



HAL
open science

Prouinciam neglexit. The consequences of waiving the right to govern a province for the cursus honorum of aristocrates during the late Roman Republic

Julie Bothorel

► To cite this version:

Julie Bothorel. Prouinciam neglexit. The consequences of waiving the right to govern a province for the cursus honorum of aristocrates during the late Roman Republic. Francisco Pina Polo. *Cursus Honorum. Pathways to Rank and Power in the Roman Republic.*, pp.293-322, 2025, 978-84-472-2797-6. ⟨hal-05021648⟩

HAL Id: hal-05021648

<https://hal.science/hal-05021648v1>

Submitted on 4 Apr 2025

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



Distributed under a Creative Commons CC BY 4.0 - Attribution - International License

PROVINCIAM NEGLEXIT.
THE CONSEQUENCES OF WAIVING
THE RIGHT TO GOVERN A PROVINCE
FOR THE *CURSUS HONORUM* OF
ARISTOCRATS DURING THE LATE
ROMAN REPUBLIC¹

Julie Bothorel

Université Paris 8 – Vincennes – Saint-Denis

Excusatio is used several times in the Latin sources² to refer to the act of publicly presenting a satisfactory excuse, pretext or exemption, for not taking up office or for not accepting undertakings, after being elected to a magistracy. Through this procedure, which was common in Republican and Imperial Rome, candidates or magistrates-elect could thus turn down different offices: an aristocrat who had stood for election could eventually withdraw his candidacy;³ a senator could refuse to attend a Senate session or to sit on a *quaestio* when his presence was required;⁴ a young girl who met the requirements to become a Vestal Virgin could, depending on her family situation, choose not to participate in the Vestal *sortitio*;⁵ magistrates could decline to cast lots for their provinces during their term of office or to govern the province they had just been assigned; and so forth.

It is this last type of *excusatio*, with which it was possible to relinquish a provincial governorship, that is discussed here. The focus is placed on the curule

1 I would like to warmly thank Francisco Pina Polo for inviting me to this conference and Thomas MacFarlane for his careful proofreading of my text. All dates are BCE, unless otherwise stated.

2 E.g. Caes. *B Civ.* 1.85.8-9; Cic. *Phil.* 9.8; Livy 41.15.6-11.

3 Livy 26.22.5-8. On refraining from running for office in the late Republic, see Baudry's chapter in this volume.

4 Ryan 1998: 49-50.

5 Gell. *NA* 1.12.6-7.

magistrates, who became provincial governors at the end of their careers, during or immediately after holding the consulship or praetorship. There are many documented cases of consuls and praetors declining provincial governorships throughout the Republican period. This was particularly the case in the 1st century, especially between 80 and 52, viz. between the dictatorship of Sulla and the enactment of Pompey's provincial law, which profoundly changed the way in which provinces were distributed and limited the casting of lots for them exclusively to consulars and praetorians who had not yet governed one. One of the best examples of this phenomenon is certainly the career of Cicero (more on which later on) who waived his right to govern a province following his praetorship in 66 and then to govern a consular one in 63, before being forced to set off for Cilicia to take up office in 51, by virtue of the *lex Pompeia*.

Despite the importance of the phenomenon, which historians have underscored on several occasions,⁶ the procedure for waiving the right to govern a province is still a moot point, as are the practical consequences for the political careers of late Republican aristocrats. The questions that remain unanswered include the following: What pretexts could be used to decline the governorship of a province? What happened to magistrates who did so? Could they then continue to pursue the *cursus honorum* or to undertake missions linked to their rank? The frequency of this practice also challenges the current understanding of the *cursus honorum*, for it contradicts the widely held notion that provincial governorships were much sought after mainly for financial reasons or for aristocratic glory-seeking and *dignitas*. This begs the question of why so many magistrates actually refused to govern provinces and what this reveals about the evolution of consular and praetorian careers at the end of the Republic.

Waiving the right to govern a province, a common practice in the late Republic

Although it is only in 1st-century sources, such as Cicero, that the term *excusatio* begins to be clearly used in reference to the act of publicly presenting a satisfactory excuse for not taking up office or for not accepting undertakings, after being elected to a magistracy,⁷ probably because the large number of

6 Giovannini 1983: 89; Brennan 2000: 400-402; Pina Polo 2011: 239-241. See recently Blösel 2016; for a different point of view: Rafferty 2019: 122-132.

7 E.g. Cic. *Phil.* 9.8.

excusationes helped to identify and codify this procedure more effectively, it seems that the possibility of declining a province (*prouincia*) existed from the beginning of the Republic and was as old as the allocation procedure itself, both of which went hand in glove. As military tribunes with consular powers (*tribuni militum consulari potestate*), who were in charge between 444 and 367, are mentioned in the sources as having declined the province they had received by lot or from the Senate,⁸ it can be assumed that *praetores*, then consuls and praetors after 367, also had the same right. By way of example, according to Livy, in 381 M. Furius Camillus, who was then a military tribune with consular powers for the sixth time, wanted to relinquish the command of the war against the Volscians, which the Senate had given him directly, *extra ordinem, parato in uerba excusandae ualetudini solita*; it was the protests of the people and his taste for battle that forced him to back-pedal.⁹

The sources, albeit more abundant due to the preservation of books 21 to 45 of Livy's *Roman History*, show that recourse to this practice remained limited during the early and middle Republican period (218-167). The manner in which the provinces, which could involve judicial, administrative or military undertakings, were distributed each year is now well known for this period. They were distributed among the colleges of magistrates, praetors or consuls, usually on the day of their investiture, by casting lots; although magistrates theoretically had the right to resort to *comparatio*, namely, reaching an amicable agreement on their distribution, instead.¹⁰ Two aspects stand out in this period: in light of the fact that there are only two instances of this practice in the 3rd and 2nd century, in 205¹¹ and in 176,¹² consuls and praetors seem to have sought provincial governorships; furthermore, both of these instances involved extra-urban provinces (an important point discussed in further detail below).

A radical change then took place at the end of the Republic, when many consuls and praetors declined to govern extra-urban provinces. For consuls, the use of *excusationes* was particularly common in the post-Sullanian period, as illustrated by the well-known examples of Pompey and Cicero, who refused to

8 On the military tribunes with consular powers, see Lanfranchi's chapter in this volume.

9 Livy 6.22.7: *exactae iam aetatis Camillus erat, comitiisque iurare parato in uerba excusandae ualetudini solita consensus populi restiterat; sed uegetum ingenium in uiuido pectore uigebat uirebatque integris sensibus, et ciuiles iam res haud magnopere obeuntem bella excitabant.*

10 Bothorel 2023: 31-134.

11 Livy 28.44.11; cf. 28.38.12 and Plut. *Fab.* 25.4.

12 Livy 41.15.6-10.

set off for their provinces after their consulships in 70 and 63, respectively. The following table lists the consuls who declined provincial governorships from 80 to 52, indicating the sources and why it is assumed that this was the case:

TAB. 1 – LIST OF CONSULS WHO DECLINED THE GOVERNORSHIP OF A PROVINCE BETWEEN 80 AND 52¹³

<i>Consuls</i>	<i>Consular year</i>	<i>Excusatio</i>
L. Cornelius Sulla	cos. 80	Sulla remained in Rome, probably for the duration of his dictatorship and consulship, until he renounced the latter (cf. e.g. App. <i>B Civ.</i> 1.450; 478-490). He is said to have refused to govern Cisalpine Gaul: Gran. Lic. 36.11.
D. Iunius Brutus Mam. Aemilius Lepidus Livianus	coss. 77	The Senate wanted to send them to Hispania to wage war against Sertorius; when the two consuls refused, Pompey was finally entrusted with the mission: Cic. <i>Phil.</i> 11.18; cf Plut. <i>Pomp.</i> 17.4. No provincial governorship is known for either of the two.
L. Gellius Poplicola Cn. Cornelius Lentulus Clodianus	coss. 72	They were commissioned by the Senate to wage war against Spartacus in 72 (and not in 73, meaning they were not appointed by virtue of the <i>lex Sempronia</i>); after their defeat, they were dismissed by the Senate in favour of Crassus. Neither of them is known to have held the office of provincial governor and both became censors in 70, which means they were still in Rome in 71: Cic. <i>Verr.</i> 2.5.15; <i>Cluent.</i> 120; <i>Flac.</i> 45.
P. Cornelius Lentulus Sura	cos. 71	Expelled from the Senate in 70: Plut. <i>Cic.</i> 17.1; Dio Cass. 37.30.4.
Pompey Crassus	coss. 70	For Pompey and Crassus: Plut. <i>Pomp.</i> 23.3-4: Ἐκ τούτου διαλλαγέντες ἀπέθεντο τὴν ἀρχήν. For Pompey only: Vell. Pat. 2.31.1; Zonar. 10.2.

