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978-0-521-19083-1 - The Consul at Rome: The Civil Functions of the Consuls in the Roman Republic

Francisco Pina Polo

Excerpt

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Studies both ancient and modern have been written on the Republican institutions as a whole, as well as in-depth analyses of the senate, the popular assemblies, the tribunate of the plebs, the aedileship, the praetorship, and the censorship. However, the consulship has not received the same attention from scholars. In fact, there are no monographs that deal specifically with the functions and activities of the supreme magistracy of the Roman state during the Republican period.

Of course, there are prosopographical studies which have shaped the chronology of the Republican consuls. Amongst these, Broughton's prosopography is absolutely essential, and without it this work would have been almost impossible to undertake.¹ With a more limited scope, Albert Neuendorff completed a prosopography of the consuls from 78 to 49, focusing mainly on the candidates for the annual consular elections, and Adolf Lippold specifically studied the political role of the consuls in the period between 264 and 201.² As a basis for consular prosopography, the *fasti consulares* have also been the subject of studies such as that of Fabio Mora, amongst others.³

To the best of my knowledge, the first doctoral thesis on the Roman consulship was written by the Utrecht scholar Heinrich Gabriel Römer. It was published in 1841 with the title *Dissertatio historico-antiquaria de consulum romanorum auctoritate libera* in Utrecht, as stated on the first page of the copy preserved in the Sackler Library, Oxford. This was deposited in 1950 by Brasenose College in the Ashmolean Museum Library. The book had previously been owned by Henry Francis Pelham, Camden Professor of Ancient History at Oxford from 1889 to 1907. Römer's thesis, written in

All dates in the book refer to the period BC. Any exceptions are noted where necessary in the text.

¹ Broughton 1951–86. See also the prosopography of the consuls between the passing of the *lex Villia* and the beginning of the civil war: Badian 1990.

² Neuendorff 1913; Lippold 1963. ³ Mora 1999. See also Drummond 1974; Pinsent 1975.

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Latin, is a worthy effort to understand the powers and functions of consuls in the Republican period. In just over one hundred pages, Römer studied the origin of the term consul, the form in which the consuls were elected, their relationship with the people through their presence in assemblies, their ability to convene the senate and discuss different questions with the senators, their authority in religious matters, and their role as commanders-in-chief of the Roman legions.

Römer's book, nowadays completely forgotten, is hitherto, as far as I know, the only monograph that deals exclusively with the Roman consulship in the Republican period. Obviously, this does not mean that there are no other works in which the consulship has been treated, more or less comprehensively, along with the other institutions of the Republican era, such as Theodor Mommsen's *Römisches Staatsrecht*, which was originally published in 1887.⁴ Soon afterwards, Ettore De Ruggiero also dedicated a good number of pages to analysing consular activities in his *Dizionario epigrafico di antichità romane* in 1892.⁵ Other authors, such as Jochen Bleicken and Francesco De Martino in the twentieth century, studied the Roman constitution and the evolution of the supreme magistracy of the Roman state throughout its history.⁶ More recently, Wolfgang Kunkel followed suit with his *Staatsordnung und Staatspraxis der römischen Republik*, an encyclopaedic work completed by Roland Wittmann.⁷ To this brief list of publications on the institutions of Republican Rome in which the consulship has been considered, a list which is by no means intended to be exhaustive, we can add the recent volume by Andrew Lintott on the Roman constitution.⁸ And, of course, there is the important book by Adalberto Giovannini on the *imperium* of consuls, which is an attempt to unravel the characteristics of consular power, particularly during the late Republican period.⁹

In the introduction to his book on the Roman constitution, Lintott highlighted the fact that Mommsen's great study, which is still a work of reference, was to a large extent a theoretical rather than an empirical analysis: '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 source-material in the footnotes.'¹⁰ Lintott's statement is not only completely accurate, but it also applies in general terms to the publications mentioned above. From the point of view

⁴ Mommsen 1887–8, on the consulship vol. II 74–140.

