

THE MARRIAGE OF SOLDIERS UNDER THE EMPIRE*

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Roman soldiers were forbidden by law to contract a marriage during their period of military service, at least until the time of Septimius Severus.¹ This restriction seems anomalous, especially in the context of the legal privileges conferred on soldiers, in the making of a will, in the relative freedom from some of the restraints of *patria potestas*, and in court. Some of these privileges were in part an attempt to protect soldiers against and compensate for the rigours of military life with its enforced lengthy absences from home, often in remote areas of the empire. And so it is strange that a soldier was prevented from obtaining the solace of normal family life through wedlock, by a law that was virtually unenforcible and which caused the authorities trouble from the start. The ways in which emperors reacted to the marriage ban and the uncertainty created by it, and sought to ameliorate its consequences, provide a useful study of the working of imperial 'government'—how and why decisions were taken on a matter that was perhaps sensitive for the emperor's relationship with the army. Furthermore, I hope to demonstrate that the marriage prohibition was eventually lifted by Septimius Severus, and that this was an important part of the improvement in the material position of the army in the reign of this emperor—who used his troops to fight his way to power and allegedly proclaimed to his sons on his deathbed, 'Enrich the soldiers and scorn the rest'.² In what follows, section I considers the problems suffered by soldiers as a result of the marriage ban, and section II the attempts made before the reign of Severus to mitigate these. Section III examines the evidence of the literary sources for the removal of the ban by Severus, section IV the evidence of legal sources, and section V the evidence of military *diplomata* for the position of soldiers after Severus. Section VI provides a summary of the conclusions and their importance.

I

The earliest reference to the prohibition on marriage is a passage of Cassius Dio, relating to A.D. 44: 'He (Claudius) gave the rights of married men to the soldiers, since, in accordance with the law, they were not permitted to have wives'.³ This is confirmed by a group of papyri, dating from A.D. 113–42, containing the judgements of Roman officials in Egypt on the legal implications of the marriage ban. Rutilius Lupus (Prefect 113–17) says specifically: 'It is not possible for a soldier to marry'.⁴

There is no definite evidence to show when this restriction was first introduced. It is unlikely that Claudius himself was responsible for it since he attempted to mitigate its consequences; furthermore, the manner of his accession would make it important for him to keep the soldiers contented. Gaius emphasized his association with the army and his role as a military commander; he even adopted the titles 'castrorum filius' and 'pater exercituum'.⁵ It is improbable, therefore, that he introduced a restrictive measure like the marriage ban. Tiberius professed that he was the 'imperator' of his troops.⁶ But there was a serious mutiny at the start of his reign and, although the concessions made to

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¹ For a bibliography of the different views, see R. Taubenschlag, *The Law of Greco-Roman Egypt in the light of the Papyri 332 B.C.–A.D. 640* (1944), 82, n. 21; M. Kaser, *Das römische Privatrecht* (1971), 317, n. 60; P. Garnsey, 'Septimius Severus and the Marriage of Roman Soldiers', *California Studies in Classical Antiquity* 3 (1970), 45. The most comprehensive account of the legal position of the Roman

soldier is that of E. Sander, 'Das Recht des römischen Soldaten', *RhM* 101 (1958), 152.

² Cassius Dio 76. 15. 2.

³ 60. 24. 3: τοῖς τε στρατευομένοις, ἐπειδὴ γυναικας οὐκ εἶδύσαντο ἐκ γὰρ τῶν νόμων ἔχειν.

⁴ Mitteis-Wilcken, *Grundzüge und Chrestomathie der Papyruskunde* (1912), II. 2, no. 372, col. 1, l. 11; cf. col. 2, ll. 1 and 20–1 (A.D. 134). All identifiable cases in these papyri deal with auxiliaries, but the general tone of the statement by Lupus implies that the ban was extended to the legions and presumably the Praetorian Guard. Dio also implies that all soldiers were bound by the marriage prohibition.

⁵ Suetonius, *Cal.* 22. 1.

⁶ Dio 57. 8. 2.

the troops were subsequently withdrawn,⁷ Tiberius will perhaps have been unwilling to impose new restrictions on the soldiers' activities. In fact it may well have been Augustus who introduced the prohibition on marriage in service. He was evidently anxious to impose a stricter discipline after the chaos of the civil wars;⁸ perhaps when the emperor organized the length and conditions of military service in 13 B.C., he imposed the rule of celibacy.⁹ It could be argued that in theory the army would be a more disciplined and efficient force if it were not encumbered with wives and children. Hadrian, in a letter in A.D. 119 to the Prefect of Egypt, concerning the illegitimate children of soldiers, does not explain why the troops had been forbidden to marry; he merely announces his intention of interpreting more liberally the rather strict rule (τὸ αὐστηρότερον σταθὲν) established by his predecessors.¹⁰

The texts cited above¹¹ show that the ban on marriage in service applied to all soldiers. However, as the letter of Hadrian helps to demonstrate, the legal restriction did not prevent soldiers from associating with women, whom they treated as their 'wives', and producing children from these unions. And so there arose serious legal problems, which varied according to the status of the people who formed the relationship. Firstly, whatever the status of the mother and father, the children born to unofficial unions during service were illegitimate. They therefore had no claim on intestate succession and none by 'querella inofficiosi testamenti'.¹² If the soldier were a Roman citizen and married a citizen, then the offspring, though still illegitimate, would be Roman citizens.¹³ A child who was a citizen could be instituted as *heres* or left a legacy, but would perhaps be subject to the inheritance tax if he were not deemed to be a near relative. As soldiers could not enter their illegitimate children on the *album* of births, those children might find it difficult to prove their identity for claims in a will.¹⁴ So provident parents of such children tended to make unofficial declarations of birth before witnesses.¹⁵

Most soldiers probably formed liaisons with women of peregrine status, and a child of such a union would not be a Roman citizen.¹⁶ His position was much worse since he could not be instituted as *heres*.¹⁷ Hence he might find it very difficult to inherit his father's property. Children of unions between peregrine auxiliaries and *cives Romanae* will have been in the same position, since they were not Roman citizens.¹⁸

In addition, since the unions formed by soldiers in service were not legally valid, a woman could not reclaim her dowry on the death of her husband.¹⁹ On the other hand, a *donatio* between man and wife, invalid in legal marriages, retained its validity in the unions between women and soldiers.²⁰ Finally, even though the soldier and his 'uxor' might consider themselves man and wife, there was no legal basis for any prosecution for adultery, should this contingency arise.

⁷ Velleius 2. 125; cf. Tacitus, *Ann.* 1. 78. 2.

⁸ Suetonius, *Aug.* 24. 1; 25. 1.

⁹ For the situation in the Republic, see P. A. Brunt, *Italian Manpower* (1971), 140, 247.

¹⁰ Mitteis, op. cit. (n. 4), no. 373 = *Select Papyri* (ed. Hunt and Edgar), no. 213.

¹¹ See n. 4.

