INTRODUCTION

In early August 54, the consular candidate C. Memmius revealed to the Senate the worst electoral scandal Rome had ever known.[1] Memmius and his fellow candidate Cn. Domitius Calvinus had entered into a *pactio* with the current consuls Ap. Claudius and L. Domitius Ahenobarbus whereby they provided the consuls with ten million sesterces for bribing the *centuria praerogativa* to ensure the candidates' election. If elected, Memmius and Calvinus would then provide three augurs who would swear they had been present at the passage of a (fictional) *lex curiata* and two consulars who would swear they had assisted in drawing up a *senatus consultum de provinciis ornandis* voting troops and money for the consular provinces. Not only had no such decree been passed, but the Senate had not even met to discuss the question.[2] If Memmius and Calvinus failed to produce these forgeries, they would owe the consuls forty (or four: the text is uncertain) million sesterces.

Clearly, then, the *lex curiata* and *ornatio* decree were important for the two consuls – important enough that, not only were they prepared to risk exposure, but they preferred them to the ten million *denarii* offered as compensation. What were these fabulous prizes? And why had the consuls been unable to obtain them through regular channels? This study aims to answer both those questions and thus to explain how Roman magistrates came to govern their provinces as well as the ways politics in Rome could interfere with this process.

Specifically, this book describes the system for allocating both consular and praetorian provinces which existed between the passage of the *lex Sempronia de provinciis consularibus* in 123 and the *lex Pompeia de provinciis* in 52, with a particular focus on the better-documented period after Sulla. It aims to explain how and why the system in this period differed from that in the middle Republic. Following Pina Polo's approach to the consulship, my intention is to gather the evidence and from that infer what actually happened in practice, rather than deducing the reality from the theory.[3] This also requires exploring the logical consequences of practices as they are attested.

This is not a study of late-republican provincial administration. Nor is it an account of the super-*provinciae* of the extraordinary imperators of this period, or of the evolution of *imperium*. Those questions continue to receive attention from scholars. Rather, my focus is on the annual decisions the Senate took about staffing Rome's various territorial provinces; this study is about the ordinary, not the ex-

1 All dates are BCE unless noted otherwise.

2 Sumner 1982, 133–35; Cic. *Att*. 4.15.7, 4.17.2, *QFr*. 2.15.4, 3.1.16.

3 Pina Polo 2011a, 3: "this monograph intends to have an entirely empirical rather than a theoretical approach. My primary objective is to determine which functions were assigned to the consulship in political practice, with the preserved ancient sources taken as reference material. In short, it is an attempt to study the consuls 'at work', in their actual activities during their term of office." Pina Polo explicitly contrasts his approach to Mommsen's.

traordinary. Each year the Senate decided which provinces were to be consular and which praetorian, which current governors were to be prorogued and which recalled, and how many troops and how much money each provincial imperator was to receive. New imperators needed to be matched to available provinces. The various legitimating departure rituals needed to be performed. And all of this had to take place, every year, in an atmosphere of political jockeying among the various interested parties. Provincial allocations were thus both a complicated administrative burden for the Senate and the occasion of much of what Christian Meier calls "routine politics."[4]

To my knowledge there has been no monograph written on the provincial allocations process. The last substantial treatment was in Willems' *Le sénat de la République romaine*, which was published in 1883.[5] While (of course) Mommsen touches on the matter in the *Römisches Staatsrecht*, his discussion is brief and scattered; in the *Römische Geschichte* he describes the evolution of the provincial system from the mid-second century but says little about the method of allocating provinces.[6] More recently there have been treatments of the magistracies (Brennan, Pina Polo) and the provincial system (Lintott, Schulz, Rivero Gracia, Dalla Rosa, Díaz Fernández) which touch upon the allocations system without discussing it at length.[7] There is a need for an up-to-date treatment of the problem.

