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G. P. BURTON

## Provincial Procurators and the Public Provinces\*

«I cannot think of an ancient city, region or <country>, or of an institution . . . of which it is possible to write a systematic history over a substantial period of time.»<sup>1</sup> For the period of the high empire, from Augustus to AD 235, any attempt to write a full account and analysis of the development of the powers and duties of key officials, such as the praetorian prefects or the urban prefect, would merely serve to illustrate FINLEY's characteristic dictum. As far as the subject-matter of this article, the role of procurators in the public provinces, is concerned, the extant testimony is especially exiguous.<sup>2</sup> Literary allusions to the activities of such provincial procurators are few. The epigraphic testimony is similarly exiguous, and some of it is fragmentary. Even when the epigraphic evidence is *prima facie* transparent, the lack of context may make it extremely difficult to infer convincingly how and why a procurator came to be involved in a specific policy-making or administrative process. Even the *fasti* of procurators of the public provinces are severely lacunose, the surviving testimony being much inferior to that for senatorial officials such as proconsuls or imperial legates.<sup>3</sup> In short, the identities of the majority of the holders of the post of procurator of a public province are unknown; even when the names survive, we have very little direct testimony about their duties.

Despite this dearth of good evidence a strong *communis opinio* exists, in the best modern literature, about the character of the duties which constituted the normal role of the procurators of the public provinces. Under the Augustan settlement, so it is claimed, the provincial procurators of the imperial provinces were responsible for the supervision both of the collection of the direct taxes and of the imperial properties. In the public provinces in contrast such procurators were restricted only to the duty of supervising the imperial properties. The proconsuls and their quaestors were responsible for direct taxation. This division of labour is deemed to have remained in force through the first and second centuries.<sup>4</sup>

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\* I would like to thank the Editorial Board of Chiron for their helpful suggestions.

<sup>1</sup> M. I. FINLEY, *Ancient History: Evidence and Models*, London 1985, 11.

<sup>2</sup> Following the trenchant analysis of F. MILLAR, *Senatorial Provinces. An Institutionalized Ghost*, *AncW* 20, 1989, 93–97, I avoid the usage «senatorial» in favour of public provinces.

<sup>3</sup> P. A. BRUNT, *Princesps and Equites*, *JRS* 73, 1983, 42–75, at 68–70.

<sup>4</sup> H. G. PFLAUM, *La mise en place des procuratèles financières dans les provinces du haut-*

In contrast I will try to show, first, that in the course of time the provincial procurator in the public provinces also acquired a co-ordinate role, with the proconsul, in the supervision of direct taxes and, secondly, that on occasion and in practice, but not normatively, a role in other areas of public administration which were actually and conceptually quite separate from their original patrimonial duties. The extension of their role, I will argue, is to be connected to the limited practical powers of proconsuls, limited in relation to the demands that might be made on them. In the final section I will draw a parallel between these developments and the analogous extension of the judicial role of provincial procurators (in both the imperial and public provinces). In general terms I hope to suggest that the inferences I draw from the unsatisfactory source-material gain credibility by their congruence with what we know (or think we know) about the character of the administration of the provinces and of the public provinces in particular.

### 1. *The Argument from Titulature*

As a preliminary I need to discuss an important argument, in favour of the traditional view, which is based on the formal titulature of an equestrian official, Q. Domitius Marsianus. The publication of a career inscription of Q. Domitius Marsianus, an inscription which included a copy of his codicil of appointment by Marcus Aurelius, appears to show that in about 170 the full formal title of the provincial procurator of Narbonensis was *procurator Augusti patrimonii provinciae Narbonensis* and that the post was ranked as ducenarian in the equestrian hierarchy.<sup>5</sup> H. G. PFLAUM, in a famous discussion, inferred that we now possessed direct evidence that the role of provincial procurators in the public provinces was still, c. 170, limited to the supervision of the personal (patrimonial) resources of the emperor as in the Augustan dispensation.<sup>6</sup> Two types of objection to this inference can be adduced, however plausible it may seem at first sight.<sup>7</sup> First, the case of Marsianus may not be typical. As P. A. BRUNT has pointed out, it is possible that the phrase *patrimonii* was specially added to the title at this time to emphasise

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empire romain, RD 46, 1968, 367–388, esp. 368–9; idem, Une lettre de promotion de l'empereur Marc Aurèle pour un procureur ducenaire de Gaule Narbonnaise, BJ 171, 1971, 349–366, esp. 353; G. ALFÖLDY, Die Stellung der Ritter in der Führungsschicht des Imperium Romanum, Chiron 11, 1981, 169–215 at 174–75; L. ZUCKERMANN, Essai sur les fonctions des procureurs de la province de Bithynie-Pont sous le Haut-Empire, RBPh 46, 1968, 42–58 at 55–6. Less certainty has already been expressed by O. HIRSCHFELD, Die kaiserlichen Verwaltungsbeamten bis auf Diocletian<sup>2</sup>, Berlin 1905, esp. 69–73 and P. BRUNT (note 3) 46–7 and 52–3.

<sup>5</sup> AE 1962, 183.

<sup>6</sup> See the articles cited above (note 4), closely followed by G. ALFÖLDY and L. ZUCKERMANN (also note 4).

<sup>7</sup> Note that before the publication of this inscription no other formal inscription had added the term *patrimonii* to the title of provincial procurators of the public provinces.

