τε ⟨καὶ⟩ Καινεική [ἐστι]ν, ταύτην {τε} τὴν ἐπαρχείαν ἅμα με[τ]ὰ τῆς Μακεδονίας διακατεχέτω.

[54] *Lex de provinciis praetoriis*: Cnidos Copy, Col. III, ll. 22–41 (trans. Crawford): στρατηγὸς ἀνθύπατός τε ὁ{ς} τὴν Ἀσίαν ἐπαρχείαν διακατέχων, οὗτος ὧι ἔλασσον Λυκαονίαν διακατέχηι ὧι τε ἔλασσον τούτου ἡ ἐπαρχεία Λυκαονία ⟨ἦι⟩, καθὼς καὶ πρὸ τοῦ τοῦτον τὸν νόμον κυρωθῆναι ὑπῆρχεν, ἐν τούτωι τῶι νόμωι οὐκ ἠρώτηται. *vac* ὕπατος ὁ πρῶτος γενόμενος γράμματα πρὸς τοὺς δήμους πολιτείας τε πρὸς οὓς ἂν αὐτῶι φαίνηται ἀποστελλέτω τὸν δῆμον τὸν Ῥωμαίων ἐν ἐπιμελείαι ⟨---⟩, ὥστε τοὺς πολίτας Ῥωμαίων καὶ τοὺς συμμάχους Λατίνους τε τῶν τε ἐκτὸς ἐθνῶν, οἵτινες ἐν τῆι φιλίαι τοῦ δήμου Ῥωμαίων εἰσίν, μετ' ἀσφαλείας πλοίζεσθαι δύνωνται ᵛ τήν τε Κιλικίαν διὰ τοῦτο τὸ πρᾶγμα κατὰ τοῦτον τὸν νόμον ἐπαρχείαν στρατηγικὴν πεποιηκέναι.

[55] After inheriting the eastern kingdom of Pergamon, Rome gave much of the inherited territory away to its allies – Phrygia was given to the kingdom of Pontus, and Lycaonia (and perhaps Cilicia) went to the king of Cappadocia. After these arrangements, it would be nearly fifty years before Rome sent another consular army to campaign in Asia. Because the kingdom of Pontus was growing overly ambitious and aggressive with its neighbors, Rome withdrew the gift of Phrygia in 120 BC, but Rome's lack of interest in territorial expansion in the East is demonstrated by the fact that it took Rome four years to send a senatorial commission to reorganize Phrygia (Sherwin-White 1984, 95f. and McGing 1986, 68 n. 8). For Rome's policies and gen-

In particular, Rome had given Lycaonia to the king of Cappadocia in c. 126 BC, so the revelation that Lycaonia was once again a Roman possession is a mystery that needs to be explained.[56] Second, the authors of the *lex de provinciis praetoriis* thought it necessary and appropriate to cite the *lex Porcia* prominently amid these clauses setting out the territorial reorganization of Macedonia and Asia; the new regulations imposed by the *lex Porcia* (or at least a portion of them) are mentioned after the discussion of Macedonia but before the discussion of Asia. While this concurrence may be a coincidence, a closer look at the reorganization of the Roman East – which occurred immediately before the promulgation of the *lex Porcia* and the *lex de provinciis praetoriis* – may provide useful clues for understanding why the Romans decided to place greater controls on their praetorian commanders (at least) at this time.

Information on Rome's eastern commands at the end of the second century BC is sparse, but the campaign led by M. Antonius ‹Orator› against eastern pirates was famous and well remembered. He held his eastern *provincia* from 102 to 100 BC – right before the promulgation of the *lex Porcia* and the *lex de provinciis praetoriis* – and therefore his command may well have influenced both *leges* as well as Rome's reorganization of Asia and establishment of Cilicia as a *provincia*.[57] Unfortunately the actual terms or definitions of his command are uncertain and disputed. What is known is that Antonius held the praetorship (probably) in 102 BC, that he received a military command in the East, that he campaigned against the pirates of Cilicia, that he was probably prorogued with the augmented title of *pro consule*, and that he returned to Rome in 100 BC and was outside the city awaiting a triumph on December 10th during the riots in which Saturninus and Glaucia were killed.[58] There is no decisive evidence that identifies what *provincia* he held from 102 to 100 BC, but three different *provinciae* have been suggested. First, Magie suggested that Antonius might have held

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eral disinterest in the East from 126 to 100 BC, see: Magie 1950, 154–170; Sherwin-White 1984, 80–97; Mitchell 1995, 29; Dmitriev 2005, 74–84.

[56] Justin 37.1.2. The Cappadocian king had sided with Rome against Aristonicus (see below). Crawford 1996, 261 discusses the use of the term ἐπαρχεία to describe Lycaonia in this inscription.

[57] Ferrary 1977, 657 n. 138 speculates that M. Antonius may have led a campaign against pirates in 103 BC, but the evidence for this possibility is not compelling.

[58] Although Broughton (MRR I 568–580) places his praetorship in 102 BC based upon evidence from Livy (Per. 68) and Obsequens (Prodig. 44), de Souza 1999, 103f. argues that Antonius may have been praetor in 103 BC. Livy (Per. 68) calls Antonius *praetor*, but Cicero and two inscriptions (de Or. 1.82 and CIL I² 2662 [ILLRP 342 and IGR IV 1116]) call him *pro consule* (στρατηγὸς ἀνθύπατος). This discrepancy in his title suggests that he did not depart for his command until after his year in office had ended and that he was prorogued *pro consule*, which means his campaign was probably limited in size and scope, since he could not leave Rome until spring 101 BC, and Cicero (Rab. Perd. 26) notes that Antonius had already returned and was waiting outside Rome on Dec. 10th, 100 BC. On Antonius' triumph, see App. BC 1.33 and Plut. Pomp. 24. For discussion of Antonius' command, see: Broughton 1946, 35–40; Magie 1950, 1161 n. 12; Sherwin-White 1976, 4f.; Ferrary 1977, 619–660; Gebhard – Dickie 2003, 272f.

a naval command independent from Rome's land *provinciae*, similar in nature to the naval command given to Pompey in 67 BC by the *lex Gabinia*.[59] Second, Sherwin-White has argued that Antonius was given the *provincia* of Asia along with Cilicia and Lycaonia so that he might root out pirate bases in Cilicia.[60] Third, Ferrary has argued that Antonius received Cilicia as his *provincia*, to which the territories of Lycia and Pamphylia may have been added.[61] Thus Ferrary sees the *lex de provinciis praetoriis* as Rome's decree that Cilicia should continue (not begin) to be a Roman province, which raises the problem of why Rome would declare Cilicia a brand-new *provincia* in 100 BC if that region already existed as a *provincia* and had been an active command for two years.[62] Whatever their differences, all three discussions emphasize the connection between Antonius' campaign and the provincial status of Cilicia, thereby directly linking the new eastern arrangements in the *lex de provinciis praetoriis* to Antonius and his piracy command.[63] Since they appear to be directly related to one another, let us briefly consider the creation of the province of Cilicia, in hopes that it may help us to unlock the context of the *lex de provinciis praetoriis* and the *lex Porcia*.