The principal findings of the study are these. The phenomenon of secondary praetorian *provinciae* (i. e. praetors who held urban *provinciae* during their magistracy before being prorogued and sent to territorial *provinciae* the following year; the phenomenon Brennan labels "*ex praetura* provinces") cannot have been instituted by Sulla. It was necessary by the last years of the second century and must have been standard practice throughout the nineties. Quite often, there were too many available outgoing praetors to staff the available provinces, which is the opposite of what the standard scholarly account would lead us to expect. This in turn means that the phenomenon of praetors refusing territorial (secondary) *provinciae* was neither an indulgence by Sulla nor (necessarily) evidence of laziness, but was instead logically inherent in the system from late in the second century. There is thus no reason to think Sulla made any deliberate change at all to the system of provincial allocation. Even his law creating two additional praetors – whatever its other effects within the political system – was not primarily concerned with provincial administration and did not dramatically alter it.

The individual steps in the provincial allocation process, which in the period covered by Livy took place close together, had become spread out by the first century. This was true for both consular and praetorian allocations. The *lex Sempronia* only covered consular provinces, and praetors increasingly received secondary *provinciae*; thus, the two processes operated on separate timelines. The essentially static nature of much of the empire in the first century – with imperators serving

4 Meier 1980, 16–17, 40–41: *regelmäßige Politik*.

5 Willems 1883.

6 Mommsen 1865, 364–67, 1878, 1.635–42, 2.199–203 3.1095–99.

7 Brennan 2000; Pina Polo 2011a; Lintott 1993; Schulz 1997; Rivero Gracia 2007; Dalla Rosa 2014; Díaz Fernández 2015.

more as administrators and garrison commanders than conquering generals – meant there was little pressure on the Senate to take decisions swiftly. As long as someone was in charge of the province, it did not much matter to SPQR who it was. All this conspired to make provincial allocations one of the main objects of politics in the late Republic, particularly in the fifties. This was to the detriment of good government and contributed substantially to political dysfunction in Rome. We can thus read two additional motives into the *lex Pompeia de provinciis* of 52, beyond those which scholars have already identified. First, to return consular and praetorian provincial allocations to a single timetable at the discretion of the Senate, allowing a coherent, empire-wide policy of provincial government. Second, to remove many of the political roadblocks which connected magistracy to provincial command, thus streamlining the system of allocating provincial commands and removing the immediate structural dependence of consuls on tribunes.

When we remove Sulla's dictatorship from the central position it holds in scholarship (on provincial matters, at least), we see that the period 123–52 constitutes a unit, with the *lex Sempronia* and *lex Pompeia* serving as bookends.[8] The difference between this period and that covered by Livy is that provincial allocations had become a process rather than an event – and often a long, drawn-out, highly contested process at that. Because this point is fundamental to the argument presented here, and because it has not been adequately appreciated in the existing scholarship, a brief justification is needed.

CONSUL KALENDIS IANUARIIS HABERE PROVINCIAM DEBET

Cicero tells us in section 36 of his speech *De provinciis consularibus* that "a consul ought to have a province on the Kalends of January": *consul Kalendis Ianuariis habere provinciam debet*. Cicero's meaning seems straightforward, while the phrase's relevance to provincial allocations is obvious. But its importance to the longstanding scholarly debate on the *Rechtsfrage* means some quite tortuous meanings have been extracted from it.[9] As is well known, Mommsen asserts the existence of a Sullan law depriving consuls of the right to exercise their *imperium militiae* in a province. He uses the passage in which this phrase appears to suggest that, once a province had been decreed consular, the current governor operated under the auspices of the consul for whom the province was destined, even though that consul could not set foot in the province until the end of his consulship. Balsdon regards such an argument as "the height of the ridiculous" and thoroughly disproved by the history of the late Republic.[10] Rather, Balsdon thinks Cicero means only that the

8 Dalla Rosa 2014, 64, 83

9 The *Rechtsfrage* is the debate over the date on which Caesar's Gallic command legally ended. It draws its name from Mommsen's 1857 paper on the topic (reprinted as Mommsen 1906, 92–145), in which Mommsen's theory described here is largely set out.

