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FREDERIK JULIAAN VERVAET

The Praetorian Proconsuls of the Roman Republic (211–52 BCE). A Constitutional Survey

1. Introduction

The republican administrative procedure of sending out praetors with consular *imperium* is reasonably well-known but little understood. To the best of my knowledge, not a single study or book chapter has been devoted exclusively to a gubernatorial practice that rapidly gained importance from the Second Punic War.¹ This bipartite study aims at bridging this remarkable gap. The first component of this inquiry endeavours to offer an overall constitutional survey of the institutional phenomenon of the *praetura pro consule* by discussing its origins, nature and historical development. The second part is conducted by F. HURLET and scrutinizes this practice as recorded in the *fasti* of Africa, Sicily and Corsica-Sardinia. After highlighting the significance of the Metilian Law from 217 BCE as a precedent, the next section of this study provides a detailed discussion of the (historical circumstances of the) creation of the praetorian proconsulship. This is followed by a brief assessment of the proliferation of this administrative practice throughout the Republic's growing number of provinces. The subsequent two sections concern the official authority and nomenclature of the praetorian proconsuls, followed by a discussion of the frequency and rationale of the practice as well as the discretion exercised by the Senate in the relevant decision-making process. The final section, then, addresses the temporary abolition as well as the eventual generalization of the praetorian proconsulship in the transitional period 53/52–27 BCE. The epilogue ponders the question whether or not the command held in 215 BCE by M. Claudius Marcellus (*cos.* 222, *pr.* II 216) can be considered as the first historically attested case of a (*pro*) *praetor(e) pro consule*.

I would like to express my profound gratitude to both anonymous referees for their extensive and detailed comments and suggestions which much helped to improve this study. Any remaining flaws and errors are my own. I also wish to thank my colleague and long-standing friend, FRÉDÉRIC HURLET, for the pleasant and rewarding collaboration.

¹ For a rare study into the praetorian proconsuls of the early Empire, see ECK 1972/1973, 233–260.

2. The Metilian Law (217 BCE) as a precedent

In the aftermath of Hannibal's crushing victory at Lake Trasimene in 217, Senate and People decided on a series of unprecedented measures. First, circumstances led the Senate to arrange for a direct popular election of a dictator as well as his *magister equitum*, both key positions being won by Q. Fabius Maximus Verrucosus (*cos.* 233, *II* 228, *III* 215, *IV* 214, *V* 209) and M. Minucius Rufus (*cos.* 221) respectively. Several factors combined to set the stage for yet another dramatic precedent: widespread popular discontent at Hannibal's targeted destructions and Fabius' evasive strategy; relentless calls for a more aggressive approach on the part of the hawkish *magister equitum*; and profound senatorial dissatisfaction at the dictator's decision to exchange prisoners without prior senatorial consent. Finally, news of a successful engagement between the *magister equitum* and Hannibal's forces prompted the Senate to instruct the tribune of the *plebs* M. Metilius to put forward a *rogatio de aequando M. Minuci magistris equitum et Q. Fabi dictatoris iure*.

In terms of public law, the results of this Metilian Law were twofold. First, it upgraded the consular *imperium* of M. Minucius by redefining it as *dictatorium*. Second, and just as remarkably, it provided that the *magister equitum* was to command on a footing of equality with the dictator, very much on the model of a joint consular command. By virtue of the Metilian Law, each man now commanded not only *eodem imperio*, but also *pari imperio*. Unsurprisingly, Minucius immediately insisted on dividing up the legions, which were saved from utter destruction only by the dictator's timely intervention. After Minucius himself had dramatically renounced the Metilian Law by submitting himself again to Fabius' supreme command, *SPQR* officially repealed the plebiscite. Although the legal effect of this ad hoc statute thus was short-lived, there is, nonetheless, every indication that its historic significance was tremendous. Amongst other things, it demonstrated that it was perfectly possible to upgrade the *genus imperii* of a certain official (with full *imperium auspiciumque*) to the level of a *genus imperii* that was, in terms of relative strength, *maius*.² The *lex Metilia* therefore set a precedent for the procedure of redefining and upgrading the *praetorium imperium* of certain praetors to *consulare imperium*.³ The next section of this study will

² The traditional *genera imperii* consisted of the *praetorium imperium* (cf. Cic. Pis. 38; Verr. 2.5.40; Diu. 1.68), the *consulare imperium*, and the *dictatorium imperium* (cf. Livy 22.34.2: *dictatorio imperio* – in Rep. 2.56, Cicero defines the *imperium* of the dictatorship, which was supposedly created ten years after the establishment of the consulate, as a *nouum genus imperii* [...] *proximum similitudine regiae*).

³ For a comprehensive analysis of the Metilian Law and its historic significance, see VERVAET 2007, 197–232. See esp. 201–215 for the argument that Minucius' *imperium* was fully equated with that of the dictator by virtue of a *plebiscitum Metilium* passed *ex s.c.* Although Livy clearly alludes to the hostility of the Senate against the dictator, his narrative suppressed any direct reference to this unprecedented *s.c.* in an attempt to shift the blame for this infamous measure to Metilius' popular agitation and the consular ambition of C. Terentius Varro (*pr.* 218, *cos.* 216), the single senator who ventured to defend it publicly before the People. The first appendix on

argue that, on the model of the clause of the Metilian Law upgrading Minucius' *imperium*, the Senate soon also began to redefine certain *praetoria imperia* as *consularia imperia*.

3. The creation of the *praetura pro consule*

The successive crises of the Second Punic War forced the Romans to resort to many short-lived and lasting constitutional innovations. It is quite likely that, amongst other things, this titanic struggle also brought forth the first identifiable case of the upgrading of a praetorian *imperium* to consular level. Given the retrospective importance of this evolution it is useful to produce a brief outline of the precise circumstances. Due to the fragmentary and largely circumstantial nature of the evidence, the following reconstruction represents an attempt at developing a set of plausible solutions to a series of persistent problems.

In 211, in consequence of the successive deaths of the proconsuls P. (*cos.* 218) and Cn. (*cos.* 222) Cornelius Scipio, the Senate instructed the tribunes of the *plebs* to ask the tribes whom they preferred to send with *imperium* to Spain to the army of which Cn. Scipio had been commander-in-chief, the appointee being the propraetor C. Claudius Nero (*pr.* 212).⁴ However, after Nero had failed to exploit his stunning initial success against Hasdrubal, the Senate decided to have him replaced. Although there was no agreement as to who was to be sent to Spain, there was consensus that a successor to this vital command was to be chosen with extraordinary care (*extraordinaria cura*). As the Senate failed to agree on the appointment of an incumbent (pro)magistrate, it eventually decided that the consuls should organize the designation of a proconsul for Hispania in the *comitia centuriata*. When, surprisingly enough, only the young but charismatic P. Cornelius Scipio, the twenty-four year old son of the recently slain P. Scipio, offered himself as a candidate, all the *centuriae* voted that he should *pro consule* have the (*summum*) *imperium* in Spain.⁵ The valuable, if

⟨The *imperium* of the *magister equitum*⟩ (224–227) argues that the *magister equitum* indeed held consular rather than praetorian *imperium*.

⁴ Cf. *infra* for a full discussion of Nero's Spanish command. For the suggestion that Cn. Scipio (*cos.* 222) had been invested with an extraordinary proconsulship in 217 and then went on to command in Spain on a footing of equality with his brother (*pari imperio*) until 211, see JASHEMSKI 1950, 22f.; BROUGHTON 1951, 245 and 247 n. 10 (compare also 250 and 260); SUMNER 1970, 86 and 88; RODDAZ, 1998, 343f.; VERVAET – NACO DEL HOYO 2007, 22f.

⁵ Livy 26.18.2–10, where Livy amongst other things records that *Cum alii alium nominarent, postremum eo decursum est ut proconsuli creando in Hispaniam comitia haberentur; diemque comitiis consules edixerunt [...] Iussi deinde inire suffragium ad unum omnes non centuriae modo, sed etiam homines P. Scipioni imperium esse in Hispania iusserunt*. See also Livy 26.41.18 for Scipio Africanus receiving his extraordinary consular *imperium* by virtue of a vote by the *comitia centuriata*: *Nunc dii immortales imperii Romani praesides, qui centuriis omnibus ut mihi imperium iuberent dari fuere auctores*. Since Scipio was in all likelihood appointed at the outset of the consular year 210 (cf. also n. 27 *infra*), the consuls who convened the *comitia centuriata* at the behest

concise, accounts of Appian and Zonaras reveal further details of the circumstances and procedure of Scipio's appointment. Both sources clearly indicate that Hasdrubal's cunning escape from the Black Rocks and the ensuing recovery of Carthaginian power in Spain had caused panic and dissatisfaction in Rome. Livy recounts in 26.18.2–4 that the initiative to appoint a successor to the command of Claudius Nero was taken by the Senate in the first place. Accordingly, it appears that the greater part of that body was displeased with Nero's conduct of operations. Although young P. Scipio eventually secured the command in 210, both Livy's representation and the fact that the Senate decided to send the seasoned *propraetor* M. Iunius Silanus (*pr.* 212, cf. *infra*) along with Scipio suggest that the *Conscript Fathers* had originally wanted to replace Claudius Nero by a senior and more experienced commander. Their inability to reach an agreement, the seriousness of the situation in Spain and, most particularly, the intention to assign the Spanish command to a senior senatorial commander perfectly explain the decision to have the consuls M. Claudius Marcellus and M. Valerius Laevinus put the matter to the *comitia centuriata* instead of working through the tribunes of the *plebs*. By virtue of this highly unusual procedure, the Senate probably hoped to forestall any popular agitation about the command as well as to secure the appointment of a mature and skilled commander. That the young Scipio subsequently had to defend his sensational nomination before a *contio*, after a number of ranking senators had casted serious doubts on his suitability, further points to this conclusion.⁶

of the Senate were none other than M. Claudius Marcellus and M. Valerius Laevinus. Scholars remain divided as to whether Scipio owed his appointment to *rogatio* or *creatio*: see BLÖSEL 2008, 326–331 with nn. 20–24. In my view, the evidence here, as well as in 30.41.4f. and 31.50.6–11, suggests a procedure of what one could define as electoral legislation, with the *rogatio* centered on the (answer to the) question *cui iubetis pro consule imperium esse in Hispania* and allowing the voters in the individual voting units to declare for certain candidates from the ranks of those authorized to stand. In this particular instance, the lack of competition must have meant a vote of <yea> or <no> on the person of Scipio. Scipio thus probably got his command by means of a *lex Claudia Valeria*.

⁶ Livy 26.18.11–19.3; App. *Ib.* 17f. and Zon. 9.7. For echoes of the senatorial opposition to Scipio's appointment in 210 see also Sil. *It.* 16.645–697 (esp. 645–653) and Dio *fr.* 70.2f. (from book 21). LANGE ³1879, 178 and 708; MOMMSEN ³1887, Vol. 2, 659 n. 4; SUMNER 1970, 87 (see also 99 n. 30); KNAPP 1977, 89f.; RIDLEY 1981, 281; and, most recently, BLÖSEL 2008, all question the historicity of this tradition and believe Scipio was really appointed through a vote of the *plebs*. BLÖSEL suggests (326–332) that Scipio received his *proconsulship* as the Senate's favourite by virtue of the plebiscite alluded to in Livy 26.2.5, asserting that the «durch den Senatsbeschluss beauftragte Plebiszit war für [C. Claudius] Nero nicht benötigt worden» (331 n. 22). He next develops an ingenious argument to explain Livy's representation (332–340). According to BLÖSEL, Livy (as well as, at least partly, Silius Italicus, Appian and Dio/Zonaras) probably relied on a «volksfreundliche und senatskritische» tradition in Valerius Antias which represented Scipio as the people's candidate in the face of fierce senatorial opposition. For his own intents and purposes, Livy suppressed the alleged antagonism between nobility and *plebs* while retaining the story of Scipio's glorious and unanimous election by the *comitia centuriata*. Valerius' representation then should be traced back (341–343 and 346f.) to the supporters of Cn. Pompeius Mag-

As indicated in the above, Scipio's surprising designation to an extraordinary proconsulship immediately caused the Senate to add M. Iunius Silanus (*pr.* 212) to the Spanish command: *et M. Iunius Silanus propraetor adiutor ad res gerendas datus est.*⁷ Zonaras further completes the picture: he records that Scipio managed to shame those senators who had questioned his suitability as he addressed the *contio*, «so that he was not deprived of the command, although Marcus Iunius, an elderly man, was sent with him».⁸ This suggests that Scipio's dramatic appointment and his equally successful defence of it before the subsequent *contio* did not deter the leading senators from their initial plan to send a senior and experienced commander-in-chief to Spain.⁹ Further in his narrative, Livy indeed shows that the Senate significantly enhanced the authority of the propraetor. In 206, in a speech to his mutinous troops, Livy has Scipio raise the following rhetorical question:

Et sic loquor tamquam sine duce Hispaniae futurae fuerint: M. Silanus eodem iure, eodem imperio mecum in provinciam missus, L. Scipio frater meus et C. Laelius legati, uindices maiestatis imperii deessent? («And I am speaking just as if the Spanish provinces would have been without a commander. But would M. Silanus, who was sent with me into the province with the same authority, the same imperium, would my brother L. Scipio and C. Laelius, my legates, have failed to avenge the dignity of the high command?»)»¹⁰

As the *comitia centuriata* had invested Scipio with the supreme command in Spain as proconsul, these words indicate that the Senate subsequently took two remarkable

nus (*cos.* 70, *II* 55, *III* 52), who were looking for the most fitting and authoritative *exemplum* for the «zwei außerordentlichen Imperien» he received by virtue of plebiscites in 67 and 66. Although Livy indeed provides good evidence that extraordinary grants of consular *imperium* to private citizens were «normally» made by the *concilium plebis* (see, e.g., 30.41.4f. and 31.50.6–11), his narrative nonetheless indicates that, in this particular instance, a confluence of exceptional circumstances induced the Senate not only to advise the creation of another extraordinary proconsulate, but also to do so by virtue of a vote in the more important *comitia centuriata*. Regardless of blatant embellishment (e.g. the pompous claim that «not only all *centuriae* but also every single man voted that Scipio should have the command in Hispania»), it therefore seems better not to question the historicity of the core of Livy's representation of an electoral *lex centuriata*. Although BLÖSEL 2008, 332–334 believes that the representation of the facts in Livy, Silius Italicus, Appian and Dio/Zonaras indicates a clear division between Senate and People, their evidence rather suggests that the division was amongst the senators, with especially a significant number of senior senators objecting to the prospect of Scipio holding the supreme command in Spain – see, e.g., *Sil. It.* 16.652: *tum grandaeva manus puero male credita bella.*

⁷ Livy 26.19.10. See BROUGHTON 1951, 268 and Livy 26.1.5 for Silanus being praetor in 212 with Etruria as his *provincia decreta*, where his *imperium* was prolonged at the outset of 211.

⁸ Zon. 9.7: τὴν μὲν ἀρχὴν οὐκ ἀφῆρέθη, Μάρκος δὲ Ἰούνιος ἀνὴρ γηραιὸς προσεπέμφθη αὐτῷ. Livy briefly alludes to Scipio's masterly defense of his position in 26.19.1–3.

⁹ In 216, the very fact that Silanus had garrisoned Neapolis as *praefectus* was enough to have Hannibal abandon his plans to occupy this strategic port as he came down to the sea from Nola (Livy 23.15.1–3), and in 212, as praetor, he had made a significant contribution towards securing the provisioning of the Roman besiegers of Capua from his *provincia* Etruria (Livy 25.20.3).

¹⁰ Livy 28.28.14.

decisions. First, they decided to send Silanus to Spain with consular *imperium*, upgrading his praetorian *imperium* following the model of the procedure first introduced in 217 by the Metilian Law.¹¹ Since Livy records that Silanus already held the position of propraeor at the time he received the commission to accompany Scipio to Hispania, and his account tends to glorify Scipio's role and exploits at the expense of Silanus' visibility, there is no reason to consider the allusion to the latter's *imperium* as a mere rhetorical device. In all likelihood, the Spanish command of M. Iunius Silanus therefore is the first historically recorded case of a praetorian proconsulship.¹² Second,

¹¹ Contra MOMMSEN ³1887, Vol. 2, 652 n. 3, where he argues that proconsul Scipio received the «Proprator» Silanus as *adiutor*, amongst other reasons because «die Einheit des Oberbefehls gewahrt werden sollte». In n. 3 of p. 102f., MOMMSEN refutes Livy's clarification in 28.28.14 as «ein Versehen». MOMMSEN's line of thought is followed by, e.g., WILLEMS 1883, 555 n. 4 and 561; SCULLARD 1930, 41 n. 1; BROUGHTON 1951, 280; RICHARDSON 1986, 46 with nn. 68 and 54; and BRENNAN 2000, 157 and 158f. BRENNAN believes that, as *pro praetore*, Silanus held *praetorium imperium* and claims that there is no reliable evidence for a consular *imperium*. BRENNAN argues that the Romans were sparing in special grants of consular *imperium* during the Second Punic War and that Livy in 28.28.14 simply forgot that he had previously termed Silanus propraeor. BRENNAN's argument that Livy unambiguously records that everything in Spain from 210 to 206 happened under Scipio's auspices (*infra*) is equally inconclusive, since this only suggests that the Spanish campaign of 201–206 was waged under Scipio's *summum imperium auspiciumque*. KUNKEL – WITTMANN 1995, 20 also seem to believe that, as propraeor, Silanus only held praetorian *imperium*. FEIG VISHNIA 1996, 67 merely defines Silanus as «Scipio's deputy». KNAPP 1977, 90f. (with n. 14), even suggests that, like C. Claudius Nero before him, Silanus merely held *praetorium imperium* granted directly by the Senate, and argues that this lack of independent *imperium* explains his failure to petition for a triumph in 206. In Livy 28.28.14, KNAPP goes on to explain, Scipio speaks *modestius quam uerius* as a tribute to his loyal assistant. In a similar line of thought, RICHARDSON 1996, 31, suggests that the Senate invested Silanus, then a private citizen of praetorian rank, with *praetorium imperium*: «The senate seems to have been aware of the risks involved with such a decision, taken by one of the assemblies of the people. They attached to Scipio's staff to assist him M. Iunius Silanus, who had at least reached the rank of praetor, and who (according to Livy) was given the unusual title of *propraetor adiutor ad res gerendas* («adjutant for the conduct of the campaign, holding *imperium* equivalent to that of a praetor»).» In n. 70, RICHARDSON observes that the term propraeor «is undoubtedly anachronistic, first occurring in the late first century BC», but that the report itself is «likely to be correct».

¹² The true purport of Livy's paraphrase in 28.28.14 and its critical significance for our understanding of Silanus' official position from 210 did not go unnoticed by JASHEMSKI 1950, 25f. («However, the two statements of Livy are not necessarily contradictory but might very well mean that the propraeor Silanus had been granted proconsular *imperium* and sent to Spain»); SUMNER 1970, 88 (who rightly considers the notice in Livy 28.28.14 as conclusive and credible as it «contrasts strikingly with the habitual inflation of Scipio's rôle»); and RODDÁZ 1998, 347. RODDÁZ emphasizes that Silanus held an independent *imperium* and rejects the idea as if Scipio's statement in Livy 28.28.14 was a rhetorical lapse or mere flattery. RODDÁZ also suggests that Livy's use of the term propraeor is an anachronism but does not elaborate on Silanus' actual title. Although BLÖSEL 2008, 344–346, too, concludes that the evidence indicates that Silanus operated in Spain «als gleichrangiger Befehlshaber neben Scipio», he suggests that Silanus was appointed proconsul by the very same plebiscite that supposedly nominated Scipio. Since

the conspicuous paraphrase *eodem iure, eodem imperio* indicates that the Senate also decreed that Silanus was to command on a footing of equality with P. Scipio. The Senate had good reasons for this complementary provision. It would have been inappropriate to submit a praetorian commander to the authority of a mere *aedilicius*. Since they could not overrule the popular vote, this arrangement also was the only way to ensure that the enormous responsibility of the war in Spain did not fall to the young Scipio alone. This explanation accounts for Livy's otherwise pleonastic definition. Apart from these indications, there are a few other clues suggesting that M. Iunius Silanus had been officially empowered in 210 to command in Spain on an equal footing (*pari* or *aequo imperio*) with P. Scipio. After his lofty account of Scipio's glorious arrival in Spain, Livy en passant mentions that Silanus next took over from Nero and led the new soldiers into their winter quarters: *successit inde Neroni Silanus, et in hiberna milites noui deducti*.¹³ In the same context Polybius terms Silanus as Scipio's *συνάρχων*, implying a position of equality in terms of official hierarchy.¹⁴ Livy also records that, like Scipio, Silanus remained in Spain till 206, and that the Senate always prolonged his *imperium* under the same terms and conditions.¹⁵

Livy's representation that the Senate charged Silanus with the role of *adiutor* in 210 certainly has the potential to mislead as it suggests that Silanus was merely added to Scipio's command as a subordinate imperator.¹⁶ Livy further reinforces this impression as the rest of his account shows that Scipio consistently held the (exclusive) *summum imperium auspiciumque* in Spain for the entire duration of his command

BLÖSEL doubts that Silanus was still propraetor at the outset of 210 he deems it less likely that the people enhanced his praetorian *imperium* by virtue of a separate vote – compare also p. 330 for BLÖSEL's view that «eine Aufstockung eines bestehenden prätorischen Imperiums auf konsularisches Niveau» required a *lex/plebiscitum* just as much as the conferral of full *imperium* on a private citizen.

