

SOME COMMENTS ON THE CHARACTER AND SCOPE
OF THE POWER OF PROCONSULS DURING THE TIME OF THE
REPUBLIC: *IMPERIUM CONSULARE* OR *PROCONSULARE*?

By

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The rapid expansion of Rome during the time of the Republic led to a huge increase in the number of military campaigns being waged. Consequently, consuls, who were entrusted with leading the vast majority of wars, were no longer able to fulfil all the military duties as required of them by the Republic. As a result, a new category of commanders who would relieve the magistrates of this function emerged. One such category were the proconsuls, who from the beginning of the 4th century¹ were entrusted with the command of many wars². In attempting to formulate a precise definition of the authority of various Republican commanders difficulties are encountered due to the available source material, usually laconic and imprecise. Such a situation is hardly surprising, especially as the ancient authors did not pay attention to rigid terminology as modern historians do. In this context the precise definition of the character of the authority of the proconsuls is of fundamental importance. In recent years, in historiography, the use of the notion of *imperium proconsulare* in relation to the prerogatives of Republican proconsuls has been viewed rather negatively. According to some historians, these commanders held *imperium consulare*, which was above all military in nature (*imperium militiae*). *Imperium proconsulare*, as a distinct model of power during the Republican period, did not exist at all³. This opinion is primarily based on the interpretation of a number of passages by Cicero,

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¹ Unless stated otherwise, all the dates in the text refer to the period before Christ.

² On the genesis of the proconsulship, cf. JASHEMSKI 1950. On the subject of the praetorship during the Republic, cf. BRENNAN 2000.

³ Cf. GIRARDET 1990: 92; GIRARDET 1992a: 179; BLEICKEN 1993: 122 f.; GIRARDET 2001: 158. See also RODDAZ 1992: 189–211.

who writes that provincial governors and commanders acting outside of Rome held *imperium consulare*, and is also based on the lack of the notion of *imperium proconsulare* in Republican sources⁴. This term appears for the first time in Valerius Maximus, writing during the reign of Tiberius⁵. In my view, this opinion is controversial and requires fundamental verification. The notion of *imperium consulare militiae*, particularly evident in the work of K.M. GIRARDET, in relation to proconsular authority during the Republic, raises some grave concerns⁶. If we were to accept this interpretation, it would mean that the proconsuls were vested with the same *imperium* outside of Rome as the consuls and were of equal status to commanders. This assumption is obviously unacceptable. Sources show numerous examples of the higher status of consular *imperium* over the authority of the proconsul⁷.

As I mentioned earlier, GIRARDET's concept is based above all on a number of remarks by Cicero who writes that proconsuls held the same *imperium* as consuls (*imperium consulare*). A confrontation of Cicero's evidence with other sources from the Republican era and the beginnings of the Principate indicates a lack of precision on his part. An analysis of the writings of Caesar and Livy proves that these authors were aware of the fundamental differences in the scope and nature of the *imperium* of proconsuls and that of consuls⁸. Likewise, Cicero is inconsistent in this matter. A passage of the *Fourth Philippic* shows that he too noticed certain differences between the status of consuls and proconsuls, evident in the superiority of the consul's authority, in whose charge all the provinces were placed⁹. This is an important argument against the use of the same term (*imperium consulare*) to describe two different models of authority. Furthermore, in neither Sallust nor Caesar there are any indications suggesting that proconsuls held consular authority. What is more, the term *imperium consulare* appears only once in Sallust and it refers there to the consul's authority held within Rome¹⁰.

A further argument meant to justify not using the term *imperium proconsulare* in relation to the Republican era is the fact that it does not appear in Republican sources. Although Republican authors do not use the phrase *imperium proconsulare* itself, the expression *imperium pro consule* is nevertheless attested in their

⁴ Cf. Cic. *Flacc.* 85 (Lucullus in Asia); Cic. *Prov.* 15 (Gabinius in Syria); Cic. *Phil.* XI 5 (Trebonius in Asia).

⁵ Val. Max. VI 9, 7; VIII 1 *amb.* 2.

⁶ GIRARDET 1992b: 214.

⁷ The issue is more comprehensively discussed later on.

⁸ Cf. Caes. *Gall.* VI 1; Liv. XXVI 9, 10; XXVI 21, 1; XXXVI 39, 3–5. The question is analyzed in detail in the later part of the paper.

⁹ “Omnes enim in consulis iure et imperio debent esse provinciae” (Cic. *Phil.* IV 9). I refer to this passage below.