13 The list was compiled by Blösel 2016: 68 n. 4, on the basis of consuls known to have remained in Rome during their consulship and for whom the exercise of provincial government is not attested. It does not include consuls who died during their term of office. I have added Mam. Aemilius Lepidus (cos. 77) and references to the sources. See also Pina Polo 2011: 239; Giovannini 1983: 89. According to Rafferty 2019: 124, only four consuls renounced provincial governorships.

<i>Consuls</i>	<i>Consular year</i>	<i>Excusatio</i>
Q. Hortensius Hortalus	cos. 69	Plut. <i>Pomp.</i> 29.2; Dio Cass. 36.1a [Xiph.]; Schol. Bob. 96 Stangl; cf. Cic. <i>Verr.</i> 2.2.76; Diod. Sic. 40.1; App. <i>Sic.</i> 6.1 and 2.
L. Aurelius Cotta	cos. 65	Censor in 64; Cic. <i>Dom.</i> 84; Plut. <i>Cic.</i> 27.3; cf. Dio Cass. 37.9.4. Moreover, he was excluded from the <i>sortitio</i> in 49 (Caes. <i>B Civ.</i> 1.6.5), probably because he was close to Caesar, which suggests that he was a potential candidate for a consular province under Pompey's law of 52 and, therefore, had not yet governed one.
L. Iulius Caesar		Appointed <i>duovir perduellionis</i> in 63 to try Rabirius for <i>perduellio</i> : Dio Cass. 37.27.
C. Marcius Figulus	cos. 64	One of the consular senators who voted in favour of the death penalty for the conspirators who had joined Catiline in 63, before seconding the motion to thank Cicero publicly for saving the Republic: Cic. <i>Att.</i> 12.21.1; <i>Phil.</i> 2.12.
Cicero	cos. 63	Cic. <i>Att.</i> 2.1.3; <i>Pis.</i> 5; <i>Fam.</i> 2.12.3; <i>Mur.</i> 42. Cf. Plut. <i>Cic.</i> 12.3-4 and Dio Cass. 37.33.
M. Calpurnius Bibulus	cos. 59	Proconsul of Syria in 51 by virtue of Pompey's law of 52, which implies that he did not govern a province as a consul, since only former magistrates who had never held such an office did so.
L. Marcius Philippus	cos. 56	Certainly opposed, like his colleague Marcellinus, to the candidacy of Pompey and Crassus for the consulship in 55, it is likely that Philippus was not given a province to govern or turned down the opportunity so as to remain in Rome. Like Cotta (see before), Philippus was later excluded from the <i>sortitio</i> in 49 (Caes. <i>B Civ.</i> 1.6.5), probably because he was close to Caesar, suggesting that he had not yet governed a province.

As the table clearly shows, during this period, almost fifteen consuls, that is to say a quarter of the consuls,¹⁴ forsook their provinces after performing urban tasks (such as presiding over the *comitia*) – most of the time, they then

14 Blösel 2016: 68. See also Pina Polo 2011: 239-242.

left Rome for their provinces usually a few weeks before the end of their term of office (which they governed *ex consulatu*).¹⁵ Although there is no information on the provinces that twelve consuls received,¹⁶ it would not be surprising if some of them declined to govern them: Cn. Octavius (cos. 76); Cn. Aufidius Orestes (cos. 71); L. Volcatius Tullus and M'. Aemilius Lepidus (coss. 66); L. Licinius Murena (cos. 62); M. Valerius Messalla Niger and M. Pupius Piso Frugi Calpurnianus (coss. 61); Q. Caecilius Metellus Celer (cos. 60);¹⁷ Cn. Cornelius Lentulus Marcellinus (cos. 56); L. Domitius Ahenobarbus (cos. 54); Cn. Domitius Calvinus and M. Valerius Messalla Rufus (coss. 53). In the words of W. Blösel, "It amounts to not quite half of the total of fifty-five consuls who held office during this period."¹⁸

Although the number of waivers was particularly high after Sulla's dictatorship, the first instances of this practice might possibly date from the 2nd century, with the paucity of sources for the years 130-80 not accounting for this. After the enactment of the *lex Sempronia de prouinciis (consularibus)* in 123, which stipulated that consular provinces should be assigned before the consular election,¹⁹ there was in any case no major changes in the procedure until the enactment of Pompey's law in 52, by virtue of which they were distributed among former consuls who had been out of office for at least five years. For consuls, however, only one *excusatio* is mentioned for the early 1st century, namely, that of Q. Mucius Scaevola (*prouinciam ... deposuerat*).²⁰ Even though the meaning of this expression, which might signify that either Scaevola left his province or that he declined it, as well as the date on which he renounced Asia, have been the subject of much debate, F. Pina Polo has clearly shown that he declined the province assigned to him by lot during his consulship.²¹

15 Giovannini 1983: 90 has clearly shown that the expression *ex consulatu* should not be equated with *post consulatum*, "after the consulate". In the 1st century, curule magistrates remained in Rome, where they held civil offices, usually setting off for their provinces before completing their term: Pina Polo 2011: 229-240.

16 Blösel 2016: 68-69 n. 5.

17 He died in Rome in April 59, without having completed his *profectio*: Cic. *Cael.* 59; cf. Dio Cass. 37.50.4-5.

18 Blösel 2016: 69.

19 Bothorel 2023: 165-171; for a different point of view, see Vervaeet 2006, followed by Rafferty 2019: 64-69, for whom the *lex Sempronia* would not have required the assignment of the consular provinces before the elections.

20 Asc. p.15 C.

21 Pina Polo 2011: 244-246.

As to praetors, it seems that many of them also declined to govern extra-urban provinces *ex praetura* during the late Republic.²² Although this phenomenon might have appeared before Sulla's dictatorship – something that is not apparent from the sources – there are institutional reasons to believe that *excusationes* became more frequent after the Sullanian period. On the one hand, even though it is now accepted that he never issued a law divorcing this magistracy from the promagistracy,²³ Sulla certainly boosted the number of candidates for the praetorian *sortitio* by increasing the number of praetors to eight. Then, on the other, as I have recently attempted to show, there is plenty of evidence to suggest that Sulla also introduced a double praetorian *sortitio* in which the praetors cast lots for the urban provinces after their election or investiture, and for the extra-urban provinces in the autumn and probably before 5 December of the year of their magistracy.²⁴ The aim of this practice, combined with the greater number of praetors, was to swell the ranks of magistrates eligible to govern provinces, at a time when recourse to prorogation was commonplace because of the dearth of aristocrats holding *imperium*, regardless of whether they were expected to exercise judicial or military functions. It also had consequences for the system of *excusationes*, since praetors could thenceforth waive their right to govern extra-urban praetorian provinces, after fulfilling their civic duties for almost their entire term of office.

As with consuls, the literary sources rarely mention the way in which praetors declined to take up office as provincial governors and focus chiefly on the cases of Lucullus (pr. 78) and Cicero (pr. 66). The prosopographical information available is also hard to interpret for several reasons: the exact dates of praetorships are generally rather vague, due not only to the gaps in the sources but also to the differences of opinion among historians on how

22 On this expression, which implies that the praetors departed *before* the end of their term of office, see Hurler 2010: 56-57.

23 Giovannini 1983: 83-101.

24 This practice is evidenced by some cases. For instance, in 74, C. Verres drew lots for the urban praetorship (Cic. *Verr.* 2.1.104: *sortem nactus est urbanae prouvinciae*; cf. 2.5.38) and then, before the end of the year, for the government of Sicily (Cic. *Verr.* 2.2.17: *ei sorte prouincia Sicilia obuenuit*), while we know that two praetorian *sortitiones* were organised this year. On the double praetorian *sortitio*, see Rafferty 2019: 47-60 and 73-86; Bothorel 2023: 194-201. The existence of a double praetorian *sortitio*, on the other hand, has been firmly rejected by Giovannini 1983: 92-93; see also the doubts expressed by Pina Polo – Díaz Fernández 2019: 136-137.