¹² *Digest* 5. 2. 6 (Ulpian); for the position of illegitimate children, see W. W. Buckland, *A Text-book of Roman Law*³ (1963), 105; *RE*, s.v. 'Spurius'; F. Schulz, *Classical Roman Law* (1951), 160 f.

¹³ Mitteis, op. cit. (n. 4), col. 3, 19-20. The supplement is ἐ[πικρι]θ[ή]σ[ο]νται. From the context it must mean that the children would undergo *probatio* as Roman citizens in the *epikrisis* ὡς ἐκ Ρωμαίας [γυε-νημέ]νοι.

¹⁴ cf. Mitteis, op. cit. (n. 4), col. 4. 6 f.

¹⁵ For examples of these see F. Schulz, 'Roman Registers of Births and Birth Certificates', *JRS* 32 (1942), 79 and 33 (1943), 59.

¹⁶ *Tit. Ulp.* 5. 8.

¹⁷ *ibid.* 22. 2. *Peregrini* could not inherit in Roman wills.

¹⁸ Gaius 1. 78; *Tit. Ulp.* 5. 8.

¹⁹ *D.* 23. 3. 3 (Ulpian): 'ubicumque matrimonii nomen non est, nec dos est'. Cf. Mitteis, op. cit.

(n. 4), col. 1, 13. The translation of the phrase ἐ[δ]ε προίκα ἀπαιτεῖς, κριτὴν δίδωμι[1]. . . ., is normally: 'If you demand back the dowry and I grant a judge, I shall seem to have been persuaded that the marriage is valid'. The implication is that this would be an erroneous impression of the Prefect's attitude. However, in his commentary Mitteis held that this idea would require the optative (δίδωμι), and saw Lupus' decision as a step on the way to recognizing 'Soldatenfrauen'. Sander (op. cit. (n. 1), 157) thought that both interpretations were possible. But Mitteis' theory seems to be ruled out by the context of the rest of Lupus' judgement. He says: 'We know that money deposits of this kind constitute a dowry. For this reason I do not give a judge; for a soldier is not permitted to marry'. This shows that Lupus was determined to uphold the legal consequences of the ban on marriage. On Mitteis' interpretation of the last sentence, the Prefect would then be making two contradictory statements. Furthermore, all the other judgements in this collection of papyri enforce the law against military marriages.

²⁰ *Tit. Ulp.* 7. 1 f; Mitteis, op. cit. (n. 4), col. 6. 1 f.

There is no way of demonstrating how many soldiers did form unofficial unions during military service. Perhaps a majority at any one time were bachelors. But for those who did, it is clear that the ban on marriage caused serious social and legal problems, which will have affected the pattern of relationships involving the troops, the emperor and his officials. In the Egyptian papyrus,²¹ the Prefect of Egypt is usually concerned to uphold the law and enforce the legal consequences of the marriage ban, but at the same time he accepts that unofficial unions will inevitably take place. So the administration found itself in a difficult position, since soldiers and their wives were reluctant to accept that they were not properly married, and that their children were bastards. This is best illustrated by a case heard by Eudaemon in 142. Octavius Valens and Cassia Secunda had produced several children during Valens' military service in an auxiliary regiment. Eudaemon states clearly that the children could not be legitimate and so could not become citizens of Alexandria. Valens persists with his petition and is obviously baffled: 'What have the children done wrong?', he protests. But Eudaemon, who is beginning to lose his patience, must uphold the law, although he has been willing to explain the problem carefully to the soldier: 'I have treated you well by explaining in detail what I could have said very briefly; but what you desire is impossible; neither this boy nor your other sons are Alexandrian citizens.'²² This episode illustrates both the pressure under which imperial officials might come when dealing with the problems of soldiers, and the frustration and bafflement experienced by the troops because of the marriage ban.

This is also reflected in the words of a soldier of *cohors II Thebaeorum* in Egypt, who made a declaration of the birth of a daughter born to him in military service: 'idcirco hanc testationem interposuisse se dixit propter distractionem mil(itiae)' (A.D. 131).²³ The soldier knows that his daughter is illegitimate and that he must make a private declaration of her birth,²⁴ but only vaguely knows why—'because of the hindrance of military service'.

Tertullian, writing in the *De Exhortatione Castitatis* at the end of the second century A.D., sheds more light on current attitudes to celibacy in the Roman empire. He wishes to convince his opponents that it would be better for a Christian to avoid marriage. But he sums up their argument as follows: 'scilicet "solis maritorum domibus bene est. perierunt caelibum familiae, res spadonum, fortunae militum et peregrinantium sine uxoribus"'.²⁵ Here we have an interesting indication of a general feeling that celibacy, or an inability to have a normal relationship with one's wife, were bad, and that those who endured this position (and soldiers were the only large group prohibited by law from having wives) were at a disadvantage. In the eyes of contemporaries and presumably of soldiers themselves, a restriction imposed on married life would be unwelcome.

What is more, this problem will have been greater if a marriage contracted before the husband enlisted had to be dissolved when he joined up. However, it has been argued that such marriages were not terminated by enlistment, but remained valid even during military service; and so any children produced in this period would presumably be legitimate. But it is surely unlikely that emperors would permit such a divisive practice, which was bound to seem unfair to soldiers who desired to marry in service but were prevented by law. It seems more plausible to suppose that, if a married man entered the army and chose not to divorce his wife, the marriage would be considered to be dissolved for the duration of military service, and that any children produced in this period would be bastards.²⁶ Evidence to support this idea is found in a judgement of Rutilius Lupus; two citizens of Alexandria had legally married before the husband joined the army, and then produced a son during his military service.²⁷ Lupus decided: 'He could not, while serving as a soldier, have a legitimate son'. He does not consider the marital status of the soldier before service, but merely states that any child born to a soldier during military service must be illegitimate. The judgement by Eudaemon quoted above confirms that

²¹ See n. 4.

²² op. cit. (n. 4), col. 5. 1 f.

²³ *FIRA*² III, p. 11. And see Schulz, op. cit. (n. 15) (1943), 62.

²⁴ See above, n. 15.

²⁵ 12. 1.

²⁶ Mitteis-Wilcken, op. cit. (n. 4), II. 1, p. 282

take the view that a marriage contracted before military service was annulled on enlistment; but the evidence cited there does not justify their conclusion. Garnsey, op. cit. (n. 1), believes that such marriages remained valid during military service.

²⁷ op. cit., col. 4. 1 f. Citizens of Alexandria would be entitled to form a valid marriage in local law.

the important factor in determining the legitimacy of a soldier's children, was whether or not they had been born in service: 'A child born to a man serving in a legion or cohort or *ala* cannot be his legitimate son'.²⁸ It seems clear that during military service a child born even to a soldier's pre-existing marriage would not be legitimate.²⁹ This does not prove that a pre-existing marriage was automatically dissolved on the enlistment of the husband, with, for example, consequences for the dowry. However, since the right to have legitimate children recognized by law is one of the most important consequences of legal marriage, the denial of this right to soldiers makes it seem likely that an existing marriage was considered null if the husband enlisted.

