

The People's Rôle in Allocating Provincial Commands in the Middle Roman Republic*

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ABSTRACT

Mommsen — followed more recently by Brennan and Ferrary — proposed that laws were passed in around 228 and in 198 that constitutionally ‘fixed’ Sicily and Sardinia, and later Hispania Citerior and Hispania Ulterior, as praetorian prouvinciae. This paper challenges that theory. It first examines the ancient evidence, comprising two ambiguous passages from Livy’s Ab Vrbe Condita. It then offers a counter-hypothesis that elucidates the people’s rôle in forestalling and/or resolving political disputes over the allocation of provincial commands. It will show that this rôle was crucial for mitigating the harmful effects of élite competition and, in turn, maintaining political stability in Rome.

Keywords: provinces; Roman Senate; Roman People; élite competition; dispute resolution; political consensus; ‘regular’ *prouvinciae*

I INTRODUCTION

A Roman army famously first ventured across the sea from Italy to Messina in Sicily to intervene in a dispute on behalf of the (Campanian) Mamertines against King Hieron II of Syracuse in 264.¹ The crossing brought Rome into conflict with the Carthaginians, who controlled much of western Sicily, and subsequently led to the First Punic War (264–241).² At the time, no one could have predicted how momentous this event would prove to be for the development of Roman imperialism overseas. Polybius claimed around one hundred years later that the war — which he describes as the ‘longest, most continuous and greatest’ — was fought precisely ‘for Sicily’.³ This is certainly how it might have appeared with the benefit of hindsight: the resulting peace treaty, following the Roman victory in a decisive naval battle fought near the Aegates Islands (modern Egadi Islands), just off north-west Sicily, in 241, stipulated that Carthage had to evacuate Sicily completely.⁴ Rome was left nominally in possession of the areas that had previously been Carthaginian-controlled — namely the parts that were outside of King Hieron II’s Syracusan kingdom. The end of the war marked the beginning of Roman territorial overseas empire.

* The dates used throughout this paper are B.C.E. unless otherwise indicated. I wish to thank John Rich for challenging me to think further about the notion of constitutionally ‘fixed’ *prouvinciae* several years ago and for his valuable feedback on an earlier draft of this article. I am also very grateful to Christopher Mallan, Jonathan Prag and the Journal’s Editor and anonymous reviewers for their advice and comments on various drafts of this article.

¹ Polyb. 1.10–12; Livy, *Per.* 16; Diod. Sic. 23.1; Zon. 8.8.

² See generally for example Hoyos 1998: 33–99; Loreto 2007: 9–43.

³ Polyb. 1.63.4–5. Cf. Polyb. 1.13.10; 1.71.5; App., *Hisp.* 4.

⁴ See Polyb. 1.62.8–9; 1.63.1–3; 3.27.1–10.

Yet, the Roman victory in the First Punic War did not immediately result in the annexation of western Sicily as a permanent *prouincia* — that is to say, a territorial or military or administrative command that was continually assigned to a Roman magistrate or promagistrate every year.⁵ For Polybius, for instance, the control of Sicily meant only that the Romans were able to give orders there and ensure that those orders were obeyed.⁶ Similarly, Sardinia did not become a permanent *prouincia* immediately after the Romans forced the Carthaginians to evacuate the island in 237 and, then, subdued a number of tribes there between 235 and 231.⁷ Whilst two consuls and two praetors were elected each year during this period, the former were usually dispatched to the most important active military spheres (e.g. both consuls were sent to Illyria in 229), whereas at least one of the latter (if not both) would have been needed in Rome (and Italy).⁸ The Senate could, therefore, only regularly designate both Sicily and Sardinia as *prouinciae* each year — alongside at least one, if not two, jurisdictions based in Rome/Italy — after it had decided to increase the number of praetors annually elected from two to four, most probably through a *lex de praetoribus*, several years after the subjugation of Sardinia, around 228.⁹ Further Roman conquests in Spain during the Second Punic War (218–202) led to a similar law in 198, enabling the election of an additional two praetors so that magistrates could be sent to Hispania Citerior and Hispania Ulterior from 197.¹⁰ As a result of these laws, the Senate consistently named Sicily and Sardinia — and, later, Hispania Citerior and Hispania Ulterior — as praetorian *prouinciae* from the late third and early second centuries.¹¹ Cicero looked back on these developments in describing Sicily as the ‘first’ of all the *prouinciae* (which

⁵ There are a variety of views on the Roman treatment of Sicily between 241 and around 228/227 in the modern scholarship, e.g.: (i) Eckstein 1987: 112–13 (no Roman presence was maintained on the island and the cities remained responsible for their own affairs, including taxation); (ii) Crawford 1990: 92–4 (a promagistrate or *priuatus cum imperio* was probably sent, although he does not rule out that a quaestor was sent instead); (iii) Brennan 2000: 89–91 (the so-called *praetor peregrinus* was regularly dispatched with a garrison); (iv) Richardson 1986: 7–8 (perhaps a non-magistrate with *imperium*, but ‘a more plausible guess’ is that the Romans relied on Hieron II of Syracuse and a naval squadron under a *duovir naualis*); and (v) Ferrary 2010: 35; Prag 2012: 61–2 with n. 13; Drogula 2015: 240–6 (a quaestor was sent after 241). I would add a further possibility, that the Romans experimented by sending different types of annual commanders to Sicily, perhaps on an *ad hoc* basis (and not necessarily consistently), in the years immediately following 241. Cf. Harris 1979: 136; Prag 2007: 72; especially now Prag forthcoming. Note also Briscoe 2012: 997: ‘... in 241 Rome had no possessions outside of Italy and *prouincia* had only its original meaning of “sphere of operation”: if a magistrate was sent to Sicily, it became his *prouincia*; the notion of the senate “declaring” Sicily a province and then deciding how to administer it makes no sense.’

⁶ For this classic formulation see Derow 1979: 4–6 (with Polyb. 1.1.5 and 3.4.2–7). See also Walbank 1957: 301–3; Nicolet 1991: 30–1; Kallet-Marx 1995: 22; Millar 2006: 91–4; Derow 2007.

⁷ Polyb. 1.79.1–7; 3.10.3.

⁸ For the well-known fact that consuls received the most important military assignments see e.g. Mommsen 1887: 234; Richardson 1986: 128–37; Rich 1993: 52. Polyb. 2.11.1–2 refers to the consular assignments of 229. For the function of the praetors see further Lintott 1999: 107; Brennan 2000: 85–9; Beck 2005: 63–7; Beck 2011: 83–4; Briscoe 2012. We should not necessarily assume that the praetor with the so-called *inter peregrinos ius dicit* jurisdiction, in addition to the praetor with the so-called *urbana* jurisdiction, was regularly deployed in Rome at this time, although this appears to have been the standard practice after the Second Punic War (218–202). For the later practice see further Brennan 2000: 106–7; 109–11. Cf. Kondratieff 2010: 96–8.

⁹ Livy, *Per.* 20.8: ‘Praetorum numerus amplius est ut essent III [c. 228–225].’ See also Solin. 5.1: ‘... utraque insula in Romanum arbitratum redacta iisdem temporibus facta prouincia est, cum eodem anno Sardiniam M. Valerius, alteram C. Flaminius praetor sortiti sunt.’ The increase in the number of praetors, including the uncertain dating, is discussed by Brennan 2000: 85–97; Beck 2005: 63–7. See also Dahlheim 1977: 48; Harris 1979: 136, n. 3; Prag 2012: 54 with n. 2. As Ferrary 2010: 35 suggested, we can assume that there was a Sullan law increasing the number of praetors from six to eight around 81 on the basis of the known *Lex Cornelia de XX Quaestoribus*, part of which is preserved on a bronze tablet (*RS*, no. 14); and we can reasonably suppose from this evidence that there would have been a *Lex de IV Praetoribus* around 228 and a *Lex de VI Praetoribus* in 198 (for which see above).

¹⁰ Liv. 32.27.6 and 32.28.2. See further Richardson 1986: 75–9; 95–125; Brennan 2000: 164–6.

¹¹ See Vervaeke 2006: 626–32 for an excellent summary of the Senate’s rôle in provincial allocations.

were still regularly named) when he composed his *Verrine Orations* in 70.¹² The same could equally have been applied to Sardinia.¹³

Modern scholars would unanimously agree that there were a number of *de facto* regular *provinciae* that were named by the Senate from around 228 onwards.¹⁴ However, Brennan and Ferrary — following an idea of Mommsen — have gone even further in providing an ingenious explanation for two passages from Livy's *Ab Vrbe Condita* that refer to the rôle of the people in altering regular praetorian provincial assignments in Sardinia and the Hispaniae.¹⁵ They argue that there were specific provisions included in the *leges de praetoribus* from around 228 and 198 (above) which constitutionally fixed Sicily and Sardinia (from 227) and the Hispaniae (from 197) as praetorian *provinciae*.¹⁶ In other words, the Senate would have been bound to name these 'fixed' *provinciae* as *sortes* (lots) for inclusion in the annual praetorian *sortitio* (drawing of lots), unless the people gave it permission to exclude one or more of them in a particular year. If correct, the laws would have seriously limited the freedom of the Senate to name the praetorian provincial assignments each year. As the same restriction did not apply to the two consular *provinciae*, the 'fixed' praetorian *provinciae* would almost certainly have been viewed in a different light.¹⁷ Indeed, the existence of constitutionally fixed *provinciae* would suggest that Rome had decided to maintain a permanent presence in Sicily and Sardinia as early as c. 228 and, then, later, in the Hispaniae from 198. Thus, these *provinciae* would have been regarded as permanent possessions, which would have been likely to influence how the Romans conceived the territories associated with their *provinciae* and their empire.¹⁸

The purpose of this paper is two-fold: first, it challenges the theory of constitutionally 'fixed' praetorian *provinciae*; and, second, it uses this as a means of exploring the Roman people's rôle in allocating *provinciae* and, in particular, in arbitrating contentious senatorial decisions on provincial assignments. This will involve examining both the institutional framework underpinning the assignment of *provinciae* and the domestic politics which affected this process. The paper will first examine the extremely limited evidence for the notion of 'fixed' *provinciae*, comprising, in total, just two ambiguous passages from Livy's *Ab Vrbe Condita* (Section II). In contrast with the theory of

¹² *Verr.* 2.2.2: 'Prima omnium, id quod ornamentum imperi est, provincia est appellata; prima docuit maiores nostros quam praeclearum esset exteris gentibus imperare ...'

¹³ See Prag 2012: 65. The ancient sources that imply that Sicily, Sardinia and Hispania Citerior and Hispania Ulterior were created as *provinciae* immediately after conquest were written long after they had become regular *provinciae* with the benefit of hindsight. See, e.g., Sextus Pomponius' account (second century C.E.) of the increase in praetors, as later summarized in *Dig.* 1.2.2.32 (sixth century C.E.): 'Capta deinde Sardinia mox Sicilia, item Hispania, deinde Narbonensi provincia totidem praetores, quot provinciae in dicionem uenerant, creati sunt, partim qui urbanis rebus, partim qui provincialibus praessent.' For the inaccuracies in this assessment note Brennan 2000: 92 (together with 284, n. 104). Cf. *Vell. Pat.* 2.38.2 (first century C.E.) and *Solin.* 5.1 (perhaps writing in the late third century C.E., for which see Brodersen 2016: 303–4).

¹⁴ For the gradual development of Roman provincial administration and the 'territorialization' of empire see further, e.g., Richardson 1986 (Spain); Hermon 1993 (Gaul); Kallet-Marx 1995 (Macedonia and Asia); Quinn 2004 (Africa); Dahlheim 1977: 44–54; Prag 2012 (Sicily and Sardinia). See also generally Crawford 1990; Hermon 1996; Ferrary 2008; Drogula 2015: 232–94.

¹⁵ *Liv.* 27.22.4–6 and 35.20.8–11 with Mommsen 1887: 211 with n. 1; Brennan 2000: 184–90; Ferrary 2003: 139; Ferrary 2008: 9–10; Ferrary 2010: 34–6. See also Drogula 2015: 255 (and cf. 237; 243 with n. 30; 253 with n. 59).