¹⁰ Sall. *Cat.* 55.

writings¹¹. I do not believe these terms are diametrically different in meaning. It seems that we are dealing with the same model of authority, expressed only in slightly different words. The justification for such an assumption can be the fact that in sources dating back to the Empire both terms are used interchangeably to describe the prerogatives of the proconsuls. In the *Senatus consultum de Cn. Pisone patre*, written during the rule of Tiberius, the prerogatives of Germanicus, who was delegated to the East as a proconsul, were described as *imperium pro consule*¹². Valerius Maximus, writing in the same period, uses the notion of *imperium proconsulare* in his description of the authority of P. Cornelius Dolabella, who in 43 was proconsul of Asia¹³. However, when referring to the prerogatives of Pompey, who in 77 was delegated proconsul and sent to oppose Sertorius, he uses the term *imperium pro consule*¹⁴. This statement by Valerius Maximus should be read side by side with Livy who writes that Pompey was sent to Spain *cum imperio proconsulari*¹⁵. These two examples clearly show that both terms possessed the same meaning. The fact that both Livy and Valerius Maximus use the term *imperium proconsulare* when referring to the situation under the Republic is crucial. Taking into account the fact that these authors were writing during the principates of Augustus and Tiberius, therefore in a period not so far removed from the events described, it is difficult to maintain that we are dealing with an anachronism¹⁶. In this context the mentions in Livy and Valerius can be a further argument to confirm that the use of the term *imperium proconsulare* is justified in the description of the prerogatives of the proconsuls during the Republic.

In my opinion, the most important argument against the concept put forward by K.M. GIRARDET and J. BLEICKEN are the fundamental differences in the scope of the *imperium* of the consuls and proconsuls. During the Republic consuls held *imperium domi et militiae*¹⁷. The military authority they exercised outside of

¹¹ Sall. *Hist. fr.* 7; Caes. *Bell. Afr.* 97; Cic. *Phil.* XI 30.

¹² *Senatus consultum de Cn. Pisone patre* 33 f.

¹³ Val. Max. VIII 1 *amb.* 2.

¹⁴ Val. Max. VIII 15, 8.

¹⁵ “Cn. Pompeius cum adhuc eques R. esset, cum imperio proconsulari adversus Sertorium missus est” (Livy. *Per.* XCI). I rely on the Teubner edition by O. ROSSBACH (Stuttgart 1959: 94) and the Budé edition by P. JAL (Paris 1984: 22). The Loeb edition by T.E. PAGE (Cambridge, MA–London 1959: 114) adopts *consulare*, a reading of one of the manuscripts.

¹⁶ In fact, the *Periochae* are dated to the 4th century AD, but we cannot exclude that the term *imperium proconsulare* was known to Livy, as it is used (in Greek version) by Dionysius of Halicarnassus who was a contemporary of Livy (Dion. Hal. *Ant.* XVII/XVIII 4, 4). The Greek historian uses the phrase ἀνθύπατος ἀρχή which in Greek sources, together with the term ἀνθύπατος ἐξουσία, is used as a synonym for *imperium proconsulare*. Cf. Cass. Dio LIII 32, 5; LV 13, 5. Cassius Dio was taking advantage of both terms in reference to Augustus’ proconsular power.

¹⁷ It is worth mentioning at this moment that the term *imperium* has recently appeared in the literature only in the context of military power. Cf. DROGULA 2007: 419–452. The author’s thesis is

Rome came to an end the moment they crossed the *pomoerium*. Having said that, it is worth pointing out here that circumstances did exist in which magistrates could exercise *imperium militiae* within the *pomoerium*. This was possible if Rome was exposed to a threat from external enemies or in response to internal unrest within the city, which was frequently precipitated by the civil wars during the late Republic¹⁸. Under such circumstances the Senate would declare a “state of emergency”, which the Romans called *tumultus*¹⁹. An example of such a situation are the events of 211 when Rome was under threat from Hannibal’s army and the right to exercise *imperium militiae* within the *pomoerium* was granted to the current consuls and one proconsul called to the defence of Rome²⁰. In 121 the right to exercise *imperium militiae* within the *pomoerium* on the basis of *senatus consultum ultimum* was granted to the then consul L. Opimius in order to enable him to wage a campaign against C. Gracchus and his supporters, and in 63 to Cicero, when he was consul, in connection with the Catiline conspiracy²¹. The right to exercise military power within the *pomoerium* was also conferred on the dictator²². The *pomoerium*, however, essentially constituted a border the crossing of which resulted in the loss of *imperium militiae*. From Livy we can see that consuls returning from military campaigns summoned the Senate to the temple of Bellona which was located outside of the *pomoerium* so as not to lose *imperium militiae* and the right to celebrate a triumph, which they would have lost had they entered the city. Here commanders also reported on their military achievements²³. Within Rome they could, however, exercise *imperium domi*, which included the right to convene the Senate and other assemblies, and to implement resolutions²⁴. The proconsuls, on the other hand, could only exercise their authority outside of Rome and it was extinguished when they crossed the *pomoerium*²⁵. The case of Pompey, who as proconsul, remained outside of Rome in order not to lose his *imperium*, is a good example here. Nevertheless, the Senate granted him a hearing beyond the *pomoerium*²⁶. Like the consuls, proconsuls returning from war, if they wished to be granted a triumph, reported on their achievements to the

strongly controversial. In the present article however, I do not take up the polemic with the author as it has no significant meaning for the issues I am going to discuss.

