The *lex Valeria* and Sulla’s empowerment as dictator (82-79 BCE)
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Abstract
In November 82 BCE, the victorious proconsul L. Cornelius Sulla (cos. 88) revived the dictatorship to restore law and order in the battered Republic. L. Valerius Flaccus (cos. 100), then princeps senatus, was appointed interrex by the patrician patres. After obtaining the necessary clearances from the Senate and the augural college, Flaccus passed a law ordering him to appoint Sulla to an unprecedented dictatura legibus scribundis et rei publicae constituendae, and himself to the office of magister equitum, and this ad tempus incertum, until the completion of their vast commission. Although Sulla was thus invested with a series of spectacular extraordinary powers, he still scrupulously bothered to involve SPQR in the execution of his momentous political programme. Probably yet before the comitia consularia of 81, Sulla next initiated a gradual and carefully staged return to normalcy. The cornerstone of this policy was his decision to run the Republic in 80 as consul II, in conjunction with Q. Caecilius Metellus Pius. Its climax was Sulla's dramatic abdication of the dictatorship at the outset of 79, proclaiming that he had now fully restored the Republic.

Résumé
En novembre 82 av. n. è., le proconsul victorieux L. Cornelius Sylla (cos. 88) ressuscitait la dictature afin de rétablir l’ordre dans la République en ruines. L. Valerius Flaccus (cos. 100), alors princeps senatus, était élu interrex par les sénateurs patriciens. Après avoir obtenu les autorisations nécessaires de la part du sénat et du collège des augures, Flaccus proposait une loi qui lui ordonnait de nommer Sylla dictateur legibus scribundis et rei publicae constitutae, et lui-même à l’office de magister equitum, et ceci ad tempus incertum, jusqu’à l’accomplissement de leur lourde mission. Alors que Sylla avait été investi d’une série de pouvoirs extraordinaires spectaculaires, il prenait scrupuleusement soin d’impliquer le sénat et le peuple romain dans l’exécution de son programme politique ambitieux. Sans doute dès avant les comitia consularia de 81, Sylla a soigneusement planifié un retour progressif à la normalité. La pierre angulaire de cette politique était sa décision de gouverner la République en 80 comme consul II, en collaboration avec Q. Caecilius Metellus Pius. Son point culminant fut atteint par son abdication de la dictature au début de 79, alors qu’il proclamait avoir rétabli la République.
THE LEX VALERIA
AND SULLA'S EMPOWERMENT AS DICTATOR
(82-79 BCE)*

1. Introduction

At the end of 82, in the wake of Sulla’s second vengeful march on Rome, the dictatorship was revived on behalf of the dauntless conqueror of Mithridates. The office had now been obsolete for 120 years. This paper attempts to define the precise legal scope of Sulla’s dictatorship, and aims in particular to demonstrate that the empowering lex Valeria set down a number of detailed provisions concerning both Sulla’s past acts and the extraordinary potestates he was to wield as the holder of an unprecedented kind of dictatorship. It will also demonstrate that, in terms of public law, Sulla’s dictatorship can indeed hardly be compared to the dictatorship as it occasionally appeared until 202. Of course, one should never forget that the exceptional measures allowed to Sulla on the occasion of his final victory over the opposing faction occurred against the unusual background of the first major breakdown of the Res Publica. During the years 88–82, following immediately upon the exhausting Social War, Rome itself was for the first time in its history thrice shattered

* All years are consular years BCE. The term imperator is used in its broad sense of official cum imperio suo iure. I wish to warmly thank Professors Fergus Millar (Oxford), David Wardle (Cape Town) and Frédéric Hurlet (Nantes), and Marcia DeVoe, graduate student at UC Berkeley, for their elaborate and useful comments on earlier drafts of this paper. Responsibility for all remaining flaws and errors is mine alone. All translations are those of LCL, modified where necessary. To a certain extent, this article may be construed as a complement to Frédéric Hurlet’s La dictature de Sylla : monarchie ou magistrature républicaine ? Essai d’histoire constitutionelle, Brussel-Rome, 1993, the first comprehensive study of the public nature of Sulla’s dictatorship in all its respects, which also gathers a wide variety of valuable source material concerning the Roman dictatorship in general. In recognition of Professor Hurlet’s ongoing and inspiring contributions to the field of Roman political and institutional history, this far more modest contribution to the discussion on Sulla’s dictatorship is dedicated to him. Last but not least, I also wish to commend the members of the comité de lecture of the Cahiers du Centre Gustave-Glotz for their kind willingness to accept this lengthy and circumstantial study in Roman public law. This study was for the most part carried out while being a grateful recipient of a Francqui Fellowship of the Belgian American Educational Foundation granted for research at UC Berkeley’s most welcoming Department of Ancient History and Mediterranean Archaeology.

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by the horrors of full-scale civil war. Although a detailed analysis of Sulla’s various activities in his capacity as dictator would lead us too far off track, it is still perfectly possible to map out most of the statutory components of Sulla’s **dictatorium imperium**.

2. Sulla’s entitlement and powers under the *lex Valeria*

*Dictator legibus scribundis et rei publicae constituendae*

Shortly after the fall of Praeneste and Norba, L. Cornelius Sulla (cos. 88) organized a gruesome massacre of his political opponents. This step was taken by virtue of what was the first official proscription-list in Roman history, a ghastly episode that is recorded quite accurately by Plutarch (*Sull.* 30–32) and Appian (*BC* 1.95f.). In *BC* 1.97, Appian tells us that Rome was at Sulla’s mercy after Marius the Younger’s demise, and that he took revenge on his enemies in Italy. On 2 November, the day after his final victory at the Porta Collina, the Senate convened at the behest of Sulla in the temple of Bellona on the Campus Martius, outside the *pomerium*, so the proconsul could attend the meeting. In *Sull.* 30.2, Plutarch tells us that Sulla’s soldiers began a well-organized massacre of 6000 captive Samnites at the very moment of this senatorial session, and that the senators were horrified by the ruthless bloodbath. In *Rosc. Am.* 153, Cicero records that the senators refused to endorse Sulla’s first full-scale proscription. In answer to this quite brave refusal, Sulla called for a *contio* and made a speech to the People which he ended by vowing to carry through beneficial reforms and spare none of his enemies. After this Sulla proceeded forthwith to proscribe his enemies, foregoing communication with any magistrate, and in spite of the general indignation. In *BC* 1.97,

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1 In addition to the *praetorium imperium* (cf. *Cic. Pis.* 38; *Verr.* 2.5.40 & *Div.* 1.68) and the *consulare imperium*, the *dictatorium imperium* (cf. *Liv.* 22.34.2 : *dictatorio imperio*) was the third of the traditional *genera imperii*. In *Rep.* 2.56, Cicero defines the *imperium* of the dictatorship, which was supposedly called into existence ten years after the establishment of the consulate, as a *novum genus imperii... proximum similitudine regiae*.

2 Although Appian also places the death of Carbo in this context, Carbo was undoubtedly executed by Cn. Pompeius only after Sulla’s appointment to the dictatorship.

3 See F. Hurlet (as in p. 37, footnote), p. 25, for an excellent reconstruction of the events of the beginning of November 82 — the principal sources being Plutarch *Sull.* 31f. and Appian *BC* 1.95. C. H. Hatzsche, *Charisma und Res Publica. Max Webers Herrschaftssoziologie und die römische Republik*, Stuttgart, 2000, p. 132 n. 150, bluntly refutes Hurlet’s reconstruction as « reine Phantasie ». Hurlet (op. cit., p. 126f.) suggests that the Senate’s refusal to support Sulla’s proscriptions made him realize that he would never obtain a *senatus consultum ultimum* granting him the necessary powers to make way with his enemies and conduct his reforms. Compelled by necessity, Sulla turned to the People to achieve his goals. This reasoning seems a bit far-fetched, since as proconsul and solely on the strength of a *s.c.u.*, Sulla would have hardly been in a position to realize his political program in a credible and legitimate way. He definitely needed a more legitimate position and a magistracy with the *ius agendi cum senatu/populo* in order to gain undisputed control of the situation.
before his account of the debate over Sulla’s dictatorship in BC 1.98f., Appian states that « everything that Sulla had done as consul, or as proconsul, was ratified »⁴, and tells how his gilded equestrian statue was erected in front of the rostra with the inscription « Cornelius Sulla, The Ever Fortunate »⁵. Since Appian clearly separates this decision from the (subsequent vote of the) lex Valeria (cf. infra), it is evident that during its meeting of November 2, although it refused to endorse his first proscription, the Senate did decide to ratify all his acts up until that day. This ratification obviously was a concession to Sulla and an acknowledgment of his achievements in the Mithridatic War⁶.

After a short digression on Sulla’s deliberate association with Venus and his famous epithet Επαφροδίτος⁷, Appian expatiates on the second important official measure staged on behalf of the victorious proconsul, to wit his nomination to the office of dictator. In BC 1.98, Appian recapitulates that Sulla had de facto acquired the position of βασιλεύς... ή τύραννος by means of force and a bloody political purge. Sulla, however, was insistent that his autocratic position be formally legitimized through an « election » in the Comitia. Sulla therefore withdrew from Rome (i.e., from the vicinity of the Campus Martius), ordering the (patrician) senators to choose an interrex. They subsequently chose L. Valerius Flaccus (cos. 100), then princeps senatus, on the desperate—or naïve—assumption that he—or a successor—would soon hold the comitia consularia. By means of a notorious letter⁸, however, Sulla promptly advised the interrex to represent to the People his own strong opinion that it was in the immediate interest of Rome to revive the dictatorship⁹. According to Appian, Sulla instructed the interrex to tell the People not to appoint the dictator ad tempus certum (i.e., for a fixed period, in sex menses at

⁴ Οί καὶ πάντα, ὅσα διέφθιναν ὁ Σύλλας ὑπατεύων τε καὶ ἀνθρωπευόν, βέβαια καὶ ἀνεύθυνα ἐνναήζοντα εἶναι.
⁵ See also Cic. Phil. 9.13 & Vell. 2.61.3 for the fact that the Senate decreed to set up an equestrian statue for Sulla upon the Rostra.
⁶ Cf. Plut. Sull. 22.5 for the fact that Sulla needed his arrangements in the East to be ratified by SPQR.
⁷ BC 1.97. Cf. J. P. V. D. Balsdon, « Sulla Felix », JRS, 41, 1951, p. 1-10 for a discussion of Sulla’s honorific cognomina. The fact that Appian asserts that he came across a document relating that Sulla was styled Epaphroditus by decree of the Senate lends further credibility to the suggestion that the (first) ratification of his (pro)consular acts (until 2 November, 82) was also done ex s.c.
⁸ See H. Bellen, « Sullas Brief an den Interrex L. Valerius Flaccus », Historia, 24, 1975, p. 555-569, for an excellent analysis of this passage from Appian/Sulla’s letter. In my opinion, Bellen cogently argues that Appian (p. 568) « ihn adäquat, d.h. auch: vollständig überliefert », and « daß er den vollständigen Text vor Augen hatte ».
⁹ Appian writes that Sulla ordered Flaccus to advise the People that it was « his own strong opinion that it was to the immediate interest of the City to revive the dictatorship, an office which had now been in abeyance 400 years ». Bellen (as in n. 8), p. 557-562 plausibly suggests that Sulla referred (or alluded) to the decemviratus legibus scribundis in his letter, as a sort of precedent to the dictatura legibus scribundis he explicitly wished to assume, and that Appian mistakenly wrote that it was the dictatorship which had been obsolete for 400 years.
the most\textsuperscript{10}, but until such time as he should firmly reestablish the City and Italy and the government in general, shattered as it was by factional strife and civil war\textsuperscript{11}. It is made clear by Appian that this proposal referred to Sulla himself, and that Sulla made no concealment of it, since he declared openly at the conclusion of the letter that, in his judgment, he could be most serviceable to the City in that capacity.

In BC 1.99, Appian goes on to say that the Romans were not particularly fond of this unexpected move, but accepted it out of sheer necessity. Some even welcomed this pretense of an election as an image and semblance of freedom. Next, Sulla was duly chosen absolute ruler for as long a time as he pleased: \textit{χειρότονον ούσι τὸν Ὁλλαν, ἐξ ὕσον θέλοι, τύραννον αὐτοκράτορα}. Appian observes that previous autocratic rule (τυραννίς) of the dictators had been limited to a short period, whereas the dictatorship of Sulla was by way of a precedent without specific temporal \textit{termīni}, thus being a perfect tyranny\textsuperscript{12}. Appian also indicates that the \textit{lex Valeria}, for propriety’s sake, stipulated that Sulla was appointed to the office of \textit{diētātora ἐπὶ θεσεῖ νόμων, ὅν αὐτός ἐν εἰαυτῷ δοκιμάσει, καὶ καταστάσει τῆς πολιτείας}, « dictator for the enactment of such laws as he himself might deem best and for the regulation of the Republic ».

Appian’s account creates the impression that Sulla was appointed to the dictatorship directly by the \textit{lex Valeria} itself\textsuperscript{13}. In \textit{Att. 9.15.2 (Formiae, 25 March, 49)}, however, Cicero explicitly records that the Valerian Law actually commissioned the \textit{interrex} to nominate Sulla as dictator and then himself as \textit{magister equitum}\textsuperscript{14}. Although Appian makes mention of an « election » in BC 1.98f., twice stating that Sulla was « chosen » dictator, it is clear that the Valerian Law

\textsuperscript{10}For six months as the maximum term of office for the traditional dictatorship \textit{rei gerundae causa}, see, for example, Cic. \textit{Leg}. 3.9 ; Dion. Hal. 5.70.2 ; Cic. \textit{Leg}. 3.9 ; Livy 3.29.7 ; 9.34.12 & esp. 23.23.2f. (cf. also \textit{infra}) ; App. BC 1.3 ; Plut. \textit{Cam}. 31.3 ; Dio 36.34.1 ; Pomp. \textit{Dig}. 1.2.2.18 & Lyd. Mag. 1.36. It is a well-known fact that dictators charged with other, more specific tasks generally abdicated immediately upon the fulfillment of their duty.

\textsuperscript{11}\textit{ἀν de ἐξαιτεί, ἐκεῖλεν ἄρχειν ὅν ἐς χρόνον ἤτην, ἄλλα μέχρι τῆς πόλεως καὶ τῆς Ἰταλίας καὶ τῆς ἀρχῆς ἔλεγεν στάσει καὶ πολέμους σεσιλεύσειν στρατηγεῖ}.

\textsuperscript{12}τότε \textit{de πρῶτον ἐς ἀρίστασιν ἐλθοῦσα τυραννίς ἐγίνετο ἐντελῆς}.

\textsuperscript{13}See also Vell. 2.28.2 : \textit{dictator creatus}. E. Valgilio, \textit{Silla e la crisi repubblicana} (Firenze 1956), 69 claims that Sulla was directly appointed/elected by the People, the \textit{interrex} simply presiding over the electoral Comitia.

\textsuperscript{14}sed si Sulla potuit efficiere ab interrege ut dictator diceretur et \textit{magister equitum}. Contra Bellen (as in n. 8), p. 559 ; A. Keaveney, \textit{Sulla. The Last Republican}, London, 1982, p. 161 ; Hurlet (as in p. 37, footnote), p. 49f. & 85 (in n. 77, p. 49, Hurlet asserts that Cicero’s representation in \textit{Att. 9.15.2} is incredible) ; W. Kunkel & R. Wittmann, \textit{Staatsordnung und Staatspraxis der römischen Republik. Zweiter Abschnitt : Die Magistratur}, München, 1995, p. 706 ; R. Seager, « Sulla », in : \textit{CAH 9} (Cambridge, 1994), p. 199 and W. Letzner, \textit{Lucius Cornelius Sulla. Versuch einer Biographie}, Münster, 2000, p. 249, who believe that Flaccus nominated Sulla as dictator, and Sulla in turn named Flaccus as his \textit{magister equitum}, this last appointment being made in accordance with precedent. In \textit{op. cit.} p. 162, however, Keaveney argues that Sulla « was chosen by a vote of the people under the presidency of an \textit{interrex} ». Keaveney’s suggestion that Sulla deliberately chose not to be nominated by a consul because a dictator appointed by a consul was expected to resign when that consul left office is implausible, since dictators could perfectly stay in office
ordered the interrex to nominate Sulla and himself. This also makes perfect sense in light of the fact that the Valerian Law ratified Sulla’s past acts and contained detailed provisions concerning the proscriptions he had conducted. This all means that the rogatio Valeria indiscriminately adopted Sulla’s suggestions regarding the necessity to revive the dictatorship, its exceptional nature, and the preferable candidates for both magistracies. In this way, Sulla could keep up appearances that it was the explicit will of the Roman People that he, and no one else, was charged with a special kind of dictatorship in order to reestablish law and order in the Res Publica.

In BC 1.99, Appian explicitly attests that, in consequence of the lex Valeria, Sulla was named dictator legibus scribundis et rei publicae constituendae. Albeit Sulla officially bore the title of dictator, it is beyond doubt that the specification legibus scribundis et rei publicae constituendae was its semi-official extension, defining Sulla’s official mandate as dictator on the model of the traditional dictatorships. Appian’s words clearly indicate that in this capacity, Sulla was legally entitled to issue edicts having the force of law, an extraordinary and discretionary prerogative. This interpretation is corroborated by a couple of valuable passages from the work of Cicero. In Agr. 3.50f., against the back-
ground of the fact that Sulla had robbed certain possessores of their share of ager publicus in order to allot it to others, Cicero inveighs against this Valerian Law. Cicero claims that, of all laws, this was the most iniquitous and least like a law, for it stipulated that all Sulla’s (future) acts, whatever they were, were to have the force of law. Cicero observes that, while in all other states all laws are annulled and abolished when tyrants are set up, in this case Flaccus, by his law, established a tyrant in a Republic: Omnium legum iniquissimam dissimilissimamque legis esse arbitravit eam quam L. Flaccus interrex de Sulla tulit, ut omnia quae cum ille fecisset essent rata. Nai cum ceteris in ciuitatibus tyrannis instituitur leges omnes extinguantur atque tollantur, hic rei publicae tyrannum lege constituit.

Cicero subsequently points out that there was nevertheless some excuse for this hateful law, because it was apparently not the law of a man, but of the times. Cicero then argues that the rogatio Seruilia agraria, however, is an even more shameless piece of legislation. Cicero explains that by the Valerian and Cornelian Laws, there is robbery of land where there is bestowal of it, a shameless favour united with a grievous wrong, and observes that these laws still leave some hope to the man who has been robbed and some scruples to him to whom it has been given: Nam Valeria lege Cornelisique legibus eripitur cui datur, coniungitur impudens gratificatio cum acerba iniuria; sed tamen habet illis legibus spem non ullam, cui ademptum est aliquem scripulum, cui datum est.

In Verr. 2.3.82, finally, Cicero also refers to Sulla in no uncertain terms as, ille de quo legem populus Romanus iussisset ut ipsius voluntas ei posset esse pro lege, « he, for whose benefit the Roman People passed a law that gave his own will and pleasure the force of law ».