Sullanian legislation should be reconstructed. The following table, which updates the list proposed by W. Blösel and T. C. Brennan by taking into account only the period from 80 to 52,²⁵ includes those praetors known to have turned down provincial governorships or for whom no such governorship *ex praetura* is known. It gives an idea, albeit imprecise, of how widespread this practice was:

TABLE 2 – LIST OF PRAETORS WHO (PRESUMABLY) DECLINED PROVINCIAL GOVERNORSHIPS BETWEEN 80 AND 52

<i>Praetor</i>	<i>Year of praetorship and urban province obtained, when known</i>	<i>Excusatio (for governing an extra-urban province ex praetura)</i>
L. Licinius Lucullus	pr. 78	Dio Cass. 36.41.1: τῆς δὲ δὴ Σαρδοῦς ἄρξαι μετ’ αὐτὴν λαχῶν, οὐκ ἠθέλησε. ²⁶
C. Calpurnius Piso	pr. 71? (<i>praetor urbis</i> : Val. Max. 7.7.5)	No known province.
C. Antonius (Hybrida)	pr. 66 (<i>urbanus</i> ?)	Q. Cic. <i>Pet.</i> 8.
Cicero	pr. 66 (<i>repetundae</i>)	Cic. <i>Mur.</i> 42; <i>Flac.</i> 87.
C. Aquillius Gallus	pr. 66 (<i>ambitus</i>)	Cic. <i>Att.</i> 1.1.1.
L. Cassius Longinus	pr. 66 (<i>maiestas</i>)	No known province.
C. Orchivius	pr. 66 (<i>peculatus</i>)	No known province.
Ser. Sulpicius Rufus	pr. 65 (<i>peculatus</i>)	Cic. <i>Mur.</i> 42.
Q. Gallius	pr. 65 (<i>maiestas</i>)	He was tried under the <i>lex Calpurnia de ambitu</i> in 64. See Alexander 1991, n. 214.
Q. Voconius Naso	pr. before 60	No known province.
L. Domitius Ahenobarbus	pr. 58	No known province.
Cn. Domitius Calvinus	pr. 56 (<i>ambitus</i>)	No known province.
P. Vatinius	pr. 55	He was tried under the <i>lex Licinia de sodaliciis</i> at the end of August 54. See Alexander 1991, n. 292.
T. Annius Milo	pr. 55	No known province.

²⁵ Blösel 2016: 75; cf. Brennan 2000: 400–402.

²⁶ This passage refers to Lucullus’ praetorship in 78 and not to that of L. Luceius, commonly dated to 67, as shown by David-Dondin 1980.

<i>Praetor</i>	<i>Year of praetorship and urban province obtained, when known</i>	<i>Excusatio (for governing an extra-urban province ex praetura)</i>
M. Porcius Cato (Vticensis)	pr. 54 (<i>repetundae</i>)	No known province.
L. Aemilius Paullus	pr. 53	Consul in 50, no known province.
Q. Minucius Thermus		Propraetor of Asia in 51 (Cic. <i>Fam.</i> 13.53, and 55, and 56), immediately after the vote on Pompey's provincial law. If this law was indeed enacted in 51, he must have been praetor before 57 (all the praetors of this year are known) and, therefore, declined the governorship of a province <i>ex praetura</i> in the first half of the 50s.
M. Nonius (Sufenas ?)	pr. before 51 (= before Pompey's law was implemented)	He governed an eastern province at least between 51 and 49 (Cic. <i>Att.</i> 6.1.13; cf. 8.15.3). The same argument as for Q. Minucius Thermus.
Cn. Tremellius Scrofa		He governed an eastern province in 51-50 (Cic. <i>Att.</i> 6.1.13; cf. 7.1.8). The same argument as for Q. Minucius Thermus.
P. Silius		Propraetor of Bithynia and Pontus in 51-50 (Cic. <i>Fam.</i> 13.61-65; cf. <i>Att.</i> 6.1.13; 7.1.8). The same argument as for Q. Minucius Thermus.

Of the 131 known praetors between 80 and 52 (out of a theoretical total of 232), eleven (or even twelve if L. Aemilius Paullus, pr. 53 and cos. 50, is included) presumably declined to govern a province later on, either because their excuses are recorded in the sources or because this can be gleaned from a closer examination of their careers.²⁷ In addition, there are eight praetors who are not recorded as having governed an extra-urban province, accounting for a total of about twenty praetors or around fifteen per cent of the overall number of praetors.²⁸ The case of Q. Caecilius Metellus Nepos (pr. 60) is not

²⁷ Rafferty 2019: 125, suggests that only four praetors declined to govern extra-urban provinces.

²⁸ Blösel 2016: 69-70.

included on the list because a letter from Cicero, dated April 59, suggests that he left Rome.²⁹

According to W. Blösel, this figure of fifteen per cent would be in any case a bare minimum. Indeed, when contrasting the number of praetors who did not receive an extra-urban province with that of known praetors, almost one in three of them assigned an urban province might have declined to take up office.³⁰ It was therefore probably to combat the frequent refusal of provincial governorships that Pompey's law of 52 explicitly reserved the extra-urban provinces for former praetors (and probably also former consuls) *neque in prouincia cum imperio fuerunt*.³¹

Lastly, the importance of this practice in the 1st century is confirmed by references to two excuses made by quaestors in the sources: in 83 when M. Pupius Piso Frugi Calpurnianus, who was supposed to serve under the command of the consul L. Cornelius Scipio Asiagenus, refused to join him, according to Cicero;³² and in 58 C. Calpurnius Piso Frugi, Cicero's son-in-law, who decided not to accept the governorship of Bithynia and Pontus in order, according to the orator himself, to help him to return from exile.³³ On the other hand, there is no record of a quaestorian province being turned down in the 3rd or 2nd century.

How and under what pretext could magistrates decline provincial governorships?

The “*excusatio* procedure” itself can be reconstructed from the few detailed accounts of how magistrates declined their provinces (mainly those relating to 205, 176, 78, 70, 66 and 63). Most importantly, they could not do so whenever they wished. Judging from the sources, the circumstances were clearly established: they could either decline to cast lots for the provinces, like the consul P. Licinius Crassus in 205,³⁴ or, more commonly, reject the results,

29 Cic. *Att.* 2.5.2: *quoniam Nepos proficiscitur*.

30 Blösel 2016: 71-72.

31 Cic. *Fam.* 8.8.8.

32 Cic. *Verr.* 2.1.37.

33 Cic. *Red. Sen.* 38. Regarding the renunciation of quaestors, see Díaz Fernández – Pina Polo 2025: 125-126.

34 Livy 28.44.11: *ideo in sortem tam longinquae prouinciae non uenit*.

such as the praetor Lucullus who refused to set off for Sardinia in 78.³⁵ In the latter case, the *excusatio* probably had to be presented and examined before the magistrate completed his *profectio*, since if he had accepted the results, this would have created a binding obligation between him and the province allotted to him.³⁶ If it was possible to reject a “first assignment” by casting lots or *extra sortem*, it is not so clear that prorogations could be declined, for in this case the magistrates were away from Rome and could not offer excuses; at the end of the Republic, moreover, they had to wait for the arrival of their successors before returning to the city, in accordance with the *lex Porcia*.

In any case, the vocabulary testifies to the solemn nature of the *excusatio*. The verbs *deponere*, *contemnere*, *neglegere* and *repudiare* (or ἀποτίθημι in Greek) are regularly used to denote the act of refusing a province.³⁷ The verb *nolle* (to refuse), which belongs to the augural lexicon, is also employed in this sense, and Cicero’s use of this technical term is surely no coincidence in that the orator himself was an augur.³⁸ Magistrates wishing to renounce a provincial governorship first had to present an apology to the senators³⁹ who could either accept or reject it, as possibly illustrated by the case of the praetors of 176. In this case, the Senate accepted the justification offered by M. Popillius Laenas (*probata Popili excusatio est*) but ordered P. Licinius Crassus (and probably M. Cornelius Scipio Maluginensis) either to leave for his province or to swear before the assembly that he was prevented from doing so because he had to perform a solemn sacrifice.⁴⁰

Magistrates then had to decline to participate in the casting of lots for their provinces under oath, at the request of the Senate and probably *in* (or *pro*) *contione*. Cicero, for instance, delivered the speech in which he declined the governorship of Gaul to the people in a *contio*, probably after his *excusatio* had been presented to (and accepted by) the senators.⁴¹ Although the approval of the people was not mandatory, it was important for magistrates, who were

35 Dio Cass. 36.41.1.

36 Bothorel 2023: 135-142.

37 *Deponere*: Cic. *Att.* 2.1.3; *Pis.* 5; Asc. p. 15 C. *Contemnere*: Cic. *Fam.* 2.12.3. *Neglegere*: Cic. *Cat.* 4.23; *Fam.* 15.4.13. *Repudiare*: Cic. *Cat.* 4.23. See also Plut. *Pomp.* 23.3: Ἐκ τούτου διαλλαγέντες ἀπέθεντο τὴν ἀρχὴν and Dio Cass. 36.41.1: οὐκ ἠθέλησε.

38 Cic. *Mur.* 42: *Postremo tu in prouinciam ire noluisti*. Cf. Ps. Asc. p. 233 St. and *Vir. Ill.* 82.3-4. See Brennan 2000: 401.