⁵ De Ruggiero 1892. See also Kübler 1900. ⁶ De Martino 1990; Bleicken 1995.

⁷ Kunkel and Wittmann 1995: esp. 311–37.

⁸ Lintott 1999b, on the consulship 104–7. See also Brennan 2000: 31–64; North 2006: 256–77.

⁹ Giovannini 1983. ¹⁰ Lintott 1999b: 8.

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of specialists in Roman law, the aforementioned studies are directed mainly towards determining the nature of the *imperium* with which consuls were invested, and thence establishing the functions that they must have fulfilled as magistrates. Some of these functions are illustrated by alluding to passages from ancient authors; others are simply presumed despite the fact that ancient sources do not mention them.

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

In his reflections on the Republican constitution, Polybius¹¹ emphasizes the power of consuls as typical of a monarchical government, balanced by the aristocratic counter-power exercised by the senate and by the prerogatives of the people that were typical of a democracy, thus forming what the Greek author considered to be the balanced political regime that was the origin of the growing Roman hegemony across the Mediterranean.¹² According to Polybius the consuls were, on the one hand, the commanders of the Roman army, with full decision-making powers, which was their function when they left Rome to lead the legions; on the other hand, they were the heads of the Roman administration, which was their function while in Rome.

In the military field, Polybius claims that consuls had absolute power during war in recruiting both citizens and allies, in the appointment of military tribunes, and in the punishment of their subordinates. The Greek historian adds that consuls were also entitled to spend public funds as they deemed appropriate, with the co-operation of a quaestor at their service during military campaigns. The reading of the surviving books of Livy unquestionably confirms the largely military nature of the consulship during most of the Republic. As commanders-in-chief of the Roman army, the consuls spent long parts of their year as supreme magistrates away from Rome. Significantly, when Polybius refers to the consuls, he refers to them more frequently as *strategoï* rather than as *hupatoi*, thus highlighting their role as *imperatores* derived from their mainly military tasks.

On the other hand, during their stay in Rome before leading the legions, consuls were the heads of the Roman administration. In this respect, Polybius mentions a series of tasks assigned to them regarding both the

¹¹ Polyb. 6.12. ¹² Cf. Walbank 1957: 673–97; Nicolet 1974: 209–58; Lintott 1999b: 16–26.

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senate and the people: the presentation of foreign embassies to the senate; deliberation within the senate on questions of interest to the community; the execution of decrees issued by the senate; summoning and presiding over popular assemblies; presentation before the people of measures to be taken and bills; and application of the laws passed by the people.

My purpose is to analyse precisely those consular tasks to which Polybius alludes that were not strictly military. My objective is to determine which civil functions were part of the *officium consulare*, both in the *Urbs* and outside it. I shall not, therefore, analyse the consuls as military chiefs, but it should be borne in mind that military tasks took up most of the work of the consuls during the consular year and that, obviously, most ancient sources refer to their military tasks much more frequently and in more detail. Information on consular civil tasks is consequently much less common than that on the consuls as commanders-in-chief of the Roman army, although the evidence is sufficient to reveal the complexity of consular activities, whether mandatory or occasional, in such varied fields as religion, diplomacy, legislation, jurisdiction, colonization, and elections.

The legal power of the consuls in the Republican period continues to be debated, and, to a great extent, the discussion still revolves around the theses put forward by Theodor Mommsen. Mommsen's starting point was that *imperium* defined the supreme power within the government of the Roman Republic, which as such represented the supreme authority both in the military sphere and in legal jurisdiction.¹³ Mommsen distinguished two spheres of application of *imperium*, differentiating between *imperium domi* and *imperium militiae*. The former concept would have referred to the civil powers that a consul had exclusively within the city of Rome, whereas the *imperium militiae* would have been wielded exclusively outside the *Urbs*. The limit between both areas would have been geographical, marked by the sacred boundary of the city (*pomerium*).¹⁴ Mommsen's thesis has generally been accepted in its main points by most scholars studying the matter.¹⁵

In his *Consulare imperium*, Giovannini offered a comprehensive critique of Mommsen's theories. In Giovannini's opinion, the definition traditionally given, following Mommsen, of the contrast between *imperium domi* and *imperium militiae* is incorrect, since such a contrast would not have been linked to the *pomerium* and would have been not a territorial but a qualitative contrast, depending on the tasks performed by the consuls. The formula *domi militiaeque* in fact distinguished civil and military activities,

¹³ Mommsen 1887–8: I 22. ¹⁴ Mommsen 1887–8: I 61–75.