Marsianus' responsibility for the supervision of «crown» land, because another official was in place who was concerned with the *ratio privata*. On this speculative hypothesis Antoninus Pius, whose family originated from Narbonensis, may have instituted a special equestrian post to administer those lands which belonged to Pius by rights of private inheritance and which could thereby be differentiated from the lands (patrimonial or crown lands) which Pius «inherited» in virtue of his public role as emperor.<sup>8</sup> Secondly, even if we accept that *procurator Augusti patrimonii provinciae* was the full and correct title of provincial procurators in the public provinces, we need to be aware of the dangers of inferring the complete range of roles of an official from his title. Indeed Roman history abounds with the difficulties of inferring roles from titles. For example, no one would wish to claim that a senator bearing the title of consul carried out the same range of duties in 200 as their predecessors in 200 BC. Cognately we know from the legal sources that, in the course of the first and second centuries, the praetorian prefects gained a wide-ranging competence in criminal jurisdiction which had not been part of their original role. Yet this substantive development was not matched by any formal change in titlature. A good analogy, in terms of the limited documentation available, to provincial procurators in the public provinces is provided by the equestrian official who carried the title prefect of the Alexandrian fleet (*praefectus classis Augustae Alexandrinae*). Nothing in this official's title prepares us for the fact that papyri attest these prefects carrying out the ἐπίκρισις, outside Alexandria, of Roman citizens and others on behalf of the prefect of Egypt.<sup>9</sup> In short the dual phenomenon that formal titles may not fully apprise us of the range of duties of any specific official and that the duties constitutive of any official role may change while the formal title does not, this phenomenon should make us sceptical of accepting the title of Domitius Marsianus as decisive testimony for our understanding of the role of provincial procurator in a public province.<sup>10</sup>

We are now in a position to examine directly the limited evidence on the role of provincial procurators in the public provinces. Some of this evidence can be comfortably accommodated to the hypothesis of a purely patrimonial role, some with difficulty, some not at all. I will begin with fiscal matters and then turn to areas of non-fiscal administration and jurisdiction.

<sup>8</sup> P. A. BRUNT, Remarks on the Imperial Fiscus, in: Roman Imperial Themes, Oxford 1988, 347–354 at 353.

<sup>9</sup> See C. A. NELSON, Status Declarations in Roman Egypt, Amsterdam 1979, 42 and P. Oxy. LVIII 3920 whose editor notes that the names of such prefects are chiefly known from the ἐπίκρισις documents.

<sup>10</sup> For an interesting discussion from a comparative historical perspective see W. G. RUNCIMAN, A Treatise on Social Theory, Vol. 2, Cambridge 1989, 48–54 and 68.

## 2. Public Taxation: Direct and Indirect

The traditional view, which restricts the role of provincial procurator in the public provinces to purely patrimonial matters, is based above all on the testimony of Cassius Dio and Tacitus. In his celebrated account of the settlement of 27 BC Dio says: «Caesar sends out procurators (thus we call those who collect public revenues and carry out authorized expenditure) to all the provinces alike, both his own and those of the people, appointing them from the *equites*, and also from the freedmen, except in as much as the proconsuls collect the tribute from those they govern.»<sup>11</sup> Both Dio and Tacitus, also, record the story of Lucilius Capito, procurator of Asia, who was charged before the senate with maladministration. Tiberius claimed that the powers which he had delegated to Capito only extended in *servitia et pecunias familiares*.<sup>12</sup> Finally Tacitus describes Publius Celer, procurator of Asia, and his freedman assistant Helius (the perpetrators of the murder of Junius Silanus, proconsul of Asia, in 54) as *rei familiaris principis in Asia impositi*.<sup>13</sup>

However no other sources, to the best of my knowledge, survive to confirm that this restriction of the role of provincial procurators to patrimonial matters continued through the 1st and 2nd centuries. We are, of course, very poorly informed in general on the procedures for the supervision of direct taxation in the public provinces. The role ascribed by Dio to proconsuls (and by implication to their quaestors) is almost impossible to illustrate: indeed informative evidence on the duties of provincial quaestors scarcely exists.<sup>14</sup> What evidence does survive for the supervision of direct taxation points in a different direction, namely joint supervision by both proconsul and provincial procurator. First, an inscription from Priene<sup>15</sup> records the erection of a statue to the empress Julia Domna «from a tenth of the tribute money accordingly as the most powerful proconsul Licinius Nepos and the imperial procurator . . . decided.» Secondly a story of Philostratus about Herodus Atticus' tenure as corrector of the free cities of Asia about 135 again suggests a procuratorial interest in direct taxation. When Herodes discovered that the city of Alexandria Troas possessed no regular water-supply, he approached Hadrian to request permission to spend 3 million drachmas for installing one. Hadrian approved the scheme and put Herodes in char-

<sup>11</sup> Dio 53, 15, 3.

<sup>12</sup> Tacitus, ann. 4, 15; cf. Dio 57, 23, 5. Note that Dio implies that the powers of procurators were more limited at this period (τότε) than in his own day.

<sup>13</sup> Tacitus, ann. 13, 1.

<sup>14</sup> For the province of Asia during the imperial period the only epigraphic references, of which I know, to decisions and letters of provincial quaestors come from Aphrodisias, a city immune from Roman taxation; see J. REYNOLDS, *Aphrodisias and Rome*, London 1983, docs. 52 and 53. The reference in Apuleius, *Apologia* 101, is to a municipal not a provincial quaestor (pace M. DE DOMINICIS, *In tema di giurisdizione fiscale nelle province senatorie*, in: *Scritti Romanistici*, Padua 1970, 133 ff.).