¹³ Livy 26.20.4.

¹⁴ Pol. 10.6.7.

¹⁵ Livy 27.7.17 and 10.13 (s.c. *de prouinciis* of 15 March 209); 27.22.7 (the s.c. *de prouinciis* of March 208); and 27.36.12 (the s.c. *de prouinciis* of 207). Livy's note (in 27.22.7) that for 208 *Et P. Scipioni et M. Silano suae Hispaniae suique exercitus in annum decreti* indicates that the Senate had given both commanders proper instructions concerning their mandate and troops, which further suggests that both men officially commanded on a footing of equality. That the Senate subsequently also ordered Scipio to send fifty of the eighty ships *quas aut secum ex Italia adductas aut captas Carthagine habebat* to Sardinia does not suggest that they considered him to be the sole supreme commander in Spain, as it concerned ships that Scipio had either brought from Italy or captured at New Carthage. At best, these instructions can be seen as implicit acknowledgement of Scipio's mutual agreement with Silanus concerning the *summum imperium auspiciumque* in Hispania.

¹⁶ Compare, e.g., Livy 33.43.5f., for the praetor P. Manlius being sent to Hispania Citerior in 195 as *adiutor* of the consul M. Porcius Cato, and 41.15.6f., for the propraetor T. Aebutius (*pr.* 178) operating in Sardinia in March 176 as *adiutor* to the proconsul Ti. Sempronius Gracchus (*cos.* 177).

there. In 26.42.1, for example, Livy relates that Scipio harangued the troops after his first winter in Spain and that,

Hac oratione accensis militum animis, relicto ad praesidium regionis eius M. Silano cum tribus milibus pedum et trecentis equitibus, ceteras omnes copias – erant autem viginti quinque milia pedum, duo milia quingenti equites – Hiberum traiecit («Having fired the spirits of the soldiers by this speech, and leaving for the defence of the region M. Silanus with three thousand infantry and three hundred horsemen, all the rest of the forces – and they were twenty-five thousand infantry, two thousand five hundred cavalry – he led across the Ebro.»).

The most convincing evidence of Scipio's continuing position as commander-in-chief, however, can be found in 28.38.1 (206 BCE), where Livy calls to mind that *haec in Hispania P. Scipionis ductu auspicioque gesta*.¹⁷

On the strength of the Senate's decisions concerning his *ius imperii* in Hispania, Silanus would have been perfectly entitled to insist on a power-sharing deal on the model of a joint consular command, especially given he was Scipio's superior in age and senatorial rank. There is, however, every indication that he decided never to press his senatorial empowerment to command *pari imperio* and instead voluntarily ceded the supreme command to Scipio. Indeed, instead of alternating the *summum imperium* at regular intervals, imperators commanding on a footing of equality could always strike a gentleman's agreement that only one was to hold the high command for part or all of their joint tenure.¹⁸ How then can this seemingly remarkable decision best be explained? Despite being his junior, Scipio easily outclassed Silanus as a scion of a patrician family that had produced many consuls during the previous centuries.¹⁹ He had, moreover, received the special distinction of being charged *extra ordinem* with the supreme command in Spain as proconsul by virtue of a consular *lex centuriata*. Last but not least, he could tap into the critical network of alliances and connections established by his father and uncle during their joint Spanish command from 218/217 to 211.²⁰

¹⁷ For a similar statement, see also 28.16.14f.: *Hoc maxime modo ductu atque auspicio P. Scipionis pulsi Hispania Carthaginenses sunt*. For a string of further references to the Spanish command which invariably suggest that Scipio uninterruptedly monopolized the high command, see, e.g., 28.1.5; 28.13.3; 28.14.15; 28.16.15; 28.34.12 (compare also App. Ib. 26, 28 and 30); and, especially, 28.26.7 and 27.12, where Scipio is clearly represented as the *summus imperator*, the commander holding the *summum imperium auspiciisque* in Spain.

¹⁸ In 3.70.1, Livy records such an arrangement between T. Quinctius Capitolinus and Agrippa Furius, the consuls of 446 BCE: *In exercitu Romano cum duo consules essent potestati pari, quod saluberrimum in administratione magnarum rerum est, summa imperii concedente Agrippa penes collegam erat; et praelatus ille facilitati summittentis se committere respondebat communicando consilia laudesque et aequando impari sibi*.

¹⁹ Compare RODDAZ 1998, 34, who suggests that Scipio only surpassed Silanus in *dignitas*.

²⁰ RODDAZ 1998, 352 explains that P. and Cn. Scipio had contracted several private alliances with local dynasts and acquired a *clientela* among Spanish *ciuitates*, and that rumours of Scipio Africanus' death and mere contempt of his successors provoked risings in 206 and 205.

Unsurprisingly, the precise procedure of Silanus' elevation to the position of proconsul remains a matter of ongoing scholarly debate. In his account of the appointments of Scipio and Silanus to the Spanish command Livy clearly distinguishes, in time and space, between the *Comitia* appointing Scipio proconsul,²¹ the *contio* he subsequently addressed to reassure the people about this surprising designation,²² and the *senatus consulta* that were subsequently passed with regard to the *ornatio prouinciae* and Silanus' new commission.²³ These events give no support to R. DEVELIN's suggestion that Silanus «for 210 [...] would, by vote of the *plebs*, have his *imperium* raised to proconsular status and nothing in the tradition necessarily prevents this assumption». DEVELIN attempts to explain the seeming contradiction between Silanus being labeled *adiutor* and the *eodem iure, eodem imperio* in Livy 28.28.14 (words which, according to DEVELIN, «need only mean that both had *imperium*») by speculating that Silanus was *propraetor* in 211, whereupon a *plebiscitum* «authorised the elevation of his status» in 210 as he departed for Spain with Scipio.²⁴ Although the possibility that the Senate had the *concilium plebis* sanction its decree cannot be ruled out altogether, the decisions to send Silanus to Spain with Scipio, upgrade his *imperium* and empower him to command on an equal footing with the young proconsul were probably taken exclusively by the Fathers.²⁵

In 1970, G. V. SUMNER suggested that, before M. Iunius Silanus, another praetorian commander had already been sent to Spain with consular *imperium*, viz. C. Claudius Nero (*pr.* 212, *cos.* 207).²⁶ As Nero's command is the likely precedent for the praetorian proconsulship, his appointment and its circumstances, too, warrant careful consideration.

The year 211 BCE witnessed what were, perhaps, Rome's worst crises since Cannae. In Italy, the war came to a climax with the Roman siege of Capua and Hannibal's march on Rome. At this critical juncture came the news that first Publius and then

²¹ Livy 26.18.

²² Livy 26.19.1–9.

²³ Livy 26.19.10f.: *Ad eas copias quas ex uetere exercitu Hispania habebat quaeque a Puteolis cum C. Nerone traiectae erant, decem milia militum et mille equites adduntur; et M. Iunius Silanus propraetor adiutor ad res gerendas datus est.* Zon. 9.7 also clearly suggests that, after the final *contio*, an *s.c.* provided Silanus with a new *prouincia* as ἀνὴρ γηραιός. RICHARDSON 1986, 45, too, seems to believe that Silanus owed his new commission to the Senate but stops short of an unequivocal statement on the issue.

²⁴ DEVELIN 1980, 359. On p. 360 DEVELIN casts doubt on his own hypothesis: «It is noticeable that Scipio seems to treat him as a subordinate. Perhaps, after all, he remained *propraetor*.»

²⁵ Although BRENNAN 2000, 157f. claims the same *comitia centuriata* that appointed Scipio also appointed Silanus, he has to admit that Livy «seems to suggest an appointment by the Senate». BRENNAN speculates that the Senate relieved Silanus in 210 of his command in Etruria «some time before his actual appointment» and «had planned Silanus' transfer a fair bit before that famous extraordinary meeting of the Centuriate Assembly».

²⁶ SUMNER 1970, 88.

thirty days later Gnaeus Scipio were defeated and killed in action.²⁷ As both proconsuls had jointly conducted the Roman war effort in Spain as *summi imperatores* this disaster jeopardized Rome's entire position on the peninsula.²⁸ Much to the Senate's shock, the sizeable remnants of the army in Spain had subsequently vested the popular equestrian *tribunus militum* L. Marcius Septimus with *praetorium imperium*.²⁹ The question of the Spanish command therefore suddenly became a matter of great urgency.

In 26.17.1f., Livy explains that, immediately after the fall of Capua and the submission of the rest of Campania,³⁰ the Senate voted to assign to C. Claudius Nero 6,000 infantry and 300 cavalry of his own choosing from the two legions which he had had before Capua, and from the Latin allies the same number of infantry and 800 cavalry. Nero immediately embarked this impressive force at Puteoli and shipped it to Hispania. As this decree clearly concerned Claudius Nero's *ornatio provinciae*, it follows that the actual decision to send him to Spain must have been taken sometime before this vote. In 26.2.5f., before his account of Hannibal's march on Rome and the fall of Capua,³¹ Livy reports:

Dimissis equitibus, de nulla re prius consules rettulerunt, omniumque in unum sententiae congruebant, agendum cum tribunis plebis esse, primo quoque tempore ad plebem ferrent quem cum imperio mitti placeret in Hispaniam ad eum exercitum cui Cn. Scipio imperator praefuisset. Ea res cum tribunis acta promulgataque est («When the equestrian envoys had been sent away, the consuls brought up that matter first of all, and there was complete unanimity that the tribunes of the *plebs* should be advised to bring before the *plebs* at the earliest possible moment the question as to whom they preferred to send with *imperium* to Spain and the army of which Cn. Scipio had been the commander-in-chief. The matter was arranged with the tribunes and duly promulgated.»).

²⁷ See Livy 25.34–36; 26.18 and App. Ib. 16. Following F. W. WALBANK and G. DE SANCTIS, SUMNER 1970, 86 and 98 nn. 13f., argues (against Livy's somewhat confused representation) that P. and Cn. Scipio were killed during the campaigning season of 211 and that Scipio Africanus arrived in Spain only in 210, after having been appointed proconsul around February 210, at the very end of the consular year 211. However, since both the consuls of 211, Cn. Fulvius Centumalus and P. Sulpicius Galba, went to their provinces after defending Rome against Hannibal (BROUGHTON 1951, 272 and Livy 26.22) and Livy unambiguously records in 26.18.4 that, in the following year, the proceedings resulting in Scipio's nomination to the Spanish command involved both consuls it is better to presume that he was made proconsul at the very outset of (the consular year) 210.

²⁸ That the Scipio brothers shared the supreme command in Spain from 217 to 211 is obvious from, e.g., Livy 26.18.3: *ubi duo summi imperatores intra dies triginta cecidissent*.

²⁹ BROUGHTON 1951, 275. See Livy 26.2.1–4 for the Senate's utter dismay at the fact that a *tribunus militum* had been elected *pro praetore* by the remnants of the army in Spain in 211, without any involvement of SPQR.

³⁰ In 26.18.2, in his outline of events that would lead to the appointment of Scipio Africanus to the Spanish command (in 210), Livy recounts that after the recovery of Capua (during the late summer of 211), Senate and People were no longer more concerned about Italy than about Spain.

³¹ See Livy 26.4–16 for this dramatic episode in the trial of strength in Italy.

Although Livy's account of the decision making concerning the war in Spain in 211/210 is confused, DEVELIN correctly observes that «it is logical to suppose that Nero was the man named by the plebeian assembly arranged for by the senate at Livy XXVI.2.5f.».³² The seriousness of the situation in Spain perfectly explains the Senate's unanimous decision to act quickly and have the tribunes organize a popular vote on the matter of Cn. Scipio's successor. The unprecedented military election of a *propraetor* in Spain offered another powerful incentive to make sure that the army in Spain was to get a regular *imperator* with the strongest possible official mandate. Zonaras and Appian provide some details which may further corroborate this suggestion. After reporting the fall of Capua in 9.6, Zonaras relates in 9.7 that «the people in Rome sent C. Claudius Nero with soldiers into Hispania»: Οἱ δὲ ἐν τῇ Ῥώμῃ Γάιον Κλαύδιον Νέρωνα εἰς τὴν Ἰβηρίαν μετὰ στρατιωτῶν ἔπεμψαν. In Ib. 17, Appian likewise attests that the people in the City were dismayed at the news of the death of both Scipiones, and consequently «sent Marcellus, who had lately come from Sicily, and with him Claudius [Nero] to Hispania»: πυθόμενοι δ' οἱ ἐν ἄστει βαρέως τε ἤνεγκαν, καὶ Μάρκελλον ἐκ Σικελίας ἄρτι ἀφιγμένον, καὶ σὺν αὐτῷ Κλαύδιον [...] ἐξέπεμπον ἐς Ἰβηρίαν.³³ A little later in their accounts, both Zonaras and Appian indicate that «the people in Rome» also appointed a successor to the command of Claudius Nero.³⁴

The Spanish commission of C. Claudius Nero is generally perceived as a transitional measure meant to consolidate the Roman position in Spain pending the arrival of a more «permanent» commander.³⁵ There are, however, several indications that this was not the case and that Claudius Nero was sent as the proper successor to the command of both Scipiones. First, the decision making process as summarized by Livy in 26.2.5f. constitutes a procedure to appoint a genuine successor to the command of Cn. Scipio, not merely a provisional measure. More importantly, Livy's representation implies that the Senate wanted the tribunes to have the *concilium plebis* appoint a

³² DEVELIN 1980, 358. As regards the fact that Livy only mentions the promulgation of the bill and, a little further in his narrative, the decree determining Nero's *ornatio prouinciae* and fails to record the actual vote, DEVELIN (357) correctly points out that after the *promulgatio*, «other events held the limelight. Henceforth Capua and Hannibal's approach to Rome are focal points». BRENNAN 2000, 156, too, thinks that the procedure described in Livy in 26.2.5f. led to the appointment of Claudius Nero to the Spanish command.

³³ Appian is evidently mistaken regarding M. Marcellus, and may have confused the military «election» of L. Marcus Septimus in Hispania in 211 and the appointment of M. Claudius Marcellus (*cos.* 222) to an extraordinary proconsulate in Rome in 215, a matter discussed *infra* in the epilogue.

³⁴ Zon. 9.7 (Μαθόντες δὲ ταῦτα οἱ ἐν τῇ Ῥώμῃ τοῦ Νέρωνος μὲν κατέγων, ἄλλω δέ τινι τὴν ἡγεμονίαν ἐψηφίσαντο ἐγχειρίσθαι) and, esp., App. Ib. 18, where the term *ἐκκλησία* unambiguously indicates that the procedure to appoint a successor to Nero involved a popular assembly. The wording in Zonaras and Appian and the lack of the term *βουλή* strongly suggests the involvement of both the Senate and the People in the process resulting in the appointments of C. Claudius Nero and P. Cornelius Scipio (*cos.* 205).

³⁵ Cf. e.g. KNAPP 1977, 88; DEVELIN 1980, 359; and BRENNAN 2000, 156.

single supreme commander for the whole of the Spanish theatre of war. Livy's précis indicates that this appointee was to succeed to the command of Cn. Scipio, who had automatically become the only *summus imperator* there after the death of his brother Publius.³⁶ Both Livy and Appian moreover record that Nero received adequate means successfully to pursue his enormous task.³⁷ Finally, Nero's remarkable feats in Spain also suggest that he was not appointed simply to hold Rome's position pending the arrival of a permanent commander. In 26.17.2–16, Livy gives an elaborate account of how Nero initially achieved an unexpected success by means of a speedy surprise attack but then, embarrassingly, failed to exploit his advantage. After arriving at Tarraco, Livy relates, Nero armed even the crews in order to increase his numbers. He then took over the army from Ti. Fonteius and L. Marcius at the Ebro and promptly marched against the enemy. Nero's course of action confirms that he commanded adequate forces and indicates that the Senate had authorized offensive action. Since Hasdrubal was encamped at the Black Rocks, between the towns of Iliturgis and Mentissa, Nero swiftly occupied the entrance to this pass. For fear of being trapped Hasdrubal sent a herald to promise that he would leave Spain with all his forces if he were allowed to escape. This promise shows that, in a remarkable reversal of fortunes, Hasdrubal and his army had been maneuvered into a desperate position. As Nero gladly accepted this proposal Hasdrubal asked for a conference to establish the terms of the surrender of the Carthaginian strongholds and fix a deadline for the general evacuation. Having gained this request, Hasdrubal at once ordered that from dusk the heaviest troops of his army should escape from the pass by any possible way. The next day, Hasdrubal duly held his conference with Nero but cleverly used up the whole time without reaching any conclusion. During the next few days, Hasdrubal cunningly prolonged the negotiations and eventually succeeded in organizing the escape of his entire army. When

³⁶ DEVELIN 1980, 358 correctly observes that Gnaeus would have effectively taken command of all the forces after the death of Publius, and that Marcius may have succeeded him in that position. In all probability, two factors conspired to trigger this major shift in strategy. In *Ib.* 17, Appian points out that the result of Nero's failure to turn the tide in Hispania «was that, although they [i.e., the Romans] desired to, they were unable to evacuate the Iberian peninsula for fear that the war there would be transferred to Italy». Appian then goes on to describe the proceedings resulting in the appointment of Scipio Africanus. Obviously, many influential senators were in favour of abandoning Spain altogether in consequence of the disastrous defeat of P. and Cn. Scipio. Since, however, such a decision would have seriously increased the risk of a new Carthaginian invasion of northern Italy, the Senate eventually decided to carry on the war in Spain, albeit now under the command of a single commander-in-chief. Secondly, the situation in Spain was extremely perilous. The circumstances there demanded a singular and undisputed supreme command. Only so could the possibility of dangerous disputes between *imperatores pares* be ruled out. One should not forget that only shortly before there had been serious, if not catastrophic, discord between the consuls in Italy, and that the harmony between the previous supreme commanders in Spain had been guaranteed because they were brothers.

³⁷ In *Ib.* 17, Appian clarifies that Nero was equipped with a fleet, 1,000 horse, 10,000 foot and adequate resources (καὶ χορηγίας ἰκανῆς).

the Romans found Hasdrubal's deserted camp, Nero's promising campaign ended in an inglorious and fruitless pursuit as the Carthaginians consistently refused to give battle to their frustrated opponents.³⁸ All of this seems to suggest that, in the late summer of 211, C. Claudius Nero was sent to Spain as a full-fledged successor to the command previously held by P. and Cn. Scipio, however short-lived his tenure there eventually proved to be.³⁹

That Nero was a propraetor at the time of his appointment to the Spanish command is beyond all doubt. He was praetor in 212 and had participated in the Capuan campaign as propraetor in 211.⁴⁰ G. V. SUMNER argues that the appointment of M. Silanus «was exactly analogous to that of C. Claudius Nero, whom he was succeeding» and that it is «therefore probable that the propraetor Nero, like the propraetor Silanus, had been vested by the Senate with proconsular status».⁴¹ Although there is no indication of Silanus having been appointed to his Spanish command by plebiscite, there may be good reason to believe that the Fathers indeed decided to upgrade Nero's *praetorium imperium*, thus creating what possibly was the first praetorian proconsulate in Roman history. First, the situation in Spain was most serious at the time, and Nero's task accordingly daunting. The Senate therefore had every reason to send a commander with a strong mandate and an equally powerful *imperium* to replace Ti. Fonteius and L. Marcus. Whereas the former had assumed his command as P. Scipio's *legatus*,⁴² perhaps *pro praetore*, the latter had after all been proclaimed propraetor by a sort of military assembly. Second, all imperators sent to Spain immediately before and after Claudius Nero commanded as proconsuls.⁴³

The dearth and problematic nature of the source material easily explains why SUMNER's attractive suggestion has hardly found any acceptance in modern scholar-

³⁸ Zon. 9.7 provides a summary but very similar account of Nero's inauspicious campaign in Hispania. Unlike Livy, Zonaras clearly indicates that Nero caught Hasdrubal by surprise, confronting him before his presence had become known, and that after hemming him in, Nero actually failed to stay on guard in expectation of a truce.

³⁹ In 26.20, Livy situates the succession of Claudius Nero by Iunius Silanus as well as the arrival of Scipio at the end of the summer of 211 (*Successit inde Neroni Silanus, et in hiberna milites noui deducti. Scipio omnibus quae adeunda agendaque erant [...] Tarraconem concessit [...] Aetatis eius extremo qua capta est Capua et Scipio in Hispaniam uenit*). In 26.17, however, Livy recounts that the Senate only decided on Nero's *ornatio prouinciae* after the fall of Capua. This means that Nero must have arrived in Hispania around the early autumn of 211 at the very latest since he still had the time for a full-scale campaign against the Carthaginians.

⁴⁰ BROUGHTON 1951, 267 (*pr.* 212). Although Livy does not mention Claudius Nero in his survey of the *s.c. de prouinciis* of the beginning of 211 (26.1) his participation in the operations against Capua as propraetor (26.5.7–6.8) proves that his *imperium* must have been prolonged *in annum* for this consular year.

⁴¹ SUMNER 1970, 88. In n. 40 of p. 99, SUMNER points out that «Jashemski did not press the argument to this logical conclusion».

⁴² See BROUGHTON 1951, 275.