In light of the unambiguous information provided by the extant sources, Sulla’s capacity to promulgate laws without any intervention on the part of the Comitia should not be questioned. With respect to Cicero’s quite particular wording in Verr. 2.3.82, Bellen plausibly suggests that Appian’s νόμον, ὤν αὐτός ἐφ’ ἑαυτῷ δικαιώσει (cf. supra) goes back to the Latin formula ex...
ipsius voluntate in the Valerian Law, and that it may have ran like this: (Velitis iubeatis) ut dictator creetur, qui et leges ex ipsius voluntate scribat et rem publicam constituat.22

Apart from Appian and Cicero, Plutarch too produces an invaluable and relatively complete account of the measures voted on behalf of Sulla. In Sull. 33.1, Plutarch indicates that in addition to his merciless massacre, the rest of Sulla’s proceedings also gave offence. After wrongly asserting that Sulla proclaimed himself dictator (δικτάτορα μὲν γὰρ ἐαυτὸν ἀνηγορέσας), Plutarch tells us that, ἐξετάθη δὲ αὐτῷ πάντων ἀδεια τῶν γεγονότων, πρὸς δὲ τὸ μέλλον ἔξουσια θυατήτου, δημευσεως, κληροχιών, κτίσεως, πορφήσεως, ἀφελέσθαι βασιλείαν, καὶ ὢ βουλητικό χαρίσασθαι, « an act was passed granting him immunity for all his past acts, and for the future, the power of life and death, of confiscation, of colonization, of founding or demolishing cities, and of taking away or bestowing kingdoms at his pleasure ».

First of all, Plutarch indicates that the Valerian Law concerning Sulla’s dictatorship ratified all Sulla’s past (pro)consular acts. This means that the lex Valeria not only gave force of law to the s.c. de actis Cornelii Sullae confirmandis which had ratified Sulla’s acts preceding the massacre of November 2 (cf. supra), but also legalized the proscriptions he had organized as proconsul. Plutarch’s assertion corroborates Mommsen’s suggestion that Valerius Flaccus passed only one law on behalf of Sulla, which — among other things — included a clause « die die acta des Consuls und Proconsuls nachträglich rathabirte », and that this measure especially concerned the proscriptions Sulla organised before the Valerian bill was framed and passed.23 Since Cicero clearly talks about the same Valerian Law in Agr. 3.5 & 6 (cf. supra), and since

22 Bellen (as in n. 8), p. 560. With reference to Dio 54.3.3 and ILS 244.7, Bellen (loc. cit., n. 29) plausibly argues that Cicero’s paraphrase « könnte sich an den Wortlaut der lex anlehnen ». Kunkel & Wittmann (as in n. 14), p. 707, implausibly argue that these words « beziehen sich darauf, daß Sulla nach der lex Valeria selbst darüber entschied, wer proskribiert wurde, während nach der lex Sempronia de capite civis Kapitalstrafen nur in einer durch Gesetz eingerichteten quaestio verhängt werden durften ». 

23 Mommsen (as in n. 19), p. 736, n. 5. Mommsen, however, believes that Appian refers in BC 1.97 (cf. supra) to that clause of the lex Valeria which ratified Sulla’s past acts. Although Valgiglio (as in n. 13), p. 54-56, 62, rightly distinguishes between the s.c. of 2 November, referred to in App. BC 1.97, and the lex Valeria, he wrongly argues that the Senate’s decree both ratified Sulla’s past acts and authorized his proscriptions by declaring his enemies hostes publici. Valgiglio also believes (56f.) that « la clausola della lex Valeria sulla ratifica degli acta si limitasse alla condotta politica di Silla dopo il suo ingresso in Roma, cioè, in sotanza, alle prozioni ». Keaveney (as in n. 14), p. 160, and Seager (as in n. 14), p. 199, also plausibly suggest that Appian here mentions a senatorial decree that actually preceded the Valerian Law. Keaveney (loc. cit., cf. also p. 167, n. 23), however, wrongly believes that Sulla’s (pro)consular acts were subsequently ratified (ex s.c.) by a law other than the lex Valeria, while Seager (loc. cit.) seems to overlook the fact that this s.c. was subsequently legalised by the lex Valeria. Seager, op. cit. p. 20, also believes that the proscriptions were only (retrospectively) authorized by Sulla’s first law. Although Hurlet (as in p. 37, footnote), p. 25, rightly deduces from Rosc. Am. 153 that on 2 November, 82, the Senate refused to endorse Sulla’s murderous purge (cf. supra), he on the other hand suggests (p. 34f.) that Sulla’s (pro)consular acts, including his proscriptions, were ratified before the vote of the Valerian Law by means of a s.c. attested in App. BC 1.97, and not by the Valerian
both this passage and Rosc. Am. 125f. (cf. infra) show that this statute also dealt with (the status of) the goods of the proscribed, the validity of Mommsen’s suggestion that the Valerian Law ratified Sulla’s acts until the moment of its enactment should not be called into question.

Secondly, Plutarch’s quite accurate summary attests that, in addition to the clause which stipulated that the dictator’s edicts would automatically carry the force of law, Sulla was given a whole series of well-defined extraordinary powers pertaining to specific administrative and military spheres. At first sight, one might argue that an allocation of additional special iura would have been both superfluous and unlikely in light of the discretionary clause of empowerment that concerned the legal standing of Sulla’s edicts. Cicero, however, produces some succinct but invaluable evidence that the Valerian Law indeed set down a number of detailed provisions concerning Sulla’s past acts and his (future) dictatorial prerogatives. In Rosc. Am. 125f, in a speech delivered during the dictatorship of Sulla, Cicero for obvious reasons feigns ignorance as to whether it was the lex Valeria or a lex Cornelia that dealt with the proscriptions and the subsequent sale of the property of those who had been either proscribed or slain within the ranks of Sulla’s enemies in particular:

Sui potuerunt ista ipsa lege quae de proscriptione est, siue Valeria est siue Cornelia — non enim noui nec sio — uerum ista ipsa lege bona Sex. Rosci uenire qui potuerunt ? Scriptum enim ita dicunt esse :VT AVT EORVM BONA VENEANT QVI PROSCRIPTI SVNT ; quo in numero Sex. Roscius non est :AVT EORVM QVI IN ADVERSARIVM PRAESIDIIS OCCISI SVNT.

This feigned ignorance would not have been possible if the Valerian Law had simply concerned the appointment of a dictator legibus scribundis et rei publicae constituendae with discretionary power. Together with Agr. 3.50f. (supra), this passage corroborates Plutarch’s statement that, apart from legalizing the past proscriptions (and some of their cruel consequences), the Valerian Law actually invested Sulla with specific powers to deal with the goods of the proscribed, past and future. Hence, it should not be doubted either that Sulla

Law, which he believes only contained provisions concerning the (future) dictatorship. Gabba (in n. 21), 262f. & 341 likewise argues that Sulla’s acts « dall’ 88 al novembre 82 » were ratified solely by means of the s.c. recorded in BC 1.97. At any rate, Mommsen’s view that the interrex passed only one bill on behalf of Sulla is accepted by numerous scholars: see De Martino (as in n. 20), 73; Id., « Sugli aspetti giuridici del triumvirato », in: A. Gara, D. Foraboschi (edd.), Il triumvirato costitutivo alla fine della repubblica romana. Scritti in onore di Mario Attilio Levi, Como, 1993, p. 72 (Sulla’s proscriptions « erano state autorizzate con il conferimento della dittatura »); E. J. Jonkers, Social and Economic Commentary on Cicero’s De Lege Agraria Onationes Tres, Leiden, 1963, p. 140; M. Sordi, Dittatura Sillana e Triumvirato rei publicae constituenda, in: A. Gara, D. Foraboschi, op. cit., p. 89. On the basis of Verr. 2.1.123 (infra), E. Gabba, Miscellanea Triumvirale, in: A. Gara, D. Foraboschi, op. cit., p. 127, thinks that Sulla’s proscriptions were ratified post factum by a lex Cornelia.

24 To my thinking, Cic. Verr. 2.123; Vel. Pat. 2.28.4 and especially Cic. Agr. 3.6 and Suet. Div. Iul. 11 clearly show that there were several leges Corneliae which dealt with (matters concerning) the proscriptions.

was given statutory power to establish new colonies, to found or destroy cities, and to decide on matters of foreign policy as he wished. Obviously, Plutarch closes his summary with a paraphrase of a provision which entitled Sulla to make treaties and declare war at his own discretion and authority, without any preliminary or subsequent intervention on the part of SPQR\textsuperscript{26}. In Rosc.\textit{Am.} 21f., Cicero indeed furnishes powerful proof of the existence of such a clause, at once making it clear that Sulla was charged with the overall control of the \textit{Res Publica}: \textit{Haec omnia, iudices, imprudente L. Sulla facta esse certo scio}. Neque enim minum, cum codem tempore et ea, quae praeterita sunt, reparet et ea, quae uidentur instare, praeparet, cum et pacis constituendae rationem et belli gerendi potestatem solus habeat, cum omnes in unum spectent, unus omnia gubernet, cum tot tantissique negotiis distantibus sit, ut respirare libre non possit, si aliquid non animaduerat, cum praesertim tam multi occupationem eius observationemuis obseruent tempusque aucupentur, ut, simul atque ille despexerit, aliquid huiusque modi moliantur.

« I am convinced, judges, that all this took place without Sulla’s knowledge. For at the time when he is repairing the past and preparing for the possible emergencies of the future; when he alone possesses the means of establishing peace and the power of waging war; when all eyes are fixed upon him alone, and he alone is absolute ruler; when he is distracted by so many and such important affairs that he cannot even breathe freely, we ought not to be surprised if something escapes his notice, especially as so many are on the lookout for the time when he is busy and are watching for an opportunity, as soon as he is off his guard, to start some such plan as this. »

Finally, a pithy but revealing sentence from a notorious address of the renegade consul M. Aemilius Lepidus to the Roman People in 78 clearly shows that the Valerian Law gave Sulla complete control of (matters concerning) the \textit{aerarium publicum}, again a spectacular and novel prerogative. Lepidus states that during Sulla’s tenure as dictator, \textit{leges, iudicia, aerarium, provinciae, reges penes unum, denique necis ciuium et uita licentia}, « the laws, the courts\textsuperscript{27}, the treasury, the provinces, the kings, and, finally, the power of life and death over the Roman citizens were in the hands of one man »\textsuperscript{28}.

There is ample proof of the fact that Sulla made full use of this set of quasi-absolute and unprecedented powers in order to take measures dealing with

\begin{footnotes}
\footnotetext[26]{On account of a valuable passage in Sallust’s \textit{Historiae} (1, fr. 55 : cf. \textit{infra}) P. Willems, \textit{Le Sénat de la République romaine. Sa composition et ses attributions}, 2, Leuven-Berlin, 1883, p. 517, n. 10 and Keaveney (as in n. 14), 161, have already correctly observed that the \textit{lex Valeria} authorized Sulla to declare war and make peace as he thought fit.}
\footnotetext[27]{By one of his dictatorial laws, Sulla restored full control of the courts to the Senate at the expense of the \textit{equites}.}
\footnotetext[28]{Sall. \textit{Hist.} 1, fr. 55.12 (ed. Maunenbrecher, Leipzig, 1893, p. 25).Valgiglio (as in n. 13), p. 64 rightly points out that Roman dictators could not draw from the \textit{aerarium} without prior authorization on the part of the Senate. It will be shown \textit{infra} that Lepidus’ statement also corroborates suspicions that the Valerian Law equipped Sulla with some other extraordinary powers.}
\end{footnotes}
both internal and foreign policy. A few examples may suffice to illustrate this. In Per. 89, the epitomator of Livy tells us that Sulla as dictator, *legibus novis rei publicae statum confirmavit*, *tribunorum plebis potestatem minuit et omne ius legum ferendarum ademit*. Pontificum augurumque collegium ampliavit, ut essent quindecim; *senatum ex equestri ordine suppleuit*; *proscriptorum liberis ius petendorum honorum eripuit et bona eorum uendidit*, ex quibus plurima priosa rapuit.

In BC 1.96 & 100, Appian attests that Sulla founded colonies in Italy on behalf of his veterans and distributed to them a great deal of land in the various communities, some of which was *ager publicus*, and some taken from the communities by way of fine. In BC 1.100, Appian states that the dictator repealed laws and enacted others. In BC 1.100, it is also recorded that Sulla held a *lectio senatus*, enrolling 300 *equites* into the *album senatorium*, and that he moreover added more than 10 000 slaves of the proscribed to the plebeians, to whom he gave freedom and Roman citizenship. In BC 1.102, Appian shows that Sulla made full use of his extraordinary power to make decisions having the force of law concerning foreign policy and the (official status of) provincials and allies, and that he did so in the same harsh way as he exercised his prerogatives in Rome and Italy. Appian actually reports that « all the allied nations and kings, and not only the tributary cities, but those which had delivered themselves to the Romans voluntarily under sworn agreements, and those which by virtue of their furnishing aid in war or for some other merit were autonomous and not subject to tribute [i.e., the *ciuitates liberae et immunes*], all were now required to pay and to obey, while some were deprived of the territory and harbours that had been conceded to them under treaties ».

Appian finally indicates that Sulla « decreed » (Σύλλας... ἐγνήσισε) that one Alexander should be king of Egypt. Dionysius of Halicarnassus relates in 5.77.4f. that not until the dictatorship of L. Cornelius Sulla did the Romans perceive for the first time that the dictatorship was actually a tyranny. Dionysius briefly explains that Sulla composed the Senate of commonplace men, reduced the power of the tribunes to the minimum, depopulated whole cities, abolished some kingdoms and established others himself, and committed many other arbitrary and objectionable acts. As dictator, Sulla also carried through the first extension of the *pomerium* since Servius Tullius.
Unfortunately, it is impossible to ascertain whether Sulla was explicitly authorized to hold a *lectio senatus* and bestow the Roman citizenship upon thousands of freedmen or whether he simply took these measures by virtue of his discretionary power to issue edicts which had the force of law. Given the importance of Sulla’s drastic *lectio senatus*, it is quite likely that the Valerian Law indeed invested the dictator with (certain components of the) *potestas censoria*\(^34\). Since Appian records in *BC* 1.100 that Sulla took the votes of the tribes on each one of the 300 *equites* he enrolled into the Senate\(^35\), it should at any rate not be doubted that his collective grants of citizenship were likewise confirmed by means of one or several *leges Corneliae*.

Although Mommsen asserts that the Valerian Law gave Sulla the explicit right to appoint (pro)magistrates on his own authority, without any involvement on the part of the Comitia and the Senate\(^36\), the evidence is otherwise. Appian tells us in *BC* 1.100 how Sulla « allowed » the Comitia to appoint consuls for 81, which resulted in the election of M. Tullius Decula and Cn. Cornelius Dolabella. In 81, Sulla stood for the consulship himself, together with Q. Caecilius Metellus Pius, both of them being duly elected. In *BC* 1.103, Appian records that after the People had chosen him consul again in 80, he refused the office and « designated » (\(\alpha\iota\pi\epsilon\mu\nu\nu\epsilon\eta\) P. Servilius Vatia (Isauricus) and Ap. Claudius Pulcher. At first sight this passage might conceivably be taken as proof of an extraordinary prerogative to nominate candidates for the annual magistracies. In all probability, however, Appian indicates that,

\(^{34}\) Both P. Willems (as in n. 26), vol. 1, p. 408 and Keaveney (as in n. 14), 161 are convinced that the Valerian Law gave Sulla the right to hold a *lectio senatus*. Although Hurlet (as in p. 37, footnote), p. 105f., rightly argues that the functions of the censor and the dictator are not incompatible by definition, and that a dictator could be charged with all kinds of tasks which were normally conducted by other magistrates, he seems to believe that Sulla was legally entitled to hold a *lectio senatus* because he held the office of dictator, and not because he was explicitly authorized to do so by virtue of the Valerian Law. On the one hand, Kunkel & Wittmann (as in n. 14), p. 710 argue that « Aus dem Auftrag zur Neuordnung des Staates leitete Sulla auch das recht ab, auf die Zusammensetzung des Senats Einfluß zu nehmen » (cf. also p. 706f., where it is positively asserted that Sulla was legally entitled to hold a *lectio senatus*). On the other hand, they explain on p. 694 that « Sulla war es offenbar gegenwärtig, daß er selbst als Diktator rei publicae constituitenda causa die censoria potestas nicht schlechthin an sich ziehen konnte. Als er durch seine Gerichtsreformen die Auffüllung des Senats auf 600 Mitglieder erforderlich wurde, ließ er über die neu aufgenommenen Mitglieder die Tributkomiten abstimmen... Dadurch sollte das Legitimationsdefizit ausgeglichen werden, das darin lag, daß er als Inhaber eines einstelligen Ausnahmeamts über die Zusammensetzung des Senats entschied ». On p. 710, however, Kunkel & Wittmann propound that Sulla « unterschied sich darin vom späteren Kaiser Augustus, der das ius senatus legendi aus eigener Machtvollkommenheit ausübte ».

\(^{35}\) That Sulla, however, supplemented the *album senatorium* at his own discretion is clear from Cat. 37.6, where Sallust claims that Sulla raised common soldiers to the rank of senator.

\(^{36}\) Mommsen, (as in n. 21), 337. Mommsen is followed by e.g. J. Carcopino, *Sylla ou la monarchie manquée*, Paris, 1942\(^2\), p. 41 and L. Pareti, *Storia di Roma e del Mundo romano*, 3, Torino, 1953, p. 616. Valgiglio (as in n. 13), p. 64 more cautiously suggests that Sulla’s « competenza si estendeva anche alla scelta dei magistrati, compresi consoli », and that their election by the People « si riduceva ad una semplice formalità ». De Martino (as in n. 20), p. 74 likewise propounds that the *lex Valeria* invested Sulla with « una facoltà di designazione ». 
as presiding magistrate, Sulla simply proclaimed both men consul-elect in consequence of their election in the *comitia centuriata*. With respect to Sulla’s decision to undertake a second consulship, Appian observes that, καὶ ἀπὸ τοῦ ὑμῶν ἑταῖρος, ὑπάρχοντας τῇ πατρίδι, ἔστιν ὅτε καὶ ἑαυτοῦ ἀποδεικνύοντα, ἐν καλῷ τιθέμενοι μετὰ τῆς μεγίστης ἡρώης καὶ ὑπετεύμας, « it is perhaps from this example that the Roman emperors designate consuls for the country and even sometimes nominate themselves, considering it not unbecoming to hold the office of consul in connection with the supreme power. »

Again, this interesting explanation need not imply more than that Sulla publicly commended certain candidates, thus creating a sort of precedent of fact for the future practice of imperial *designatio*, rather than acted on an explicit right to make exclusive and binding designations. The fact that, probably in 81, Sulla ordered a centurion to kill Q. Lucretius Ofella on the Forum because he persisted in standing for the consulate against his explicit wishes, also shows that, at least in theory, all were still free to put up for the consular or praetorian elections. Finally, this hypothesis is also congruent with Appian’s statements that Sulla allowed for yearly consular elections in order to keep up a semblance of republican libertas. Nonetheless, both the fate of Lucretius Ofella and Plutarch’s statement that Sulla eventually « put the consular elections in the hands of the People » (*Sull. 34.3, infra*) show that it was the dictator who really decided who was to be chosen consul by the *comitia centuriata*.