¹⁵ See now also on the concept of *imperium* Beck, forthcoming.

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regardless of the place where they were carried out.¹⁶ These domains of consular power were not incompatible, but were simultaneous and complementary. A consul had one *imperium*, both civil and military, and he exercised civil power over civilians and military power over the soldiers under his command.¹⁷

Recently, Fred Drogula has suggested a radically different scenario in regard to the powers held by the higher magistrates of the Roman Republic. In his opinion, Mommsen was correct in differentiating between the powers of a magistrate inside and outside Rome, but was wrong in assuming that the two spheres were governed by means of *imperium*.¹⁸ Drogula argues that the distinction between *imperium domi* and *militiae* must be eliminated and that it never existed as such because the *imperium* was exclusively a military power wielded outside Rome.¹⁹ There was certainly a marked difference between the exercise of civil and military powers, but such a difference came from *potestas* and *imperium* respectively.²⁰ Inside the *pomerium* consuls and praetors did not have *imperium*, since the *potestas* which was attached to their office and to all Roman magistracies was sufficient for the exercise of their civil functions.²¹ The *imperium* as military command was banned inside the *pomerium*, and its use was permitted only in extraordinary circumstances: the celebration of a triumph, the appointment of a dictator, or the proclamation of the so-called ‘ultimate decree of the senate’ (*senatus consultum ultimum*).²²

The debate therefore revolves around several questions which complement or exclude each other: whether from the very moment of their appointment consuls had *imperium* or simply *potestas*; whether *imperium* was exclusively a military command exercised outside Rome or was a single power within which a military and a civil command could be distinguished; whether the exercise of civil and military power depended on the physical location of the consuls, so that they could only wield their civil power inside

¹⁶ Giovannini 1983: 7–15. ¹⁷ Giovannini 1983: 27–30. ¹⁸ Drogula 2007: 451.

¹⁹ Drogula 2007: 430: ‘*Imperium* was the right to exercise military command – outside the *pomerium* – and no more.’

²⁰ Drogula 2007: 431: ‘The divide between military and civilian powers at Rome was strong, and it is reasonable to believe that these powers derived from separate sources, *imperium* (military command) and *potestas* (civilian magisterial authority), rather than from a single military source (*imperium*)’; 451: ‘The tremendous power of *imperium* was carefully limited by the sacred boundary of the *pomerium*, into which *imperium* (except in exceptional circumstances) did not extend. *Imperium* remained outside the city with all other things military, while within Rome magistrates functioned by right of their *potestas* to undertake their assigned duties.’

²¹ Drogula 2007: 422: ‘*imperium* was not necessary within the *pomerium*, because *potestas* provided all the power and authority magistrates needed to perform the duties of their offices.’

²² Drogula 2007: 442–51.

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the *pomerium* and their military power outside it; or if the differentiation between *imperium domi* and *militiae* was not spatial, but depended on the tasks performed by consuls at each specific moment.

This monograph aims to make a practical contribution to the debate by means of the verification of the tasks that consuls performed during their term of office in the civil sphere. In this sense, most of the civil functions of the *officium consulis* which are set out in this book were definitely performed in the *Urbs* (religious, diplomatic, legislative, and electoral tasks, as well as communication with the people, etc.), and these are the activities that are fundamentally relevant for this book. But other tasks were carried out outside Rome once the consuls had left the city, and these must be included as consular civil activities. For example, a consul wearing the military cloak (*paludamentum*), acting as president over the electoral process, could call an election for a specific date by means of an edict issued from his province or during his return journey to the *Urbs* (*ex itinere*), where he was to preside over the elections. This was plainly a civil task performed by a consul without leaving his military command.²³ Likewise, the consul who was entrusted with presiding over the annual elections did so while wearing the *paludamentum*, and he usually returned to his province afterwards. But in cases where censorial elections were necessary, that same consul presided over them at the beginning of the consular year before leaving Rome to go to his province.