There are five compelling reasons to doubt that Antonius was assigned either the *provincia* of Cilicia or a special naval command against pirates. First, the resources of the Roman Republic were stretched extremely thin in 102 BC, and the allocation of manpower and resources to outfit a new army would have been very difficult if not impossible. Not since Hannibal's invasion of Italy had Rome been so hard-pressed for soldiers: only three years earlier, two experienced armies – four Roman legions plus allied contingents – had been wiped out at the Battle of Arausio (105 BC), and Rome had to resort to emergency measures to recruit and train new soldiers to replace these

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[59] Magie 1950, 283. Brennan 2000, 357 concurs that Antonius held a special command against pirates.

[60] Sherwin-White 1976, 4 f. and 8, and 1984, 98. Ferrary 2000, 175–179 and 192 argues that a C. Julius Caesar (the father of the dictator) – and not Antonius – held the *provincia* of Asia from 102 to 100 BC. While his argument is plausible, there is simply no solid evidence to firmly date this Caesar's proconsulship, which many scholars argue should be dated to the 90's BC: Magie 1950, 1579; MRR II 22; Badian 1964, 97; Brennan 2000, 584, 715, 746. One can also speculate that – since C. Julius Caesar (the dictator) was born in July of 100 BC – his father almost certainly was in Rome during the late summer/early autumn of 101 BC (it is virtually unknown for women to have accompanied their husbands to their *provinciae* in the second century BC).

[61] Ferrary 1977, 627, 637–640, 660 and 2000, 167–170. Avidov 1997, 34, de Souza 1999, 104–106, and Dmitriev 2005, 93 f. concur that Cilicia was probably the province given to Antonius.

[62] Because of this contradiction, de Souza (1999, 103 f. and 109) argues that either Antonius held Cilicia for only a few months (which would allow Cilicia to have ‹expired› as a *provincia* some time before it was ‹recreated› in 100 BC), or that Antonius held the praetorship and received the *provincia* in 103 BC, an idea suggested by Ferrary (see n. 57 above) but lacking in compelling evidence.

[63] Avidov 1997, 36–38, suggests the possibility that Antonius may have been given the *provincia* of fighting pirates in Sicily (instead of Cilicia), but this requires that too much evidence be emended or ignored.

losses;[64] in the next year (104 BC), a major slave revolt in Sicily had overwhelmed a praetor's army, requiring that a new army be raised and dispatched there in 103 BC, and when this replacement force failed to subdue the revolt, a consul with a consular army had to be dispatched to Sicily in 101 BC;[65] finally, the imminent danger that the Cimbri and Teutones would invade Italy drove the Romans to maintain as many as six legions (plus allies) in northern Italy and Gaul.[66] Rome was so desperate for manpower in this decade that Gaius Marius decided to overlook Rome's ancient property requirements and recruit landless men as volunteers into the army to fill his legions.[67] Brunt calculates that Rome's need for soldiers increased dramatically from 105 to 101 BC, which would have all but exhausted Rome's manpower and military resources.[68] In such a difficult position, it seems hard to believe that Rome would further deplete its resources in 102 BC to fight eastern pirates voluntarily when its Italian homeland was under threat of invasion and its oldest *provincia* in turmoil from a slave revolt. It would make much more sense, therefore, to place the creation of the new *provincia* of Cilicia in 100 BC – after Antonius' command in Asia, and after the decisive defeat of the Cimbri and Teutones in the north had greatly reduced the demand on Rome's manpower.[69] In 102 BC Rome was shorthanded and facing an imminent invasion of Italy, making it unlikely that a new, additional military force could have or would have been raised to provide for a new *provincia* in the East (either in Cilicia or to create a substantial naval armada).

Second, it is not at all clear that Rome would have thought it necessary to create a ‹special pirate command› in 102 BC. While the pirates would certainly become a tre-

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[64] Livy Per. 67; Vell. 2.12.2–3; Tac. Germ. 37.5; Plut. Mar. 11.8–9, Luc. 27.6, Sert. 3.1. On the emergency measures to replace the lost armies, see Val. Max. 2.3.2.

[65] Diod. 36.1.1–10.3; Dio 27 fr. 93.1–3; Flor. 2.7.9–12.

[66] Livy Per. 68; Vell. 2.12.4; Plut. Mar. 15–24. See Brunt 1971, 431. Harris 1979, 81 n. 6 points out that Antonius' province for 102 BC was certainly decided upon before the Roman victory at Aquae Sextiae relieved the imminent danger of a Germanic invasion of Italy. Thus, the senate would have made their provincial assignments in a state of uncertainty and with a severe shortage of available manpower.

[67] He raised soldiers from the *capite censi* in 107 BC (Sall. Iug. 86; Plut. Mar. 9.1). See Brunt 1971, 406–408.

[68] Brunt 1971, 432f. calculates the number of Roman legions in the field for the following years as follows: 106 BC (7), 105 BC (11), 104 BC (9), 103 BC (10), 102 BC (10), 101 BC (11). In addition to these numbers, account must be taken of legions lost in battle, such as the four legions that were destroyed at Arausio in 105 BC. After the end of the Cimbric War, Rome would only raise (on average) 5.2 legions a year for the next decade (101 to 91 BC), suggesting a need or desire (or both) to allow their male population to recuperate and replenish itself.

[69] This reconstruction resolves a problem identified by Crawford (1996, 262), who noted how curious it was that the *lex de provinciis praetoriis* should make «so much fuss» about the creation of a *provincia* in 100 BC that had already been in existence for two years; why should the *lex* go to such lengths to publicize the creation of a *provincia* that already existed? By accepting that Antonius held the *provincia* of Asia from 102 to 100 BC, then the fanfare of the *lex de provinciis praetoriis* is logical and merited.