<sup>15</sup> I. Priene no. 230.

ge. His outlay of public money soon ran to 7 million drachmas at which point, according to Philostratus, the procurators of Asia (οἱ ἐπιτροπεύοντες τὴν Ἀσίαν) began writing to Hadrian to claim that it was disgraceful for the tribute of 500 cities to be spent on the fountain of one.<sup>16</sup> The subsequent and generous intervention of Herodes' father need not concern us. But, if, as elsewhere in the works of Greek writers of the principate, the term «500 cities» is used as a periphrasis for the province of Asia, then the involvement of the procurators of Asia in the expenditure of the tribute of their province can only be explained on the hypothesis that they had come to have some responsibility for its collection and expenditure.<sup>17</sup>

Two further items of evidence (one from the reign of Augustus, one from the reign of Hadrian) may be relevant to our enquiry, though in both cases lack of clear context makes interpretation speculative. First, Josephus very briefly records an incident in 14 BC when Herod the Great on behalf of the Chians paid «money to Caesar's procurators» and relieved the Chians of εἰσφοραὶ (the exact connotation of which is unclear). Although it is possible that the moneys owed were private debts, it is equally plausible to believe they were arrears of tribute.<sup>18</sup> Secondly, in a famous dossier of letters of 127 from Hadrian to the city of Stratonicea-Hadrianopolis (which he had refounded in 123) the emperor makes a grant to the city of «the revenues from the territory» (τὰ τέλη ἐκ τῆς χώρας) and goes on to note that he has forwarded this decision (and others) to the proconsul and the procurator.<sup>19</sup> T. S. R. BROUGHTON once suggested that the revenues in question accrued from patrimonial land in the neighbourhood and were diverted to support the finances of the newly founded city.<sup>20</sup> Given the brevity of the allusion to the revenues no interpretation can be secure. In my opinion it is equally plausible to believe that Hadrian was granting the city the right to levy new direct (or indirect) taxes on its territory.<sup>21</sup> At best neither this dossier nor the

<sup>16</sup> Philostratus, V.S. 548.

<sup>17</sup> For 500 cities as a periphrasis for the province of Asia, see Josephus, BJ 2, 16, 4 and Apollonius of Tyana, Ep. 58.

<sup>18</sup> Josephus, Ant. Jud. 16, 2, 2. For the former view see A. H. M. JONES, *The Greek City*, Oxford 1940, 325 n. 68 (accepted by D. MAGIE, *Roman Rule in Asia Minor*, Princeton 1950, 1337 n. 20); for the latter see O. HIRSCHFELD, op. cit. (note 4) 72 n. 6.

<sup>19</sup> L. ROBERT, *Hellenica* 6, 1948, 81, esp. lines 8–16.

<sup>20</sup> T. S. R. BROUGHTON, *Roman Landholding in Asia Minor*, TAPhA 65, 1934, 222–3. He actually terms the land «fiscal» but it is clear from the context of his account (a discussion of imperial estates) that he uses fiscal in the restricted sense of patrimonial.

<sup>21</sup> Compare the formulations of M. ROSTOVITZEFF, *The Social and Economic History of the Roman Empire*<sup>2</sup>, Oxford 1957, 698–9; «Τέλη means of course the payments of the rural population of the territory of the newly created city» and of D. MAGIE, op. cit. (note 18) 616: «the revenues which the neighbouring territory had hitherto paid to Rome». An analogous example in which τέλη clearly refer to locally imposed taxes can be found in an inscription from Magnesia on the Maeander of the mid-first century. In this document (Syll.<sup>3</sup> 807) the council and people of Magnesia grant to a Ti. Claudius Tyranus ἀτέλειαν πάντων τῶν τελῶν ὧν κατασκεύακε ἐργαστηρίων ἐπὶ τῆς χώρας ἧς κώμη Καδύη.

story about Herod can be deemed to give clear and unambiguous support to the conventional restrictive interpretation of procurators' powers.

Two additional and recently published documents, both concerned with indirect taxation, cast further doubt on the conventional interpretation. First, in a letter of 119 Hadrian writes to Aphrodisias that: «I have been petitioned through an embassy about the use of iron and the tax on nails. Although the matter is controversial, since this is not the first time that the collectors have attempted to collect from you, nevertheless, knowing that the city is in other respects worthy of honour and is removed from the *formula provinciae*, I release it from payment and I have written to Claudius Agrippinus, my procurator, to instruct the contractors for the tax in Asia to keep away from your city.»<sup>22</sup> Prima facie this letter implies that the procurators of Asia had at this time the duty of supervising the collection of at least one indirect tax. Secondly, the long and instructive tax law for the *portoria* of Asia in its final provisions (which are unfortunately heavily damaged) makes some reference to the role of the procurators of Asia in cases of dispute, presumably between the tax-contractors and individual provincial subjects.<sup>23</sup> Such a role, however difficult to define precisely given the condition of the inscription, again suggests that the procurator has extrapatrimonial duties to perform.

In the light of the evidence, admittedly unsatisfactory, adduced in the preceding paragraphs I think it is attractive to hypothesise that in the course of the first century provincial procurators in the public provinces came to acquire a normative role in the supervision of public taxes. In turn this role can be viewed as parallel to the role of provincial procurators in the imperial provinces. Although the surviving evidence is too exiguous to reconstruct the process by which their role was expanded, three general considerations may help to provide a plausible context for understanding its expansion and its assimilation to that of procurators of the imperial provinces.

First, by the early second century, if not earlier, it had become common practice to appoint specially designated procurators to exercise control and supervision over the collection of the most important public indirect taxes, the *portoria* and the *vice-sima hereditarium*.<sup>24</sup> Two features of this development are significant for our discussion. Such equestrian officials, responsible it should be emphasised for non-patrimonial revenues, are attested for both imperial and public provinces. Further the territorial circumscriptions attributed to these officials comprised both imperial and public provinces. For example, procurators of the inheritance tax could be responsible for its supervision in Gallia Narbonensis and Aquitania or in Asia and Lycia and Galatia.<sup>25</sup> Indeed, I think it very probable that, when such special officials were

<sup>22</sup> J. REYNOLDS, *op. cit.* (note 14) doc. 15, lines 8–17.

<sup>23</sup> EA 14, 1989, lines 147–9.

<sup>24</sup> See H. G. PFLAUM, *Les Carrières Procuratoriennes*, Vol. 3, Paris 1961, 1017ff. (for lists) and the important comments of P. A. BRUNT, *op. cit.* (note 3) 53 and 72–3.