10 Balsdon 1939a, 61 (the claim is ascribed to Cicero but Balsdon clearly agrees with it). Giovannini 1983, 82, who rightly regards Mommsen's argument as awkward, thinks "Mommsen est très embarrassé par ce texte."

consular *sortitio* was normally conducted on the consuls' first day in office.[11] This suggestion has been picked up and repeated by several later scholars.[12]

Cicero's orations are never straightforward, but his situation and objectives in this speech were particularly complicated.[13] The circumstance was a determined effort by some senators to recall Caesar by allocating one or both of his Gallic provinces to the following year's consuls; Cicero's overall aim was to prevent this. In Elaine Fantham's words, "the political situation required skilful selection of Cicero's arguments to manipulate different partisan groups in his senatorial audience."[14] So to be able to use this speech, we need to understand his rhetorical strategy, the way he frames questions, and what he does not say. For example, the speech is Cicero's *sententia* in the senatorial debate to decide the provinces for the following year's consuls and yet Cicero frames the debate as being about which current governors should be recalled. For him, the *real* question is the Senate's judgement on the conduct of the governors already in place: those who have fallen short of the mark should be prevented from doing any more damage.[15] But this is not the only way the question could be considered. In deciding where to send the consuls, the Senate might do better to consider where in the Roman world there was a risk of war – that is, which provinces might need consular attention? This is certainly how Livy represents the way consular provinces were decided in the previous century.[16] But putting the question in such a way would not suit Cicero's purpose. Similarly, in section 3, Cicero points out that there are four provinces which have been suggested so far, and therefore the Senate *must* choose two of these four provinces as consular. Such a framing suits his goal, which is to present any attack on Caesar as support for Gabinius and Piso, the *duo vulturii paludati*.[17] But Cicero is being intentionally elusive here: the Senate had a free choice of any provinces which had not been legally reserved (e. g. as Cisalpine Gaul and Illyricum were under the *lex Vatinia*). So in any attempt to glean information from this speech we must understand that Cicero (as usual) is not telling us the whole truth.

The passage in which our original quote occurs provides much to the historian, but it is more problematic than it first appears:

> *Nam illae sententiae virorum clarissimorum minime probandae sunt, quorum alter ulteriorem Galliam decernit cum Syria, alter citeriorem. qui ulteriorem, omnia illa de quibus disserui paulo ante perturbat; simul ostendit eam se tenere legem quam esse legem neget, et, quae pars*

11 Balsdon 1962, 139. Note however, that Balsdon's language hardly suggests certainty: Cicero's statement "may well indicate that 1st January was the day on which the *sortitio* normally took place."

12 So Allen 1952, 238 n. 8; Stockton 1975, 234 (implicitly); Giovannini 1983, 83 n. 25; Stewart 1998, 28 n. 42; Lintott 1999, 106 n. 53.

13 For general discussions of the *De provinciis consularibus* and Cicero's circumstances, see Fantham 2004, 214–19; Lintott 2008, 205–08; Grillo 2015, 9–20.

14 Fantham 2004, 214.

15 See particularly sections 1–3.

16 See Pina Polo 2011a, 81 on the importance of foreign policy in determining the consular provinces; cf. Giovannini 1983, 66; Vervaet 2006, 630–31. See also chapters 2 and 3 below, where I argue this was still important in deciding consular provinces in this period.

17 Cic. *Sest*. 71. This is noted by Fantham 2004, 214–15.

> *provinciae sit cui non possit intercedi, hanc se avellere, quae defensorem habeat, non tangere; simul et illud facit, ut, quod illi a populo datum sit, id non violet, quod senatus dederit, id senator properet auferre. alter belli Gallici rationem habet, fungitur officio boni senatoris, legem quam non putat, eam quoque servat; praefinit enim successori diem. <quamquam> mihi nihil videtur alienius a dignitate disciplinaque maiorum quam ut, qui consul Kalendis Ianuariis habere provinciam debet, is ut eam desponsam non decretam habere videatur. fuerit toto in consulatu sine provincia cui fuerit, ante quam designatus est, decreta provincia. sortietur an non? nam et non sortiri absurdum est, et quod sortitus sis non habere. proficiscetur paludatus? quo? quo pervenire ante certam diem non licebit. Ianuario, Februario provinciam non habebit: Kalendis ei denique Martiis nascetur repente provincia.*
>
> For we ought by no means to accept the proposals of some distinguished men, of whom one assigns to the consuls Transalpine Gaul with Syria, the other Cisalpine Gaul. The assignment of Transalpine Gaul upsets all the plans of which I have just spoken. At the same time it reveals the proposer as upholding that law which he claims to be no law; as depriving Caesar of that portion of his province the detachment of which is immune from veto, but disregarding that portion which has a champion to defend it; with the result, too, that the proposer does not lay hands on what was given to Caesar by the People, but is eager, a senator though he be, to deprive him of what was given him by the Senate. The other proposer takes the Gallic War into consideration, performs the duty of a good senator, and respects a law which he does not regard as such, for he fixes a day for Caesar's successor. Yet nothing seems to me more at variance with the authority and practice of our ancestors than that a consul who ought to enter upon his province on the first day of January, should seem to have it promised only, not definitely assigned. Assume that throughout his consulship he will have been without a province, although a province was assigned to him before he was elected consul. Will he draw lots for it or not? For to refrain from drawing lots and to be denied possession of what has been allotted are alike absurd. Is he to leave Rome wearing his general's cloak? What is his destination? A place where he will not be allowed to present himself before a fixed day. During January and February he will have no province; all at once, on the first day of March, a province will be found for him. (Cic. *Prov. Cons.* 36–37)