39 Pina Polo 2011: 240-241; *contra* Rafferty 2019: 131.

40 Livy 41.15.8-10.

41 Cic. *Att.* 2.1.3; *Pis.* 5.

ultimately accountable to them and wished to preserve their *dignitas*, to obtain it. The example of Camillus, who finally agreed to command the war against the Volscians because of the protests of the people (*consensus populi restiterat*) and his taste for battle, shows, despite the difficulties of interpretation, that it was hard to go against the opinion of the crowd.⁴²

The sources allow us to list the official or legal pretexts that could be offered by magistrates who wished to decline a provincial governorship. The procedure thus refers to a whole “system of excuses”⁴³ that could be accepted and which were gradually codified in the second half of the 1st century and in the imperial age.⁴⁴

First of all, magistrates could claim that they had to fulfil religious obligations, as was the case in 205, when the consul P. Licinius Crassus, who was also *pontifex maximus*, asked to be excused from participating in the *sortitio* for the consular provinces,⁴⁵ and in 176, when the praetor P. Licinius Crassus, who had been assigned Hispania Citerior by lot, also asked to be excused because of a sacrifice he had undertaken to perform.⁴⁶ This type of excuse was still acceptable at the end of the Republic, as was the fact that family circumstances sometimes required the presence of magistrates in the *Vrbs*.⁴⁷

Magistrates could also contend that they were unable to leave Rome owing to bad health (*excusatio ualeitudinis*).⁴⁸ Nonetheless, in 49 L. Aelius Tubero was confirmed by a *senatus consultum* as a candidate in the *sortitio* of praetorian provinces and a tablet with his name on it was promptly cast into the *urna*, although he was absent and even ill.⁴⁹ Indeed, Cicero points out

42 Livy 6.22.7.

43 Chevreau 2014: 142.

44 For example, the *lex coloniae Iuliae Genetivae*, which was probably drafted during Caesar's dictatorship and promulgated by Antony in the following years, explicitly stated that the following excuses could always be invoked for exemption from the office of judge: serious illness, funerals, sacrifices, purgatory rites, trials or magistracies (*RS* 1, no. 25, 393–454). The literary genre of the *libri de excusationibus* was subsequently developed as of the end of the 2nd century AD to provide a framework for apologies to guardians: Chevreau 2014.

45 Livy 28.44.11: *qui ne a sacris absit pontifex maximus, ideo in sortem tam longinquae prouinciae non uenit*; cf. Livy 28.38.12 and Plut. *Fab.* 25.4.

46 Livy 41.15.9: *sacrificiis se impediri sollemnibus excusabat*.

47 Tac. *Ann.* 3.35.2–3 (AD 21).

48 On the link between the ill health of Roman magistrates and their ability to carry out their political duties, see Baroin 2010.

49 Cic. *Lig.* 21: *cum ipse non adesset, morbo etiam impediretur; statuerat excusari*.

that the procedure followed was not in accordance with the traditional rules because Tubero was not given the opportunity to excuse himself. The *excusatio ualetudinis* must have been an old one, as it was sometimes used by magistrates who wished to withdraw their candidacy for an office.⁵⁰

Magistrates could also argue that they were too old to command an army. As already seen, when attempting to resign his command of the war against the Volscians,⁵¹ Camillus did just that, an excuse that was still acceptable at the end of the Republic. As F. X. Ryan observes, the two most common excuses offered by senators in the late Republic for not attending certain Senate sessions or sitting on the permanent tribunals were illness and age.⁵² However, nothing is known about the age at which magistrates were allowed to decline to govern a province in Republican times. It can be assumed that only those over sixty, the age limit for serving in the army, could employ old age as an excuse. Another argument supporting this assumption is that during the Empire senators over the age of sixty were no longer required to attend all senate sessions.⁵³ However, documents from the same period mention higher age limits. In his *Controversiae*, Seneca the Rhetorician, for example, states that a senator over sixty-five years of age could not be forced to come to the Senate – but could not be prevented from doing so, either.⁵⁴ As for the fifth Cyrene Edict, it stipulates that “no one over seventy” can be chosen by lot.⁵⁵ In any case, candidates who had reached the age of sixty must have been few and far between.

This begs the question of whether these “classic” excuses were always true or sincere. If they were acceptable and allowed a magistrate to decline a provincial governorship without damaging his *dignitas*, it cannot be said for

50 In this regard, see Livy 26.22.5-8. In this passage, Livy refers to T. Manlius Torquatus, who turned down his election to a third consulate because he had an eye disease: *oculorum ualeitudinem excusauit*; cf. Baroin 2010: 58-59 and *Dig.* III.1.1.5 (Ulpian, *VI ad ed.*) about the blind in both eyes who could not, in certain cases, be magistrates. See also Cic. *Phil.* 9.4 (Ser. Sulpicius Rufus, cos. 51, is said to have tried to renounce his position as legate against Antony on the grounds that he was ill).

51 Livy 6.22.7.

52 Ryan 1998: 49-50.

53 Sen. *Brev. Vit.* 20.4: *a sexagesimo senatorem non citat*. See also Chapter 44 of the *lex Irnitana* (*AE*, 1986, 333): *qui minores quam LX annorum erunt*.

54 Sen. *Rhet. Contr.* 1.8.4: *senator post sexagesimum et quintum annum in curiam uenire non cogitur, non uetatur*.

55 De Visscher 1940: 24-25, l. 112: κληρούσζω δὲ μηξένα, ὃς ἂν ἑβδομήκοντα ἢ πλείω ἔτη γεγονῶς.

sure that advanced age or illness should be considered as a realistic excuse.⁵⁶ In any case, the assessment of age and health was subjective in the ancient world, when the year of birth was rarely known with any degree of accuracy and health was not evaluated in the same way as it is today. Moreover, there was absolutely nothing to prevent an elderly or sickly consul from participating in a *sortitio*, for there was no examination before the casting of lots comparable to the δοκιμασία practiced in the Greek world. Magistrates were in fact the sole judges of their haleness and their ability to govern a province or not.⁵⁷

In the 1st century, in addition to these “classic” excuses, consuls and praetors began to offer additional pretexts for declining provincial governorships, like invoking the interests of the state.⁵⁸ Although this type of excuse was not new, it does not seem to have been widely used before the last century of the Republic. One such case occurred in 176, when M. Popillius Laenas recalled that Sardinia, which he had been assigned by lot, was currently commanded by Ti. Sempronius Gracchus and that it would have been counterproductive to replace him at a time when he was in the process of pacifying the province.⁵⁹ This argument was accepted by the Senate probably because the continuity of command was an important issue at the time – the *lex Baebia* of 181 had established the election of four praetors (instead of six) and, by extension, the prorogation of commands in Hispania every other year. The troubled times also explain why the consul Q. Petilius was able to remain in Rome at the beginning of 176: he received no favourable *omina* and his colleague Cn. Cornelius died during the year.⁶⁰ Before the 1st century, however, invoking the interests of the state was of secondary importance, especially as it was preferable to send sitting magistrates to govern the provinces, rather than resorting to prorogation.

56 See Cic. *Phil.* 9.4, as regards the excuse offered by Ser. Sulpicius Rufus, who “pleaded his illness as an excuse more by the truth of the fact than by any laboured plea of words” (*quem cum uideretis re magis morbum quam oratione excusantem*).

57 The same can be said for the exercise of offices, even if certain disabilities were sometimes the target of jokes or disparaging remarks that could injure the *dignitas* of an aristocrat. See in this sense Baroin 2010: 68: “si un magistrat ou un sénateur peut conserver, malgré une infirmité physique, congénitale ou acquise, ses attributions politiques et militaires, les atteintes qui marquent son corps lui font courir des risques sur le plan social – le premier étant celui du rire et de la moquerie d’autrui –, voire sur le plan politique.”

58 Morrell 2017 has argued that improving the standards of provincial government was at the heart of Pompey’s project as consul in 70: 22-56; cf. 225-226; Rafferty 2019: 124-127.

