AGER ROMANUS AT MESSANA?

In 252 B.C., twelve years into the First Punic War, the consul C. Aurelius Cotta laid siege to Lipara, off the coast of Sicily. At some point during the operation, he found it necessary to repeat his auspices for war, obtained when he first departed from the City. He placed one of his officers in charge of the siege, and sailed away. Where to, that is the question.

P. Aurelium Pecuniolam sanguine sibi iunctum, quem obsidioni Liparitanae ad auspicia repetenda Messanam transiturus praefecerat, virgis caesum militiae munere inter pedites fungi coegit, quod eius culpa agger incensus, paene castra erant capta.

Thus Valerius Maximus (2.7.4) reports; Frontinus repeats the story almost verbatim.[1] In relating what is clearly the same incident, Dio (*ap.* Zonar. 8.14) makes the chastised officer a tribune by name of Q. Cassius.

μετὰ δὲ τοῦτο Αὐρήλιος…ἔπλευσεν εἰς Λιπάραν, καὶ ἐν αὐτῇ Κύιντον Κάσσιον χιλίαρχον καταλιπὼν προσεδρεύσοντα μάχης ἄνευ, ἀπῆρεν οἴκαδε. Κύιντος δὲ μὴ φροντίσας τῆς ἐντολῆς προσέμιξε τῇ πόλει καὶ πολλοὺς ἀπέβαλεν. ὁ μέντοι Αὐρήλιος μετὰ ταῦτα ἐκείνους ἑλὼν πάντας ἀπέκτεινε καὶ τὸν Κάσσιον τῆς ἀρχῆς ἔπαυσε.

The identity of the offending officer may have been reported variously, just like that of Cato's famous tribune[2] leading the Four Hundred on their sacrifice mission in 258 – was his name Caedicius, Calpurnius, or Laberius? Indeed, Frontinus *Strat*. 4.1.30 knows of a third individual that ran afoul of Cotta: *Cotta consul in Sicilia in Valerium, nobilem tribunum militum ex gente Valeria, virgis animadvertit*; if this information came from a different source than the one that supplied Aurelius Pecuniola (*Strat*. 4.1.31, the next entry), it might well represent merely another variant of the man's name, even though Frontinus' text does not make that connection. On the other hand, Zonaras alone reports specifically that Cassius had been left in command, with orders to avoid action; Valerius Maximus and Frontinus merely mention Aurelius' failure to defend the siegeworks and the camp from what evidently was a Liparitan counter-attack in the wake of a failed Roman assault: their interest in the matter is governed by the social dynamics of the situation – the consul enforcing discipline ruthlessly against an officer who was both a noble and his *consanguineus*. It is entirely possible that Cotta held more than one of his officers accountable for the debacle, and that Cassius had been, in fact, the one in charge, with Aurelius (and Valerius?) assisting him.[3]

1 Frontin. *Strat*. 4.1.31, *idem P. Aurelium sanguine sibi iunctum, quem obsidioni Liparorum, ipse ad auspicia repetenda Messanam transiturus, praefecerat, cum agger incensus et capta castra essent, virgis caesum in numerum gregalium peditum referri et muneribus fungi iussit*. Given the verbal parallels, this comes either from Valerius Maximus directly, or from an earlier collection of *exempla* used by both.

2 *Orig*. 83 *HRR*; cf. *MRR* 1.207 for other sources.

3 T.R.S. Broughton, *The Magistrates of the Roman Republic* [*MRR*], vols. 1–2 (New York, 1951–2); vol. 3 (Atlanta, 1986), 1.212, combines the information from Zonaras' narrative with the name of Aurelius Pecuniola ('…when he engaged in an attack contrary to orders…'), and notes Q. Cassius as having been 'similarly degraded for a similar offence', in effect suggesting that Aurelius and Cassius were punished on two separate occasions. That will not do.

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Besides being the only source to state expressly that the delinquent officer had acted contrary to the consul's orders, Dio/Zonaras differs from Valerius Maximus and Frontinus in one other detail. It is significant: Cotta sailed 'home', that is, to Rome.