Evidence can be found here for or against many coherent accounts of consular *imperium* and *provincia* (as Mommsen found to his embarrassment). Detailed attention to Cicero's language and to the implications of his claims points to provincial assignment more as a process than a single event.

Cicero constructs three possible outcomes, based on what has already been proposed:

1. That Caesar should keep Cisalpine Gaul but be replaced in Transalpine Gaul;
2. That Caesar should keep Transalpine Gaul but a consul should receive Cisalpine Gaul (with certain special conditions); and
3. That Caesar should retain both Gallic provinces and the consuls be sent to Macedonia and Syria.

Proposal 3 is Cicero's preferred solution and he argues for it vigorously throughout the speech. But he is also concerned to discredit the first two proposals and must do so in different ways, since Caesar's tenure in Cisalpine Gaul was established by law (the *lex Vatinia* of 59) whereas he only held Transalpine Gaul at the pleasure of the Senate. So Cicero first (in section 36) attacks Proposal 1 politically by claiming that it gives away what is bestowed by the Senate while respecting the gift bestowed by the People. That is, Cicero claims "the proposal is a bad proposal partly because its

author shows himself, in making it, to be a bad senator."[18] Moreover, although this point is rarely raised in the scholarship, it was highly unusual by this period for the Senate to contemplate recalling a successful commander in the middle of a war.[19] Cicero thus had a good strategic case in his efforts to defend Caesar's tenure of the Transalpine province.

Cicero next criticises Proposal 2. It must be emphasised that he describes a situation which is wholly unusual: Cisalpine Gaul had not been assigned to Caesar by the Senate as an *annua provincia*, but by the People for a legally defined term. Thus the proposal to deprive him of that province could not be as simple as any other, but had to respect the *lex Vatinia* while also working around it. Its complexities are best summarised by Stockton:[20]

> The proposal was that one of the consuls for 55 be assigned Cisalpine Gaul *on condition* that he should not assume his governorship until the expiry of Caesar's own term as governor under the *lex Vatinia*. And the date specified was 1 March 54.

For our putative consul of 55, as Balsdon says:[21]

> During January and February, 54 B.C., he will be, constitutionally, in a highly anomalous position. He will have *imperium* as a proconsul and yet be legally debarred from entering his province, where alone he can exercise his *imperium*.

Cicero's weapon against such a proposal is ridicule. Nothing, he claims, could be more ridiculous and contrary to *dignitate disciplinaque maiorum* than for a consul to have-but-not-have his province in this way, and he evokes (and exaggerates) the problems such a course of action would create.[22] In doing so, he provides us with useful evidence about the nature of provincial assignments in this period. But we need to read the passage closely to extract it all. The relevant section of the text is reproduced below, with the two key terms (*habere* and *decreta*) underlined:

> *Quamquam mihi nihil videtur alienius a dignitate disciplinaque maiorum quam ut, qui consul Kalendis Ianuariis habere provinciam debet, is ut eam desponsam non decretam habere videatur. Fuerit toto in consulatu sine provincia cui fuerit, ante quam designatus est, decreta provincia. Sortietur an non? Nam et non sortiri absurdum est, et quod sortitus sis non habere. proficiscetur paludatus? quo? quo pervenire ante certam diem non licebit. Ianuario, Februario provinciam non habebit: Kalendis ei denique Martiis nascetur repente provincia.*

These two words (*habere* and *decreta*) demonstrate Cicero's ambiguity and the multiple uses to which his evidence can be put. They have slightly different mean-

18 Balsdon 1939b, 167. Cf. Hantos 1988, 102–03.

19 The attempts to recall L. Lucullus (*cos*. 74) only gained traction when he seemed to disregard the war he was sent to fight, while the replacement of Q. Metellus (*cos*. 109) by C. Marius (*cos*. I 107) in Numidia was not the work of the Senate.