59 Livy 41.15.7-8.

60 Livy 41.15-16.

On the contrary, thenceforth magistrates often justified their decision to decline provincial governorships by vaguely insisting on their honesty and their concern for preserving the integrity of the state. As can be imagined, this was a valid argument at a time when governing a province often made it possible to enrich oneself at the expense of the provincials or the state. Cassius Dio, for example, in an illustrative literary passage, reports that the praetor L. Licinius Lucullus turned down Sardinia, which he had been assigned by lot in 78, because he did not want to hold an office that most provincial governors held without any concern for honesty.⁶¹ If Cicero is to be believed – a biased source since he himself had twice refused to govern a province – it was much wiser to turn down the province assigned to him by lot than to accept it and fail in his mission. The orator criticised Verres for accepting his quaestorian province, instead of refusing it, and for subsequently failing to fulfil his duties, such as overseeing the financial management of the consul to whom he was attached. On the other hand, he praised the conduct of M. Pupius Piso Frugi Calpurnianus (q. 83), stressing that he betrayed neither his *fides* nor tradition nor the obligations arising from the *sortitio* of quaestorian provinces.⁶²

Following the Ciceronian Corpus, the act of declining a provincial governorship would have thus reflected the moral and civic values of the individual in question, a complete reversal of the situation in the middle Republic, when service to the *res publica* was inseparable from the conduct of war and provincial administration. The pretexts Cicero offered in 63 for declining a provincial governorship thus formed part of this new rhetoric, since he recalled the oath he had taken in January to remain in Rome to guarantee the safety of the state, plus the political circumstance that required his presence, namely, the conspiracy of Catiline.⁶³

As before, it is unclear whether these excuses should be taken at face value. The argument of honesty or the good of the state could indeed vary and did not presuppose the moral qualities of the individual deploying it. In a letter written in 50, Cicero stressed that he had demonstrated his integrity as much as by despising provincial governorship as by saving Cilicia, which he

61 Dio Cass. 36.41.1.

62 Cic. *Verr.* 2.1.37.

63 Cic. *Leg. agr.* 1.26; *Pis.* 5; *Cat.* 4.23.

had governed in 51-50, from ruin.⁶⁴ As with age and health, these acceptable official excuses provided magistrates who did not want to leave Rome a face-saving way out. Better still, they allowed them to exalt their moral and civic qualities, thus reflecting a “standard ideal” that developed at the end of the Republic. The recurring and stereotyped nature of the apologies presented in the 1st century also suggests, as T. C. Brennan has argued, that a standard speech of renunciation, which must have been similar to that attributed to Lucullus by Dio, spread in the post-Sullanian period.⁶⁵

It is telling that despite being a common practice, the sources do not mention any cases of rejected excuses in the 1st century. As R. Seager points out, the system for allocating provinces, which was based on the casting of lots among the magistrates in office chosen by the Senate and the allocation of other provinces to magistrates who had retired, “could work only if every magistrate were compelled by law to take a province at the end of his year of office [*sc. ex magistratu*], but in fact they was no compulsion, nor even indeed any pressure.”⁶⁶ This raises the question of whether the absence of rejected *excusationes* signifies that they were no longer examined or that the Senate encouraged magistrates to decline provincial governorships.

This is the explanation put forward by D. Rafferty, according to whom the greater number of *excusationes* after Sulla was due to the fact that there were more magistrates eligible for governing the “territorial” provinces than there were provinces to be allocated. In his view, the Senate would have encouraged magistrates to present *excusationes* in order to bring the number of “territorial” provinces into line with the number of praetors.⁶⁷ By my reckoning, there are several problems with this explanation, particularly because it is based on the idea that the Senate had to allocate a fixed number of “territorial” provinces each year. This is, to my mind, far from certain, firstly because the dates on which provinces were created are not well known and a province could be assigned to both a consul and a praetor, and secondly because the extra-urban praetorian provinces were not necessarily territorial (praetors could also receive military commands).⁶⁸ In reality, as in the 3rd and

64 Cic. *Fam.* 2.12.3: *me integritatis laudem consecutum; non erat minor ex contemnenda quam est ex conseruata prouincia.*

65 Brennan 2000: 401-402.

66 Seager 1994: 202.

67 Rafferty 2019: 25 and Chap. 7.

68 Bothorel 2023: 57-64.

2nd centuries, the assignation of praetorian provinces by lot was based on the idea that each praetor was entitled to one, with none of them losing out (the province that a praetor received made it possible to define the field in which he could exercise his *imperium*); recourse to prorogation then allowed governors to be appointed to provinces that had remained *sine imperio*. In view of this, it is unlikely that the Senate would have encouraged the presentation of *excusationes* because it would have reduced the number of eligible magistrates, as well as posing institutional problems.

If *excusationes* were not rejected outright, it was not because the Senate encouraged them but because they were legally permissible and, above all, because sophisticated strategies were implemented to avoid provincial governorship, despite the Senate's wishes. The examples of Pompey in 70⁶⁹ and Cicero in 63 show that magistrates sometimes – on their own accord – swore an oath not to accept a provincial governorship during their inaugural address; they could then officially present their *excusatio* to the people during their term of office. For example, in 64, the consuls Cicero and C. Antonius (Hybrida)⁷⁰ received Macedonia and Cisalpine Gaul, respectively, under the *lex Sempronia*. As has been seen, in his inaugural address at the beginning of 63, Cicero undertook to decline the government of a province in order to ensure the safety of Rome.⁷¹ As to the question of whether he had already been assigned a province by lot⁷² or had pledged not to govern one at all,⁷³ it is impossible to say for sure. Nevertheless, it seems more likely that the speech was delivered before the *sortitio* because, on the one hand, this was usually held on 1 January, after the consuls had reported on the state of the *res publica*,⁷⁴ and, on the other, because no province is mentioned in Cicero's speech.

In any case, after the consuls had cast lots for their provinces, with Cicero receiving Cisalpine Gaul and Antonius, Macedonia, and the Senate had voted

69 Vell. Pat. 2.31.1: *qui, cum consul perquam laudabiliter iurasset se in nullam provinciam ex eo magistratu iturum idque seruasset*; cf. Brennan 2000: 401. The expression *in nullam provinciam ex eo magistratu iturum* suggests that the oath was taken before the provinces were assigned. The same oath might have been sworn by Crassus.

70 Buongiorno 2006 showed that Hybrida was not a *cognomen* but an informal nickname referring to the different status of her parents.

71 Cic. *Leg. agr.* 1.26.

72 Allen 1952: 235.

73 Rafferty 2017: 162 n. 93.

74 Bothorel 2023: 177-182.

supplies for them (*ornatio provinciae*), they decided to exchange them.⁷⁵ The sources do not specify the legal terms of this exchange, with Cicero simply using the term *commutatio* to describe it, which does not imply a *comparatio*, since the consular provinces had already been assigned by lot (Cicero stresses that he declined a *prouinciam ornatam*), but rather the completion of an exchange, a *permutatio*. The Senate presumably prompted them to do so precisely because Cicero had been assigned by lot the highly strategic province of Macedonia and had announced at the time of his investiture that, if necessary, he would decline a provincial governorship. The senators preferred that Macedonia be entrusted to the other consul, Antonius (thus ensuring that the consular armies of Macedonia were commanded by a consul), and that Cicero be given Cisalpine Gaul, a province close to Italy from which he could easily return in the event of unrest. Cicero then officially declined Cisalpine Gaul *in contione* in the autumn of 63 at the latest, on the occasion of his sixth consular speech,⁷⁶ when he announced the existence of a conspiracy promoted by Catiline.⁷⁷ Cicero thus remained faithful to the oath he had taken at his investiture.

What happened to magistrates who declined their provinces?

Despite the paucity of information available in this respect, there is every reason to believe that magistrates who declined to travel to their provinces remained in office. *Excusatio* differed in fact from *abdicatio*.⁷⁸ Whereas the latter was the voluntary renunciation of power or high office, without having to offer any explanation, the former was an “involuntary” and circumstantial renunciation (because of ill health, advanced age, etc.). Aristocrats who declined to govern their provinces with an *excusatio* were therefore required to retain their magistracy and to remain in Rome, although the sources offer no clues about the exact nature of the duties they performed there.

On this last point, a distinction must be made between the situation of consuls and that of praetors. The renunciation of a province did not pose any

75 Cic. *Pis.* 5: *quam cum Antonio commutavi*. Cf. *Catil.* 4.23; *Fam.* 15.4.13.

76 Cic. *Att.* 2.1.3; *Pis.* 5; *Fam.* 2.12.3; *Mur.* 42. Cf. Plut. *Cic.* 12.3-4 and Dio Cass. 37.33.

77 Brennan 2000: 401 n. 101.

78 On the appointment of guardians in the imperial age, see Chevreau 2014:141-144, who states that *abdicatio tutelae* (voluntary renunciation, often accompanied by moral condemnation) differed from *excusatio tutelae* (a refusal accompanied by an apology).

major institutional problems for consuls who did not need a specific province or mission to exercise their *imperium domi*. In fact, in the 1st century it was at matter of course for consuls to remain in the city for most of their term, either because of the increase in urban duties or to keep an eye on the tribunes of the plebs, especially after the restoration of their powers in 70.⁷⁹ On the other hand, nor did it mean that they were deprived of the exercise of the *imperium militiae* because they could still be entrusted with military commands or tasks during their term of office. The consuls of 72 who waged war against Spartacus during their consulship⁸⁰ and the consuls of 63 who were obliged to raise troops to fight against Catiline are just two examples of this.⁸¹ An agreement could also be reached between consuls to allow one of them who had given up his province to accept a military command, as evidenced by the exchange of provinces between Cicero and Antonius in 63. Another more illustrative example is when, in 205, after the consul P. Licinius Crassus had declined to cast lots for the consular provinces for religious reasons, these were actually distributed that year by *comparatio* and not by *sortitio*, giving Crassus the province of Italy and Scipio, the future *Africanus*, Africa (*extra sortem*, since no lots were cast).⁸² The allocation procedure thus made it possible to give both consuls a province, while respecting the religious obligations of Crassus, who was *pontifex maximus*.