It is well known that the inital auspices granting Iuppiter's permission to leave the City to go to war could only be repeated *in agro Romano*, as augurally defined: the primordial territory (*ager antiquus*) of the Roman State, ranging only a few miles beyond the *pomerium*, and not to be confused with the *fines populi Romani*.[4] In all but one of the attested cases in which it became necessary to repeat the auspices, the commander in question is reported to have returned to Rome for that task; only in the last such instance, dating from 215 B.C., do we find no specific mention of the location.[5]

The question may be raised whether those five attested instances of a commander repeating his auspices should be accepted as fact at all, or whether they constitute merely a narrative device that would permit the second-in-command to assume a leading role and make a mess of things.[6] In two cases (Livy 10.3.6–7 and the one discussed here), that does in fact happen; in another (Livy 8.30), the deputy achieves a splendid victory. In the fourth case (Livy 23.19), the deputy follows orders and holds still, avoiding both disaster and success; in the last (Livy 23.36.9–10), the deputy plays no role at all. (Here we cannot be certain, though, that the commander ever left camp.) The stories do not show a consistent outcome resulting from the commander's departure, and deputies could find themselves in trouble when their superiors were absent for reasons unrelated to the auspices: take, for example, A. Postumius Albinus in 110 B.C. (Sall. *BJ* 36–8; his brother the consul had returned to Rome to hold elections), or C. Aurunculeius Cotta and Q. Titurius Sabinus in 54 (Caes. *BG* 5.26–37; the commander had returned to another of his provinces for the winter). Nor should it cause surprise if a commander's leaving camp *ad auspicia repetenda* would surface in a historical narrative mostly if something untoward happened in consequence of it, or unusual circumstances attached to it, and go unmentioned otherwise. Those are not grounds for dismissing the practice as a literary fiction.

[4] Serv. in *Aen*. 2.178: *et respexit Romanum morem: nam si egressi male pugnassent, revertebantur ad captanda rursus auguria*; cf. Livy 22.1.7, *nec sine auspiciis profectum in externo ea solo nova atque integra concipere posse*. Our understanding of the (augural) definition and extent of the *ager Romanus* is based on Varro *LL* 5.33; Festus offers some topographic detail (232.23–8 L) and a fragment pertaining to repeating the auspices *in agro Romano* (326.16 L). See also T. Mommsen, *Römisches Staatsrecht*, 3 vols. (Leipzig, 1887–8[3]), 3.824–5; P. Catalano, 'Aspetti spaziali del sistema giuridico-religioso romano', *ANRW* II.16.1 (1978), 440–553, esp. 491–502, 529–31; J. Rüpke, *Domi militiae: Die religiöse Konstruktion des Krieges in Rom* (Stuttgart, 1990), 31–5, 45–6. It is possible, though uncertain, that the auspices had to be repeated not merely *in agro Romano*, but *in Urbe*. On augural law and procedure in general, see Catalano, *Contributi allo studio del diritto augurale, I* (Torino, 1960); J. Linderski, 'The augural law', *ANRW* II.16.3 (1986), 2146–2312.

[5] Livy 8.30.1–2 (cf. 8.32.4 and Val. Max. 3.2.9.), *in Samnium incertis itum auspiciis est…dictator a pullario monitus cum ad auspicium repetendum Romam proficisceretur*; similarly 10.3.6; 23.19.3. Uncertainty remains at 23.36.9–10, *nec alter consul Fabius, qui ad Cales castra habebat, Volturnum flumen traducere audebat exercitum, occupatus primo auspiciis repetendis, dein prodigiis quae alia super alia nuntiabantur; expiantique ea haud facile litari haruspices respondebant*. From Livy's subsequent narrative (to 23.39.5) it is evident that Fabius was delayed for a considerable time, enough certainly to go back to Rome, though nothing in the wording rules out the camp. But the expiation of *prodigia* and the mention of *haruspices* – more than one – would rather suggest the City.

[6] As suggested by the journal's anonymous referee.

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Given the parallels of the other known cases, one ought to assume that in 252, Cotta, after a stopover at Messana, returned to Rome, and there repeated the auspices. Yet in his magisterial study of the Roman legal and religious terminology of space, Pierangelo Catalano held that Zonaras was simply wrong, and that the consul repeated the auspices at Messana.[7] His argument proceeds from the legal fiction, reported by Servius Auctus (*sive* Danielis), under which a plot of foreign land could be converted to *ager Romanus*, thereby obviating the need for a commander to return to Rome to repeat the auspices:

Aen. 2.178: *Argis*. [Servius] adverbium loci est. et respexit Romanum morem: nam si egressi male pugnassent, revertebantur ad captanda rursus auguria. [Servius auct.] item in constituendo tabernaculo, si primum vitio captum esset, secundum eligebatur; quod si et secundum vitio captum esset, ad primum reverti mos erat. tabernacula autem eligebantur ad captanda auspicia. sed hoc servatum a ducibus Romanis, donec ab his in Italia pugnatum est, propter vicinitatem; postquam vero imperium longius prolatum est, ne dux ab exercitu diutius abesset, si Romam ad renovanda auspicia de longinquo revertisset, constitutum, ut unus locus de captivo agro Romanus fieret in ea provincia, in qua bellabatur, ad quem, si renovari opus esset auspicia, dux rediret.

