That the promagistracy of the Republic was extensively controlled by the Senate is a commonplace. It is also well known that this control was exercised often without constitutional sanction on the plea of expediency, or of the success in practice of innovations made. Originally a vote of the people was required for a prorogatio imperii, as it had been required for the initial grant of imperium. In times of emergency, however, for speed and efficiency, the Senate assumed the right to prorogue, its decision being later rubber-stamped by the popular assembly. Custom and practical necessity, powerful agents in Roman legal and constitutional theory and practice, eventually established prorogatio imperii as a senatorial function. So it was with the distribution and assignment of provinciae. The Senate, a permanent body and repository of all the official experience of the state, came in practice through expediency to direct foreign policy and finance and thus claimed to intervene in such distribution and assignment. There also supervened by the second century B.C. a change from non-territorial provinciae to provinces that were fields of activity circumscribed by territorial rather than functional limits. By 123 B.C. a practice had been fairly well established by which the Senate dispensed prorogatio and territorial province to each consul and praeator, generally at the conclusion of his year of office in Rome.

It is consequently surprising to find it contended that, among Sulla's constitutional reforms in 81, was the provision that consuls and praetors should as a rule assume promagistracies in a territorial province for a year after their year of office in Rome. In fact, however, Sulla did not make a clean break between magisterial office and provincial government; examination of consulships from 79 to 53 clearly indicates that there was no legal or constitutional restraint on a consul's leaving Rome before the end of his year's office. Moreover it does not seem that even long term commands of the Republic had a specific terminal date; equally, the date of commencement and deposition of a promagistracy seems never to have been nicely defined. This vagueness over initial and

2 Ibid. 161—66.
3 Ibid. 166—72 for a discussion of the whole problem. The test cases of Decius and Fabius in 295, Marcellus in 210, and Scipio in 205 show the gradual process by which these administrative "rights" were acquired by the Senate.
4 Marsh The Roman World from 146 to 30 B.C., 1953, 132; von Fritz, 286; C.A.H. 9, 1951, 294.
5 Balsdon, 'Consular Provinces under the Late Republic', J.R.S. xxix, 1939, 57—63. Anyway the regulation that a promagistrate must retire within thirty days of his colleague's arrival could only be effective if the latter could arrive at any time: ibid. 65.
6 Until the Second Triumvirate, and definition at this point seems largely to have been due to the trouble caused by not fixing a definite terminal date to Caesar's Gallic command: Balsdon, 71—73.
7 Balsdon's statistics show that there can have been no fixed date of commencement: cf. p. 63. It follows from this that there can have been no fixed date for deposition of office. The exact calculation of their governorships by Cicero and Bibulus, starting from the moment of entry into their provinces, has no parallel in Republican administration to that date (ibid. 69—70): this too indicates that there was no defined promagisterial year.
terminal dates of promagisterial appointments is the more surprising as Sulla's other legislation aimed at exact delimitation of the promagistracy: a governor was restricted to his province and compelled to retire thirty days after his successor's arrival; the senate was to designate consular provinces and violation of these regulations was treason. Even the increase of the number of praetors to eight seems to have been intended largely to provide additional personnel so that governors would normally be available for all provinces year by year. A striking point in the legislation is this increase in the number of praetors: in all other respects the state of affairs produced is identical with that in 123.

Yet there had been no constitutional amendment of note to the position of the promagistracy in the years intervening since C. Gracchus. The difficulty is regularly explained by saying that Sulla "accepted and completed" a practice that had grown up. But the trend of Sulla's legislation was that of inducing change, and von Fritz states that Sulla's (normally annual) promagistracies after office in Rome were aimed at avoiding "repeated prorogations of office such as had occurred in earlier times". Moreover, "Clearly the whole system was designed to prevent any individual from becoming too powerful and to make it impossible for any magistrate or promagistrate to become independent of the Senate". Two questions are thus posed: was Sulla's provision regarding promagistracies a formulation of or a change in custom, and how did that provision accord with the general tenor of his legislation on provincial government?

Now if there were no constitutional changes as such involving the promagistracy during the years 121–81 B.C., there were nonetheless some very important developments in socio-political and administrative life which directly influenced it. In the period 120–108 one family, the Caecilii Metelli, achieved a dominance in the elections that was something new even for the faction-ridden politics of Rome. They were in alliance with the Equites, who had become an important force in political life since C. Gracchus had organized them and given them control of the judicature. Their emergence brought a powerful Third Estate into the Republic and altered the whole political climate.