From this line of argument, it follows that it is also most unlikely that the Valerian Law gave Sulla the explicit right to define the *provinciae consulares/praetoriae* or to assign them nominatim. In the extant sources it is indeed often stated that Sulla « sent » certain commanders to certain provinces. In *Sert. 7.1*, Plutarch for example asserts that Sulla sent out C. Annius (*pr. 82 or 81 ?*) to drive Sertorius from Hispania. In *BC 1.97*, Appian notes that Sulla later also sent Q. Caecilius Metellus Pius, his colleague in the consulate of 80, into Hispania against Sertorius. In *Sert. 9.3*, Plutarch reports that Sulla sent out one Paccianus to Mauretania to give aid to Ascalis, king of Mauretania, against

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37 As Prof. Wardle points out to me (per litteras).
38 I owe this observation to Prof. Hurlet’s written review of this paper.
39 Cf. *Per. 89*: Q. Lucretium Ofellam adversus voluntatem suam consulatum petere ausum iussit occidi in foro; et cum hoc indigne ferret populus Romanus, contione adnuata se iussisse dixit (* Because Q. Ofella dared to seek the consulship against Sulla’s wishes, he ordered him to be killed in the Forum. And when the Roman People took offence at this, Sulla called a public meeting and announced that he had ordered the execution. *) This anecdote is also on record in *Plut. 33.4 & comp. Lys. et Sull. 2.4 & App. BC 1.101*. Appian asserts that Ofella was still an *eques* at the time of his candidacy, and that he stood for the consulate in defiance of the *lex Cornelia* which determined that tenure of the quaestorship and praetorship were necessary preliminaries to the consulship. Appian suggests that Ofella apparently reckoned with being dispensed from this law because he had captured Praeneste (with C. Marius) and had so won the final victory for Sulla.
40 *BC 1.100 & 103*, cf. infra.
41 C. Annius operated in Hispania as proconsul: see Broughton (*as in n. 29*), p. 77.
the same Sertorius. In BC 1.80, Appian tells us that Sulla dispatched Cn. Pompeius to Sicily in 82. However, thanks to Per. 89, where it is summarily recorded that "Cn. Pompeius in Siciliam cum imperio a senatu missus", we know that Sulla actually took this decision in consultation with the Senate. Since Plutarch also attests in Pomp. 11.1 that Pompeius was commissioned to cross over to Africa by virtue of a decree of the Senate and a letter from Sulla, it is better to assume that during Sulla’s dictatorship, the Senate kept formally exercising its traditional prerogative of allocating provincial commands to (pro)magistrates. Last but not least, Granius Licinianus (36.11f.) attests that Sulla received Gallia Cisalpina as his provincia consularis in 80, although he obviously declined to assume command of it. In all probability, Cisalpina and Hispania had been decreed consular in 81 under the terms of the Sempronian Law. It is quite possible that in 80, Sulla and Metellus agreed to exchange their provinces, after which Sulla eventually refused to depart for his province on the grounds that he was still needed in Rome. However, since Sulla was legally entitled to promulgate laws, he was perfectly capable of making binding interventions in the assignment of the provinces if he saw fit.

The fact that the Valerian Law had equipped Sulla with the right to issue laws and with a whole series of other special powers does not at all imply that the dictator did not trouble to carry through his measures and reforms in consultation with the Senate and the People. There is indeed ample and cogent evidence that, irrespective of his tremendous powers, the dictator involved the Senate in his decisions, and that he put the bulk of his legislative work to the popular assemblies, the comitia centuriata and the comitia tributa. Therefore, it

42 The official status of this further unknown Paccianus cannot be ascertained.
43 See infra.
44 Data erat et Sullae provincia Gallia Cisalpina (ed. N. Criniti, Leipzig 1981, p. 25). Since Granius Licinianus mentions the assignment of Cisalpina to Sulla after recording the triumphs of Cn. Pompeius, L. Licinius Murena and C. Valerius Flaccus, all of which took place in 81, it should not be doubted that Cisalpina was Sulla’s consular province in 80. Contrà M. Cary and E. G. Hardy, Keaveney (as in n. 14), p. 203, n. 22 thus rightly asserts that there is no justification whatsoever to assign it to an earlier date. Hurlet (as in p. 37, footnote), p. 130 suggests that Sulla transformed Gallia Cisalpina into a regular Roman province, and that this augmentation of the Roman dominion warranted his extension of the pomerium. Since Sulla evidently stayed in Rome during his tenure as dictator, it is quite unlikely that he conducted the redactio in formam provinciae of Gallia Cisalpina. Neither is there any proof of Sulla governing this province in absentia through one or more legati. Hence, the precise date of the definitive, official organization of Cisalpina as a provincia Populi Romani and the identity of the official involved remain unknown. In my opinion, Licinianus’ words seem to imply that Cisalpina had already been assigned as a provincia before 81, regardless of the date of its formal provincialization. If so, the imperium of the official governing Cisalpina in 81 was perhaps prorogued in consequence of Sulla’s refusal to assume his provincial command.
45 For a reassessment of the scope of this Sempronian Law, see my forthcoming article «The Scope of the lex Sempronia Concerning the Assignment of the Consular Provinces (123 BCE)», to be published in Athenaeum, 94, 2006.
46 For a collection and discussion of the attested decrees and leges rogatae (tributae and centuriatae) voted under the presidency of the dictator, see Hurlet (as in p. 37, footnote), p. 149–159, Kunkel & Wittmann (as in n. 14), p. 703. Sulla’s two letters de collegiis artificum Bacchiorum
is rightly asserted in Schol. Gronov. ad Cic. Rosc. Am. 125 (ed. Stangl, p. 314) that, his [i.e., the interrex L. Valerius Flaccus] tuiti legem quicquid Sulla dixisset, lex esset. Si quid ergo ad populum tulisset Sulla, ualebat lege Cornelia; si quid voluisset et non tulisset ad populum, hoc ualebat lege Valeria.

"The interrex carried a law to the extent that whatever Sulla said was the law. This means that if Sulla decided to put a proposal to the popular assembly, it was valid by virtue of a Cornelian Law. If he wanted something without submitting it to the People, it was lawful by virtue of the Valerian Law."

Apart from confirming that Sulla indeed put certain matters before the People, this explanation provides additional proof of the fact that he was legally entitled to issue laws on his own authority, since it is clearly stated that by virtue of the lex Valeria, his will was law, and that it was entirely up to Sulla whether or not he wanted to make use of the Comitia in order to enact his laws. Evidently, the dictator was also free to decide which decisions he would make in consultation with the Senate and which not47. In point of fact, Sulla’s desire to work in close cooperation with the Senate and to have the most

(R. K. Sherk, Roman Documents from the Greek East, Baltimore, 1969), nr. 49; henceforth abbreviated RDGE and the s.c. de Stratonicensibus (RDGE, nr. 18, esp. ll. 15–22) provide us with striking examples of how the dictator interfered in matters of provincial administration by submitting sententiae which were subsequently turned into decrees by the Senate. The s.c. de Stratonicensibus, however, also makes it clear that the ultimate power to decide in these matters resided with the dictator to whom was left a remarkable amount of discretion (see, for example, ll. 34f.; l. 43; ll. 103–112, 123–127). Although Hurlet (op. cit., p. 154) rightly supposes that Sulla involved the Senate in his decision-making concerning the conferment of the Egyptian throne upon Alexander, Sulla was fully entitled to settle the question by virtue of one of his dictatorial edicts. Therefore, Appian’s conspicuous use of ἐν ηπιστατῷ in BC 1.102 (cf. supra) may refer to an edictum dictatoris as well as to a decree of the Senate. In all probability, both were subsequently ratified by the People. Although SPQR had ratified Sulla’s acta from 88 until the beginning of November 82 (supra), there is ample evidence that in 81 and 80 the Senate (Sherk, RDGE, nr. 18, ll. 49–113; nr. 49, ll. 1–13 and nr. 23, ll. 52–59) and the People (RDGE, nr. 18, l. 99) continued to ratify many of the arrangements and grants which Sulla had made on behalf of particular communities and individuals during his command as proconsul in Greece and Asia Minor. Apparently, this mostly happened in consequence of provincial embassies who were eager to obtain separate ratification of those privileges awarded by Sulla in order to secure them, or to turn agreements into solid foedera legitima. Local entities clearly wanted to obtain maximum legal certainty now affairs in Rome and the East seemed to have been stabilized.

The fact that P. Cornelius Sulla (as, desig. 65) is on record as triumvir coloniis deducendis in Cic. Sull. 60–62, suggests that the establishment of a number of colonists in Pompeii was likewise done by virtue of a lex Cornelia (rogata) modeled on earlier legislation concerning colonization. 47 Contra Hurlet (as in p. 37, footnote), p. 156f., 162–164. Hurlet is convinced that Sulla worked through the Senate and the People not to exceed his competences, which, he believes, equaled those of the traditional dictatorship rei gerundae causa. It is quite important to emphasize that Sulla’s decision to consult the Senate and to put his bills before the Comitia does not mean that the dictator was not empowered to issue laws on his own authority. Kunkel & Wittmann (as in n. 14), p. 703f. and 707 claim that Sulla « war kein Diktator legibus scribundis », but only rei publicae constitutendi. On account of the fact that Sulla apparently put all his bills to the vote in the Comitia, they argue that the Valerian Law « stellte lediglich die Einbringung von Gesetzen in das alleinige Ermessen Sullas. Er konnte also Gesetze zur Abstimmung bringen, ohne vorher den Senat befragt zu haben und brauchte dem etwaigen Wunsch des Senats nach einer Rogation nicht zu folgen ». On p. 707 (op. cit.), Kunkel & Wittmann make mention of Sulla’s « unabhängig Rogationsrecht ». They are followed by Letzner (as in n. 14), p. 248, n. 7 and 251, n. 20.
important of his measures ratified by the Comitia should not be surprising at all. His course of action as dictator can be easily explained by his apparent wish to respect the (customary prerogatives of the) foremost institutions of the Roman Republic, Senatus Populusque, as much as possible. By his choice to have none other than the moderate princeps senatus as his magister equitum, Sulla not only enhanced the dignitas and auctoritas of his office, but made it clear from the very outset that he wished to discharge his exceptional duties in harmonious and respectful cooperation with the Senate. Besides, Sulla obviously wanted to make sure that his political program was officially built on the consensus uniuersorum. Therefore, he wanted his leges Corneliae to be genuine comitial leges rogatae rather than laws issued by virtue of a discretionary and objectionable prerogative.

Dictator sine prouocatione

In addition to his extraordinary and — to the prevailing political standards — totally unacceptable powers, the lex Valeria equipped Sulla with yet another remarkable prerogative. In order to interpret the extant source material concerning this exceptional provision correctly, a short digression on the matter of the number of fasces belonging to the dictator is imperative. Although at least one (late) tradition hands down that the dictator (at first) disposed of twelve lictors, like the consuls, it is beyond doubt that the dictator was entitled to twelve lictors/fasces and because a certain tradition also ascribes twelve lictors/fasces to the Roman kings. As the Romans could have hardly imagined that the power of a dictator surpassed that of kingship, the Roman equivalent to arbitrary and absolute rule, it is quite logical that part of the tradition ascribes only twelve lictors/fasces to the dictators.

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48 Cf. Hurlet (as in p. 37, footnote), p. 171f. for a good discussion of Sulla’s traditionalism.
49 Keaveney (as in n. 14), p. 161 argues that Sulla’s choice was no accident and points out that Valerius Flaccus was probably the most distinguished man in the state after Sulla himself: « It was entirely fitting that someone of his authority should be associated with the dictatorship and his presence would thus lend it an added luster. » Keaveney also calls to mind that Valerius Flaccus had led that party in the Senate which had sought a compromise with Sulla [see Livy Per. 83] and had been prepared to recognise the validity of his imperium [as proconsul], and explains that Flaccus’ connection with the dictatorship would provide « an element of continuity and would make it clear that he approved also of the imperium which Sulla now held ». 50 This conspicuous move clearly was an invitation to all senators « of good will ». 51 Sulla’s pretence and aspirations should, of course, not deceive, as it concerns a consensus that was enforced by a bloody military victory, and the dictator’s political program was the program of one man and his faction.
52 Cf. Lydus Mag. 1, 37: Πάντα δὲ τὰ τῆς βασιλείας σύμβολα παρῆν τῷ δικτάτορι στεφάνου χωρίς οἱ τε διοικηδές πελέκες, πορφύρα καὶ σέλλα καὶ δόρατα καὶ οὕς επισήμως οἱ ρής ἐγνωρίζοντα. K.-H. Vogel, « Imperium und Fasces », ZSS-RA, 67, 1950, p. 93 believes that this information is corroborated implicitly (e silentio) by Livy 2.18.8 en Dion. Ant. 5.75.2. G. De Sanctis, « I fasci littori e gli ordinamente romani antichissimi », Rivista di filologia, 57, 1929, p. 2 and 5f., argues unconvincingly that until the clades Caudinae of 321, the dictator was entitled to twelve fasces, as the Roman kings had been previously, whereas each consul originally had a right to only six fasces ; cf. E. G. Staveley, « The Fasces and the Imperium Maius », Historia, 12, 1963, p. 460f. for some serious criticism of this suggestion. Prudence is in order, since certain authors hand down that the dictator was originally entitled to twelve lictors/fasces and because a certain tradition also ascribes twelve lictors/fasces to the Roman kings. As the Romans could have hardly imagined that the power of a dictator surpassed that of kingship, the Roman equivalent to arbitrary and absolute rule, it is quite logical that part of the tradition ascribes only twelve lictors/fasces to the dictators.
tled to twenty-four lictors (and an equal number of *fasces*) during the later centuries of the Republic. Dionysius relates in *Ant.* 10.24.1 that L. Quinctius Cincinnatus, dictator in 458, was assigned twenty-four *secures* and *fasces*. Polybius 3.87.8 and Plutarch *Fab.* 4.2 record that in 217, the dictator Q. Fabius Maximus Verrucosus was accompanied by twenty-four lictors complete with *fasces*, in the latter case evidently in the *Urbs*.53. Finally, Dio 54.1.3 attests that in 22, the commons forced the Senate to decree that Augustus should be elected dictator. Next they took twenty-four bundles of *fasces* and vainly begged Augustus himself to consent to being named dictator.54

K.-H. Vogel is the principal advocate of the hypothesis that originally only twelve *fasces* were granted to the dictator. Vogel argues that within the *pomerium*, the dictator was entitled to twelve « Heimliktoren » by virtue of his *imperium domi*, whereas he had a right to twelve « Feldliktoren » outside Rome by virtue of his *imperium militiae*. Vogel tries to confirm Lydus’ information by means of three passages in Dionysius which he thinks to be related to « der Errichtung der Diktatur »55. The first two of these references actually concern Romulus and Tarquinius Priscus, while the third passage refers to the *consulate* and moreover omits any precise indication regarding the number of consular lictors/*fasces*56. Vogel believes that the doubling of the number of dictatorial lictors/*fasces* occurred sometime between the original situation and the reality portrayed by Polybius and Plutarch and confirmed by Cicero57.

At first sight, matters seem to become even more complicated by what is written in *Per.* 89 about the dictatorship of Sulla: *Sulla dictator factus, quod nemo umquam fecerat, cum fascibus uiginti quattuor processit*, « Sulla was made dictator, and appeared in public with twenty-four *fasces*, which no one had ever done before. »

Far more than the above-mentioned passage from Lydus, this vague and intriguing passage is the cause of persisting disagreement among modern scholars with regard to the question of the precise number of lictors/*fasces* falling to the dictator. Mommsen propounds that all « glaubwürdigen » sources attest that the dictator had a right to twenty-four lictors/*fasces*, and tries to explain this statement in *Per.* 89 away by arguing that « nach älterem Recht », the dictator was entitled to twelve lictors/*fasces* within the *pomerium*, and to twenty-four of them outside of it. According to Mommsen, Sulla

53 Cf. T. C. Brennan, *The Praetorship in the Roman Republic*, Oxford, 2000, p. 263, n. 78. According to Polybius, the dictator chiefly differed from the consuls in the number of lictors and because while the consuls required the cooperation of the Senate in many matters, the dictator was an *imperator* with absolute power (παντοκράτωρ *σοφοκράτος*). De Sanctis (as in n. 52), p. 1 convincingly explains why this statement of Polybius is « ineccepibile ».

54 Apparently, the Senate had decreed that the consuls should either organize a direct election of Augustus to the dictatorship or pass a law ordering his immediate nomination.

55 Vogel (as in n. 52), p. 93f.

56 Dion. *Ant.* 2.29.1 & 3.61.2f.

57 Dion. *Ant.* 5.19.3.

58 From the evidence of these sources, Vogel (as in n. 52), p. 94 gathers that towards the beginning of the Second Punic War, « ist die einstige Vorstellung von Imperium demzufolge bereits ausgelöscht ». 
would thus have been the first dictator to enter the Urbs in the company of twenty-four lictors/fasces\(^59\). Staveley asserts that dictators carried twenty-four fasces probably from the outset, and argues that the words with which Lydus prefaces his statement are such as to suggest strongly that he has blindly attributed to the dictator the number of fasces that was traditionally assigned to the king, thus committing the same error as Appian in reverse\(^60\). A. Keaveney suggests that Livy’s epitomator wrongly believed that a dictator was regularly accompanied by twelve lictors, whereas Sulla « was preceded by the normal number of lictors for a man in his position »\(^61\). F. Hurlet is also convinced that dictators were entitled to twenty-four fasces, and likewise suggests that Lydus’ comparison of kingship and dictatorship induced him to attribute the kingly number of fasces to the dictators too. Hurlet notes that the statement of an epitomator who was hardly interested in institutional matters is of little value by comparison with the other relevant attestations, and argues that on the basis of an anti-Sullan tradition, the epitomator « avait conclu hâtivement à la nouveauté de cette pratique »\(^62\). Hurlet believes that Sulla’s dictatorship did not bring along major formal innovations, and that Sulla held the office in conformity with the practices of the traditional dictatorship\(^63\). Seager likewise asserts that the number of Sulla’s lictors comprises a minor puzzle, and argues that the figure of twenty-four need not be doubted, whereas the comment

\(^{59}\) Römisches Staatsrecht 1, Leipzig, 1887\(^3\), p. 383. Mommsen is followed by F. Fröhlich, « L. Cornelius (nr. 392) Sulla Felix », in : RE, IV, 1, 1900, c. 1556 ; Valgiglio (as in n. 13), p. 67 and Gabba (as in n. 21), p. 272. Hurlet (as in p. 37, footnote), p. 89 n. 19 makes the subtle remark that in his Römische Geschichte, Mommsen simply states that before the dictatorship of Sulla, the dictators were everywhere headed by twelve lictors. Vogel (as in n. 52), p. 95f, believes that dictators originally carried twelve fasces, subsequently only outside the Urbs twenty-four (« ein Zwischenergebnis »), and twenty-four everywhere from the dictatorship of Sulla. Like Mommsen, Brennan (as in n. 53), p. 42 propounds that « earlier dictators » were entitled to twelve fasces within the pomerium, while militiae, they held no less than twenty-four. Brennan (cf. also p. 263, n. 78 & 80) suggests that Polybius was perhaps confused by the fact that the full complement of insignia was portrayed at funeral ceremonies of former dictators, and brushes the evidence from Plut. Fab. 4.3 aside as being « suspect ».