<sup>25</sup> For these examples see H. G. PFLAUM, *op. cit.* (note 24) numbers 106 bis and 264.

not appointed, responsibility for the supervision of the indirect taxes lay with the provincial procurators.<sup>26</sup>

Secondly, as the number of procuratorial posts increased and as a recognisable and hierarchically organised equestrian career developed, equestrian officials pursued their public careers in civil and military posts and in both the imperial and the public provinces. The ranking by salary of provincial procuratorships was the same for both the imperial and the public provinces. So, for example, the provincial procuratorships of Baetica and of Lusitania or of Asia and of Syria were all ducenarian. Such identity of ranking is difficult to comprehend, if the procurators of the public provinces were restricted to purely patrimonial matters whereas their contemporaries in the imperial provinces were responsible in addition for the key duty of supervising direct taxation. In this context the career of Aemilius Juncus is pertinent. After completion of his equestrian *militia* his first procuratorial post was as procurator of Cilicia and Cyprus.<sup>27</sup> Are we to believe that during his tenure of this post the duties constitutive of his role were quite different in Cyprus and Cilicia?

Thirdly, during the course of the first century routine control over the general finances of the imperial state came to lie with the emperor and his personal appointees.<sup>28</sup> The collation of census information was in the hands of the *a censibus*. Rudimentary budgetary control was exercised by the *a rationibus*. The latter was responsible for estimating both revenues and the costs not only of public institutions such as the army, the fleet, and the road-system but also of the imperial household. This development, which effaced any distinction between patrimonial and public (indirect and direct taxes) sources of revenue, provides a readily intelligible context for the process whereby the emperor's financial appointees in the public provinces came, if my hypothesis is correct, to exercise control over the public revenues of their provinces as well as the patrimonial ones.<sup>29</sup>

In short the evidence for the supervision of direct taxes in the public provinces suggests that, probably during the course of the first century, their provincial procurators acquired a role which was analogous to that exercised from the beginning of the principate by their contemporaries in the imperial provinces. If this suggested development must remain hypothetical, it gains credibility and context from what we know of the procedures for the supervision of indirect taxes in both the imperial and public provinces, of the character of the equestrian career and of the

<sup>26</sup> See P. A. BRUNT, *op. cit.* (note 3) 53. The obscure role attributed to the provincial procurator in the new tax-law of Asia (above note 23) may be an illustration of this.

<sup>27</sup> H. G. PFLAUM, *op. cit.* (note 24) no. 116; cf. no. 5 (reign of Tiberius) and, perhaps, also no. 124.

<sup>28</sup> See P. A. BRUNT, *The Fiscus and its Development*, in: *Roman Imperial Themes*, Oxford 1990, 134–162, esp. 153 ff. My paragraph is heavily dependent on this fundamental study.

<sup>29</sup> Note again that it was the procurators of Asia who complained to Hadrian about the excessive expenditure of state revenues by Herodes Atticus (above note 16).



mechanisms for the central control and allocation of the revenues of the imperial state at Rome.

### 3. *Non-Fiscal Administration*

Procurators of the public provinces are attested during the first and second centuries also exercising duties which were neither patrimonial nor fiscal. Little attention, with one notable exception, has been given to this evidence in recent discussions.<sup>30</sup> Since these duties cannot be construed as *procuratio* but are, rather, derivative of *imperium*, they pose difficulties for our understanding of the role of provincial procurator.<sup>31</sup> For the sake of clarity I have arranged the evidence, which is again sporadic and exiguous, under three headings, namely boundary disputes, imperial services and civic affairs.<sup>32</sup>

#### (a) *Boundary disputes*

The resolution of boundary disputes between neighbouring civic communities or between individual land-owners and a community is one of the best attested, epigraphically, duties of provincial governors, proconsuls and imperial legates alike.<sup>33</sup> Boundary disputes were sometimes of great antiquity, sometimes they arose out of the fiscal demands of the imperial state.<sup>34</sup> Provincial governors adjudicated such disputes at their own initiative, at the request of one or all of the parties concerned or on the instructions of the emperor whom the dispute had already reached by letter or embassy.<sup>35</sup> However, on three occasions in public provinces we find procurators, rather than the proconsul, adjudicating such disputes.

The erection of boundary stones near Synnada in Phrygia by an imperial freedman procurator, Irenaeus, need occasion no surprise, since the land in question was patrimonial.<sup>36</sup> The duties of the junior procurators who ran large patrimonial areas within a province no doubt always extended beyond assuring the correct payment of rent and fulfilment of imperial obligations by the peasants to the solution of any

<sup>30</sup> See especially F. MILLAR, *Some Evidence on the Meaning of Tacitus Annals 12, 60, Historia 13, 1964, 180–7* and, also, *idem, The Development of Jurisdiction by Imperial Procurators, Historia 14, 1965, 362–7*, who sets out some of the data used in this section.

<sup>31</sup> Compare Seneca (*nat. 4, praef.*) who advises his friend Lucilius, procurator of Sicily, not to try to turn his *procuratio* into *imperium*. The point of Seneca's words is completely garbled by the Loeb translator.

<sup>32</sup> A good index of the unsatisfactory nature of the relevant data is that none of it concerns, for example, the provincial procurators of Baetica, Cyprus or Narbonensis.

<sup>33</sup> It is another quirk of our evidence that none of the extensive surviving extracts of Ulpian's handbook on the duties of proconsuls refers to this activity.

<sup>34</sup> Antiquity: e.g. SEG 30, 573; fiscal demands: Hyginus, *de condicionibus agrorum* p. 74 (THULIN).

<sup>35</sup> For proconsuls acting on the instructions of the emperor, see e.g. ILS 5947 (Macedonia, Hadrianic) or AE 1954, 188 (Cyrenaica, 88/9).