⁴³ See VERVAET – ÑACO DEL HOYO 2007, 22–36, esp. 22–30.

ship. R. C. KNAPP maintains that C. Claudius Nero went to Spain, where he would have been the first official successor to the command of Cn. Scipio, as *pro praetore*.⁴⁴ R. FEIG VISHNIA claims that, as *propraetor*, Nero was given «a command inferior to that of Scipio's».⁴⁵ J.-M. RODDAZ, too, believes that Nero operated in Spain «revêtu d'un *imperium* prétorien».⁴⁶ DEVELIN, by contrast, observes that «the nature of the Spanish command would necessitate the elevation of Nero's *imperium* to *proconsular*» and goes on to argue that this «would require a vote of the *comitia (tributa)*». He plausibly suggests that Nero was the man appointed by means of the plebiscite recorded in Livy 26.2.5f. and subsequently speculates that: «It would, of course, be put to the voters that the man chosen be Nero, clearly an able individual and highly thought of by the senate. This means that the tribal assembly was asked to choose (and promote) a man who already held *imperium*.»⁴⁷ There is, however, no evidence that the Senate had recommended a specific candidate for appointment by the *concilium plebis*. In the event that the vote resulting in Nero's nomination had not expressly provided for the appointment of a commander *consulari cum imperio*,⁴⁸ the Senate may have reinforced his *imperium* at the time of its decision concerning his *ornatio prouincia*. If so, this decree was, perhaps, subsequently ratified by the tribes on the model of the procedure leading to the Metilian Law.

4. The proliferation of the praetorian proconsulship

At all events, the novel procedure of dispatching (pro)praetors with consular *imperium* was continued and extended after the Senate in 198 decided to stop sending extraordinary proconsuls to Hispania. It was precisely their historic decision to retain

⁴⁴ KNAPP 1977, 88. Amongst other things, KNAPP argues that «it would have been unprecedented to advance a commander already in the field from praetorian to consular authority, which seems to have been precisely the change in level of command desired in Iberia». The case of the *magister equitum* M. Minucius shows that such a measure would not have been wholly unprecedented.

⁴⁵ FEIG VISHNIA 1996, 222 n. 63. FEIG VISHNIA explains that this suggests that «there was no need for a popular vote to approve his dispatch to Spain». Her views on the Spanish command around 206 clearly make the erroneous assumption that Claudius Nero received his *imperium pro praetore* by means of delegation by the praetor Urbanus.

⁴⁶ RODDAZ 1998, 345 (see also n. 25 for the view that Nero did not hold *consulare imperium* in Spain).

⁴⁷ DEVELIN 1980, 358. DEVELIN mistakenly thinks that the tribal assemblies could not directly invest someone with full *imperium*. Although BRENNAN 2000, 156 believes that Livy records a plebiscite in 26.2.5f. that temporarily charged Claudius Nero with the high command in Spain, he rejects the possibility it concerned a special measure to «raise him to consular status». This definition of an official *consulari cum imperio* is both wrong and confusing. Depending on circumstances, consular status applied either to the consulship or to the senatorial rank of *consularis*.

⁴⁸ See VERVAET – ÑACO DEL HOYO 2007, 24–29 for the fact that all subsequent popular votes appointing imperators for Spain *extra ordinem* expressly provided that they were to command *pro consule*.

the hard-won Roman foothold in Spain by instituting two distinct provincial commands that prompted the resumption of what began as an ad hoc measure dictated by exceptional challenges.⁴⁹ As regards the nature of the new provincial commands, E. HERMON indicates that it concerned «deux nouvelles provinces à frontières particulièrement floues, entourées d'un vaste territoire ennemi à l'organisation tribale», and that structural military complications persisted after the momentous decision to stay. Operations in Citerior dragged on until 179, whereas Lusitanian tribes would repeatedly raid Ulterior until the tenure of C. Iulius Caesar in 61/60.⁵⁰ C. EBEL, too, points out that the Spanish provinces continued to be the scene of major warfare for decades after the Second Punic War and that the peninsula was not completely subdued before the reign of Augustus.⁵¹

Regardless of the tricky debate about the chronology and administrative organization of the two Spanish provinces, there are strong indications that they were routinely governed by *praetores pro consule* from the very outset.⁵² In 197, C. Sempronius Tuditanus departed for Hispania Citerior as praetor and, probably within the same (consular) year, died there from his injuries as proconsul.⁵³ Although the incomplete nature of the records in the *Fasti Triumphales* rules out absolute certainty,⁵⁴ it is therefore likely that Tuditanus' successor Q. Minucius Thermus (*pr.* 196) also governed Citerior as proconsul.⁵⁵ P. Manlius, who together with the consul M. Porcius Cato re-

⁴⁹ For the first official attempt at dividing Hispania into two more or less clearly demarcated provincial spheres of control, viz. Citerior and Ulterior, see Livy 32.28.11: the Senate in 197 ordered the first two praetors sent to Spain *et terminare* [...] *qua ulterior citeriorue prouincia seruarietur*.

⁵⁰ HERMON 1983, 80 with n. 20.

⁵¹ EBEL 1991, 443ff.

⁵² MOMMSEN emphasizes (and demonstrates) in ³1887, Vol. 2, 647 that those praetors who drew the Spanish provinces invariably held consular *imperium* and that the Spanish *prouinciae* were governed through consular *imperium* from the very outset. MOMMSEN explains that it was undesirable to administer these lands by virtue of *praetorium imperium* as it would have been unwise for the Spanish commanders to abandon the «Vorrechte, welche der Consul als Feldherr vor dem Prätor voraus hatte» (compare Vol. 2, 95). In n. 2, MOMMSEN points out that the *fasti* list all praetors sent to Hispania as having celebrated their triumphs *pro consule*, that all republican governors of Spain carry the title of proconsul on coins and inscriptions, and that Livy, too, rarely defines these officials as (pro)praetors and mostly refers to them as proconsul. MOMMSEN also explains that every Spanish commander retained this consular *imperium* «so lange wie sein Commando». MOMMSEN's conclusions are accepted by, for example, JASHEMSKI 1950, 40–47, who convincingly shows that all (pro)praetors in Hispania from 197 governed their provinces *pro consule*, and KNAPP 1977, 94. When Diodorus 31.42 terms L. Mummius (*cos.* 146), fighting in Hispania Ulterior as praetor in 153 (BROUGHTON 1951, 452), ἐξάπέλευς στρατηγός he simply uses a generic Greek denomination for the praetorship, with no deductions to be made in terms of his actual *imperium* – compare also HURLET's observations in n. 23 of his contribution.

⁵³ Livy 32.28.2 (praetor) and 33.25.8f. (proconsul). For the title of proconsul, see also Orosius 4.20.10.

⁵⁴ Act. Tr. Cap.: *pr[occos- -]*, and Tol.: *p[rocos -]*, DEGRASSI, Inscr.It. 13.1, 78f., 338f., 552.

⁵⁵ Contra BROUGHTON 1951, 341, who adds a question mark to the title of proconsul.

ceived Citerior on the Ides of March 195, probably also commanded as proconsul.⁵⁶ This, together with the fact that both the consul and the praetor received armies of their own⁵⁷ does of course not detract from the consul's status as (exclusive) holder of the *summum imperium auspiciumque* in Citerior and, most probably, all of Hispania.⁵⁸ As for Hispania Ulterior, the *Fasti Triumphales* unequivocally record M. Helvius (*pr.* 197) as having celebrated an ovation in 195 as proconsul.⁵⁹ This suggests that P. Cornelius Scipio Nasica (*pr.* 194) also commanded as (*pro*)praetor(e) *pro consule*, even though he is only recorded as praetor (194)⁶⁰ and *pro praetore* (193).⁶¹ M. Fulvius Nobilior (*pr.* 193) had already been very active in Ulterior as praetor⁶² and saw his *imperium* prolonged in 192⁶³ to continue his command there as proconsul.⁶⁴ At the close of 191 he was also given the privilege of celebrating an ovation in Rome, which he did as proconsul.⁶⁵ P. Sempronius Longus (*pr.* 184), too, commanded in Spain as (*pro*)praetor(e) *pro consule*,⁶⁶ which doubtless was also the case with P. Manlius Vulso (*pr.* 182), only recorded as praetor for 182 and 181 in Livy.⁶⁷

⁵⁶ Livy 33.43.5f.: *P. Manlius in Hispaniam citeriorem adiutor consuli datus*. Citerior thus was a *prouincia permixta*, being simultaneously *consularis* and *praetoria*. In *prouinciae permixtae*, the provincial command was shared by two or more imperators, either on a footing of equality or *impari imperio*. See Livy 27.35.10 for the use of this term to define geographically and functionally identical *prouinciae* held by two (or more) imperators. For the fact that the same *prouincia* could be simultaneously *consularis* and *praetoria* if assigned to both a consul and a praetor, see: GIOVANNINI 1983, 68–72. GIOVANNINI conclusively argues (109) that «une province pouvait effectivement être la même année consulaire et prétorienne, soit qu'un consul et un préteur soient envoyés ensemble dans une province».

⁵⁷ Livy 33.43.2f. and 8.

⁵⁸ Manlius conducted minor operations in Citerior and it would have been Cato who took the prevailing auspices whenever necessary. The consul's position of supreme commander in Citerior is also clear from the fact that P. Manlius did not hesitate to call in the consul when things looked bad: see Livy 34.13.8; 14.1; 17 and 34.19.1f. For some evidence suggesting that the Senate might very well have authorized Cato to interfere in Hispania Ulterior, too, if need be, see also Livy 33.21.9 and 33.26.1–6, where Livy's summary of senatorial decisions concerning Hispania suggests that the Senate in 197 and 196 considered all of Roman Spain as a vast and formidable theatre of war; compare also Livy 33.43.2f. and 34.10.1–5.

⁵⁹ BROUGHTON 1951, 341. Livy relates in 32.28.11 that Helvius had departed for Hispania Ulterior in 197 as praetor.

⁶⁰ Livy 35.1.3.

⁶¹ Livy 35.1.4f.

⁶² BROUGHTON 1951, 347.

⁶³ Livy 35.20.11.

⁶⁴ Livy 35.22.5–8 (proconsul).

⁶⁵ BROUGHTON 1951, 354.

⁶⁶ Livy 39.56.1f. (proconsul, 183 BCE). See Livy 40.2.5 for the fact that Sempronius Longus died from disease in his province in 182, a misfortune that prompted the immediate dispatch of the praetors of that year.

⁶⁷ Livy 40.34.1. BROUGHTON 1951, 382 and 385 does not give his opinion on Manlius' gubernatorial title.

Praetorian proconsuls could soon be deployed wherever the Senate saw fit. So much is clear from the case of Ti. Claudius Nero (*pr.* 178) who commanded in Italy in 177 as (*pro praetore*) *pro consule*: Ti. Claudius proconsul, qui praetor priore anno fuerat, cum praesidio legionis unius Pisis praeerat.⁶⁸ Although Ti. Claudius obviously is Italy's first recorded praetorian proconsul his official status has caused needless confusion amongst historians. T. C. BRENNAN, for example, believes Ti. Claudius had been invested with «a special consular command», on the model of, for example, the extraordinary proconsulship given to Scipio Africanus in 210.⁶⁹ TH. MOMMSEN considers Ti. Claudius as the prototype of a praetor given consular *imperium* in Italy in lieu of an absent consul. On the basis of his erroneous assumption that no (pro)praetor commissioned to assist a consul or a consular proconsul could receive consular *imperium*, MOMMSEN believes that (pro)praetors commanding alongside the consuls in Italy or in the navy could not hold consular *imperium*. Only when «der Consul ausnahmsweise eine Provinz übernimmt», MOMMSEN explains, «kann ein Prätor an seiner Stelle das höchste Commando in Italien führen.» One such example occurred in 177: «In diesem Jahre nehmlich commandirte der eine Consul in Sardinien, und an seine Stelle trat in Italien Claudius.»⁷⁰ MOMMSEN's attempt at schematization is, however, beset with problems. First, there is no evidence that there ever existed some binding, if unwritten, rule that Italy always required the presence of both consuls, or, at the very least, two commanders with consular *imperium*. Second, Livy's representation strongly suggests that Ti. Claudius' *imperium* had already been upgraded before the consul Ti. Sempronius Gracchus set out to Sardinia and that the Senate had commissioned him with the important task of monitoring the Ligurians from a position of strength at Italy's northwestern periphery while C. Claudius Pulcher, the other consul of 177, pursued the war in Histria. As soon as that war had been concluded victoriously and Ti. Claudius had advised the Senate of trouble in Liguria, Claudius Pulcher was instructed to lead his army against the Ligurians.⁷¹ From that moment, Ti. Clau-

⁶⁸ Livy 41.12.1.

⁶⁹ BRENNAN 2000, 669. BRENNAN (182–221) needlessly defines (and discusses) commands of the kind held by Ti. Claudius Nero (e.g. «*Ariminium*», «*Tarentum et Sallentini prouincia*») as «The Special Provinciae». A *prouincia* was a *prouincia*, regardless of its permanent or temporary nature and the question whether it was traditionally tied to a certain, more or less defined territorial entity. Such fictitious categories are bound to cause confusion.

⁷⁰ MOMMSEN ³1887, Vol. 2, 649 with n. 2. Although MOMMSEN correctly distinguishes Claudius' command from that of, for example, M. Claudius Marcellus, who owed his «proconsularische Imperium» of 215 to a special vote of the People (cf. also the epilogue *infra*), he doesn't pronounce on how precisely Claudius Nero «für das J. 577 proconsularisches» *imperium* «erhielt». In Vol. 1, 383, MOMMSEN simply asserts that all who commanded *pro consule* under the Republic held twelve *fasces*, «mochten sie diesen Titel in Fortsetzung ihres Consulats oder auf Grund ausserordentlicher Verleihung führen».

⁷¹ Livy 41.11.10–12.3 (*Sub Histrici finem belli apud Ligures concilia de bello haberi coepta. Ti. Claudius proconsul, qui praetor priore anno fuerat, cum praesidio legionis unius Pisis praeerat. Cuius litteris senatus certior factus, eas ipsas litteras ad C. Claudium – nam alter consul iam in Sar-*

dus would have been responsible for securing Pulcher's Italian rear with his legion at Pisa.⁷² The Senate's decision to upgrade Ti. Claudius' *imperium* was therefore probably of an ad hoc nature, dictated by a particular necessity to have another commander with consular *imperium* guard Italy's northwestern rim during the Histrian war, rather than the result of some unattested rule. Under different circumstances the Senate could well have thought it wholly unnecessary to elevate Ti. Claudius' *imperium* just as much as it could have ordered the proconsul to assist the consul in Liguria with his legion.

5. *The ius imperii of the praetores pro consule*

The *genus imperii* of the praetorian proconsuls was the *consulare imperium*. Given the obviousness of this deduction, a brief survey of unequivocal evidence may suffice. First, there is Livy's brief though unambiguous allusion to the *ius imperii* of Iunius Silanus, quoted and discussed in the above. Second, Valerius Maximus defines the *imperium* of T. Aufidius, probably praetor in 67 and proconsul of Asia in 66,⁷³ as *proconsulare* in 6.9.7, an early imperial literary definition of *imperium* exercised *pro consule*. Last but not least, Plutarch in Paul. 4.1f. records the precise circumstances of L. Aemilius Paullus' *prouincia praetoria*⁷⁴ in Hispania Ulterior in 191 BCE:

Συστάντος δὲ τοῦ πρὸς Ἀντίοχον τὸν Μέγαν πολέμου τοῖς Ῥωμαίοις, καὶ τῶν ἡγεμονικωτάτων ἀνδρῶν τετραμμένων πρὸς ἐκεῖνον, ἄλλος ἀπὸ τῆς ἐσπέρας ἀνέστη πόλεμος, ἐν Ἰβηρία κινήσεων μεγάλων γενομένων. ἐπὶ τοῦτον ὁ Αἰμίλιος ἐξεπέμφθη στρατηγός, οὐχ ἕξ ἔχων πελέκεις, ὅσους ἔχουσιν οἱ στρατηγοῦντες, ἀλλὰ προσλαβὼν ἑτέρους τοσοῦτους, ὥστε τῆς ἀρχῆς ὑπατικὸν γενέσθαι τὸ ἀξίωμα. μάχη μὲν οὖν δις ἐκ παρατάξεως ἐνίκησε τοὺς βαρβάρους, περὶ τρισμυρίου ἀνελῶν («After the Romans had gone to war with Antiochus the Great, and while their most experienced commanders were employed against him, another war arose in the West, and there were great commotions in Spain. For this war, Aemilius was sent out as praetor, not with the six axes praetors usually have, but adding another six to that number, so that his office had a consular dignity. Well, then, he defeated the barbarians in two pitched battles, and slew about thirty thousand of them.»).

diniam traicerat – deferendas censet et adicit decretum, quoniam Histria prouincia confecta esset si ei uideretur exercitum traduceret in Ligures.) and 7f. For the consuls of 177 and their impressive military exploits in Histria, Liguria and Sardinia, see BROUGHTON 1951, 397f. Until the emergence of Cisalpine Gaul as a distinct *prouincia* in the first quarter of the first century BCE, any consul operating in Italy's northern periphery would naturally have been accountable for the peninsula's overall security if his colleague happened to command overseas.

⁷² See my forthcoming article on «Crassus' Command in the Third Servile War: a Reassessment» for the fact that the military operations against Spartacus and his associates offer a series of striking examples of how it was perfectly possible for praetorian proconsuls to operate alongside consuls and (consular) proconsuls in Italy.

⁷³ BROUGHTON 1952, 143 and 154. In Flacc. 45, Cicero styles Aufidius praetor, indubitably on the basis of his praetorian rank.

⁷⁴ For the praetorship of Paullus, see also BROUGHTON 1951, 353.

T. R. S. BROUGHTON believes that praetors never held consular *imperium* during their magistracy and only became proconsuls after the expiry of their magisterial tenure, by virtue of their *prorogatio (imperii) ex praetura*.⁷⁵ J.-L. FERRARY rightly questions the assertion that praetors could only become proconsuls after the expiry of their actual praetorship. FERRARY points out that Aemilius Paullus departed for Spain in 191 as *praetor cum imperio consulare* and that «il n'y avait sans doute rien là d'exceptionnel, ce qui explique d'ailleurs que Tite-Live n'en parle pas».⁷⁶ In point of fact, Plutarch's note indicates that the authority of those praetors whose *imperium* was upgraded to consular for the administration of their *prouvinciae* took this form from the very moment they officially assumed their *militiae* command by virtue of the solemn rites of departure on the Capitol, the well-attested procedure of *paludatus exire* (or *proficisci*) *uotis nuncupatis* (or *uota nuncupata*) in *Capitolio*.⁷⁷ It also follows that praetorian *imperium* was never upgraded for the purpose of administering the urban *prouvinciae*, with the exercise of consular *imperium* in the City mostly remaining the exclusive preserve of the consuls.⁷⁸ Upgrades of praetorian *imperium* to *consulare* were

⁷⁵ BROUGHTON 1946, 35–40. Compare also BROUGHTON 1952, 20: as regards the command of Q. Servilius, who was charged with monitoring the Picentes as praetor in 91, BROUGHTON comments that Servilius was sent «as Praetor (or at the end of his praetorship with proconsular *imperium*)». See also DEVELIN 1980, 356f. for this view. On p. 363, DEVELIN observes that if Plutarch's note in Paul. 4.2 would be correct, «this was something new: no *praetor* had ever held proconsular status». DEVELIN therefore believes that it simply regards «a retrojection of the status Paullus actually held in 190».

⁷⁶ FERRARY 2000, 164 n. 17. Compare also FERRARY 1977, 625, where he argues that «nous ne pensons pas qu'il y ait de raison décisive pour refuser d'admettre qu'un préteur en charge pouvait recevoir l'*imperium consulare*». FERRARY here also refers to CIL I² 781 = ILLRP 402 (quoted *infra* in n. 90) as an epigraphic record of the title *praetor pro consule* from the Republican era. MOMMSEN ³1887, Vol. 2, 647 had already suggested that praetors could receive consular *imperium* during their magisterial tenure. The case of Aemilius Paullus also inspired RICHARDSON 1986, 76, to accept that «they held the *imperium pro consule* from the beginning of their holding of their *provinciae*» and to suggest that praetors sent to Spain held *imperium pro consule* «at least by the end of their tenure». None of these scholars, however, explain precisely from when the praetorian proconsuls began to exercise their consular *imperium*.

⁷⁷ For an excellent study of the praetorian *profectio*, see HURLET 2010, 45–72. Although the focus of this study is on the last three decades of the Republic many of its findings are relevant to the preceding period. For the formula *paludatus exire uotis nuncupatis in Capitolio* and its variants, see esp. (the notes on) pp. 45f. As HURLET explains (45), «Le gouverneur revêtait à un moment ou un autre de cette cérémonie le costume de guerre porté par les généraux romains, le *paludamentum*, après avoir abandonné la toge (c'est la *mutatio uestis*); les lecteurs changeaient également de tenue pour s'habiller de la même manière que le gouverneur et ajoutaient les haches aux faisceaux qu'ils portaient au-devant du general en tant qu'*insignia imperii*.»