The problem is highlighted by *D. 24. 1. 60-2* (Hermogenianus and Gaius, whose words are in italics):

Divortii causa donationes inter virum et uxorem concessae sunt: saepe enim evenit uti propter sacerdotium vel etiam sterilitatem vel senectutem aut valetudinem aut militiam satis commode retineri matrimonium non possit: et ideo bona gratia matrimonium dissolvitur.

Donations are allowed between man and wife by reason of a divorce; for it often happens that on account of a priesthood, or indeed sterility, or old age, or ill health, or military service, a marriage cannot conveniently be kept in being; and so the marriage is annulled with good will.

The context suggests that Gaius is referring to a situation where a married man entered the army.³⁰ Unfortunately his statement that such a marriage cannot be continued 'satis commode' is rather vague; he may have in mind the possible legal implications if the soldier preferred not to dissolve his marriage and continued to regard himself as properly married,³¹ or the difficulty of carrying on a normal married life because of long periods of separation from his wife. Therefore this passage does not provide conclusive evidence on the question of the status during military service of a pre-existing marriage; but it does perhaps imply that many soldiers sought a divorce on enlistment.³²

Finally, one general point needs to be made. If, as Garnsey believes, a marriage contracted before military service was regarded as valid during it, and the children produced in service were presumably legitimate, but serving soldiers were not permitted even after Severus to form legal marriages and their children were illegitimate, then there is an important distinction in legal consequences between the two types of union; jurists, if referring to a marriage contracted before service, would have to make clear precisely what kind of marriage they meant. Otherwise their statements would be inaccurate and even misleading.³³ Yet no jurist makes this presumed distinction.³⁴ This is explicable if, as argued above, before Severus all soldiers alike were forbidden to have a marriage during service and even pre-existing unions were held to be null, and the children produced from them illegitimate. After Septimius Severus there was no need for jurists to make any distinction since (as will be argued below) soldiers could now form a legally valid marriage.

To sum up, despite the difficulties of the evidence, it is clear that a legitimate child could not be born to a serving soldier, even from a marriage contracted before service.³⁵

²⁸ See n. 22.

²⁹ However, a child who was conceived before the husband enlisted and born when he was in the army, would presumably be held to be legitimate, provided that the dates could be clearly proved.

³⁰ Sterility, old age, illness and the taking of a priesthood are cases in which a gradual or sudden change in the ability of the husband to have normal relations with his wife have made it impossible to sustain an already existing marriage. It follows that 'militia' should refer to a case where a married man decided to enter military service.

³¹ It may be asked why, if entry into military service dissolved a marriage, Gaius should recommend divorce in such cases. But the government could not prevent a soldier from cohabiting with any woman, including the woman he had legally married before enlistment; but it could deny him the usual legal consequences of a proper marriage, including the right to have legitimate children born to him.

Gaius therefore perhaps means that it is better for a husband about to enlist to dissolve his marriage formally by divorce, rather than risk the consequences of continuing to regard himself as legally married.

³² cf. *FIRA*² III, p. 54. This enigmatic text, which appears to show a dowry declaration by the wife of a soldier, may be an example of a divorce because the husband had entered the army. See A. Berger, *Journal of Juristic Papyrology* 1 (1946), 13. But the interpretation of the text has been much disputed and no weight can be placed upon it.

³³ Especially in view of the common, inappropriate use of the word 'uxor' even in official documents to describe the spouse in unions contracted during military service.

³⁴ See below, nn. 74-76.

³⁵ For the presumed position of a child conceived before enlistment, see n. 29.

In addition, it is plausible to suggest that a pre-existing marriage was required to be dissolved on the husband's entry into military service.

The restriction on the marriage of soldiers seems particularly out of place in view of the fact that the army enjoyed several legal privileges, which at least in part will have helped to compensate them for the rigours of military life, and perhaps also for the difficulty of getting adequate legal advice in the camps. The problem of the succession of a soldier's children to his property was linked with the ban on marriage. If a soldier failed to make a will in due form, then, before the Flavians at least, it was invalid, and the property went to his intestate heirs. The effect of this would often have been to disappoint the expectations of his own comrades or his concubine and children.³⁶ Moreover, if there were no intestate heirs, or none aware of their position, or effectively able to claim, the *bona vacantia* would fall to the *fiscus*. The case would come before the legate, or perhaps the procurator, and the emperor's officials would be forced to sequester the property for the emperor. Cases of this kind would create great discontent among the soldiers, and it is easy to imagine that emperors chose to neglect any claims to *bona vacantia* in the army. From the time of the Flavians a soldier was permitted to make a will that did not conform to strict legal requirements.³⁷ The best expression of this is in the effusive *mandata* issued by Trajan: 'Secutus animi mei integritudinem erga optimos fidelissimosque commilitones simplicitati eorum consulendum existimavi, ut quoquomodo testati fuissent, rata esset eorum voluntas. Faciant igitur testamenta quo modo volent, faciant quo modo poterint sufficiatque ad bonorum suorum divisionem faciendam nuda voluntas testatoris'.³⁸ Imperial concern for the legal problems of the troops and the consequent pressure upon governors to adopt a special attitude towards the army are emphasized by the statement of Gaius that pro-consuls should issue a separate edict on the 'testamentum militare'—'quod optime novit ex constitutionibus principalibus propria atque singularia iura in testamenta eorum observari'.³⁹

In addition, Augustus had allowed soldiers to retain their *castrense peculium* under their own control and dispose of it by will.⁴⁰ The *castrense peculium* contained everything given to a soldier by his friends and relatives at the time when he entered the army, or anything he acquired during military service.⁴¹ The privilege was based on the fact that the Roman 'filius familias' owned no property of his own and could not therefore make a will. Everything was in the power of his father.⁴²

Once again it seems that emperors modified the law in order to keep the troops in good heart in the face of the special difficulties imposed by military life. If we assume a reasonable estimate of the expectation of life in the Roman empire, many soldiers who were legitimate sons of citizens would have lost their fathers, and many, whether sons of *peregrini* or of *cives ex mulieribus peregrinis*, were not subject to *patria potestas*. All these soldiers had full rights over their property and earnings. By contrast, if the law had not been modified, 'filii familiarum' would have had no title even to keep and spend their army pay, except in so far as their fathers gave them a freely revocable administration of *peculium*. It would presumably have been the duty of the imperial legate to enforce the right of the father to take what his soldier son had earned. This would have been the more intolerable in that so many of the men's comrades were not in the same position.

In the case of both the military will and *castrense peculium*, we can see that emperors were prepared to modify existing law and grant the army privileges in order to deal with the real problems faced by soldiers in military service, to keep the army loyal and contented, and perhaps to maintain recruitment. In this context it is strange that the awkward and troublesome ban on marriage, so irritating to many soldiers, remained for so long. The

³⁶ See above p. 154.