<sup>36</sup> CIL III 12237.

communal disputes which might have arisen. The two other cases have nothing, however, to do with patrimonial interests. In Crete Nero is recorded to have restored, through a procurator P. Licinnius Secundus, to the temple of Aesculapius at Cnossos five iugera of land which had been granted by Augustus and confirmed by Claudius;<sup>37</sup> and on the same island in 84 boundaries were set up near Cnossos between lands belonging to a Plotius Plebeius and the Italian town of Capua as a result of a judicial decision of Titus and according to a decree of Capua with the agreement of both parties under the supervision of P. Messius Campanus *procurator Caesaris*.<sup>38</sup>

Analogous examples from the imperial provinces are also relevant, since the settlement of boundary disputes cannot be construed as a normative function of provincial procurators in the imperial provinces. A series of inscriptions of 54/5 record the adjudication of a boundary dispute between the city of Sagalassus and the village of Tymbrianassus.<sup>39</sup> The imperial legate and the provincial procurator jointly made their decision in accordance with a letter of the deified Claudius. In Hispania Citerior under Vespasian the governor, his legate and the provincial procurator (together with a *consilium*) resolved a boundary dispute between two peoples, the Olossitani, and the Indicetani.<sup>40</sup> In 102 Trajan is credited with the restoration of boundaries (probably of Palmyra) through the joint action of the governor and procurator of Syria.<sup>41</sup> In this context it is noteworthy that an analogous inscription of 153 attributes a similar decision to Antoninus Pius, but in this case carried out by the provincial governor alone.<sup>42</sup> Finally in 184/5 in Thrace a delimitation of the territory of the colony of Deultum was carried out «on the authority of» the provincial procurator.<sup>43</sup>

#### (b) *Imperial Services: Roads and Vehiculatio*

To find lower ranking freedmen procurators on imperial estates either adjudicating among villages the allocation of responsibility for the provision of ἀγγαρεία or addressing complaints about the depredations of passing soldiery need occasion no surprise.<sup>44</sup> More pertinent from our point of view are examples of provincial procu-

<sup>37</sup> I. Cret. I 8 no. 49. Note that L. Turpilius Dexter, who in 64 restored some lands of Gortyn in Crete on the instructions of Nero, was a proconsul not a procurator (I. Cret. I 26 no. 2) pace F. MILLAR, *op. cit.* 1964 (above note 30), 184 and P. A. BRUNT, *Procuratorial Jurisdiction*, in: *Roman Imperial Themes*, Oxford 1990, 163–187 at 179 note 58.

<sup>38</sup> BCH 93, 1969, 846f. no. 3.

<sup>39</sup> OGIS 538 and G. E. BEAN, *AS* 9, 1959, 67–117 no. 30; for further discussion of these texts see S. MITCHELL, *Requisitioned Transport in Roman Empire*, *JRS* 66, 1976, 117–9.

<sup>40</sup> AE 1952, 122. For the date and the officials see G. ALFÖLDY, *Fasti Hispanienses*, Wiesbaden 1969, 19–21.

<sup>41</sup> IGLS V 2549.

<sup>42</sup> IGLS V 2550: a restoration of boundaries previously delimited by Q. Caecilius Metellus Creticus Silanus.

<sup>43</sup> AE 1965, 1–2.

<sup>44</sup> For example, see W. H. C. FRENCH, *A Third-Century Inscription relating to Angaeria in Phrygia*, *JRS* 46, 1956, 46–56, and SEG 37, 1186.

rators who are credited with responsibility for the maintenance and repair of public roads in non-patrimonial territory.<sup>45</sup>

Inscriptions which record the repair or construction of roads in the provinces survive in very large numbers. The initiative for such work is normally attributed to the emperor, while the work itself is described as carried out through the agency of the provincial governor. However on a handful of occasions in the public provinces responsibility for the execution of the work is attributed to the provincial procurator. In 58/9 responsibility for the repairs of the road between Apamea and Nicaea lay with C. Julius Aquila, the procurator of Pontus-Bithynia.<sup>46</sup> Four milestones from the same province record the activity of the procurator, L. Antonius Naso, in the region of Sinope in 78; another procurator was active in the same region in 85.<sup>47</sup> Another example of such procuratorial activity may subsist in a heavily damaged inscription from Lycia-Pamphylia of 198/209.<sup>48</sup>

Finally, an important inscription, of the mid-2nd century, from the territory of Magnesia in the province of Asia records the contribution of the city of Amyzon to the construction of part (which had been allotted to it) of a major road called the Trachon. The work was completed under the supervision of the procurator M. Caecilius Numa (ἐπιμεληθέντος).<sup>49</sup>

### (c) Civic Affairs

The evidence, wholly epigraphic, for the involvement of provincial procurators in aspects of civic administration in the public provinces is especially intractable. Almost without exception meaningful context and background is missing; furthermore the relevant inscriptions are often damaged and lacunose. For example on two occasions Marcus and Commodus refer the gerousia of Athens to their procurator, Caecilius Quadratus.<sup>50</sup> The first occasion concerns the property-rights of the gerousia and especially the cutting-down of trees on its estates; the second concerns the

<sup>45</sup> The most helpful modern discussions of the mechanisms for the maintenance of the road-system and for the allocation of the associated liturgies of *hospitium* and ἀρχαρεία are, in my view, T. PEKARY, Untersuchungen zu den römischen Reichsstraßen, Bonn 1968, esp. 77 ff. and 121 ff. and S. MITCHELL, op. cit. (note 39) 106–131.

<sup>46</sup> IGR III 15.

<sup>47</sup> For this evidence see D. FRENCH, Milestones of Pontus, Galatia, Phrygia and Lycia, ZPE 43, 1981, 149 ff. at 149–51. Also on C. Julius Aquila and L. Antonius Naso see L. ZUCKERMANN, op. cit. (note 4) 45–47, who adequately refutes the hypothesis that they were praesidial procurators.