mendous nuisance to the Romans by 67 BC, there is little indication that Cilician pirates were a significant cause of concern to the Romans thirty-five years earlier. De Souza rightly points out that ancient authors tend to present Cilician pirates as a «continually growing menace» in order to inflate their significance and present them as an epic enemy for the hero Pompey to destroy, but there is little indication that Rome took any particular interest in these pirates before the passage of the *lex de provinciis praetoriis* in 100 BC.[70] Rome's initial indifference is attributed by de Souza to the fact that the pirates did little harm to Roman interests, and to the fact that Rome did not consider itself responsible for security in the East until the end of the second century BC (when the *lex de provinciis praetoriis* was published).[71] Indeed, some historians have even suggested that Rome deliberately turned a blind eye on piracy, because it was a valuable source of slaves for Roman markets.[72] Avidov has demonstrated that the claims made by ancient authors for the strength and significance of the pirates are simply untenable, and he even suggests that M. Antonius may have been given the *provincia* of Cilicia *specifically because* there was so little to do there – it offered just enough fighting to merit a triumph, but was not really a serious military zone.[73] Indeed, archaeologists and historians who have studied Cilicia find that Pamphylia – rather than Cilicia – contained the ‹core› of Cilician piracy, although they note that «despite the many difficulties the pirates are credited with creating, they appear never to have succeeded at mounting a genuine military threat against the dominant polities of the Mediterranean».[74] In addition, Garnsey points out that there is no good evidence that Cilician pirates threatened Rome's grain supply, and that the price of grain in Rome was fairly stable from 130 to 100 BC.[75] An inscription from Astypalaia also illustrates that the threat posed by pirates may not have been very great: it records an occasion at the end of the second century BC when the citizens of that island single-handedly defeated and put to flight a pirate fleet that had raided Ephesian territory.[76] De Souza has pointed out that the Astypalaians probably had little more than a «handful of oared vessels and not a substantial war-fleet», so the pirate fleet they defeated cannot have been a particularly large or well armed.[77] While one would not wish to make too much from this single example, the evidence suggests that east-

[70] De Souza 1999, 97 and Geelhaar 2002, 113.

[71] De Souza 1999, 99f.

[72] Marasco 1987, 131–135; Pohl 1993, 98f. and 186–190. Contra: Avidov 1997, 25–29.

[73] Avidov 1997, 16–18 and 34. He suggests that Antonius' friendliness with the tribunes in 102 BC may have secured this province for him as an easy triumph. Geelhaar 2002, 116 concurs, saying that Antonius' success in the East cannot have been great.

[74] See Brandt 1992, 85–87, de Souza 1999, 136–141, Rauh – Townsend – Hoff – Wandsnider 2000, 151–177, esp. 175f.

[75] Garnsey 1988, 195 and 204f. He points out that it was not until the early 60's BC that pirate raids caused a food crisis in Rome.

[76] IG XII.3.171 (I.Ephesos 1a, no. 5; IGR IV 1029).

[77] De Souza 1999, 101.

ern piracy around 100 BC was nothing like the widespread and perilous danger it would become decades later, when the Romans were forced to dispatch a mighty fleet under one of their most experienced commanders, Pompey. Taken altogether, the eastern pirates do not seem to have been any threat to Rome or Roman interests in 102 BC; they were little more than a nuisance, and there is no reason to imagine that Rome would have allocated sorely needed resources to fighting inconsequential pirates while the Cimbri and Teutones were threatening Italy itself.

Third, the evidence that Antonius received a special naval command against pirates is weak at best. Although Rome had assigned naval commands to praetors during the Second Punic War and the Macedonian Wars, these had generally been in support of a consular army on land; a major naval command separate from a land *provincia* would have been extremely unusual, especially if assigned to a praetor.[78] The best evidence that Antonius held some kind of naval *provincia* comes from the inscription he is believed to have set up commemorating the portage of his boats across the Isthmus of Corinth,[79] but the actual date (and therefore the authorship) of this inscription has been questioned.[80] Even if these problems were resolved, the inscription is still uncer-

[78] 191 BC: Livy 36.2.6, 36.42.1–45.8; 190 BC: Livy 37.2.10, 4.5, 14.1–19.8; 169 BC: Livy 44.1.3–4, 2.1–3, 7.10, 9.2, 10.5–12.8; 168–67 BC: Livy 44.17.10, 30.1, 32.5–6, 35.8–13, 46.3, 45.5.1–6.12, 28.8, 29.3, 33.7, 35.4–5, 42.2–3; Vell. 1.9.5–6; Plut. Aem. 26.1; Act. Tr. for 167 BC; Diod. 31.8.9–10.

[79] Gebhard – Dickie 2003, 272 (Latin text and translation) = CIL I^2 2662 = ILLRP 342 = AE 1928, 5: *auspicio [[Antoni Marc]]i pro consule classis Isthmum traductast missaque per pelagus. Ipse iter eire profectus Sidam, classem Hirrus Atheneis pro praetore anni e tempore constitui* («Under the auspices of Marcus Antonius proconsul a fleet was drawn across the Isthmus and sent over the sea. He himself set out to journey to Side: the propraetor Hirrus had the fleet, because of the season of the year, stop in Athens. This was accomplished in a few days with a minimum of uproar and with great care and with great respect for safety.»). Antonius' name was removed from the inscription, probably because it was confused with the homonymous triumvir from the Late Republic.

[80] Four objections have been raised to this inscription. First, Sherwin-White (1976, 4 and 1984, 98 n. 16) questioned whether the inscription refers to M. Antonius ‹Orator› (pr. 102, cos. 99) or his son M. Antonius ‹Creticus› (pr. 74), but Ferrary (1977, 640–645) has argued persuasively for the elder Antonius (see also de Souza 1999, 104–106). Second, the date of the inscription has been questioned: de Souza 1999, 105 has argued that the lettering and language of the inscription cannot be dated more precisely than sometime between 146 and 44 BC, and Gebhard – Dickie 2003, 273–277 raised (but ultimately rejected) the possibility that the inscription was commissioned many decades after the event it celebrates by Antonius' grandson (the triumvir M. Antonius). Third, Walbank 2002, 258 points out that, at the end of the second century BC, Corinth was still in ruins from the sack of 146 BC (no other Corinthian inscriptions exist from this period), so it would have been surprising and unusual for Antonius Orator to have set up a new inscription in a ruined city. Fourth, the inscription states that Antonius – a praetor *pro consule* – was given a lieutenant *pro praetore* (that is, a *legatus cum imperio*), a type of lieutenant that was unheard of in 102–101 BC, but common enough in the middle of the first century BC. Sherwin-White 1976, 4 argues that it is highly unlikely that a praetor would have received a *legatus pro praetore* at the end of the second century BC, and de Souza 1999, 104–106

tain evidence for an independent naval command, since it says little more than that Antonius travelled to the East with a number of ships. It is highly doubtful that Rome possessed sufficient naval resources to outfit a significant fleet in 102 BC, and the inscription offers no indication whether the number and type of ships was sufficient to constitute a substantial naval command.[81] Furthermore, the fact that Antonius was content to leave this fleet behind in Athens for the winter while he travelled on to Asia makes it difficult to believe that his *provincia* was a fleet – his concern was to reach Asia, and not to drill or prepare his fleet. The inscription identifies the city of Side in Pamphylia as Antonius' destination, which – although very close to Cilicia – was nevertheless a part of the *provincia* of Asia at that time.[82] If anything, this would seem to indicate that Antonius held the *provincia* of Asia, which is further supported by the fact that ships from Byzantium served under Antonius between 102 and 100 BC.[83] Since Byzantium was in the *provincia* of Asia and answered most directly to the governor of Asia, and since there is no reason to believe that the governor of Asia would have willingly allowed another commander to recruit forces from his *provincia*, it seems most likely that Antonius – whether or not he travelled east with a fleet of ships – held Asia as his *provincia*.[84] There is no strong evidence, therefore, to support the suggestion that Antonius held a special naval command, or even an otherwise-unknown (in 102 BC) *provincia* in Cilicia, and in the silence left to us by the sources, it is

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likewise acknowledges that the presence of a propraetor in Antonius' fleet is unusual. Brennan 2000, 357 accepts that Antonius Orator had a *legatus pro praetore*, but points out that he is the earliest example of a praetor having such a subordinate.