¹⁶ The best summary is given by Ferrary 2010: 34–6.

¹⁷ As Richardson 2008: 17–18 recognizes, '... these *provinciae* would certainly have a different status in the minds of senators and magistrates from those others (both consular and praetorian) which were not hedged from senatorial consideration ...'

¹⁸ This does not mean that there were specific annexation laws (or so-called *leges provinciae*) which formally defined the territorial and administrative boundaries of the *provinciae* once and for all, for which see further, e.g., Lintott 1981: 58–61; Crawford 1990: 112–17; Lintott 1993: 28–32; Kallet-Marx 1995: 18–21; Drogula 2015: 271–2.

constitutionally ‘fixed’ *provinciae* — which is never explicitly attested in any ancient source — the hypotheses presented in this paper will be based on empirical research. We shall explore a number of cases, dating between 295 and 131, in which the people played a decisive rôle in determining the assignment of *provinciae* after political disagreements in the Senate (Section III). On the basis of this evidence, the paper will then propose that the people were involved in the allocation of Sardinia in 208, and Hispania Citerior and Hispania Ulterior in 192, as briefly recorded by Livy, in order to forestall or arbitrate political disputes among the political élite over the assignment of these commands (Section IV). The people’s involvement in the allocation of *provinciae* — and, in particular, the relationship between ‘élite’ and ‘popular’ elements in this decision-making process — will be placed within the broader context of popular politics in the Roman Republic, which has been a topic of much debate, especially following the publication of Millar’s articles from the mid-1980s in the *Journal of Roman Studies*.¹⁹

II THE THEORY OF CONSTITUTIONALLY ‘FIXED’ *PROVINCIAE*: THE *STATUS QUAESTIONIS*

The notion of constitutionally ‘fixed’ *provinciae* originates with Mommsen, who cites the evidence from Livy’s record of the senatorial resolutions about the praetorian *provinciae* of 208:²⁰

The other [non-consular] *provinciae* were distributed among the praetors as follows: the urban jurisdiction to P. Licinius Varus; the peregrine jurisdiction and wherever the Senate should have voted to P. Licinius Crassus, the Pontifex Maximus; Sicily to Sex. Iulius Caesar; and Tarentum to Q. Claudius Flamen. *Imperium* was prorogued for a year for Q. Fulvius Flaccus so that he could hold Capua as his *provincia* with one legion, which had previously belonged to the praetor T. Quinctius. *Imperium* was also prorogued *pro praetore* for C. Hostilius Tubulus so that he could succeed C. Calpurnius in Etruria with command of two legions. *Imperium* was likewise prorogued *pro praetore* for L. Veturius Philo so that he could retain the same *provincia Gallia* with the same two legions which he had held as praetor. The same order, which was made for L. Veturius, was decreed by the Senate for C. Aurunculeius, who as praetor had held Sardinia as his *provincia* with two legions, and a law concerning the prorogation of his *imperium* was proposed to the people. Fifty warships, which P. Scipio was to send from Spain, were added to the command for the protection of the *provincia*.²¹

Mommsen noticed that the people were asked to approve the Senate’s decision to extend the command of C. Aurunculeius (*pr.* 209) in Sardinia, whereas they were apparently not involved in any of the other prorogations of *imperium* (*ex senatus consulto*) that year.²² Accordingly, he suggested that the Senate had to consult the people in 208 in

¹⁹ See Millar 2002a (originally published in 1989); Millar 2002b (originally published in 1984); Millar 2002c (originally published in 1986). See also Millar 1998; Millar 2002d (originally published in 1995). For an excellent overview of the issues at stake in the debates see Jehne 2006. See also Hölkeskamp 2010.

²⁰ Mommsen 1887: 211 with n. 1.

²¹ Liv. 27.22.4–6: ‘ceterae provinciae ita diuisae: praetoribus, P. Licinio Varo urbana, P. Licinio Crasso pontifici maximo peregrina et quo senatus censuisset, Sex. Iulio Caesari Sicilia, Q. Claudio Flamini Tarentum. prorogatum imperium in annum est Q. Fulvio Flacco ut provinciam Capuam quae T. Quincti praetoris fuerat cum una legione obtineret. prorogatum et C. Hostilio Tubulo est ut pro praetore in Etruriam ad duas legiones succederet C. Calpurnio. prorogatum et L. Veturio Philoni est ut pro praetore Galliam eandem provinciam cum iisdem duabus legionibus obtineret quibus praetor obtinisset. quod in L. Veturio, idem in C. Aurunculeio decretum ab senatu, latumque de prorogando imperio ad populum est qui praetor Sardiniam provinciam cum duabus legionibus obtinuerat. Additae ei ad praesidium provinciae quinquaginta longae naues quas P. Scipio ex Hispania misisset.’

²² Mommsen 1887: 211. In this case, the people approved the *lex*, which would have been brought before them by a magistrate *ex senatus consulto*. However, it should be noted that Livy is not consistent with his choice of

order to obtain an exemption from a law of around 228 — passed alongside the *lex de praetoribus* that enabled the election of two additional praetors each year — which had legally bound it to name both Sicily and Sardinia as praetorian lots every year from 227.

Mommsen's suggestion was followed, more recently, by Brennan and Ferrary, who added that the Senate would also have required a *lex/plebiscitum* to omit Hispania Citerior and/or Hispania Ulterior from the praetorian *sortitiones* from 197 onwards.²³ Ferrary explains that this was why both a *senatus consultum* and a *plebiscitum* were used to change the praetorian allotments of Hispania Citerior and Hispania Ulterior to the Bruttii and the fleet and Macedonia in 192.²⁴

The praetors then drew lots for their *provinciae*: the urban jurisdiction was allotted to M. Fulvius Centumalus, the peregrine jurisdiction to L. Scribonius Libo, Sicily to L. Valerius Tappo, Sardinia to Q. Salonius Sarra, Nearer Spain to M. Baebius Tamphilus and Further Spain to A. Atilius Serranus. But the *provinciae* of these last two were changed first by senatorial decree and then again by a vote of the *plebs*: the fleet and Macedonia were voted to Atilius, whereas the Bruttii were voted to Baebius. *Imperium* was prorogued for both [C.] Flaminius and [M.] Fulvius [Nobilior] in the Hispaniae.²⁵

Brennan explicitly differentiates between the so-called 'fixed' *provinciae* above — the urban jurisdiction, the peregrine jurisdiction, Sicily, Sardinia, Hispania Citerior and Hispania Ulterior — which were usually allotted to praetors each year *de iure* and what he refers to as 'special' (i.e. irregularly named) *provinciae*, such as the Bruttii and the fleet and Macedonia.²⁶ He suggests that the legal obligation to name the six 'fixed' *provinciae* continued until the passage of the Lex Baebia in 181, which stipulated that four praetors should be elected in alternate years rather than six.²⁷ As a result of this law, Hispania Citerior and Hispania Ulterior were named as praetorian lots only every other year. Brennan and Ferrary argue that the Baebian Law allowed, for the first time, the omission of the 'fixed' (or 'regular') *provinciae* from the praetorian *sortitio* without a *lex* or *plebiscitum*.²⁸ Even though the law was short-lived, they claim that it set an important precedent, which, in effect, abrogated the laws of c. 228 and 198 supposedly fixing Sicily, Sardinia, Hispania Citerior and Hispania Ulterior as praetorian *provinciae*

vocabulary to describe institutions and uses *populus* to allude to both *leges* and *plebiscita*, for which see Ferrary 2003: 108 with n. 3.

²³ Brennan 2000: 187–8; Ferrary 2003: 139–40; Ferrary 2008: 9; Ferrary 2010: 34–6. This theory appears to have been accepted most recently by Drogula 2015: 255, who claims — presumably following Brennan 2004: 45 — that the Senate stopped asking the people to confirm prorogations in the 'fixed' *provinciae* in the 190s ('or shortly thereafter'). Cf. Drogula 2015: 237, 243 with n. 30, 253 with n. 59.

²⁴ Ferrary 2003: 139–40 with n. 145; Ferrary 2008: 9; Ferrary 2010: 36. See also Brennan 2000: 187, who acknowledges that, 'This is a different type of case than the one for 208 ...' Cf. Mommsen 1887: 214 with n. 1: 'Hat die Loosung einmal stattgefunden, so bedarf es für die Abänderung der also festgestellten Kompetenzen unzweifelhaft eines Volksschlusses; das freie Schalten des Senats hört mit der Erloosung der Provinz auf, ausser wenn durch Tod oder Rücktritt eine Vacanz eintritt.'

²⁵ Liv. 35.20.8–11: 'praetores deinde prouincias sortiti, M. Fulvius Centumalus urbanam, L. Scribonius Libo peregrinam, L. Valerius Tappo Siciliam, Q. Salonius Sarra Sardiniam, M. Baebius Tamphilus Hispaniam citeriorem, A. Atilius Serranus ulteriorem. sed his duobus primum senatus consulto, deinde plebei etiam scito permutatae prouinciae sunt: Italia classis et Macedonia, Baebio Bruttii decreti. Flaminio Fuluique in Hispaniis prorogatum imperium.'

²⁶ Brennan 2000: 184–90.

²⁷ Brennan 2000: 189. This is followed by Ferrary 2008: 9; Ferrary 2010: 36. For the details of the Baebian Law see Brennan 2000: 169–72 (with Liv. 40.44.1–2).

²⁸ It should be noted that Brennan 2000: 189 refers to this as 'a most tentative suggestion', whereas Ferrary 2008: 9–10 and Ferrary 2010: 36 have far more confidence in the hypothesis. (Ferrary 2003: 140 with n. 147 is more cautious.)

each year.²⁹ This would have meant that the Senate was no longer constitutionally bound to name any of the so-called ‘fixed’ *provinciae* as lots each year after 181.

One might be sceptical that the fixing of two praetorian *provinciae* as Sicily and Sardinia in a rigidly deterministic way would have been implemented as early as 228. As Lintott emphasizes in *The Constitution of the Roman Republic*, ‘It is significant that the best known and fundamental modern attempt to give an account of the constitution, Theodor Mommsen’s *Römisches Staatsrecht*, is highly theoretical, in spite of the assembly of the source-material in the footnotes’.³⁰ Mommsen’s suggestion concerning ‘die dauernd eingerichteten Provinzialstatthalterschaften’ certainly fits this description.³¹ There have been various moves in modern scholarship away from the institutionalization of the Roman constitution towards viewing the political system as more fluid and evolutionary.³² Indeed, the theory of constitutionally ‘fixed’ *provinciae* has not remained unchallenged. Richardson rightly observes that, ‘... the single report in Livy of the details of the allotments in 208 is a slender foundation on which to base a theoretical distinction between “fixed” and “special” praetorian *provinciae*’.³³

However, Richardson’s own arguments against the theory are not entirely convincing.³⁴ He first highlights that Livy gives no indication that there were votes of the people in the various other instances in the late third and early second centuries in which the so-called ‘fixed’ *provinciae* (i.e. Sicily, Sardinia, Hispania Citerior and Hispania Ulterior) were omitted from praetorian *sortitiones* (and (pro)magistrates were prorogued with them instead).³⁵ As he acknowledges, though, the argument from silence is weak, since Livy might have simply omitted the record of votes by the people in the other cases.³⁶

Richardson next claims that the question about the prorogation of Aurunculeius’ *imperium* was posed only after the Senate had already omitted Sardinia from the praetorian *sortitio* and after the praetorian allotments had been made.³⁷ Accordingly, he puts weight on the following proposition: ‘If the decision which was made in the popular assembly was about the decision of the senate as to which *provinciae* were to be included in the allotment, this would surely take place before the allotments were made, not after it.’³⁸ We can imagine that the Senate first named the praetorian *sortes* and determined which magistrates/promagistrates would continue to hold their *provinciae* for the year. Yet, we do not know whether Livy (or his source) maintained the chronology of what immediately followed this — i.e. whether it was the actual praetorian *sortitio*, as Richardson suggests, or the law confirming Aurunculeius’ *prorogatio imperii*.³⁹ In other words, the people may have been consulted about

²⁹ The election of four praetors in alternate years seems to have been abandoned around 176, for which see Brennan 2000: 172–73; Ferrary 2003: 122.