We must distinguish two elements here in Servius Auctus' elaboration on Servius' curt statement about the Roman custom of returning home to repeat the auspices after suffering a defeat. The first (*item…ad captanda auspicia*) deals with the actual placement of the auspicant's hut or tent of observation, the *tabernaculum*: if a *vitium* (or, presumably, a negative response) occurred during auspication, the next auspication (for the same purpose, that is, to obtain permission to carry out the same intended act) had to be conducted from a different location; if a *vitium* occurred again, however, the auspicant was free to make his third attempt from the original place of observation. Only the second element (*sed hoc…rediret*) connects directly to Servius' comment. Apparently the scholiast saw a parallel (*item*) between the auspicant's returning to his original *tabernaculum* and the commander's returning to the City; it is a bit of a stretch, although both cases do involve an auspication *de novo*.[8]

Catalano's view runs into two obstacles. For one, while we have ample evidence for the transformation of *ager peregrinus* into *ager Romanus* for a variety of legal and ritual purposes as far back as the fifth century,[9] not a single instance of this being done *ad auspicia repetenda* is on record.

Second, Messana is in Sicily, not Italy. For as Catalano points out, correctly, Servius Auctus' legal fiction cannot have originated prior to the second century B.C.: until then it was impossible to turn into *ager Romanus* any territory located *extra Italiam*. As late as 210 B.C., the Senate ruled out (undoubtedly on the basis of an augural *responsum*) the naming of a dictator by a consul in Sicily, on the grounds that any such appointment had to occur *in agro Romano*: *eum autem in Italia terminari* (Livy 27.5.15).

[7] Catalano (n. 4), 529–31.

[8] Note that Servius himself was almost certainly confused about the reason for this procedure: there is no attested case, at any rate, of a commander returning to the City *ad auspicia repetenda* after suffering defeat. In all known instances (above, n. 4), the action is prompted by concerns about the validity of the commander's auspices. Cf. also C.F. Konrad, '*Vellere signa*', in id. (ed.), *Augusto augurio: Rerum humanarum et divinarum commentationes in honorem Jerzy Linderski* (Stuttgart, 2004), 169–203, at 173 (where Cotta's case has been overlooked) and 202.

[9] See the list of attested cases in Catalano (n. 4), 502.

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Messana, however, in Catalano's view must constitute a special case: convinced that Cotta travelled only to Messana and no further,[10] he argued that the city was considered a *civitas Italica*, and hence was able to contain, by 252, within its territory a piece of land that had been rendered *ager Romanus*. The consul Cotta, therefore, repeated his auspices there – not in Rome.

Now *ad auspicia repetenda Messanam transiturus* obviously means that the consul's immediate destination, on departing from Lipara, was Messana, and Catalano is right to insist that the 'natural interpretation' of that phrase points to the auspices being retaken there.[11] The problem with the 'natural interpretation' is that it rests on a common yet dangerous presupposition: namely, that our sources intended to furnish us with precisely the kind of information we are after. In this instance, the information comes from a series of *exempla* that are not concerned with technicalities of augural law, nor with the consul's precise movements on that occasion. The story falls, in both Valerius Maximus and Frontinus, under the rubric *de disciplina militari*, and its main point is that Cotta enforced discipline, ruthlessly, against a fellow noble – indeed, a *consanguineus*. For Valerius' purpose it would not matter if after a stopover in Messana, the consul travelled on to Rome – quite possibly by land, and certainly along the coast of Italy, as was the common practice if by boat; like most of our sources, Valerius had no inkling that this issue might be of concern to readers two millenia hence, and no reason to expound on it, in this particular context, for the benefit of his contemporary audience.

Could Cotta have been trying to bypass existing augural rules, and repeat his auspices at Messana – even though no *ager Romanus* did exist there – rather than return to Rome?[12] Perhaps; but such an attempt would certainly have been noted, and while Valerius Maximus might not mention it in the context of this *exemplum* (and Frontinus not at all), he might be expected – being necessarily aware of it – to bring it up under a different rubric.[13] And if Cotta wanted to establish a precedent that would allow future commanders to avoid the inconvenient trip back to Rome, why not simply repeat the auspices right where he was, at Lipara?