20 Stockton 1975, 233. The italics are his.

21 Balsdon 1939b, 168. Note that in this article Balsdon did not think this was the case, although he later realised his mistake (1962, 140).

22 Balsdon 1962, 140: "The suggestion that the proposal would have been unworkable – for instance, that there could have been no sortition between the consuls in 55 is nonsense … the proposal, in respect of Cisalpine Gaul, though unusual and contrary to the intention of the *lex Vatinia*, was, procedurally at least, perfectly sensible and perfectly workable."

ings at each occurrence. To look initially at *decreta*: a province has been decreed for the consul prior to his election (*ante quam designatus est, decreta provincia*). In the normal course of events, he should "have" his province on 1 January 55, his first day in office (*qui consul Kalendis Ianuariis habere provinciam debet*). Indeed, it is contrary to *dignitate disciplinaque maiorum* that he should not "have" (*habere*) a province on 1 January, but instead have it merely "promised" (*desponsam*) and not "decreed" to him (*decretam*). Note the two different meanings Cicero attaches to the concept of a *provincia decreta*: it is both the province decreed by the Senate for the (as yet unknown) consuls before their election, and the province the consul has as his own after he assumes office. Thus we are not able to assign one clear meaning to the phrase *provincia decreta*: it does not refer only to one stage of the process.

A similar ambiguity comes from *habere*. If we leave aside the idiomatic phrase *habere videatur*, the word occurs three times in the passage, and each time it is both meaningful and used in a different sense. The most quotable phrase comes first, *qui consul Kalendis Ianuariis habere provinciam debet*. That is, a consul should have a province on 1 January. Yet from what we know of late-republican practice, which required holding the *feriae Latinae*, which required a decree for *ornatio*, and which normally required holding the consular elections, *habere* here cannot mean "possession."[23] Since a consul on 1 January could not legitimately travel to his province (and thus physically take over its command) and could not legitimately issue orders to its current holder, we must interpret *habere* here in the sense of a consul knowing which province he has a right to.

The second instance is *nam et non sortiri absurdum est, et quod sortitus sis non habere*. That is, it is absurd not to draw lots for a province and absurd not to "have" the province for which one has drawn lots. This implies the normal procedure is that once a consul has drawn lots, and so a province has fallen to him, he "has" that province in some sense. But, again, this does not mean he immediately takes full and effective control over the province, but only that at some point he will. That is, as a result of the *sortitio* a consul has the right to a particular province (and no longer merely the right to a province in general) – but the previous governor is still in charge, for the moment.

The third instance is *proficiscetur paludatus? quo? quo pervenire ante certam diem non licebit. Ianuario, Februario provinciam non habebit: Kalendis ei denique Martiis nascetur repente provincia*. That is, the consul in question might be expected to depart Rome as an imperator, but he has nowhere to go. All through the January and February (after his consulship has ended) he is not to have a province, but he will have it in March. That is, he may only legally enter his province – he only "has" it – from 1 March. The language here clearly requires *habere* in the sense of possession: the consul only "has" his province when he may legally possess it and displace its previous holder.

So if in these few short lines Cicero can change his meaning so much, we are surely entitled to ask: how precisely should we understand the phrases *provincia*

23 The steps in the process of provincial allocation are dealt with in detail in chapters 4–6.

decreta and *provinciam habere*? When precisely does a consul (or praetor, for that matter) "have" his province and when can we say it is "decreed" for him?