³⁰ Lintott 1999: 8.

³¹ Mommsen 1887: 211.

³² See, e.g., Lintott 1999: 6–7; Brennan 2000: 3–6; Flower 2010; Hölkeskamp 2010: 14–22, especially 21–2, and 125–6; Beck *et al.* 2011: 3–4; Bergk 2011; Drogula 2015: especially 3–4.

³³ Richardson 2008: 19.

³⁴ *ibid.*: 17–23.

³⁵ *ibid.*: 19, referring predominantly to the prorogations made in Spain in the 190s and 180s. Note already Willems 1885: 550, n. 4. For a list of prorogations in the so-called ‘fixed’ *provinciae* see Brennan 2000: 186; Ferrary 2003: 140, n. 146. See also Stewart 1998: 194–5.

³⁶ See Ferrary 2003: 107–23 and the discussion in Section IV above for Livy’s omissions.

³⁷ Richardson 2008: 20–1.

³⁸ *ibid.*

³⁹ Note that Livy reports that *provinciae* were decreed at the end of 192 for 191 (35.41.6), whereas the actual *sortitio* and prorogations followed at the start of 191 (36.1.6–36.2.6). Elsewhere, he first mentions the *prorogatio imperii* of M. Claudius Marcellus (*pro cos.*) in Italy in 209 followed by the praetorian *sortitio* (27.7.8) and later records — alongside the distribution of military forces — the prorogation of M. Valerius Laevinus (*pro cos.*) and L. Cincius Alimentus (*pro pr.*) in Sicily (27.7.12), P. Sulpicius Galba Maximus (*pro cos.*) in Macedonia (27.7.15), and, finally, the continuation of the commands of P. Cornelius Scipio (*pro cos.*)

Aurunculeius' *imperium* prior to the *sortitio* and the outcome of their decision may, therefore, have affected whether the Senate changed the name of one of the praetorian lots.⁴⁰ Even if the praetorian allotment took place before the vote on Aurunculeius' *imperium*, it is still possible that the Senate regarded the vote as a formality and did not feel that it was necessary to hold up the *sortitio*. In the event of a negative vote, the Senate could have still opted to change one praetorian lot to Sardinia rather than repeat the entire *sortitio*.⁴¹ With these considerations in mind, it remains entirely possible that the vote of the people determined whether Sardinia was allowed to be excluded from the list of praetorian *provinciae* in 208.

Finally, Richardson tentatively suggests that the people may have been concerned with proroguing Aurunculeius' *imperium* owing to their general involvement in approving *prorogatio imperii*.⁴² However, although the people had customarily been involved in confirming the prorogation of *imperium* in the late fourth and early third centuries, the Senate appears to have gained exclusive responsibility for this at some point between 292 and 218 (the period covered by the (now lost) eleventh to twentieth books of Livy's *Ab Urbe Condita*).⁴³ In any case, it would be very strange that the people were only mentioned with regard to the extension of Aurunculeius' *imperium* and not the other magistrates (e.g. L. Veturius Philo) in 208 if they were still generally involved in prorogations at the time. Livy's language implies that a vote of the people was held for Aurunculeius with his *provincia Sardinia* and not for Veturius with his *provincia Gallia*.⁴⁴ There must have been something extraordinary in Aurunculeius' case alone.

Despite Richardson's objections, Brennan and Ferrary must be right that we need a reason why a vote of the people was necessary in the specific case of Aurunculeius' *imperium* alone. However, Ferrary goes too far in concluding that, 'Le seule explication qu'on en ait pu donner est celle de Mommsen ...'.⁴⁵ As we shall see in the following sections of this paper, viable alternative – and, arguably, more plausible – explanations for the evidence can be offered, which, at the very least, cast substantial doubt on the theory of constitutionally 'fixed' *provinciae*.⁴⁶

and M. Iunius Silanus (*pro cos.*) in Spain (27.7.17). Livy appears to give his reports on these commands thematically (geographically) rather than chronologically. Note also that he records the praetorian *sortitio* and *prorogatio imperii* for 215 prior to the first meeting of the Senate when they would surely have both come afterwards (23.30.18–19 and 23.31.1), for which see Vervaeke 2012: 92–3. See generally also Levene 2010: 34–63, especially 60–1 with n. 156, and Rich 2011, especially 5.

⁴⁰ There are various other instances in which Livy mentions the prorogation of commands prior to the *sortitio*: e.g. Liv. 22.34.1 (prorogation of Cn. Servilius Geminus (*pro cos.*) and M. Atilius Regulus (*pro cos.*) in Italy) and 22.35.5–7 (praetorian election and *sortitio*) for 216; 30.1.7 (prorogation of M. Cornelius Cethegus (*pro cos.*) in Gaul) and 30.8–10 (the consular and praetorian *sortitio*) for 203; 30.27.5–6 (the consular *sortitio*), 30.27.6 (prorogation of C. Servilius Geminus (*pro cos.*) in Etruria) and 30.27.7–8 (praetorian *sortitio*) for 202.

⁴¹ The *sortitio*, after all, was not repeated when the Senate asked the *plebs* to confirm the decision to change the praetorian allotments of Hispania Citerior and Hispania Ulterior to the Bruttii and the fleet and Macedonia in 192 (Liv. 35.20.8–11).

⁴² Richardson 2008: 21–2.

⁴³ See Ferrary 2003: 138–9 with n. 137 *contra* Oakley 1998: 660–1. See also Brennan 2000: 187–9; Drogula 2015: 213.

⁴⁴ Liv. 27.22.6 (emphasis mine): 'quod in L. Veturio, idem in C. Aurunculeio decretum ab senatu, latumque de prorogando imperio ad populum est qui praetor Sardiniam provinciam cum duabus legionibus obtinuerat.' Note especially the singular 'prorogando imperio'.

⁴⁵ Ferrary 2003: 139.

⁴⁶ Willems 1885: 550, n. 4 proposed that the people were consulted in order to upgrade Aurunculeius' *praetorium imperium* to *consulare imperium* in Sardinia in 208 and compares the grant of *consulare imperium* to M. Claudius Marcellus in 215 (Liv. 23.30.19). Ferrary 2003: 139, n. 143 rightly dismisses this by highlighting that Livy gives no indication that there was any difference between the *imperium* of Aurunculeius and the *imperium* (*pro praetore*) held by Veturius in Gaul. There is no obvious reason why Aurunculeius' *imperium* would have been upgraded in 208. On this phenomenon see now Vervaeke 2012: *passim* and especially 46–7 (on the precedent of the Lex Metilia of 217) and 86–94 (on the voting of *imperium* to M. Claudius Marcellus in 215).

III THE PEOPLE'S RÔLE AS ARBITRATORS

This section and the next will provide alternative explanations for the people's rôle in the allocation of *provinciae* in order to demonstrate the weakness of the hypothesis first proposed by Mommsen and later expanded on by Brennan and Ferrary. They will suggest that the people may have been involved in the extension of Aurunculeius' *imperium* in 208 — as well as the modification of the praetorian lots from Hispania Citerior and Hispania Ulterior to the Bruttii and the fleet and Macedonia in 192 — in order to forestall or arbitrate political disputes.⁴⁷

This counter-hypothesis has a distinct advantage in that it is grounded in modern understandings of how Roman politics functioned. In a series of articles from the mid-1980s, Millar famously championed the people's rôle in politics and, in particular, the power they were able to exert in the *comitia*.⁴⁸ He noticed that, '... problems over office-holding, and disputes between office-holders, were resolved either by legislation by an assembly, or by a trial before a popular court'.⁴⁹ As Hölkeskamp, among others, argues, though, Millar's emphasis on the people is too 'one-sided' and distorts the importance of the interrelationship between 'popular' and 'élite' elements within the 'political culture' of the Roman Republic.⁵⁰ In contrast with Millar, Hölkeskamp suggests that the Senate also functioned as an 'arbiter of acute conflicts' between magistrates.⁵¹ As we shall see, there is clear evidence for both the Senate and the *comitia* acting as arbiters of disagreements among the political élite (and it is worth adding that societal pressures alone rather than formal institutions sometimes resolved disputes).⁵² It is well-known that magistrates and tribunes of the *plebs* were solely responsible for calling meetings of the people (*contiones*) and proposing legislation to the *comitia* (or *concilium plebis* in the case of the tribunes). The key point is that the impetus for popular dispute resolution usually came from the Senate: there was not a dichotomy between 'Senate' and 'people'. Cicero, for example, as consul, suggested that the Roman people act as arbitrators (following a *contio*) when he opposed the agrarian legislation of P. Servilius Rullus (*tr. pl.*) in the Senate in 63.⁵³ Roman politicians understood that they were able to make use of the people as arbitrators of their disputes and, in doing so, potentially legitimize or strengthen their own position. Indeed, North argues that this was the fundamental political rôle played by the people in the Republic:

The popular will of the people found expression in the context, and only in the context, of divisions within the oligarchy. Democratic politics in Rome was consequently a function of

⁴⁷ As Vervaeke 2006: 629 recognizes with regard to the case of 192, 'One might suggest that the Senate decided to have its decision confirmed by means of a popular vote simply in order to forestall any possible argument on the part of the officials involved.' However, he favours interpreting the vote as a means of obtaining 'popular endorsement' owing to the impending war against Nabis of Sparta and, in particular, Antiochus III (for which see Section IV above).

⁴⁸ See the references in n. 19. As mentioned in Section I, Millar's arguments stimulated much debate concerning the nature of Roman politics, for which see further e.g. Hölkeskamp 2000; Jehne 2006: especially 14–24; Hölkeskamp 2010: 1–22 and *passim*.

⁴⁹ Millar 2002b: 123.

⁵⁰ Hölkeskamp 2010: especially 4, 11, 20. See also, e.g., Hölkeskamp 1993: especially 17–18; Yakobson 2010; Steel and van der Blom 2013: 1–4.

⁵¹ Hölkeskamp 2010: 26–7 and 29. Note also North 2004: 103: '... most [divisions within the ruling class] lay conventionally within the ambit of the senate or even of negotiation between families or groups, to be settled Gelzer-style by the negotiation of mutual benefits.'

⁵² Indeed, the use of influence and informal pressure sometimes forestalled or resolved disagreements. For example, see Cic., *Brut.* 97 for the report that M. Antius Briso (*tr. pl.*) — supported by M. Aemilius Lepidus (*cos.*) — withdrew his opposition to the secret ballot law (for use in popular trials) proposed by L. Cassius Longinus (*tr. pl.*) in 137 after P. Cornelius Scipio Aemilianus (*cos.* 147 and 135) exerted his influence on him.

⁵³ *Leg. Agr.* 1.23: 'Lacesso uos, in contionem uoco, populo Romano disceptatore uti uolo ...'

the degree and type of competition in progress between oligarchic families, groups or individuals. It is simply a fact that the ruling class accepted the arbitration of popular voting in certain extremely important circumstances, just as they accepted the power and success of families and individuals should be limited by the rotation of office, regular succession to commands, and so on.⁵⁴

Arguably, the important question is not to what extent the people's rôle was 'democratic' (which is such a loaded term), but rather why the political élite felt that it was sometimes desirable and/or necessary to gain popular approval for particular decisions (e.g. as Cicero suggested in 63).⁵⁵ One possible answer is that the Senate was able to use the people to mitigate the potentially harmful and divisive effects of élite competition, such as between individual senators over the chance to win military glory and the honours and prestige that could follow this.⁵⁶ The rationale for using the *comitia* in this way would have been to create what may be termed a senatorial-popular political consensus — by which I mean a general agreement among individual senators, especially the particular stakeholders in the debate, and with the people as a whole (which included senators and the politicians who claimed to be representing the interests of the *populus* and the *res publica populi Romani*), that the outcome of a vote was final and represented the best course of action, even if not everyone favoured it unanimously.⁵⁷ As we shall see, this was crucially important for maintaining political stability and the status quo of the élite.⁵⁸

Such a senatorial-popular consensus was sought on various occasions to forestall or mitigate disagreements over provincial commands.⁵⁹ I shall focus on the evidence for six political disputes dating from the early third century to the late second century. These examples will further elucidate the interrelationship between the Senate and people in the decision-making process and the importance of achieving a political consensus for mitigating the negative effects of élite competition. They may, in turn, also provide a key to understanding the legislation concerning the praetorian commands in Sardinia and the Hispaniae (and over the Bruttii and the fleet and Macedonia) in 208 and 192.⁶⁰

The earliest example comes from Livy's report of a disagreement in the Senate over the consular allotments in 295: the patrician senators reportedly wanted to assign Q. Fabius

⁵⁴ North 2004: 153 (originally published in 1990). See North 2004: 156–8 for the 2003 postscript. See also Millar 2002d: especially 164–5; Jehne 2006: 18; Yakobson 2006: 395 (with 400, n. 16).