\(^{60}\) E. G. Staveley, « The Constitution of the Roman Republic, 1940-1954 », Historia, 5, 1956, p. 104, n. 139 ; Id. (as in n. 52), p. 459, 469. Staveley styles Lydus as a « very late and unreliable authority ». In his article of 1956, Staveley concedes that (p. 104f) the fact that the republican dictator carried twenty-four fasces doesn’t prove that there had not been dictators or magistri populi who carried only 12 (or possibly even fewer) in the older days. It does prove, Staveley argues, that the purpose and function of the republican dictatorship were entirely original to the Republic.


\(^{62}\) Hurlet (as in p. 37, footnote), p. 90f and n. 25, where Hurlet argues that the representation of the facts and the way in which the quod nemo unquam fecerat is inserted suggest that this regards a view of the epitomator, and not a statement of Titus Livius himself. Hurlet is here inspired by Staveley (as in n. 52), p. 469. To my thinking, the evidence from Per. 89 cannot be explained away so easily. In Staatsrecht 1 (as in n. 59), p. 383, n. 4, Mommsen rightly emphasizes that « diese Angabe einfach als irrig zu betrachten ist nicht möglich ».

\(^{63}\) Hurlet (as in p. 37, footnote), p. 91.
that this was unprecedented « may well be incorrect » 64. A. Lintott, too, believes that the dictators had a right to twenty-four fasces, though he does not exclude the possibility that within the pomerium the number of dictatorial lictors/fasces was restricted to twelve65. Kunkel & Wittmann, however, rightly observe that Mommsen’s proposition is simply untenable in light of what is said in Plut. Fab. 4.366.

As a matter of fact, this passage need not necessarily lead to confusion about the precise number of fasces due to the dictator67. Nor ought it be interpreted as proof of the fact that the Valerian Law would have simply raised the number of dictatorial fasces from twelve to twenty-four. In 1929, De Sanctis developed the brilliant hypothesis that by virtue of the lex Valeria, Sulla was invested with a dictatorship « con assoluta pienezza di poteri e, senza dubbio, con illimitato diritto di vita e di morte sui cittadini anche entro l’ambito del pomerio », which means that he was by statute entitled to carry his secures even within the pomerium68. In consequence of this provision of the lex Valeria, Sulla was probably the first dictator in centuries whose lictors were not bound to remove their axes when the dictator was active in the sphere domi69. This officially symbolized the fact that Sulla was acting as dictator sine provocazione at any time and everywhere.

This interpretation is corroborated by a few other indications in the sources. Appian in particular provides us with some very valuable information in BC 1.100. Appian states that although Sulla in 82 allowed the People to appoint consuls for 81, he was dictator over them like a reigning sovereign. Appian goes on to explain that twenty-four axes were borne in front of him as dictator, the same number that were borne before the ancient kings, and that Sulla was also accompanied by a large body-guard70. Appian clearly emphasizes that in terms of public law, Sulla was equal to the ancient Roman kings as dictator, since he was likewise (everywhere) preceded by twenty-four

64 Seager (as in n. 14), p. 200.
66 Kunkel & Wittmann (as in n. 14), p. 120, n. 66. Kunkel & Wittmann know the problematic passage in the Periochae of Livy, but confine themselves to the observation that the original representation of the facts in Livy was perhaps deformed by the epitomator’s far too drastic summarizing.
67 In my opinion, the dictatorship was indeed a republican creation (see, for example, Livy 2.18.5), the office being assigned twenty-four lictors/fasces from the very beginning.
68 De Sanctis (as in n. 52), 5. De Sanctis explains that Sulla « conservò naturalmente per primo anche entro il pomerio le securi nei fasci nè si curò, ben inteso, di abassare i fasci stessi nell’esercizio dell’imperium domi ». However, a magistrate cum imperio was entitled to carry his fasces within the pomerium at any given time (see e.g. Suet. Caes. 20), while the secures could only be attached in case of the assumption of a military command, i.e., in general only outside the pomerium.
69 I.e., normally, within the pomerium and its immediate periphery, being the area traditionally reserved for civil life, and in his official dealings with Roman citizens outside the Urbs.
70 αὐτός δ’ οία δὴ βασιλεύων δικτάτορ ἐπὶ τοῖς ὑπάτοις ἤν· πελέκεις τε γὰρ ἐχέροντο πρὸ αὐτοῦ, οία δικτάτορος, εἰκοσι καὶ τέσσαρες, ὡσι καὶ τῶν πόλει βασιλέων ἡγούντο, καὶ φυλακῆς τοῦ σώματος περιέθετο πολλὴν.
lictors carrying both *fasces* and *secures*\(^{71}\). It is illuminating to compare this representation of the facts with Dionysius 2.29.1, where it is reported that Romulus used to sit in judgment in the most conspicuous part of the Forum, and that as part of these sessions of the court, his (twelve) lictors there scourged those whose offences deserved it and beheaded others in public who were guilty of the greatest crimes with the rods and axes. It is sufficiently well known that, to the Romans, the unrestricted and unconditional power of life and death was one of the most characteristic and offensive features of *regnum*. The evidence from Appian is to be compared also with what Dionysius says in 5.75.2 about the exploits of the first dictator, T. Larcius Flavus, in 501. Dionysius tells that shortly after Larcius had assumed the dictatorship and appointed Spurius Cassius as his *magister equitum*, he ordered his lictors to carry the axes with the *fasces* through the Urbs, by which act he revived once more a custom that had been observed by the kings but was abandoned by the consuls after Valerius Publicola in his first consulship had lessened the hatred felt for that magistracy\(^{72}\). Dionysius explains that Larcius deliberately staged this threatening display of these symbols of royal power in order to terrify the turbulent and the seditious\(^{73}\). Finally, there is the illuminating example of the *decemviri legibus scribundis*. In 450, the second set of *dece-mviri* decided to give up the turnus of the *fasces*, so that, *centum uiginti lictores forum impleuer ant et cum fascibus secures inligatas praeferebant ; nec attinuisse demi securem, cum sine prouocatione creati essent, interpretabantur, « a hundred and twenty lictors crowded the Forum, and before them they carried axes bound up in the rods. And indeed the decemvirs explained that there had been no reason for removing the axe, since the office to which they had been chosen was without appeal »\(^{74}\).

\(^{71}\) Appian obviously lays the stress on the twenty-four axes. See also *BC* 1.105 for the fact that the *secures* where a prominent feature of Sulla’s dictatorship since they were ostentatiously displayed during his funeral procession.

\(^{72}\) In 5.19.3f. and 10.59.5f., Dionysius explains that the custom of attaching the axes to the bundles of rods in the sphere *domi* was abolished by the consul P. Valerius Publicola in 509, and emphasizes that this measure was a cornerstone of the *libertas Populi*.

\(^{73}\) This means that the view of De Martino (as in n. 20), p. 75f. to the point is only partly correct. De Martino believes that the dictator had twenty-four lictors until the *dictatorium imperium* was made subject to the *ius prouocationis*, because the dictator until then « poteva avere domi anche il comando militiae », and that this number was reduced to twelve only after this extension of the *ius prouocationis*. De Martino argues that the fact that the *lex Valeria* assigned twenty-four lictors to Sulla indicates that « la legge attribuiva a Silla il potere di vita e di morte sui cittadini senza possibilita di appello ». Kunkel & Wittmann (as in n. 14), p. 673 suggest that the extension of the *ius prouocationis* to the dictatorship (in the sphere *domi*) only occurred after 287.

\(^{74}\) Livy 3.36.4. See also Livy 3.33.9f. ; 3.36.6f. ; 3.55.5 ; Cic. *Rep*. 2.61f. and Dion. Hal. 10.58.1 & 59.3-6 for the fact that the *decemviri* were entitled to exercise their office *sine prouo-catione*, which meant that they could make use of both their *fasces* and *secures* everywhere and at any given moment. Dionysius literally writes (10.59.5) that the people « were terrified by the axes attached to the bundles of rods which were borne by the lictors, twelve of whom pre-ceded each of the decemvirs… as had been the practice formerly under the kings ». 
There is also ample indirect proof of the existence of such a clause in the *lex Valeria*, if only because this was — to the prevailing republican standards — yet another completely objectionable prerogative. In *Leg*. 1.42, Cicero records that the *lex Valeria* invested Sulla with the power to execute Roman citizens at will: *interrex noster tulit ut dictator, quem uellet ciuium uel indicta causa impune posset occidere.*

Plutarch and (the consul Aemilius Lepidus in) Sallust too (*supra*) attest that Sulla was given unrestricted power of life and death. That the dictator did not even refrain from killing some of the most prominent politicians by virtue of this extraordinary prerogative is shown by the ruthless execution of Lucretius Ofella75.

Commander-in-chief of the entire Roman empire

To my thinking, there is every indication that the Valerian Law explicitly charged Sulla with the supreme command of the whole of the Roman dominion, both in Italy and in the *provinciae Populi Romani*. This means that regardless of their status or station, all other Roman *imperatores* fell under his *sumnum imperium auspiciumque*. In the first place, there is the above-mentioned statement of the consul M. Aemilius Lepidus that, among other things, « provinces and kings » were at Sulla’s discretion during his dictatorship76. Lepidus’ words clearly indicate that the dictator’s *imperium* extended over the Roman provinces. Secondly, Appian records in *BC* 1.100 that Sulla as dictator generously rewarded no fewer than twenty-three legions that had served under him. Since until his invasion of Italy, the core of his army had been formed by those six legions he had received in 88 as *exercitus consularis* for the Mithridatic war77.

75 Hurlet and Kunkel & Wittmann seem to ignore the fact that Sulla was dictator *sine prouocatione*. Hurlet (as in p. 37, footnote), p. 161, 177f. for example argues that Lucretius Ofella was executed « en application de la nouvelle *lex Cornelia de magistratibus* », while the proscriptions were supposedly legalized (post factum) by *lex Cornelia de hostibus rei publicae*. Kunkel & Wittmann (as in n. 14), p. 707f. likewise argue that « Die Proscriptionen Sullas beruhten nicht unmittelbar auf seiner politischen Ausnahmegewalt, sondern wurden zunächst durch die lex Valeria… und später durch die lex Cornelia de prospicione gerechtiftigt », and also suggest that Ofella was executed because he was seeking the consulship without being legally qualified to do so. Kunkel & Wittmann (*op cit.*, p. 704, 707) also suggest that the clause which supposedly gave Sulla the right to introduce bills without preliminary approval on the part of the Senate at once ruled out *intercessio tribunicia* against the dictator’s rogations. That no *intercessio* whatsoever was possible against the dictator’s decisions was, of course, a direct consequence of the fact that Sulla was dictator *sine prouocatione* (*cf.* also Livy 3.36.6 for the necessary connection between suspension of the tribunician *ius intercessionis/auxilii* and the existence of an office *sine prouocatione*).

76 In my opinion, this revealing enumeration corroborates the hypothesis that the Valerian Law conferred a well-defined series of extraordinary powers upon Sulla. For the sake of his argument, Lepidus refers to some of the most objectionable of these, viz. the dictator’s power to issue edicts with the force of law, his special criminal jurisdiction, his power to declare war or make peace, and his overall control of the *aerarium*.

77 *Cf.* App. *BC* 1.57; *Mithr. 30* & *Plut. Sull*. 9.3 for the fact that Sulla commanded six legions in 88. Velleius Paterculus similarly records in 2.24.3 that Sulla disposed of (only) 30 000 soldiers at the time he landed at Brundisium.
Sulla must have formally assumed the supreme command of the whole of the Roman army immediately after his appointment to the dictatorship. Thirdly, there is some unequivocal evidence of the dictator issuing direct orders to the *imperatores* in the field. In *Pomp.* 11.1, Plutarch relates that while Pompeius was still engaged as *praetor* in Sicily settling its affairs according to the wishes of Sulla, he received a decree of the Senate and a letter from Sulla, ordering him to cross over to Africa and to wage war against Domitius Ahenobarbus. In *Pomp.* 13.1, Plutarch reports that, after his dashing campaign in Africa, Pompeius returned to Utica, where he again received a letter from Sulla commanding him to send home the bulk of his army, and to remain there himself with one legion pending the arrival of the commander who was to succeed him. Plutarch’s attestation of the Senate’s official involvement in the decision to dispatch Pompeius to Africa is very fortunate since it indicates that the dictator chose to exercise his prerogative of overall commander of the Roman empire in consultation with the Senate. This deduction is confirmed by what is known about the decision-making concerning the tenure of L. Licinius Murena in Asia during the same period. In *Mith.* 65, Appian records that in 82, Mithridates sent an embassy « to the Senate and to Sulla » to complain of Murena’s unwarranted aggression. The Senate consequently commissioned one Calidius to order Murena not to molest the king anymore. In *Mith.* 66, Appian goes on to say that since Murena ignored the Senate’s will, the dictator sent A. Gabinius (*cos.* 58) to Asia to make it clear to him that the former order to cease invading the territory of Mithridates was to be taken seriously. In *Man.* 8, Cicero indicates that Sulla at once ordered Murena to return to Italy. In this respect, it is also significant that it was Sulla who finally gave Pompeius permission to celebrate a full *triumphus publicus* in March 81. The attested protest of one prominent Servilius, however, shows that the dictator must have taken this decision also in consultation with the Senate, the body that traditionally decided in these matters. Since Pompeius had conquered in Africa under the...
supreme command of Sulla, the dictator was perfectly entitled to have a say in the decision-making concerning the propraetor’s bold request.

In light of the above, Plutarch’s assertion in *Sert.* 25.2. that Sulla became ἀρχων συμπάσσει γῆς καὶ θαλάττης is to be taken at face value. Although in 203 the Senate commissioned a dictator *c.h.c* to recall the consul Cn. Servilius Caepio from Sicily to Italy by virtue of his *imperium maius* (because he had crossed over to Sicily with the intent to cross over to Africa itself), Sulla was indeed the first Roman *imperator* who was explicitly authorized to exercise his *imperium* over the entire Roman empire, in Italy as well as in the provinces. As Sulla held this *imperium* in the capacity of dictator, it was by definition *maius* vis-à-vis the *imperium* of both the other magistrates and all the *imperatores* in the field.

3. The *tempus legitimum* of Sulla’s dictatorship and the date of his abdication

The matter of the *tempus legitimum* (i.e., the term of office as legally defined) of Sulla’s extraordinary dictatorship is anything but a crux. As the sources clearly show, the *lex Valeria* stipulated that Sulla need not lay down his dictatorship before issuing the necessary legislation and re-establishing the Roman Republic on a firm basis. Since Sulla was, as a consequence of his exceptional official mandate, the only authority entitled to take a decision in this matter, and since his public measures had the force of law, this provision implied that Sulla could retain his dictatorship as long as he was convinced of its necessity. Therefore, it should not come as a surprise that Appian in *BC* 1.3 observes that Sulla’s term of office was unlimited, where it is said that Sulla, although he was nominally ‘elected’, became dictator for life by force and compulsion. Appian also relates that Sulla laid down supreme power voluntarily, and even ventured to declare that he would render an account of his official acts to any who were dissatisfied with it. After his abdication, Sulla was able to pursue his life unmolested as a private citizen. In *BC* 1.4, Appian notes that Caesar, having overpowered his opponents by war, « was chosen next after Sulla dictator for life »: δεύτερον ἐπὶ Σὺλλα δικαίως ἐς τὸ διπλέκες ἔρθη. Although *de iure*, the *tempora legitima* of Caesar’s dictatorships differed substantially from Sulla’s legal term of office, his being chosen *dictator perpetuus* at the
beginning of 44 means that the tenure of his last dictatorship was *de facto* not different at all from Sulla's term of office. It needs to be strongly emphasized, however, that in terms of public law, there was of course a fundamental difference between Sulla’s *dictatura legibus scribundis et rei publicae constitutae*, which at least formally implied the intent to abdicate *legibus datis et re publica constituta*, and the *dictatura perpetua*, which was meant to last until the death or abdication of the dictator involved. That Sulla probably explained his abdication by referring to the intention of the *lex Valeria*\(^90\), is shown by Aur. Vict. *Vir. Ill. 75.12 : re publica ordinata dictaturam deposuit*. Considering that Sulla was in a position in 82 to have himself appointed *dictator perpetuus*\(^91\), and with what we know about the definition of his term of office and his official mandate, Wilcken’s conclusion that Sulla intended from the outset to abdicate on an unspecified day, and that he at least formally recognised « die mit der Diktatur verbundene Abdankungspflicht » should not be called to question\(^92\).

Thus, although Sulla was evidently not bound to abdicate after a period of six months, like the dictators of old, the arrangement concerning his term of office was not a complete breach of traditional practice. In a fundamental and authoritative study of 1953, U. Coli convincingly demonstrated that regardless of the maximum term of six months, dictators were expected to abdicate, and generally did so, as soon as the specific task for which they were appointed was fulfilled\(^93\). To the extent that it was the intent of the Valerian Law that Sulla should abdicate upon completion of his task, the term of Sulla’s dictatorship was, at least theoretically, in accordance with customary practice. Due to unusual circumstances, the sorry state of the Roman Republic and the

\(^90\) De Martino (as in n. 20), p. 73f. argues that Sulla became dictator until he thought fit to abdicate, but that is was indeed the intention of the *lex Valeria* that Sulla should abdicate after the restoration of the *Res Publica*.

\(^91\) As dictator, he could also have decreed an unlimited extension of his term of office.