³⁷ *D. 29. 1. 1 pref.*

³⁸ *ibid.*

³⁹ *D. 29. 1. 2.*

⁴⁰ *Iust., Inst. 2. 12 pref.; Tit. Ulp. 20. 10.*

⁴¹ *D. 49. 17. 11 (Macer); 49. 17. 4 (Tertullian); 49. 17. 6 (Ulpian); 49. 17. 16 (Papinian).*

⁴² *Tit. Ulp. 20. 10.* I cannot agree with the view of D. Daube (*Roman Law: Linguistic, Social and Philosophical Aspects* (1969), 81) that for the bulk

of the citizen population the rules of *patria potestas* did not operate, and that it applied only to the upper class élite. It is enough to cite the many imperial rescripts addressed to soldiers and emphasizing the principle of the father's power: *CJ* 12. 36. 1 (223); 12. 36. 2 (224); 12. 36. 3 (224); 12. 36. 4; 12. 36. 5; 8. 46. 7 (294). Note also Juvenal 16. 51 f. and *P. Oxy.* 2951 (this papyrus of A.D. 267 shows that *patria potestas* applied to Roman citizens in the provinces).

problem was resolved only gradually by a series of measures taken by various emperors to ameliorate the legal consequences for those soldiers who ignored the ban.

II

(i) In A.D. 44 Claudius granted soldiers the rights of married men.⁴³ It was an anomaly that soldiers, who were forbidden by law to marry, had ever been considered subject to the provisions of Augustus' marriage laws, which laid down penalties for the unmarried and childless. Indeed the tenets of the marriage laws had perhaps been tacitly ignored in the case of soldiers before the time of Claudius, who may have needed to proclaim his goodwill to the soldiers by a formal grant of exemption. The main benefit for soldiers will have been that they could now receive inheritances and legacies.

(ii) Gaius says that soldiers were permitted to institute *peregrini* and Latins as heirs and legatees.⁴⁴ This would enable a soldier to institute a peregrine child as *heres* or leave property to him through a legacy. This concession was not enjoyed by civilians, and belongs to the privileges associated with the military will. It will especially have helped soldiers who had taken a 'wife' during service. The women of these illicit unions would most often be of peregrine origin, and so the subsequent children, being themselves peregrines, could not inherit in a Roman will, and, being illegitimate, had no claim on intestate succession.⁴⁵ But now, as a result of the concession described by Gaius, a soldier could, to some extent, protect his children born in service and presumably could also institute his peregrine 'wife' as heir if he wished. The date of the measure is uncertain; Gaius probably completed the *Institutes* in the early years of the reign of Marcus Aurelius, but he places the ruling in the context of a general relaxation of the law concerning wills made by soldiers, 'propter nimiam imperitiam'. It may be associated with the benevolence of Trajan. Ulpian, describing those emperors who gave testamentary privileges to the army, says: 'Postea divus Nerva plenissimam indulgentiam in milites contulit: eamque et Traianus secutus est et exinde mandatis inseri coepit caput tale'.⁴⁶ In his *mandata*⁴⁷ Trajan mentioned the 'simplicitas' of the troops as a reason for his special concern for their interests; when Gaius spoke of 'nimia imperitia' he may have had this statement of Trajan in mind; and perhaps the concession to the troops concerning the institution of peregrines and Latins can also be attributed to the benevolence of Trajan. Certainly, that emperor's emotional language in his *mandata*, as he asks for something the troops should not get, suggests a willingness to improve the lot of his soldiers wherever possible.

(iii) Hadrian, in a letter to Rammius Martialis, the Prefect of Egypt in 119, granted to the illegitimate children of soldiers a claim on intestate succession.⁴⁸ Although the letter was posted in the legionary camp, its wording and tone suggest that it applied to all soldiers, not just the legionaries in Egypt.⁴⁹ It is possible that the benefit applied only where the child was a Roman citizen, though this is perhaps unlikely.⁵⁰ The general impression given by the letter is that of an act of great benevolence which was extended to the children of all the emperor's soldiers without distinction.

This letter provides an excellent *vignette* of imperial attitudes to soldiers and the ban on marriage. Hadrian recognizes that it imposes difficulties upon them and that his predecessors have been rather severe.⁵¹ He is benevolent, and stresses his personal inter-

⁴³ Dio 60. 24. 3.

⁴⁴ *Inst.* 2. 110.

⁴⁵ See above, p. 154.

⁴⁶ See above, n. 37.

⁴⁷ As some troops were occasionally stationed in senatorial provinces and individual soldiers may have had property there, these *mandata* were presumably sent to proconsuls as well as imperial legates. For the sending of *mandata* to proconsuls, see now G. Burton, 'The Issuing of Mandata to Proconsuls', *Zeitschrift für Papyrologie und Epigraphik* 21 (1976), 63.

⁴⁸ See n. 10.

⁴⁹ cf. lines 11-12; 21-4; 29-30.

⁵⁰ Hadrian says specifically (ll. 24-7) that the

claim of children born to soldiers in military service would be allowed in accordance with the section of the edict that extended the right to 'cognati' of the family: $\delta\mu\omega\varsigma\ \kappa\alpha\tau\prime[\sigma\chi\eta]\nu\ \upsilon\prime[\pi\alpha]\rho\chi\acute{o}\nu\tau\omega\upsilon\ \xi\varsigma\ \acute{\epsilon}\kappa\epsilon\iota\upsilon\upsilon\ \tau\omicron\upsilon\ \mu\acute{\epsilon}[\rho]\sigma\upsilon\varsigma\ \tau\omicron\upsilon\ \delta\iota\alpha\tau\acute{\alpha}\gamma\mu\alpha\tau\omicron\varsigma,\ \sigma\upsilon\ \kappa\alpha\iota\ \tau\omicron\iota\varsigma\ \pi\rho\acute{o}\varsigma\ [\gamma]\acute{\epsilon}\nu\omicron\upsilon\varsigma\ \sigma\upsilon\upsilon\gamma\epsilon\upsilon\sigma\iota\ \delta\iota\delta\omicron\tau\alpha\iota,\ \alpha\iota\tau\epsilon\iota\sigma\theta\alpha\iota\ \delta\upsilon\upsilon\upsilon\alpha\sigma\theta\alpha\iota\ \dots$

Now, the edict was presumably applicable only to Roman citizens, and peregrines would be excluded, as they were from inheriting in testamentary succession. But this view may be too legalistic; the letter speaks simply of $\omicron\iota\ \gamma\omicron\upsilon\epsilon\iota\varsigma\ \alpha\upsilon\tau\acute{\omega}\nu\ \tau\acute{\omega}\ \tau\eta\varsigma\ \sigma\tau\tau\alpha\tau\epsilon\iota\alpha\varsigma\ \acute{\alpha}\nu\epsilon\iota\lambda\alpha\upsilon\tau\omicron\ \chi\rho\acute{o}\nu\omega$, which surely implies any child of a soldier. There is no mention of any restriction on the numbers of children eligible.