⁵⁵ On the use of terms such as 'democracy' and 'democratic' see, e.g., Hölkeskamp 2000: 203–4 and Yakobson 2006: 383–4.

⁵⁶ See, e.g., Hölkeskamp 1993: especially 25–30.

⁵⁷ Flower 2014 makes many useful observations on the dynamic rôle of consensus (and its definition) in politics at Rome and highlights that it was not simply a façade used to 'rubber stamp' decisions taken by the political 'élite'. Cf. Flaig 2003: especially 155–212 for an alternative analysis of the importance of consensus in the Roman political system.

⁵⁸ cf. Hölkeskamp 2000: 219, who describes the important rôle played by elections: 'Election was an institutionalized procedure for the distribution of *honores* and the concomitant ranks among the restricted "class" of generally eligible candidates. This "class" needed a decision-making body outside itself, in order to shift the burden of choice and neutralise conflicts among its members, thus upholding the minimum degree of coherence and internal stability necessary for its collective ascendancy and monopoly of power as a "class".' See also Hölkeskamp 2010: 94–5 and especially 98–106, which draws on the work of the German sociologist Georg Simmel and note especially 99 (quoting Simmel 1992: 323 and 340, emphasis mine): 'In this "special form of fighting", the "parties" engaging and participating in it do not struggle "directly against each other" but rather "for the success of their merits in the eyes of a third party" as a kind of instance of reference or *even arbitral authority*.' See also Steel 2013: 51; Flower 2014: 11.

⁵⁹ See the third category of comitial legislation discussed by Ferrary 2010: 34. Cf. Yakobson 2009 on the people and foreign policy and note especially 54: '... when a Roman politician — whether Memmius in 111 or Cicero in the 60s — addressed the people on foreign policy issues, he could, if he so chose, treat them as any other political controversy, assuming as a matter of course (rather than having to defend explicitly) the Roman People's right to be the ultimate judge and arbiter.'

⁶⁰ Millar 2002a: 113 takes the case from 192 as a general example of the use of a *senatus consultum* followed by a *plebiscitum* to change provincial arrangements.

Maximus Rullianus (*cos.*) the *prouincia Etruria* without drawing lots, whereas the plebeian senators urged his colleague, P. Decius Mus (*cos.*), to insist on the use of the *sortitio*.⁶¹ The case was brought before the people, who decided that Fabius should have the *prouincia Etruria* without drawing lots (i.e. *extra sortem/sine sorte*).⁶²

There is no need to reject the whole account as an invention by either Livy or his so-called ‘annalistic’ source/s.⁶³ Livy’s sources clearly had access to authentic details of senatorial activities and what may be termed archival material.⁶⁴ Livy’s records of this type of material are much more detailed for the latter part of the ninth book and the tenth book of his *Ab Vrbe Condita* — i.e. dealing precisely with the period in which the dispute between Fabius and Decius took place. As Cornell suggests, this implies that, ‘... there was a marked improvement both in the quality and quantity of the information available to Roman historians around the turn of the fourth and third centuries’.⁶⁵

The dispute between Fabius and Decius (and their supporters) took place only around a generation before the birth of Q. Fabius Pictor (the first Roman to write a history of Rome), who may have been able to speak to some of the senators involved.⁶⁶ Fabius Pictor was also the great-nephew of Fabius Rullianus, one of the main protagonists in the dispute of 295. It is most probable that he narrated an earlier dispute between his great-uncle and the dictator L. Papirius Cursor when the former was serving as the master of the horse and ignored the latter’s advice not to engage the enemy in 325.⁶⁷ The dispute over the consular *prouinciae* in 295 may well have been part of the same ‘Fabian tradition’, especially given the popular favour shown to Fabius Rullianus. It follows that Livy would have been able to incorporate this family tradition (via Fabius Pictor) into his own history when recounting the dispute between Fabius Rullianus and Decius in 295.⁶⁸ We know that he made use of Fabius Pictor in his account of the following year.⁶⁹ Livy’s possible use of the ‘Fabian tradition’ does not, of course, necessarily make his account more reliable, given that it could have been skewed in favour of Fabius Pictor’s relative.⁷⁰ Nonetheless, it is reasonable to imagine that he would have been able to gain insights from Fabius and, perhaps, from other annalistic material into the fundamental issues at stake in the debate of 295.

Prima facie, this looks like a straightforward case whereby the people settled a dispute over which consul received the more desirable *prouincia Etruria*. However, there may have been another issue at stake in the disagreement. Livy reports that Decius complained of the Senate’s injustice (*iniuria*) in seeking to assign a *prouincia* without using the *sortitio*, thereby circumventing the decisions of Fortune (*arbitria fortunae*) concerning the allocation of *prouinciae*.⁷¹

⁶¹ Liv. 10.24.1–4. See Stewart 1998: 154–5 for Decius’ plebeian ancestry.

⁶² Liv. 10.24.4–18.

⁶³ cf. Oakley 2005: 300–2. Cf. also Vervaeet 2014: 15–16 and Drogula 2015: 8–13 for two different methodologies.

⁶⁴ See generally the careful analysis by Oakley 1997: 21–108, especially 38–9 and 57 with Oakley 2005: 475–92 (concentrating on Livy’s first decade). See also, e.g., Fronda 2010: 6–8; Rich 2011: especially 11–12; Satterfield 2012; Lushkov 2014.

⁶⁵ Cornell 2004: 120. See also Rich 2014: 204: ‘From the fourth century and particularly for the Second and Third Samnite Wars (327–290) there is a discernible change in the character of our information. For this period, closer to the beginning of Roman historical writing at the end of the third century, stronger traditions will have been available, and Livy’s narrative now becomes fuller down to 293, after which his account is lost to us.’

⁶⁶ Cornell 2004: 119 with n. 20. For Fabius Pictor see generally *FRHist*, 1.160–78 (Bispham and Cornell).

⁶⁷ See Liv. 8.30.9–10 (= *FRHist*, no. 1 (Fabius Pictor), F 17) with *FRHist*, 1.177–8 (Bispham and Cornell).

⁶⁸ cf. Cornell 2004: 119.

⁶⁹ See Liv. 10.37.13–15 (= *FRHist*, no. 1 (Fabius Pictor), F 18).

⁷⁰ Note, however, *FRHist*, 1.177 (Bispham and Cornell): ‘... [the Fabian tradition] is not invariably favourable to the Fabii.’

⁷¹ Liv. 10.24.8–10.

All the consuls before him had drawn lots for their *provinciae*, whereas the Senate was now giving a *provincia* to Fabius without drawing lots.⁷²

The implication is that the proposal to assign a *provincia extra sortem* did not follow the *mos maiorum*, which comprised various ‘rules of the game’ affecting how political events, such as provincial allocations, unfolded.⁷³ These (unwritten) ‘rules’ ensured that the consuls had an equal chance of winning the highest honours (for which, note especially Livy’s reference to *fortuna*). In this case, as both consuls did not agree to allow the Senate to assign the *provinciae* directly, there was an expectation (implied by Decius’ complaints) that the *sortitio* would be used to determine which consul acquired the *provincia* providing the best opportunities to win military glory.⁷⁴ In comparison, M. Valerius Corvus (*cos.*) and M. Atilius Regulus Calenus (*cos.*) appear to have agreed that the former should be assigned to the war against the Sidicini *extra sortem* ‘lest there should by fortune be some miscarriage’ in 335.⁷⁵ The question of the *mos maiorum* — or the customary practices for allocating *provinciae* — seems to have been an issue only when it suited one or more of the individuals involved in a disagreement; if there was no controversy, then the Senate could have presumably taken a decision to depart from the *mos maiorum* without worrying about obtaining a senatorial-popular consensus. The judgement of a ‘third party’ (i.e. the people as a whole) was required to settle the dispute in 295 and legitimize the decision to break with the established *mos maiorum* within this context only.⁷⁶

There was no need to ask the people to determine the allocation of *provinciae* when both consuls mutually agreed to forego the *sortitio* without any disagreement in 205.⁷⁷ However, there was a fierce debate in the Senate after P. Cornelius Scipio, one of the two consuls of that year, wanted Africa to be named as his *provincia* rather than Sicily.⁷⁸ Livy produced one speech for the preeminent senator Q. Fabius Maximus Verrucosus (*cos.* 233, 228, 215, 214, 209 and *princeps senatus* in 205) in opposition to naming Africa as a *provincia* and another speech for Scipio.⁷⁹ According to Livy, Scipio’s speech was received less favourably because it had been revealed that he would propose a law to the people if the Senate did not decree Africa as his *provincia*.⁸⁰

⁷² Liv. 10.24.10–11: ‘omnes ante se consules sortitos provincias esse: nunc extra sortem Fabio senatum provinciam dare ...’

⁷³ For the difficulty translating *mos maiorum* see especially Hölkeskamp 2010: 17–18: ‘This notional stock of time-honored principles, traditional models, and rules of appropriate conduct, of time-tested policies, regulations, and well-established practices not only prescribed social behaviour in “private” life, but also regulated all criminal and “public” law, the state religion as well as the military system, the ways and means of running politics at home and abroad. Last but not least, *mos maiorum* also included what one might call the “constitutional conventions”.’ See also, e.g., Lintott 1999: 4–7, 66; Linke and Stemmler 2000; Flower 2010: 21; Hölkeskamp 2010: 17–22; van der Blom 2010: 12–17; Straumann 2016: 47–54.

⁷⁴ For the general expectation that *comparatio* or *sortitio* would be used see, e.g., Liv. 30.40.12–13 (which is discussed further above). See generally Rosenstein 1995: 45–8 and cf. Stewart 1998: 12–51. See also Vervaeke 2006: 630–1 and n. 29, in which he notes that, ‘... it is most likely that the matter was brought before the Comitia because of a consular or tribunician veto against the decree *de provinciis consularibus*.’

⁷⁵ Liv. 8.16.4–6: ‘itaque omni ope adnisi sunt, ut maximum ea tempestate imperatorem M. Valerium Coruum consulem quartum facerent; collega additus Coruo M. Atilius Regulus; et ne forte casu erraretur, petitum ab consulibus ut extra sortem Corui ea provincia esset.’ Cf. Liv. 7.25.12–13.

⁷⁶ See Hölkeskamp 2010: 103–6, 135; note especially 104 on the ‘third party’ awarding prizes on the basis of the comparison between the competitors.

⁷⁷ Liv. 28.38.12–13: ‘quarto decimo anno Punici belli P. Cornelius Scipio et P. Licinius Crassus ut consulatum inierunt, nominatae consulibus provinciae sunt, Sicilia Scipioni extra sortem, concedente collega quia cura sacrorum pontificem maximum in Italia retinebat, Bruttii Crasso.’ For *comparatio* see Rosenstein 1995: 52–3; Stewart 1998: 138–59; Vervaeke 2006: 630.

⁷⁸ cf. Liv. 28.38.12 and 28.40.1.

⁷⁹ Liv. 28.40.3–28.42.22 (Fabius) and 28.43.2–28.44.18 (Scipio). For Fabius’ position as *princeps senatus* see Liv. 27.11.12 and 29.37.1.