Outside Rome certain consular tasks were occasionally performed, such as the control of the use of the public land (*ager publicus*) and its apportioning in the colonization process. In 173, the consul Postumius was sent to Campania by the senate to recover public land that was being used improperly by some private individuals. To conduct this task, Postumius would not have left Rome wearing a military cloak and with the pomp of the procession with which a consul usually left the city to take command of the legions. Also, the consuls were occasionally entrusted by the senate with extraordinary investigations of matters of particular relevance, both within and outside Rome, as for example in the case of the Bacchanalia in 186. For a good part of the Republican period the consuls were great promoters of public works, many of them outside the *Urbs*, such as certain water works and most of the roads in Italy. In summary, this book deals with consular civil functions in a broad sense, especially, but not only, those performed in Rome, and it does not include the otherwise predominant role of the consuls as military chiefs on the battlefield for most of the Republican period.

²³ Giovannini 1983: 30.

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The period selected for this analysis is from 367 to 50, from the approval of the Licinio-Sextian laws to the beginning of the civil war between the Caesarians and Pompeians. The date of the beginning of this study is justified by the fact, generally accepted although debated by current scholarship, that the approval in 367 of the Licinio-Sextian laws actually represented the start of the consulship as the supreme Republican magistracy, after the long period of experimentation which had taken place from the beginning of the Republican period. The study has been divided into two parts: the first concerning the period from 367 to Sulla's dictatorship; the second from 80 to 50. Between the fourth and second centuries the two consuls generally spent most of their term of office outside Rome, commanding their respective armies in their allotted provinces. However, during the first century, the consuls remained in Rome during most or all of the consular year. This means that, if the function of the consuls until Sulla's period was essentially, though not exclusively, to act as the supreme commanders of the Roman army, from the year 80 onwards their work focused mainly on their executive duties of government in Rome.

Since Mommsen, it has traditionally been considered that this substantial change in the institutional role of the consuls was the result of a law introduced by Sulla, who would thus have removed military command from the consuls, limiting their power to civil matters in the *Urbs*. Giovannini, however, demonstrated that the supposed *lex de provinciis ordinandis* attributed to Sulla never existed. It is therefore evident that there was a substantial difference between the political role played by consuls who spent a short period of time in Rome before setting off for their provinces leading their armies, and that of those who were the centre of Rome's political scene in the late Republican period. While this is true, we do not know for certain that this important change can be attributed to a Sullan law. Nevertheless, for practical reasons this book maintains that the alteration occurred during Sulla's dictatorship, although it must be recognized that his intervention in the change of the consulship as an institution is questionable.

For the historical period analysed in the first part of this monograph, Livy is, of course, our main source. In fact, in most cases he is the only available source for the years 367 to 167, and even when texts of other authors exist, they are based on Livy's work. In Books 21 to 45, which deal with the Middle Republic from 218 to 167, Livy structured his narrative following a pattern based on the movements of the consuls (and to a lesser extent those of other magistrates) between Rome and the provinces, differentiating between the activity deployed within the *Urbs* and that beyond it,

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essentially following the polarity between civilian and military matters. As Rome expanded her control over further territories, Livy overlapped the usual chronological sequencing based on the consular year with a new polarity: military activities in the East and the West of the Mediterranean. Whereas this applies between 218 and 167, there is no fixed structure for the books on the fourth century, and the loss of Livy's work after 167 prevents us from determining how he organized his account.²⁴ All other sources for this period (Polybius, Plutarch, Diodorus, Valerius Maximus, etc.) are secondary and only provide brief pieces of information which corroborate or complement those given by Livy.