⁷⁸ The only regular exceptions to this rule were ad hoc grants of *consulare imperium* to consular and praetorian proconsuls for the day of their ovation or triumph. For the fact that Cn. Pompeius (*cos.* 70, II 55, III 52) in 57 received the most unusual and conditional prerogative to operate within the City as proconsul in charge of the *cura annonae*, see VERVAET 2010, 149–154. As MOMMSEN points out in ³1887, Vol. 2, 650, Domitianus is the only recorded praetor ever to

thus confined to praetors departing for their provincial commands *militiae* or to those propraetors who did not yet hold consular *imperium* and received some new *provincia* requiring such enhanced authority.⁷⁹

Careful analysis of the scope of the Metilian Law dispels the lingering supposition that praetorian proconsuls would have held both *praetorium* and *consulare imperium*. As regards the practice of granting *consulare imperium* to the praetors sent to Hispania, MOMMSEN, for example, explains: «Selbstverständlich erstreckt sich diese Cumulation auch auf die aus der Prorogation hervorgehende Proprätur.»⁸⁰ With regard to the case of Q. Tullius Cicero, praetor and then (*pro praetore*) *pro consule* in Asia in 62/61, K. M. GIRARDET observes: «Er wird also, wie alle anderen Prätoeren auch, sich vor Amtsende in den Bereich *extra pomerium* begeben haben, und er war dann, zusätzlich ausgestattet mit *imperium consulare (militiae)*, ein *praetor pro consule* in der Provinz Asia.»⁸¹ Technically, the matter is as clear as it is simple: so long as one was *praetor pro consule*, one combined the magisterial title of praetor with the *consulare imperium*; as soon as one was *pro praetore pro consule*, one combined the title of *pro praetore* with the *consulare imperium*. In either case, the official involved was entitled to carry the additional, more prestigious and authoritative, title of proconsul, which apparently became the preferred denomination after expiry of the actual *praetura* (cf. infra). At any rate, since the procedure of investing certain praetors with consular *imperium* involved an upgrade of their existing (*praetorium*) *imperium* rather than the conferral of a new (consular) *imperium*, BADIAN's suggestion that «essentially (i.e. the

have received consular *imperium* for use in Rome in 70 CE: see Suet. Dom. 1 (*honorem praeturae urbanae consulari potestate suscepit*) and Tac. Hist. 4.3 (*praetura Domitiano et consulare imperium decernuntur*).

⁷⁹ Although GIOVANNINI 1983, 64 is adamant that «le titre de proconsul que portent parfois et même souvent les gouverneurs de province de rang prétoerien ne découle pas de leur *prorogatio*» and signifies «qu'ils ont les pouvoirs d'un consul sans être consuls» he offers no explanation as to how and why certain praetorian imperators held consular *imperium*. GIOVANNINI's assertion (65) that «Un *praetor pro consule* est un gouverneur de province qui cumule les fonctions de préteur et de consul» is incorrect in that a praetorian proconsul really was (pro)praetor authorized *ex s.c.* to exercise by virtue of his enhanced *imperium* those consular prerogatives that were not associated with the *nomen consulis* (i.e., the magistracy of consul) such as, for example, the *ius agendi cum populo* and the *ius senatus habendi*. See Livy 3.33.2 for the important distinction between the *consulum nomen imperiumque*; compare also Dio 55.10.8.

⁸⁰ MOMMSEN ³1887, Vol. 2, 647. In his précis of the *praetura pro consule* (647–650) MOMMSEN consistently uses such terms as the «Cumulation» or «Combination» of (pro)praetorship and consular *imperium*.

⁸¹ GIRARDET 2001, 182 n. 115. This misconception also crept into some of RICHARDSON's explanation of why (1986, 46 n. 68) Iunius Silanus cannot have held *consulare imperium* in Spain alongside Scipio from 210: «*Praetor pro consule*, the office of praetor with the *imperium* of a consul, was certainly used later [...] but *propraetor pro consule*, the *imperium* of praetor and consul combined, would be anomalous or impossible». Whereas, technically, a *praetor pro consule* would become a *pro praetore pro consule* after the expiry of his magisterial office, his *imperium* would continue to be consular tout court.

fact that they were of praetorian status) there was no difference between their case and that of a *priuatus* given *imperium*» can be dismissed as altogether wrong.⁸²

In this context, it is also very important to point out that when a consul or a consular proconsul and a praetorian proconsul shared their provincial command, the latter would normally be expected to defer the high command, the so-called *summum imperium auspiciumque*, to the consul or the consular proconsul respectively by virtue of his inferior senatorial rank, regardless of the fact that all these officials held the same *consulare imperium*.⁸³ MOMMSEN is therefore mistaken to believe that the principle of what he defines as the «Einheit des militärischen Oberbefehls» resulted in the following rule: «Diese Combination von Prätur und Proconsulat kommt [...] nur vor bei den in ihrem Sprengel als höchste Commando führenden Prätoeren. Nie erhält consularisches Imperium der Prätör oder Proprätör, welcher einem Consul oder Proconsul als Gehülfe beigegeben wird, was in den grossen Kriegen der Republik häufig geschehen [...] und in der Provinzialordnung der Kaiserzeit zu einer festen Einrichtung (*quaestor pro praetore, legatus pro praetore*) geworden ist.» It also follows, MOMMSEN goes on to explain, that there normally were no proconsuls «unter den in Italien oder auf der Flotte neben den Consuln verwendeten Prätoeren und Proprätöeren der Republik».⁸⁴ Praetorian proconsuls could perfectly share their provincial commands with consuls or consular proconsuls, the latter being entitled to the *summum imperium auspiciumque* by virtue of their office and their superior senatorial rank successively.⁸⁵ MOMMSEN here also fails to distinguish between holders of independent *imperium auspiciumque*, whether *praetorium* or *consulare*, and delegated/derivative *praetorium imperium*, the latter category lacking *auspicium* of their own.⁸⁶

6. The official title(s) of the praetorian proconsuls

As this inquiry represents the first investigation of the *praetura pro consule* as a republican institutional practice in its own right, it should not come as a surprise that, so far, few scholars have expressed clear views on this matter. In his brief but rich treatment of what he termed the «Proconsulat des Prätoers», MOMMSEN suggests:

⁸² BADIEN 1965, 111f.

⁸³ This as opposed to the position of M. Minucius under the Metilian Law, as this statute had not only upgraded his *imperium* but also authorized him to command on a footing of equality (*pari imperio*) with the dictator Fabius Maximus.

⁸⁴ MOMMSEN ³1887, Vol. 2, 649.

⁸⁵ For praetorian proconsuls being normally subordinate to consuls and consular proconsuls, see also chapters 6 (The consuls and the *provinciae Populi Romani*) and 7 (The hierarchy of *imperatores* in *provinciae permixtae*) of my forthcoming monograph on the «Roman High Command. The Principle of the *summum imperium auspiciumque* under the Roman Republic».

⁸⁶ Compare in this sense also the pertinent remarks in FERRARY 2000, 350.

«Hinsichtlich der Titulatur ist zu unterscheiden, ob das consularische Imperium verbunden wird mit der wirklichen oder mit der prorogierten Prätur. In dem ersten Fall treten die beiden dem Beamten zukommenden Bezeichnungen *praetor* und *pro consule* sowohl alternierend auf [...] wie auch cumuliert als *praetor pro consule*, griechisch στρατηγός ἀνθύπατος, wofür auch στρατηγός ὑπατος oder ἀρχιστράτηγος gesetzt wird. In dem zweiten Fall dagegen verschwindet regelmässig die auf der Prorogation ruhende Bezeichnung *pro praetore* und wird die Bezeichnung *pro consule* ausschliesslich geführt.»⁸⁷

In his thought-provoking and equally substantial study on *consulare imperium*, GIOVANNINI, however, categorically argues:

«Le gouverneur de province qui a reçu son commandement pendant ou à la fin de sa préture, s'appelle habituellement *praetor*, titre qui se traduit en grec par στρατηγός. Parfois, dans les inscriptions honorifiques, ils est *praetor proconsule*, à quoi correspond en grec le titre στρατηγός ἀνθύπατος. Assez fréquemment, il est seulement proconsul. Mais jamais, absolument jamais, il n'est propréteur: il n'y a, dans les textes littéraires et dans les inscriptions d'époque républicaine, aucun exemple d'un gouverneur qui, ayant reçu sa province de par sa préture, porte le titre de propréteur. Ce titre est réservé à des personnes qui exercent un gouvernement de province ou un commandement militaire sans avoir été préteurs ou plusieurs années après avoir exercé une magistrature, qu'il s'agisse du consulat ou de la préture, de sorte qu'il n'y a plus de relation légale entre la magistrature exercée et le commandement reçu.»⁸⁸

In his magnum opus on the Roman praetorship under the Republic, BRENNAN simply asserts that «a prorogued consul is usually termed <pro consule> (<in place of a consul>), a prorogued praetor is termed <pro praetore>; however, sometimes they are simply called <consul> and <praetor>», a simplistic conclusion rightly disputed by G. ROWE.⁸⁹

Although this matter deserves to be investigated further, and no final conclusions should be made before that happens, some logical deductions consistent with a survey of the sources nonetheless do suggest a series of preliminary findings. Technically, in terms of public law, a praetor holding consular *imperium* could style himself as a *praetor pro consule*, and next, after formal *prorogatio imperii*, a *pro praetore pro consule*.

⁸⁷ MOMMSEN ³1887, Vol. 2, 650. In n. 2 MOMMSEN further explains: «In den Inschriften des M. Coelius Vinicianus Volkstribuns im J. 701 [=53 BCE] (C. XIV, 2602), des M. Cordius Rufus (C. XIV, 2603) (cf. infra n. 90 for both these inscriptions) und anderen (vgl. C.I.L. I, p. 188) aus derselben Zeit ist *praetor pro consule* so gestellt, dass beides nothwendig als ein Amt gefasst werden muss. So lange Prätur und Provinzialstatthalterschaft noch zeitlich zusammenhingen (und dieser Epoche gehören jene Inschriften an), konnte man beide juristisch nur als ein Amt betrachten; und wenn die Functionen eines Beamten, der sich in Rom *praetor*, in seiner Provinz *pro consule* titulierte, für den *cursus honorum* ausgedrückt werden sollten, bot sich dafür kein anderer Ausdruck dar als die Zusammenfassung *praetor pro consule*.» His evidence, however, for στρατηγός ὑπατος or ἀρχιστράτηγος as Greek equivalents of *praetor pro consule* (listed in nn. 3 and 4) is very flimsy, with the material for ἀρχιστράτηγος all from after 50 BCE. The equation of *provincia* («Provinzialstatthalterschaft») and *consulare imperium* is incorrect and confusing.

⁸⁸ GIOVANNINI 1983, 59–65, cf. esp. 62ff. (with the quote from p. 62).

⁸⁹ BRENNAN 2000, 73; ROWE 2001.

Whereas the title of *praetor pro consule* is epigraphically recorded,⁹⁰ there is, it should be acknowledged, no surviving Latin attestation of an individual *pro praetore pro consule*. The sources also seem to suggest that praetorian proconsuls were mostly called either by the generic title of *praetor*, even after formal *prorogatio imperii*,⁹¹ or simply

⁹⁰ ILLRP 391 = CIL I² 761 (L. Caecilio L. f. Rufo, / q., tr. pl., pr. pro cos.); 393 = CIL I² 811 = CIL X 6462 = ILS 5529 ([M.? Aemilius] Scaurus pr. pro cos. basilicam ---); 402 = CIL I² 781 = CIL 14 2602 (M. Coelio M. f. Viniciano / pr. pro cos. / tr. pl. q. / Opsilia uxor fecit); 414 = CIL I² 782 = CIL 14 2603 (M. Cordi M. f. / Rufo, / pr. pro cos., / aed. lustr., mon. sacr.); 438 = CIL I² 2515 (L. Caecina L. f.), / q., tr. p., p. pr. cos., / IIIuir i. d., / sua pecunia uias / strauit and 443 = CIL I² 837 (Q. Sanquinius / Q. f. Stel., / q., tr. pl., pr. / pro cos.); ILS 47 (C. Octavius C. f. C. n. C. pr[on.] / pater Augusti /, tr. mil. bis., q., aed. pl. cum / C. Toranio, / iudex quaestionum, / pr. pro cos., imperator appellatus / ex prouincia Macedonia.). The Greek equivalent of *praetor pro consule* indeed was στρατηγὸς ἀνθύπατος: see, e.g., IGR IV 1116 (Rhodus: [M]άρκου Ἀντωνίου στραταγοῦ ἀνθυπά[ι]του) and ILLRP 358; for what still is a fine anthology of such epigraphic attestations in Greek, see FOUCART 1899, 263–266. BROUGHTON 1946, 40 questions the validity of the title *praetor pro consule* and suggests that praetorian proconsuls continued to be named praetor during their tenure and only assumed the title of proconsul after their actual year of office. Although this discussion is largely semantic, as Plutarch's note on the number of axes held by Aemilius Paullus shows that he held *consulare imperium* as praetor in 191, there is no valid reason to reject the possibility that praetors holding consular *imperium* could style themselves as *praetor pro consule*.

⁹¹ For (a series of examples of) the general fact that propraetors are often termed *praetor* in the literary sources, see MOMMSEN ³1887, Vol. 1, 638 and Vol. 2, 240 n. 5 and 648; and GIOVANNINI 1983, 60f. Compare also B.C. 1.6, where Caesar defines the propraetors sent to the praetorian provinces under the terms of the *lex Pompeia* of 52 as praetors: *Prouinciae priuatis decernuntur duae consulares, reliquae praetoriae. Scipioni obuenerit Syria, L. Domitio Gallia; Philippus et Cotta priuato consilio praetereuntur, neque eorum sortes deiciuntur. In reliquis prouinciis praetores mittuntur*. Although MOMMSEN (in his comment on the inscription) and, for example, also BROUGHTON 1951, 320 and GIOVANNINI 1983, 62 n. 8 believe CIL I² 2.610 = CIL 14 4268 (C. Aurelius C. f. / praetor / iterum didit / eisdem consl [sic!] / probauit) to be a rare epigraphic example of a propraetor being named simply praetor, this inscription should be taken at face value as recording that C. Aurelius Cotta, pr. 202 and cos. 200, indeed was *praetor iterum* in 201. For examples of praetorian proconsuls being called *praetor*, regardless of the expiry of magisterial tenure, see, e.g., Cic. Flacc. 27, 31 and 43 (L. Valerius Flaccus, pr. 63 and governor of Asia in 62, compare also Caes. B.C. 3.53.2: *qui praetor Asiam obtinuerat*); Cael. 10 (L. Sergius Catilina, pr. 68, as governor of Africa in 67/66); and Att. 4.15.2 (Rome, 27 July 54, referring to C. Claudius Pulcher, pr. 56 and governor of Asia from 55 to 53 – see, however, BROUGHTON 1952, 218 for the fact that cistophori of three cities attest his title of proconsul); Caes. B.C. 3.53 (L. Valerius Flaccus, praetor in Asia); Liv. Per. 68; Tac. Ann. 1.74 (Bithynia) and 4.43 (Achaia). For the fact that Cicero mostly refers to the governors of Asia from 80 to 53 as praetor, not as proconsul, whereas «toutes les inscriptions et monnaies concernant les gouverneurs d'Asie entre 80 et 53 les qualifient d'ἀνθύπατος» (with I.Mylasa 109 as the only exception), see FERRARY's illuminating survey in 2000, 348f. As FERRARY (349) explains, «Seul comptait vraiment, en fait, devant le public romain de ces procès, la distinction entre un gouverneur de rang prétorien, quelle que fût la nature de son imperium, et un gouverneur de rang consulaire comme Lucullus [...]; dans le premier cas, *praetor*, restait le terme le plus usuel, même si *pro consule* pouvait être utilisé de temps en temps.» Nonetheless, MOMMSEN ³1887, Vol. 2, 240 n. 5 rightly emphasizes: «Im titularen Sprachgebrauch halten die Römer *praetor* und *pro praetore* sowie *consul* und *pro consule* streng ausein-

proconsul.⁹² By contrast, no consular proconsul is ever termed *praetor*, and no (pro)praetor holding merely *praetorium imperium* ever *proconsul*.⁹³ It also is also reasonable to suppose that praetorian proconsuls would continue to use the title of *praetor* in official business for the duration of their magisterial tenure, solely or in conjunction with *pro consule*, whereas the additional title of proconsul would prevail after prorogation. So long as one held what still was one of the *magistratus maiores* of the Roman People, the prestige attached to the title of *praetor* probably guaranteed its use in public affairs.⁹⁴ After the expiry of magisterial tenure, however, the more prestig-

ander. Die Unterscheidung der Magistratur und der Promagistratur tritt schon in dem Senatusconsult über die Bacchanalien vom J. 568 auf und sie ist titular wahrscheinlich so alt wie der Gegensatz selbst; in solchen Dingen ist der strenge Sprachgebrauch immer auch der ältere.» For just one example that proves MOMMSEN right, see Livy 42.10 where his summary of the *s.c. de prouinciis* of March 214 clearly distinguishes between praetors and propraeors.

⁹² For examples of praetorian proconsuls being styled simply proconsul, see ILLRP 342 = CIL I² 2662 (*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 constituit*) and Cic. De Or. 1.82 (*tamen cum pro consule in Ciliciam proficiscens*), the M. Antonius involved being the praetor of 102 and consul of 99); SEG 37, 958 (Q. Tullius Cicero, praetor in 62 and governor of Asia from 61 to 58, honoured as ἀνθύπατος by the people of Clarus – in Diu. 1.58, Cicero post factum also styles his brother *Asiae pro consule*, whereas he invariably refers to him *praetor* in his correspondence); Cic. Fam. 5.1f. (62 BCE: Gallia Cisalpina); 10.32.2 (43 BCE, concerning a praetorian proconsul of 56 BCE in Hispania Ulterior); 13.6 and 6a (56 or 55 BCE: Africa); 13.40 (55 or 54 BCE: Macedonia); 12.11f. (43 BCE: C. Cassius Longinus, *pr.* 44, proconsul with an extraordinary commission in 43); Cic. Leg. 1.53 (*Gellium, familiarum tuum, cum pro consule ex praetura in Graeciam uenisset*); De Or. 1.82; Cael. 73; Diu. 1.58; Phil. 2.97, 10.26 and 11.30f. (concerning the proconsuls M. Iunius Brutus and C. Cassius Longinus, both praetors in 44 BCE); Livy 35.22.6 and 39.56.1f.; and Tac. Ann. 16.18 (Bithynia) and Hist. 1.48 (Narbonensis). The examples from Tacitus in this and the previous note admittedly concern the situation under the early Empire following the provincial reorganization of 27 BCE.

⁹³ To the best of my knowledge, there is no single instance of a consular proconsul being styled *praetor* in the extant Latin sources. In Greek sources, however, both consuls and proconsuls and, for that matter, all other Roman imperators could be termed στρατηγός in its general sense of commander: see, e.g., I.Mylasa 190, where M. Iunius Silanus, *procos. Asiae* in 76 BCE (Pliny N.H. 2.100 with FERRARY 2000, 348), is styled στρατηγός at the time of his arrival in an honorary decree. FERRARY (350) rightly explains that the term στρατηγός here «conformément à un usage ancien, désigne de manière générale un magistrat romain à la tête d'une armée, le gouverneur d'une province». Another example is M. Iuncus, *pr.* 76 and governor of Asia in 75 (BROUGHTON 1952, 98 and FERRARY 2000, 348), termed proconsul in Vell. 2.42.3 but στρατηγός in Plut. Caes. 2.6. Likely examples of praetors holding provincial commands without consular *imperium* being termed propraeor after *prorogatio imperii* can be found in, e.g., Livy 37.50.13, with BROUGHTON 1951, 356 and 362f.