⁸⁰ Liv. 28.45.1–2: ‘minus aequis animis auditus est Scipio quia uolgatum erat si apud senatum non obtinisset ut provincia Africa sibi decerneretur, ad populum extemplo laturum.’ The report apparently came from Scipio

Q. Fulvius Flaccus (*cos.* 237, 224, 212 and 209) reportedly asked the tribunes of the *plebs* to support him if he refused to express his opinion (as a senior *consularis* and *ex-censor*) given that he thought Scipio would ignore the outcome of a senatorial vote if it was not favourable to his wishes.⁸¹ Livy reports that the tribunes intervened in the dispute by resolving that:

... if the consul [i.e. Scipio] permits the Senate to assign the *prouvinciae*, we decide that he must stand by the vote of the Senate, and we will not allow a bill touching that matter to be brought before the people. If he does not permit, we will come to the defence of a man who refused to express an opinion on that matter.⁸²

As a result of this resolution, Scipio agreed to allow the Senate to settle the matter without interfering, and a compromise was reached: Scipio received Sicily as his *prouvincia*, but was given permission to cross into Africa if he should consider it to be in the interest of the state.⁸³ In this case, Scipio was (presumably) discouraged from putting forward his own bill to the people not only owing to strong senatorial opposition, but also the threat of tribunician veto (*intercessio*).⁸⁴ As Flower observes, ‘Consensus systems typically deploy significant veto power (or other ways to obstruct business) in order to prevent controversial or divisive initiatives from gaining ground or even from being proposed’.⁸⁵ The unfavourable reception of Scipio’s speech in the Senate, the opposition of Fulvius and the tribunes’ resolution, at least, in part, may have stemmed from the fact that Scipio’s threat to go straight to the people contravened the *mos maiorum*.⁸⁶ It was generally accepted that the Senate determined the provincial assignments and, therefore, Scipio’s stance breached a ‘collective consensus’ on the accepted practice concerning the definition of the *prouvinciae*.⁸⁷ Consulting the people in order to bypass a senatorial decision was not part of the ‘rules of the game’.

Indeed, Cn. Cornelius Lentulus (*cos.*) also used his position as consul a few years later in 201 to block senatorial proceedings until he received Africa as his *prouvincia*.⁸⁸ Two tribunes of the *plebs* reminded him that the people had already voted — *ex auctoritate patrum* — that Scipio should have *imperium* in Africa in 202!⁸⁹ The decision was

himself, for which see Liv. 28.40.1–2: ‘cum Africam nouam prouinciam extra sortem P. Scipioni destinari homines fama ferrent, et ipse nulla iam modica gloria contentus non ad gerendum modo bellum sed ad finiendum diceret se consulem declaratum, neque id aliter fieri posse quam si ipse in Africam exercitum transportasset, et acturum se id per populum aperte ferret si senatus aduersaretur ...’

⁸¹ See further Liv. 28.45.2–6, especially 28.45.5–6: “itaque a uobis, tribuni plebis, postulo” inquit “ut sententiam mihi ideo non dicenti quod, etsi in meam sententiam discedatur, non sit ratum habiturus consul auxilio sitis”.

⁸² Liv. 28.45.6–7: ‘... si consul senatui de prouinciis permittit, stari eo quod senatus censuerit placet, nec de ea re ferri ad populum patiemur; si non permittit, qui de ea re sententiam recusabit dicere auxilio erimus’ (trans. Loeb ed. Moore 1949).

⁸³ Liv. 28.45.8–9: ‘prouvinciae ita decretae: alteri consuli Sicilia et triginta rostratae naues quas C. Seruilius superiore anno habuisset; permissumque ut in Africam, si id e re publica esse censeret, traiceret; alteri Bruttii et bellum cum Hannibale ...’ Cf. Liv. 28.38.12.

⁸⁴ cf. Liv. 41.6.2–3 for the use of a tribunician veto to interfere with a *rogatio* designed to abrogate the *prorogatio imperii* (*ex senatus consulto*) of A. Manlius Vulso (*cos.* 178) with the *prouvincia Gallia* in 177.

⁸⁵ Flower 2014: 16.

⁸⁶ As Vervaeke 2006: 632 concludes, ‘... the extent of the Senate’s authority in all matters concerning the *prouvinciae Populi Romani* and foreign policy in general can hardly be overestimated. The Senate was responsible for the annual assignment of the provinces and decisions pertaining to the *ornatio/sortitio prouinciarum* of all magistrates and commanders in the field ...’ See also, e.g., Hölkeskamp 1993: 33–4; Richardson 2008: 12–13 and *passim*; Hölkeskamp 2010: 27; Drogula 2015: 134.

⁸⁷ Note especially Hölkeskamp 2010: 135.

⁸⁸ Liv. 30.40.7–9.

⁸⁹ Liv. 30.40.10–11: ‘... ex auctoritate patrum latum ad populum esse cuius uellent imperium in Africa esse; omnes quinque et triginta tribus P. Scipioni id imperium decreuisse.’ See Liv. 30.27.3 for the vote in 202 with the discussion above.

ultimately left to the Senate following many contests both in the Senate and before the people.⁹⁰

The senators therefore under oath — for such had been the agreement — decided that the consuls should determine their *provinciae* by mutual agreement or by lot, which of them was to have Italy and which the fleet of fifty ships ...⁹¹

The oath was almost certainly intended to add further weight to a senatorial consensus (that is, an agreement among senators that the outcome of the senatorial vote was the best and final course of action). Once again, this consensus, as governed by the *mos maiorum*, determined that the Senate was ultimately responsible for naming the two consular *provinciae* and that it would then be for the consuls to decide whether they would agree among themselves how they would be allocated (*comparatio*) or whether they would draw lots for them (*sortitio*).

A similar situation arose when two tribunes of the *plebs* intervened in the consuls' plan to draw lots for Macedonia and Italy in 197. The tribunes argued that T. Quinctius Flaminius, who had been assigned Macedonia as consul the previous year, had been delayed in leaving for his *provincia* during his magistracy and was now in a position to end the war against Philip V of Macedon by the summer.⁹² In other words, they proposed that Flaminius needed more time with his *provincia Macedonia* and should not be replaced by one of the consuls.⁹³ Just as Scipio and Lentulus agreed to stand by the Senate's resolutions in 205 and 201, the tribunes were able to persuade the consuls to accept the Senate's decision (as long as they promised to do the same) in 197.⁹⁴ The actions of the tribunes (and, presumably, the prospect of tribunician veto) ensured, again, that there was a senatorial consensus (as defined above): the Senate decreed a *provincia Italia* to both consuls and Flaminius' *imperium* was prorogued until a successor should have arrived (*ex senatus consulto*).⁹⁵

It was agreed that the Senate should fulfil its traditional rôle in determining the provincial assignments without interference in 205, 201 and 197. There seems to have been a senatorial consensus that this is how the internal conflicts among the élite, who were competing for the best opportunities to win glory and further their careers, should be resolved.⁹⁶ However, there was a second recourse if this failed: if the individual consuls and/or tribunes had not agreed to submit to the wishes of the Senate as a body

⁹⁰ Liv. 30.40.11–12.

⁹¹ Liv. 30.40.12–13: 'patres igitur iurati — ita enim conuenerat — censuerunt uti consules provincias inter se compararent sortirentur uter Italiam, uter classem nauium quinquaginta haberet ...' (trans. Loeb ed. Moore 1949). On this episode see further Day 2014: 224–6.

⁹² Liv. 32.28.3–7.

⁹³ Liv. 32.32.7–8 reports that Flaminius had instructed his friends and relatives later in the year to strive with all their might to ensure that his *imperium* was prorogued in 196. If correct, one can imagine his friends and relatives would have worked on his behalf in 197.

⁹⁴ The consuls of 196 also attempted to persuade the Senate (who intended to decree a *provincia Italia* to both consuls) to name Macedonia as one of the two consular *provinciae*. According to Liv. 33.25.4–8, the consuls would have succeeded if two tribunes had not threatened to intervene: the tribunes demanded that the *plebs* should be consulted as to whether peace should be made with Philip V; and, as the *plebs* voted to make peace, the consuls were forced to drop their attempts to convince the Senate to name a *provincia Macedonia*.

⁹⁵ Liv. 32.28.8–9: 'permittentibus utrisque liberam consultationem patres consulibus ambobus Italiam provinciam decreuerunt, T. Quinctio prorogarunt imperium donec successor ex senatus consulto uenisset.' See also Polyb. 18.11.1–2. It is worth noting that Polyb. 18.39.4 and Liv. 32.28.6–8 claim that one reason Flaminius was willing to grant peace to Philip V was that he was worried about being replaced in his command in 196.

⁹⁶ The fact that Scipio was given permission to cross into Africa may have been a suitable compromise in helping to reach a senatorial consensus in 205 (Liv. 28.45.8–9). Similarly, the Senate may have conciliated Cn. Cornelius Lentulus (*cos.*) by assigning him a *provincia classis* with special permission to cross into Africa from Sicily in order to command the fleet alongside Scipio in 201 if peace with the Carthaginians could not be agreed (Liv. 30.40.12–16).

and if no compromise could be reached (and political deadlock ensued), there may have been no option but for the Senate to call upon the people to arbitrate, just as they did in 295 (above).⁹⁷

This is exactly what had happened in very similar circumstances when the *plebs* were asked to arbitrate a political impasse after Ti. Claudius Nero (*cos.*) and M. Servilius Pulex Geminus (*cos.*) wanted Africa to be named as a consular *provincia* in 202 — just one year after P. Cornelius Scipio's command had been continued (*pro consule*) until the war there had been brought to an end!⁹⁸ (The consuls' interest in this stemmed from the fact that Hannibal had sailed to Africa from Italy in 203.)⁹⁹ Unlike the disputes from 205, 201 and 197 when the consuls agreed to allow the Senate to choose the *provinciae* without interference, Livy records that Q. Caecilius Metellus (*cos.* 206) was instrumental in preventing the Senate from making a final decision in 202.¹⁰⁰ This presupposes not only a difference of opinion in the *curia*, but also suggests that there was a political stalemate.¹⁰¹ In this case, the Senate directed the consuls to urge the tribunes of the *plebs* to consult the people about whom they wished to carry out the war in Africa.¹⁰² Although Livy does not provide further details about what prompted the decision to put a motion to the people, we can infer that the decision to consult the people stemmed from a disagreement in the Senate about whether one of the new (and clearly highly ambitious) consuls should take over the command of the war in Africa against the Carthaginians — including Hannibal — from Scipio (cf. the actions of Cn. Cornelius Lentulus (*cos.*) in 201 and both of the consuls in 197).¹⁰³

Finally, Cicero records in his *Eleventh Philippic* that there was a dispute over which consul should be entrusted with the war against Aristonicus (a pretender to the Attalid throne) in Asia in 131.¹⁰⁴ This must have been reasonably well attested, given that Cicero selected the episode as one example of several in which consuls rather than extraordinary promagistrates had been entrusted with important wars in the past.¹⁰⁵ The consul P. Licinius Crassus Mucianus (also the *Pontifex Maximus*) reportedly threatened his colleague, L. Valerius Flaccus (also the *Flamen Martialis*), that he would fine him if he left the city. This suggests that Flaccus had received the *provincia Asia*

⁹⁷ cf. Millar 2002b: 110.

⁹⁸ Liv. 30.27.1–4: 'principio insequenti anni M. Servilius et Ti. Claudius senatu in Capitolium uocato de prouinciis rettulerunt. Italiam atque Africam in sortem conici, Africam ambo cupientes, uolebant; ceterum Q. Metello maxime adnidente neque negata neque data est Africa. Consules iussi cum tribunis plebis agere ut, si iis uideretur, populum rogarent quem uellet in Africa bellum gerere. omnes tribus P. Scipionem iusserunt.' See Liv. 30.1.10–11 for the prorogation of Scipio's command in 203: 'P. Scipioni non temporis, sed rei gerendae fine, donec debellatum in Africa foret, prorogatum imperium est; decretumque ut supplicatio fieret, quod is in Africam prouinciam traiecisset, ut ea res salutaris populo Romano ipsique duci atque exercitui esset.' There is no evidence that the people were asked to confirm Scipio's command in either 203 or 201. I am not convinced by the arguments against the historicity of the *plebiscitum*, for which see De Sanctis 1917: 545–6, n. 157; Ferrary 2003: 111 with n. 14. Cf. Scullard 1973: 80 and 278.