One way of answering these questions is by comparing the situation Cicero describes with normal procedure, as described in this book. Normally, the consuls would be elected and enter office knowing which were to be the two consular provinces – as is the case here. Normally, consuls went through a series of steps before they actually arrived in their province and took control: should our imagined consul of 55 take these steps? Cicero gives two parts to this. First, should he draw lots (*sortietur an non*)? In a normal situation, the drawing of lots would make the province "his" in the sense (it seems to me) that it would be known he would command there. And that is also the case here: if our putative consul had drawn lots, then he would have known that Cisalpine Gaul would be his from 1 March 54, and could prepare accordingly (as could Caesar, who at this stage, several years before the Rubicon, could only be expected to comply). Second, should he depart Rome in uniform (*proficiscetur paludatus*)? Technically, he would need to do so, in order to retain *imperium* beyond the end of his magistracy.[24] And nothing prevented the consul in question from performing the ceremony of *profectio* and then remaining for a time on the Campus Martius, as was frequently done in the late Republic. One might, without too much of a stretch, compare our imagined consul's situation to that faced by the praetors of 62, who were still waiting for their secondary (*militiae*) provinces in February 61.[25] So while this proposed situation was indeed anomalous, it was certainly not impossible, despite Cicero's efforts to paint the whole idea as ridiculous. Close examination of the passage reveals that *Consul Kalendis Ianuariis habere provinciam debet* is less an answer than the prompt for a series of questions.

The remainder of this book is dedicated to answering those questions, to tracing the steps consuls and praetors needed to take before they actually exercised command in their provinces. This process had changed dramatically by the late Republic from that described in books 21–45 of Livy. In Livy, the decision as to which provinces are to be consular and praetorian, the *sortitio* (or *comparatio*) to distribute them among the relevant magistrates, and the decrees *de ornandis provinciis* were all frequently undertaken at a single Senate meeting on the first day of the consular year.[26] After the passage of the *lex Sempronia de provinciis consularibus* and after it became usual for consuls to depart for their provinces late in the consular year, the stages in the process of choosing and distributing provinces became spread out over time. It was difficult to identify a single point at which a consul "had" his province. The same holds true for praetors, although the different demands on the praetorship in the late Republic meant that the process for praetorian provinces was separate and somewhat different.

24 On *profectio*, see Mommsen 1878, 1.63–65; Hurlet 2010; Pina Polo 2011a, 215–18. See also section 1.3 below.

25 A comparison made by Balsdon 1939b, 168 n. 5. See below, section 6.2.2.

26 Pina Polo 2011a, 18–20, who also notes that circumstances often complicated the simplified picture given here.

IMPERIUM

This book has a great deal to say about the concepts of *imperium* and *provincia* as they operated in the late Republic. Since the way scholars understand these concepts is debated and has changed substantially in recent decades, a brief discussion is in order.

The starting point must always be Theodor Mommsen: his account of Roman public law is still widely accepted.[27] Mommsen's explanation will be familiar to many readers: *imperium* was the power of the kings of old, inherited by the consuls. It was divided into two types, with *imperium domi* operative within the *pomerium* and *imperium militiae* beyond it. *Imperium* was a conceptually unlimited power to act in the name of the state (particularly in the realm of military command), until such time as it was hedged about with restrictions such as *provocatio*. The decisive change in the history of *imperium* was the *lex Cornelia de provinciis ordinandis*, passed by Sulla as dictator, which stripped the consuls and praetors of their *imperium militiae*, leaving them only their *imperium domi*. Henceforth they were civil magistrates in Rome during their year in office and only as promagistrates did they acquire *imperium militiae* and use it to govern Rome's provinces.

It should not be thought that Mommsen's version easily carried the day; Heuss and Bleicken, among others, mounted robust challenges.[28] But the most comprehensive attack came in Giovannini's *Consulare Imperium*.[29] First, Giovannini proposed a different understanding of the *domi*/*militiae* divide: these referred not to place but to function. *Imperium* was an indivisible concept, with *imperium domi* meaning *imperium* exercised in civilian life and *imperium militiae* referring to its operation in military life and over non-Romans. But, most importantly, Giovannini demolished Mommsen's case for the *lex Cornelia*. No such law ever existed and the consuls retained their ability to command in war at least into the triumviral period. However, the *lex Cornelia* has proved the Rasputin of scholarship on Roman public law: despite several attempts, it has been very hard to kill.[30] There is a further relevant account: that presented by Fred Drogula in his 2007 article "*Imperium*, *potestas*, and the *pomerium* in the Roman republic."[31] Drogula argues that *imperium* was strictly the power of military command, while civilian magisterial power was comprised only of *potestas*. While I disagree with Drogula's argument, it is both surprising and disappointing that it has not, as yet, received serious engagement from scholars.