[81] It had been over sixty years since Rome had disbanded its navy following the Third Macedonian War, so only a token force could have been available to accompany Antonius. See Sherwin-White 1976, 4f., 1977, 73, and 1984, 99f.; Meijer 1986, 184–185. Not too long after Antonius' command, Sulla had trouble assembling a significant number of warships in his command against Mithridates, and his quaestor Lucullus had to travel as far as Egypt to find enough ships to form a decent fleet. See App. Mith. 33, 45, 51, and 54; Plut. Luc. 2.4, 3.1–3, 4.1; Thiel 1946, 414f.; Sherwin-White 1976, 5 and 1977, 73.

[82] Magie 1950, 27f.; Sherwin-White 1976, 3; Mitchell 1999, 18–20; Dmitriev 2005, 81. Nollé 1993, 69–71 believes that Pamphylia and Cilicia were removed from the *provincia* of Asia when Rome began military operations against the pirates at the end of the second century BC. While this must certainly be correct, the evidence is insufficient to determine whether this reorganization took place before or after Antonius' eastern command.

[83] Tacitus (Ann. 12.62.1) records an occasion in AD 53 when the Byzantines reminded Emperor Claudius of the assistance they gave to (among other Romans) Antonius when he was fighting pirates. Antonius also seems to have received naval support from the independent state of Rhodes, based upon a fragmentary inscription (IGR IV 1116) that honors a Rhodian naval officer who served under Antonius. Taylor – West 1928, 18f. n. 7 suggest that Antonius would have needed the naval resources of Asia to fight Cilician pirates.

[84] Romans were very jealous of their provincial commands: in 67 BC, C. Calpurnius Piso was holding the *provincia* of Gaul (Cisalpine and Transalpine), where he actively opposed and hindered Pompey's efforts to recruit naval resources from that *provincia* in spite of the fact that Pompey had been specifically authorized to recruit men and materials from other men's *provinciae* by the *lex Gabinia* (Plut. Pomp. 25; App. Mith. 94; Dio 36.37.2–3; Plut. Pomp. 27.1).

perhaps better to accept that Antonius held Asia as his command, which was the only Roman *provincia* near Cilicia at that time.

Fourth, it is a mistake to assume that Antonius held the *provincia* of Cilicia just because he became famous for fighting pirates in Cilicia; Scipio Africanus was holding the *provincia* of Sicily when he defeated Hannibal at Zama in Africa, Gaius Marius held the *provincia* of Africa when he campaigned against Jugurtha in Numidia, Sulla fought and defeated Mithridates in Greece although he had been given the *provincia* of Asia, and Caesar was the governor of Gaul when he invaded Britain. Antonius may have triumphed over Cilicia, but that does not mean he had been given Cilicia – or even a pirate command – by the senate. In fact, the summary of Livy provides what is perhaps the most important clue. It clearly states that Antonius pursued the pirates *into* Cilicia (*M. Antonius praetor in Ciliciam maritimos praedones persecutus est*), indicating that Antonius was operating from a base in another Roman *provincia* outside of Cilicia.[85] Obviously, the only Roman province within striking range of Cilicia at that time was Asia. Since the Corinth inscription indicates that Antonius left Greece for the city of Side in Pamphylia, which lay within the *provincia* of Asia near the border with Cilicia and was known to be a common harbor for pirates, it is perhaps most likely that he – as governor of Asia – decided to fight pirates within his *provincia*, whom he pursued outside of his *provincia* and into Cilicia.[86] Whether or not this was the case, his campaign in Cilicia is not proof that Antonius held the *provincia* of Cilicia or a special naval command against pirates; pirate attacks against Roman territory in Asia would have provided the governor of Asia with all the justification he needed to attack pirate bases outside of Roman territory.

Finally, it is hard to believe that the Roman senate would have created a new *provincia* against pirates in Cilicia when Rome already had a powerful commander stationed nearby. The governor of Asia was not only a fully competent military commander with *imperium* and the vast resources of the *provincia* of Asia at his fingertips, but he also had ample opportunity to undertake a campaign against pirates in and near his province, since he was rarely engaged in military activity or other essential responsibilities.[87]

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[85] Livy Per. 68. In a fictional dialogue in his de Oratore, Cicero makes his character Antonius say that he travelled to Cilicia (1.82: *in Ciliciam proficiscens*; 2.2: *in Ciliciam profectus*), but in a more historically based public speech (Man. 33) Cicero merely states that Antonius fought pirates.

[86] Strabo (14.3.2) noted that Cilician pirates used Side's harbor to sell their freeborn captives as slaves, and therefore pirate ships were often to be found in that area of Pamphylia, but it is not clear whether he was describing the situation in 102–100 BC, or in later years when the pirates had become more dangerous and troublesome. See Ferrary 1977, 643.

[87] Sherwin-White 1977, 70 «there was no need for a second province in Roman Asia. The existing praetorship of Asia was a virtual sinecure at this time, with no military and few civil duties. The praetor could very well take on the task of suppressing pirates, for which the province of Asia could supply the means – a local fleet, material resources and a naval base in Pamphylia.» Of course, the governor of Asia had substantial responsibilities for the exercise of jurisdiction in his province, but such duties usually took second place to the leadership of a military command.

Indeed, raising a significant military force in the East would have required the aid of the governor of Asia, and it would have been a great insult for the senate to order him to hand over military forces from his own *provincia* to another commander of equal rank, when he (the governor of Asia) was more than capable of leading a campaign against Cilicia himself. Indeed, the king of Pergamon had been able to maintain a permanent fleet and to suppress piracy along his coast for decades using the same cities and resources that now made up Rome's Asia province.[88] Without solid evidence to the contrary, therefore, there is no reason to suppose that a second praetor would have been dispatched to fight pirates in Cilicia when the governor of Asia was available and better suited for the task, especially since Side, one of the pirates' main bases of operation, lay within the *provincia* of Asia.