⁹⁹ Liv. 30.21.1; 30.24.1–2; 30.25.11–12.

¹⁰⁰ Liv. 30.27.2–3.

¹⁰¹ It is almost certain that Metellus was acting in Scipio's interests by working to prevent a successor replacing him, as he had very recently argued that Scipio's advice should be followed about whether to grant peace to the Carthaginians towards the end of 203 (Liv. 30.23.3–5). Cf. Liv. 29.19–20 for Metellus' support for Scipio against the hostility of certain *principes* in the Senate, especially Q. Fabius Maximus (*cos.* 213), following the complaints made about the conduct of Scipio and his *legatus*, Q. Pleminius, by the Locrians in 204.

¹⁰² Liv. 30.27.3–4.

¹⁰³ Indeed, Cn. Cornelius Lentulus (*cos.*) was initially accused of attempting to do what Ti. Claudius Nero had failed to do when he blocked senatorial proceedings the following year (Liv. 30.40.7–9 with the discussion above). For the outcome of the dispute in 202 see Liv. 30.27.4–5. Vervaeke 2014: 166–9 argues that the Senate determined that Scipio and the consul should command on an equal footing (*par imperium*): 'By this clever arrangement, the Senate respected both the People's decision and the consul's traditional position of supreme commander.'

¹⁰⁴ *Phil.* 11.18.

¹⁰⁵ See Manuwald 2007: 26–7 for the context and note especially *Phil.* 11.16–18.

(and, with this, the war against Aristonicus) in the *sortitio*.¹⁰⁶ Crassus clearly desired the command for himself and most probably claimed that Flaccus should not be allowed to leave the city as the *Flamen Martialis*.¹⁰⁷ P. Cornelius Scipio Aemilianus, who held neither a magistracy nor a promagistracy at the time, was even put forward as an alternative commander for the war.¹⁰⁸ It is reasonable to assume that the Senate was unable to reach an agreement on the matter and so, once again, the people were called upon to settle a political dispute over a provincial command: the people resolved that Crassus should be entrusted with conduct of the war against Aristonicus (and, therefore, the *provincia Asia*), which, as far as we can tell, settled the disagreement.¹⁰⁹

The six cases discussed above indicate that there was a general consensus among the political élite that the Senate was responsible for the designation of *provinciae*, which usually prevented competition getting out of hand. As we have seen, the protagonists involved in disputes in 205, 201 and 197 all accepted the Senate's overall decision as final. However, as the examples above demonstrate, the Senate had another option available to it if political deadlock could not be broken internally: it could direct a magistrate or a tribune of the *plebs* to ask the people to arbitrate and, thus, ensure that the political instability arising as a result of the divisive effects of élite competition could be mitigated. In this way, the people had an important function as 'third party' arbitrators in senatorial disputes in 295, 202 and 131.

IV THE PEOPLE AND THE *PROVINCIAE* IN 208 AND 192: NEW EXPLANATIONS

On the basis of the six cases explored in the previous section, we might hypothesize that the Senate asked the people to extend Aurunculeius' command, and to change the two praetorian lots from Hispania Citerior and Hispania Ulterior to the Bruttii and the fleet and Macedonia, in order to acquire a senatorial-popular consensus (as defined earlier) for these decisions. One can imagine that such a consensus may have been sought out in 208 and 192 to forestall or to arbitrate disagreements, which may have also included some contention over breaking with the traditional praetorian provincial allotments.

There is, of course, no explicit evidence to support the theory that the people were used to arbitrate political disputes over the command in Sardinia in 208 and the modification of the praetorian lots in 192. One might argue that Livy would have referred to them if they had indeed occurred, given that he mentioned the debates over the consular *provinciae* in 295, 205, 202, 201 and 197. However, he does not report every senatorial dispute and so it would not be entirely surprising that he provides details of the disputes in 295, 205, 202, 201 and 197 — which all involved important consular commands — and does not give any record of disagreements over the praetorian command in Sardinia in 208 and the changes to the praetorian assignments in 192.¹¹⁰ He may not have had any information on political disagreements in 208 and 192: perhaps his source (presumably Valerius Antias) simply recorded the senatorial decrees and, then, gave the results of the votes — i.e. that the

¹⁰⁶ This is correctly recognized by Brennan 2000: 233.

¹⁰⁷ *ibid.* (with 348, n. 82).

¹⁰⁸ *ibid.*: 233 suggests that the objection may have been raised against Crassus that, 'no *pontifex maximus* had ever before left Italy to fight a war'. See especially, e.g., Livy, *Per.* 59: 'aduersus eum P. Licinius Crassus cos., cum idem pontifex max. <eset>, quod numquam antea factum erat, extra Italiam profectus proelio uictus et occisus est.'

¹⁰⁹ *Phil.* 11.18: 'Rogatus est populus, quem id bellum gerere placeret ... pontifici tamen flaminem parere iussit ... Ita populus Romanus consuli potius Crasso quam priuato Africano bellum gerendum dedit.'

¹¹⁰ It would be interesting to know whether Livy included details of the dispute between Crassus and Flaccus in 131 — which we only know about because of the incidental reference in Cicero's *Eleventh Philippic* — in the (now lost) fifty-ninth book of his *Ab Vrbe Condita*. The record in the *Periochae* (59) that Crassus was the first *Pontifex Maximus* to leave Italy to undertake military activity hints that Livy would have provided some further discussion.

people simply confirmed the decisions taken by the Senate — rather than the reasons that led the Senate to consult the people in the first place.¹¹¹ Alternatively, even if his source/s did record the disputes, it does not follow that Livy would necessarily reproduce these details in his own account. For example, we learn from Cicero that there was a fierce debate between M. Pinarius Rusca (*pr.* 181) and the senior *consularis* M. Servilius Pulex Geminus (*cos.* 202) in the 180s over the proposal of a *lex annalis* by the former.¹¹² The information was available to Cicero, who took Rusca's response to Servilius as an example of allegorical phraseology, and was presumably still accessible to Livy.¹¹³ Yet, Livy does not mention the disagreement or any attempts to pass a *lex annalis* before the Lex Villia Annalis of 180.¹¹⁴ He also sometimes omits details of the political rôle played by the tribunes of the *plebs*, who could have vetoed the senatorial resolutions on Sardinia and the alterations to the praetorian lots of Hispania Citerior and Hispania Ulterior in 208 and 192.¹¹⁵ The lack of evidence for disputes over the provincial assignments in 208 and 192 may, then, be explained by Livy's tendency to omit certain political events and/or the nature of historical writing, which invariably involves some selection of material.

However, the alternative suggestion that popular votes were intended to forestall disputes in 208 and 192 would also explain Livy's silence. If the votes prevented disagreements arising in the first place, then there would have been nothing for Livy to report. It is, therefore, necessary to consider next what sort of factors could have led to arguments and, hence, might have been anticipated by the Senate. This is important for pre-empting the potential argument against the above hypothesis that there would not have been any reasons, especially in 208, for serious disagreements which could have led the Senate to consult the people. It is also an important exercise in itself, as a means of elucidating some of the factors influencing élite competition in domestic politics. The purpose of what follows is not to assert what necessarily happened, but rather to highlight what could have been behind the Senate's desire to obtain a senatorial-popular consensus for the decision to prorogue Aurunculeius' *imperium* in 208 and to change the praetorian lots of Hispania Citerior and Hispania Ulterior to the Bruttii and the fleet and Macedonia in 192.

First, the Senate may have consulted the people in order to forestall or mitigate the negative effects of competition between those officials who were affected by their decisions. We have seen that fierce élite competition was behind the senatorial disputes over the command in Etruria in 295, Africa in 202 and 201, Macedonia in 197 and Asia in 131. One can imagine that one (or a number) of the praetors of 208 wanted Sardinia to be named as one of the praetorian *provinciae* instead of Tarentum, which would primarily have involved undertaking garrison duties under the supreme authority of the consuls.¹¹⁶ There were arguably more opportunities to win military glory in

¹¹¹ For Livy's use of Valerius Antias and the latter's consultation of senatorial archives see Rich 2005: especially 156–61.

¹¹² Cic., *De or.* 2.261.

¹¹³ See Brennan 2000: 11–12, 170; and note especially 248–9, n. 25: 'The heated public debate ... was available to Cicero, no doubt via an annalist, and thus to Livy as well; yet Livy pays no attention to what Cicero (*De Orat.* 2.261) describes as a vociferous row.' See now also Beck 2016: 142.

¹¹⁴ Liv. 40.44.1. See further, e.g., Brennan 2000: 169–72; Beck 2005: 51–60.

¹¹⁵ See Ferrary 2003: 123 (for Livy's tendency to omit the participation of tribunes of the *plebs* in the political decision-making process); 124–5 (for Livy's omission of the people's rôle in awarding triumphal honours). See also Rich 2014: 213 (with the evidence collected in n. 77) on Livy's 'selective' and 'patchy' coverage of the Senate's deliberations over triumphs.

¹¹⁶ Liv. 27.22.3. Brennan 2000: 191 and 193 rightly refers to the Tarentum command as 'garrison duty' (for which see e.g. Liv. 27.25.2 and 27.26.4). With this in mind, there was, arguably, little chance for a praetor to win glory with Tarentum as his *provincia*, given that the two consuls were also assigned Italy as their *provinciae* and operated in the South. See Liv. 27.29.1–6 for the responsibility of M. Claudius Marcellus (*cos.* 208) for southern Italy, including Tarentum, and note especially the senatorial instructions given in 27.29.6:

Sardinia following a rumour that the Carthaginians were planning to cover the coasts of Italy, Sicily and Sardinia with two hundred ships.¹¹⁷ The annalistic tradition preserves the record of the capture of around eighty transport ships by Cn. Octavius, a praetor in Sardinia, in 205.¹¹⁸ An ambitious individual could well have sought similar fame a few years earlier.

Similarly, A. Atilius Serranus and M. Baebius Tamphilus — the two praetors allotted the Hispaniae — may have objected to their *provinciae* being changed. They may well have thought that their careers would be better served by going to Spain, especially given that this was a period in which competition for the consulship was fiercer than ever owing to the increase in the number of praetors annually elected from 198 onwards.¹¹⁹ There were significant political advantages associated with the commands in Spain at this time. The praetors would have received the title of *praetor pro consule* (or *pro praetore pro consule* after prorogation) if they had gone to Spain and would have been entitled to twelve lictors rather than the six customarily used by praetorian commanders.¹²⁰ This would have enhanced the prestige of the praetorian commanders assigned to Hispania Citerior and Hispania Ulterior, especially if they managed to win military success and were granted permission to triumph back in Rome and flaunt their status *pro consule* (rather than *pro praetore*).¹²¹ In addition, there was a significant rise in praetorian triumphs from the Hispaniae in the early second century, which both Atilius and Baebius surely would have been aware of.¹²² It is notable that C. Flaminius and M. Fulvius Nobilior, who had been allotted Hispania Citerior and Hispania Ulterior as praetors the previous year, won important victories in 192 and Fulvius even celebrated an *ouatio* (the so-called ‘lesser triumph’) in Rome the following year.¹²³ Baebius and

‘... si consul Tarentum profectus esset, Q. Claudium praetorem placere in eam regionem inde abducere legiones in qua plurimas sociorum urbes tueri posset.’

¹¹⁷ See Liv. 27.22.6–9: ‘additae ei ad praesidium provinciae quinquaginta longae naues quas P. Scipio ex Hispania misisset. et P. Scipioni et M. Silano suae Hispaniae suique exercitus in annum decreti. Scipio ex octoginta nauibus quas aut secum ex Italia adductas aut captas Carthagine habebat quinquaginta in Sardiniam tramittere iussus, quia fama erat magnum naualem apparatus eo anno Carthagine esse: ducentis nauibus omnem oram Italiae Siciliae Sardiniaeque impleturos.’ It is worth noting that there were already two legions there, which was the same number regularly allocated to consuls.