⁵¹ cf. lines 10-20.

vention and interest,⁵² asking the Prefect to ensure that the soldiers and veterans know about the concession, 'not so that I may become an object of praise to them, but so that they may use it, if they are unaware of it'. It appears that the emperor on his own initiative has made a general decision to deal with the soldiers' hardships: 'I myself take great pleasure in putting forward a policy by which I may interpret more generously the rather strict rule set up by my predecessors'.⁵³ This would offer a significant contrast with the normal pattern of relationships between ruler and the subjects and communities in the empire.⁵⁴ Instead of the usual limited response to individual appeals from below, here we find the emperor himself modifying a long-standing rule, in order to benefit all his soldiers. In the same way Trajan initiated significant testamentary benefits for the army by himself inserting a precise and lengthy statement of their rights in his *mandata* for the attention of all provincial governors.⁵⁵ Perhaps some emperors were inclined to pay more attention to their soldiers and their problems than to their other subjects, at least those in the lower orders.⁵⁶

Nevertheless, Hadrian in his letter provided only a partial solution to the problem and left the basic question unresolved. In fact, the concession would have only limited effect for the bastard children born to soldiers in service. Since they were allowed to claim 'unde cognati', their claims would be preceded by those of a soldier's legitimate *liberi* (e.g., a son born before enlistment or after discharge), and *heredes legitimi* (e.g., the brother of a deceased soldier).

(iv) In general it appears that although no emperor before Septimius Severus was prepared to abolish the prohibition on the marriage of soldiers, the imperial administration was tolerant of the tendency of many soldiers to pay little attention to the marriage ban, and to form unofficial unions with women they subsequently regarded as their 'wives'. Discharge *diplomata* issued to the auxiliaries, the sailors of the fleet and the Praetorian Guard (legionaries did not receive them) indicate that the existence of such unions was accepted, and no punitive action was considered. For example, the auxiliaries were granted citizenship and 'conubium cum uxoribus quas tunc secum habuissent'.⁵⁷ It is notable that these documents employ the word 'uxor' (properly used only to describe a woman in a legal marriage) and permit discharged soldiers *conubium* with women with whom they have lived in service. The Egyptian papyri considered above show that Roman officials, although prepared to enforce the legal implications of the marriage ban, accepted the *fait accompli* of unofficial unions during military service.

In conclusion, the attitude of the imperial administration to the troops and the problems created by the marriage ban was ambivalent. Favours were extended to the army in a piecemeal fashion, providing a relaxation in the restriction on married life and dealing with some of the difficulties. However, there is a definite improvement in the soldiers' position and, by the time of Marcus Aurelius, all soldiers could institute a peregrine child or 'wife' as *heres*; probably the illegitimate children, whether peregrine or citizen, of all soldiers had at least some claim on intestate succession. This went some way towards a recognition of military marriages, and, along with the generally tolerant attitude of the administration towards the troops' unofficial unions, paved the way for the eventual removal of the ban by the end of the second century.

III

Is it possible to ascribe the removal of the ban to Septimius Severus and can this be connected with the other events of his reign? On this question the literary sources appear relatively trivial as historical evidence compared to the legal texts. Dio, the main con-

⁵² ἡδίστα δὲ αὐτὸς προελεῖται τὰς ἀφορμὰς δι' ὧν τὸ αὐστηρότερον ὑπὸ τῶν πρὸ ἐμοῦ Ἀυτοκρατόρων σταθὲν φιλιανθρώποτερον ἐρμηνεύω.

⁵³ See n. 52. There is no indication in the letter that Hadrian has been alerted to the problem by, or is responding to, any particular complaint. The verb ἐπίσταμαι (l. 10) means 'I know' or 'I am aware of'.

⁵⁴ F. Millar, *The Emperor in the Roman World* (1977), 6-7 and *passim*.

⁵⁵ See above, n. 47.

⁵⁶ This is a mere impression; I hope to take up these matters in more detail elsewhere.

⁵⁷ e.g. *FIRA*² I, p. 231, no. 27. Cf. *ibid.*, p. 233 no. 29 (Praetorian Guard); *CIL* xvi. no. 122 (the Fleet).

temporary source, does not mention the matter at all in his history of Severus' reign. However, this part of his history survives only in the incomplete *Epitome* of Xiphilinus, and we cannot tell if Dio would have mentioned the problem of military marriage, and how much emphasis he would have given to it. The life of Severus in the *Historia Augusta* is similarly uninformative; but this need not be significant since that source is often careless and inaccurate. In fact Herodian is the only ancient writer who explicitly refers to a ruling by Severus concerning soldiers' marriage rights. The statement appears in the context of a description of various privileges conferred by the emperor after his victory over Clodius Albinus in 197:⁵⁸

To the soldiers he gave a very large sum of money and many other privileges that they had not had before; for he was the first to increase their pay and he also gave them permission to wear gold rings and to live in wedlock with their wives(?). All these things are normally considered alien to military discipline and an efficient readiness for war. And Severus was certainly the first to undermine their tough and severe way of life, and their obedience in carrying out their tasks, and their discipline and respect for their officers, by teaching the troops to love money, and by introducing them to a life of ease.

The phrase γυναιξί συνοικεῖν can be interpreted to mean either that Severus granted the soldiers the right of legal marriage or merely allowed them to cohabit with women.⁵⁹ But Herodian says that Severus gave the soldiers many things & μὴ πρότερον εἶχον. The next phrase begins καὶ γὰρ . . . πρῶτος, and implies that the right γυναιξί συνοικεῖν was one of the concessions granted for the first time by Severus and not enjoyed by the soldiers before. And the following sentence begins καὶ πρῶτος . . ., confirming that Herodian is still referring to measures that Severus was the first to carry out. Therefore the passage cannot refer to mere cohabitation, which soldiers had always enjoyed. The word πρῶτος implies that Severus made a decisive change, and so the phrase γυναιξί συνοικεῖν should refer to a grant of the right of legal marriage. Furthermore, Herodian sums up the concessions that Severus was the first to give the troops, by saying that all these things were alien to military discipline and a readiness for war. Now, if Herodian meant that the emperor merely confirmed that soldiers could live with their 'wives', it would be ridiculous for him to say that this cohabitation became inimical to discipline in Severus' reign, when it had been common practice since the early empire.⁶⁰

Herodian at least thought that Severus was the first to grant the right of legal marriage to the troops. However, he was not necessarily correct in his opinion, and doubts about his reliability here may be raised by his assertion that Severus was the first to increase military pay; in fact Domitian had been the first to do so after Augustus. But the error seems venial; perhaps Herodian simply did not know that the *stipendium* had been raised 100 years before; it would be quite another matter to suppose that he did not know the immediate pre-Severan rule on wedlock.⁶¹ What other evidence is there to confirm or refute the opinion of Herodian?

Tertullian, in the *De Exhortatione Castitatis* (perhaps written soon after Severus' presumed removal of the ban), seems to classify soldiers among those who are bachelors.⁶² However, it is easy to imagine that even if the ban on the marriage of soldiers had been removed about 197 (and Herodian cannot be used to prove a precise date), and Tertullian wrote after this, he could for the sake of his argument refer to the recent state of affairs before Severus when soldiers were forbidden to marry in strict law. Furthermore, he may not have known that Severus had changed the law. There is, therefore, no real conflict between this text and Herodian. But the literary evidence can give no decisive answer

⁵⁸ 3. 8. 4-5.