It is clear that the sources for the mid-Republican period sometimes present problems of credibility, along with the fact that information on most of the third century is scarce due to the loss of the second decade of Livy's work. Nonetheless, the reading and analysis of ancient sources clearly continues to be the only appropriate method for the reconstruction of the institutional history of the Roman Republic in the pre-Sullan period, for which the available epigraphy is extremely scarce.²⁵ Although certain episodes narrated by the annalists, and later collected by Livy, generate reasonable doubts as regards their historicity (as noted when necessary), Livy's account as a whole allows us to produce a fairly accurate picture of the activities engaged in by the consuls, both within and outside Rome, throughout the period for which the work of the Latin author is preserved. It therefore enables us to determine with a certain amount of precision the actual role of the consulship in the government of the Roman Republic in the pre-Sullan period, including its duties, powers, functions, and tasks.

From the moment from which the books of Livy are no longer available, this picture fades considerably, to the point that for the second century, from 167 until the beginning of the first century, we have in many cases only very rough sketches. The period of time between Sulla's dictatorship and the beginning of the civil war between the Caesarians and Pompeians, which occupies the second part of this book, is no exception. This is rather paradoxical, since we have the preserved works of contemporaries who were directly involved in the Roman political scene, such as Cicero, Sallust, and Caesar.

²⁴ See Rich 1997, who suggests that the structure used by Livy for the mid-Republican period may have derived from the work of Valerius Antias (see also Rich 2005). In general, on the layout of Livy's work, see McDonald 1957; Luce 1977; Mineo 2006.

²⁵ Lintott 1999b: 7: 'We read the texts of laws and decrees of the senate, we study the fragments of learned commentaries to be found in antiquarian sources, but frequently our best guide to constitutional practice is to read in ancient narratives what actually happened over a period, and, where there was conflict, to discover, as far as we can, in what terms the issues were formulated at the time.'

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We also have the texts of Greek authors, such as Appian, Cassius Dio, and Plutarch, along with other minor sources. However, we do not have a detailed account of the activities carried out by many of the consuls from 80 to 50, and it is at times particularly difficult to determine the routine of consular work. Exceptions to this are the years in which some of the great protagonists of the period were consuls, in particular Pompey, Cicero, and Caesar, on whom the ancient sources focus and provide abundant information. The limitations of the sources must be taken into consideration when tackling the study of the evolution of consular functions during the first century before the successive civil wars which led to the establishment of the Principate.

The structure of the first part of the book, on the pre-Sullan period, is inspired by the pattern provided by Livy for the development of the consular year in the mid-Republican period. The chapters are presented successively so that it is possible to follow approximately the usual order of the tasks undertaken by the consuls in this period, from the moment they took office and performed their religious and diplomatic duties in Rome at the beginning of the consular year to their presidency over the elections, usually held in the last few weeks of the consular year; also included are other tasks (public works, inquiries, etc.) which occasionally also fell to the consuls during their term of office and could be carried out both within the *Urbs* and outside it. The short stay of the consuls in Rome, and their habitual absence from the city because they were commanding their armies, set the pattern of the consular year in the pre-Sullan period and determined consular functions.

The second part of the book deals with the period from 80 to 50, for which we have no ancient sources that reflect, as Livy did, the structure of the course of the consular year; nor were the political circumstances the same. The habitual presence of the consuls in Rome during their time of office altered their participation in the political life of the city, making it more conspicuous. Although certain consular tasks continued to be mandatory at specific times of the year, increased flexibility meant that the consuls combined various functions; however, these remained similar to those of the pre-Sullan period. A chapter in the second part of the book describes the civil consular functions in the late-Republican period, preceded by a much-needed discussion on the existence of the supposed Sullan law on provincial government and its consequences for the consulship. Each of the two parts of the book concludes with an analysis of the activities carried out by the consuls during the consular year, in the first place for 190–189, and in the second place for the year 63.

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PART I

The consular functions in the pre-Sullan age
(367–81)