¹¹⁸ Coelius Antipater, writing around the mid-second century, reportedly claimed the ships were laden with corn and supplies for Hannibal (Liv. 28.46.14 = *FRHist*, no. 15, F 31), whereas Valerius Antias suggested that they were carrying Etruscan booty and prisoners from the Ligurians and the Montani to Carthage (Liv. 28.46.14 = *FRHist*, no. 25, F 30). See further the commentary in *FRHist*, 3.254–5 (Briscoe). Cf. the naval achievements of T. Otacilius Crassus (*pro pr.*), which included the seizure of seven Carthaginian ships and their crews in 215 (Liv. 23.41.10–11).

¹¹⁹ It is worth noting that both Baebius and Atilius took a relatively long time to attain the consulship (181 and 170) in comparison with C. Flaminius and M. Fulvius Nobilior (187 and 189), the two praetors prorogued in Spain.

¹²⁰ See, e.g., Plut., *Aem.* 4.1, who describes how L. Aemilius Paullus was sent to Spain as praetor with twelve lictors ‘so that his office had consular dignity’ (ὥστε τῆς ἀρχῆς ὑπατικῶν γενέσθαι τὸ ἄξιωμα) in 191. See further Vervaeke 2012: especially 65–72 for a discussion of the titles of *praetor*, *praetor pro consule* and *pro consule*. See also Hurler 2012: especially 98–101.

¹²¹ On the prestige associated with the title *pro consule* see Vervaeke 2012: 78–9; especially Drogula 2015: 227–9. For the use of lictors and *fascēs* as ‘theatre of power’ see also Hölkeskamp 2011: especially 169–72 (with additional bibliography).

¹²² See Richardson 1975: 52–4; Rich 1993: 49–51; especially Rich 2014: 226–9, noting that twelve praetors obtained triumphal honours for victories in Spain between 195 and 174.

¹²³ Liv. 35.22.5–8: ‘et in utraque Hispania eo anno res prospere gestae; nam et C. Flaminius oppidum Licabrum munitum opulentumque uineis expugnauit et nobilem regulum Corribilonem uiuum cepit, et M. Fulvius proconsul cum duobus exercitibus hostium duo secunda proelia fecit, oppida duo Hispanorum, Vesceliam Helonemque, et castella multa expugnauit; alia uoluntate ad eum defecerunt. tum in Oretanos progressus et ibi duobus potius oppidis, Nolibae et Cusibi, ad Tagum annem ire pergit. Toletum ibi parua urbs erat, sed loco munito. eam cum oppugnaret, Vettonum magnus exercitus Toletanis subsidio uenit. cum iis signis conlatis prospere pugnauit et fuis Vettonibus operibus Toletum cepit.’ For the *ouatio* see Liv. 36.21.10–11; *Inscr. Ital.* 13.1, 78–9.

Atilius, perhaps, reasonably assumed that they would have a greater chance of acquiring military *gloria* in Spain than they would by taking command of forces that would primarily have been charged with defensive duties.¹²⁴ This could have led them — alongside their supporters — to fight fiercely against the proposal to change their praetorian *provinciae* of Hispania Citerior and Hispania Ulterior. Indeed, it is even possible that the friends (and/or relatives) of Flaminius and Fulvius supported the proposal to change the allotments so that they could continue their own quests for military glory in Spain, just as Flaminius had asked his friends and relatives to fight for his *prorogatio imperii* in late 197 (for 196).¹²⁵

Furthermore, it is possible that an individual or a group objected to the decision to break with the *mos maiorum* in not allocating ‘regular’ praetorian *provinciae* to praetors in 208 and/or 192.¹²⁶ As discussed in Section I, there were a number of *de facto* regular *provinciae* named by the Senate each year following the increase in the numbers of praetors annually elected in around 228 and in 198: Sicily and Sardinia and, then, Hispania Citerior and Hispania Ulterior were regularly named as praetorian *provinciae* from around 227 and 197 respectively. Whilst there is no need to return to Mommsen’s theory that the naming of these *provinciae* was stipulated by specific laws, this certainly would have been customary by 208 and 192. It is doubtful that the Senate would have been concerned about acquiring popular support for breaking with the *mos maiorum per se* if there was a senatorial consensus that it was the right course of action. The custom of using the *sortitio* to allocate *provinciae* was apparently not an issue when both consuls agreed to allow the Senate to assign their *provinciae extra sortem* in 335.¹²⁷ However, a senatorial-popular consensus may well have been desirable if the Senate thought that diverging from the *mos maiorum* would cause disagreement or if this was actually used in an argument against their proposals concerning the provincial assignments in 208 and/or 192 (cf. Decius’ reference to the customary use of the *sortitio* within the context of the dispute in 295).¹²⁸ If that was the case, such a consensus would have legitimized the resolution in the eyes of all, especially those directly affected by the decision to break with the *mos maiorum*, which, in turn, would have maintained political stability.

A second possible reason for consulting the people in 192, aside from alleviating the potentially negative effects of élite competition, is that some senators may have been anxious about committing extensive military resources to the East.¹²⁹ There must have been some anxiety that war with Nabis of Sparta and Antiochus III was imminent in 192, even though the formal declaration of war was not made until the following year.¹³⁰ As a result, Baebius, who received a *provincia Bruttii*, was assigned two legions from the previous year (i.e. the same number regularly assigned to consuls) and fifteen thousand infantry and five hundred cavalry from Rome’s allies; whereas Atilius, who had been allotted the fleet and Macedonia, was instructed to build thirty quinqueremes, to launch

¹²⁴ See further Brennan 2000: 203, 206–7; and especially the comments on 207: ‘These commanders probably did not have to wait for a formal declaration of war before engaging in minor hostilities; but they had to yield their command when the consul (or in Atilius’ case, praetor) to whom the war had been properly allotted showed up in the *provincia*.’ Cf. Grainger 2002: 165–7; Vervaeke 2006: 629 with n. 22.

¹²⁵ Liv. 32.32.7–8: ‘... necdum enim sciebat utrum successor sibi alter ex nouis consulibus mitteretur an, quod summa ui ut tenderent amicis et propinquis mandauerat, imperium prorogaretur ...’

¹²⁶ cf. the discussion in Section III on the *mos maiorum*.

¹²⁷ See Liv. 8.16.6 with the discussion in Section III.

¹²⁸ cf. Straumann 2016: 49: ‘It is conspicuous that *mos*, whenever it is being adduced in the sources, is nearly always used for normative purposes, usually in the context of attacks on the constitutionality of extraordinary commands or emergency powers or, conversely, in the justification of such powers. It is thus plausible that *mos maiorum* really came into its own as a rhetorical and constitutional term of art only in the oratory and in the constitutional debates of the last century of the Republic.’ See also Flower 2010: 21; van der Blom 2010: 16.

¹²⁹ A similar argument cannot be made with regard to the case of 208, since the praetor allotted Tarentum (which took the usual place of Sardinia in the praetorian *sortitio*) was decreed one of three existing legions (Liv. 27.22.1–3).

¹³⁰ See Rich 1976: 87–8; Pina Polo 2011: 102–10.

any usable old ships from the *naulia* and to levy so-called *socii nauales*.¹³¹ The two new commands not only comprised considerable military resources, but the Senate also anticipated that both Baebius and Atilius would cross over to Greece (though primarily in a defensive capacity).¹³² It is even possible that the Senate recalled the opposition to the proposal to declare war against Philip V of Macedon eight years earlier in 200 and, hence, sought to confirm the people's support in advance of an actual vote on war in the East.¹³³ It is worth noting that Macedonia had already been designated as a *provincia* when the people voted to reject the war against Philip V in 200.¹³⁴ The Senate may have been wary about pre-empting a popular vote on the declaration of war against Antiochus III and Nabis of Sparta when it decided to change Atilius' *provincia* from Hispania Ulterior to the fleet and Macedonia in 192. In any case, as Vervaeke suggests, it remains possible that the Senate simply wished to obtain 'popular endorsement' (or the 'strongest possible public legitimation') for committing such vast resources, as well as the two praetors, to the East: 'Exceptional circumstances thus led to a quite unusual procedure'.¹³⁵

V CONCLUSIONS

I have proposed in this paper that the Senate consulted the people over the command of Aurunculeius in 208 and the *provinciae* of Atilius and Baebius in 192 in order to achieve a senatorial-popular consensus which either forestalled or solved disputes. One can imagine that such disputes would have been fuelled by élite competition over access to the *provinciae* which were thought to provide the best chances for winning military glory and the honours and prestige which followed this. The fact that the Senate departed from the *mos maiorum* in not allocating regular praetorian *provinciae* to praetors (Sardinia in 208 and Hispania Citerior and Hispania Ulterior in 192) would most probably have been an issue, if at all, only within the context of these disputes (or, perhaps, the prevention thereof).

These hypotheses must, of course, remain speculative. Nonetheless, they provide viable alternatives to the theory that a vote of the people was necessary in order to exclude so-called constitutionally 'fixed' *provinciae* from the praetorian *sortitio* between c. 227 and the passage of the Lex Baebia in 181. They serve to underline just how insecure the evidence is for a *de iure* distinction between constitutionally 'fixed' and 'non-fixed' praetorian *provinciae*. We no longer have to follow Ferrary's suggestion concerning the people's rôle in extending Aurunculeius' command in Sardinia in 208 that, 'Le seule explication qu'on en ait pu donner est celle de Mommsen ...'.¹³⁶

¹³¹ Liv. 35.20.9–13. For the term *socii nauales* see Milan 1973: 193–203 and Pinzone 2004.

¹³² As noted in n. 124, both commands were largely defensive in nature. Liv. 35.20.13–14 reports that it was claimed that 'hi duo praetores et duo exercitus' were prepared to operate against Nabis of Sparta. Note especially the instructions recorded for Baebius in Liv. 35.23.5–6 and Liv. 35.24.7 (and see 36.1.7–8 for his eventual crossing later in the year). Meanwhile, Atilius was instructed to defend the allies against Nabis of Sparta (Liv. 35.20.13–14 and 35.22.2). For the events more generally see Gruen 1984: 629–36.

¹³³ For opposition to the declaration of war against Philip V see especially Liv. 31.6.3–4: 'id cum fessi diurnitate et grauitate belli sua sponte homines taedio periculorum laborumque fecerant ...'. As Eckstein 1987: 271, n. 7 notes, 'We do not know whether this war-weariness of the *populus* reflected any deep splintering of opinion among the *patres* about the new war.' If this was the case, it would make an interesting comparison with the decision to consult the people about changing the praetorian lots in 192. The declaration of war against Philip V and the subsequent chronology is discussed further by Rich 1976: 25, 87–8; Warrior 1996: 37–89; Pina Polo 2011: 102–3.

¹³⁴ Liv. 31.5.9 and 31.6.3–6. See Rich 1976: 21, n. 7 for the suggestion that the naming of 'Macedonia' before the vote on the declaration of war could have been used in the arguments of opponents of the bill in 200.

¹³⁵ Vervaeke 2006: 129 with n. 22.

¹³⁶ Ferrary 2003: 139.

Unlike the theory of constitutionally ‘fixed’ *provinciae* — which is never explicitly attested in the surviving ancient sources — there is clear evidence for the people’s rôle in determining the allocation of commands after political disputes (Section III). We have seen that the people were used to arbitrate following the breakdown of senatorial consensus over the assignment of the consular *provinciae* in 295. This particular case highlights that there was fluidity in interpreting the various ‘rules of the game’ — as influenced by the *mos maiorum* — which provided a framework for governing élite competition.¹³⁷ Decius reportedly argued that the consular *provinciae* were ordinarily allocated through the *sortitio*; thus, the vote of the people may have legitimized the Senate’s decision to break with the *mos maiorum* in assigning the *provinciae extra sortem*.¹³⁸ The dispute was settled by a senatorial-popular consensus — that is, a general agreement among senators, especially those directly involved in the disagreement, and with the *populus Romanus* as a whole, that the vote of the people represented a final decision, even if not everyone favoured it unanimously.¹³⁹ As Livy has Fabius tell the people during a *contio* prior to the vote, ‘... if they considered him worthy for the *provincia* then they should give it to him; he had submitted to the decision of the Senate and would accept the authority of the people’.¹⁴⁰

The people’s final decision (and the formation of a senatorial-popular consensus) also settled disputes over who should have the command in Africa against the Carthaginians in 202, and in Asia against Aristonicus in 131. In addition, the prospect of consulting the people was reportedly mooted following a clash over the designation of the consular *provinciae* in 205 and would have presumably occurred also in 201 and 197 if an agreement had not been reached between the consuls and tribunes. Once again, the (potential) rôle of the people as arbitrators of senatorial disagreements was important in mitigating the harmful effects of élite competition over the assignment of *provinciae*. This enabled the fluid constitutional system — which allowed for individuals to compete with each other — to function without breaking down.