\(^92\) U. Wilcken, *Zur Entwicklung der römischen Diktatur*, Berlin, 1940, p. 7; cf. also Hurlet (as in p. 37, footnote), p. 165-168. Conta Ehrenberg (as in n. 20), p. 125, where it is argued that « it seems unlikely that at that moment even he would have acknowledged any “compulsion to abdicate” » and K. Christ, *Sulla. Eine römische Karriere*, München, 2002, p. 122, who claims with no further explanation that Sulla could stay in office « so lange er wolle ». Valgiglio (as in n. 13), p. 66 correctly explains that « l’illimitatezza era solo potenziale, non giuridica ». Sordi (as in n. 23), p. 86 asserts also that « In modo coerente con la funzione che gli era stata affidata Silla aveva abdicato dalla dittatura al termine della sua opera repressiva e legislativa, mostrando di ritenere ancora il potere dittatoriale delimitato, se non da una scadenza precedentemente stabilita, almeno da una funzione costituzionale ». See in the same sense also Seager (as in n. 14), p. 199 : « It perhaps needs to be emphasized that Sulla was not appointed dictator for life. The definition of his mission, broad though it was, constituted in itself a kind of time-limit, albeit an inevitably vague one. It was taken for granted that when Sulla had completed that mission according to his lights he would lay down his dictatorship, and there is nothing but the anachronistic surprise of later sources to suggest that Sulla himself considered for a moment the possibility of trying to retain his power for life. » According to Suetonius *Diu. Iul. 77*, Titus Ampius recorded that Caesar once arrogantly declared in public that Sulla did not know his A.B.C. when he laid down his dictatorship : *Sullam necisse litteras, qui dictaturam deposuerit*.

formidable extent of his official mandate, however, Sulla must have decided that it made no sense to confine his special dictatorship to specific *termini*.94

The exact date of Sulla’s official resignation, on the other hand, remains a matter of dispute. Following E. Badian, many scholars argue that Sulla laid his dictatorship down on the last day of 8195, while others opt for the last day of 80.96 In my view, however, the sources unambiguously attest that the dictator abdicated only in 79. In BC 1.103, Appian records that, τὸ δ’ ἐπίτοντος ἔτους Σύλλας, καίπερ ἄν δικαίως, ἐς ὑπόκρισιν ὁμοὶως καὶ σχήμα δημοκρατικῆς ἀρχῆς ὑπέστη καὶ ὑπάτως ἀνθετὺς γενέσθαι σὺν Μετέλλῳ τῷ Εὔσεβει, οὐτοὶ τὸν Ἐὐσεβίον τὸν δικαίου ὑπερείναι καὶ ὑπάτου εὐγενεῖαν σὺν Μετελλῷ τῷ Εὐσεβεί, « the following year [i.e., 80] Sulla, although he was dictator, undertook the consulship a second time with Metellus Pius for his colleague, in order to preserve the presence and form of republican government ». Appian’s subsequent observation that Sulla’s decision to hold the consulate in 80 perhaps inspired the imperial practice of holding the consulate from time to time while wielding the supreme power (cf. *supra*) also shows that Sulla combined his second consulate with his special, privileged dictatorship. Appian goes on to say that, τὸ δ’ ἐξῆς ἔτει ὃ μὲν δῆμος καὶ τότε τὸν Σύλλαν θεραπεύον ἤρειτο ὑπατεύον, ὃ δὲ οὐκ ἀνασχίμως ὑπάτους μὲν αὐτοῖς ἀπέφηγε Σερούλλου Ισαυρίκου καὶ Κλαύδιον Πούλχρον, αὐτοὶς δὲ τὴν μεγάλην ἀρχὴν οὐδὲνος ἐνυπαλόντος ἐκὼν ἀπέθετο, « the next year [i.e., 79] the People, in order to pay court to Sulla, chose him consul again, but he refused the office and proclaimed Servilius Isauricus and Appius Pulcher as elected», and voluntarily laid down the supreme power, although nobody interfered with him ».

Whereas Appian misdates Sulla’s election to a third consulate and the subsequent *renuntiatio* of Servilius Isauricus and Claudius Pulcher as consuls-elect for 79, he clearly records that Sulla’s abdication from the dictatorship took place during the year after his second consulate. In 1.104, Appian furthermore

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94 Cf. Valgiglio (as in n. 13), p. 65: « Abbiamo qui un’ analogia colla dittatura repubblicana: Silla doveva mantenere il potere finché lo esigesse la situazione politica, e non oltre. » Cf. in the same sense Keaveney (as in n. 14), p. 165: « Like previous dictators, Sulla had been appointed to end a crisis, and when he had done that he resigned his office. » Keaveney, however, asserts that the clause which allowed Sulla to hold power for as long as was necessary to remedy the situation was no vague formula but rather a literal injunction to be strictly obeyed. In my opinion, this argument is less plausible, since Sulla was the only one capable of determining when his task would be completed.


97 Appian’s wording clearly indicates that Sulla presided over the *comitia consularia* of 80.
records that Sulla made a speech in the Forum when he laid down his office (τὴν ἀρχήν ὑποτιθέμενον), in which he offered to give the reasons for what he had done to anybody who should ask them. He then dismissed his lictors « with their rods and axes » — an additional indication that he still held his dictatorship sine provocatio — and discontinued his bodyguard, and for a long time walked to the Forum with only a few friends, the multitude looking upon him with awe even then. Once only when he was going home, Sulla was allegedly reviled by a boy, who even dared to follow him to his house as nobody restrained him. Sulla endured his reproaches with remarkable calmness and is said to have prophesied that « This young man will prevent any future holder of such power from laying it down. » First, Appian’s account clearly shows that after his official resignation from the dictatorship, Sulla was simply a private citizen. Secondly, this provocative and theatrical performance by itself only made sense if Sulla did not intend to hold any magistracy cum imperio in the near future, but not if he were consul (designate) at the time. It seems most likely, therefore, that Sulla laid his dictatorship down at the very outset of 79. In BC 1.104, Appian also relates that Sulla

98 In BC 1.3, Appian likewise relates that Sulla was the first man who held tyrannical power and had the courage to lay it down voluntarily and to declare that he would render an account of his official acts to any who were dissatisfied with them. Appian points out that for a considerable period, Sulla walked to the Forum as a private citizen in the sight of all and returned home unmolested, and explains that the onlookers either stood still very much in awe of his government, or were still amazed at his laying it down.

99 Contra G.V. Sumner, « Manius or Mamercius ? », JRS, 54, 1964, p. 45, n. 44 ; B. L. Twyman, « The Date of Sulla’s Abdication and the Chronology of the First Book of Appian’s Civil Wars », Athenaeum, 54, 1976, p. 77-97, 271-295 and Kunkel & Wittmann (as in n. 14), p. 711, who argue in favour of the second half of 80 as the time of Sulla’s abdication. Twyman’s main argument that Appian fails to draw a distinction between renuntiatio and magistratum inire, and merely indicates in BC 1.103 that Sulla was dictator as well as consul designatus (in 81) strains belief. Although Seager (as in n. 14), p. 205 rightly points out that this challenging act would be curiously hollow if Sulla did this on the last day of 81, when he and everyone else knew perfectly well that on the next morning, he would once more hold imperium and be attended by lictors, he argues that « It is therefore tempting to believe that Sulla, who understood the theatre, gave up his dictatorship long enough before the end of 81 for his gesture to have at least some dramatic force ».  

100 In 5.22.1, Orosius asserts that Sulla finally returned to a private station « after the election of Servilius Isuricus and Claudius Pulcher » : Cretis itaque P. Servilio et Appio Claudio consulibus usus est tandem Sylla priusatus. Although this assertion need not necessarily be in contradiction with the hypothesis that Sulla laid his office down after his second term as consul had expired, it is quite possible that Orosius simply wanted to indicate that Sulla resigned immediately after the consuls of 79 entered upon their office, but somehow failed to express this properly. As Sulla held the consulship throughout 80, he could not have been a private citizen immediately upon their election. The view that Sulla abdicated sometime at the beginning of 79 was previously also held by Mommsen (as in n. 21), p. 367 (« bald nachdem die neuen Konsuln Publius Servilius und Appius Claudius ihr Amt angetreten hatten ») ; Fröhlich (as in n. 59), c. 1562 ; W. Drumann, P. Groebe, Geschichte Roms in seinem Übergange von der republikanischen zur monarchischen Verfassung, 2, Leipzig, 1902, p. 421f. ; Pareti (as in n. 36), p. 637 (February 79) ; C. Meier, Res Publica Amissa. Eine Studie zu Verfassung und Geschichte der späten römischen Republik, Wiesbaden, 1966, p. 260, n. 348 ; I. Schatzman, « Four Notes on Roman Magistrates », Athenaeum, 46, 1968, p. 345-347, and A. Giovannini, Consulare imperium, Basel, 1983, p. 83, all of whom refer to Appian BC 1.103.
retired from Rome not too long after laying down his dictatorship (ἐκ τυράννου) to pass his time in rural solitude on his estate in Cumae, where he spent his leisure time hunting and fishing. In BC 1.105, Appian finally indicates that civil strife was renewed « directly after his retirement » as a consequence of Aemilius Lepidus’ decision to run for the consulship of 78.

From Sull. 34.3-5, it is, furthermore, clear that Sulla abdicated a considerable time before the *comitia consularia* of 79. Plutarch here likewise records that Sulla, after having slain a great number of citizens and introduced great institutional innovations and changes, laid down his office and « made the People master of the consular elections (again) ». Plutarch explains that when the *comitia consularia* were held, Sulla did not go near them himself, but walked up and down the Forum like private man (*ὁσερ ἵδιώτης*), exposing his person freely to all who wished to call him to account. Since this is a clear reference to Sulla’s theatrical abdication and the fact that he dared to stay around as a private citizen afterwards, this statement should be taken at face value, i.e., as proof that Sulla indeed witnessed the build-up to the consular elections of 79 as a *pripus*. It is at any rate important to ascertain that Plutarch connects Sulla’s abdication of the dictatorship with the restoration of truly free consular elections in 79. Plutarch goes on to say that when the People subsequently elected M. Aemilius Lepidus, contrary to Sulla’s wishes and owing to Cn. Pompeius’ zealous canvassing on his behalf, Sulla confined himself to giving the ambitious young eques a severe and prophetic warning.

By making way for the consuls of 79 to fully resume their traditional prerogative of supreme magistrates in the Roman Republic, Sulla’s abdication at the outset of this year completed the return to normality initiated by his election to a second consulship in 81. Appian’s observation that Sulla undertook the consulship a second time « in order to preserve the pretence and form of democratic government » (cf. supra) clearly indicates that Sulla’s second consulship was an official statement that Republican politics were now to resume their traditional course, irrespective of the fact that Sulla stuck to his dictatorship in 80. To my thinking, it is precisely against this background of a progressive and carefully staged normalization that one has to interpret those passages from the work of Cicero and Plutarch which Badian adduces as solid proof of a resignation as early as the last day of 81.

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101 *Contra* J. Carcopino (as in n. 36), p. 208f., who argues in favour of an abdication shortly after the *comitia consularia* of 79 (i.e., during the summer of 79). Carcopino’s chronology is accepted by—among others—Broughton (as in n. 29), 82. In his *Supplement to the Magistrates of the Roman Republic*, Ann Arbor, 1960, p. 75, Broughton, however, affirms that a date later than 80 is very unlikely.

102 See also Plut. *Pomp.* 15 for this episode. It seems as if Sulla had returned to Rome shortly before the *comitia consularia* of 79.

103 Badian (as in n. 95, art. 1970), p. 8–14. Badian also argues that as well the *σύνος ἐν τῇ μεγάλῃ ἀρχῇ...* oπέθηκε in App. BC 1.103 as the *ἀπόθεσις* τῆς ἀρχῆς in Plut. Sull. 34.3 simply indicate that Sulla laid down « a magistracy », and that this office was none other than his second consulate. The wording in Appian and Plutarch, however, unambiguously points to the voluntary act of *sé magistratu abdicare* which was required for dictators, and not to the automatic
In *Rosc. Am.* 139, a speech dating from 80, Cicero affirms that, *dum necesse erat resque ipsa cogebat, unus omnia poterat; qui posteaquam magistratus creauit legisque constituit, sua cuique procuratio auctoritasque est restituta*, « while it was necessary and the state of affairs demanded, one man alone possessed all power; but after he created magistrates and established laws, everyone’s sphere of duty and authority was restored to him ».

Although Cicero unquestionably alludes to some important turning point in Sulla’s administration of state affairs, this intriguing statement need not imply that he abdicated already in 81. If that had been the case, Cicero could have easily made this clear. Cicero does, however, indicate that Sulla started to relax his regime as plenipotentiary dictator in the course of this year. Cicero’s words strongly suggest that sometime before the consular elections of 81, when he had realized the bulk of his legislative program, Sulla may have issued an edict proclaiming that the *Res Publica* had been reestablished and inviting the traditional magistrates to actively resume their customary political roles.

As Cicero’s potentially dangerous defense of Roscius Amerinus took place while Sulla was still retaining his dictatorship, the great orator had of course no choice but to pay lip service to Sulla’s staged return to political normality. In *BC 1.100* (cf. *supra*), Appian emphasizes that irrespective of the election of M. Tullius Decula and Cornelius Dolabella to the consulship of 81, Sulla acted as dictator over the consuls « like a reigning sovereign ». Cicero’s intriguing statement indicates that in the course of 81, Sulla initiated quite a different policy in this respect.

In *Sull. 6.5*, Plutarch notes that Sulla seemed « to attribute more to Fortune than to his own excellence, and to make himself entirely the creature of this deity, since he accounts even his concord with Metellus, a man his equal in rank (ἰσότιμων ἄνδρα), and a relative by marriage, a piece of divine felicity; for whereas he expected much annoyance from him as a colleague in office (ἐν τῷ κοινωνία... τῆς ἄρχης), he found him most obliging. »

In my opinion, this valuable passage shows that Sulla was still really dictator in 80, but presented himself solely as consul. Plutarch’s words clearly reveal that Sulla intended to govern the Republic in 80 in the capacity of consul,

*magistratu abire* at the end of a consul’s tenure. Moreover, a little further in *BC 1.103*, Appian indicates that Sulla explicitly proclaimed himself a private citizen : ἐγώ ἄνεγμα τυλίγων. Coli (as in n. 93) conclusively demonstrates that the annual magistracies (*consulatus, praetura, quaestura*) differed fundamentally from magistrates like the *dictatura* and the *censura* in that the first category of magistrates lapsed *de iure* at the end of their official term, while dictators and censors stayed in office until they formally abdiicated, even if the fixed deadlines for abdicating had expired.

In my opinion, it is quite possible that Cicero paraphrases the content of this edict in *Rosc. Am.* 139.

To my thinking, it is quite clear from *Cic. Brut. 312* and especially Plut. *Cic. 3.2-5* that Roscius’ trial took place while Sulla still held his menacing dictatorial powers.

Plutarch obviously refers to the fact that Metellus and Sulla were equals in terms of social standing, since both men had consular ancestors and stemmed from some of the noblest senatorial families, whereas in terms of (semi-)official standing, Sulla outranked Metellus in 81 as well as consular and as dictator.
and in close consultation with his colleague Q. Caecilius Metellus Pius. Hence his satisfaction with the fact that a man of Metellus’ calibre, whose younger relative C. Metellus had apparently dared to criticize his proscription during the senatorial meeting of 2 November, 82, did not seize the occasion to obstruct Sulla or make any difficulties about his prolonged dictatorship and his political program. The suggestion that Sulla decided to present a moderate and republican image as consul in 80 is further corroborated by a couple of lines from a Greek transcript of a senatus consultum: Λεοντις Κορνήλιος Λευκίου [υἱός Σολλευ Άπαρθίτου άπατος] το δεύτερον 107.

These indications suggest that Sulla chose to relax his regime gradually in order to create the optimal conditions for his formal abdication. Rather than to give up his iron grip on political life in Rome all of a sudden, Sulla preferred to work towards full normalization and his abdication along gradual lines. As a matter of fact, Plutarch indicates in Sull. 6.8 that Sulla had the habit of relaxing his severity out of calculated regard for his interests. Especially after his controversial proscription and the enactment of an impressive series of (often harsh) laws in 82 and 81, Sulla had every interest in slackening the reins in order to placate Senate and People and to pave the way for his eventual abdication. As the instrument of his draconic measures, Sulla’s absolute dictatorship was inextricably connected with one of the most gruesome episodes in the history of the Roman Republic. Therefore, Sulla chose to organize a phased return to normalcy and gradually shifted the emphasis from his dreadful dictatorship to the consulship. In 81, the dictator first invited the consuls and the other magistrates to resume their traditional roles in state matters. Next, he stood for the consulship himself and ran the Republic in 80 as consul with the respectable Metellus Pius as a colleague, making sure that he was merely styled consul II in public documents issued that year by the authorities in Rome.

It is worth calling to mind in this respect that from 31 until his formal resignation as triumvir rei publicae constitutae at the outset of 27, C. Iulius Caesar Octavianus also cumulated the consulship with an extraordinary magistracy. After defeating Antonius and Cleopatra, he likewise orchestrated a phased return to normalcy and (temporary) consular supremacy, a process culminating in the theatrical and momentous settlement of January 27 108.

107 Since Metellus had been one of Sulla’s foremost generals during the civil war preceding his dictatorship, together with Cn. Pompeius, M. Licinius Crassus and Servilius Isauricus (cf. Plut. Sull. 28.8), he could have hardly debarred him from running for office in 81.

108 Cf. Plut. Sull. 31.1

109 Sherk, RDGE, nr. 20, c. I, A, ll.1f. (Thasos). Hurlet (as in p. 37, footnote), p. 65, however, argues these words plainly confirm Badian’s hypothesis. In Sherk, op. cit., nr. 19 (s.c. de Cernis, obviously issued in 80), Sulla is apparently also referred to as consul II. See Sherk, op. cit., nrs. 18 & 49 for Sulla being styled dictator in documents that evidently stem from 81. In Sherk, op. cit., nr. 23, a senatorial decree of 73, the year 80 is referred to as ἐπὶ Λαυκίου Σολλα Ἐπαφρόδιτου, Κοίνου Μετέλλου Ἐσσενίου ὕπατον in ll. 52f.

During these years, Octavianus, too, preferred to present himself as *Imperator Caesar divi Iuli filius* and consul rather than as *triunvir*\(^{111}\). Only one other important aspect of this carefully staged road map towards the much-advertised *Restitutio Rei Publicae* was Octavianus’ decision of 28 to reinstate the consular (*turnus*) of *fasces* and the consuls’ role as leading magistrates of the *Res Publica*\(^{112}\). Not surprisingly, Octavianus staged this gradual return to normalcy while he was holding his sixth consulate with M. Vipsanius Agrippa, his most trusted lieutenant, as his colleague. Since the consuls had to dismiss their lictors/*fasces*...
in the presence of a dictator\textsuperscript{113}, and since Sulla decided to stay in Rome during the entire term of his dictatorship, he may have likewise ordered that, from a given moment in 81, the consuls were again entitled to hold their \textit{fasces} alternately, notwithstanding the dictator’s presence in Rome\textsuperscript{114}. By virtue of this measure, the consuls of 81 officially resumed their customary role of Rome’s principal magistrates, henceforth under the dictator’s now rather nominal, but watchful, supervision. This formal reinstatement of the consuls’ foremost prerogative would have been an eloquent display of the dictator’s seriousness about normalizing political life, as well as a strong incentive to the rest of Roman officials to resume their duties and take part in this process. As indicated in the above, Sulla’s decision to run for the consulship of 80 and to manage the Republic in conjunction with none other than Metellus Pius was a second significant step to full normalization of Roman political life\textsuperscript{115}.