¹⁸ Cf. RÜPKE 1990: 55 f.

¹⁹ Cic. *Phil.* VIII 1, 3; Liv. XXVI 9 f.

²⁰ I write more on the subject below.

²¹ DROGULA 2007: 447 f.

²² RÜPKE 1990: 55; DROGULA 2007: 445–447.

²³ Liv. XXXVI 39, 3–5.

²⁴ Polyb. VI 12; Sall. *Cat.* 55; Liv. XXVIII 9, 4 f.; XXXVI 39, 5.

²⁵ Cass. Dio XXXIX 63, 4; Cf. also RÜPKE 1990: 45 f.; GIRARDET 1992a: 183; BLEICKEN 1993: 119.

²⁶ Caes. *Gall.* VI 1; Cass. Dio XLI 3, 3.

Senate which convened at the temples of Bellona or Apollo, both of which were located beyond the *pomoerium*, in the *circus Flaminius*²⁷. It is worth noting that a proconsul, unlike a consul, could not personally summon the Senate in this situation. In each instance this was performed on his behalf by a praetor who was present in Rome²⁸.

As I pointed out earlier, consuls additionally held *imperium maius* in relation to the *imperium* of the proconsuls²⁹. Contrary to clear references in the source material, not all historians share this opinion. According to E.S. STAVELEY, consuls and proconsuls were granted equal military authority³⁰. This historian, in my view, has over-interpreted the sources. The examples he refers to, which are intended to prove the equality of both categories of commanders, are not particularly convincing. In the following I would like to refer only to a few of the most important arguments which STAVELEY calls on in support of his theory³¹. STAVELEY mentions, amongst others, a passage by Dionysius of Halicarnassus, which refers to the conflict which occurred between L. Postumius, the consul in 291, and the proconsul Q. Fabius during the Third Samnite war³². According to Dionysius the consul ordered the proconsul to resign from his position of command and leave the arena of war. Under pressure from the consul, Fabius ultimately agreed to his conditions. After Postumius had completed his term as consul he was ordered to appear before court and was fined³³. According to STAVELEY, the fact that Postumius was brought before the tribunal indicates that the consul could not give orders to the proconsul because as they were equals in terms of the authority they possessed he did not have the right to do so³⁴. However, the analysis of the Dionysius passage as well as of a papyrus text, discovered in the 1980s by Polish archaeologists working in Egypt, containing most probably a fragment from book nine of Livy, permits fundamental verification of STAVELEY's conclusion³⁵. In the light of the account of Dionysius we can assume that the

²⁷ Liv. XXVI 21, 1; XXVIII 38, 2; XXXVIII 44, 9; XXXIX 4, 1 f.; On the localization of the Bellona and Apollo temples cf. ZIÓLKOWSKI 1992: 18 f.; 284 f.; 290.

²⁸ Liv. XXVI 21, 1; XXXVIII 44, 9.

²⁹ Cf. among others Polyb. VI 12; Cic. *Phil.* IV 9; Liv. XXIII 48, 1 f.; XXV 15, 18–20; XXVI 9, 10; XXXVI 37, 6; Cass. Dio XXVII 91.

³⁰ STAVELEY 1963: passim; similarly KLOFT 1977: 72–76; HÖLKESKAMP 1987: 139, n. 89. However, the opinion that the consul had at his disposal *imperium maius* in relation to the *imperium* of the proconsul is held among others by LAST 1947: 160, 162; EHRENBURG 1953: 115 f.; BLEICKEN 1993: 119 f.

³¹ For detailed argumentation cf. STAVELEY 1963: 472–478.

³² Cf. BROUGHTON 1951: 182 f.

³³ Dion. Hal. *Ant.* XVII/XVIII 4 f.

³⁴ STAVELEY 1963: 475.

³⁵ For the philological and historical analysis of the text of this papyrus see BRAVO, GRIFFIN 1988.

proconsul's refusal to carry out the consul's orders was caused by the decision of the Senate, which obliged Fabius to remain on the war front in order to assist the consul and entrusted to him the command of part of the army operations. In this context he refused to accept the consul's orders not because he felt he possessed equal authority but because of his interpreting these orders as contrary to the decision of the Senate³⁶. Additional information on the subject of the possible cause of this conflict can be found in the passage by Livy mentioned above. It permits the assumption that the Senate made the prorogation of Fabius' *imperium*, and therefore his presence on the Samnite front, dependent on Postumius' approval, who as consul was commander-in-chief of the whole campaign. Postumius' determination could therefore have stemmed from his strong conviction that it was within his remit to decide whether the proconsul could continue to lead military operations at his side, and that as consul he had the unquestionable right to issue the proconsul his directives (*mandata*)³⁷. The aforementioned sources also provide reasons as to why the consul was brought before court by the tribunes. It was not due to an abuse of power by Postumius in relation to the proconsul, but it was the result of his activities as a whole, such as discharging the army before the arrival of his successor, the triumph he carried out without the approval of the Senate, his arrogant attitude towards the Senate and the fact that he used legionaries to work on his own private property³⁸. In sum, it is necessary to emphasise that in the light of the available sources it is not possible, on the basis of the conflict between the consul L. Postumius and the proconsul Q. Fabius, to draw any conclusions about the equal status of both categories of commanders.