If Antonius was indeed the governor of Asia, then his career stands out as one of the most exceptional praetorian commands in that *provincia*, since he not only won a triumph for his successful military campaigns, but he also managed to expand Rome's borders and add considerable territory to his *provincia*. Furthermore, he did this in a *provincia* that normally did not offer significant military opportunities; although the governor of Asia had considerable resources under his authority, he rarely needed to conduct military operations because his *provincia* was peaceful and surrounded by Roman allies.[89] The senate must have been astounded to learn of Antonius' successes in a *provincia* that was normally quiet and uneventful, and he was the first and only commander of Asia to triumph since the *provincia* had been organized by Manius Aquillius nearly thirty years earlier. Of course, Antonius was no stranger to Asia: having served there as a quaestor in 113 BC, he would have known that the Cilician pirates offered the best opportunity for an ambitious governor of Asia to win military glory and legitimate plunder, and his decision to launch a campaign against them may have been made even before he left Rome.[90] There is no good reason to imagine, therefore, that Antonius held his eastern *provincia* anywhere other than Asia.

Antonius holding the *provincia* of Asia from 102 to 100 BC might also explain the reincorporation of Lycaonia into Asia. Lycaonia was the strategically important land route through the Taurus Mountains from Asia to Cilicia and Syria, but in 129 BC Rome seems to have had no interest in adding to its eastern possessions, so Lycaonia had instead been given to Ariarathes VI, the king of Cappadocia, whose grandfather (Ariarathes V) had lost his life giving aid to Rome in its fight against Aristonicus.[91] Be-

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[88] Sherwin-White 1976, 4.

[89] Sherwin-White 1977, 69, «strategically Asia was treated as a dead end for … thirty years [129–102 BC]. The governors of Asia down to 102 had no known military functions, and it is uncertain whether they had any legionary forces at all under their command. While the European provinces of Rome were the scene of perpetual frontier warfare and aggrandizement, the praetors of Asia lived in unbroken peace.»

[90] On his quaestorship in Asia, see Val. Max. 3.7.9.

[91] See Magie 1950, 154f., 203f., 375f., and Sherwin-White 1977, 68. Justin (37.1.2) records that Rome presented Ariarathes with Cilicia as well as Lycaonia, but Magie 1950, 154f. and

cause the *lex de provinciis praetoriis* states that Lycaonia was already a part of the *provincia* of Asia when the *lex* was written, some scholars have surmised that Rome may have repossessed Lycaonia after the death of Ariarathes VI in c. 116 BC, but there is no evidence to support this possibility.[92] Of course, if Rome did repossess Lycaonia around 116 BC, it seems odd that – after sixteen years of ownership – the senate still felt the need to reiterate this fact in the *lex de provinciis praetoriis* in 100 BC. It is not excessively speculative, therefore, to consider that Rome may have reclaimed Lycaonia not after the death of Ariarathes VI, but after the death of his son and last descendant Ariarathes VII, who had been assassinated by Mithridates sometime around 100 BC, exactly when Antonius was holding the adjacent *provincia* of Asia and looking to make a name for himself.[93] Hassall, Crawford, and Reynolds have pointed out that the eastern arrangements in the *lex de provinciis praetoriis* could all have been made in response to Antonius' command, so it is reasonable to consider that he may have been the one to assert Rome's claim on Lycaonia.[94] Antonius was certainly a bold and aggressive individual who won a rare praetorian triumph in a normally-peaceful *provincia*, and there are many good reasons why he might have reclaimed Lycaonia for Rome: as a reaction to the assassination of Rome's ally Ariarathes VII, in an effort to enhance his reputation by expanding the borders of his *provincia*, or to reacquire for Rome the strategic land route from Asia to Cilicia. Although Rome had not been particularly interested in eastern expansion in 129 BC, things may have changed by 102–100 BC, and commanders like Antonius needed Lycaonia to conduct large-scale military operations against Cilicia. Sherwin-White and de Souza have both pointed out that land forces would have been absolutely necessary to combat pirates and pirate bases effectively, but, without large numbers of troop transports or other military vessels, it would have been difficult to bring a significant army to Cilicia from Asia by sea.[95] Although the absence of reliable evidence makes assertions impossible,

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1044 n. 28 argued that this was not possible because Cilicia «had never been part of the Pergamene Kingdom, and, therefore, was not the Romans' to bestow». Hassall – Crawford – Reynolds 1974, 211 were less certain: «the assertion of Lykaonia's continued control by the governor of Asia implies a lost territorial description of Cilicia.» Dmitriev 2005, 75 also seems inclined to accept that Cilicia was indeed given by Rome to the kingdom of Cappadocia.

[92] For example, see: Hassall – Crawford – Reynolds 1974, 211, who venture only that «[Lycaonia] was perhaps removed by Rome when the last surviving son … was murdered by Mithridates VI» (cf. Crawford 1996, 260f.). Harris 1979, 153, is similarly hesitant on this question, saying only that Lycaonia «presumably» had been annexed after the assassination of Ariarathes VI, and he points out that the actual annexation may not have occurred until several years after the king's death. See also Mitchell 1995, 29 n. 23, and Dmitriev 2005, 84.

[93] Justin 37.1.2, 38.1.1–2.8, 38.5.9; App. Mith. 57; FGrH 434 F 22.1. See also: Sherwin-White 1977, 71 «Ariarathes VII was still alive, unliquidated, in the year 101–100» and McGing 1986, 75 n. 37 «that Ariarathes VII was alive and still ruling in 102–101 is one of the few secure dates in the whole period.» See also Mitchell 1995, 29 and Erciyas 2006, 21.

[94] Hassall – Crawford – Reynolds 1974, 211.

[95] Sherwin-White 1984, 97 and de Souza 1999, 114.

there is no reason to reject the possibility that Antonius reclaimed Lycaonia for Rome during his tenure of Asia, and the senate confirmed this action in the *lex de provinciis praetoriis* by the otherwise-peculiar statement that Lycaonia would remain a part of the *provincia* of Asia «just as it was before the passage of this statute» (that is, just as it was after Antonius repossessed it).

While Antonius was busy hunting for triumphs in Asia, it seems his colleague in Macedonia was equally ambitious and aggressive. As noted above, the *lex de provinciis praetoriis* records a reorganization of Macedonia:

«The praetor, propraetor or proconsul who may hold or shall hold the province of Macedonia according to this statute or plebiscite or according to a decree of the senate, is to travel at once to the Chersonese and the Caenice which Titus Didius took by force in war. And he who has the Chersonese and the Caenice as his province is to hold this province along with Macedonia.»[96]

This passage of the *lex* indicates that the most recent praetor in Macedonia, Titus Didius, had just conquered the region of Caenice and probably the Chersonese as well, and by action of this *lex* these territories were being formally added to the *provincia* of Macedonia.[97] Although these two new conquests had once been a part of the kingdom of Pergamon, this passage indicates that they had been independent when Didius captured them «by force in war».[98] In other words, Didius had led his army beyond the traditionally recognized boundaries of his *provincia* by attacking Caenice and the Chersonese, which clearly had not been parts of Macedonia previously. What this law does not state is whether Didius had been instructed by the senate to take such action.