In light of the above, Appian’s statement in \textit{BC} 1.103 that Sulla undertook a second consulship in 80 « in order to preserve the pretence and form of republican government » should be taken at face value. Sulla’s second consulship was not only the crowning glory of his work as a statesman, but also confirmed the reinstatement of the traditional \textit{Res Publica}\textsuperscript{116}. Since Sulla cumulated the consulship of 80 with his dictatorship, he was, moreover, in the best

\textsuperscript{113} Livy 22.11.5 & Plut. \textit{Fab}. 4.3 both record that in 217, after lake Trasimene, the dictator Q. Fabius Maximus ordered the consult Cn. Servilius Geminus to dismiss his lictors and lay aside the \textit{insignia} of his office, and appear before him as if he were a private person. Although the dismissal of a magistrate’s lictors normally symbolized his discharge, it is beyond all doubt that Cn. Servilius stayed in office for the remainder of 217 (Broughton, as in n. 29, p. 242 — see Livy 22.9.10 for the fact that M. Atilius Regulus was elected consult in place of C. Flaminius). Therefore, it is better to assume that the consuls were simply obliged to dismiss their lictors temporarily when being in the presence of a dictator. Evidently, this was powerful official acknowledgement of the institutional reality that whenever one or both consult(s) and a dictator were present in Rome or were campaigning jointly, the \textit{summum imperium auspiciumque} automatically devolved upon the dictator by virtue of his \textit{maius imperium} and his special status as sole supreme commander.

\textsuperscript{114} Since Sulla assumed overall control of all state affairs in 82 by virtue of the \textit{lex Valeria} (cf. e.g. \textit{Rosc. Am.} 22 \textit{supra}), it is quite possible that this law explicitly confirmed that for the duration of Sulla’s dictatorship, the consuls were permanently deprived of their lictors/\textit{fasces} as long as they did not assume a provincial command and the dictator was present in Rome. Unfortunately, it is impossible to elucidate this matter.

\textsuperscript{115} In light of these considerations, it is quite possible that Sulla presided over the \textit{comitia consularia} of 80 (see App. \textit{BC} 1.103, \textit{supra}) in his capacity of consul rather than as dictator.

\textsuperscript{116} Rich & Williams (as in n. 110), p. 183, 197\textit{E.} cogently argue that Octavianus issued an edict in 28 officially proclaiming the restoration of their laws and rights to the Roman People. To my thinking, Octavianus first of all ordained the restoration of the traditional primacy of the consuls at the very beginning of his sixth consulate by reinstating (the \textit{turnus of}) the consular \textit{fasces}. After normalizing political life in Rome throughout 28, Octavianus abdicated the triumvirate itself at the outset of 27 in what clearly was the apotheosis of his \textit{Restitutio Rei Publicae}. Since our evidence, however scanty, suggests that Sulla may have taken a similar course of action in 81–79 (official reinstatement of consular rule in 81, second consulate with Metellus Pius in 80, and abdication of the dictatorship at the outset of 79), Octavianus’ action in 28/27 may have been inspired by Sulla’s example, just as the \textit{triumviratus rei publicae constituendae} itself was to a significant extent modelled on Sulla’s \textit{dictatura rei publicae constituendae et legibus scribundis}. 

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possible position to make sure that this arrangement would not cause him any major difficulties. His anxiety that Metellus would cause him some trouble as consul indeed gave him all the more reason not to lay down his dictatorship during his second consulsip. Sulla’s theatrical abdication at the outset of 79 was then the grand finale of this carefully staged restoration of consular rule and his *constitutio Rei Publicae* in general. In light of both the trauma caused by his gruesome proscription and his far-reaching legislative measures, it is perfectly understandable that Sulla did not take chances with normalizing political life in Rome.

In a recent contribution, F. Hinard argues that Dio 36.31.4 corroborates Badian’s view that Sulla abdicated already in 81117. In the context of his speech against the *rogatio Gabinia* of 67, in which he makes a strong case for adherence to institutional *mos maiorum* and against the conferment of exces-

sive power upon one man, Q. Lutatius Catulus (cos. 78) points to a couple of inauspicious past deviations from customary practice. Catulus explains that C. Marius changed for the worse because he was entrusted with so many wars in the shortest space of time and held no less than six successive consulates. Catulus next adds that « similarly Sulla became what he was because he held command of the armies so many years in succession, and later was appointed dictator, then consul »118. Although Hinard convincingly argues that here Dio drew from well-informed sources and that his representation of Catulus’ speech is accurate, he proposes that, « il est difficile de ne pas voir, dans le *eìta* qui sépare la dictature de l’exercice du consulat, l’indication d’une succession et, par conséquent, de comprendre autrement que comme l’affirmation selon laquelle Sylla n’a revêtu la charge de consul qu’après celle de dictateur ». First of all, Sulla’s very presence in Catulus’ shortlist of ominous *exempla* suggests that, in terms of public law, there was something unusual about his dictatorship and second consulate. Although Sulla’s dictatorship was in itself extraordinary in terms of powers granted and tenure, Catulus’ explicit refer-

ence to both Sulla’s dictatorship and second consulship suggests further pecu-

liarities with regard to Sulla’s official status in 81 and 80. In itself, there is nothing special about Sulla holding the consulship shortly after the dictator-

ship119, even more so since he owed both positions to a vote of the People. In a speech directed specifically against the passage of a bill that provided for an unprecedented concentration of huge powers into the hands of one man120, however, Catulus’ words acquire their full meaning. Rather than merely indicating that, chronologically, Sulla was vested first with a dictator-

ship and then with a (second) consulship, Catulus in the first place calls to mind that Sulla undertook an unprecedented cumulation of Rome’s two

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118 ούτε τὸν Σύλλαν ἢ ὅτι τοσοῦτος ἐσφέρετο ἔτεσι τὴν ἀρχὴν τῶν στρατουπέδων ἐσχε καὶ μετὰ τοῦτο δικαύτωρ, εἰθ’ ὑπάτος ἐπέδειχθη.
119 Roman history offers several examples of men holding the consulate shortly after or before the dictatorship.
120 See Dio 36.34.4 & 35.1 ; Cic. *Man*. 52.
Thus, Catulus’ words as summarized in Dio seem to corroborate Appian’s unambiguous statement on the point in BC 1.103. It can therefore be safely concluded that Cornelius Sulla did hold the dictatorship for the unprecedented period of more than two years, assuming the office at the end of 82 and abdicating it at the outset of 79.

121 Although T. Larcius and M. Livius Salinator reportedly cumulated the consulship and the dictatorship in 501 (or 498) and 207 successively (Broughton, as in n. 86, p. 9, 12 and 294f.), Sulla was the first Roman to hold both offices for an entire year.

122 Hinard’s explanation (as in n. 117, p. 428) that Appian (loc. cit.) himself admits « que c’est l’exemple impérial qui l’amène à ces conclusions » is unconvincing. On the contrary, it is precisely Sulla’s cumulation of dictatorship and consulship that prompts Appian’s observation that this sensational move may have inspired the future Emperors. Hinard (art. cit., p. 429-431) next develops the hypothesis that Sulla laid down his dictatorship before the comitia consularia of July 81. Hinard argues that Sulla was eager to assert himself as being respectful of customary constitutional practice and therefore refused to preside over his own election to the consulship of 80 in the capacity of dictator. Sulla obviously did not refrain from organizing the comitia consularia for 81 as dictator, whereas the possibility that one of the consuls of 81 did indeed preside over the comitia consularia for 80 does not rule out Sulla’s staying on as dictator throughout the year. Sulla’s action against Lucretius Ofella, in marked contrast with the rather resigned attitude he adopted vis-à-vis the candidacy of M. Aemilius Lepidus at a time when he undisputedly was a private citizen, also suggests that Sulla partook in the consul elections of 81 as dictator. The fact that in 80 Sulla again presided over the comitia consularia, this time probably in his capacity of consul, neither excludes the possibility that he was still dictator at that time. Hinard next suggests that Sulla laid down his office on the Kalends of June, 81, « date que Sulla lui-même avait fixée, dans la loi de proscription, comme limite au-delà de laquelle il ne serait plus possible de procéder à la vente des biens de proscrits ». Hinard asserts that Sulla limited this procedure to six months precisely because « il désirait la faire coïncider avec le terme de sa magistrature, dont la tradition voulait, en effet, qu’elle ne dure pas plus de six mois ». If Sulla had had the intention to abdicate the dictatorship after six months from the very outset in order to act in accordance with customary practice, why then was he appointed ad incertum? Hinard finally argues that Catulus’ words in Dio 36.34.1f. further corroborate this hypothesis. Catulus argues that the People could always appoint a dictator if there should be any necessity of choosing another commander in addition to the annual magistrates. After calling to mind that the Romans « did not appoint a dictator on all occasions nor for a longer period than six months », he suggests that the People could eventually « elect Pompeius himself or any one else as dictator — on condition that he shall not hold office longer than the established time nor outside of Italy. For surely you are not unaware that this second limitation too was was scrupulously observed by our forefathers, and no instance can be found of a dictator chosen for another country, except one who was sent to Sicily and who, moreover, accomplished nothing ». Hinard asserts that « il fallait bien que le discours de Catulus fût crédible et il ne pouvait l’être si la dictature de Sylla avait duré plus de six mois ». First of all, it is important to point out that Sulla was technically not appointed for a period longer than six months, but ad incertum, until the completion of his official mandate. Second, Sulla was not appointed dictator for some province, but for the entire Roman empire. Finally, it is notable that Catulus only mentions an alleged exception to the second, geographical limitation, viz. the dictatorialship of A. Attilius Calatinus in 249, whereas he conspicuously overlooks any examples of dictators who, owing to exceptional circumstances, stayed on beyond the traditional limit of six months (e.g. Camillus, and, in my view, Sulla). Dio moreover mistakenly claims that it ran counter to (augural?) law to appoint a dictator for an extra-Italian task, since it was only wrongful to invest someone who was outside Italy/the ager Romanus with the dictatorship (see infra). No other source attests that a dictator could not normally operate outside Italy. While Zon. 81.5 and Flor. 1.18.12 merely tell us that Calatinus was active in Sicily, Per. 19 simply records that...
4. Conclusion: the legality of Sulla's dictatorship and its extraordinary empowerment

This inquiry shows that by virtue of the lex Valeria, Sulla disposed of a number of carefully defined extraordinary iura which were not included in the dictatorship as it appeared until the end of the third century BCE. Although Sulla's imperium was, of course, the dictatorium imperium, it was de iure a kind of nouum genus dictatorii imperii, and thus a sort of dictatorium imperium extraordinarium. In accordance with the provisions of the lex Valeria, Sulla was entitled to make decisions which had the force of law, his imperium being furthermore sine provocazione domi militiaeque and valid throughout the entire Roman empire. While, mutatis mutandis, the decemviri consulari imperio legibus scribundis had also held these prerogatives, and Sulla was obviously inspired by this extraordinary magistracy, most of his other attested extraordinary powers he was the first dictator to lead an army out of Italy. Not surprisingly, Catulus also keeps silent about some other notorious deviations from customary rules concerning the dictatorship and its prerogatives (cf. infra). In Phil. 11.171, where Cicero emphatically argues against (the creation of) imperia extraordinaria, he likewise deliberately overlooks the illustrious examples of the Second Punic War. Hinard (p. 431) admits that Orosius' statement in 5.22.1 (cf. supra) might pose a problem for his hypothesis and explains it away with the implausible argument that « si la dictature s’est bien terminée début juin, Sylla revêtit la toga candida, ce qui peut passer pour un statut différent de celui de privatus ; et la même remarque vaut pour le statut de consul designatus qui fut le sien jusqu’au début de l’année 80 ». Even a consul designatus was officially still a private citizen. Hinard finally points out that if Sulla would have wanted to keep imperium as a means of protecting himself against his enemies in 80, he would have preferred a second dictatorship over a second consulship. Precisely in order to ensure a flawless and unhampered return to normalcy, Sulla indeed chose to retain his dictatorship during his entire tenure as consul II. 

In this respect, Valgiglio (as in n. 13), p. 75 rightly points out that « la lex Valeria crea una magistratura nuova nella sostanza ». See n. 1 for the terms dictatorium imperium and nouum genus imperii. In Dom. 24, Cicero stigmatizes the statutorily enhanced imperia consularia of Piso and Gabinius (coss. 58) as extraordinaria imperia (extraordinariis fasibus). In BC 1.85, Caesar brands Pompeius' imperium consulaire — acquired in 57, extended at the beginning of his consulate in 55 with a series of new extraordinary potestates by virtue of the lex Trebonia de provinciis consularibus and prolonged in 52 — as a nouum genus imperii. It is important to emphasize that apart from dictatorium imperium, it concerns non-official definitions.

See Bellen (as in n. 8), p. 566. Kunkel & Wittmann (as in n. 14), p. 704 question that the decemviri were really entitled to enact laws on their own authority, pointing out that « Selbst die Zwölftafeln wurden nicht einfach von den decenviri legibus scribundis in Kraft gesetzt, sondern von den Zenturiatkomitien beschlossen (Livy 3.34.6 ; 3.37.4) ». To my thinking, it should not be doubted that the decemviri had this power. In the first place, Cicero's definition of the decemviri in Rep. 2.61 as maxima potestate sine provocazione… qui et summum imperium haberent et leges scriberent speaks volumes. Although Livy indeed asserts in 3.36.6 that the comitia centuriata met and adopted the first set of ten tables of laws, his words in 37.4 clearly show that the subsequent establishment of two more tables of laws was done without any intervention on the part of the Comitia: Iam et processerat pars maior anni [= 450] et dixit tabulas legum ad proris anni decem tabulas erant adiectae, nec quicquam iam supererat, si eae quoque leges centuriatis comitia perlatae essent, cur eo magistratu rei publicae opus esset. Although Livy's wording shows that men expected the (less considerate) decemviri of 450 to submit their laws to the comitia centuriata, it clearly implies that they eventually refused to do so. In Rep. 2.63, Cicero, who dates the addition of two more tables of laws to 449, likewise attests that it concerns leges datae, and that one of these leges decemvirales was later repealed by the famous lex Canuleia: qui duabus tabulis ini-
were surely unprecedented. Therefore, the dictatorship of Sulla can hardly be compared to the collegial and annual office of *decemuir legibus scribundis*, let alone to the dictatorship as it had existed until 202, of which both the official mandate and the actual use had always been determined and steered by the Senate. On account of these observations, it is difficult to uphold Hurlet’s observations that, « le choix des vingt-quatre faisceaux, de même que la nomination d’un maître de cavalerie, n’étaient pas fortuits et innocents ; par ces actes, Sylla entendait mettre en évidence son respect des règles coutumières et son profond désir de rattracher son pouvoir aux dictatures traditionnelles », and that, « son pouvoir n’était pas une monarchie — puisqu’il n’avait aucune rupture avec le *mos maiorum* —, mais une magistrature républicaine semblable en tout point aux dictatures les plus récentes ».

On the other hand, however, one should never forget that in spite of certain recurrent procedures and characteristic features, the Roman dictatorship had always been an extraordinary magistracy. Hence, depending on circumstances, the (by definition) extraordinary nature of the dictatorship always allowed for the introduction of unusual measures on behalf of any given dic-

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125 See, for example, Livy 7.11.4 ; 27.6.1-6 ; 23.24.1f. & 30.40.4.
126 Hurlet (as in p. 37, footnote), 91 & 149 successively ; cf. also p. 171f. for similar statements. On the other hand, Hurlet (p. 99) asserts that the Valerian Law « revêtait Sylla d’une magistrature extraordinaire et lui octroyait les pleins pouvoirs pour la rédaction de lois et la réorganisation de l’État », and that (p. 169) he was as such invested with « pouvoir absolu ». Cf. also Keaveney (as in n. 14), p. 161, who argues unconvincingly that « in many ways this revived dictatorship closely resembled the office of old, and most particularly with regard to its outward trappings ». On p. 162, Keaveney nonetheless concedes that there were three fundamental differences between Sulla’s dictatorship and those of former times (viz. the method of appointment, his unusual term of office and his special powers, which were « far wider than anything previously conceived »). The suggestions of Ehrenberg (as in n. 20), p. 126f., however, are a bit far-fetched and even anachronistic to my thinking. Ehrenberg propounds that the fact that Sulla « had his lictors not only *militiae*, as the old dictator used to have, but inside the *pomerium* as well » as a sort of manifestation of his « unrestricted *imperium maius* », and that his title of *Imperator* « meant more than the great and victorious general. It was, in fact, an expression of the dictator’s *imperium maius* ». Irrespective of the question whether or not Scipio Aemilianus really considered the possibility of creating a dictatorship *rei publicae constitutendi* in 129 (Cic. *Rep*. 6.12), the analysis of the scope of Sulla’s dictatorship neither warrants Hurlet’s suggestion (op. cit., p. 107) that « il est… très possible que la tâche fixée à Sylla par la *lex Valeria (legibus scribundis et rei publicae constitutendi)* soit une paraphrase explicative de la titulature la plus habituelle et la plus générale de la dictature — *rei gerundae causa* ». 
tator, including the statutory enhancement of his imperium with certain special powers. Tradition, as reflected in Livy, recorded that in 390-389, the dictator M. Furius Camillus held the dictatorship for the unprecedented term of one (calendar) year at the urgent request of the Senate, which would not suffer him to abdicate in a time of utter crisis. In 217, after the disastrous defeat of the consul C. Flaminius at Lake Trasimene, the praetors and the Senate decided to appoint a dictator to face the Carthaginian menace. Since the surviving consul Cn. Servilius Geminus was absent, it was decided for the first time in Roman history to refrain from consular nomination and to have the People directly choose a dictator and a magister equitum: Et quia et consul aberat, a quo uno dici posse videbatur, nec per occupatam armis Punicis Italiam facile erat aut munitionum aut litteras mitti; quod nunquam anteam diem factum erat, dictatorem populus creavit Q. Fabius Maximum et magistrum equitum M. Minucium Rufum.

The year 216 too saw a series of spectacular innovations. During the tenure of M. Iunius Pera (cos. 230), who had been appointed dictator rei gerundae causa after the news of Cannae and was fully occupied by his duties in the field, the

127 See Livy 5.49.8 & 6.1.4f.; Plut. Cam. 28.2 & 31.3. There is a possibility that the dictator of 316, L. Aemilius Mamercinus Privernas, stayed in office during the whole of the consular year 316 at the behest of the Senate: see Livy 9.21f. Livy’s account, however, perfectly allows for the possibility that the six-month campaigns of 316 and 315 were conducted by dictators, while the consuls stayed in Rome for the whole duration of their tenure. A discussion of the so-called « dictator years » is beyond the scope of this paper, the more since A. Drummond, «The Dictator Years», Historia, 27, 1978, p. 550-572 argues that this tradition was forged in 47 in consequence of the controversy concerning Caesar’s (first) annual dictatorship.