STAVELEY'S further argument is based on a passage of Livy referring to events during the Second Punic war³⁹. Livy describes an episode connected to the election of the commander-in-chief who was to be sent to Africa in 202. The Tribal Assembly decided that P. Scipio, who had been proconsul for this region since 204, should remain in the position of commander in Africa⁴⁰. The Senate however voted to send to Africa Tiberius Claudius, one of the consuls, instead. Livy writes that Tiberius was delegated, by force of the Senate's resolution, *parique imperio cum P. Scipione imperator*⁴¹. According to STAVELEY, this passage reflects "the normal relationship existing between consul and proconsul outside Rome"⁴². In my opinion, and I agree on this point with V. EHRENBERG, we are dealing here

³⁶ Dion. Hal. *Ant. XVII/XVIII* 4, 4.

³⁷ Cf. BRAVO, GRIFFIN 1988: 511–513.

³⁸ Dion. Hal. *Ant. XVII/XVIII* 5, 3; Liv. *Per. XI*. See also BRAVO, GRIFFIN 1988: 507–511.

³⁹ STAVELEY 1963: 476.

⁴⁰ BROUGHTON 1951: 308.

⁴¹ Liv. XXX 27, 1–5.

⁴² STAVELEY 1963: 476.

with a specific situation which was recorded by the Roman historian because of its unique nature⁴³. In Livy we can find a number of examples which prove that under normal conditions, when confrontations between the two categories of commanders occurred, the proconsuls were subordinate to the consuls⁴⁴. The arrival of a consul in the territory where P. Cornelius Scipio was proconsul would have thus entailed the loss of Scipio's position as chief-in-command. Taking into account the position of Scipio in the Roman political arena, his popularity and military experience, such a situation would most certainly not have been desirable. The regulation mentioned above, which was connected *de iure* with the diminution of consular authority, was to prevent this from occurring. It also constituted a compromise between the wishes of the people, who wanted Scipio as commander-in-chief, and the intentions of the Senate, who desired this position for one of the consuls.

According to STAVELEY, the fact that consuls and proconsuls had the same number of lictors to assist them was also proof of their equality. Expanding on Th. MOMMSEN's statements, STAVELEY assumes that during the Republican era they had the right to twelve lictors⁴⁵. This opinion is in effect primarily based only on a passage of Plutarch regarding L. Aemilius Paulus being delegated to Spain in 191. Plutarch writes that Paulus was delegated as praetor, but rather than the six lictors who were usually assigned to such a position he gained the right to twelve lictors, which, as the Greek biographer notes, gave him consular status⁴⁶. In reality, this passage tells us only about the number of lictors who assisted praetors and consuls; it does not permit any conclusions about the number of lictors assigned to a proconsul. Furthermore, there are certain notices which indicate that the number of lictors did not always reflect the scope of a given official's *imperium*. From Cassius Dio we learn that during the time of Augustus proconsuls in the public provinces had different numbers of lictors⁴⁷. This depended on their previously holding the office of consul or praetor. Ex-consuls had the right to twelve lictors, ex-praetors to six⁴⁸. Despite this difference, all proconsuls held proconsular authority⁴⁹. In this instance a higher number of lictors was rather an indication of the greater prestige awarded to provincial administration positions

⁴³ EHRENBERG 1953: 115 f.

⁴⁴ Liv. XXIII 48, 1 f.; XXV 15, 18–20; XXXVI 37, 6; XLI 18, 5 f.

⁴⁵ MOMMSEN 1876: 366; STAVELEY 1963: 478; similarly KLOFT 1977: 68.

⁴⁶ Plut. *Aem.* 4, 2.

⁴⁷ The provinces which were not under Augustus' rule after 27 are most often referred to in literature as the Senate's provinces; however, MILLAR 1989 has proved the term to be incorrect.

⁴⁸ Cass. Dio LIII 13, 4. See also MILLAR 1966: 157; RICH 1990: 144.

⁴⁹ It is confirmed by Tacitus who states that proconsuls of Achaia and Macedonia, chosen from ex-praetors, had proconsular power, the same as the proconsul of Asia, chosen from ex-consuls. Tac. *Ann.* I 76; III 58.

reserved for ex-consuls (proconsulship of Asia and Africa), rather than the different legal status of the proconsuls.