<sup>48</sup> D. FRENCH, op. cit. 174 with SEG 36, 1467. The restoration of [ἐπιτρό]που in line 12 is not certain.

<sup>49</sup> SEG 33, 967 with the important discussion of J. and L. ROBERT, Fouilles d'Amyzon, Paris 1983, 31–5 who infer that responsibility for this major public route was shared among cities, such as Magnesia and Amyzon, which were attached to the *conventus* of Miletus.

<sup>50</sup> J. H. OLIVER, Greek Constitutions of Early Roman Emperors, Philadelphia 1969, no. 195, esp. lines 39–48 and no. 196, esp. lines 63–4.

erection of statues of the imperial family and of certain other unspecified individuals. From another free-city, Delphi, two imperial letters of 98 and 99 survive in fragmentary form which allude to the problems of a local citizen, Pythodorus. These problems have been raised with Trajan by an embassy from Delphi. In reply Trajan states that he will write to both the proconsul and provincial procurator to gain clarification and to confirm the account of the embassy.<sup>51</sup> Equally as obscure, given the condition of the inscription, is the involvement of the procurator of Sicily, c. 164/6, in the financing of a civic building-project at Catania.<sup>52</sup>

Three other inscriptions place us on slightly firmer ground. As early as the reign of Claudius at Amyzon an honorific inscription was dedicated to him, out of funds left to the city by a private individual, «in accordance with the decision (ἐπίκριμα) of the procurator Cn. Vergilius Capito».<sup>53</sup> Although it is not clear whether Capito's decision referred to the will of the individual or the contribution itself, the use of the term ἐπίκριμα (a word normally used to denote the decisions of Roman magistrates) is striking. During the reign of Hadrian the famous dossier of the dispute over cleruchic lands at Aezani also witnesses the involvement of a procurator in a non-patrimonial matter. In 125/6 the proconsul of Asia, Avidius Quietus, in order to try to resolve the dispute, wished to discover the average size of cleruchic allotments. He wrote to a certain Hesperus, «the procurator of the emperor», to instruct him to investigate the maximum and minimum sizes of such allotments in Aezani and its neighbourhood.<sup>54</sup> This delegation was made, we should assume, because the proconsul lacked at his direct disposal the skilled surveyors to carry out the task.<sup>55</sup> From Gortyn in Crete an instructive inscription records the restoration of cross-roads and associated work, attributed to the emperors Marcus Aurelius and Lucius Verus, *a sacris pecuniis deae Dictymnae*. The work was accomplished «through» the procurator.<sup>56</sup>

As a final coda to this section we should note two examples of provincial procurators performing a diplomatic task, namely the forwarding of civic decrees to the emperor, which was normally carried out by the incumbent proconsul. In the early 140s and c. 150 two procurators of Asia are attested as forwarding to Antoninus Pius decrees of the city of Ephesus.<sup>57</sup>

<sup>51</sup> J. H. OLIVER, *op. cit.* nos. 44 and 45.

<sup>52</sup> AE 1960, 202 = 1989, 341d. The restorations can scarcely be deemed secure.

<sup>53</sup> J. and L. ROBERT, *op. cit.* (note 49) no. 69 who cite a possible, if fragmentary, parallel allusion to ἐπίκριματα of a procurator at Perge.

<sup>54</sup> MAMA IX pp. xxxvi–xliii.

<sup>55</sup> Compare the famous example of Pliny's need for skilled manpower (ep. 10, 61 and 62). My account follows that of T. S. R. BROUGHTON, *op. cit.* (note 20) 242 ff.; there is no warrant for the view (e.g. F. F. ABBOTT and A. C. JOHNSON, *Roman Municipal Administration*, Princeton 1926, 404–5) that fiscal interests were at issue.

<sup>56</sup> I. Cret. IV 333. For a proconsul under Trajan supervising the repair of a civic building at Gortyn, see I. Cret. IV 221; I. Cret. IV 327 and 329 may also be relevant if of imperial date.

<sup>57</sup> J. H. OLIVER, *op. cit.* (note 20) nos. 135 and 139. A similar role is probably to be at-

From the point of view of this article three aspects of the data which we have set out are of especial significance. None of the activities attributed to procurators in this data were fiscal or patrimonial. All of these activities were within the routine competence of an incumbent proconsul. The data itself is not only qualitatively but quantitatively very limited. This last aspect of the data makes the description of such procuratorial actions as «regular» implausible, given the comparatively abundant data for proconsuls performing these and other administrative functions.<sup>58</sup> Rather such actions were occasional extensions of the procuratorial role beyond its core patrimonial and fiscal elements. To find a satisfactory explanation of these occasional extensions we need to situate them in the wider context of provincial administration in the public provinces.

(d) *Context and Explanation*<sup>59</sup>

The range of administrative and jurisdictional duties which could legitimately be expected of proconsuls was far reaching. Yet both their effective, as opposed to theoretical, powers and the infrastructural reach of provincial administration in general were limited. The potential mismatch between the supply of and demand for administrative and jurisdictional services led to a variety of ad hoc institutional expedients. If we look at each of these propositions in more detail, we can find a convincing historical context in which to fit our evidence about procurators.

The administrative and jurisdictional activity of provincial governors (whether proconsuls or imperial legates) can usefully, if schematically, be seen as serving two functions. On the one hand provincial governors were responsible for carrying out the demands of the central power at Rome as expressed in imperial *mandata*, edicts and letters. Whatever specific demands might be made, all governors had a generic duty to maintain internal order through formal jurisdiction and summary hearings. Provincial governors alone possessed the powers of capital punishment and severe chastisement. On the other hand, individual provincial communities and individual subjects routinely approached the governor to gain authoritative adjudication of their problems. Individual communities expected governors to resolve, for example, disputes over the allocation of local magistracies, civic revenues, the control of public lands, the financing and execution of public building-projects. The governor, alone, had the legitimate power to adjudicate disputes between neighbouring communities. Individual subjects sought the governor's tribunal in order to gain resolution of private disputes, through the mechanisms of civil and criminal jurisdiction.