It is important to stress that the impetus for the popular votes discussed above consistently came from the Senate. We have seen that the Senate was ordinarily free to designate the various *provinciae*, including all of the praetorian *sortes*, each year during the Middle Republic. It was only in exceptional circumstances that the Senate consulted the people through a particular magistrate or a tribune of the *plebs*. The notion that the people’s rôle was ‘democratic’ obscures the interrelationship between so-called ‘élite’ and ‘popular’ elements in the Roman political system: the Senate and the people arguably functioned, at particular times, together — taking into account a number of different ‘rules of the game’ — to maintain political stability and the status quo in Rome. One may further suggest that the failure of the Senate and the people to work together effectively was either, in part, responsible for or at least exacerbated political crises in the late Republic.¹⁴¹

This may best be illustrated by the series of events leading up to and following the catastrophic march on Rome by L. Cornelius Sulla (*cos.*) and his army in 88. Sulla had

¹³⁷ See Section III.

¹³⁸ See Liv. 10.24.10–11 (quoted in n. 72).

¹³⁹ On the senatorial-popular consensus see the definition given in Section III.

¹⁴⁰ Liv. 10.24.7–8: ‘postremo se tendere nihil ultra quam ut, si dignum provincia ducerent, in eam mitterent; in senatus arbitrio se fuisse et in potestate populi futurum.’ As Oakley 2005: 297 comments, ‘note the tactful contrast between *arbitrio* (used here of the senate but elsewhere also of the people and magistrates: see Packard [1968] i. 455–6) and *potestate* (a stronger word than *arbitrio*, reflecting the constitutional power of the people).’ See generally Paananen 1993: 72–3 and for the *contio* setting see especially Humm 1999: 642–3.

¹⁴¹ For the notion of a ‘crisis’ see generally e.g. Jehne 2006: 7–9; Morstein-Marx and Rosenstein 2006; Hölkeskamp 2010: 42–3. See also Flower 2010 for a reassessment of the use of the term ‘crisis’ to describe a period of Roman history roughly between 133 and 49 and the idea of a single ‘Republic’ (as opposed to distinct ‘Republics’).

drawn Asia as his *provincia* — and with this the war against Mithridates — in the consular *sortitio* at the start of the year. Yet, P. Sulpicius Rufus (*tr. pl.*), ignoring the wishes of the Senate as a whole and its decision concerning the allocation of *provinciae*, managed to carry a *plebiscitum* transferring the *provincia Asia* to his new political ally C. Marius (*cos.* 107, 104–100 and 86).¹⁴² In this case, the old (unwritten) ‘rules of the game’ — whereby the Senate would ordinarily determine all of the consular and praetorian *provinciae* and would then resolve any subsequent disputes either internally or, if necessary, by using the people as final arbiters — were completely ignored (for which contrast especially the senatorial opposition and the threat of tribunician *intercessio* when it was thought that Scipio might propose a law to the people if the Senate refused to grant him Africa as his *provincia* in 205).¹⁴³ According to Appian, Sulla and his colleague, Q. Pompeius Rufus (*cos.*), proposed a law soon after their capture of Rome stipulating that, ‘... no question should ever again be brought before the people which had not been previously considered by the Senate, an ancient practice which had been abandoned long ago ...’.¹⁴⁴ Sulla, as dictator, having marched on Rome and defeated his enemies for a second time on his return from the East, passed an even more radical law curtailing the tribunes’ power to legislate and veto in 81.¹⁴⁵ The laws of 88 and 81 prevented the tribunes of the *plebs* bypassing the Senate as an advisory body (as Sulpicius had done in 88) and enforced the Senate’s traditional right to decide whether the people should vote on certain proposals, such as those concerning the allocation of *provinciae*.¹⁴⁶ Yet, both laws were short-lived.¹⁴⁷ After the restoration of the tribunes’ power to legislate in 70, divisions within the Senate were manifested, in part, in rival claims concerning whether the Senate or the people as a whole should allocate important military commands.¹⁴⁸

Serious disputes between individual politicians, who all claimed to be representing the interests of the *populus* and *res publica populi Romani*, were no longer settled by a general agreement among the protagonists involved that the people should serve as arbitrators if political deadlock could not be solved in the Senate and that a vote of the people represented a final decision, even if not everyone favoured it. Most famous,

¹⁴² The *sortitio* is recorded in Vell. Pat. 2.18.3; App., *B Civ.* 1.55; *Mith.* 22; Diod. Sic. 37.29.2. For the transfer of the command see Vell. Pat. 2.18.4–6; Livy, *Per.* 77; Plut., *Mar.* 34; *Sul.* 8; App., *B Civ.* 1.55–6.

¹⁴³ As Flower 2010: 91–2 argues, ‘By agreeing to promote the career of Marius, Sulpicius effectively decided to throw republican norms aside in his bid to control the political scene in Rome and get his reforms established. Yet, Sulla’s decision to march on Rome with the army, which was encamped at Nola in preparation for the expedition against Mithridates in the East, was a devastating choice that led to the complete collapse of the traditional culture of the *nobiles*.’ Note that C. Sempronius Gracchus’ tribunician Lex Sempronia de provinciis consularibus (123/122) enabled the Senate to name the consular *provinciae* without interference (e.g. tribunician veto) in advance of the elections. This law is best interpreted as an earlier attempt to reinforce the Senate’s traditional authority (as viewed as part of the *mos maiorum*) over the naming of the consular *provinciae* in law. See further Vervaeke 2006: especially 649–54. Cf. Drogula 2015: 298–304. The case from 205 is discussed above in Section III.

¹⁴⁴ App., *B Civ.* 1.59: εισηγοῦντό τε μηδὲν ἐπὶ ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεισθαι, νενομισμένον μὲν οὕτω καὶ πάλαι, παραλελυμένον δ’ ἐκ πολλοῦ ... Cf. App., *B Civ.* 1.12 and Plut., *Tib.* 11 for the actions of Ti. Sempronius Gracchus (*tr. pl.*) in 133. For the laws of 88 see Keaveney 2005: 56–7; Pina Polo 2011: 116–17. Cf. Flower 2010: 120.

¹⁴⁵ The tribunician *intercessio* is discussed by Keaveney 2005: 140–1 and 213, n. 5. For the date see Flower 2010: 120.

¹⁴⁶ Steel 2014a argues that Sulla’s legislation strengthened the power of individual *imperium*-holding magistrates (who could still propose legislation) rather than the Senate as a whole, whereas scholars have traditionally thought that the laws enhanced the position of the Senate (for which see e.g. Steel 2014a: 657, n. 4).

¹⁴⁷ See now Santangelo 2014: 5–10 on the issue of the tribunate within the context of politics in the 70s. Cf. Steel 2014b: 12–13.

¹⁴⁸ e.g. note the opposition of a number of senators to the Lex Gabinia, which gave Cn. Pompeius Magnus an extraordinary command throughout the Mediterranean against the pirates in 67. See, e.g., Cic., *Phil.* 11.18; Vell. Pat. 2.31–2; Dio 36.24.1–6; Plut., *Pomp.* 25. See further Arena 2012: 180–200 on the ideological claims made by the various sides in disagreements over the allocation of extraordinary commands in the 60s and 50s.

perhaps, are the numerous debates, starting in 51, concerning when C. Julius Caesar should be replaced in his command in Gaul. The contemporary letters sent by M. Caelius Rufus (*pr.* 48) to Cicero in Cilicia between 51 and 50 provide some fascinating insights into the political turmoil in Rome.¹⁴⁹ The lingering question about what to do with Caesar's *provinciae* — which would traditionally have been decided by the Senate and/or, in the event of a political impasse, by the people — features prominently in Caelius' letter to Cicero from April 50:

As for the political situation, all conflict is directed to a single question, that of the provinces. As things stand so far, [Cn.] Pompeius [Magnus] seems to be putting his weight along with the Senate in demanding that Caesar leave his province on the Ides of November. [C. Scribonius] Curio [tribune of the *plebs* in 50] is resolved to let that happen only over his dead body ...¹⁵⁰

In this case, the question of the *provinciae* was never satisfactorily settled by the Senate or the people; and Caesar took the historic decision to lead his army across the Rubicon into Italy (and, in doing so, commence civil war) on 10 January 49.¹⁵¹ The absence of senatorial-popular consensuses in the late Republic was a highly significant factor in the breakdown of the political system and crisis.¹⁵²

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¹⁴⁹ See, e.g., *Fam.* 8.1.2 (= SB 77; Caelius to Cicero, May 51); 8.4.4 (= SB 81; Caelius to Cicero, August 51); 8.14.2 (= SB 97; Caelius to Cicero, September 50).

¹⁵⁰ *Fam.* 8.11.3 (= SB 91; Caelius to Cicero, April 50): 'Quod ad rem publicam attinet, in unam causam omnis contentio coniecta est, de provinciis; in quam, <ut> adhuc est, incubuisse cum senatu Pompeius uidetur ut Caesar Id. Nou. decedat. Curio omnia potius subire constituit quam id pati; ceteras suas abiecit actiones ...' (trans. Loeb ed. Shackleton Bailey 2001). Caelius correctly predicted Curio's actions, for which cf. *Fam.* 8.13.2 (= SB 94; Caelius to Cicero, June 50).

¹⁵¹ cf. Cic., *Att.* 7.8.4 (= SB 131; Cicero to Atticus, December 50).

¹⁵² Note especially Appian's report in his introduction to his account of the *Civil Wars* (1.4): '... After his [Sulla's] death similar troubles broke out and continued until Gaius Caesar, who held the command in Gaul by election for some years, when ordered by the Senate to lay down his command, excused himself on the ground that this was not the wish of the Senate, but of Pompeius, his enemy, who had command of an army in Italy, and was scheming to depose him. So he sent proposals that either both should retain their armies, so neither need fear the other's enmity, or that Pompeius also should dismiss his forces and live as a private citizen under the laws in the manner with himself. Both suggestions being refused, he marched from Gaul against Pompeius into the fatherland [i.e. Italy], entered Rome, and finding Pompeius fled, pursued him into Thessaly, won a brilliant victory over him in a great battle, and followed him to Egypt.' (trans. Loeb ed. White 1913 with minor modifications: μετὰ δὲ Σύλλαν αὐθις ὅμοια ἀνερριπίζετο, μέχρι Γάιος Καίσαρ, αἰρετὴν ἀρχὴν ἐπὶ πολὺ δυναστεύων ἐν Γαλατία, τῆς βουλῆς αὐτὸν ἀποθέσθαι κελευούσης αἰτιώμενος οὐ τὴν βουλὴν, ἀλλὰ Πομπήιον, ἔχθρὸν ὄντα οἱ καὶ στρατοῦ περὶ τὴν Ἰταλίαν ἡγούμενον, ὡς τῆς ἀρχῆς αὐτὸν ἐπιβουλεύοντα παραλύειν, προτίθει προκλήσεις ἢ ἄμφω τὰ στρατεύματα ἔχειν ἐς τῆς ἔχθρας τὴν ἀφοβίαν ἢ καὶ Πομπήιον οὓς ἔχοι μεθέντα ιδιωτεύειν ὁμοίως ὑπὸ νόμοις, οὐ πειθὼν δ' ἐς οὐδέτερα ἐκ Γαλατίας ἤλαυνεν ἐπὶ τὸν Πομπήιον ἐς τὴν πατρίδα, ἐσβαλὼν τε ἐς αὐτὴν καὶ διώκων ἐκφυγόντα περὶ Θεσσαλίαν ἐνίκησε μεγάλῃ μάχῃ λαμπρῶς καὶ ἐδίωκεν ἐς Αἴγυπτον ὑποφεύγοντα).

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