Particularly important in the discussion of the superiority of consul over proconsul in relation to *imperium* is, in my view, a passage of Cicero and a number of passages in Livy. In the *Fourth Philippic* Cicero states explicitly that all the Roman provinces remain under the undisputed authority and jurisdiction of the consuls⁵⁰. According to M. GRIFFIN, this passage shows only a lack of territorial limitations in the *imperium* of the consuls, giving them the right to enter each province. It is not an indication of the superior nature of *imperium consulare* in relation to the *imperium* of provincial governors (including the proconsuls)⁵¹. It is difficult to agree with GRIFFIN who reduces the interpretation of the Ciceronian passage to the territorial extent of consular authority, thus overlooking the fact that Cicero clearly highlights the specific rank of the consul in relation to other provincial governors. More convincing is G. MANUWALD's assertion that Cicero reveals the superior position of the consul in the provinces, which is due to the *imperium maius*, which included giving him the right to intervene in the affairs of all the provinces⁵². However, this does not obscure the fact that in practice consuls rarely took advantage of this privilege.

Strong arguments in favour of the superiority of the consul in relation to the *imperium* of the proconsul can be found, as I mentioned earlier, in a number of passages of Livy. One of them refers to a situation in 215 when both the then consul Q. Fabius Maximus and the then proconsul M. Claudius Marcellus were active in the territory of Campania. Livy's account shows unequivocally that the consul held chief command and had the indisputable right to give orders to the concurrent proconsul⁵³. We encounter a similar situation in reports of the events of 212. In this instance the consuls gave an order to the proconsul Tiberius Gracchus forcing him to transfer his armies to the defence of Beneventum⁵⁴. In 209 the proconsul M. Claudius Marcellus was ordered by the consul Q. Fabius Maximus to undertake an intensive campaign against Hannibal⁵⁵. Particularly significant is the description in Livy regarding the preparations for the defence

⁵⁰ Cic. *Phil.* IV 9.

⁵¹ BRAVO, GRIFFIN 1988: 520, n. 38.

⁵² MANUWALD 2007: 512.

⁵³ Liv. XXIII 48, 1 f.

⁵⁴ Liv. XXV 15, 18–20; App. *Hann.* 35.

⁵⁵ Liv. XXVII 12, 7. According to KLOFT (1977: 74), the directives given to Marcellus by Fabius were not the effect of wielding superior authority but of his *auctoritas* being the result of his experience and impressive political career (holding five consulates). Taking into account the fact that Marcellus had similar experience and an almost equally impressive political career (four consulates), this interpretation does not seem persuasive. An episode from 207 may be decisive in that context, when the consul Claudius Nero ordered the proconsul Fulvius Flaccus to arrive with his army in Lucania in order to defend the region (Liv. XXVII 42, 17). Taking into account the fact that Claudius

of Rome against the expected attack of Hannibal in 211. Livy notes that in order to strengthen the city's defensive forces, the Senate decided to call upon the help of one of the proconsuls, who at that time were involved in the siege of Capua. The task fell on Q. Fulvius Flaccus⁵⁶. Because of the fact that he was to enter Rome, "cui ne minueretur imperium si in urbem venisset, decernit senatus ut Q. Fulvio par cum consulibus imperium esset"⁵⁷. According to the majority of historians, this regulation was to prevent Flaccus from losing his *imperium* after crossing the *pomoerium*⁵⁸. Yet this interpretation overlooks one important detail. From the Livy text it is obvious that by entering Rome the proconsul's *imperium* would not cease but only be diminished through confrontation with the higher *imperium* of the consuls present in the city. It seems that the very fact that one of the proconsuls was summoned to Rome by the Senate in order to defend the city from Hannibal's armies was equivalent to awarding him the right to cross the *pomoerium*. Thus further regulations were not necessary. Fulvius Flaccus, who undertook this task in place of his colleague who was unwell, could thus freely enter Rome with his army. A similar dispensation was also applied to consuls who, as I mentioned earlier, could exercise only *imperium domi* when in Rome⁵⁹. In this instance, because of the threat to Rome, armies were led into the city and consuls were allowed to exercise *imperium militiae* within the *pomoerium*⁶⁰. Hence the aim of the regulation mentioned by Livy was primarily to make the proconsul's *imperium* equal to that of the consul, thanks to which Flaccus was given the rank of commander equal to the other consuls⁶¹. This situation was of course exceptional, but it does show that in normal situations the proconsuls held *imperium minus* in relation to the *imperium* of the consuls⁶². It is worth remembering that despite the superior rank of the consuls, situations in which they exercised their *imperium maius* to intervene in the activities of the proconsuls were rare. This was due to their having their own concerns in separate territories⁶³. The

Nero during his first consulate gave an order to an experienced commander, previously four times consul, it is difficult to assume it was the result of *auctoritas*.

⁵⁶ Liv. XXVI 8, 9.

⁵⁷ Liv. XXVI 9, 10.

⁵⁸ BROUGHTON 1986: 95; STAVELEY 1963: 476; WEINRIB 1968: 55, n. 88; BLEICKEN 1993: 126.

⁵⁹ See also HURLET 1994: 256, n. 4.

⁶⁰ Liv. XXVI 8-10.