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tributed to the procurator Iuncus in the fragmentary letter of Hadrian (part of a dossier of imperial letters mainly concerning the *vétoi*) to Pergamum (ibid. no. 60 at l.24).

<sup>58</sup> The characterisation of F. MILLAR, *op. cit.* (note 30) 182.

<sup>59</sup> For what follows see G. P. BURTON, *Proconsuls, Assizes and the Administration of Justice under the Empire*, JRS 65, 1975, 92–106 and W. ECK, *Die staatliche Administration des Römischen Reiches in der Hohen Kaiserzeit – ihre strukturellen Komponenten*, in: R. KLEIN (ed.), *100 Jahre Neues Gymnasium Nürnberg, Donauwörth 1989*, 204–224.

The procedures for formal and summary jurisdiction provided the framework in which governors exercised all their powers. They toured their provinces and held hearings at fixed assize-centres. Local authorities and individual subjects, who wished to gain access to the governor's tribunal, had either to seek him out in person or communicate via letters and/or embassies. Governors, in addition to their exercise of public authority, were also expected to participate in and attend the major ceremonial, religious and social events of their province and its constituent communities.

In practice there were severe constraints on the effective exercise of their responsibilities by provincial governors and other elite officials. The vast territory of the empire, about 5 million square kilometres, was divided into only 41 provinces under Trajan (44 under Septimius Severus). On one plausible estimate in the middle of the second century there was one elite official (senatorial or equestrian) for every 350–400,000 subjects.<sup>60</sup> As significant as the relative paucity of elite officials was the differential size of provinces. Hispania Citerior comprised c. 300,000 square kilometres, Cyprus only c. 9,000.<sup>61</sup> If we look at the public provinces in particular, the proconsul of Asia, though assisted by three legates and a quaestor, was faced by especially far-reaching potential demands. According to the best modern estimate Asia comprised at least 300 constituent civic communities, according to contemporary accounts there were 500.<sup>62</sup> Or again, if the proconsul of Cyprus had a relatively easy task, the proconsul of Crete and Cyrenaica (like the proconsul of Cyprus assisted by one legate and a quaestor) faced the arduous problem of ruling two geographically discrete areas. The competing demands placed on the resources of the proconsul of Crete and Cyrenaica were explicitly invoked by Antoninus Pius in reply to a request from the city of Berenice to become an assize-centre.<sup>63</sup> The difficulties and delays, inherent in the assize-system, which litigants might face are reasonably well-documented in the public provinces.<sup>64</sup> In short, in relation to the possible executive and jurisdictional demands which might be made on provincial governors, we can usefully perceive Rome's control over her provinces as characterised by a substantial deficit of administrative resources.

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<sup>60</sup> So K. HOPKINS, *Taxes and Trade in the Roman Empire (200 BC-AD 400)*, JRS 70, 1980, 101–125 at 121.

<sup>61</sup> See the instructive discussion of W. ECK, *op. cit.* (note 59) 206–7.

<sup>62</sup> CH. HABICHT, *New Evidence on the Province of Asia*, JRS 65, 1975, 64–91 at 67.

<sup>63</sup> J. H. OLIVER, *op. cit.* (note 50) no. 123, a letter to the city of Cyrene referring to the request of Berenice.

<sup>64</sup> G. P. BURTON, *op. cit.* (note 59) 99–102. *Mutatis mutandis* now compare the fascinating papyrus of 245 published by D. FEISSEL and J. GASCOU, *Documents d'archives romains inédits du moyen Euphrate (III<sup>e</sup> siècle après J.-C.)*, CRAI 1989, 535–561, esp. 545 ff. which contains a petition to a governor by four villagers who have waited eight months at Antioch to gain a hearing.

A variety of administrative expedients occurred in the public provinces during the first, second and early third centuries which can plausibly be interpreted as ad hoc responses to this deficit. The best known expedient was the sporadic, in time and place, appointment of *curatores* to investigate and to supervise, on a short-term basis, the public finances of individual communities.<sup>65</sup> The hypothesis that such appointments were made primarily in response to requests from local communities for authoritative intervention by the central power is given greater credibility by the fact that on occasion even free-cities requested outside intervention.<sup>66</sup> A second expedient was the occasional appointment of special imperial legates (*legati Augusti*) to serve in public provinces alongside the incumbent proconsul.<sup>67</sup> Some of these attested legates are merely names to us. However, when we can discover something of the duties attributed to them, without fail we find them performing functions (e.g. the adjudication of boundary disputes) which were within the routine competence of the annual proconsul.<sup>68</sup> The appointment of such legates, we may hypothesise, allowed the systematic investigation and adjudication of a complex dispute, while the incumbent proconsul concentrated on his regular duties. A good analogy, from an imperial province, may be discerned in Syria when we find the occasional appointment of a special legate or a procurator to investigate the accounts (*rationes*) of the cities of Syria, a task fully within the theoretical competence of the imperial governor.<sup>69</sup>

If this explanation of the appointment of *curatores* and special imperial legates in the public provinces is convincing, we have a clear context for situating and understanding the occasional, but not regular, attribution of non-fiscal administrative duties to provincial procurators. Given the structural deficit in administrative resources, the appointment of *curatores* and special imperial legates and the occasional use of procurators for non-fiscal functions can all alike be envisaged as alternative mechanisms for bridging the gap between the demand for and supply of administrative services.

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<sup>65</sup> See G. P. BURTON, *The Curator Rei Publicae: Towards a Reappraisal*, *Chiron* 9, 1979, 465–88. On the reasons for the appointments of *curatores* also compare F. VITTINGHOFF, *Zur Entwicklung der städtischen Selbstverwaltung. Einige kritische Anmerkungen*, Munich 1982, 107–146 at 113–17.