Little is known about Didius' command in Macedonia. He was probably a praetor in or shortly before 101 BC,[99] and he celebrated a triumph for his victory in either 100 or 99 BC.[100] It is most likely that his conquest of Caenice and the Chersonese took place in 101 BC, because the reference to him in the *lex de provinciis praetoriis* indi-

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[96] *Lex de provinciis praetoriis* Cnidos Copy, Col. IV, ll. 5–30: στρατη[γὸς] ἀν[τι]στράτηγος ἀνθύπατός τε, ὅς ἂ[ν] κατὰ [τοῦτ]ον [τ]ὸν νόμον ἢ ψήφισμα ἢ συνκλήτου δόγμα [τὴν] Μακεδονίαν ἐπαρχείαν διακατέχηι διακαθέξε[ι, ε]ὐ[θὺ]ς εἰς Χερσόνησον Καινεικήν τε ἣν Τίτος Δ[είδιο]ς πολεμῶν δορίκτητον ἔλαβεν πορ[ευέ]σθω. οὗ τε ἐπαρχεία Χερσόνησός τε ⟨καὶ⟩ Καινεική [ἐστι]ν, ταύτην {τε} τὴν ἐπαρχείαν ἅμα με[τ]ὰ τῆς Μακεδονίας διακατεχέτω.

[97] For discussion on the identification of what regions are signified by ‹Caenice› and ‹Chersonese›, see Crawford 1996, 264.

[98] Magie 1950, 155 and 1044 n. 29 thought that the Chersonese had been incorporated into the Roman *provincia* of Macedonia after the war against Aristonicus, but his evidence (two speeches by Cicero – Pis. 86 and Leg. Agr. 2, 50) states only that the Chersonese was subject to the governor of Macedonia in the mid-first century BC. This evidence, therefore, does not indicate whether the Chersonese was incorporated into the *provincia* of Macedonia in 129 BC (for which there is no evidence) or in 100 BC (the date supported by the *lex de provinciis praetoriis*).

[99] MRR I 571. He was consul in 98 BC, and therefore cannot have been praetor any later than 101 BC or he would have violated the *lex Villia annalis*.

[100] MRR II 4 n. 11.

cates that news of his victory had reached Rome by the time the *lex* was drafted in the early months of 100 BC. Three points make it unlikely that Didius was ordered to conduct this aggressive expansionary campaign. In the first place (as argued above), the crisis posed by the pending invasion of Italy by the Cimbri and Teutones was Rome's first and foremost concern in these years, and Rome was marshalling its resources for that critical engagement. Indeed, if Marius and Catulus had been defeated in northern Italy, Didius' force in Macedonia would have been the closest Roman army available to come to Rome's relief, and it seems unlikely that the senate would have sent Didius to the far side of Macedonia on a campaign of conquest when his army might have been needed intact to come to Rome's aid. Second, the military priority of the governor of Macedonia at this time was to protect his northern border from raids by the Thracian Scordisci, who were – and would remain – a significant threat to the Roman *provincia*. For decades the Scordisci had threatened Macedonia, and in recent years they had defeated and killed a praetorian commander, and even routed a consular army.[101] The Scordisci were the chief threat to the province of Macedonia and the best opportunity for winning a triumph, and Didius did indeed devote much of his time to campaigns against that tribe. Yet, in addition to defending Roman territory from the Scordisci, Didius had done something very unusual for a governor of Macedonia by expanding the borders of his *provincia* through the conquest of new territory. This achievement may well have contributed to his being awarded a rare praetorian triumph, and it is consistent with his aggressive style of command – not only did he fight the Scordisci and conquer Caenice and the Chersonese as a praetor, but in his subsequent consular command in Nearer Spain he conducted a very aggressive war against the Celtiberi, slaying over 20,000 of the enemy and destroying several major towns, for which he received the great honor of a second triumph in 93 BC.[102] There is every reason to believe, therefore, that Didius would have sought out new military opportunities. Third, another section of the *lex de provinciis praetoriis* indicates that – shortly before or during Didius' governorship – soldiers had been removed from Macedonia and sent elsewhere (perhaps to the Cimbric War or to the slave revolt on Sicily), and that those soldiers were not to be returned to the Macedonian army:

«The consuls in office, for whom it is or shall be appropriate according to statute or plebiscite to act so that and see that soldiers be returned to the praetor, propraetor

[101] In 119 BC a praetor was killed fighting the Scordisci (SIG^3 700), in 114 BC a consul was defeated fighting the Scordisci (Livy Per. 63; Flor. 1.39.4; Dio 26 fr. 88; Fest. Brev. 9.1; Amm. Marc. 27.4.4), in 112 BC a consul was dispatched to Macedonia to fight the Scordisci and was prorogued for a second year there (Livy Per. 63; Flor. 1.39.5; Fest. Brev. 9.2; Amm. Marc. 27.4.10), in 110 another consul was sent to fight the Scordisci and was prorogued four times before triumphing (SIG^3 710 [CIL I^2 2.692; ILS 8887]; Act. Tr. for 110 BC; Livy Per. 65; Vell. 2.8.3; Frontin. Str. 2.4.3; Flor. 1.39.5; Fest. Brev. 9.2; Amm. Marc. 27.4.10), after which praetors were sent until Didius who, as a praetor, triumphed over the Scordisci in 101 BC (Cic. Pis. 61; Flor. 1.39.3–6; Fest. Brev. 9; Amm. Marc. 27.4.10).

[102] MRR I 7f., 15.

or proconsul governing the province of Macedonia and be handed over to him, those consuls are not to send those soldiers to the province of Macedonia or see to their being transported or handed over; and it is to be lawful for them to do this without personal liability.»[103]

It seems unthinkable that the senate would have instructed the praetor in Macedonia both to fight the Scordisci and to engage in campaigns of territorial conquest while simultaneously reducing the strength of his army. Indeed, it is a testament to Didius' military skill that he was able to conduct two successful campaigns with reduced forces. Naturally, when the senate learned of Didius' successful conquests, it did not hesitate to add the strategically important Caenice and Chersonese to the *provincia* of Macedonia (both lay between Rome's *provinciae* in Macedonia and Asia), but this does not reduce the likelihood that Didius undertook these campaigns on his own authority, motivated by his desire for glory and plunder.