⁵⁹ Garnsey, *op. cit.* (no. 1), 47 f. However, Liddell and Scott, s.v. συνοικεῖν, think that the word means 'to live in wedlock'.

⁶⁰ Indeed, in general it would be very odd if Severus had merely allowed soldiers to live with women, since *de facto* this had always been tolerated and there was no point in a specific grant.

⁶¹ Herodian's statement that Severus allowed the soldiers to wear gold rings may also arouse some doubts about his reliability in this passage. But he does not necessarily imply that Severus made soldiers *equites*, which would certainly be untrue; all he means is that soldiers were now permitted to wear gold rings, if they could afford them.

⁶² See above, n. 25.

to the question if Severus granted the army the right of legal marriage. It is necessary to turn to the legal texts.

IV

Although there is no specific mention of a pronouncement by Severus, granting the troops the right to contract a legal marriage, this is not necessarily significant, since the *Digest* and the *Codex* contain only a selection of extracts from the works of jurists and from imperial rescripts. If the writings of the Severan jurists and the rescripts of emperors show a changed state of the law after Severus, this will be a strong indication that he was responsible for the relaxation of the ban.

I shall begin by examining those texts that definitely refer to a marriage contracted during military service.⁶³

Filius familias miles matrimonium sine patris voluntate non contrahit (Papinian).⁶⁴

A *filius familias* who is a soldier cannot contract a marriage without the approval of his father.

The fact that the soldier has to obtain the permission of the *pater familias* implies that the marriage is subject to the normal 'ius civile' and is therefore a 'iustum matrimonium', and not mere concubinage. Furthermore, the presence of the *filius* and *pater familias* shows that Papinian is referring to a Roman marriage, not a 'matrimonium iure gentium' available to *peregrini*. Papinian clearly believes that in the time of Severus soldiers had the right to a legal marriage; it is not possible to argue that 'matrimonium' in this passage is used in a non-technical sense and does not refer to a formal marriage.⁶⁵

In eo iure, quod dicit invito patrono libertam, quae ei nupta est, alii nubere non posse, patronum accipimus . . . et eum qui hac lege emit, ut manumittat Plane si filius familias miles proponatur, non dubitamus, si castrensis peculii ancillam manumiserit, competere ei hoc ius: est enim patronus secundum constitutiones nec patri eius hoc ius competit. Hoc caput ad nuptam tantum libertam pertinet . . . (Ulpian).⁶⁶

As regards that right which states that a freedwoman cannot marry some one else against the wishes of her *patronus* to whom she has been married, I class as a *patronus* . . . also the man who bought her deliberately in order to manumit her Certainly if the case of a *filius familias* who is a soldier is brought forward, I have no doubt that this right applies to him provided that he manumitted a slave belonging to his *castrense peculium*; for according to the *constitutiones* he is the *patronus* and this right does not apply to his father. This section applies only to a freedwoman who is married

The whole context of the passage concerns the marriage of a freedwoman to her *patronus* and the fact that she cannot marry another person if the *patronus* does not consent to a divorce. In 45.3, Ulpian means that when a serving soldier manumits a slave girl from his *castrense peculium* he becomes her *patronus* and has the right to marry her and not to permit her to marry another; the 'ius' mentioned must refer to 'in eo iure' in the opening sentence. It seems a necessary conclusion that Ulpian believed that a soldier in service was capable of contracting a legal marriage.

Militem, qui sororis filiam in contubernio habuit, licet non in matrimonium, adulterii poena teneri rectius dicetur (Papinian).⁶⁷

If a soldier has taken his sister's daughter in concubinage, granted that he has not formed a proper marriage, it will be correct to consider him as guilty under the penalty prescribed for adultery.

Papinian refers to a serving soldier who takes a girl as his concubine, and he seems

⁶³ Garnsey, op. cit. (n. 1), has attempted to cast doubt on some of the legal evidence by alleging that it might refer to a marriage contracted before service. See further below, n. 72.

⁶⁴ *D.* 23. 2. 35.

⁶⁵ This was suggested by Garnsey, op. cit. (n. 1), 50.

⁶⁶ *D.* 23. 2. 45. 1-6.

⁶⁷ *D.* 48. 5. 12.

to imply that the soldier could, if he wished, form a legally valid marriage. It is surely necessary to supply the verb 'duxit' to the phrase 'licet non in matrimonium', in order to make grammatical sense. On this basis the phrase is best interpreted as an attempt to emphasize that the soldier should be subject to punishment for adultery, even though he has only a concubine and not a legally married wife. And so, in the context, the phrase 'licet non in matrimonium' would be redundant if it were impossible for the soldier to be legally married.⁶⁸

Imp. Gordianus A. Sulpiciae. Decreto amplissimi ordinis luctu feminarum deminuto tristior habitus ceteraque hoc genus insignia mulieribus remittuntur, non etiam intra tempus, quo lugere maritum moris est, matrimonium contrahere permittitur. cum etiam, si nuptas alias intra hoc tempus secuta est, tam ea quam is, qui sciens eam duxit uxorem, etiam si miles sit, perpetuo edicto labem pudoris contrahit (239).⁶⁹

Imperator Gordianus Augustus to Sulpicia. The Senate has decreed that when the grief of females has moderated, the wearing of mourning dress and other similar indications of mourning are relaxed in the case of women; however, a widow is still not permitted to contract a marriage during the period of time when it is customary for her to mourn her husband. Furthermore, if she should enter into another marriage within this period of time, then both she and whoever knowingly made her his wife (even if he should be a soldier), incur the stigma of lack of propriety under the provisions of the standing edict.

It is clear that Gordian envisages a situation where a soldier may marry during military service, and the marriage he refers to must be a 'iustum matrimonium'; otherwise the soldier and the widow would not be guilty under the edict's provision.⁷⁰ This text proves that, at least by 239, soldiers were allowed to contract a legal marriage in service.

The texts examined above show conclusively a changed state in the law on soldiers' marriage in the Severan and post-Severan period. If they are taken in conjunction with the evidence of Herodian, it is surely reasonable to conclude that it was Septimius Severus who made the decisive change.

The consequences of the removal of the ban may be seen in several other texts. It should be remembered that a pre-existing marriage was probably dissolved by enlistment in the army, and that all children produced in military service were certainly bastards.⁷¹ If a text shows that after the time of Severus a soldier was legally married or had produced legitimate children *during service*, then whether or not the text might refer to a marriage contracted before service, it is good evidence that by this time the ban on military marriage had been lifted.⁷²

Si filius familias miles fecisset testamentum more militiae, deinde post mortem patris postumus ei nasceretur, utique rumpitur eius testamentum. verum si perseverasset in ea voluntate, ut vellet adhuc illud testamentum valere, valiturum illud, quasi rursus aliud factum, si modo militaret adhuc eo tempore quo nasceretur illi postumus (Tertullian).⁷³

If a *filius familias* who was a soldier made a will under military regulations and then after the death of his father a *postumus* was born to him, his will is on this account broken. But if he persevered in his desire that the existing will should still remain valid, then the will would retain its validity, as if it had been made over again, provided that the man was still in military service at the time when the *postumus* was born to him.