⁹⁴ For fact that along with the *censura* and the *consulatus*, the *praetura* ranked amongst the *magistratus maiores* of the Roman People, see the augur M. Valerius Messalla (*cos.* 53) in Gell. 13.15.4: ranked in order of their importance, the defining qualities of the higher magistracies were (1) that they held a certain *potestas* of *auspicia patriciorum maxima* (confirmed by virtue of a *lex curiata*) and (2) that were elected by the *comitia centuriata*, as opposed to the *magistratus minores*, who held the *auspicia patriciorum minora* and were elected in the *comitia tributa*.

ious and authoritative title of *pro consule* would eclipse and suppress that of *pro praetore*.⁹⁵ In Leg. 1.53, for example, Cicero recounts an anecdote about L. Gellius Poplicola (*cos. 72*), *cum pro consule ex praetura in Graeciam uenisset essetque Athenis*. Gellius was praetor in 94 and praetorian proconsul of Asia or Cilicia in 93.⁹⁶ In the *Fasti Triumphales* all praetorian proconsuls are invariably recorded as having celebrated their ovations and triumphs *pro consule*. In this respect, it is also interesting to observe that in the inscriptions of Clarus honouring the Roman governors of Asia the shorter title of ἀνθύπατος had by the 60's BCE replaced the fuller denomination of στρατηγός ἀνθύπατος, still current in the 90's BCE.⁹⁷ This change nicely corresponds with the fact that the praetors were tied to their urban obligations and only left Rome by the end of December following the Sullan reforms concerning the praetorship and the *quaestiones perpetuae*.⁹⁸

Certain sections of the surviving Greek copies of the so-called *lex de prouinciis praetoriis* of 100 BCE may further strengthen these preliminary findings.⁹⁹ In my opinion, these (partially overlapping) fragments offer a unique window into the official denominations of the praetorian proconsuls at the various stages of their tenure. First, Column 4, ll. 31–39 of the Cnidian copy of the statute strongly suggests that praetors sent overseas with consular *imperium* would leave Italy as praetors and eventually return as proconsuls:

ἐὰν οὐτ[ο]ς ὁ στρατηγός ὡι τῆς Ἀσίας Μακεδονίας τε ἐπαρ[χ]εία ἐγένετο τῆς ἀρχῆς αὐτὸν ἀπέιπη ἢ ἀπέιπται, ὡς ἐν ἐπιταγῇ ἐξουσία πάντων πραγμάτων ἐ[π]ιστροφῆν τε ποιῆσθαι κολάζειν δικαιοδοτεῖν κρείνει[ν κ]ριτὰς ξενοκρίτας διδόναι ἀναδόχων κτημάτων ΤΕ[.]ΓΑΡΟ-ΔΟΣΕΙΣ ἀπελευθερώσεις ὡσαύτης κατὰ τὴν δικαιοδοσίαν ἔστω καθὼς ἐν τῇ ἀρχῇ ὑπῆρχεν οὐ[τ]ὸς τε ὁ ἀνθύπατος ἕως τούτου ἕως ἂν εἰς πόλ[ι]ν Ῥώμην ἐπανεῖληθι ἔστω¹⁰⁰ («If the praetor to whom the province of Asia or Macedonia shall have fallen abdicate from his magistracy, as described in his *mandata*, he is to have power in all matters according to his jurisdiction just as it existed in his magistracy, to punish, to coerce, to administer justice, to judge, to appoint *iudices*

⁹⁵ Compare also MOMMSEN ³1887, Vol. 2, 647 n. 2, who argues that «beide Bezeichnungen [i.e., *pro consule*, on the one hand, and *praetor* or, «insofern ihr Imperium prorogirt ist», *pro praetore* on the other hand] sind gleich richtig; im titularen Gebrauch wiegt die erstere vor, die zweite dagegen da wo die magistratische Stellung definirt oder auch der Gegensatz zwischen dem ordentlichen und dem prorogirten Imperium hervorgehoben werden soll.»

⁹⁶ BROUGHTON 1952, 12 and 15.

⁹⁷ See FERRARY 2000, 334–353. According to FERRARY «on retrouve à Claros l'évolution courante de la traduction grecque du titre proconsulaire». To my thinking, this observation should be qualified in that it here concerns an evolution in the nomenclature of praetorian proconsuls.

⁹⁸ For a compelling discussion of the time of departure for praetorian governors until the *lex Pompeia* of 52, see HURLET 2010, 45–72.

⁹⁹ I have used the excellent edition of (the surviving fragments of) this statute published in CRAWFORD 1996, 231–270.

¹⁰⁰ CRAWFORD 1996, 242.

and *recuperatores*, ‘registrations’ of guarantors and securities, emancipations, and he is to be proconsul until the very moment of his return to the city of Rome.». ¹⁰¹

Two other considerations give further support to this interpretation. First, the words τῆς ἀρχῆς αὐτὸν ἀπέπιπῃ ἢ ἀπέπιπται clearly refer to the act of *se magistratu abdicare* = *uoluntate abire magistratu*.¹⁰² A promagistrate could only conduct the act of *imperium* (or *potestatem*) *deponere* and normally only lost the (*consulare* or *praetorium*) *imperium* he held *pro magistratu* when crossing the *pomerium* into the City. Second, the title of ἀνθύπατος (= *pro consule*) is invariably used in sequential conjunction with στρατηγός (= *praetor*) or στρατηγός ἢ ἀντιστράτηγος (= *praetor proue praetore*) elsewhere in the remaining fragments. Examples of στρατηγός ἀνθύπατος or στρατηγός ἢ ἀνθύπατος are on record in Cnidus Copy, Column 3, l. 22; Delphi Copy, Block B, l. 20; Cnidus Copy, Column 4, l. 25; and Delphi Copy, Block C, ll. 8f.¹⁰³ The full definition of στρατηγός ἀντιστράτηγος ἀνθύπατος or στρατηγός ἢ ἀντιστράτηγος ἢ ἀνθύπατος figures in Cnidus Copy, Column 2, ll. 13 f.; Delphi Copy, Block B, l. 27; and

¹⁰¹ The explicit reference to the proconsulship *usque quoad in urbem Romam redierit* here concerns an intentional nuance in the text overlooked in the editor’s translation (CRAWFORD 1996, 255), which reads as follows: «If the praetor or proconsul to whom the province of Asia or Macedonia shall have fallen abdicate from his magistracy, as described in his *mandata*, he is to have power in all matters according to his jurisdiction just as it existed in his magistracy, to punish, to coerce, to administer justice, to judge, to appoint iudices and *recuperatores*, ‘registrations’ of guarantors and securities, emancipations, and he is to be ‘immune from prosecution’ until he return to the city of Rome.» An alternative translation accounting for the *vacat* would read as follows: «and the proconsul is to be ‘immune from prosecution’ until the very moment of his return to the city of Rome.» In my view, this further clarification is not strictly necessary since immunity from prosecution follows from retaining proconsular rank until returning *intra urbem*. Interestingly, the reconstructed Latin original in CRAWFORD 1996, 250 correctly separates the title of praetor and that of proconsul but omits any mention of the latter: *si is praetor, cui Asia Macedoniae prouincia obuenerit, a magistratu se abdicauerit, uti in mandatis omnium rerum potestas, animaduertere coercere ius dicere iudicare, iudices recuperatores dare, praedium praediorum ‘subsignationes’, manumissiones, ita e iurisdictione, uti (ei) in magistratu erat, esto isque ??? usque eo quoad in urbem redierit esto.*

¹⁰² As COLI 1953, 404 explains, the magistracies *ad tempus certum* such as the consulship and the praetorship would lapse *ipso iure* after expiry of the annual term, even if the magistrate did not officially abdicate, a form of *cessatio* technically defined as *magistratu abire*: «Il giuramento *in leges* e il discorso *in contione* erano formalità dell’*abire magistratu*, paragonabili alle formalità dell’*inire magistratum*; ma l’*abire magistratu*, ossia l’uscita dalla carica, poteva aver luogo automaticamente, per l’arrivo della scadenza fissa, o volontariamente, per abdicazione. L’abdicazione veniva fatta dal magistrato che non era soggetto o non era ancora soggetto a perdere la carica per effetto della scadenza.» If they had not been granted the right further to exercise the *potestas* of the magistracy concerned by virtue of explicit *prorogatio imperii* their occupants irreversibly became private citizens. This clause from the *lex de prouinciis praetoriis* seems to suggest that magistrates holding provincial commands at the time of expiry of their annual tenure preferred (or were expected to follow) the active procedure of *se magistratu abdicare* = *uoluntate abire magistratu* rather than the passive process of *abire magistratu*.

¹⁰³ See, respectively, CRAWFORD 1996, 239, 240 and 242.

Cnidus Copy, Column 4, l. 5.¹⁰⁴ All these passages indicate that both Macedonia and Asia were governed by praetorian proconsuls at the time this statute was passed and that the praetors who would receive these provinces by virtue of this statute likewise were to administer them with consular *imperium*.¹⁰⁵ In the commentary on ll. 13–15 of Column 2 of the Cnidus Copy, it is suggested that:

«Translations of gubernatorial titlature are erratic: the full formula should doubtless be as here: compare the Delphi Copy, Block B, l. 27 = the Cnidus Copy, Column IV, l. 5, though it is here used unthinkingly, since there was presumably only one governor actually in office; but στρατηγός ἢ ἀνθύπατος *vel sim.* also occurs, in the Cnidus Copy, Column III, l. 22; the Delphi Copy, Block B, l. 20 (restored); the Cnidus Copy, Column IV, l. 25; the Delphi Copy, Block C, l. 8 (restored: HCR were wrong to suppose anything had been omitted by the engraver here); and στρατηγός occurs alone in the Cnidus Copy, Column IV, l. 31, and perhaps in the Delphi Copy, Block A, l. 8.»¹⁰⁶

In my view, these translations from the original Latin terms of *praetor proue consule* or *praetor proue praetore proue consule* are quite accurate and at no time used unthinkingly. As in Latin, these descriptive terms are meant to define as meticulously as possible (the various stages in) the official position and titles of the individual praetorian governors of Macedonia, Asia and, perhaps, Cilicia, in their capacity of (*pro*)*praetores pro consule*.¹⁰⁷ In point of fact, the inclusion of the words *proue praetore* in the full and inclusive summation of the titles of the praetorian proconsuls sent to certain eastern provinces by virtue of the *lex de prouinciis praetoriis* (*viz. praetor proue praetore proue consule*) suggests that, technically, they became *pro praetore pro consule* after the expiry of their praetorship, regardless of the fact that this full title is not recorded for any individual praetorian proconsul and they are mostly referred to as praetors or proconsuls. Only the minutiae of a contentious piece of popular legislation required the kind of absolute clarity and detail on record in the surviving fragments. Indeed, had praetorian proconsuls departed for their provinces as praetors and then legally become proconsuls tout court after the expiry of their magistracy, the inclusion of the term *proue praetore* would have been altogether unnecessary.

Although the Metilian Law certainly set the precedent for the constitutional procedure of upgrading existing *imperia*, there is every indication that M. Minucius stayed on as *magister equitum* after its vote, even though the upgrade of his *imperium* certainly meant that he could have added the specification *pro dictatore* to his title.

¹⁰⁴ See CRAWFORD 1996, 238 and 241.

¹⁰⁵ See esp. ll. 5f. and 31–39 of Column 4 of the Cnidus Copy.

¹⁰⁶ CRAWFORD 1996, 259.

¹⁰⁷ That this statute made Cilicia a *prouincia praetoria* is clear from Cnidus Copy, Column 3, ll. 28–37 as published in CRAWFORD 1996, 239. As the law provided for Asia and Macedonia to be governed by *praetores pro consule*, the same is likely for Cilicia. In 102, the praetor M. Antonius (*cos.* 99) had been sent there as proconsul to fight piracy, a command he held until 100, when he celebrated a triumph for his successes in December: *vide supra* n. 92 and BROUGHTON 1951, 568, 572 and 576.

Since the *lex Metilia* was an ad hoc statute, as opposed to the enduring practice of upgrading praetorian *imperia*, and the dictator Fabius had been slighted enough by its vote, this should not come as a surprise.¹⁰⁸ Nonetheless, that Minucius continued to command as *magister equitum* even after his *imperium* had been redefined as *dictatorium* does show that an official whose *imperium* was upgraded retained his original title. That praetorian proconsuls were often termed praetors tout court therefore does not reflect their senatorial rank alone. This practice also indicates that they retained the title of *praetor* or *pro praetore*, depending on their precise official status (magistrate or promagistrate). Although they also regularly carried the title of proconsul, their full official denomination would therefore have been (*pro*) *praetor(e) pro consule*. The very fact that Livy often terms praetorian proconsuls either *propraetors* or *proconsuls* after the expiry of their praetorship further corroborates this conclusion.¹⁰⁹

¹⁰⁸ See VERVAET 2007 (esp. 218–220: ‘The Matter of Official Titulature’).

¹⁰⁹ P. Cornelius Scipio Nasica, in charge of Hispania Ulterior, wins a series of victories beyond the Ebro as *praetor* in 194 and next as *pro praetore* against the Lusitani in 193: 35.1–3–5. His successor M. Fulvius Nobilior (*pr.* 193) administers this province as proconsul in 192: 35.22.6. In 186, C. Atinius (*pr.* 188) is killed in action as *propraetor* in Hispania Ulterior: 39.21.4. In 183, A. Terentius Varro and P. Sempronius Longus, put in charge of Citerior and Ulterior successively as praetors in 184, are first styled proconsuls for 183 (39.56.1f.), with Terentius being subsequently termed *propraetor* (40.2.5) and Sempronius *proconsul* (40.16.8) for 182. Contra GIOVANNINI 1983, 59f., who seizes on this string of examples to assert that Livy’s allegedly arbitrary use of titles is the main cause of the uncertainty surrounding the nomenclature of promagistrates and claims that «on ne peut se fier à Tite-Live pour la titulature des promagistrats». In a similarly disparaging vein, RICHARDSON 1986, 76 argues that Livy refers to the praetorian proconsuls of Spain «somewhat inconsistently as praetors, *propraetors* or proconsuls». As the *Fasti Triumphales* list those of them who celebrated ovations or triumphs as *pro consule* RICHARDSON suggests this was their (only) correct title, at least from «the beginning of their holding their *provincia*». To my thinking, this consistent practice of Livy further suggests that, technically, a *praetor pro consule* indeed became a *pro praetore pro consule* after the expiry of the *praetura*. For the sake of literary aesthetics and variety, Livy alternates the use of either the *propraetorian* or the proconsular component of the full official denomination of praetorian proconsuls with pro-rogued *imperium*. GIOVANNINI 1983, 63f. is equally wrong to assert that «pour un préteur qui, pendant ou à la fin de sa préture à Rome, reçoit le gouvernement d’une province, préture à Rome et préture provinciale forment un tout indivisible, sa préture provinciale découle de sa préture urbaine et en est le prolongement», and that «en tant que préteur prorogué, un gouverneur de province est et reste *praetor*». In terms of public law, there were important differences between a magistrate and a promagistrate, and between *imperium* being exercised *domi* (i.e., in the civil sphere) and *militiae* (i.e., in military matters), regardless of the question whether a promagistrate had assumed his provincial command *ex magistratu* or as a private citizen. In his summary of Roman promagisterial nomenclature GIOVANNINI also fails to distinguish clearly between full and delegated/derived *imperium*.

7. Frequency and rationale

W. F. JASHEMSKI suggests that from 197 BCE to the last decades of the Republic, the practice of assigning *imperium* to private citizens was replaced by that of ‘granting’ ‘proconsular *imperium*’ to praetors. This evolution was reinforced by the simple reality that there were now enough praetors who could be given ‘proconsular *imperium*’ wherever necessary.¹¹⁰ JASHEMSKI also argues that the fact that praetorian proconsuls are attested for a growing number of provinces does certainly not imply that, eventually, all provinces were permanently administered by such officials. She believes this claim can only be made with certainty for the Spanish provinces and, at least as regards the post-Sullan era, for the province of Asia.¹¹¹ Nonetheless, the vast majority of scholars now believe that, at the very latest from the dictatorship of Sulla, the practice of sending out praetorian proconsuls had been institutionalized and generalized. MOMMSEN’s relevant views are somewhat blurred by inconsistency as he observes that:

«Im siebenten Jahrhundert hat diese anfänglich auf Spanien eingeschränkte Cumulation der Prätur, resp. Proprätur mit dem Proconsulat weiter um sich gegriffen: dem Statthalter von Asia kommt wenigstens seit Sulla diese Titulatur ebenso zu wie den spanischen, und auch sonst begegnet sie häufig; ja in der ciceronischen Zeit sind Statthalter, die auf Grund der Prätur fungiren und sich mit dem proprätorischen Titel begnügen, bereits selten geworden, obwohl dies immer noch der normale Amtstitel und die Combination von Prätur und Proconsulat in republikanischer Zeit Ausnahme geblieben ist.»¹¹²

As P. WILLEMS’ contribution to the debate has the merit of clarity, he may be considered as the most influential advocate of the idea that by virtue of some Sullan reform, all praetors were sent to the provinces with consular *imperium*. According to WILLEMS,

«Sulla introduisit une autre innovation importante. La loi Cornélienne décida que les huit préteurs, pendant l’année de leur charge, resteraient à Rome pour administrer les provinces préto-riennes judiciaires [...] et qu’immédiatement après la préture ils auraient droit au gouvernement d’une province extra-Italique, qu’ils administreraient *pro consule*. C’est le titre officiel que la loi Cornélienne reconnaissait à tous les gouverneurs de rang prétorien.»¹¹³

¹¹⁰ JASHEMSKI 1950, 39. Given the amazement of, for example, BÉRANGER 1948, 21 f. at the fact that Q. Tullius Cicero as governor of Asia «avait le titre de proconsul tout en étant ancien préteur [...] De même en 46, M. Brutus», it is JASHEMSKI’s great merit to have demonstrated both the extension (in time and space) and the normality of the institutional practice of the *praetura pro consule*.

¹¹¹ JASHEMSKI 1950, 88 f. As regards the claim that from some point in time, all praetorian governors carried the title of proconsul, she rightly observes that «no author has made a detailed study of this problem». JASHEMSKI goes on to offer some sharp criticism of the scholarship on the issue: «Such statements are generally made in passing, without documentation, or are found in footnotes to studies primarily concerned with other problems.»

¹¹² MOMMSEN ³1887, Vol. 2, 647 f. Compare also MOMMSEN ³1887, Vol. 1, 59: «bis durch Sulla die proconsularisch-proprätorischen Provinzen eintraten».

¹¹³ WILLEMS 1883, 571. In n. 5, WILLEMS forcefully argues: «Les gouverneurs qui ont exercé leurs fonctions *ex praetura* et en vertu de la *lex Cornelia*, c’est-à-dire depuis 81 à 52 avant J.C.,

Despite JASHEMSKI's justified doubts, this line of thought has been embraced unreservedly by, for example, V. EHREMBERG, R. E. SMITH, M. GELZER, J. P. V. D. BALSDON, E. BADIAN and A. J. MARSHALL.¹¹⁴ Most recently, BRENNAN, too, endorsed this viewpoint, arguing that the records in the *Fasti Triumphales* are «just one indication» that «Sulla generalized grants of consular *imperium* (long seen in the Spains, and then Macedonia, Asia and Cilicia) to all provincial commanders. Henceforth praetorian commanders for Sicily, Sardinia, Africa and the Gauls were to set out for those provinces – as well as the eastern ones – *pro consule*.»¹¹⁵

Although, as ROWE rightly emphasizes, Sulla made no formal changes to the office of praetor «other than adding two praetorships and two praetorian courts (*quaestiones*)»,¹¹⁶ very few scholars have questioned what has become some sort of modern doctrine of Roman institutional history. On the basis of a series of references in BROUGHTON's priceless *Magistrates of the Roman Republic* and JASHEMSKI, GIRARDET suggests that the provinces of Africa, Sicilia and Sardinia-Corsica were not governed by proconsuls but (pro)praetors in 67/66.¹¹⁷ Like most other provinces at the time, however, Africa does seem to have been governed permanently by (*pro*)*praetores*

portent tous le titre de *proconsule*, sur les inscriptions, sur les monnaies, et chez les auteurs contemporains, par exemple chez Cicéron et Salluste. Nulle part, le titre de *pro praetore* ne leur est attribué.» Compare also p. 591 with n. 1.

¹¹⁴ EHREMBERG 1953, 117; SMITH 1958, 15; GELZER ⁴1984, 152; BALSDON 1962, 134f. with n. 10 («many – perhaps all» republican praetors «went out to their provinces with *imperium* raised to consular rank»); BADIAN 1965, 111; MARSHALL 1972, 903, who asserts that, apart from the odd *quaestor pro praetore*, all post-Sullan governors, whether departing *ex praetura* or *ex consulatu*, «were almost certainly holders of *imperium pro consule*», and this until the *lex Pompeia* of 52. MARSHALL also suggests that praetorian proconsuls mostly administered peaceful provinces, whereas consular proconsuls were charged with military commands and typically had more legates.

¹¹⁵ BRENNAN 2000, 398. Compare also 484; 587; 620f. («Sulla as dictator standardized the rank of *pro consule* for all commanders who had charge of a territorial province»); 791 n. 80 («It is in fact generally accepted that provincial governors after Sulla, whether *praetorii* or *consulares*, regularly held consular *imperium*»), and 799 n. 185. As for Italy, BRENNAN suggests on p. 620f. that even «in the later Republic such enhancement of *imperium* could not be taken for granted, as the incident of the two praetors and their (combined) «twelve axes» captured by pirates in Italy shortly before 67 B.C. shows». He goes on to explain that «the power to delegate [*praetorium imperium*] might [...] explain why in certain emergencies, the People (surely) raised the *imperium* of various praetors for use in Italy.»

¹¹⁶ ROWE, in his 2001 review of BRENNAN 2000, with due reference to GIOVANNINI 1983, 73–101. The idea of a comprehensive *lex Cornelia de provinciis ordinandis* which supposedly (amongst other things) introduced a statutory interval between magistracy and promagistracy had already been exploded by BALSDON 1939, 57–60.

¹¹⁷ GIRARDET 2001, 175 with n. 87. GIRARDET, however, believes this to have been an exceptional arrangement, implemented across the Mediterranean, in order further to strengthen the position of the proconsul Cn. Pompeius vis-à-vis local provincial governors following his appointment to a sweeping command against piracy under the *lex Gabinia*, an argument invalidated by FERRARY 2000, 347–350.

pro consule during the final decades of the Republic.¹¹⁸ Nonetheless, there is some good evidence suggesting that relatively small and mostly demilitarized provinces such as Sicilia and Sardinia-Corsica usually continued to be administered by (pro)praetors tout court, and this until the *lex Pompeia* of 52 BCE. First, the extant *fasti* of these provinces record very few (pro)praetors carrying the title of proconsul.¹¹⁹ Second, a couple of passages in Cicero's orations against C. Verres (*pr. urb.* 74) unequivocally attest that Sicily continued to be ruled by virtue of praetorian *imperium* during the final decades of the Republic. In *Verr.* 2.5.40, Cicero's words leave little room for doubt as to Verres' official status as governor: *cum penes te praetorium imperium ac nomen est*. With regard to C. Servilius' supplication, Cicero in *Verr.* 2.5.142 records:

Haec cum maxime loqueretur, sex lictores circumstant ualentissimi et ad pulsandos uerberandosque homines exercitatissimi, caedunt acerrime uirgis («In the midst of his appeal he was surrounded by six lictors, muscular fellows who had plenty of practice in assaulting and flogging people, and who now proceeded to beat him savagely with rods.»).