An appointment 'in annum' was not an appointment for a year; the 'annus' was the year between the making at Rome of one set of provincial appointments and the next (ibid. 70).

8 C.A.H., 293–97. The Senate had been given the right to designate the consular provinces before the consular elections in 123: von Fritz, 172. Sulla seems to have further delimited provinces in that propraetors were given purely administrative duties in the pacatae provinciae and proconsuls received those where military operations might be necessary: Balsdon, 64.

9 C.A.H., 296; Marsh, 133.

10 Marsh, 132; cf. C.A.H., 294: "the Sullan age saw custom hardening into rule".

11 Von Fritz, 286. Last in C.A.H. states: "Down to the time of the Social War provincial commands had been held by consuls and praetors both during the years in which they occupied these magistracies and in innumerable cases for a further period thereafter... From the time of Sulla onwards... it is rare for a consul, and unknown for a praetor, to be employed elsewhere than in Rome or Italy during his tenure of the magistracy itself". This means that Sulla definitely changed contemporary political practice.

12 Bloch et Carcopino La République Romaine de 133 avant J.C. à la mort de César, 1929, 266 f.

Their breach with the Metelli and alliance with Marius brought to the latter and his associates political dominance in the years 107 to 100.\(^{14}\)

The years 110–100 put the administrative machinery and manpower of the Republic to the most severe testing: major wars — against the Cimbri, Jugurtha, and the revolted slaves — had to be waged on several fronts. In this period Rome never had less than two wars to prosecute simultaneously. There was also a decided movement to assert popular, as opposed to senatorial, control over the magistracies, whose functions and importance became altered in the process. In 108, for example, a plebiscite altered the Lex Sempronia de provinciis consularibus to send Marius to Africa.\(^{15}\) In 105 the Lex Annalis was altered to permit Marius' re-election to the consulship, within four years and in absentia. This change was effected by citing the constitutional precedent set in the case of Aemilianus in 148.\(^{16}\) Clearly, this must have been done in the full legal knowledge of the implications involved. It would be perverse not to assume that Marius took a fully cognizant part in these developments, for he benefited directly from then, had a profound knowledge of Roman law, and was a very shrewd politician.\(^{17}\) In 105 also the people abrogated the imperium of the proconsul Caepio,\(^{18}\) a direct challenge to the Senate's claim to monopolize the power to prorogue. With Saturninus in 100 came "a scheme . . . to subject the upper magistracies to a detailed control of their activities in a way that smacks of government by psephisma".\(^{19}\) There was also a trend towards putting real power in the hands of one consul at a crisis: this can be seen in the repeated re-elections of Marius in 104–100. The administrative crisis recurred after a decade of inaction, when in 90–82 there broke upon Rome the Social War, the Mithridatic War, the Cinnan-Marian counter coup and Sulla's final counter coup, the first three of which overlapped. With these crises the trend to absolutism also recurred: Cinna held the consulship from 87–84, and in 87 the flamens Merula was appointed suffect consul, in place of the deposed Cinna, a ruse which in effect gave sole power to his colleague Octavius.\(^{20}\)

Under senatorial control the promagistracy had been developed to serve two purposes; one was administrative, the other was to secure senatorial pre-eminence in political life. It supplied the demand for more magistrates with imperium, making available an indefinite number of officials. It also avoided an increase in the number of regular magistracies. An increase here would have meant that the cadets of consular and praetorian gentes could not be numerous enough for all the lower offices and thus new-comers would have opportunity to obtain these, then higher office, and with it ennoblement as novi homines.\(^{21}\)

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15 C.A.H. 9, 125–126, and n. 1 p. 126.
16 Sherwin-White, 3; cf. Plutarch, Marius 12, 1 (Loeb section notation).
17 On Marius' legal knowledge, see Plutarch, Mar., 5,5; 14,5; 28,2; 38,3. He seems to have been a shrewd party-politician and opportunist (Cic. Ad Att., x, 8,7; Epit., lxix; Dio, xxi, 89,2), and not the simpleton he is made out by Plutarch at Mar., 28,2 (cf. Passerini, ‘Caio Mario come uomo politico’, Athenaeum, xii, 1934, 260–68, modified by Badian, ‘Caepio and Norbanus’, Historia vi, 1957, 342–44).
18 Discussed at C.A.H. 9, 159–61.
19 Sherwin-White, 4; f. Passerini, 121–24.
20 C.A.H. 9, 262.
21 Marsh, 25 and n. 1.
Under senatorial control, state policy aimed at the preservation of the status quo and was indifferent to commercial interests. Such policy could not possibly be maintained through the wars of this tumultuous period, especially as the Equites had come to participate in the direction of foreign policy. Changed administrative trends in turn influenced the promagistracy, one of the tools on which the administration relied so heavily.