⁶¹ We may assume that the Senate wanted this way to avoid a situation when the militarily experienced Flavius Flaccus, having a firm position on the Roman political stage (three consulates) would be subordinate to less experienced consuls. It is necessary to remember that Cn. Fulvius Centumalus and P. Sulpicius Galba held in 211 their first consulates and had not led any military operations before. Cf. BROUGHTON 1951: 272, 274. Moreover, when it comes to Sulpicius Galba it is known that it was his first curule office. Cf. Liv. XXV 41, 11.

⁶² See also EHRENBERG 1953: 115.

⁶³ LAST 1947: 160, 162; EHRENBERG 1953: 115.

Second Punic war stands out as a period when confrontations between the two categories of commanders were quite common.

Continuing with the differences in the scope of the authority of the consuls and proconsuls, it is worth pointing out the information from Livy regarding the right to celebrate a triumph. The Roman historian writes that this privilege was initially reserved exclusively for magistrates. Livy notes that Scipio, on his return from Spain, had little chance of being granted a triumph as he had commanded the army there as proconsul⁶⁴. Elsewhere Livy relates how the proconsul L. Cornelius Lentulus requested a triumph on his return from Spain in 200. He too was denied this right by the Senate which justified this decision on the basis that triumph was reserved only for a commander who had been successful as consul, praetor or dictator. In the end Lentulus had to be content with a mere ovation⁶⁵. On the basis of the events recorded by Livy we can assume that the proconsuls were viewed only as substitutes for the consuls and were not of the same rank.

Another aspect which I would like to consider when discussing the scope of the authority of the proconsuls during the Republic is the question of the right to take auspices⁶⁶. Sources reveal conclusively that in the 3rd and 2nd centuries proconsuls had such a privilege⁶⁷. So in this respect they were no different from the magistrates leading war campaigns⁶⁸. This fact is corroborated by Cicero, who clearly states that in the past Romans did not begin any public undertaking, including military, without first taking auspices⁶⁹. According to N. ROSENSTEIN, the right of promagistrates to take auspices in this period was a consequence of their holding the office of a particular magistrate in the preceding year. A magistrate leaving for war was granted the right to auspices as a result of a resolution passed by the assemblies (*lex curiata*), which somewhat legitimized his command. After the term of office had passed, the *imperium* of consuls and praetors was often extended (*prorogatio imperii*), so that they could continue to wage frequently unfinished military campaigns as proconsuls or propraetors. Thanks to the fact that their *imperium* continued uninterrupted these commanders also retained the

⁶⁴ Liv. XXVIII 38, 1–4; see also DEVELIN 1977: 58.

⁶⁵ Liv. XXXI 20, 1–5.

⁶⁶ On the subject of the *auspicia* and relations between *imperium* and *auspicium*, cf. MAGDELAIN 1968; BLEICKEN 1981: 259–278; LINDERSKI 1986: 2146–2312; RIVERO GRACIA 2004.

⁶⁷ Liv. XXVIII 16, 14; XXVIII 38, 1 (Scipio in Spain); XXXI 4, 1 (Scipio in Africa); XLI 17, 3; XLI 28, 8 (Ti. Sempronius Gracchus in Sardinia in 176); XLI 28, 1 (Ap. Claudius Centho in Spain in 174). The proconsul's right to take auspices is also confirmed by epigraphic sources (*CIL* I 2, 2662).

⁶⁸ *CIL* I 2, 626; Liv. XXIII 36, 9 f.; XXXVIII, 26, 1.

⁶⁹ Cic. *Div.* I 3: “Deinde auguribus et reliqui reges usi, et exactis regibus nihil publice sine auspiciis nec domi nec militiae gerebatur”.

authority to take auspices⁷⁰. ROSENSTEIN's interpretation seems to be correct, but it cannot be applied to all cases. We do know that not all proconsuls held this position directly following a praetorship or consulship. We also know of cases where proconsuls had not previously held any position of a magistrate *cum imperio*. It is enough to refer to the case of Scipio Africanus, who as proconsul in Spain had the right to take auspices, despite never having held previously any office *cum imperio*⁷¹. He had held only the aedileship in 213⁷². These rights were probably granted to Scipio by the people's resolution entrusting him with the position of the proconsul in this territory⁷³. In as much as in the 3rd and 2nd centuries the issue of proconsuls taking auspices seems to be unquestionable, this situation changes diametrically in the 1st century. Cicero in his treaty *De divinatione* writes that in his time promagistrates did not have the right to take auspices⁷⁴. In his work *De natura deorum* he attributes the disappearance of military auspices (*auspicia militaria*) to neglect on the part of commanders, who, when departing for war, did not concern themselves with obtaining the right to take auspices⁷⁵. This passage would therefore suggest that we cannot speak of a withdrawal of the privilege of auspices from the promagistrates but rather of their conscious resignation from this prerogative. The report of Caesar in which he mentions praetors heading off for their designated provinces without their leadership being confirmed by the people supports Cicero to a significant extent⁷⁶. On the basis of the information from Cicero and Caesar we can accept that when auspices were not taken by military campaign commanders in the 1st century it was not the result of a specific legal regulation which denied them this right but the result of the conscious neglect of procedures. The commanders heading out into the provinces

⁷⁰ ROSENSTEIN 1990: 205.