The situation of praetors who waived their right to govern a province was probably more complex from an institutional point of view. In the 3rd and 2nd centuries, unlike consuls, the assignation of a province determined the type of *imperium* that praetors were to exercise, since they could receive “urban” provinces, that is, linked to the city and the exercise of the *imperium domi*, or “extra-urban” ones, namely, *extra pomerium* and linked to the exercise of an *imperium militiae*. Like consuls, praetors who declined extra-urban provincial governorships could certainly remain in Rome. It is conceivable that in the middle Republic the Senate entrusted praetors who remained in the city with specific tasks, as was the case when an incident

79 The supervision of Rullus’ proposals for an agrarian plebiscite was one of the reasons given by Cicero in January 63 when he promised not to govern any province: Cic. *Leg. agr.* 1.26.

80 Sall. *Hist.* 3.106 Maurenbrecher; Livy *Per.* 96; Plut. *Crass.* 9.7-10.1; *Cat. Min.* 8.1-2; App. *B Civ.* 1.542-546; Flor. 2.8.10; Eutr. 6.7.2; Oros. 5.24.4.

81 Sall. *Cat.* 36.3.

82 Livy 28.44.11; 28.38.12; Plut. *Fab.* 25.4. Cf. Bothorel 2023: 103-106.

forced it to entrust the praetors with an extraordinary mission which they had to carry out before setting off for their provinces.⁸³

Since there is no information in Livy's account about what happened to the praetors who declined to govern their provinces in 176, as it is known that one of the consuls died,⁸⁴ perhaps the Senate requested them to help the other consul to organise new elections and raise armies. After Sulla, the situation changed, as all the praetors who left Rome to govern a province had already performed urban tasks. To give just one example, Cassius Dio recalls that when Lucullus resigned his Sardinian command in 78, to which he had been appointed by lot, he had already completed his praetorship in Rome.⁸⁵ In this connection, praetors who declined to govern a province posed fewer problems, since they usually did so at the end of their one-year term, after they had already exercised the *imperium domi*. The introduction of the double praetorian *sortitio* undoubtedly increased the number of *excusationes* in the praetorian colleges, since it offered these magistrates the possibility of declining governorships of extra-urban provinces but without having to renounce the exercise of their magistracies.

This leads us to the question of whether the renunciation of a province prevented aristocrats, in the long run, from pursuing the *cursus honorum* or from undertaking further missions linked to their rank. It seems that this was not the case, as excuses (and therefore renunciations) were of a temporary nature. An examination of some famous and distinguished careers, such as those of Sulla, Pompey and Crassus, clearly shows that this was not held against magistrates and did not prevent them from standing in subsequent elections – even in the case of a *homo novus* like Cicero. Be that as it may, they had to offer genuine excuses, for on the contrary they could be condemned for perjury, as was perhaps the case with Maluginensis, who was finally expelled from the Senate in 174.⁸⁶

83 For example, when the Bacchanal affair forced the Senate to entrust the praetors with an extraordinary mission, before they set off for Apulia: *L. Durnio praetori cui provincia Apulia euenerat adiecta de Bacchanalibus quaestio est* (Livy 40.19.9, in 181). On the *provinciae adiectae*, Bothorel 2023: 145-148.

84 Livy 41.16.7.

85 Dio Cass. 36.41.1: Λούκιος δὲ δὴ Λούκουλλος τὴν μὲν στρατηγίαν τὴν οἴκοι διῆρξε.

86 Livy 41.15.10. F. Münzer, *RE*, 4/1, 1900, col. 1431-1433, n° 325 *s.v.* *Cornelius* links Maluginensis' expulsion from the Senate to the oath he took in 176 to renounce Hispania; cf. Brennan 2000: 147. However, it is not certain that his apology was accepted in 176, since according to Livy 41.27.2, Maluginensis was praetor in Hispania (*qui biennio ante praetor in Hispania fuerat*).

In practice, consuls who had declined to leave Rome to govern a province could, for example, stand for election to the censorship, as did L. Gellius Poplicola and Cn. Cornelius Lentulus Clodianus (coss. 72), who were elected to this office for 70. Praetors in this position could run for the consulship or be chosen as legates, thus still leading armies into battle, albeit under the command of another magistrate, as well as receiving a substantial share of the spoils in the event of victory. For instance, C. Antonius (Hybrida) (pr. 66) was Pompey's legate during the war against Mithridates, immediately after his praetorship.⁸⁷

The same phenomenon is attested for quaestors, with M. Pupius Piso Frugi Calpurnianus, who had refused to join L. Cornelius Scipio Asiagenus during his quaestorship in 83, becoming praetor c. 72 and consul in 61.⁸⁸ Finally, the fact that he declined to govern a province did not prevent him from taking part in another *sortitio* and governing another province. By the same token, M. Popillius Laenas, one of the praetors of 176 who had declined the governorship of a province, became consul in 173 and received Liguria, while his colleague, P. Licinius Crassus, who had also turned down his praetorian province in 176, held the consulship in 171. His consular colleague, C. Cassius Longinus, recalled on this occasion that five years earlier Licinius had waived his right to govern the praetorian province of Hispania Citerior, which he had been assigned by lot, swearing under oath that he was unable to leave Rome. According to Cassius, Licinius was still bound by this oath in 171, forbidding him to cast lots for a consular province outside the city. He therefore asked that Macedonia be given to him *extra sortem*. The answer of the Senate was unequivocal: Licinius had been duly elected and was therefore entitled to one.⁸⁹ The senators then ordered the consuls to cast lots for the provinces of Macedonia and Italy.

In the 1st century, magistrates who declined one province could therefore subsequently govern another, as is clearly evidenced by the career of Cicero, who declined to govern an extra-urban province during his praetorship in 66 but was allowed to cast lots for the consular provinces in 63; after having again renounced the post, he was ultimately sent to Cilicia in 51.

Lastly, it should be noted that the renunciation of a province had direct consequences for the allocation procedure, since the province left *sine imperio*

87 Blösel 2016: 75 n. 21; Brennan 2000: 450.

88 Díaz Fernández – Pina Polo 2025: 88-89.

89 Livy 42.32.

had to be entrusted to another magistrate; in this sense, the *excusatio* did not only affect the magistrate presenting it but also had repercussions for the careers of others.

As already noted, when a magistrate waived his right to cast lots for a province because his presence was required in Rome, a *comparatio* could sometimes be held, as was the case in 205 and 63. However, the possibility of having recourse to a *comparatio* or *permutatio* depended on the provinces assigned to the magistrates, who did not always receive those linked to the city or to Italy, and on the nature of the excuse given. More often than not, when a consul or praetor declined to participate in a *sortitio*, the unassigned province could not be entrusted to one of his colleagues but had to be given to another (pro)magistrate. In 63, the year in which Cicero finally abandoned Cisalpine Gaul, the Senate allowed it to be included among the provincial governorships destined to be allocated by lot to the praetors of 63 who had already performed their urban duties, with Q. Metellus Celer (pr. 63) receiving Cisalpine Gaul with the same troops and supplies as Cicero. The orator's use of the senatorial calendar to decline his province probably explains why he implied in a letter to Celer that he had worked to have Cisalpine Gaul entrusted to him.⁹⁰

Excusationes: revealing changes in the pursuit and perception of aristocratic careers

After confirming that those magistrates who declined provincial governorships could continue to pursue their careers and even end up governing a province at some time or another, there remains the question of why so many of them chose to do so. This attitude reflects a change in the way careers were pursued and appraised throughout the Republic. In the early days, casting lots for provinces was an important moment in a magistrate's career and recourse to *excusationes* was still very rare. Provincial governorships often offered magistrates the chance to achieve military greatness and/or to amass a fortune, especially at a time when the state did not have the wherewithal to keep tabs on their activities in the provinces and therefore to hold them to account on their return to Rome. On the other hand, the sources report several cases of magistrates who wanted to govern extra-urban provinces

90 Cic. *Fam.* 5.2.3.

but were exceptionally forbidden by a decree of the Senate and a law of the people to travel to the those they had been assigned by lot, on the grounds that they were also major *flamines* and that their religious obligations took precedence over their civic duties.⁹¹ The invocation of the superiority of sacred law over those governing the *sortitio* also sometimes served as an argument for an aristocrat who wished to appropriate the province that a magistrate who was also a major *flamen* or *pontifex maximus* had been assigned by lot, as shown by the confrontation between Crassus and Scipio in 205.

Conversely, the growing number of excuses given by consuls for not governing a province in the late Republic (and maybe as early as the passage of the *lex Sempronia*) shows that it was gradually becoming a less important and valued part of their career paths. While we should refrain from diagnosing late Republican aristocrats as having an “*otium* problem” and from describing them, in the words of E. Badian, as “proven cowards and open self-seekers”,⁹² the increase in the number of *excusationes* certainly calls into question the idea that consuls and praetors unanimously wished to become provincial governors in order to replenish their coffers after an expensive election campaign.