<sup>66</sup> For example see J. REYNOLDS, *op. cit.* (note 14) no. 16.

<sup>67</sup> A neglected topic. The fullest discussion remains H. G. PFLAUM, *Légats impériaux à l'intérieur de provinces sénatoriales*, in: *Hommages à Albert Grenier*, Brussels 1962, 1232–42. Now compare B. E. THOMASSON, *Legatus*, Stockholm 1991, 73 ff. (non vidi).

<sup>68</sup> E.g. AE 1934, 260 with Tac. ann. 14, 18, 2f. or AE 1919, 91–3 and SEG 9, 360. Note also the occasional appointment in the public provinces by emperors of *iudices dati*, who appear to hold no other official position in the province, to resolve boundary disputes (AE 1913, 2; 3 and J. H. OLIVER, *op. cit.* [note 50] nos. 113 and 114).

<sup>69</sup> Three examples are known to me: ILS 1067 (senatorial); AE 1956, 123 (equestrian) and ILS 1437 (equestrian).

#### 4. Jurisdiction: A Coda

In the foregoing analysis I have avoided any discussion of the difficult topic of procuratorial jurisdiction. However the kind of argument used in the previous section may help to illuminate one aspect of this topic. Procuratorial jurisdiction was the subject of wide-ranging debate almost thirty years ago. This debate culminated in an authoritative and classic exchange of views by F. MILLAR and P. A. BRUNT.<sup>70</sup> Although the surviving data does not allow a full descriptive account of the development of procuratorial jurisdiction and the exact significance of Claudius' grant of jurisdictional powers remains obscure, two prime aspects of the jurisdiction of procurators emerged from this debate. First, on imperial estates and properties, such as mines, procurators exercised a low level jurisdiction and policing role analogous to that which local magistrates possessed in their cities and dependent territories.<sup>71</sup> Secondly, provincial procurators came to exercise routine jurisdiction in fiscal cases. Such cases included both disputes where the *fiscus* was either plaintiff or defendant and disputes between third-parties over their obligations to the *fiscus*.<sup>72</sup> They exercised their jurisdiction either alone or in conjunction with the provincial governor. It is a good index of the importance of fiscal jurisdiction that jurists of the late second and early third century can categorise legal cases into three types, public, civil and fiscal.<sup>73</sup> Given the routine exercise of administrative powers in patrimonial and fiscal affairs by procurators, this acquisition of parallel jurisdictional powers scarcely occasions surprise.<sup>74</sup> More difficult to interpret are the occasional references in the legal sources to the exercise (or attempted exercise) by procurators of jurisdiction in civil and criminal disputes. BRUNT argued that such accretions of procurators' powers occurred either by specific decision of an individual emperor or as a result of attempts by individual procurators to enhance their effective powers.<sup>75</sup> The history of the enforcement of the *lex Fabia* neatly illustrates the two possibilities. Caracalla gave procurators the power to try cases under this law, a grant revoked by Gordian III. Caracalla's decision had followed attempts in Rome and the provinces to usurp such jurisdiction.<sup>76</sup>

A third, but not necessarily mutually exclusive, explanation of the occasional extension of procuratorial jurisdiction is possible, an explanation which is analogous to that used in the previous section. For example, we know that procurators were

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<sup>70</sup> F. MILLAR, *op. cit.* (note 30) and P. A. BRUNT, *Procuratorial Jurisdiction*, in: *Roman Imperial Themes*, Oxford 1990, 163–87.

<sup>71</sup> See esp. P. A. BRUNT, *op. cit.* (note 70) 183–7.

<sup>72</sup> *Idem*, 169–183.

<sup>73</sup> E.g. Ulpian, *Digest*. 3, 6, 1, 3.

<sup>74</sup> It is plausible to believe that Claudius' decision of 53 concerned the formal extension to provincial procurators of jurisdiction in fiscal disputes.

<sup>75</sup> P. A. BRUNT, *op. cit.* (note 70) esp. 170–1, 183 and 187.

<sup>76</sup> Ulpian, *Collatio* 14, 3, 1–3 and CJ 9, 20, 4.



not normally competent to appoint a judge in a civil suit, but also that by a rescript of Caracalla they were empowered to do so if the litigants agreed.<sup>77</sup> It is, therefore, plausible to assume that sometimes procurators exercised (or attempted to exercise) jurisdiction in civil and criminal suits in response to the demands of individual provincial subjects who wished to avoid the potential difficulties and delays inherent in any attempt to gain a hearing at the governor's tribunal.

Patrimonial and fiscal administration and jurisdiction came to represent the routine duties constitutive of the role of a provincial procurator. However, given the limitations on the effective powers of provincial governors and in order to meet the competing demands of the central power and the provincial subjects, provincial procurators occasionally exercised administrative and jurisdictional duties in areas where normally they had no legitimate powers.

### *Concluding Remarks*

Given the limitations of the surviving evidence, the arguments adduced in this paper cannot be decisive. At a minimum a plausible case exists that, first, provincial procurators in the public provinces came to acquire a routine role in the supervision of public taxation (in addition to their original patrimonial role) analogous to that exercised by provincial procurators in the imperial provinces and, second, they exercised occasional administrative and jurisdictional powers in the non-fiscal sphere as a response to the limited resources available for the exercise of public authority in the empire.<sup>78</sup> Both propositions possess reasonable credibility when placed in the wider context of our general conception of Roman fiscal, administrative and jurisdictional practice.

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<sup>77</sup> CJ 3, 13, 1.

<sup>78</sup> Compare the remarks, in the context of the emergence of the new province of Phrygia and Caria in the 250s, concerning the demands made on the proconsul of Asia in the early 3rd century by CH. ROUECHÉ, *Rome, Asia and Aphrodisias*, JRS 71, 1981, 103–120 at 117.