The process was gradual and piecemeal. First of all, the Metelli used their predominance to secure the continued proroguing of members of their own family and faction when once in command of an undertaking. This maintained their supremacy while serving the administrative end of securing continuity of command. The device proved indispensable in the wars of 110—100, and by 100 had become a fixed practice. There was nothing new in the practice itself, but the frequency with which important politicians were given these extensively prorogued commands meant in practice that the promagistracy gained in importance, standing and power. "The regnum Cinnanum was a time when we might expect a serious shortage of men able and willing to command armies and govern provinces on behalf of the Government. But the period that precedes — the time of the Social War — must, for different reasons, have seen an even more serious shortage: men able to lead armies were wanted nearer home; yet the Social War was bound to, and in fact did, arouse the eager hopes of Rome's enemies everywhere, so that the provinces more than ever needed competent commanders. Thus the problem is a continuous one ... prolonged commands and the minimum of change may be expected to characterize our decade." Efficient men tended to be simply held to their posts till successors could be sent, and this often meant very lengthy commands.

But a build-up of factional power meant frustration of careerists' ambitions and bottlenecks in the cursus honorum. Again the promagistracy could be employed. A man could, for instance, be prorogued at a higher level. Thus Marius, praetor in 115, became proconsul in Spain in 114 by way of reward.

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22 A good illustration of this can be seen in Rome's motives for entering upon the Jugurthine War: Frank Roman Imperialism, 1914, 266–68 and C.A.H. 9, 131–33. The tolerance of piracy by the nobilitas is a striking instance of their indifference to equestrian interests: Ormerod Piracy in the Ancient World, 1924, 185–90 and especially 207.

23 Examples taken only from the gens Caecilia are:
   Metellus Dalmaticus, proc. 118–116;
   M. Caecilius Metellus, proc. 115–111;
   Metellus Numidicus, proc. 108–106. For substantiation of these and the following references to the Fasti, reference should be made to Broughton The Magistrates of the Roman Republic, 1951, under the relevant year and magistracy.

24 Other examples are:
   Minucius Rufus, proc. 109–106;
   Servilius Caepio, proc. 107–105;
   Ti. Didius, proc. 97–93;
   Sentius, propr., 93–87;
   Metellus Pius, proc. 88–82.

25 C.A.H. 9, 294.

26 Badian, 'Notes on Provincial Governors from the Social War down to Sulla's Victory', P.A.C.A. 1, 1958, 2; cf. the appendix on p. 16.

27 Broughton, 1, 534 and 535, n. 3.
for a year of office in which he had totally ceased his popularis activities.28 Besides serving as a reward for — and inducement to — cooperation, this practice was invaluable in wartime. For instance, Marius' repeated tenure of office excluded many rising men and that at a time when their services to the administration were of vital importance.29 By proroguing at a higher level of command, men of talent could be employed at the most gainful administrative level (advancement coming when their increased experience and successes indicated that promotion was expedient), and could be kept in harmony with the administration in general through their promotions. Again, there was nothing new in this practice itself,30 but its frequent use31 resulted in a de facto extension of the power of the promagistracy.

These two developments combined to cause the promagistracy to become regarded as in some way separable from its magistracy. For instance, in 93 a proconsul's legate governed his province in his name for a year after the proconsul had left it.32 "That Flaccus held imperium in two provinces (at least in succession) from 92 to 81 seems undeniable... in the emergency of the regnum Cinnanum, he received a cumulation of provinces that recalls some of the later 'special imperia'."33 Hence Marius did not take up a proconsulship in 99 but claimed, and was given, one in 88.34 Again, as a practice, this was not without precedent.35 It was not even unknown for privati to be invested with a promagistracy36 and the proconsul Cluvius, for instance, of 104 may be a case where this particular development was employed.37 What was unprecedented, but nonetheless the logical conclusion of this trend of development of the promagistracy, was the deposition of the proconsul Caepio in 105. By abrogating his prorogued imperium the people at once challenged the Senate's sole 'right' to prorogue and simultaneously indicated a difference between a promagistrate and an elected holder of an imperium, who was of course not liable to have his powers revoked. It is noteworthy that Caepio's deposition was