Furthermore, although governing a province could be profitable and, just as important, expand one’s relational network with equestrians and senators, it cannot be said for sure that provincial governments were always that lucrative and the price to be paid when an aristocrat returned to Rome after having governed an extra-urban province must have sometimes seemed higher than the expected gain. The personal integrity argument, often deployed as a justification for not leaving Rome, thus shows that the legal arsenal against *crimen repetundarum* and *peculatus* had already been deployed and that in all likelihood magistrates declined provincial governorships less out of a desire to show how upright they were than out of fear of being accused of embezzlement on their return. This brings to mind Cicero, who had built much of his political career on pleading cases in the *quaestio de repetundis* and perhaps feared being accused himself if he governed a province. Moreover, it sometimes might have been more advantageous to

91 Livy 37.51.1-4 (in 189) or Cic. *Phil.* 11.18 (in 131). On these conflicts, see Lundgreen 2011: 121-136; Bothorel 2023: 153-158.

92 Badian 1970: 32; Blösel 2016: 74.

decline a province in exchange for a financial or political deal with colleagues or lesser magistrates than to govern it.⁹³

Beyond these economic explanations, the fact that magistrates insisted on the importance of their presence in the city as a pretext for turning down provincial governorships also shows that for some members of the political class leaving Rome for a province was not necessarily a profitable strategy: carrying out urban tasks relating to the *comitia* or courts, on which the curule magistrates had a strong influence,⁹⁴ had become central to the political careers of aristocrats.⁹⁵ In addition to the risks posed by long-distance travel, being out in the sticks prevented them from making political decisions and limited their chances of being tasked with lucrative missions or concluding contracts.⁹⁶ As Cicero recalls, “it is in Rome where you must dwell. In this light you must live”.⁹⁷ Finally, those governing provinces also ran the risk of offending prominent equestrians (especially the *publicani*) and senators, as the experiences of Cicero’s clients reveal and as is explicit enough in the orator’s famous letter to his brother Quintus, governor of Asia in 59, which presumably reflects normal, if not normative, expectations of provincial administration.⁹⁸

The increase in the number of praetors who declined provincial governorships also indicates that many of them preferred to remain in Rome to run for the consulship after a *biennium*. For example, L. Domitius Ahenobarbus (pr. 58) was consul in 54, and Cn. Domitius Calvinus (pr. 56), in 53. To these should be added the cases of praetors who are known to have stood for the consulship but were not elected, such as L. Cassius Longinus (pr. 66) who failed in 63,⁹⁹ and T. Annius Milo (pr. 55) who might have been a candidate in the consular elections for the year 52.¹⁰⁰ If praetors did indeed

93 In 63, for example, Cicero might have swapped Macedonia with his colleague Antonius, probably after having agreed to share the profits of their respective administrations: Cic. *Att.* 1.12.2; cf. *Fam.* 5.5.2-3. The government of Macedonia was particularly lucrative for Antonius: Dio Cass. 38.10; Cic. *Cael.* 74; *Vatin.* 27-28.

94 See, in this sense, the refusal of Q. Hortensius Hortalus (cos. 69) to leave Rome in order to continue to exercise his authority over the Roman courts: Dio Cass. 36.1a [Xiph.].

95 On the importance of *adsiduitas* or “presence” in Rome, see Q. Cic. *Comment. Pet.* 41-44 and Díaz Fernández’s chapter in this book.

96 Blösel 2016: 80.

97 Cic. *Fam.* 2.12.2.

98 Cic. *Q.fr.* 1.1.

99 Pina Polo 2012: 65-72.

100 Asc. p. 30 C.

accept to govern a province, they often had to bide their time for several years after their praetorships before standing for the consulship, as governors had to wait for their successors to relieve them (which did not always leave them enough time to return to Rome for the elections) and many of them had their terms prorogued several years in a row.¹⁰¹ For all these reasons, W. Blösel estimated that the probability of being elected consul was greater for those who had declined to govern a province than for those who had accepted to do so; they also progressed in their careers more rapidly, evidenced by the fact that most praetors who had declined provincial governorships were elected after a *biennium*¹⁰² – in this way, governing or not of an extra-urban province did not change the way in which aristocratic careers were built¹⁰³ but rather their pace. The introduction of rules governing the *cursus honorum* from the 2nd century onwards, reinforced by Sulla in the 80s, contributed to this change in career strategies. After the advent of a *cursus honorum* with firmly established rungs, it was easier to plan a long-term career and design and implement strategies for the next election campaign than in the 3rd century, when it was possible to run for the praetorship after the consulship.

Finally, the relative lack of interest shown by magistrates in becoming involved in provincial administration was linked to changes in legislation in this regard. As already noted, the introduction of the double praetorian *sortitio* had consequences for the system of *excusationes*, since praetors could thenceforth waive their right to govern extra-urban praetorian provinces, after fulfilling their civic duties for almost their entire term of office. With respect to consuls, as is well known, until 52 the *lex Sempronia* of 123 had required the Senate to assign provinces to future consuls by decree before their election. During his dictatorship, Sulla established the date of the elections in July (even though the elections could have been postponed to a later date in the post-Sullan period, like in 63),¹⁰⁴ which further extended the period between the establishment of the consular provinces and the departure of the consuls to govern them: almost a year and a half now elapsed between the two, which certainly led to more

101 Steel 2012: 91.

102 According to Blösel 2016: 74-76, nine of the twenty praetors (= 45%) who refused provincial governorships *ex praetura* were elected to the consulship, while only 25 per cent of praetors became consuls. *Contra* Brennan 2000: 793 n. 96.

103 See Díaz Fernández's chapter in this book about the difficulties in quantifying in absolute terms the extent to which provincial administration facilitated or hindered the ascent of the *cursus honorum*.

104 Ramsey 2019.

frequent recourse to *excusationes* among consuls who were reluctant to govern the provinces they had received from the Senate a long time ago, whereas the commanders of major wars were regularly chosen by plebiscite, without the casting of lots (*extra sortem*), as in the case of the extraordinary commands given to Pompey and Caesar. Consuls who did not have the necessary prestige or support to obtain lucrative provinces or important military commands from the people could sometimes choose to remain in Rome for their year in office with an eye to currying the favour of the plebs. The same goes for praetors hoping to be chosen as legates of *imperatores* who had been given major military commands, such as Pompey.¹⁰⁵ Depending on which provinces were allocated to consuls and praetors, however, *sortitiones* could still be heavily contested and sometimes tainted by corruption. Furthermore, the increase in the number of *excusationes* does not mean that aristocrats had lost interest in war as such because there was still fierce competition for top military commands. So, caution should be taken when talking about the “demilitarisation”¹⁰⁶ or “politicisation”¹⁰⁷ of magistracies because the conduct of a war or the celebration of a triumph was more than ever a decisive factor, as illustrated by the careers of Pompey and Caesar, plus the desire of Cicero, who had declined to govern a province *ex praetura* and *ex consulatu*, to achieve a triumph in 50. The most important development was that the command of the most prestigious wars was now often achieved by plebiscite or *extra sortem*, rather than in a *sortitio*.

The widespread use of *excusationes* was ultimately a factor in the development of the *cursus honorum*. It helped to reinforce the division between the administration of the urban provinces, which was linked to the exercise of magisterial authority, and that of the extra-urban provinces, which increasingly appeared to be optional. According to Frédéric Hurlet, the elevation of the *praetorium imperium* to the *consular imperium* from the end of the 80s onwards could therefore be explained by the Senate’s desire to limit the number of magistrates who declined provincial governorships, which, in turn, would suggest that this was already a common practice.¹⁰⁸

It was with the *lex Pompeia de prouinciis* of 52 that the magistracy was finally divorced from the promagistracy, but the law was only implemented in

105 See Rafferty’s chapter in this book. For Blösel 2016: 74-75, it was easier for a praetor to gain a military reputation by serving as a legate than by governing certain provinces.

106 Blösel 2011; 2016: 80-81.

107 On this expression, cf. Millar 1998: 110-111; Pina Polo 2011: 307; 331-332.

108 Hurlet 2012: 108.

51 and 49 in times of trouble. According to this new law, the two consuls and the eight praetors in office were henceforth to be assigned urban provinces by lot after their election or investiture, whereas the *sortitio* for the extra-urban provinces, which took place in the spring, was reserved for consuls and praetors who had been out of office for at least five years. To prevent magistrates from refusing to govern a province, Pompey's law of 52 expressly reserved the government of extra-urban provinces for former praetors who *neque in provincia cum imperio fuerunt*,¹⁰⁹ the same clause applying to former consuls. Although Pompey did not deprive candidates of the chance to waive their right to participate in the *sortitio* or to reject its results, his regulations might have also placed greater restrictions on *excusationes* in order to ensure that there were sufficient candidates for the promagistracies.