The problem discussed by Tertullian could arise only if the soldier had a legitimate child from a legally valid marriage, since only a legitimate child could disrupt a will, and a bastard was not 'in potestate' and would not have to be disinherited. Tertullian is

⁶⁸ It may be argued that 'licet non in matrimonium' means 'even if we concede that there is no question of a (legal) marriage', implying that a soldier could not be properly married. This interpretation remains a possibility, but for the reasons stated in the text it seems to me unlikely.

⁶⁹ *Cy* 2. 11. 15.

⁷⁰ The law could not prevent a woman cohabiting with a man during the period of mourning for her husband.

⁷¹ See above p. 155 f.

⁷² Garnsey's method (op. cit. (n. 1), 48 f.) of rejecting all legal texts that appear to show a soldier legally married after Severus, on the grounds that they may refer to a marriage contracted before service, is therefore unsound. His argument does not in any case affect the four texts cited above, on which I place most emphasis.

⁷³ *D.* 29. 1. 33.

clearly referring to a serving soldier,⁷⁴ and we may note that permission for soldiers to marry and so produce legitimate children during service would increase some social and legal problems. Through a privilege associated with the military will, a soldier was allowed to disinherit by passing over a child in silence; hence the birth of a legitimate *postumus* would raise doubts about the father's real intentions. So the jurists accepted that a soldier's will remained valid despite the birth of a *postumus*, but the soldier had to express a wish that this should be so. This is also illustrated by the following passage:

Qui iure militari testatur etsi ignoraverit praegnatem uxorem vel non fuit praegnas, hoc tamen animo fuit, ut vellet quisquis sibi nascetur exheredem esse, testamentum non rumpitur (Ulpian).⁷⁵

If someone made a military will even though he did not know that his wife was pregnant, or if she was not pregnant, but was of the intention that he wished that whoever might be born to him should have no part in his inheritance, then the will is not broken.

This text probably refers to a serving soldier,⁷⁶ and, as noted above, only legitimate children could disrupt a will. The phrase 'vel non fuit praegnas' is difficult, but seems to provide a second alternative, namely that the wife might become pregnant later, perhaps if the soldier went home on leave; or it might indeed imply that she could live with him in the camp. Here again we may have an indication of a new situation after Severus and of the potential problems caused by the birth of a legitimate *postumus* to a serving soldier, in the context of the soldier's privilege of disinheriting a child by passing him over in silence.

Ad legem Iuliam de adulteriis coercendis. Miles qui cum adultero uxoris suae pactus est, solvi sacramento deportarique debet (Papinian).⁷⁷

On the Julian law concerning the punishment of adultery. A soldier, who has made an agreement with someone who has committed adultery with his wife, ought to be dismissed from the service and deported.

This is a further sign that after Severus serving soldiers could form a legally valid marriage; adultery cannot take place except in the case of a 'iustum matrimonium'.⁷⁸ It is particularly interesting to note the position of soldiers in a new social and legal environment. Serving soldiers would perhaps not be familiar with all the implications of the law on adultery, since in the past this regulation would not have applied to their illegal unions.

In conclusion to this section, the legal evidence confirms that it was Septimius Severus who removed the ban on the marriage of soldiers, and illuminates the new series of relationships between emperor and troops and jurists initiated by the sweeping away of this long-standing regulation.

V

What light can military discharge *diplomata* shed on the position of soldiers after the reign of Septimius Severus? These *diplomata* continue after 197 to grant *conubium* with

⁷⁴ It may be suggested that the *postumus* had been conceived before the father joined the army. However, if Tertullian had such a situation in mind, it would surely be essential for him to make this explicit. Cf. 29. 1. 33. 2-3; 29. 1. 36. 2; C^y 6. 21. 9.

⁷⁵ D. 29. 1. 7.

⁷⁶ It can be argued that 'qui iure militari testatur' does not necessarily refer to a 'miles', since the will of a 'paganus' counted as a military will if that is what the man wanted when he joined up (cf. D. 29. 1. 9; 29. 1. 15. 2). And so the phrase 'non fuit praegnas' could refer to a case in which a man had made a will as a 'paganus', leaving his property to his heirs other than his children, not knowing that his wife was pregnant and also disregarding the results of

future pregnancies. But again it seems extraordinary that, if this is what Ulpian meant, he did not make it explicit. The passage certainly implies that serving soldiers could produce legitimate children.

⁷⁷ D. 48. 5. 12.

⁷⁸ Can the jurist perhaps be referring to a marriage contracted before service? But the available evidence at least suggests that such marriages were annulled when the husband joined up. What is more, if we assume for a moment that soldiers were still not permitted to marry after Septimius Severus (as Garnsey argues), and that Papinian is referring to a marriage contracted before enlistment, the jurist would have to make this distinction clear, since the text as it stands gives the impression that all soldiers could have wives.

their current *uxores* to soldiers of the Praetorian Guard. This is also true of the *equites singulares*, *classici* and probably the auxiliaries.⁷⁹ It may indeed be argued that if all these soldiers still needed a grant of *conubium* after 197, Severus cannot have granted the right of legal marriage; it would be strange if only legionary soldiers received the benefits of Severus' removal of the ban, since Herodian implies that all the soldiers were involved,⁸⁰ and there is no reasonable explanation why the Praetorian Guard should be more harshly treated than the legions.⁸¹ But it is essential to distinguish between 'ius uxoris ducendi' (the right of marrying a wife) and 'ius conubii cum peregrinis' (the right of forming a marriage with non-Romans). These privileges are quite distinct and Severus presumably granted the former but not the latter to the troops; that is, he made the marriage of a soldier legally valid in the same way and under the same conditions as the marriage of a civilian would have been.⁸² As before, 'ius conubii cum peregrinis' would be conceded only on a soldier's discharge, and the soldiers who had married *peregrinae* would still require a grant of *conubium* on discharge so that their subsequent children could be Roman citizens.⁸³ It is quite possible of course that some soldiers married Roman citizens and therefore did not require any grant of *conubium*; but it would be more convenient for the government to retain the usual wording on *diplomata* for the benefit of those who would need the grant.⁸⁴

It has been suggested that the removal of the ban might have adversely affected recruitment. By the end of the second century, in practice many recruits were the illegitimate offspring of unions between soldiers and peregrine women of the civilian settlements which grew up near the camps.⁸⁵ The *de facto* grant of citizenship and legitimacy on enlistment into the army would provide an incentive for volunteers. It is true that emperors would wish to do nothing to damage the supply of men for the army, which was vital for the defence of the empire and their own position. But to force men, perhaps against their will, to join the army in order to acquire citizenship and legitimacy, would not improve the popularity of the imperial government or the efficiency of the army. The idea that emperors sought to encourage recruitment by withholding Roman citizenship and legitimacy from the sons of soldiers and *peregrinae* and offering these benefits on enlistment, is not convincing. Sons of veterans would probably be poorly off, and with little or no training in any trade. In practice many will already have been citizens.⁸⁶ But the army did offer reasonable pay, security, privileges and regular food; perhaps this, the military calling of their fathers, and the status that being a soldier conferred on a poor man, would provide sufficient incentive for enlistment. Furthermore, the desire for the citizenship seems not to have been decisive. In the first century, when the citizenship was a relatively rare distinction, and presumably on that account a greater incentive, the evidence points to widespread conscription; it is precisely in the second century, when volunteering is likely to have been more usual, that the citizenship privileges of the *auxilia* were reduced.⁸⁷ It is more plausible to suppose that potential recruits would be attracted by favourable

⁷⁹ See Garnsey, *op. cit.* (n. 1), 50 f. The *diplomata* of the auxiliaries are not attested after 168/90. Their case can be compared to that of the *equites singulares*.