Taken together, the commands of M. Antonius in Asia and T. Didius in Macedonia provide a very plausible explanation for the promulgation of the *lex Porcia*. In the two years preceding the publication of the *lex*, the praetorian commanders of both eastern provinces seem to have initiated military campaigns that exceeded the traditional boundaries of their *provinciae* and (almost certainly) the instructions or *mandata* given them by the senate.[104] Although both campaigns were successful and brought strategically important territories under Rome's direct control, this is not an indication that the senate had instructed or even wanted their praetors to engage in such expansionary warfare. Given the crises facing Rome when Antonius and Didius were given their *provinciae*, it is very doubtful that the senate would have ordered the praetorian commanders to stir up trouble with Rome's neighbors (and even risk losing their armies) just to acquire territory that – although strategically important – Rome would not seek to exploit for many years.[105] Furthermore, it would have been very

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[103] *Lex de provinciis praetoriis*, Cnidos Copy, Col. II, ll. 12–23: ὕπατοι ἄρχο[ν]τες, οὓς στρατιώτας κατὰ νό[μ]ον ἢ ψήφισμα πρὸς στρατηγὸν [ἢ ἀ]ντι[σ]τράτηγον ἢ ἀνθύπατον τὸν τὴν Μ[ακε]δονίας ἐπαρχείαν διακατέχοντα ὅπ[ως] ἀποκατασταθῶσιν τούτωι τε ἵν[α] παραδ[ο]θῶσιν ποιῆσαι φροντίσαι δεῖ ἢ δεήσει, οὗτοι οἱ ὕπατοι τούτους τοὺς στρατιώτας εἰς τὴν Μακεδονίαν εἰς τὴν ἐπαρχείαν μὴ ἀποστελλέτωσαν μήτε ἀποκομισθῆναι μήτε παραδοθῆναι φροντισάτωσαν τοῦτό τε αὐτοῖς ἄνευ ἐλασσώματος ἰδίου ποιῆσαι ἐξέστω. See Crawford 1996, 259; Ferrary 1977, 631f.; Brunt 1971, 430f.

[104] The *lex de provinciis praetoriis* (Cnidos Copy, Col. IV, ll. 33) refers to the instructions (ἐπιτάγματα or *mandata*) given to all provincial commanders by the senate, but nothing indicates that the praetors had been instructed or expected to conduct expansionary warfare. See Crawford 1996, 266.

[105] Rome's only effort to exploit the strategic advantages of its new territorial acquisitions was the establishment of a new *provincia* in Cilicia, which may have been a secondary decision only made after Antonius' acquisition of Lycaonia was made known at Rome (see below). Sherwin-White (1976, 6f. and 1977, 70) has even suggested that Cilicia may not have been made a separate *provincia* in 100 BC, but rather it was simply declared a military zone (*provincia militaris*) attached to Rome's *provincia* in Asia (see also Dmitriev 2006, 86–90). Whether or not this was

unusual for Rome to assign such expansionary campaigns to praetors with small armies, since such wars were normally reserved for consuls with large armies.[106] In all likelihood, therefore, Antonius and Didius planned and initiated these campaigns on their own, so that Hassall, Crawford, and Reynolds rightly called these two commanders «the two architects of Rome's improved position in the East».[107] While this use of military force was certainly within the authority of a provincial governor at that time, the senate may well have reflected upon both campaigns with consternation, since the military operations had not been essential for Roman security, had involved substantial risk, and had been decided upon and initiated without the approval of (or even consultation with) the senate. The great ambition displayed by Antonius and Didius – although beneficial on this occasion – might well portend disaster for Rome if their precedent was widely imitated by future praetorian commanders. It seems likely, therefore, that the senate promulgated the *lex Porcia* to restrain the actions of those future praetors by requiring them to remain «inside» their assigned provinces.

Antonius' and Didius' motivations for undertaking their respective campaigns are fairly clear: to achieve military glory and to earn a triumph. Harris has demonstrated that, in this period, men who won triumphs during their praetorian commands enjoyed substantially higher success rates when standing for the consulship (so long as they did not run afoul of the senate or people).[108] Of course, triumphs were not easy for a praetor to achieve, since he received a smaller army than a consul, and his *provincia* generally offered fewer opportunities for active campaigning. Most important, certain prerequisites for a triumph, such as killing at least 5,000 of the enemy, were very difficult to achieve in the (usually) peaceful provinces, with the result that

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the case, Cilicia was not regularly assigned as a *provincia* until the end of the Second Mithridatic War (Wesch-Klein 2008, 284f.) or perhaps as late as 75 BC (see Dmitriev 2005, 93–100), indicating that Rome had little interest in territorial expansion into the East in 100 BC. On the more traditional view that Cilicia was made a second, new and independent *provincia* (albeit perhaps not a ‹permanent› one), see Ferrary 1977, 637–645 and 2000, 167–170; Lintott 1976, 81f.; RS 261f.; Harris 1979, 153 n. 3; Bertrand 1989, 195; Crawford 1996, 261f.; Brennan 2000, 358.

[106] Brunt 1971, 429 points out that a praetor in Macedonia normally commanded a single legion (although Didius' legion appears to have been under-strength – see above), and a praetor in Asia commanded no legions, but only a fleet and local levies. On the other hand, consuls were sent to these *provinciae* with two legions (plus allies) each.

[107] Hassall – Crawford – Reynolds 1974, 219.

[108] Harris 1979, 32, points out that «[i]n the years between 227 and 79 fifteen out of nineteen securely attested praetorian *triumphatores* reached the consulship – a very high ratio – and one or perhaps more of the four exceptions may have died before their turns came. The praetorian triumph was a relatively rare event, but it reveals the practical value of the repute enjoyed by successful commanders.» Harris provides the names, dates, and provinces of these praetorian *triumphatores* on pp. 262f. (Itgenshorst 2005, 262–271 provides a complete list of all triumphs held during the Republic). See also Richardson 1975, 52–58.

no praetors are known to have been granted triumphs over Africa, Asia, Corsica, Sardinia, or Sicily in the second century BC.[109] Still, in the final decade of the second century BC, competition for the consulship was intensifying rapidly, and ex-praetors needed every advantage they could get if they wanted their careers to advance.[110] Furthermore, between 107 and 100 BC, six of the sixteen consulships had gone to just one man, Gaius Marius, and Antonius and Didius no doubt watched his career with envy and no small degree of fear, since the great man was swallowing up half of the annual consulships just as the two younger men were seeking election to that office. Not only had Marius virtually monopolized Rome's highest magistracy for years, but his six consulships had created a larger than normal pool of ex-praetors hoping for political advancement. The consular elections around 100 BC must have been fiercely contested, and candidates needed every ounce of distinction they could acquire. Antonius and Didius would, therefore, have been strongly motivated – even more strongly than usual – to achieve any and all possible military successes in their praetorian provinces. It should not be remotely surprising, therefore, that both seized upon the opportunity to conduct aggressive military campaigns, even exceeding the intended scope of their *provinciae* in their quest for ‹good› enemies to fight.[111] In both cases, the gamble paid off. Both men were celebrated for their successes and swiftly won triumphs and consulships, Antonius in 99 BC and Didius the next year, in 98 BC. It is therefore likely that the ferocious competition for the consulship caused by C. Marius' career stimulated praetors to distinguish themselves in every way possible, driving Antonius and Didius to conduct overly aggressive campaigns against convenient enemies.