128 Livy 22.8.5-7. On the basis of Livy 22.7.14, where it is recorded that this decision was taken by the praetors and the Senate, it is reasonable to suppose that the election was presided over by M. Aemilius, the praetor Urbanus. The view that the election was presided over by one of the praetors is generally accepted, cf. Hurlet (as in p. 37, footnote), p. 38, n. 38. In 22.31.8-11, however, Livy inserts a most remarkable correction of his statement in 22.8. Livy points out that nearly all the analysts state that Fabius was dictator in his campaign against Hannibal, and that Coelius even writes that he was the first to be created dictator by the People. Livy then observes that all of these authorities forget that only the surviving consul had the right of naming a dictator (ius dicendi dictatoris). Livy explains that, owing to critical circumstances, the nation resorted to the popular election of a pro dictator, and that the general’s successes and his great renown, and the additions which accompanied his portrait led easily to the belief that one who had in fact been made pro dictator had been dictator. Since Fabius is termed dictator in all other sources, including Pol. 3.87, the Fasti Capitoline and his Elogium, Livy’s odd self-correction doesn’t sound very convincing (see Mommsen, as in n. 19, p. 147 n. 4: « ohne Grund »). In my opinion, Livy put this conspicuous confession of orthodox republican constitutional procedure into his account at the instigation of one of his powerful patrons from within the domus Augusta. Although it is impossible to ascertain the identity of this « referee », it is interesting to point out that this position of principle also discredits Caesar’s first appointment to the dictatorship by the praetor M. Aemilius Lepidus (cf. infra). Mommsen, loc. cit, however, wrongly supposes that after the enactment of the law, Fabius Maximus was actually named by one of the praetors of 217. Livy unambiguously records that the dictator and his magister equitum were chosen directly by the People. As a matter of fact, Mommsen wrongly equates renuntiatio and dictio. A praetor announcing the election of a certain man to the dictatorship is absolutely not the same as a praetor naming a dictator on the model of a regular consular nomination.
Senate took the unprecedented step of having a much-needed *lectio senatus* conducted by yet another dictator. The Senate decreed that the consul C. Terentius Varro be summoned to name a senator who had previously been censor and was senior to all the other living *censorii*. Livy explains that during the night, as was the custom, in accordance with the decree of the Senate, the consul nominated M. Fabius Buteo (*cos. 245*) for six months without *magister equitum*. This apparently conscious and conservative dictator *legendi senatus causa* subsequently mounted the Rostra with his lictors and declared, *neque duos dictatores tempore uno, quod numquam antea factum esset, probare se dixit, neque dictatorem sine magistro equitum, neque censoriam uim uni permissam et eidem iterum, nec dictatori, nisi rei gerundae causa create, in sex menses datum imperium. Quae inmoderata forsan temporibus ac necessitas fecerit, iis se modum impositurum*, « that he did not approve of two dictators at the same time, an unprecedented thing, nor of a dictator without *magister equitum*, nor of conferring *potestas censoria* upon one man, and in fact to the same man a second time, nor of giving *imperium* for six months to a dictator not appointed ‘for the conduct of affairs’. He said that he would set a limit to such possible irregularities as the crisis and necessity had occasioned ».

After outlining the quite simple and equitable principles on which he was to draw up the list of the Senate, the dictator chose a hundred and seventy-seven men to be enrolled in the Senate with great approval, at once abdicated his office and came down from the Rostra a private citizen, after ordering his lictors to leave him. Livy’s representation clearly shows that the Senate’s decree not only determined precisely who was to be named dictator, but also that this second dictator should not name a *magister equitum*, was to hold *potestas censoria*¹³⁰, and was entitled to stay in office for the full term of six months. The Senate’s decree thus provided for no less than three precedents. In 210, finally, yet another most interesting deviation from standard procedures occurred, once again by decree of the Senate. In consequence of alarming reports about ambitious Carthaginian plans to reinforce Hasdrubal’s army in Spain, to have him invade Italy, and to recover Sicily with a large fleet, the Senate decided not to wait for the elections, but wanted the present consul, M. Valerius Laevinus, to appoint a dictator *comitiorum habendorum causa* and to return to Sicily, his province, at once. The consul, however, insisted on naming M. Valerius Messala (*cos. 226*), who was at that time *praefectus classis* in Sicily. The senators, on the other hand, maintained that a dictator could not be appointed outside of the *ager Romanus*, which was confined to Italy.¹³¹ As

¹²⁹ Livy 23.22.10–23.8.

¹³⁰ Sulla may have « suggested » to Valerius Flaccus that he invest him with certain components of the *potestas censoria* on the strength of this precedent. It is quite possible that Livy paraphrases the dictator’s objections of principle as a form of subtle criticism of Sulla’s special dictatorship and, perhaps, of any prolonged and unwarranted tenure of extraordinary powers.

¹³¹ Ilia disceptatio tenebat, quod consul in Sicilia se M. Valerium Messalam, qui tum classi praeesset, dictatorem dicturum esse aiebat, patres extra Romanum agnum — cum autem Italia terminari — negabant dictatorem dicri poesse. Cf. also Livy 27.29.5f. for the fact that the appointment of a dictator had to occur on the *ager Romanus*. 
a result of this stalemate, the tribune of the plebs M. Lucretius consulted the Senate on the matter, after which it decreed that, before leaving Rome, the consul should ask the People whom they preferred to have named dictator, and should name as dictator the man ordered by the People. If the consul should refuse, the praetor should ask the People; in case of his refusal, the tribunes should bring the matter before the concilium plebis. When the consul refused to submit to the People a question that belonged to his own authority, and forbade the praetor to do so, the tribunes asked the commons and the commons ordained that Q. Fulvius Flaccus (cos. 237, II 224, III 212, IV 209), who was then at Capua, should be named dictator (by one of the consuls). In the meantime, however, on the very day on which this concilium plebis was held, Valerius Laevinus secretly left for his province by night. The Senate had no choice but to summon the other consul, M. Claudius Marcellus, to name as dictator whomsoever the People might command. Claudius Marcellus duly named Q. Fulvius dictator, and in accordance with the same plebiscitum, P. Licinius Crassus (cos. 205), then Pontifex Maximus, was named magister equitum by Q. Fulvius Flaccus.

These striking examples show that, especially in case of the dictatorship, it was always possible to introduce innovative ad hoc measures, though it seems clear that customary practices were always respected as far as possible. Nonetheless, this analysis of Sulla’s legal status as dictator clearly shows that in terms of public law his dictatorship was a considerable advance on any of the dictatorships of the preceding period. In light of his unprecedented and quasi-absolute powers, it should not be surprising that Appian closes his account of the appointment of Sulla to the office of dictator in BC 1.99 with the remark that, after a period of 427 years, the Romans resorted to kingly government again. In BC 1.101 Appian relates that during Sulla’s Pontic triumph, some of the scoffers called his government “the official denial of royalty” because he kept back only the nomen regis, while others took the contrary view, judging

132 Livy 27.5.14–19. Cf. also Varro LL 5.82 & 6.61 for the fact that it belonged to the consuls to name a dictator. Plut. Marc. 25.1 likewise records that the People “named Q. Fulvius as dictator”, after which the Senate wrote to Marcellus bidding him to carry out the actual nomination. Mommsen (as in n. 19), p. 147, n. 4 wrongly refers to this case as additional proof for his theory that a consul could name a dictator on his own authority; whereas a praetor could only do so by virtue of a popular vote. The Senate’s decree simply ruled that in case the consul should refuse to carry a bill ordering a consul to name a certain dictator who was within the ager Romanus at the time of his appointment, the praetor should do so, and in case of his refusal, the tribunes of the plebs. From the very outset, it was the intent to have one of the consuls name a dictator. Hurlet (as in p. 37, footnote), p. 39 also observes that the proceedings of 210 do not corroborate Mommsen’s theory. Hurlet’s assertion, however, that by 82, the idea of a dictatorship established by virtue of a lex rogata was “tout à fait naturelle” (p. 40), is a bit far-fetched to my thinking. At any rate, the procedure of Sulla’s appointment to the dictatorship was very similar to the one of 210 since in 82 the Comitia also determined who precisely was to be appointed to the offices of dictator and magister equitum, and by which official. The only difference was that in 82 an interrex was commissioned to name both the dictator and the magister equitum, while in 210, one of the consuls was ordered to name the dictator, while the dictator was ordered to name the magister equitum.
from his acts, and called it « the official avowal of tyranny ». In Har. Resp. 54, Cicero likewise emphasizes that after his second victory over his opponents in Rome, « Sulla surely held kingly power, although he had recovered the Republic »: *Idem iterum Sulla superauit : tum sine dubio habuit regalem potestatem, quamquam rem publicam recuperarat.*

Cicero’s words in Verr. 2.3.81 are also most illuminating in this respect: *Vnus adhuc fuit post Romam conditam (di immortales faxint ne sit alter) cui res publica totam se tradaret temporibus et malis coacta domesticis, L. Sulla. Hic tantum potuit ut nemo illo inuito nec bona nec patriam nec uitam retinere posset ; tantum animi habuit ad audaciam ut dicere in contenditio non dubitaret, bona ciuium Romanorum cum uenderet, se praedam suam uendere.* « There has been one man only in all the history of Rome – the gods grant there may never be another – into whose hands our country, overcome by internal danger and calamity, surrendered itself without reserve. So great was the power of L. Sulla that no man was safe, if he willed otherwise, from poverty, from exile, from death. So unshrinking was his audacity that he did not hesitate to say, in public speech, that in selling the goods of Roman citizens he was selling the plunder that belonged to him »133.

In BC 1.100, Appian relates that Sulla, notwithstanding his position of absolute power, ‘allowed’ the People in 82 to appoint consuls for the sake of keeping up the form of the Republic. This shows that in principle, Sulla had the official power to put an end to all existing institutional practices and to devise a totally new institutional setting. This statutory reality, however, does not mean that the appointment of Sulla to a dictatorship *« con potere constiituente era fuori della costituzione ed anzi presupponeva se non la fine, per lo meno la sospensione della costituzione tradizionale »*134. It is self-evident that the traditional institutions continued to function in a formal way, under the supreme command and supervision of the dictator, even though Sulla obviously took care of the bulk of the legislative activity. As a matter of fact, Cicero indicates in Agr. 3.5 (*supra*) that Sulla’s tyranny stood, paradoxically enough, not outside the constitution, because his dictatorship was founded on

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133 The rest of this argument provides further proof of the fact that Sulla’s measures automatically had the force of law, which implied that they could by definition not be illegal. Cicero asserts that « the whole system that Sulla set up is not only in force today, but moreover supported against change by the authority of the Senate, which has ordained that the amount of the deductions made by Sulla must be paid by the purchasers into the State treasury. It was the Senate’s ruling that it was unlawful, even for him to whom nothing had been forbidden, to diminish the total profits thus gained and acquired by the people »:*Eius omnes res gestas non solum obtinencus, uerum etiam preper maionem incommoondorum et calamitatum metum publica auctoritate defendimus ; unum hoc aliquid senatus consultis reprehensum, decrettumque est ut, quibus ille de capite dempsiit ii pecunias in aerarium referrent. Statuit senatus hoc ne illi quemn esse licitum cui concessaret omnia, a populo factum queistitumque rerum sumnas imminere.*

134 De Martino (as in n. 20), p. 76f. Cf. also Valgiglio (as in n. 13), p. 62f. Valgiglio argues that « Silla era… formalmente nella legalita ; ma non era nella costituzione ». Valgiglio explains that Sulla’s wide powers and term of office place his dictatorship « al di fuori e al di sopra della costituzione, cioè, contro di essa ». See also p. 67-74 for a discussion of « l’anticostituzionalita della dittatura sillana ». 
a lex Populi. In Att. 9.10.3 (Formia, 18 March 49), Cicero likewise asserts that although Sulla, Marius and Cinna perhaps acted rightly in terms of legality, their victorious regimes were still the cruelest and most sinister episodes in Roman history.135

Even though Sulla achieved all of his political ends after his ultimate victory in 82 by means of unrestrained atrocities, brutal force and sheer terror, be it before or after the vote of the Valerian Law, and the scope of this statute was controversial, its terms still responded to legalistic scruples and the need of public legitimacy, both of paramount importance in sphere of Roman politics. In this respect, it is, for example, worth calling to mind that C. Marius refused to enter Rome in 87 before the Comitia had formally undone the law that had driven him into exile,136 and that in 88 and 87 successively, the consuls Sulla and Cinna took the pains to annul previous legislation on the part of the opposite faction.137 In 82, Sulla’s past (pro)consular acta were reconfirmed, whereas the dictator rescinded a number of measures and laws passed during the years 87–82.138 Therefore, rather than just demanding a law which stipulated that the dictatorship was to wield absolute power by means of its prerogative to issue edicts carrying the force of law, Sulla preferred the interrex to frame a bill that was to invest him with a battery of well-defined special iura, in order provide him with the broadest possible legal basis for the most important of the drastic measures he intended to carry out.139 Although E. Gruen rightly asserts that « The man who was smiled upon by divinity did not have to institutionalize his position » in that Sulla « was not the man to desire a divine monarchy modelled on decadent Hellenistic kings », Sulla

135 At Sulla, at Marius, at Cinna recte. Immo iure fortasse; sed quid eorum uictoria crudelius, quid funestius? Hurlet (as in p. 37, footnote), p. 16 at any rate rightly emphasizes the lawfulness of Sulla’s dictatorship. On p. 175f. Hurlet accurately defines Sulla’s dictatorship as one of the first historic examples of a « coup d’État légal ».

136 See App. BC 1.70 & Plut. Mar. 43.2f., where we are told that Marius eventually threw aside his pretence and entered the City before three or four of the tribes had cast their votes. Since Appian explains that this tribunician bill concerned all who were expelled under the consulship of Sulla, his representation that it was duly passed should not be called into question. Marius obviously decided to enter the city before the proceedings in the concilium plebis were completed.

137 After their capture of Rome, the consuls Sulla and Q. Pompeius passed a bill that annulled as being illegal all measures Sulpicius Rufus had carried through after the consuls’ proclamation of a iustitium (App. BC 1.59). Sulla, however, had been forced by Sulpicius and his partisans to revoke this vacation by means of a consular edict (App. BC 1.56 & Plut. Sull. 8.3f.). In 87, Cinna and Marius in their turn saw to it that the laws enacted during Sulla’s consulsiphip were repealed (App. BC 1.73).

138 Cf. App. BC 1.100 (supra). The decree which declared Sulla hostis publicus at the instance of Cinna in 87 (App BC 1.81) had probably already been rescinded by the Senate on November 2, 82.

139 It would, of course, be absurd to suppose that every of Sulla’s measures was taken by virtue of a specific power defined in the Valerian Law, all the more so since Sulla could not foresee all of the many measures he would take during his long term of office. Apart from the fact that Sulla’s acts carried the force of law by virtue of the lex Valeria, the dictator was also entitled to put his proposals to Senate and People.

140 Gruen (as in n. 95, 1968), p. 253.
definitely took the trouble to institutionalize his temporary position as supreme commander, legislator and restorer of the Roman Republic by means of a popular law that meticulously defined the extraordinary powers he was to hold in the capacity of dictator. Sulla’s legalistic and conservative scruples are furthermore highlighted by the well-recorded fact that, in spite of his legally-acquired position of unprecedented power, the dictator carefully involved the Senate and the People in his policies and legislative program.

141 In Römische Geschichte 2 (as in n. 21), p. 336f., Mommsen suggested that Valerius Flaccus proposed a bill determining that Sulla « das Recht erteilt werden möge über Leben und Eigentum der Bürger in erster und letzter Instanz zu erkennen, mit den Staatsdomänen nach Gutdünken zu schalten, die Grenzen Roms, Italens, Staats nach Ermessen zu verschieben, in Italien Städtegemeinden aufzulösen oder zu gründen, über die Provinzen und die abhängigen Staaten zu Verfügen, das höchste Imperium anstatt des Volkes zu vergeben und Prokonsuln und Proprätoren zu ernennen, endlich durch neue Gesetze für die Zukunft den Staat zu ordnen ; daß es in sein eigenes Ermessen gestellt werden sole, wann er seine Aufgabe gelöst und es an der Zeit erachte dies außerordentliche Amt niederzulegen ; daß endlich während desselben es von seinem Gutfinden abhängen solle die ordentliche höchste Magistratur daneben eintreten oder auch ruhen zu lassen ». Mommsen’s reconstruction is accepted by Carcopino (as in n. 36), p. 40f. De Martino (as in n. 20), p. 73 likewise argues that the lex Valeria gave Sulla « il potere di giudicare senza appello sulla vita dei cittadini e sui loro beni, di disporre del patrimonio pubblico, di estendere il pomerium e di fissare le frontiere dell’Italia e dell’impero, di fondare o dissolvere città in Italia, di provvedere alle provincie ed ai regni ad esse vicini, cioè ai protettori, di nominare i magistrati sostituendosi ai comizi, di designare i proconsoli ed i propretori, di dettare le leggi sulla repubblica ». Although the argument of this paper shows that not all of these suggestions are plausible, Mommsen, Carcopino and De Martino were basically right in supposing that the Valerian Law equipped Sulla with a series of well-defined special powers.

142 Therefore, one can only partially agree with the conclusion of Hurlet (as in p. 37, footnote), p. 164, that : « La dictature de Sylla n’était donc pas une nouvelle forme de pouvoir
In this respect, too, Sulla established a precedent for the future emperors. Irrespective of the fact that as (pro)consuls, Augustus and his successors also wielded a number of legally defined special powers, they generally preferred to realise their policies in close consultation with the Senate and, if need be, by means of leges rogatae.

It is the paradox of Sulla’s political method that he set up an unprecedented and unorthodox kind of dictatorship, putting him in direct control of all state affairs, in order to carry through an impressive series of mostly conservative measures, doing so, moreover, in close cooperation with SPQR and its traditional representatives. Although he was unquestionably a staunch and somewhat reactionary « republican », Sulla boldly opted for the novel instrument of an absolute dictatorship legibus scribundis et rei publicae constituendae in order to forestall any formal hindrances or possible opposition against a program of national reconstitution which he deemed unavoidable after many years of civil discord and internal upheaval. After the dictatorship of Sulla, not before the subsequent dictatorships of Iulius Caesar and especially the creation of the triumviratus rei publicae constituendae, Rome did see yet another series of extraordinary magistrates who were legally empowered to control and regulate the whole institutional apparatus, both in Rome and in the provinces. This time, however, owing to changed circumstances and the completely different intentions of the protagonists involved, the Res Publica would not survive in its traditional form, viz. free from the continuous domination of one or more statutorily privileged imperatores.

5. Epilogue: the legitimacy of the acts of the interrex on behalf of Sulla

Appian’s account in BC 1.98 clearly implies that only one interrex was appointed at the end of 82, namely L.Valerius Flaccus. Since none of the other sources make mention of any other interrex, there are no good reasons to question Appian’s representation. This means that the comitia centuriata were indeed convened by the first interrex143, i.e., the one chosen by the patrician patres144, in order to enact a law concerning the appointment of Sulla to a special kind of dictatorship145. This was apparently done in spite of the fact that

absolu, monarchique ou tyrannique, dans lequel l’autorité était exercée par un individu et ses délégués, mais une magistrature légale qui dominait l’État sans que les autres pouvoirs d’essence républicaine fussent suspendus. »

143 Contra Hurlet (as in p. 37, footnote), p. 45–47, who argues that Appian, unaware of the principle that the first interrex did not normally convene the Comitia (cf. infra), mistakenly thinks that there was only one interrex in 82, L.Valerius Flaccus, whereas he forgets to take his predecessor, the interrex chosen by the patrician senators, into account, since the latter simply named Valerius Flaccus and performed no other acts of interest.