⁷¹ Liv. XXVIII 16, 14; XXVIII 38, 1

⁷² BROUGHTON 1951: 263; RIDLEY 1981: 281.

⁷³ Liv. XXVI 18, 9.

⁷⁴ Cic. *Div.* II 76 f.: "Bellicam rem administrari maiores nostri nisi auspiciato noluerunt; quam multi anni sunt, cum bella a proconsulibus et a propraetoribus administrantur, qui auspicia non habent? Itaque nec amnis transeunt auspiciato, nec tripudium auspiciantur. Ubi ergo avium divinatio? Quae, quoniam ab iis qui auspicia nulla habent bella administrantur, ab urbanis retenta videtur, a bellicis esse sublata". ROSENSTEIN (1990: 205) believes that the quoted words refer only to those proconsuls who held extraordinary commands (Pompey in Spain) or had the post after some time since holding the magistrate. In my opinion, however, Cicero does not make any distinction and he writes about all the commanders being proconsuls and propraetors.

⁷⁵ Cic. *Nat. deor.* II 9: "An Atti Navi lituus ille, quo ad investigandum suem regiones vineae terminavit, contemnendus est? Crederem, nisi eius augurio rex Hostilius maxima bella gessisset. Sed negligentia nobilitatis augurii disciplina omissa veritas auspiciorum sprete est, species tantum retenta; itaque maximae rei publicae partes, in is bella quibus rei publicae salus continetur, nullis auspiciis administrantur, nulla perennia servantur, nulla ex acuminibus, nulli viri vocantur, ex quo in procinctu testamenta perierunt; tum enim bella gerere nostri duces incipiunt, cum auspicia posuerunt".

⁷⁶ Caes. *Civ.* I 6, 6.

did not wait for the authorisation of their *imperium* by the Curiate Assembly (*lex curiata*), which was necessary in order to be granted the right to take auspices. This situation led to the decline of the meaning of *leges curiatae* and the disappearance of military auspices towards the end of the Republican era⁷⁷.

Finally I would like to discuss the term *privatus cum imperio* as used in reference to a certain category of proconsuls. In modern historiography this notion is often used regarding those *proconsules* who had not previously held any office *cum imperio* (e.g., the proconsulship of Scipio in Spain 210–206), or who had taken up this post after a certain time had elapsed since completing their term as consul during which they did not take the office of provincial governor with the title of proconsul (e.g., Pompey during the war against the pirates in 67)⁷⁸. It is my belief that this term, apart from the fact that it does not appear in ancient sources, is unfortunate and raises serious concerns. The context in which the notion of *privatus* appears in ancient sources indicates serious opposition to the term *imperium*. Sources show that a public person becomes *privatus* after *imperium* ceases, not at the moment when it is gained. It is worth looking here more closely at a few passages from Livy. The Roman historian describes an episode from 216 when the consul C. Terentius Varro nominated M. Fabius Buteo for the position of dictator. He in turn, after completing the constitution of the Senate, resigned from office and dismissed his assisting lictors. Resignation from the dictatorship automatically led to Fabius Buteo becoming a private individual⁷⁹. At the end of 202 the Senate did not extend the *imperium* of the consul T. Claudius Nero. Livy writes that Nero returned to Rome at the head of the fleet as a *privatus*⁸⁰. At the end of 199 the proconsul L. Manlius Acidinus returned to Rome from Spain. The Senate gave its permission for his ovation which did not actually take place because of opposition from one of the tribunes. Acidinus therefore entered the city as a private individual⁸¹. In this case the loss of *imperium* was connected to the proconsul crossing the *pomoerium*. Two passages from Cicero and Suetonius serve to support Livy. Cicero mentions the declaration of Antonius of his readiness to resign from his designated provinces and dissolve his legions. This move would have meant that Antonius would become a private person⁸². Suetonius writes of Cato's threats that he would sue Caesar after his

⁷⁷ Cf. DEVELIN 1977: 63, 65; BLEICKEN 1981: 270–273; RÜPKE 1990: 49–51; ROSENSTEIN 1990: 205.

⁷⁸ JASHEMSKI 1950: 21; KLOFT 1977: 29 f.; RIDLEY 1981: 280 f., 286 f.; BLEICKEN 1993: 121; GIRARDET 1992a: 181.

⁷⁹ Liv. XXIII 23, 7.

⁸⁰ Liv. XXX 39, 3 f.

⁸¹ Liv. XXXII 7, 4.

⁸² Cic. *Phil.* VIII 25.

becoming a private individual on his resignation from command⁸³. The examples mentioned here show clearly that for the holder of *imperium* its loss implied the gain of the *privatus* status⁸⁴.