As praetors and propraetorian holders of independent *imperium auspiciumque* held the *praetorium imperium* and were as such entitled to six lictors/*fasces*, it should not be doubted that Verres governed Sicily as *pro praetore* after the expiry of his magisterial tenure in December 74.¹²⁰

However, that some provinces apparently continued to be governed by means of *praetorium imperium* certainly does not preclude occasional exceptions to the rule authorized by *SPQR*. In the very same *Verrinae* (2.3.212) Cicero indeed records that

¹¹⁸ See JASHEMSKI 1950, 132 and, esp., HURLET's discussion of the African *fasti*, pp. 102–104. HURLET's plausible suggestion that C. Fabius Hadrianus governed Africa around the end of the 80s BCE as (pro)praetor does, however, invite caution.

¹¹⁹ See, for example, JASHEMSKI 1950, 114–117 (Sicilia) and 119–121 (Sardinia-Corsica).

¹²⁰ Under the Republic, propraetors holding independent *imperium auspiciumque* were entitled to six lictors/*fasces* as opposed to holders of delegated *praetorium imperium*, who received only five lictors/*fasces*. That much is clear from Cicero's rhetorical questions to C. Scribonius Curio (*trib. pleb.* 50 BCE), who had been granted an *imperium pro praetore* by Caesar's Senate, in *Att.* 10.4.9 (Cumae, 14 April 49): *«Quid isti inquam sex tui fasces? Si a senatu, cur laureati? Si ab ipso [i.e., Caesar himself, at that time Imperator], cur sex? cupiui inquit ex senatus consulto surrupto; nam aliter non poterat. At ille impendio nunc magis odit senatum. «A me» inquit [i.e., Caesar] «omnia proficiscentur.» «Cur autem sex? «Quia duodecim nolui; nam licebat.»* As holder of independent *imperium pro praetore* who had not himself taken part in Caesar's victorious campaigns in Gaul, Curio did not have the right to add the laurels to his *fasces* on account of the former's successes, while his boastful claim that he could have obtained consular *imperium* from Caesar (Senate) had he wanted it further points to his arrogance. For Caesar's decision to send Curio to Sicily with the sizeable force of three legions as *pro praetore*, see *Caes. B.C.* 1.30.2; for the *fasces* as the exclusive *insignia imperii*, see, e.g., *Livy* 1.8.2 and 17.5f.; 2.7.7 and 28.24.14; *Cic. Phil.* 11.20; *Rep.* 2.31; *Man.* 32 and *Lig.* 22; *Sall. Cat.* 36.1 and *Dion.* 3.61. For some far-fetched attempts at explaining away Cicero's crystal-clear proof that Verres governed Sicily as *pro praetore* for most of his tenure in Sicily, see FERRARY and BRENNAN as discussed in HURLET's contribution, pp. 101 f.

C. Claudius Marcellus (*pr.* 80) administered Sicily *pro consule* in 79.¹²¹ Sardinia-Corsica, too, might occasionally have seen praetorian proconsuls during the final decades of the republican era.¹²² In all likelihood, such exceptions occurred either because the Senate felt specific circumstances required enhancing the status of certain praetors sent to these provinces, or because certain senators managed to secure their elevation to proconsular rank *per gratiam*, for reasons of their own.¹²³

MOMMSEN believes that the practice of sending praetors to the provinces with consular *imperium* was first introduced for the administration of the Spanish provinces in 197 because the military situation there simply required that these praetors received «die Vorrechte, welche der Consul als Feldherr vor dem Prätor voraus hatte».¹²⁴ T. F. CARNEY seeks to explain the creation of the administrative practice of the *praetura pro consule* in terms of the quasi-monopoly on the consulship by a handful of noble families, a situation which created a bottleneck frustrating ambitious careerists. CARNEY, who deems this development detrimental to the efficient administration of the expanding Republic, suggests: «By proroguing at higher level of command, men of talent could be employed at the most gainful administrative level (advancement coming when their increased experience and successes indicated that promotion was expedient), and could be kept in harmony with the administration in general through their promotions.»¹²⁵ B. A. MARSHALL follows SMITH who claims that it became usual for any (pro)praetor commanding more than two legions «to be given *imperium proconsulare*».¹²⁶ According to BRENNAN, grants of «enhanced [i.e., consular] *imperium*» to praetors did «not necessarily imply a larger army, just a larger task and a more independent position».¹²⁷ Referring to P. Sempronius Tuditanus' proconsular command of 205¹²⁸ and Plutarch's above-mentioned clarification on Aemilius Paul-

¹²¹ C. Marcelle, *te appello. Siciliae prouvinciae, cum esses pro consule, praefuisti*. For his Sicilian tenure, see also BROUGHTON 1952, 84 and PRAG 2007, 304, who thinks it possible he also governed Sicily in 78. See PRAG, 308 and HURLET's discussion of the *fasti Siciliae* (pp. 104–106) for L. Caecilius Rufus (*pr. urb.* 57) being another possible example of a praetorian proconsul in Sicily.

¹²² See HURLET's discussion of the *fasti* of this province, pp. 106f.

¹²³ Compare HURLET's discussion of the case of C. Claudius Marcellus on p. 105f. of his contribution as well his observations concerning possible political reasons for the progressive proliferation of the *praetura pro consule* across the provinces in his conclusion.

¹²⁴ MOMMSEN ³1887, Vol. 2, 647. MOMMSEN is followed by RICHARDSON 1986, 76, who likewise argues that the Senate felt that «commanders in Spain should exercise consular *imperium*, no doubt because of the serious nature of their military activities».

¹²⁵ CARNEY 1959, 75. CARNEY accepts the view that praetorian commanders could only assume consular *imperium* after their magisterial tenure, by virtue of *prorogatio imperii*.

¹²⁶ MARSHALL 1973, 113 and SMITH 1958, 12f.

¹²⁷ BRENNAN 2000, 610.

¹²⁸ BRENNAN is mistaken in the case of P. Sempronius Tuditanus (*pr.* 213, *cos.* 204) as this proconsul had most probably received his *consulare imperium* directly from the People, i.e., *extra ordinem*.

lus' Spanish command of 191, BRENNAN further identifies «the emergence of the principle of what we may call the «persistence» of consular *imperium*». He goes on to argue that «once a *provincia* had been declared consular, it tended to remain consular for some time». BRENNAN considers Ti. Claudius Nero's command at Pisa in 177 (supra) as a «later example of the principle of «persistence»» of the consular *imperium*. Whereas this argument is questionable and suffers from terminological confusion,¹²⁹ BRENNAN is nonetheless right to observe that the decision to create (what he, certainly in the case of Claudius Nero, wrongly defines as) a «special consular command had nothing to do with the size of an army in a particular *provincia*», since both Tuditanus and Claudius Nero commanded only one legion. BRENNAN goes on to explain: «It appears, rather, that the presence of a consular commander accompanied by twelve lictors in a bellicose *provincia* was perceived to have an important psychological effect on the enemy, which translated into a Roman military advantage. Once the enemy was used to consular commanders, experience showed that it was inadvisable to send praetorian commanders in their stead.»¹³⁰ Conversely, BRENNAN goes on to observe, «we can even detect a principle of «persistence of praetorian *imperium*» in the maintenance of garrison forces under praetors in «noncrucial *provinciae*»». ¹³¹ BRENNAN also seeks to explain «the decision to institutionalize grants of consular *imperium* to praetorian commanders for distant provinces like the Spains, Macedonia, Asia and Cilicia», a practice later generalized by Sulla «for promagistrates in all the territorial provinces», in terms of an alleged distinction between consular and praetorian *imperium*. According to BRENNAN, only holders of consular *imperium* could delegate *praetorium imperium*, a necessary device in order to maintain continuous control of large and warlike provinces.¹³² A steady increase of the number of commanders with

¹²⁹ Officially, a province was only *provincia consularis* after it had been defined as such by *SPQR* and only really became such from the moment and as long it was administered by a consul.

¹³⁰ Again, BRENNAN's otherwise insightful arguments suffer from terminological confusion, as a praetorian proconsul was not a «consular commander», but a commander of praetorian senatorial rank holding *consulare imperium*.

¹³¹ BRENNAN 2000, 669f. For BRENNAN's theory of the «persistence of consular *imperium*», see also 620.

¹³² BRENNAN 2000, 398f. Compare also 587 and 620f. BRENNAN (637f.) believes that propraetors only began delegating *imperium* «at their own level» as a result of the *lex Pompeia* of 52 «divorcing the magistracy from the promagistracy and then restoring praetorian *imperium* as the standard grade for praetorian governors». BRENNAN's suggestion (158) that, unlike regular (consular and praetorian) proconsuls, extraordinary proconsuls (i.e., appointed *extra ordinem* by vote of the People) could not delegate *imperium* does not contribute to the coherence of his ideas. BRENNAN's view is nonetheless accepted by, for example, FERRARY 2001, 104 n. 11: «La raison pour laquelle on éprouva le besoin de conférer un *consulare imperium* à des gouverneurs de rang prétorien est sans doute, ainsi que l'a vu Brennan [...] que seul le détenteur d'un *consulare imperium* avait capacité à déléguer un *imperium (praetorium)* à un légat ou un questeur, et qu'il était prudent qu'un (pro)magistrate envoyé gouverner une province lointaine et étendue dispose de ce droit de déléguer une forme d'*imperium*».

consular *imperium* plainly had the advantage of increasing their scope for appointing officials with delegated praetorian *imperium*. Wherever and whenever necessary, more of such officials could serve praetorian commanders whose authority as supreme commander had been visibly reinforced by virtue of their holding consular *imperium*.¹³³ This is not to say, however, that commanders with independent *praetorium imperium* (and the corresponding *auspicium*) would have been unable to delegate *imperium pro praetore* to anyone they saw fit.¹³⁴ Any legates or (pro)quaestors invested with derived *praetorium imperium* (and as such lacking *auspicium* of their own) would still have been required to obey the commands of the delegating holder of independent *praetorium imperium*.

The most conspicuous and tangible difference between imperators holding *praetorium imperium* and those holding *consulare imperium* certainly was the number of lictors attending them (with the equivalent number of bundles of *fasces* and *secures*), viz. six and twelve respectively. Therefore, there is no doubt that the psychological factor, a desire visibly to enhance not only a commander's official *ius imperii* but also his informal *auctoritas* and *dignitas*, indeed goes a long way to explain the creation and subsequent proliferation of the *praetura pro consule* across a growing number of prov-

¹³³ In B.C. 3.32.1–4, Caesar accuses the proconsul Q. Caecilius Metellus Pius Scipio Nasica (*cos.* 52) of plundering his province Asia, amongst other things by virtue of excessive delegation of *imperium (pro praetore)*: *Non solum urbibus, sed paene uicis castellisque singulis cum imperio praeficiebantur. Qui horum quid acerbissime crudelissimeque fecerat, is et uir et ciuis optimus habebatur. Erat plena lictorum et imperiorum prouincia, differta praefectis atque exactoribus, qui praeter imperatas pecunias suo etiam priuato compendio seruiebant.* This strongly suggests that there must have been legal or at least customary constraints on the number of holders of delegated *praetorium imperium* any imperator could appoint, and it is entirely reasonable to suppose that commanders with consular *imperium* had greater scope to do so than holders of (independent) praetorian *imperium*.

¹³⁴ For an unambiguous example of ad hoc grant of *praetorium imperium* by the praetor Urbanus, see Livy 28.46.13: the Senate in 205 advised the praetor Urbanus Cn. Servilius Caepio to grant *imperium* to an appointee of his choice who should lead the urban legions to Arretium, the nominee being M. Valerius Laevinus. For another likely example, see Livy 35.23.6–8. Whereas MOMMSEN ³1887, Vol. 1, 681 f. n. 6, and BROUGHTON 1951, 303 accept that a praetor could delegate *imperium*, BRENNAN 2000, unsurprisingly has little choice but to question Livy's accuracy. On p. 643 he argues that the case of Valerius Laevinus as represented in Livy «seems to show that Livy shared Mommsen's view, that *imperium* was conferred by personal delegation». BRENNAN goes on to explain that «we have often seen how indifferent Livy is to details of procedure [...] Here we may have a compressed notice of what actually was a four-part process. First, the decision of the Senate to entrust to the *pr. urb.* the matter of choosing a commander to bring the legions to Arretium; second, the choice of M. Valerius Laevinus by the *pr. urb.*; third, the granting of *imperium* to Laevinus in some unspecified way; and fourth, the orders of the *pr. urb.* to Laevinus.» On p. 644f., BRENNAN has another stinging swipe at Livy: «One – but only one – passage (M. Valerius Laevinus in 205, «imperio ... dato») does imply personal delegation by the praetor urbanus. Livy may even have thought this was the actual Republican procedure. But the truth must be that Livy did not really know – or care – how *imperium* was granted to *privati* when no consul was present; hence his consistently vague formulations in these contexts.»

inces. This effect would have impacted on the Roman military, citizen and allied soldiers alike, the provincials, friendly or hostile, and external enemies. Wherever a praetorian proconsul would go with his awesome escort of twelve lictors complete with *fasces* and *secures*, all alike would perceive of the Roman *imperator* as holding the power, status and dignity of the consuls, the Republic's highest officials and traditional supreme commanders of Rome's formidable military machine.¹³⁵

8. The Senate's control of the *praetura pro consule*

It is a well-known fact of Roman constitutional history that the procedure of prolonging magisterial *imperium* beyond the annual term initially required a popular vote but then quite soon became the all but exclusive prerogative of the Senate. At some point during the third century BCE, *rogatio (imperii) ad populum ex s.c.* thus simply became *prorogatio imperii ex s.c.*¹³⁶ There is every indication that almost immediately after it had first created the *praetura pro consule*, the Senate also acquired quasi-absolute control of this administrative practice. Whereas it is impossible to preclude the possibility that the *imperium* of C. Claudius Nero was upgraded in 211 *ex plebiscito ex s.c.*, the Senate was probably exclusively responsible for enhancing the *imperium* of M. Iunius Silanus in 210.¹³⁷ In any event, the very fact that Hispania continued to be governed through *consulare imperium* after the popular assemblies ceased to appoint extraordinary proconsuls suggests that the Senate had already obtained the prerogative to upgrade the *imperium* of (pro)praetors during the Second Punic War.¹³⁸ The above-

¹³⁵ The importance of (the number of) lictors and *fasces* as the supreme and awesome symbols par excellence of Roman official authority is obvious from an anecdote on record in Plut. Fab. 4. Plutarch here recounts that when Q. Fabius Maximus was chosen dictator in 217, he promptly asked permission of the Senate to use a horse in the field. In order to enforce his request, he decided on a showy display of power: «However, Fabius himself was minded to show forth at once the magnitude and grandeur of his office, that the citizens might be more submissive and obedient to his commands. He therefore appeared in public attended by a united band of twenty-four lictors with their *fasces*, and when the remaining consul [i.e., Cn. Servilius Geminus] was coming to meet him, sent his adjutant to him with orders to dismiss his lictors, lay aside the *insignia* of his office, and meet him as if a private person.» For the pervasive role of honour as a governing force in the Roman world, see LONDON 1996.

¹³⁶ The last recorded plebiscites proroguing *imperium (ex s.c.)* date from 297 (Livy 10.16.1 and 20.2: *in sex menses*) and 296 (Livy 10.22.9: *in annum*, compare also 10.27.11 and 30.6f.). By the time of the Second Punic War, *prorogatio imperii* had probably become a firmly entrenched senatorial prerogative (see, e.g., Livy 22.34.1) regardless of the occasional popular vote invited by the Senate.

¹³⁷ SUMNER 1970, 88 merely observes that the propraetors C. Claudius Nero and M. Iunius Silanus «had been vested by the Senate with proconsular status».

¹³⁸ Contra WILLEMS 1883, 556, who suggests that some unattested law in 197 ruled that all (pro)praetors sent to Spain be provided with consular *imperium*: «Néanmoins il fut établi que les gouverneurs des Espagnes, s'ils étaient de rang prétorien, préteurs ou expréteurs, auraient l'*imperium* consulaire avec le titre de *proconsule*. Cette disposition a dû être introduite par voie

mentioned commands of, for example, Ti. Claudius Nero (*pr.* 178) in 177 at Pisa and C. Claudius Marcellus (*pr.* 80) in 79/78 in Sicily furthermore suggest that the Senate could perfectly well decide to upgrade the *imperium* of (pro)praetors sent to regions where the presence of praetorian proconsuls was not a matter of practice.

Livy's History contains a few commonly ignored clues that, as part of its annual range of decisions on the praetorian provinces, the Senate would assess the provincial commands of all (pro)praetorian incumbents, deciding either to maintain or upgrade the relative strength of their *ius imperii*. In 30.2.3f., for example, Livy records that, as part of the *senatus consulta de prouinciis* of March 203, the Senate decreed the following with regard to the official status of Cn. Octavius (*pr.* 205)¹³⁹ and M. Pomponius Matho (*pr.* 204):¹⁴⁰

Huic classi M. Pomponius, prioris anni praetor, prorogato imperio praepositus novos milites ex Italia aduectos in naues imposuit. Parem nauium numerum Cn. Octauio, praetori item prioris anni, cum pari iure imperii ad tuendam Sardiniae oram patres decreuerunt («Placed in charge of this fleet [i.e., a fleet of forty warships to protect Sicily], with his *imperium* prolonged, was Marcus Pomponius, praetor in the preceding year, who provided the ships with new soldiers brought from Italy. The same number of ships were by decree of the Senate assigned, with the same *ius imperii*, to Gnaeus Octavius, who likewise had been praetor in the preceding year, in order to defend the coast of Sardinia.»).

Since both commands were *prouvinciae maritimae* and none concerned a *prouvincia permixta*¹⁴¹ this clarification can only refer to the *ius imperii* in the sense of the *genus imperii* (i.e., legal category of *imperium*) of the *pro praetore* involved, not to the ques-

législative. Le Sénat n'en avait point le pouvoir.» Compare also p. 568f., where WILLEMS more cautiously argues that the Senate only acquired the prerogative to upgrade *praetorium imperium* without having to put the matter to the vote in the popular assembly at some point during the second half of the second century BCE: «Nous ne sommes pas suffisamment renseignés sur l'histoire de cette époque [i.e., the years 123–81 BCE, vide p. 562] pour décider si l'attribution du titre *pro cos.* exigait encore un vote populaire, comme dans la période précédente, ou s'il suffisait d'un sénatusconsulte. Le développement des attributions du Sénat en cette matière semble nous autoriser à opiner en faveur de la seconde hypothèse.» Although MOMMSEN³1887, Vol. 2, 647 also suggests that the *praetura pro consule* was first introduced «als normale Ordnung» in 197 BCE on behalf of the praetors sent to the Spanish provinces by virtue of a structural measure that gave «diesen beiden Prätoeren neben der Prätur ein für allemal consularisches Imperium» he stops short from expressing clear views on the nature of this measure or the authority that upgraded the *imperium* of the praetors sent to Spain. For a discussion of the extraordinary proconsuls operating in Hispania from 217 to 197, see VERVAET – NÁCO DEL HOYO 2007, 22–33. The last plebiscite concerning the Spanish command was passed at the very end of (the consular year) 200.

¹³⁹ BROUGHTON 1951, 302.

¹⁴⁰ BROUGHTON 1951, 306.

¹⁴¹ See BROUGHTON 1951, 311 for the fact that in the same round of decisions on the praetorian provinces, the Senate assigned the (territorial) provinces of Sicilia and Sardinia respectively to the praetors P. Villius Tappulus and P. Cornelius Lentulus (Caudinus). See n. 56 for a definition of *prouvincia(e) permixta(e)*.

tion which emperor was to hold the *summum imperium auspiciumque* in a shared province. In 41.15.11, Livy further documents that when early in 176 two praetors refused to go to their Spanish provinces, claiming that they were prevented by *sacrificiis [...] sollemnibus*, the Senate decreed that M. Titinius and T. Fonteius, the incumbent proconsuls, were to remain in Spain with the same prerogative of command: *M. Titinius et T. Fonteius proconsules manere cum eodem imperii iure in Hispania iussi*. At the same time, the Senate also decided to provide them with significant reinforcements. As M. Titinius Curvus and T. Fonteius Capito had governed Citerior and Ulterior respectively since 178 as *(pro)praetores pro consule*,¹⁴² the Senate's decision again clearly concerns the *genus imperii* of these emperors, which was maintained at consular level in March 176. Livy's note suggests that, at least until that time, the Senate explicitly reconfirmed the *genus* of the *imperium* held by the *(pro)praetorian* governors of the Spanish provinces. The routine character of this administrative practice may account for the fact that there hardly is any record of it in the extant source material. Livy's representation here also seems to suggest that, at least in theory, the Senate could equally decide to downgrade the *imperium* of a praetorian proconsul should it see fit. That there is not a single known instance of such a delicate and possibly slighting decision does not mean that the Senate did not have this power. If the Senate could upgrade the *genus imperii* of a certain emperor, it logically follows that it could also reverse this decision. However, what the Senate certainly could not do (without recourse to the popular assemblies) was to downgrade an *imperium* that had not been upgraded or to reverse enhancements of *imperium* made by virtue of statute law.