144 Cf. Cic. Dom. 38 & Brut. 1.5.4 for the fact that even at the very end of the Republic only patrician senators were competent to nominate the first interrex.

145 Cf. Gell. 14.7.4; Var. LL 6.93 & Cic. Leg. 3.10 for the fact that the interrex disposed of the ius agendi cum populo/senatu.
it was not customary for the first *interrex* to convene the Comitia, a principle recorded by Asconius: *non fuit moris ab eo qui primus interrex proditus erat comitia haberet*\(^{146}\).

In other words, while it was the norm that the first chosen *interrex* refrained from convening the Comitia, this practice was evidently not fixed in statute law\(^{147}\). Various explanations have been offered to account for this tradition. On the basis of the fact that the auspices could only be consulted by individual persons, J. Linderski suggests that the first *interrex* was actually selected by lot: « as the drawing of lots depended upon divine will it was akin to the *auspicatio*. But in a strict sense of the word it was only the second *interrex* who was really appointed *auspicato*, and consequently it was felt that only he or his successors (but not the first *interrex*) were qualified to convene the *comitia* (or more exactly to hold the auspices for the election and the *renuntiatio* of the consuls) »\(^{148}\).

In my opinion, the famous statement of Appius Claudius Crassus in Livy 6.41.5f. unequivocally attests that the *auspicia* taken on the occasion of the appointment of the first *interrex* were « genuine », irrespective of both the number of individuals that were actually partaking in the *auspicatio*\(^{149}\) and of their status as private citizens\(^{150}\). There may be another possible explanation for the custom that only the successor(s) of the first *interrex* convened the bureaucratic procedure for electing the tribunes militum consulari potestate.

\(^{146}\) Asconius in Milon. p. 43 ed. Orellius (1833) ; cf. Schol. Bob. p. 281 ed. Orellius (1833) : *et erat in uetere consuetudine ut non is qui primus interrex, sed qui loco secundo crearetur comitia haberet*. Cf. Livy 5.31.7-9 ; 6.5.6f. ; 7.22.2 ; 8.3.5 ; 9.7.15 & 10.11.10 for a few examples of the traditional procedure in the first *interrex* appoints a successor (*prodere interregem*), after which this second *interrex* or one of his successors actually organizes the election of tribuni militum consulari potestate.

\(^{147}\) It is impossible to ascertain whether or not the *ius augurum* contained specific regulations concerning the question which *interrex* was (in)capable of presiding over the Comitia.


\(^{149}\) For the fact that more than one person could take part in the public *auspicatio* at elections, see Gell. 13.15.4. The *augur* M. Valerius Messala (cos. 53) here claims that from the moment praetors started voting praetors, he ceased taking part in the auspices at such elections : *Nos his temporibus, praetore praetores creante, ueterum auctoritatem sumus secuti neque his comitiis in auspicio fuimus*.

\(^{150}\) Penes quos igitur sunt auspiciae more maiorum ? Nempe penes patres ; nam plebeius quidem magistratus nullus auspicate creatur ; nobis adeo propriis sunt auspicia ut non solum quos populos creat patricios magistratus non altet quam auspicate creet, sed nos quoque ipsi sine suffragio populi auspiciato interregem prodamus et privatim[<ea>] auspicia habeamus, quae isti ne in magistratibus [plebeis] quidem habent. Basically, Appius Claudius here claims that the *auspicia publica* (= the *auspicia Populi Romani*, which were, in fact, the *auspicia patriciorum maxima*: see Gell. 13.15.4) could only be controlled by their « natural » owners, the patricians, who were even entitled to appoint an *interrex* by virtue of their private *auspicia*, whereas the plebeians did not even possess them in the capacity of (plebeian) magistrate. Therefore, M. Crawford’s suggestion (in W. Eder ed., as in n. 148, p. 674) to emend Livy’s text to *et privatim[<ea>] auspicia habeamus* is indeed a plausible and excellent one. The fact that only one (senior ?) patrician senator took the *auspicia* on the occasion of the appointment of the first *interrex*, probably on behalf of all the patrician senators involved, does not rule out that these special *auspicia patriciorum priuata* were, by way of exception, also valid *auspicia publica*.
Comitia. In Noctes Atticae 13.15.4, where Aulus Gellius quotes extensively from M. Valerius Messala’s first book De Auspiciis, it is recorded that the type and the potestas of the auspices taken by the magistrate who presided over the Comitia determined the type and potestas of the auspices which would be held by the magistrate-elect. To my thinking, the potestas of the auspices taken on the occasion of the interregem prodere, when auspicia patriciorum taken by a patrician senator in the capacity of private citizen (i.e., privatim) exceptionally served as auspicia (patriciorum) publica, was felt to be « insufficient » to allow the first interrex to take the auspices necessary to preside the Comitia and elect a set of regular magistrates (cum imperio consulare). The reason for this was probably that, in accordance with republican institutional practice, a magistrate cum imperio only held the public auspices de iure if these came with his office, as was apparently so in case of the special office of interrex, or if the official involved had been given the auspicium publicum by virtue of a lex curiata, as was customary in the case of the consuls and the praetors. Hence, only those ‘optimally’ public auspicia which the first interrex held by virtue of his office and which he consulted on the occasion of the appointment of a successor, enabled the latter (or his successors) to take « optimal » auspices — auspicia of the right type and (with sufficient) potestas — on the occasion of the electoral Comitia. However, this explanation does imply that at least in theory, the first interrex was perfectly qualified to preside over the Comitia. Religious scruples and the importance of maintaining optimal public auspices in the Republic simply made that it was not customary for him to do so.

This was, however, not the only deviation from standard procedure, since the Valerian Law itself ordered that the dictator and his magister equitum were

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151 Augural Law evidently ruled that, by virtue of their potestas auspiciorum patriciorum maxima, consuls had to take a certain type of auspices at a certain time on the occasion of nominating a dictator, viz. oriens (de) nocte silentio (see Livy 8.23.15 ; 9.38.14 ; 10.40.2 ; 23.22.11 & Dio fr. 36.26).

152 There is not one known instance of an interrex passing/receiving a lex curiata.

153 See Livy 22.1.5f. & esp. Cic. Agr. 2.27-31 & for some material that strongly suggests that the lex curiata officially conferred the auspicia (publica) upon the consuls/praetors and certain extraordinary magistrates cum imperio.

154 Contra Mommsen (as in n. 59), p. 98, n. 2, and p. 647–661, who argues that the first interrex was « der einzige nicht auspicato bestellte römische Beamte » since no competent magistrate could take the auspicia publica on the occasion of his appointment. Consequently, only the second interrex was fully entitled to preside over the comitia consularia. In n. 2 of p. 98, however, Mommsen concedes that « Nach dem Wortlaut », the auspicia (publica) concerned as well the appointment of the first interrex (patricii produnt interregem) as the appointment of the second one (interrex patricius prodit interregem). Nonetheless, Mommsen simply propounds that it is unnecessary to assume this was the case for the first interrex « und dadurch ein unauflosliches Räthsel zu schaffen. Denn wo es an einem Besteller fehlt, ist die Einholung der Auspicien vor der Bestellung unmöglich ». Mommsen is followed by among others A. Magdelain, « Auspicia ad patres redeunt », in : Hommages à Jean Bayet, Brussel, 1964, p. 347 and n. 16, and Hurlet (as in p. 37, footnote), p. 45. Following Schwagerl, Römische Geschichte 2, Tübingen, 1856 (non uidi), p. 76, Mommsen explains away the tradition in Dion. Hal. 4.75f. & 84 that the first interrex, Spurius Larcius, organized the comitia consularia after the expulsion of Tarquinius Superbus as being « gewiss nichts als eine ungeschickte Nothhilfe später Annalisten ». 
to be named by the interrex, and not, as usual, by one of the consuls. The question is whether or not such a course of action ran irreparably counter to public and augural law. Fortunately, Cicero provides us with the key to a plausible answer in Att. 9.15.2 (Formiae, 25 March 49), where he complains that Caesar, who was very eager to avoid an interregnum in 48, uoluit enim, credo, senatus consultum facere, uoluit augurum decretum (rapiemur aut absentes uexabimur) uel ut consules roget praetor uel ut dictatorem dicat, quorum neutrum ius est. Sed si Sulla potuit efficeru et interregnum et magister equitum, cur hic non possit ? « I believe he will want a decree of the Senate and another from the augurs (I shall be hauled up or harried if I am not here) allowing a praetor either to hold consular elections or to nominate a dictator, neither of which is just 155. But if Sulla could arrange for a dictator to be nominated by an interrex, and a magister equitum, why not Caesar ? »

Hurlet argues that Cicero reprehends the illegality of the nomination of a dictator by an interrex, and not the latter’s competence to put forward a bill in the Comitia. On account of Cicero’s statement that the nomination of a dictator by a praetor required prior authorization on the part of the augurs, and that in 426, the augurs were also called in to remove a religious impediment and so authorize one of the tribuni militares consulari potestate to name a dictator156, Hurlet lucidly suggests that a decretum augurum « semble donc être le moyen de permettre à un magistrat autre que le consul de nommer le dictateur ». As regards the case of Sulla, however, Hurlet asserts that Cicero’s words imply that Sulla or Valerius Flaccus did not demand such a decree in 82. Hurlet speculates that one of the clauses of the Valerian Law possibly authorized the interrex to name a dictator, but that this was apparently not enough in Cicero’s eyes157.

155 Non ius here meaning running counter to the ius augurum/in auspiciis (= iniustus/uitiosus) rather than « illegal » (i.e., running counter to the ius in legibus), since Cicero (Att. 9.9.3, Formiae, 17 March 49) and Messala (in Gell. 13.15.4), both men being consulars and augurs at the time of writing, explain that praetors could not elect consuls in consequence of principles set up by the ius augurum. Cicero and Messala elucidate that since praetors are elected under the same type of auspices as the consuls, they are considered their colleagues. Nonetheless, the praetor cannot rightfully elect either a consul, for he has imperium minus (vis-à-vis the consul), while the consul has imperium maius (vis-à-vis the praetor), and a higher imperium/collega maior cannot be elected by a lower imperium/collega minor, or even a praetor, because praetors are proposed as colleagues of the consul, who possess maius imperium. In other words, the praetor’s inability to elect praetors stemmed from the fact that in terms of augural/auspicial law, the praetor was (elected as) the colleague of the consuls.

156 Livy 4.31.4 : Et cum ibi quoque religio obstaret, ne non posset nisi ab consule dici dictator, augures consulti eam religionem exsecemere. Per litteras, Prof. Millar rightly suggests that although it is dangerous to regard late statements about constitutional practice in the early Republic as factual reports, they still give a valuable insight into contemporaneous standard procedure and what was deemed appropriate at the time of writing.

157 Hurlet (as in p. 37, footnote), p. 48f., n. 77. Hurlet eventually winds up his argument with the observation that this passage from Cicero « pose plus de problèmes qu’il n’en résout », and that « Il ne faut néanmoins pas accorder une importance démesurée à ce détail de procédure religieuse, d’autant plus que, comme l’a suggéré Fr. Hinard [as in n. 141, p. 89, n. 15], le juge-
To my thinking, Cicero actually indicates that Sulla did obtain official authorization on the part of the Senate and the augural college to carry out his plan to have an *interrex* name a dictator and a *magister equitum*. The essence of Cicero’s argument is precisely that since Sulla already managed to bring about (*efficere ut*) a *decretum augurum* issued *ex s.c.* which officially authorized an *interrex* to nominate both a dictator and a *magister equitum*, it would be perfectly feasible for Caesar to have the same authorities authorize a praetor to organize the *comitia consularia* or to name a dictator\(^{158}\). That Caesar actually obtained this authorization in 49 is clear from what Dio records in 42.20.3 & 21. In the context of a survey of a series of decrees passed in honour of Caesar following his victory over Pompeius at Pharsalia, Dio notes that, by decree of the Senate, the consul P. Servilius Isauricus passed a law ordering himself to name Caesar dictator, not for six months, but for an entire year. Dio relates that Caesar entered upon the dictatorship at once, although he was outside of Italy, and chose Marcus Antonius as his *magister equitum*, although the latter had not yet been praetor. Dio next explains that, « the consul [consequently] proposed the latter’s name also, although the augurs very strongly opposed him, declaring that no one might be master of the horse for more than six months. But for this course, they brought upon themselves a great deal of ridicule, because, after having decided that the dictator himself should be chosen for a year, contrary to all precedent, they were now splitting hairs about the *magister equitum* »\(^{159}\).

Since Cicero claims that Marcus Antonius was actually made *magister equitum* by favour of Caesar’s friends but without the latter’s knowledge because
he was at Alexandria at the time, and as Dio clearly indicates that the rogatio Seruilia made explicit mention of Marcus Antonius, it is clear that the consular bill ruled that Servilius Isauricus was to appoint both his colleague and Marcus Antonius to the offices of dictator and magister equitum successively.

The clause concerning the appointment of Marcus Antonius apparently came as a surprise to many in Rome, since the augural decree evidently only provided for Caesar’s unusually long tenure. In light of the fact that Caesar (or his partisans) still took the trouble to consult the augurs after his decisive victory over Pompeius at Pharsalia, it should not be doubted that his nomination to his first dictatorship in 49 by the praetor M. Aemilius Lepidus was likewise authorized ex decreto augurum ex s.c. Dio’s valuable information not only corroborates Hurlet’s ingenious suggestion that magistrates other than the consuls needed formal authorization on the part of the augural college to name a dictator, but even warrants the conclusion that, in order to be valid,
any deviation from customary procedure concerning the appointment of a dictator required prior augural sanction ex s.c. If not, the procedure, and hence the appointment itself, would have been uitio (flawed), and thus inauspicious in the literal sense of the word.

At any rate, Cicero’s evidence shows that regardless of his ruthless behaviour at the end of 82, Sulla still took care to obtain the necessary dispensations from regular procedures, so he could carry through his plans without any infringement of public and augural law. In light of Sulla’s attested eagerness to act within the law, this should not at all come as a surprise, the more since Sulla, who attached great importance to religious matters in general, became an augur himself at an unknown stage of his career. Therefore, it should not be doubted that shortly before the patrician senators chose an interrex, the Senate also dispensed the future interrex from any legal hindrances concerning the mandatory interval between promulgation and rogation.

163 It should not be doubted that any unprecedented deviation from customary procedure required prior augural endorsement ex s.c. In Staatsrecht 2 (as in n. 19), p. 146f., Mommsen suggests that once the augurs had determined in 426 that the tribuni militum consulari potestate were entitled to name a dictator, subsequent appointments of dictators by these magistrates (Livy 4.46.10f. : 418 ; 4.57.5f. : 407 ; 5.19.2 : 396 ; 6.2.5f. : 389 ; 6.11.10 : 385 ; 6.28.3f. : 380 & 6.38.4 : 368) no longer required formal authorization (on the part of the augurs). Livy indicates in 4.31.4 that the augurs simply removed the religious impediment to the appointment of 426, which is not the same as stating that the augurs ruled for once and for all that tribuni militum were henceforth entitled to name dictators. Although it is quite possible that subsequent similar appointments no longer required prior augural permission, there is no way to ascertain whether any (recurrent) deviation from customary practice required prior augural authorization or this was only the case for unprecedented exceptions to the rule. Cicero’s cynical statement (in Att. 9.15.2, cf. supra) that Caesar could suit himself in 49 because the augurs had previously authorized an interrex to appoint a dictator (and a magister equitum) seems to imply that in case there was a more or less recent precedent for a particular deviation, repeated augural approval was not strictly necessary. This conclusion also means that the appointment of a dictator by a magistrate other than the consuls was not « unzulässig » under all circumstances: contra e.g. Kunkel & Wittmann (as in n. 14), p. 669. On p. 670, they also brand the appointment of Fabius Buteo in 216 as « unzulässig », whereas it should not be doubted that this deviation from customary rule was also authorized by the augurs. For an excellent study about the paramount importance of the augurs as experts and guardians of proper constitutional procedures and Roman public law in general, see A. Giovannini, « Les livres auguraux », in : La mémoire perdue. Recherches sur l’administration romaine, Rome, 1998, p. 104-122.


166 Hurlet (as in p. 37, footnote), p. 44, n. 62 rightly points to the fact that the Senate could dispense a magistrate from respecting the mandatory trinum mundium between promulgatio and rogatio, and makes the plausible suggestion that « On peut dès lors penser que pareille résolution avait été votée par le Sénat en novembre 82, au moment de la nomination du premier interrex (ou même lors d’une séance ultérieure) ». 
while the augurs doubtlessly removed any religious scruples concerning the fact that the first chosen interrex would preside over the Comitia and appoint a dictator and a magister equitum for an unspecified period\textsuperscript{167}. Thus, it can be safely concluded that the lex Valeria was iure rogata, in that it was not passed in contravention to public law, and non uitiosa\textsuperscript{168}, in that an augural decree had sanctioned a number of deviations from well-established principles of augural law\textsuperscript{169}. Although the procedure of Sulla’s appointment to the dictatorship was highly unusual, it was neither illegal nor « unjust »\textsuperscript{170}.

\textsuperscript{167} Kunkel & Wittmann (as in n. 14), p. 705f. deduce from App. BC 1.98 that Sulla simply ordered the (patrician) senators to appoint L. Valerius Flaccus to the office of interrex. It is self-evident that any possible deviations from the standard procedure to appoint the first interrex were also authorized by the decree of the augurs.

\textsuperscript{168} See, for example, Cic. Har. Resp. 48 for the fact that a law carried in defiance of the ius augurum/in auspiciis was uitio lata.

\textsuperscript{169} This argument corroborates Hurlet’s (as in p. 37, footnote, p. 50) final conclusion that « La procédure suivie était inhabituelle, mais loin d’être illégale ».

\textsuperscript{170} Contra Mommsen (as in n. 19), p. 147, where it is stated that the appointment of a dictator by an interrex « ist dem Wesen der Institution zuwider ». Mommsen moreover explains away the fact that in an oration in Dion. Ant. 11.20.5, L. Valerius Potitus supposedly advised the Senate the following in 449: « And in order that the appointment of a dictator shall also be in accordance with the laws, we should create an interrex, choosing the most suitable person from among the citizens; for this is the customary thing for you to do when you have neither kings, consuls nor any other legal magistrates, which is the case at present. » Mommsen rejects this passage as « Ein blosser Fehler ». Although Sulla’s appointment is indeed the only known instance of an interrex naming a dictator, Dionysius’ words show that, perhaps especially since 82, such a procedure was certainly not considered to be impossible altogether.