We also have firm source evidence indicating that the granting of *imperium* to an individual not holding a position in office means that this person ceases to be *privatus*. Here we can refer to the example of T. Manlius Torquatus, who was entrusted with command in Sardinia in 215 because of the indisposition of the praetor Quintus Mucius who was already active there⁸⁵. The fact that Livy does not use the term *privatus cum imperio* when referring to Torquatus is important. Livy writes only that he was sent *cum imperio*⁸⁶. He mentions elsewhere that Torquatus conducted the military campaigns in Sardinia as praetor⁸⁷. Of course, this does not mean that he held the office of praetor during his mission. The description of Torquatus as praetor would have rather stemmed from the fact that he had been granted the *imperium* of praetor, thanks to which he obtained the rank of praetor or, as W. JASHEMSKI writes, *propraetor*⁸⁸. We encounter a similar situation in the case of Pompey in 67, whom Cassius Dio describes as proconsul even though he only held *imperium proconsulare*⁸⁹. Both cases are particularly interesting examples of the separation of power from office which is its natural carrier⁹⁰. Especially significant is the case of Octavian, who in 44 illegally assembled an army which he planned to use against Antonius, consul at that time. Until this undertaking was legalised by the Senate Octavian was acting as *privatus*. Only when he was granted the *imperium* of *propraetor* together with the assistance of lictors in early 43 – which amounted to the authorisation of his earlier activities – did the status of the young Caesar fundamentally change⁹¹. It was no coincidence that Octavian later treated this moment as his *dies imperii*, a kind of “birth” into the Roman public arena⁹².

⁸³ Suet. *Caes.* 30.

⁸⁴ See also *Caes. Civ.* II 32, 9.

⁸⁵ Manlius Torquatus held a consulate in 235 and 224. Cf. BROUGHTON 1951: 223, 231.

⁸⁶ Liv. XXIII 34, 13–15.

⁸⁷ Liv. XXIII 40, 1.

⁸⁸ JASHEMSKI 1950: 24.

⁸⁹ Cass. Dio XXXVI 37, 1.

⁹⁰ We encounter a similar situation with relation to *sacrosanctitas*, traditionally connected with the office of the people’s tribune. In 44, 36 and 35 the following people received it consecutively (apart from the office): Caesar, Octavian, Livia and Octavia. See Cass. Dio LXIV 5, 3; XLIX 15, 5 f.; XLIX 38, 1; see also BAUMAN 1981: 166–183. The practice will later be meaningful for the model of holding the authority developed by Augustus.

⁹¹ *RGDA* 1; Tac. *Ann.* I 10.

⁹² KIENAST 1996: 61.

In the context of the present considerations, a remark made by Caesar may also be of some interest. In a passage of the *Civil War* he discusses the political situation shortly before the outbreak of the civil war with Pompey and complains about the deterioration of public life. According to him, one of the symptoms of such deterioration is the public appearance of lictors attending private citizens in Rome⁹³. For Caesar, seeing lictors, a visual aspect of an official's authority, accompanying a private individual is an anomaly, contradictory to the traditional Roman view of authority.

To summarise, it is necessary to highlight the fact that the scope of the authority of the proconsuls was subject to clear evolution during the Republic. Initially, it was the commanders acting as deputy consuls (*pro consule*) who took on this position directly after consulship, by way of *prorogatio imperii*. The case of Scipio Africanus initiated the creation of a new category of *proconsules*. The Roman political arena witnessed the appearance of commanders acting as proconsuls, who had not previously held any office *cum imperio*. Particularly important in the development of the proconsulship was the dictatorship of Sulla, during which the final division between the promagistrate and magistrate emerged, and proconsuls became a somewhat separate category of officials, who were entrusted with the management of the most important Roman provinces⁹⁴. The most discernible change in the scope of the authority of the proconsuls was most certainly the loss of the right to take auspices in the 1st century, which was the result of intentional procedural neglect. The differences which existed between consular and proconsular *imperium*, to which we should include above all the superiority of the authority of the consul in relation to that of the proconsul and the exclusively military character of the proconsul's *imperium*, which was lost at the moment of crossing the *pomoerium*, indicate clearly the existence of two separate models of power, both of which, in my opinion, deserve a separate name. In this context I do not see any premise which would not permit the use of the notion of *imperium proconsulare* when referring to the authority of proconsuls during the Republic. I therefore support the Republican origin of this model of power, which at the time of the Principate became the basis for the authority of the Princeps and the members of the *domus Augusta* in the provinces⁹⁵.

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⁹³ Caes. *Civ.* I 6, 7.

⁹⁴ EHRENBERG 1953: 116; BLEICKEN 1993: 119.

⁹⁵ Cf. JASHEMSKI 1950: 95–99; BRINGMANN 1977: 219–238; HURLET 1997: 38–51; 63–65; 86–89; 129–133; 144–146; 156–162; 172–174; 215 f.; 222; SAWIŃSKI 2005: 22–36.

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