Zonaras, in fact, clearly states that Cotta went to Rome: ἀπῆρεν οἴκαδε. Catalano suggests that the author misunderstood a reference to *ager Romanus* at Messana in his source. That source, of course, did write in Greek, not Latin, and would have explained the matter clearly enough if indeed it mentioned it: for the practice (late and

[10] Catalano is clearly aware of the difficulties his suggestion poses, and leaves little room for doubt ([n. 4], 530, esp. notes 375–6) that it was prompted by his belief that *Messanam transiturus* must be understood as referring to the consul's final destination – while admitting, in the same breath, that the phrase can indeed denote a mere stopover (n. 374).

[11] Catalano (n. 4), 530, n. 376.

[12] I wish to thank the journal's anonymous referee for raising this question in pointing out that Romans were perfectly capable of breaking, bending, or forgetting their rules, or trying 'an experiment to see if they can get away with establishing a precedent'. It is a reminder worth repeating, and a salutary correction to the caricature of a Rome existing in unquestioned obedience to law and tradition. Yet I cannot accept the contention that if we have evidence for a procedure at a certain date (X) and a different procedure at a later date (Y), we may not assume that a change in law or religious rules has occurred at some point between X and Y: on the contrary, unless there is evidence that the procedure at Y caused controversy or resistance, it is entirely legitimate to postulate a change – provided it is understood that the change need not have come about by way of formal deliberation (i.e., someone may have experimented and got away with it, and thus established a precedent that henceforth became the norm or an acceptable alternative), and that Y itself, not some earlier date nearer X, may have marked the change.

[13] E.g., under 1.1 *de religione*, or 1.4 *de auspicio*.

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rare, no doubt) of converting a plot of provincial land to *ager Romanus* was something Dio knew and, basically, understood – witness his account of the Republicans at Thessalonica doing just that in 49 B.C. (41.43.2–3).[14] If Dio had told about the consul's going to Messana to repeat his auspices, and why, or if Dio wrote of Cotta's going to Messana without explaining why, it is utterly implausible that Zonaras should have mistaken that for Rome. In Dio's lost account, the consul returned to Rome.

Finally, if it was possible to repeat the auspices *in agro Romano* at Messana in 252, why was it not possible to name a dictator there in 210? The rules about having to name a dictator *in agro Romano* had been relaxed to mean effectively anywhere in Italy as far back as the fourth century;[15] if Messana by 252 could count as part of *Italia* and contained a piece of *ager Romanus*, no obstacle existed. But commanders had to return to Rome *auspiciorum repetendorum causa* as late as 216 (the dictator M. Iunius Pera, Livy 23.19.3). As did Cotta, surely, in 252.

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[14] The fact that Thessalonica is the only recorded instance of such a conversion overseas, and that Dio clearly treats it as an unusual event, should give us pause before assuming that the practice described by Servius Auctus had become routine in Cicero's day.

[15] Dictators had been named *in castris*, away from Rome – but within Italy, of course – for over a hundred years: e.g., in 352 (Livy 7.21.9), 327 (Livy 8.23.13), or 309 (Livy 9.38.13–14); evidently, a spot within the camp had been converted to *ager Romanus* in those cases.

ASCONIUS' FIFTY-THREE ROMAN COLONIES: A REGAL SOLUTION[1]

eamque coloniam (sc. Placentiam) LIII < > deductam esse inuenimus: deducta est autem Latina. duo porro genera earum coloniarum quae a populo Romano deductae sunt fuerunt, ut Quiritium aliae, aliae Latinorum essent (Asc. *Pis.* 3C).

LIII *spat. (iii litt. P, v S, viii M) MSS* : LIII <I ab u(rbe) c(ondita)> *Crawford* ut Quiritium aliae *Baiter* : itaque *MSS*

The difficulty raised by Asconius' report of Placentia as the fifty-third 'Roman' colony is well known. Mommsen saw that Asconius' total exceeded the number of

[1] This problem was drawn to my attention in E.H.Bispham's important recent piece, '*Coloniam deducere*: how Roman was Roman colonization during the Middle Republic', in G.Bradley and J-P.Wilson (edd.), *Greek and Roman Colonisation. Origins, Ideologies and Interactions* (Swansea, 2006), 73–160. I am grateful to him for letting me see this pre-publication. He comments that 'Asconius' source seems to be the only one to have reached us which uses the term *Quirites* of the inhabitants of what we call *Roman* colonies…, and the use of the term surprises in view of the *military* function often ascribed to these colonies' (at 81). But *Quirites* is a (rather dubious) emendation: I can suggest only the obelus. I am grateful to Dr. J. Briscoe, Mr. J. Paterson, and Prof. L.de Ligt for commenting on an earlier draft of this piece, and also to the anonymous referee. All mistakes are my own, and all references to Dion. Hal. are to the *Antiquitates Romanae*.

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