An interesting passage from the so-called *s.c. de Stratonicensibus* of 81 BCE seems to indicate that, from a certain moment in time and for certain provinces, the Senate may have passed some sort of a standing decree ordaining that, until further notice, every praetor who would henceforth depart *paludatus* to these provinces was to do so *consulari cum imperio*. One of the rewards heaped on Stratonicea in return for proven loyalty was a provision that the future governors of Asia should provide for the restitution of lost property to the Stratoniceans upon their claim, the words key to this inquiry being ἀνθύπατος ὅστις ἂν ἀεὶ Ἀσίαν ἐπ[αρχείαν] διακατέχηι («whatever proconsul shall ever hold the province of Asia»).¹⁴³ The premise that all future Roman governors of Asia will administer the province as proconsul may suggest that by 81 BCE, there existed a *senatus consultum* determining that every praetor sent to govern *provincia Asia* was to do so with *consular imperium*. Conceivably, the Senate at some point in time ceased to (re)confirm the *genus imperii* of those emperors ruling provinces that had been run consistently by virtue of consular *imperium* during its annual round of decisions *de provinciis*. Instead, it was decided that, failing specific decisions to the contrary by *SPQR*, every praetor sent to these provinces was entitled to twelve lictors until his return *intra urbem*. Possibly, such a decree was passed for the

¹⁴² See BROUGHTON 1951, 395; 399 and 401.

¹⁴³ SHERK 1969, nr. 18, ll. 114f. (p. 109).

first time during the second century BCE with regard to the Spanish provinces, similar decisions concerning other provinces following whenever expedient. Even if no such decree was ever passed, this inscription at the very least confirms that by the time of Sulla's dictatorship, it clearly was standard procedure for the Senate to upgrade the *imperium* of all praetors sent to *prouincia Asia*, and, by analogy, a series of other important provinces.

This hypothesis is still a far cry from MOMMSEN's characteristically legalistic take on the issue. MOMMSEN believes that the governors of the Spanish provinces got their title of *pro consule* «von Haus aus». MOMMSEN explains that those praetors sent to Spain did not receive their consular *imperium* by virtue of a «Specialgesetz», as was the case with such grants to *priuati*, but that «das consularische Imperium mit den spanischen Präturen gleich durch dasselbe Gesetz verbunden worden [ist], das deren Wahl vorschrieb».¹⁴⁴ There is, however, no evidence whatsoever for a statute so drastic as to have created a distinct category of praetorship, positioned between the consulship and the four remaining praetorships. As praetors already held full *imperium auspiciumque* by virtue of their election in the *comitia centuriata* and their subsequent *lex curiata de imperio*, there was no strict requirement to involve the popular assemblies in both *prorogatio imperii* and «quantitative» upgrades of certain *imperia*, and, consequently, their relative strength.¹⁴⁵ This constitutional reality partially explains why, at some point during the second half of the third century BCE, the Senate was able to appropriate both prerogatives smoothly and seemingly unnoticed. In other words: although the Senate could not normally grant (or abrogate) full

¹⁴⁴ MOMMSEN ³1887, Vol. 2, 658f.

¹⁴⁵ Contra BRENNAN 2000, 610, who wrongly lumps extraordinary proconsulships (i.e., proconsulates created *extra ordinem*, outside the framework of the traditional *cursus honorum*, by virtue of granting consular *imperium* to private citizens) and praetorian proconsulships together and asserts that upgrading praetorian *imperium* to consular, too, invariably required popular legislation: «enhanced *imperium* – whether that of a praetor or *privatus* [...] did always require a popular vote.» The difference between the *genera imperii* indeed was «quantitative» rather than «qualitative», the *dictatorium imperium* being twice as strong as the *consulare imperium*, and the *consulare imperium* twice as strong as the *praetorium imperium*. In Leg. 3.3.9, Cicero asserts that the *dictator idem iuris quod duo consules teneto* (compare also Dion. 5.71.2: τὴν ἀμφοτέρων ἕξουσίαν). In N.H. 11.190, Pliny relates that on the first day of Octavianus' command (as extraordinary propraetor in 43), the livers of six victims were found with the bottom of their tissue folded back inward, which was interpreted to mean that he would double his *imperium* within a year: *responsumque duplicaturum intra annum imperium*. In Syr. 15, Appian explains that praetors had only half of the dignity (ἀξιωματικὸς) and half of the *insignia imperii* (viz. *fasces*) of the consuls (compare also Dio 37.39.2). This constitutional reality indeed found its symbolic expression in the number of *fasces* (*securaeque*) held by the dictator (twenty-four: see, e.g., Dion. 10.24.1; Pol. 3.87.8; Plut. Fab. 4.2; Dio 54.1.3; and VERVAET 2004, 51–54), the consul (twelve) and the praetor (six).

imperium,¹⁴⁶ it could unquestionably prolong the right to use, or enhance, existing *imperia*. Finally, E. G. HARDY's suggestion that the *praetores pro consule* received their *consulare imperium* through delegation, presumably by the consuls *ex s.c.*, is equally implausible.¹⁴⁷ There is no good reason to doubt that, unlike holders of delegated *praetorium imperium* such as *legati* or (pro)quaestors *pro praetore*, (pro)praetores *pro consule* held full *imperium auspiciumque*. Whereas no holder of delegated *imperium* ever celebrated a public triumph under the Republic, the *Fasti Triumphales* list many praetorian proconsuls.¹⁴⁸

9. The years 53/52–27 BCE: abortive abolition and generalization

In 52 BCE, Cn. Pompeius passed a historic law which famously established a five-year interval between urban magistracy and promagisterial provincial command, so hardening the provisions of a similar *senatus consultum* from 53 BCE into statute law.¹⁴⁹ In his magisterial study of the Senate of the Roman Republic, WILLEMS rightly concludes that, amongst other things, this law also «réserva le titre de *proconsule* aux gouverneurs des provinces consulaires, et elle rétablit pour les gouverneurs des provinces prétoriennes le titre officiel de *propraetore*». Both Cicero's contemporary correspondence and the numismatic evidence indeed consistently indicate that all praetorian governors appointed under the terms of the Pompeian Law carried the title of *pro praetore*, none that of proconsul.¹⁵⁰ As WILLEMS explains, the *senatus auctoritas de prouinciis praetoriis* of October 51 as recorded in *Fam.* 8.8.8 (Rome) powerfully corroborates this conclusion.¹⁵¹

¹⁴⁶ Those rare examples of senatorial grants of full *praetorium imperium* in times of crisis are exceptions to this rule. For a full discussion of one such grant made on behalf of Cn. Pompeius in 78 BCE during the so-called *bellum Lepidanum*, see VERVAET 2009, 406–412.

¹⁴⁷ HARDY ²1910, 286: «No doubt in republican times the *consulare imperium* was often prologued to a consul after his office was over to enable him to finish a war, and no doubt it was also conferred by delegation on some of the provincial praetores, especially in Spain and Asia.»

¹⁴⁸ See Chapter 5 (The *summum imperium auspiciumque* and the so-called *ius triumphi*) of my aforementioned (forthcoming) study of the Roman High Command (cf. supra n. 85) for the fact that the possession of full *imperium auspiciumque* was a condition sine qua non for a victorious imperator to qualify for public triumphs and ovations.

¹⁴⁹ For the *s.c. de prouinciis* of 53 and the subsequent *lex Pompeia* of 52, see esp. Dio 40.46.2 and 56.1. As Cicero records in *Att.* 4.16.5 (ca. 1 July 54), a first attempt at passing such a decree had possibly already been made in 54 by the consuls L. Domitius Ahenobarbus and Ap. Claudius Pulcher: *senatus consultum quod hi consules de prouinciis fecerunt, quicumque posthac [...], non mihi uidetur esse ualiturum*. For a good discussion of (the other sources for) this historic piece of legislation, see FERRARY 2001, 105–107 and HURLET 2006, 26f.

¹⁵⁰ See, for instance, BROUGHTON 1952, 243 for the examples of Q. Minucius Thermus (*pr.* before 57 or 53) and P. Silius (*pr.* before 57 or 52), governors of Asia and Bithynia-Pontus respectively in 51.

¹⁵¹ WILLEMS 1883, 591 with n. 1; compare also FERRARY 2001, 105: «Personne ne conteste qu'elle [i.e., the *lex Pompeia*] se soit appliquée aux préteurs, et que les *praetorii* envoyés dans des

Itemque senatui placere in Ciliciam prouinciam in VIII reliquas prouincias quas praetorii pro praetore obtinerent eos qui praetores fuerunt neque in prouincia cum imperio fuerunt, quos eorum ex s.c. cum imperio in prouincias pro praetore mitti oporteret, eos sortitio in prouincias mitti [placere](«It is likewise the Senate's pleasure as touching the province of Cilicia and the eight remaining provinces now governed by former praetors with the rank of propraeor that such persons as have held the office of praetor but have not previously held command in any province, being eligible under the Senate's decree for dispatch to provinces with propraetorian rank, shall be dispatched to the aforesaid provinces as by lot determined.»).

WILLEMS demonstrates that within Caesar's sphere of power praetorian proconsuls reappeared immediately after the outbreak of civil war in January 49,¹⁵² and praetorian proconsuls are also recorded for the triumviral era.¹⁵³ Accordingly the attempt to abolish the institutional practice of the praetorian proconsulship in 53/52 perished with Pompeius, its author. Whereas it is, unfortunately, impossible to conclude whether the *lex Iulia* of 46 BCE generalized the praetorian proconsulship,¹⁵⁴ the Au-

provinces de 51 à 49 l'aient été avec le titre de *pro praetore* et un simple *praetorium imperium*.» Contra MOMMSEN ³1887, Vol. 2, 648 n. 4, who believes that many of the provinces *quas praetorii pro praetore obtinerent* under the terms of this *senatus auctoritas de prouinciis praetoriis* were «mit Titularproconsuln besetzt».

¹⁵² WILLEMS 1883, 571 n. 5, 591 n. 1, and, esp., 724 with n. 3. Just as he believes that «la *lex Cornelia* a reconnu le titre de proconsul à tous les gouverneurs prétoriens» and that «la *lex Pompeia* leur à interdit ce titre», WILLEMS (571 n. 5) also rather categorically argues that «le dictateur César est revenu à la *lex Cornelia*». The fact that there was no such thing as a *lex Cornelia* concerning the institutional practice of the praetorian proconsulship begs the question as to the veracity of WILLEMS' claim with regard to the praetorian imperators *cum prouincia* of the Caesarian and triumviral era.

¹⁵³ Just a few certain examples are L. Marcius Censorinus (*pr.* 43, *cos.* 39) in 42 BCE (BROUGHTON 1952, 362), C. Sossius (*cos.* 32) in Syria from 37 BCE (BROUGHTON 1952, 397, 402, 409 and 412), and M. Titius (*cos. suff.* 31) in Asia in 35 BCE (BROUGHTON 1952, 409). The matter of the praetorian proconsuls from 49/48 down to 27 BCE, too, deserves to be studied in its own right.

¹⁵⁴ For an excellent and minute study of this *lex Iulia*, see GIRARDET 1987. Interestingly, praetorian proconsuls emerge in Sicily right from 48 BCE. First, there was A. Allienus, praetor in 49 (Cic. Att. 10.15.3) and proconsul of Sicily in 48 and 47: see BROUGHTON 1952, 275 and 288; Caes. Bell. Afr. 2 and 34 (where Allienus is termed *praetor* and *pro consule* successively at the time of Caesar's African campaign in 47); and Cic. Fam. 13.79 (where Cicero addresses Allienus as proconsul). Allienus was succeeded by M. Acilius Caninus, *pr.* 47, and governed Sicily as proconsul until early in 45: see BROUGHTON 1952, 296 and 308; and, esp., Cic. Fam. 13.30–39. By the close of 46, Caninus had been succeeded by the proconsul T. Furfanius Postumus, *pr.* 46?: BROUGHTON 1952, 295 and 309 and Cic. Fam. 6.9 (December 46). Apart from that of *praetor* in Liv. Per. 123 no precise title is preserved for A. Pompeius Bithynicus, *pr.* 45? and governor of Sicily from 44 to 42: BROUGHTON 1952, 329, 348 and 362, where BROUGHTON possibly wrongly defines him either as «probably Propraetor» or «Propraetor». This suggests that at the latest from 49/48, as a deliberate rejection of the *lex Pompeia* of 52, Caesar may have introduced a de facto generalization of the *praetura pro consule*, followed, perhaps, by a statutory generalization from 46. A possible terminus post quem for Caesar's policy to provide all praetorian governors with consular *imperium* may have been a law passed in 48 in the immediate aftermath of Pharsalia empowering him to assign the praetorian provinces *sine sorte*, «for they [i.e., the provinces] had

gustan *lex Iulia* of 27 BCE certainly did. In his painstaking and invaluable summary of the constitutional settlements of 27 BCE, Cassius Dio records that, as regards the governors of the public provinces, Augustus enacted, amongst other things, «that they should all be called proconsuls, not just the two ex-consuls, but the others who were merely ex-praetors or held the rank of ex-praetors», and «that they should employ the same number of lictors as they had been accustomed to do at Rome»:

καὶ ἀνθυπάτους καλεῖσθαι μὴ ὅτι τοὺς δύο τοὺς ὑπατευκότας ἀλλὰ καὶ τοὺς ἄλλους τοὺς ἐκ τῶν ἐστρατηγηκῶτων ἢ δοκοῦντων γε ἐστρατηγηκῆναι μόνον ὄντας, ῥαβδούχοις τέ σφας ἐκατέρους ὅσοισπερ καὶ ἐν τῷ ἄστει νενόμισται χρῆσθαι.¹⁵⁵

By the end of the Republic, most provinces already seem to have been governed more or less permanently by virtue of *consulare imperium*. Notwithstanding the shortlived attempt of 53/52 to abolish the institution of the praetorian proconsulship, the measure of 27 therefore was nothing but the logical conclusion of a remarkably successful and enduring administrative experiment commenced in the heat of the Second Punic War. The remarkable innovation, though, that the Augustan praetorian proconsuls were only entitled to six lictors, in contrast with their republican predecessors, suggests a symbolic concession to those reactionary senators eager fully to restore the analogous clauses of the Pompeian Law and those in favour of a general proliferation of the title of proconsul across the public provinces. Apparently, already in the 50s BCE there had been a conservative sentiment amongst ranking nobles that the proliferation of the *praetura pro consule* and the corresponding relative debasement of the title of proconsul had gone too far and needed to be reversed.

10. Conclusion

By virtue of a procedure first established in 217 BCE by the Metilian Law on behalf of the *magister equitum* M. Minucius Rufus (*cos.* 221), the Senate set another precedent in 211 by upgrading the *imperium* of the propraetor C. Claudius Nero (*pr.* 212), the newly appointed supreme commander for Spain. The next year, the Senate decided to enhance the *imperium* of the propraetor M. Iunius Silanus (*pr.* 212) and expressly authorized him to command on a footing of equality with P. Cornelius Scipio (*cos.* 205),

gone back to consuls and praetors again contrary to their decree [i.e., the *lex Pompeia* of 52]», as Dio explains in 42.20.4f.

¹⁵⁵ Dio 53.13.3f. In 53.14.5, Dio probably records the official denomination of the public provinces, the category of provinces that were not directly governed by Augustus: τὰ τοῦ δήμου τῆς τε βουλῆς λεγόμενα ἔθνη – the provinces of the People and the Senate. Although ΜΟΜΜΣΕΝ rightly observes in ³1887, Vol. 2, 649 that from 27 BCE all praetorian governors of the public provinces received consular *imperium*, the assertion that they also received a consular rank is confusing at best since these officials remained *praetorii* until their tenure of the consulship or imperial *adlectio inter consulares*. For the praetorian proconsuls of the early Empire, see Eck 1972/73, 233–260.

the People's new appointment to the Spanish command. As the Senate in 198 decided to create two new praetorships in order to govern the newly won Spanish lands, it felt it was best that these warlike territories continued to be administered by virtue of *consulare imperium*. As the Senate thereafter routinely upgraded the *imperium* of all praetors sent to Hispania, the *praetura pro consule* quickly became an established constitutional practice. Whereas such enhancements of praetorian *imperium* at first seem to have been confined to provinces with significant military activity, the practice was gradually extended to other sizeable or populous and complicated provinces, Asia being a pre-eminent example.¹⁵⁶ By the end of the Republic, government by praetorian proconsuls thus became standard practice in all but a few minor provinces such as Sicily and Sardinia-Corsica. The very fact that even there praetorian proconsuls are on record is demonstrative of both the Senate's discretion in this matter and the eagerness of praetorian governors to receive the full trappings of the consular *imperium*. Although the Senate and subsequently Cn. Pompeius in 53/52 eventually moved to abolish the practice of sending praetorian proconsuls to the provinces, there is every indication that Caesar the dictator and subsequently the triumvirs *rei publicae constituendae* avidly revived this institution, probably as an instrument to reward and gratify loyal supporters. In January 27, finally, as part of his sweeping provincial reorganization, Augustus decided to generalize the *praetura pro consule* for the administration of the non-consular public provinces, provided that the imperial proconsuls of praetorian rank were entitled to six *fascēs* only instead of the customary twelve. Whereas it was illegal under the Republic to combine two annual magistracies¹⁵⁷ it had been perfectly possible for a praetor to hold consular *imperium* as a (*pro*) *praetor(e) pro consule*. It was largely by virtue of this constitutional innovation from the Second Punic War that the entire Roman world eventually came to be governed *consulari cum imperio*, regardless of the fact that there could only be two consuls at any given time. Both these remarkable developments pay further tribute to the astonishing pragmatism and administrative flexibility of the Roman machinery of state.

Epilogue: M. Claudius Marcellus in 215 BCE, first of the praetorian proconsuls?

Few scholars have as yet discussed the official position of M. Claudius Marcellus (*cos.* 222, *pr.* II 216) in 215 BCE. The seemingly insurmountable problems caused by Livy's confused narrative probably account for the wide variety of views on the issue. In his

¹⁵⁶ In Quint. 1.1.4–6 (Rome, end of 60 or beginning of 59), Cicero observes that his brother Quintus is fortunate to be spared the risky business of major warfare, his responsibilities being chiefly administrative (i.e., judicial and fiscal), and reminds him of the fact that his province had the most highly civilized population in the world and was teeming with *publicani* and wealthy *negotiatores*, all of which contributed to the delicate burden of its administration. Under such circumstances, a senatorial governor could certainly do with any official authority he could get.

¹⁵⁷ See MOMMSEN ³1887, Vol. 1, 513–517.

discussion of the «Proconsulat des Prätors», MOMMSEN asserts that Marcellus' position in 215 represents the only exception to the supposed rule that no (pro)praetor commanding in Italy or in the navy could receive consular *imperium* if both consuls were present. After having held the praetorship in 216, Marcellus received a grant of «proconsular *imperium*» by virtue of a special popular vote because, MOMMSEN suggests, it was deemed politically inexpedient to give him the «gewöhnliche proprätörische der consularischen subordinirte Stellung». MOMMSEN explains that Marcellus was granted the «proconsularische Imperium» following the untimely death of consul designate L. Postumius, arguing that «da man wahrscheinlich schon damals die Wahl des Marcellus zum Consul voraussah und entschlossen war sie seiner Plebität wegen zu hintertreiben [...] gab man ihm im Vorweg zum Ersatz consularisches Imperium, das heisst selbständiges Commando». The view that Marcellus still held the position of propraeor when the People invested him with consular *imperium* necessarily implies the presumption that his *imperium* had been prorogued *ex praetura*.¹⁵⁸

MOMMSEN'S position that the command given to Marcellus in 215 BCE represents the first historically attested case of a praetorian proconsul (in the sense of a propraeor receiving consular *imperium*) has ever since been accepted by many prominent scholars, regardless of minor qualifications. WILLEMS doubts that the Senate could already award «*imperium* consulaire avec le titre de *proconsule*» at this early stage and suggests that Marcellus received «avec la *prorogatio imperii*, le titre officiel de *proconsule*» by means of a *lex populi*.¹⁵⁹ JASHEMSKI accepts MOMMSEN'S argument that the

¹⁵⁸ MOMMSEN ³1887, Vol. 2, 649 (with n. 1) and 652. MOMMSEN is equally adamant that the command of M. Marcellus in 215 represents the first example of an *imperium* conferred upon someone «der das Oberamt nicht einmal früher gehabt hatte» and further adds: «... die Übertragung des consularischen Imperiums auf den zur Handhabung des prätorischen qualificirten Beamten und die des Imperiums überhaupt auf einen Privaten stehen rechtlich sich gleich.» First, there is quite some circumstantial evidence suggesting that the proconsular command held by Cn. Cornelius Scipio (*cos.* 222) from 217 to 211 in Spain represents the first historically recorded example of an extraordinary grant of consular *imperium* to what was in this particular instance a legate who perhaps already held delegated praetorian *imperium*: see VERVAET – ÑACO DEL HOYO 2007, 22f. (and n. 4 supra). Second, there is, in terms of public law, a fundamental distinction between an extraordinary grant of full *imperium auspiciumque* to a private citizen and the procedure of upgrading an existing *praetorium imperium* to consular level.