Despite the success of Antonius' and Didius' campaigns, the senate may well have looked on these enterprises with dissatisfaction and even apprehension. Although the Romans wanted and expected their consuls to be aggressive military commanders, they had somewhat different expectations of their praetorian provincial commanders by the end of the second century BC. Unlike consuls, who invariably commanded large armies and were given major wars as their *provinciae*, most praetors had no Roman legions under their command and were usually assigned to administer and protect previously conquered territory as their *provinciae*. While some praetors (particularly

[109] In the second century BC, sixty percent (nine out of fifteen) of all known praetorian triumphs were won by praetors commanding in Spain (MRR I 341, 376 [bis], 389, 395f. [bis], 402, 454, and 552), and 20% (three out of fifteen) were naval triumphs (MRR I 362, 366, and 434). Gaul, Illyria, and Macedonia each provided a single triumph to a praetor during the same period (MRR I 323, 434, and 467). All known praetorian ovations (five, of which one is uncertain) were held over Spain (MRR I 354, 362 [uncertain], 373, 383, and 404). One praetor was refused a triumph over Corsica (he triumphed on the Alban Mount instead), and another praetor was condemned for celebrating a triumph in Sardinia (MRR I 412 and 560).

[110] Beard – Crawford 1985, 53–55, 68–71; Vishnia 1996, 178f.; Hölkeskamp 2010, 94 and 121–124; Brennan 2000, 168f.

[111] De Souza 1999, 103, allows that hunting for a triumph may have been the main purpose behind Antonius' piracy campaign.

in Spain and Macedonia) were expected to be active military commanders, the majority of praetors would have lacked both the resources and the opportunities to launch a significant military campaign; if necessary, they were expected to use improvised military force to defend their *provinciae* from internal and external threats, but the senate undoubtedly expected most praetors to spend their time maintaining the stability of the territory assigned to their care. By 100 BC, most of the Mediterranean was normally under the direct authority of praetorian governors, so it would have been a source of deep concern to the senate that Antonius and Didius had risked the security and stability of their *provinciae* by launching unexpected and unnecessary campaigns of conquest with only modest military forces. If the rising competition for political advancement drove more and more praetors to begin acting recklessly in their commands, the stability of the entire empire might have been placed in jeopardy. Indeed, Antonius' campaign in Cilicia seems to have forced the senate to make changes to Rome's eastern policies that it might not otherwise have made. After learning of Antonius' conquests, the senate instructed its senior consul to send letters to the various states and kingdoms throughout the East explaining that Rome's annexation of Cilicia had been done to fight piracy for the common good.[112] These letters are clearly intended to give a positive and reassuring explanation for the expansion of Roman territory in the East, but it seems very strange that they were composed and dispatched more than a year *after* Antonius launched his invasion of Cilicia. Furthermore, the creation of the new *provincia* of Cilicia seems a rushed and haphazard affair – despite the fanfare the senate makes about this new *provincia* in its letters to the eastern states, the *provincia* is treated as a low priority by the Romans for well over a decade, and there is no evidence that the Romans took a sincere interest in suppressing eastern piracy until Pompey's expedition a generation later. All in all, the *lex de provinciis praetoriis* gives the impression that Antonius' campaign was unexpected, and it forced the senate to reorganize its eastern territories and policies, which may or may not have been a welcome development.[113] If the *lex Porcia* had not prohibited praetors to engage in unauthorized campaigning outside of their *provinciae*, ambitious praetors across the Mediterranean might well have taken Antonius and Didius as their models.

It is in this context of unusually aggressive activity on the part of praetorian commanders that one must place the *lex Porcia* and the *lex de provinciis praetoriis*. While the campaigns of Antonius and Didius were not illegal, they greatly exceeded the traditional limits that praetorian commanders were expected to observe by their senatorial peers, and they probably caused the senate considerable irritation and trouble.

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[112] *Lex de provinciis praetoriis* Cnidos Copy, Col. III, ll. 28–41, and Delphi Copy B, ll. 9–14.

[113] Pohl 1993, 216–257 argues that the *lex de provinciis praetoriis* shows a desire to consolidate Rome's eastern holdings rather than position Rome for future military campaigning, and Sherwin-White 1977, 70 notes the conciliatory tone of the author of the *lex de provinciis praetoriis* towards the eastern states. See also Giovannini 1978, 44f. and de Souza 1997, 477–481, esp. 478.

In response, the senate promulgated two laws: the *lex de provinciis praetoriis* consolidated the gains made by Antonius and Didius, and the *lex Porcia* imposed new limitations on the authority of provincial commanders – restrictions that would fall disproportionately upon praetorian commanders like Antonius and Didius.[114] The fact that the senate's response came in the form of a *lex* instead of a *senatus consultum* indicates the seriousness of the senate's resolve, as do the penalties that the *lex* laid down for those who transgressed its regulations. Previously, praetorian commanders who exceeded their *provinciae* risked only their prestige, their hopes for triumphs, and their aspirations to higher offices.[115] With the passage of these *leges*, however, praetors who exceeded their assigned *provinciae* could readily incur more serious penalties, including a new fine of 200,000 HS.[116] To add yet greater force to these new regulations, the *lex de provinciis praetoriis* required that all present and future magistrates swear to uphold the terms of this law.[117] Such requirement of an oath is unusual in Roman laws, which are equally binding with or without an oath, and should be understood to highlight the seriousness of the senate's intention that praetorian commanders remain within their provinces.[118] The effect of these new restraints was to contain the praetors more tightly within the geographic boundaries of their assigned provinces, which reduced their role as military commanders, and instead emphasized their roles as governors of Roman territory and Roman subjects. The *lex Porcia*, therefore, was critical in the transformation of praetorian provinces from military theaters into spheres of administration, thereby marking an important change in the way the Romans conceived of their empire.

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[114] Giovannini 1978, 40 discusses the desire to further define and limit the expansionary activity of the provincial commanders of Asia and Macedonia.

[115] Possible risks included: having difficulty receiving a triumph (Livy 36.40, 38.45), being refused a triumph (Livy 35.8), losing election for the consulship (Livy 37.47); being prosecuted (Livy 42.8–22); being condemned to pay a fine (Livy 43.8).

[116] *Lex de provinciis praetoriis* Delphi Copy C, ll. 19–22.

[117] *Lex de provinciis praetoriis* Delphi Copy C, ll. 8–10.

[118] See Giovannini – Grzybek 1978, 41 f. and Crawford 1996, 267–268. On the oath, see Bleicken 1975, 226–231 and Pohl 1993, 224–228.

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