My own position is developed from Giovannini's and particularly from work by Jean-Louis Ferrary, Frédéric Hurlet and Frederik Vervaet. *Imperium* as a concept

27 Mommsen 1878.

28 Heuss 1944; Bleicken 1998.

29 Giovannini 1983.

30 See the account in Pina Polo 2011a, 225–29. I can only concur with Pina Polo's statement: "I believe it has been sufficiently proved that Mommsen's thesis is wrong, and it is not worth debating it once again. In this respect I refer readers to the book by Giovannini, whose thesis I substantially agree with" (p. 229).

31 Drogula 2007; the question sits more in the background in Drogula 2015.

changed greatly over the course of the Republic and, whatever its origins, in the period covered by this book it had a definite and reasonably well-understood meaning. It was not, as Drogula argues, opposed to *potestas*, but was the strongest form of it. In Vervaet's words, "while not every official *potestas* was an *imperium*, every lawful *imperium* was a public *potestas*."[32] It was bestowed by the People or plebs, whether through election in the centuries or through a plebiscite (as was Pompeius's command in 67 and, so Ridley argues, Scipio Africanus's in 210).[33] The *lex curiata*, whatever it may have done (which is disputed), did not confer *imperium*: *imperium* came from the People. Its physical manifestation (for in a society such as Rome, possession of *imperium* had to be visible) was the fasces carried by lictors. While lictors themselves might be assigned to ambassadors, lower magistrates or as an occasional honour, lictors *cum fascibus* were restricted to holders of *imperium*.[34] The laying down of *fasces* is repeatedly represented as the gesture by which an imperator gave up power (e. g. App. *BCiv*. 1.65–66, 1.104; Caes. *BCiv*. 2.32.9).

By the late Republic there were at least two *genera imperii* (*praetorium* and *consulare*) and, exceptionally, three (*dictatorium*), although this may be a relatively late development, since the nature and significance of the reforms of 367 are disputed. The relationship between them was expressed as *maius*/*minus* and was made visible by the differing numbers of lictors: praetors had six (at least *militiae*), while consuls had twelve and dictators, twenty-four (Plut. *Paul*. 4.2; Plin. *HN* 11.190; cf. Cic. *Pis*. 38). So much is clear, but it is uncertain what precisely possessing *imperium maius quam* allowed a higher imperator to do to a lower – an uncertainty which has only increased with Vervaet's clarification of the *summum imperium auspiciumque* as a separate principle for deciding hierarchies of command.[35] That is, while a consul's *maius imperium* may have ensured he received the high command over a praetor in the same (*militiae*) province, he then gave orders to the praetor by virtue of his *summum imperium auspiciumque*, not by virtue of his *maius imperium*. Moreover, examples of consuls in the City of Rome giving orders to praetors are conspicuous by their absence (with only Val. Max. 7.7.6 arguably demonstrating this). In this sense, Drogula is correct to emphasise the relationship between magistrates *cum imperio* as largely being one of prestige rather than (military) rank.[36] Prestige was perhaps also the main motivator for the phenomenon of praetorian proconsuls: it is hard to see how precisely Rome benefitted from one of its commanders having consular rather than praetorian *imperium*, or whether there was any functional (as opposed to relational) difference between the two.

The exercise of *imperium* in the *militiae* sphere was (largely) restricted to a *provincia*, which was bestowed by the Senate or (occasionally) People (Cic. *Att*. 7.7.4). Each imperator, whatever his rank, was king (or, rather, *summus imperator*) within his own *provincia*, although the picture was more complicated when it came to overlapping *provinciae*. Imperators on their way to or from their

32 Vervaet 2014, 21.
33 Ridley 1981, 281.
34 Vervaet 2014, 7 n. 12. See also Ov. *Fast*. 1.81.
35 Vervaet 2014.
36 Drogula 2015, 223–24.