This is shown, for example, by the fact that Cicero seems to have been forced to accept the governorship of Cilicia in 51. Similarly, Tubero also had to depart for the province of Africa in 49, which had been assigned to him by lot, although he was absent and even ill.¹¹⁰ Moreover, it is impossible to say for sure that old age was still considered as an acceptable excuse after 52. In this regard, Caesar, in his reply to L. Afranius, a Pompeian, mentions that after the passage of the *lex Pompeia de provinciis*, “even the plea of age is of no avail to prevent men approved in former wars being called out to control armies”.¹¹¹ It is, however, difficult to confirm this last point for there are no examples of consulars or praetorians who were summoned to take part in a *sortitio* when their advanced age would have been sufficient reason to decline. As far as we know, the oldest consul to participate in a *sortitio* was Cicero, who was aged 55 in 51 and could not have therefore claimed to be too old to govern a province. In plain English, age was no longer a problem because, as Wolfgang Blösel observed, “[...] this law was presumably not designed to produce consuls (consulars, rather) older than forty-eight years”.¹¹²

To conclude, between 80 and 52 there was an unprecedented increase in the number of consuls and praetors who declined to govern an extra-urban province, evidenced by the fact that, even though the *excusatio* was a practice as old as bestowing honours, which was based on voluntary action during the

109 Cic. *Fam.* 8.8.8.

110 Cic. *Lig.* 21.

111 Caes. *B Civ.* 1.85.8-9: *in se aetatis excusationem nihil ualere, quod superioribus bellis probati ad optinendos exercitus euocentur.*

112 Blösel 2016: 78.

Republic, very few provinces seem to have been turned down before the 1st century. An examination of the sources shows how magistrates were able to decline a provincial governorship: excuses had to be presented before the Senate and then to the people, using a specific vocabulary which led to the development of standard speeches of renunciation; the pretexts given, whether related to personal or family circumstances or, in a more moral and abstract way, to the interests of the state, formed a veritable catalogue of more acceptable than realistic excuses that allowed a magistrate to turn down a post while enabling him to preserve his *dignitas*.

The relative lack of interest shown by consuls and praetors in governing the extra-urban provinces was a complete reversal of the situation in the middle Republic, when they were much sought after. This can be explained by the importance attached to civic duties in the city of Rome for furthering aristocratic careers – even if it is impossible to talk about a demilitarisation or politicisation of magistracies – by the fear of being accused before the *quaestio de repetundis* or *de peculatu* on their return, or by the change in the rules governing the allocation of provinces, the most prestigious of which were often awarded to the most influential senators at the end of the Republic by virtue of laws passed *ex* or *sine senatus consulto*.

The fact of solemnly waiving the right to govern a province by presenting an *excusatio*, which was different from the *abdicatio* and essentially temporary, thus offered those who declined to leave Rome the opportunity of retaining their magistracy and rank by performing civic duties during their term of office, or even of standing in subsequent elections and obtaining other provincial governorships. Many praetors who waived their right to govern provinces *ex praetura* even seem to have been elected to the consulship after a *biennium*. Illustrating the discrepancy between institutional rules and practice, the increased use of *excusationes* helped, in turn, to change the rules governing the *cursus honorum* in the medium term by contributing to draw a greater distinction between the exercise of the magistracy and that of the promagistracy, a separation that was later formally established by Pompey's provincial law of 52.

Bibliography

- Alexander, Michael Charles (1990) *Trials in the late Roman Republic, 149 BC to 50 BC*, Toronto.
- Allen, Walter Jr (1952) "Cicero's Provincial Governorship in 63 B. C.", *TAPhA* 83, 233-241.
- Badian, Ernst (1970) *Lucius Sulla: the dreadly reformer*, Sydney.

- Baroin, Catherine (2010) “Intégrité du corps, maladie, mutilation et exclusion chez les magistrats et les sénateurs romains”, in F. Collard and É. Samama (eds), *Handicaps et sociétés dans l’Histoire. L’estropié, l’aveugle et le paralytique de l’Antiquité aux temps modernes*, Paris, 49-68.
- Blösel, Wolfgang (2011) “Die Demilitarisierung der römischen Nobilität zwischen Sulla und Caesar”, in Wolfgang Blösel and Karl-Joachim Hölkeskamp (eds), *Von der militia equestris zur militia urbana. Prominenzrollen und Karrierefelder im antiken Rom*, Stuttgart, 55-80.
- Blösel, Wolfgang (2016) “Provincial commands and money in the late Roman Republic”, in Hans Beck *et al.* (ed.), *Money and power in the Roman Republic*, Brussels, 68-81.
- Bothorel, Julie (2023) *Gouverner par le hasard. Le tirage au sort des provinces à Rome (III^e s. av. J.-C. – I^{er} s. ap. J.-C.)*, Rome.
- Brennan, Terry C. (2000) *The praetorship of the Roman Republic*, Oxford.
- Buongiorno, Pierangelo (2006) “Gaio Antonio (cos. 63) e l’appellativo ‘Hybrida’”, *Rudiae* 18, 295-309.
- Chevreau, Emmanuelle (2014) “L’évolution de la tutelle romaine à travers le mécanisme de l’*excusatio tutelae*”, *Fundamina (Pretoria)* 20-1, 139-149.
- David, Jean-Michel and Dondin, Monique (1980) “Dion Cassius XXXVI, 41, 1-2. Conduites symboliques et comportements exemplaires de Lucullus, Acilius Glabrio et Papirius Carbo (78 et 67 a.C.)”, *MEFRA* 91.1, 199-213.
- De Visscher, Fernand (1940) *Les édits d’Auguste découverts à Cyrène*, Louvain.
- Díaz Fernández, Alejandro and Pina Polo, Francisco (2025) “La *sortitio* des *provinciae quaestoriae* à l’époque républicaine”, in Julie Bothorel and Frédéric Hurllet (eds), *Le tirage au sort dans l’Antiquité: du monde grec à Rome*, Lyon, 117-130.
- Giovannini, Adalberto (1983) *Consulare Imperium*, Basel.
- Hurllet, Frédéric (2010) “Recherches sur la *profectio* des gouverneurs de province de la dictature de Sylla à la *lex Pompeia* (82-52 av. J.-C.). Le cas des proconsuls de rang prétorien”, in Nathalie Barrandon and François Kirbihler (eds), *Administrer les provinces de la République romaine*, Rennes, 45-72.
- Hurllet, Frédéric (2012) “*Pro consule uel pro praetore?* À propos des titres et des pouvoirs des gouverneurs prétoriens d’Afrique, de Sicile et de Sardaigne-Corse sous la République romaine (227-52 av. J.-C.)”, *Chiron* 42, 95-106.
- Lundgreen, Christoph (2011) *Regelkonflikte in der römischen Republik. Geltung und Gewichtung von Normen in politischen Entscheidungsprozessen*, Stuttgart.
- Millar, Fergus (1998) *The crowd in Rome in the late Republic*, Ann Arbor.
- Morrell, Kit (2017) *Pompey, Cato, and the governance of the Roman Empire*, Oxford.
- Pina Polo, Francisco (2011) *The consul at Rome: the civil functions of the consuls in the Roman Republic*, Cambridge.
- Pina Polo, Francisco (2012), “*Veteres candidati*: losers in the elections in republican Rome”, in Francisco Marco Simón, Francisco Pina Polo and José Remesal Rodríguez (eds), *Vae victis! Perdedores en el mundo antiguo*, Barcelona, 63-82.
- Pina Polo, Francisco and Díaz Fernández, Alejandro (2019) *The quaestorship in the Roman Republic*, Berlin – Boston.
- Rafferty, David (2017) “Cisalpine Gaul as a Consular Province in the Late Republic”, *Historia* 66.2, 147-172.

- Rafferty, David (2019) *Provincial allocations in Rome*, Stuttgart.
- Ramsey, John T. (2019) "The Date of the Consular Elections in 63 and the Inception of Catiline's Conspiracy", *Harvard Studies in Classical Philology* 110, 213-270.
- Ryan, Francis X. (1998) *Rank and participation in the republican Senate*, Stuttgart.
- Seager, Robin (1994) "Sulla", in John Anthony Crook, Andrew Lintott and Elizabeth Rawson (eds), *CAH IX* (2nd ed.), 165-207.
- Steel, Catherine (2012) "The *lex Pompeia de provinciis* of 52 BC: a reconsideration", *Historia*, 61-1, 83-93.
- Vervaet, Frederik Juliaan (2006) "The precise scope of the '*Lex Sempronia de iure senatus provinciarum consularium decernendi*' of 123 BCE", *Athenaeum* 94, 625-654.