⁸⁰ See n. 58. The language suggests that all soldiers without distinction received the benefits conferred by Severus.

⁸¹ M. Durry, *Les cohortes prétoriennes* (1938), 296 argued that military discipline was more closely observed among the Praetorian Cohorts than among the rest of the soldiers. This is hardly convincing; the Guard enjoyed special privileges in pay and donatives and terms of service, and frequently received special gifts from the emperor. Indeed, in the period between the death of Commodus and the accession of Severus, the Guard was one of the major sources of indiscipline and disturbance in the army.

⁸² See P. A. Brunt, 'Conscription and Volunteering in the Roman Imperial Army', *Scripta Classica Israelica* 1 (1974), 110 f.

⁸³ Gaius 1. 75.

⁸⁴ It is worth noting that *diplomata* continued to be issued after A.D. 212, even though by this time Caracalla had probably conferred citizenship on the majority of the free population of the empire. This can be explained on the hypothesis that, as it would take some time for the measure to have its effect, there would be many people of uncertain status, and the soldiers would still need *diplomata* as insurance, especially in the unstable times of the later third century.

⁸⁵ Garnsey, *op. cit.* (n. 1), 46-7.

⁸⁶ With the gradual spread of the Roman citizenship, many more legionaries will have been able to form unions with women of citizen status in the *canabae*. The children of these unions were Roman citizens.

⁸⁷ Brunt, *op. cit.* (n. 82), 109.

conditions of military service, and that the removal of the ban on marriage might make the thought of enlistment for twenty-five years more acceptable.

VI

The prohibition on military marriages was an irritation to many soldiers, difficult to enforce, and anomalous in the context of the attempts by several emperors to ameliorate the rigours of military life by various legal privileges. The imperial administration found itself in an unwelcome muddle as a result of a decision taken for obscure reasons in the early empire, and only slowly extricated itself through a series of decisions by individual emperors, who benevolently initiated measures to help the soldiers, without actually removing the ban itself. It is indeed difficult to explain why the ban remained for so long, given the general imperial interest in the welfare of the army in this respect. Perhaps conservative military thinking on the maintenance of strict discipline played a part; emperors seemed content to deal with various problems arising from the ban, rather than produce a radical solution to the whole question.

It was Septimius Severus who made the decisive change. Despite the unhelpfulness of most of the literary sources, legal texts and imperial rescripts attest a changed state of the law after Severus with regard to the marriage of soldiers. When this evidence is taken in conjunction with Herodian's statement that Severus allowed his troops *γυναῖσι συνοικεῖν*, it strongly suggests that it was indeed this emperor who gave the troops the right to form a legal marriage.

This conclusion fits in with several other factors. By the middle of the second century the pattern of recruitment had changed. The various units of the army tended to be recruited largely in the area where they were stationed.⁸⁸ By the end of the century this trend was well established and perhaps made it easier to contemplate the possibility that wives and children might permanently reside with soldiers in the army. When Severus removed at one stroke all the legal disabilities of the ban on marriage, which had afflicted soldiers probably since the time of Augustus, it was the culmination of a long process but also a dramatic act of generosity.⁸⁹ Although many soldiers will have lived with their 'wives' before Severus, now they were free from all uncertainty concerning the status of their marriage, and legal problems over the position of their children. This would be very important for uneducated men who often suffered from 'simplicitas' and 'imperitia'.

Severus had won power after two civil wars directly through the support of the army; he was the first provincial governor to use his army successfully in this way for a century and a quarter. Perhaps as a result he was forced into a closer association with the soldiers; it was certainly imperative to cement their loyalty, and the emperor's removal of the marriage ban and increase in military pay and other privileges should be seen in this light. Cassius Dio, summing up the main contemporary criticism of Septimius Severus, said: 'Severus did many things that we did not approve of; he incurred blame because he disturbed the peace of the city with a crowd of soldiers, and burdened the state with huge financial expenditures, and especially because he placed his hopes of survival on the

⁸⁸ See Forni, *Il Reclutamento delle legioni da Augusto a Diocleziano* (1953), 182 f.; Kraft, *Zur Rekrutierung von Alen und Kohorten an Rhein und Donau* (1951), 50 f.

⁸⁹ I cannot accept the view of C. G. Starr, *The Roman Imperial Navy* (1960), 91 f., that the phrase 'concessa consuetudine', which appears in the discharge *diplomata* of *classici* after A.D. 166, means the right to contract a 'iustum matrimonium'. The complete formula of the fleet *diplomata* reads (*CIL* XVI. 122): 'quorum nomina subscripta sunt, ipsis filiisque eorum, quas susceperint a mulieribus quas secum concessa consuetudine vixisse probaverint, civitatem Romanam dederunt et conubium cum iisdem quas tunc secum habuissent cum est civitas eis data, aut si qui tunc non habuissent, cum iis quos postea duxissent dumtaxat singuli singulas'.

The phrases associated with 'concessa con-

suetudo', i.e., 'quas secum vixisse...' and 'quas... habuissent', are contrasted with 'quas postea duxissent', and this reflects the usual contrast in the *diplomata* between the unions in service (officially not recognized) and legal marriage after service. The phrase 'concessa consuetudo' simply means the common practice by which a soldier would live with a woman as his 'wife'; the government accepted this but still denied him the legal consequences of legal marriage. The more explicit wording may be explained on the hypothesis that it was intended to clarify the position of sailors after discharge.

There are thus no real grounds for the statement of G. R. Watson, *The Roman Soldier* (1969), 138: 'it was as a result of the experience of the praetorian fleets over a generation that Septimius Severus found it possible to break with long-standing army tradition and make it legal for the men to be officially married'.

strength of his army rather than on the good will of those around him.' ⁹⁰ There seems little doubt that by the manner of his accession Severus was forced to rely more openly on his army, and that he and his son and successor, Caracalla, contributed greatly to an improvement in the material position of the soldiers. Throughout the empire, enlistment in the army, despite the risks involved, provided an avenue for the poor man to acquire a position and status above that of his class, and it was perhaps in the early third century that the recruit to the army had most to gain.

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⁹⁰ 75. 2. 3. Cary in the Loeb edition translates ἐν τῇ τῶν συνόντων εὐνοίᾳ by 'in the good will of his associates (in the government)'. But it is hard to see what 'government' means here. The word

συνόντες perhaps refers to the partisans and supporters of Severus, or indeed to the senators and upper classes in general.