¹⁵⁹ WILLEMS 1883, 556f.: «Cette disposition a dû être introduite par voie législative. Le Sénat n'en avait point le pouvoir. En effet, en dehors des gouverneurs d'Espagne, l'histoire de cette période ne mentionne qu'un préteur sortant de charge qui ait reçu, avec la *prorogatio imperii*, le titre officiel de *proconsule*. C'est M. Claudius Marcellus, qui, après avoir géré le consulat en 222, fut préteur pour la seconde fois en 216, et *proconsule* en 215. Or, le pouvoir proconsulaire lui fut accordé, non par le Sénat, mais par le peuple.» Although MÜNZER 1899, c. 2742, too, accepts the thesis that Marcellus, «der nur Praetor war», saw «sein Imperium für 539=215 als proconsularisches erneuert» by means of «einen besondern Volksbeschluss» his subsequent observation that Marcellus simply kept «das ihm vorher bestimmte proconsularische Imperium» after his abdication from the consulate is, however, bound to confuse. The view that Marcellus received a «proconsular *imperium*» by means of *prorogatio imperii ex praetura* is also adopted by KLOFT

case of Marcellus in 215 offers the first clear instance of «a grant of proconsular imperium to a man who had not been consul in the previous year» and suggests: «Since Marcellus had been praetor the previous year, this grant of proconsular imperium might also be considered as a precedent for the grants of proconsular imperium given to men of praetorian rank, which were so frequent after 197.»¹⁶⁰

BRENNAN, one of the most recent scholars to elaborate on Marcellus' position in 215, appears to waver between two rather opposite views. BRENNAN first adheres to the prevailing opinion: «At the end of 216, the People had raised the *imperium* of the praetor M. Claudius Marcellus (*pr.* 216 and prorogued into 215) to consular for the next year. The grant was allowed to stand even after he sought, won, and then was forced to abdicate a place as suffect consul for 215.» To BRENNAN, this case was the direct precedent «for the Romans making a *privatus* into a *pro consule*».¹⁶¹ BRENNAN subsequently argues, however, that Marcellus found himself in an «unprecedented constitutional position» as *consul II* in 215: «We are not entitled to assume automatically that Marcellus' status as prorogued praetor from 216 still held good after election to, and abdication from, a consulship, nor that the People's vote of consular *imperium* that Livy assigns to late 216 properly belongs to early 215, and was in fact a «compensation prize» for the lost consulship.» His final point of view then is that «Marcellus' position in 215 was probably that of a *privatus* with (consular) *imperium*».¹⁶² FEIG VISHNIA seems to be the only scholar unequivocally to state that Marcellus was vested with «full military authority as proconsul» by the Comitia after his abdication from the consulate, and thus as a private citizen.¹⁶³ In my opinion, careful analysis of the extant source material strongly suggests that this is the only correct representation of the facts.

Towards the end of (the consular year) 216, the Senate summoned the dictator M. Iunius Pera, his *magister equitum* Ti. Sempronius Gracchus as well as the praetor M. Clau-

1977, 16 with n. 33 and DEVELIN 1980, 357, who suggests that the Senate in 215 instructed the People to prolong and elevate Marcellus' *imperium* on the model of the procedure followed on behalf of Cn. Scipio in 217. RIDLEY 1981, 287 merely observes that «Marcellus' *imperium* [...] was continuous 216–215».

¹⁶⁰ JASHEMSKI 1950, 20–22. JASHEMSKI also observes that from here, «it was only a short step to the granting of proconsular imperium to privati who had never held office». BROUGHTON 1951, 255, too, seems to accept MOMMSEN's view and briefly notes that Marcellus was «granted proconsular *imperium* [in 215] as a tribute to his generalship in 216».

¹⁶¹ BRENNAN 2000, 157. Compare also 192, where he points out that «Marcellus' status was exceptional»: at the end of 216 he was «not just (apparently) prorogued into 215, but had his *imperium* raised to equal that of a consul». 328 n. 54 suggests that BRENNAN infers this from Livy 23.30.19, observing that «Mommsen first believed Marcellus' rank as *pro cos.* 215 to be from prorogation [...] but then seems to have decided that this is a special command [...] which is surely right». In point of fact, MOMMSEN appears to think it was a case of both.

¹⁶² BRENNAN 2000, 192.

¹⁶³ FEIG VISHNIA 1996, 62f. FEIG VISHNIA points out that it is impossible to ascertain the identity of the Comitia involved.

dius Marcellus (*cos.* 222) to organize the elections and to set forth the *status rei publicae*.¹⁶⁴ Having presided over the *comitia consularia* and *praetoria* – the consuls-elect being L. Postumius (for the third time and *in absentia*) as well as the *magister equitum* – the dictator immediately returned to his army at its winter quarters in Teanum. The *magister equitum*, however, was allowed to stay in Rome, in order that he, inasmuch as he was to enter upon the consulship a few days later, might confer with the senators in regard to enrolling and supplying armies for the year. Immediately thereafter, however, tidings came of the death of L. Postumius, the other consul designate.¹⁶⁵ The *magister equitum* instantly convened the Senate and consoled the senators by reminding them of the dictator and his army, whereas Marcellus also set forth the total of his forces. These reassurances given, the Senate took a series of decisions with regard to the destination of existing and new armies and prolonged the *imperium* of the consul C. Terentius Varro *in annum*, with Apulia as his *prouincia*.¹⁶⁶ Since Livy's meticulous report indicates that Marcellus stayed in Rome, that his *praetorium imperium* (and *prouincia*) was not prolonged, and that all this took place shortly before the Ides of March 215, Marcellus automatically became a private citizen on 15 March 215.

Further in his narrative, Livy records that, immediately after Sempronius Gracchus entered the consulate and the *sortitio praetoria*, the People ordered that Marcellus should have full *imperium* as proconsul, and that he received this grant of consular *imperium* because he alone of the Roman commanders since the disaster at Cannae had met with success in Italy: *M. Marcello pro consule imperium esse populus iussit, quod post Cannenensem cladem unus Romanorum imperatorum in Italia prospere rem gessisset*.¹⁶⁷ Livy then notes that the Senate in its first session of the new consular year, in the context of the decrees concerning the consular and praetorian armies, decided that Marcellus was to go to the army for which a date of mobilization at Cales had been set, in order to conduct the City legions to the Claudian camp.¹⁶⁸ Livy also recounts that, though at first men had been waiting calmly for the consul to preside over an election for the naming of his colleague, some senators started to murmur that Marcellus, whom they particularly desired to have elected consul for that year on account his remarkable successes as a praetor, had been sent away on purpose. Gracchus successfully appeased them with the argument that both acts were to the interest of the Republic: Marcellus had been sent to Campania to make the change of armies, while the coming election would not be proclaimed until he returned, after accomplishing his assignment, so that the senators might have the consul whom the critical situation required and whom they particularly desired.¹⁶⁹ Gracchus' explanation indicates that the deci-

¹⁶⁴ Livy 23.24.

¹⁶⁵ Livy 23.24.5–13.

¹⁶⁶ Livy 23.25.

¹⁶⁷ Livy 23.30.17–19.

¹⁶⁸ Livy 23.31.5f. Marcellus was sent *ad permutandos exercitus in Campaniam*: 23.31.8.

¹⁶⁹ Livy 23.31.7–9.

sion to postpone the *comitia consularia* until the return of Marcellus was taken simultaneously with, or immediately after, the decision to charge Marcellus with a transfer of troops. The most curious part of Livy's representation is, however, that the People appointed Marcellus proconsul at the very outset of (the consular year) 215, when it was already clear to all that he was the top favourite to fill the vacant consulship. Indeed, as Livy next relates, Marcellus was duly elected consul suffect with great unanimity and immediately entered upon office: *Postquam Marcellus ab exercitu rediit, comitia consuli uni rogando in locum L. Postumii edicuntur. Creatur ingenti consensu Marcellus, qui extemplo magistratum occiperet.* By a remarkable stroke of fate, however, his second consulship would prove to be as shortlived and meaningless as his first had been laden with glory:

Cui ineunti consulatum cum tonuisset, uocati augures uitio creatum uideri pronuntiauerunt; uolgoque patres ita fama ferebant, quod tum primum duo plebeii consules facti essent, id deis cordi non esse. In locum Marcelli, ubi is se magistratu abdicauit, suffectus Q. Fabius Maximus tertium («Just as he was entering upon his consulship it thundered, and thereupon the augurs, being summoned, declared that there seemed to be a flaw in his election. And the Fathers widely circulated the statement that it did not meet the approval of the Gods that two plebeians had then for the first time been elected consuls. In place of Marcellus, after he had abdicated, Q. Fabius Maximus was substituted as consul for the third time.»).¹⁷⁰

Although Livy only mentions the augural decree, there should be no doubt that the college had been convened by the Senate as the ominous thunderbolt had been reported. However concise, Livy's summary also indicates that a powerful faction of senators, including prominent patricians, was not pleased with the outcome of the election, since they immediately tried to play on the religious scruples of the commons. This suggests that at least one ranking patrician senator had run against Marcellus. As Marcellus was eventually replaced by none other than Q. Fabius Maximus Verrucosus (Cunctator) (cos. 233, II 228, III 215, IV 214, V 209), who also happened to be the chief augur of the day, the chances are that it was he who had been defeated by Marcellus in the first place. In light of these considerations, the testimony of a thunderclap at the time of Marcellus' entry upon the consulship looks rather suspect and might well have been contrived after his election. At all events, Marcellus' abdication apparently did not cause him to lose his *consulare imperium* since Livy next reports that, after Fabius' election and the vote of a series of decrees *de prouinciis* and *de exercitibus*, the Senate immediately dispatched him *pro consule ad eum exercitum qui supra Suessulam Nolae praesideret*.¹⁷¹ Marcellus was reportedly still at his post at Nola as proconsul towards the end of 215.¹⁷²

It goes without saying that there is something awkward about Livy's representation of what transpired in Rome at the beginning of 215. Fortunately, Plutarch's narrative

¹⁷⁰ Livy 23.31.12–14.

¹⁷¹ Livy 23.32.1 f.

¹⁷² Livy 23.48.2.

and a note further in Livy's account of 215 may offer the complementary information needed for a plausible reconstruction of the true course of things. In Marc. 12.1 f., Plutarch records that the people called Marcellus to Rome from his army after the death of L. Postumius (wrongly termed consul) in order «to succeed him» and that the *comitia consularia* were postponed under popular pressure against the wishes of the magistrates. Marcellus was made consul by unanimous vote. Because there was a peal of thunder at the time, Marcellus renounced the consulate himself since the augurs considered the omen unpropitious but hesitated to make open opposition for fear of the people. Plutarch then expressly records that Marcellus nonetheless did not abandon his military command but returned to his army at Nola after having been declared proconsul, and proceeded to punish those who had espoused the Carthaginian cause: οὐ μέντοι τὴν στρατείαν ἔφυγεν, ἀλλ' ἀνθύπατος ἀναγορευθεὶς καὶ πάλιν πρὸς Νῶλαν ἐπανελθὼν εἰς τὸ στρατόπεδον κακῶς ἐποίηι τοὺς ἡρμημένους τὰ τοῦ Φοίνικος.

The combined evidence from Livy and Plutarch allows for the following deductions. First, it is obvious that Marcellus was very popular among the commons, while a group of powerful senators was not so keen on the prospect of a second consulship for the plebeian swashbuckler in 215. This would perfectly account for the Senate's decision to charge Marcellus with a transfer of troops in Campania. As a consequence of Marcellus' apparent popularity with at least part of the Senate and the vast majority of the suffering people, the consul Sempronius Gracchus nonetheless felt obliged to postpone the *comitia consularia* until his return. Second, there is every indication that Marcellus received an extraordinary grant of consular *imperium* by way of compensation for his abdication. That the augural decree was reportedly not made public and that Marcellus abdicated of his own accord suggest that supporters and adversaries of his second consulship struck a compromise following the decree of the augural college. In exchange for his voluntary abdication and replacement by Q. Fabius, the paramount chief of the opposing senators, the Senate would arrange for Marcellus to be appointed proconsul *extra ordinem* by virtue of a popular vote. This agreement also had the benefit of avoiding further political infighting at a critical juncture in the war and save Marcellus the slight of a forced abdication *ex s.c. ex decreto augurum*.

Fabius Maximus and his supporters, for their part, were probably determined to avoid the possibility that, in the very year after Cannae, the most life-threatening Roman defeat since the Allia, yet another champion of the people and a notoriously hawkish personality would hold the consulate and thus the *summum imperium* in Italy. Fabius and his associates may have feared that Marcellus, slayer of Britomartus, would not hesitate from staking everything on one battle, in the bloody tracks of C. Flaminius (*cos.* 217) and C. Terentius Varro (*cos.* 216), and reckoned that another crushing defeat in 215 might very well be the fatal blow to Roman power in Italy. In 23.35.1, Livy laconically observes that the intensity of the war subsided in the aftermath of Cannae as the resources of the Romans had been broken, and the spirit of the Carthaginians sapped: *fractis partis alterius uiribus, alterius mollitis animis*. By contrast, a third consulship for Fabius Maximus would allow him to continue his fa-

mous policy of non-confrontational attrition, giving Rome the necessary time to regain her strength.

It is in any case remarkable to note that both Fabius Maximus and Claudius Marcellus were elected consul at the end of 215, respectively holding their fourth and third consulate in 214, and that Fabius and the senior senators also strongly opposed Scipio's bold request to carry the war into Africa before Hannibal had been ousted from Italy.¹⁷³ Since Fabius Maximus held his fifth (and last) consulate in 209 and Marcellus was *consul IV* in 210 and *V* in 208 there seems to have been an ongoing senatorial rivalry between advocates of a more cautious and responsive military strategy and more aggressive elements such as, pre-eminently, C. Claudius Nero (*cos.* 207), M. Claudius Marcellus and Scipio Africanus. The very fact that Marcellus was ambushed and slain together with his colleague in 208 as *consul V* proves that Fabius' reservations concerning his ironside rival were not without foundation.¹⁷⁴

There is, however, one remaining problem with regard to the official position of Marcellus in 215. Further in his account of 215, in the context of a summary of the exhortations Marcellus and Hannibal made during an encounter near Nola, Livy has a frustrated Hannibal terming Marcellus *legatus* in an attempt to shore up the morale of his weary troops. Hannibal reproaches them with being barely able, with great effort, to hold out against a mere Roman *legatus* in command of only one legion and its auxiliaries, whereas they had always defeated the combined strength of two consular armies.¹⁷⁵ Since Marcellus was proconsul at the time F. G. MOORE thinks that Hannibal deliberately misrepresents the facts «in disparagement of Marcellus, as in xlii.10».¹⁷⁶ However, the fact that Livy also uses the term *ablegatum* with regard to Marcellus in 23.31.7 weakens the hypothesis of a rhetorical device and calls for another explanation. Both references seem to indicate that, at the very outset of 215, M. Claudius Marcellus had been charged with the transfer of troops as a *legatus*, possibly receiving a grant of delegated *praetorium imperium* from the consul or the praetor Urbanus by decree of the Senate, the very decision that was perceived by some senators and sizeable parts of the people as a move to hamper his candidacy for the succession of the fallen L. Postumius in the consulship of 215. Although the possibility of Hannibal wilfully misrepresenting the official position of Marcellus can not be ruled out entirely, it could probably be regarded as an inaccuracy on the part of Livy.

That Livy's narrative of 215 suffers from confusion is beyond doubt. Livy for example situates the *sortitio praetoria* after Sempronius Gracchus entered upon the

¹⁷³ See BROUGHTON 1951, 301 and particular Livy 28.40–45 (with the reference to the *seniores* in 28.43.1); Sil. It. 16.604–644 (with esp. 644: *haec Fabius; seniorque manus paria ore fremebat*); and Plut. Fab. 25.

¹⁷⁴ See BROUGHTON 1951, 290 for (the sources for) Marcellus' rather inglorious fate.

¹⁷⁵ Livy 23.45.7: *Cum haec exprobando hosti Marcellus suorum militum animos erigeret, Hannibal multo grauioribus probris increpabat: [...] Legatumne Romanum et legionis unius atque alae magno certamine uix toleratis pugnam, quos binae acies consulares numquam sustinuerunt?*

¹⁷⁶ In the Loeb-edition of books 23–25 (1958), 154 n. 1.

consulship but before the first meeting of the Senate of the consular year 215, whereas the *sortitio praetoria* at this stage of Roman history naturally took place during such inaugural sessions of the Senate. It also strains belief that Marcellus received his extraordinary proconsulate before the election of a suffect consul. First, it was clear to all that he would be a number one favourite for the job. Second, it would have been odd to create an extraordinary proconsulate for the mere purpose of a troop transfer. Conversely, the decision to charge none less than Marcellus with the task to lead a precious army from Cales to Suessula was perfectly understandable after the appalling loss of life at Cannae. Marcellus could have hardly refused this assignment under the circumstances, especially as the only surviving consul was much needed in Rome. Besides, it was not unusual for the Senate to (instruct one of the competent magistrates to) appoint *legati (pro praetore)* for the transfer of major armies.¹⁷⁷

Last but not least, Valerius Maximus offers some additional proof of an extraordinary proconsulship for Marcellus in 215 BCE. In the context of his famous discussion of the so-called *ius triumphi*, Valerius explains in 2.8.5 that the triumphal prerogative was so jealously guarded by the Senate that no triumph was decreed to P. Scipio (Africanus) on account of his conquest of Spain, or to M. Marcellus for the capture of Syracuse, because they had been sent to conduct these operations without any magistracy: *Quin etiam ius, de quo loquor, sic custoditum est, ut P. Scipioni ob reciperatas Hispanias, M. Marcello ob captas Syracusas triumphus non decerneretur, quod ad eas res gerendas sine ullo erant missi magistratu*. Although Valerius is mistaken in that Marcellus was *consul III* in 214, went on to conquer Syracuse in 212 after his *imperium* had been prorogued in 213 and 212, and was refused his triumph in 211 on different grounds,¹⁷⁸ these words provide further circumstantial evidence that he indeed received an extraordinary proconsulate at some point during his eventful career.

This revision of the evidence thus suggests the following reconstruction of events concerning Marcellus' official position in 215. At the very outset of the consular year 215, the Senate charged M. Claudius Marcellus with a transfer of troops, probably as *legatus pro praetore*. Since his absence would also increase the chances of his rivals at the impending election of a suffect consul, strong popular pressure made the Senate and the magistrates postpone the *comitia consularia* until Marcellus had accomplished his assignment and returned to Rome. Although Marcellus was easily elected *consul II*, his opponents seized upon an unpropitious omen and had the augurs decree a *uitium*. By virtue of a mutually acceptable compromise, Marcellus abdicated of his own volition before the Senate took further action and in compensation received an extraordinary proconsulship. This arrangement ensured that the high command in Italy remained with Sempronius Gracchus and Fabius Maximus while Marcellus

¹⁷⁷ See, e.g., Livy 28.46.13 (205 BCE): *Cn. Seruilio praetori negotium datum ut, imperio cui uideretur dato, ex urbe duci iuberet. M. Valerius Laeuinus Arretium eas legiones duxit.*

¹⁷⁸ BROUGHTON 1951, 264 and 268 f. The true reason for the Senate's refusal of a *triumphus publicus* in 211 is given in Livy 26.21.3f.

could continue his prominent role in the war in Italy with the dignity and authority of a proconsul. It is quite likely that the Senate instructed the consuls to have the tribunes of the *plebs* put the question of an extraordinary proconsulate for Marcellus to the vote in the *comitia tributa plebis*. That Livy does not single out Marcellus' direct election to the position of proconsul as an innovation suggests that there must have been at least one precedent for such a procedure.¹⁷⁹ It also follows that the suggestion that Marcellus was the first of the praetorian proconsuls can be safely discarded. That Marcellus held no less than three positions in rapid succession at the start of 215 as well as the apparent confusion in the historiographical tradition probably account for the fact that the erroneous view that he somehow received his proconsulship while still holding the *praetorium imperium* he had received by virtue of his praetorship in 216 can be traced back all the way to Orosius: *Deinde Sempronio Graccho Q. Fabio Maximo consulibus Claudius Marcellus ex praetore proconsul designatus Hannibalis exercitum proelio fudit*.¹⁸⁰

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¹⁷⁹ At any rate, it follows from this reappraisal of Marcellus' proconsular command in 215 that the case of P. Cornelius Scipio Africanus in 210 does not represent the first historically recorded example of an *imperium* conferred upon a private citizen (i.e., *extra ordinem*) by virtue of a popular vote – contra, e.g., MOMMSEN ³1887, Vol. 2, 652; SIBER 1944, 235; WAGENVOORT 1941, 62; EHRENBERG 1953, 125; and, most recently, BLÖSEL 2008, 342.

¹⁸⁰ Orosius 4.16.12. Besides, even in the hypothetical event that *SPQR* had enhanced the praetorian *imperium* Marcellus held in 215 *ex praetura*, his consular rank still set him aside from the genuine praetorian proconsuls as they began to emerge regularly from 197 BCE.

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