28 It is clear that Marius' law about the voting pons was not promulgated in collusion with the Senate (so Bloch et Carcopino, 270—71) but as an anti-Senatorial measure (Badian, 'P. Decius P. F. Subulo', 94). Marius was subsequently dogged by the enmity of the Metelli, whom he had flouted, and failed with a bid for an aedileship and was prosecuted on being elected praetor — last (Passerini, 15 and n. 1). Significantly his praetorship is the only office on literary record in which no political activities of his are recorded. As the Senate controlled both prorogatio and provincia at this point, Marius' promagistracy can only have been a reward for his cooperation through inactivity.
29 Sherwin-White, 3; on Billienus cf. Broughton, 1, 552, n. 3.
30 Jashemski The Origin and History of the Proconsular and Praetorian Imperium to 27 B.C., 1950, 58.
31 Examples are: Marius, 114; Antonius, 112; Caepio, 107; Billienus, 106; Sulla, 105; Memmius, 103; Antonius and Didius, 100; Dolabella, 99; Calidus, 98; Scaevola, 97; Caesar, 95; Publicola, 93 and Caesar, 91.
32 Badian, 'Notes on Provincial Governors', 10 and n. 89.
33 Ibid., 11—12 (the quotation is taken from p. 12).
34 Broughton, 2, 42 and 45, n. 8. Note that in 87 Cinna offered Marius the insignia of a proconsul: ibid., 48.
35 Jashemski, 92: "Since Marius had previously held the consulship, this grant of imperium is similar to those discussed in Chapter I, given to men who had previously been consuls but who while privati were granted imperium."
36 Ibid., 36 and 37.
37 Broughton, 1, 560 (no Praetorship recorded).
a popular action as was Marius' election as privatus to the proconsulship of 88, while Sulla, in reaction against popular supremacy, gave the Senate legal power to designate the consular provinces and made the process of prorogation automatic (and therefore incumbent upon the administration — i.e. the Senate). It is not suggested that these instances in themselves constitute a trend in the development of the promagistracy. They do however set most important precedents and are developments of the trend just analysed and also movements in a similar direction. Marius' election to the proconsulship of 88 involved the reallocation of a major command, which was taken from the consul Sulla and given to Marius. It was thus another challenge to the Senate's right to prorogue, claiming for the people complete control over a promagistrate's appointment and functions. Moreover the promagistracy was coming to be administratively used by the Marians as an office distinct from the magistracy.

This period was one in which new problems were posed by changed administrative needs and new factional alignments. It is clear that there was much rethinking of the aims and scope of the administrative machinery that served those needs. More; decisive action was taken, especially with promagistrates. The latter were at first developed within the framework of constitutional precedent. They thus came by a gradual development of precedent to be dissociated from the magistracy proper, for they were in practice not annual nor necessarily connected in standing with the magistrates which severally preceded them. A second stage of development was foreshadowed when, while challenging the Senate's monopoly of prorogatio, the populace deposed a promagistrate. By 88 the promagistracy had become almost wholly separate from the magistracy as an institution, and subject to extensive control by the popular assembly. Hence Sulla's legislation, which involved change in current political practice or the re-enforcing of what had been custom but had been recently invalidated by precedents running directly counter to that custom. His failure to define initial and final dates in tenure of promagistracies is aimed at making the promagistracy once again the normal extension of the magistracy and at removing the distinctions which had grown up between the two offices. The limitations placed upon the promagistracy had the same aim, in that they sought to define its scope and functions just as those of the magistracy were defined. In sum, Sulla's regulations about the promagistracy sought to re-establish in statutory, legal form what had been the practice in 123. They are thus a decisive reassertion of the central administrative authority of the Senate, for they restored to the Senate its former control of prorogatio and the promagistracy, which had been seriously compromised in the preceding forty years.

38 Von Fritz, 286.
39 The mushroom growth and lack of definition of the powers of a promagistracy was in itself beginning to distinguish it as an office different in kind from the magistracy. For example, a promagistrate had set the precedent of governing (for his second year in office) through a legate (Badian, 'Provincial Governors: The Social War to Sulla's Victory', 10 and n. 89); during these forty years in some cases the provincia had come to be interpreted as an ad hoc command, not a territorially defined governorship (ibid. 10 and n. 97), and the administration of two provinces was often given to a single governor, thus creating, in a way, a maius imperium (ibid. 11-12).
40 The senate was empowered to waive these regulations (C.A.H., 295-96), and was thus restored to its former absolute control of the promagistracy as an instrument of administrative action and nepotism.
Acta Classica is published annually by the Classical Association of South Africa. The journal has been in production since 1958. It is listed on both the ISI and the SAPSE list of approved publications.

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