

ROME, APHRODISIAS AND THE *RES GESTAE*:  
THE *GENERA MILITIAE* AND THE STATUS OF OCTAVIAN

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When in the autumn of 44 Octavian embarked on his perilous journey as heir to Caesar's mantle he and his soldiers were branded as brigands or extolled as saviours of their country. What was their legal status? Most modern historians, fascinated with naked power, tacitly dismiss this question as utterly frivolous. They are fully satisfied with Ciceronian epithets. Octavian and Cicero were not. The Roman doctrine of the *genera militiae* afforded Octavian a comfortable legal niche at each stage of his career. It allows us to comprehend the intricate manoeuvres in the senate at the turn of 44 and 43 B.C.; it also sheds light on the crowning *coup* of Octavian when he led Italy as a *dux* against Antonius and the Queen. But this antiquarian doctrine, attested only in late authors, could easily be dismissed as an artificial construct far removed from real life. Historical puzzles lie dormant and insoluble until a spark of insight creates an instant enlightenment. And the spark comes from Aphrodisias, from the new documents published in an exemplary way by Joyce Reynolds, *Aphrodisias and Rome* (1982). It comes in the shape of a new puzzle.

Document 9 (pp. 92-3) contains excerpts from various Roman acts granting privileges to Plarasa/Aphrodisias. Lines 2-4 read as follows:

μήτε μὴν ἄρχοντά τινα ἢ ἀντάρχοντα δήμου Ῥωμαίων ἕτερόν τε τινα εἰς τὴν πόλιν ἢ  
καὶ τὴν χώ-  
ραν ἢ καὶ τοὺς ὄρους τοὺς Πλαρασέων καὶ Ἀφροδεισιέων στρατιώτην καὶ ἀντιστρα-  
τιώτην, ἵππεά,  
ἕτερόν τινα εἰς παραχειμασίαν πρὸς αὐτοὺς δίδοσθαι μηδὲ καταθέσθαι κελεύειν.

This clause comes from the *S.C. de Aphrodisiensibus* (39 B.C.); it recurs in the new fragment of this decree, Doc. 8, lines 32-4, where the supplements are assured by Doc. 9.

The expression στρατιώτην καὶ ἀντιστρατιώτην is baffling. Reynolds translates it (p. 62) 'a soldier or a substitute soldier' or (p. 93) 'an infantry man or one substituting for such', and she comments (p. 78): 'The most satisfying explanation that I can propose is that of Lawrence Keppie, who compares it with *vicarii* (*militēs*) in Pliny, *Ep.* 10. 30'.

Ingenious but hardly correct, as a glance at Pliny's text will show. In *Ep.* 10. 29 Pliny informs Trajan that two slaves were discovered among *tirones*; should they be executed? They had already taken the military oath ('iam dixerant sacramento'), but had not yet been posted to a unit ('nondum distributi in numeros erant').<sup>1</sup> Trajan replies (*Ep.* 10. 30) that the latter point is of no consequence for they were obliged to reveal their status (*origo*) at their enlistment, on the very day 'quo primum probati sunt'. What does matter is whether 'they were volunteers (*voluntarii*) or conscripts (*lecti*), or possibly offered as substitutes (*vicarii*). If they are conscripts, the recruiting officer was at fault; if substitutes, then those who offered them as such are guilty; but if they volunteered for service, well aware of their status, then they will have to be executed'.

According to A. N. Sherwin-White,<sup>2</sup> followed by Reynolds, this is the earliest evidence for *vicarii militēs*. In fact the earliest mention is in Livy. He reports (29. 1) that in 205 Scipio conscripted (*legit*) in Sicily out of all younger men (*iuniores*) three hundred horsemen, men of high rank and wealth. But when they proved reluctant to go with him to Africa he released them all from their military oath, on condition, however, that they provide horses, armament and military training to three hundred *vicarii*. But it was not the conscripted Sicilian *equites* who were to furnish these substitutes: the *imperator* himself

<sup>1</sup> G. R. Watson, *The Roman Soldier* (1969), 43, and R. W. Davies, 'Joining the Roman Army', *Bj* 169 (1969), 214, take this phrase to refer to rolls or records. But in a fundamental article J. F. Gilliam, 'Enrolment in the Roman Imperial Army', *Eos* 48, 2 (1956), 212, perspicaciously observed that *in numeros distribuere* (or *per numeros distribuere* in Trajan's

reply) 'is not equivalent to *in numeros referre*'. In the latter phrase *numeri* means rolls, but in the former probably units. The *tirones*, Gilliam suggests, 'were still at some recruiting center and had not yet been divided among or at any rate dispatched to units'.

<sup>2</sup> *The Letters of Pliny. A Historical and Social Commentary* (1966), 601.

supplied them. They were the young Roman volunteers: 'thus three hundred Sicilians were replaced by Roman horsemen without expense to the state'. A curious story, very embellished, and hardly reliable.<sup>3</sup> It belongs to the genre of *strategemata*. But it is instructive: it presents the institution of *vicarii* as something exotic, alien to normal Roman practice.<sup>4</sup> Thus it does not lend any support to Reynolds's interpretation.

Nor does the letter of Trajan. Trajan speaks of the three categories of recruits *voluntarii*, *lecti*, *vicarii*. There is no reason to suppose that the *vicarii* should have served in special units; occasionally we hear of the *cohortes voluntariorum*,<sup>5</sup> but the *cohortes vicariorum* are not on record. Once he swore the military oath the *vicarius* was a regular soldier, *miles*; his legal status did not differ from that of his companions, conscripts or volunteers.

*Vicarii* discarded, where are we to turn? 'Ἀντιστρατιώτης is unique', writes Reynolds, 'and the implied *pro milite* is also unknown' (p. 78).<sup>6</sup> But 'the implied *pro milite*' is in fact quite well known, though not fully understood. Sallust, *Hist. frg. inc.* 8 M. (p. 202), reads: 'Neu quis miles neve pro milite', which forms a striking parallel to μήτε μὴν . . . στρατιώτην καὶ ἀντιστρατιώτην. This fragment of Sallust did not, of course, escape Mommsen's attention. His comments in *StR* II<sup>3</sup>, 577 are worth quoting. He argues that as military service 'has in principle no time limits', so also 'the prorogation generally did not apply to the soldier and officer rank'. And he continues (n. 4): 'When Sallust . . . distinguishes between *miles* and *pro milite* he does not have in mind those who serve beyond the space of one year but rather those who strictly speaking are not authorized to serve'. In other words the expression *pro milite* cannot be explained by analogy with *pro consule*, *pro praetore* or *pro quaestore*. Hence *pro milite* must describe somebody 'who strictly speaking is not authorized to serve', 'der eigentlich zu dienen nicht befugt ist'. This sounds mysterious, but fortunately Mommsen directs us for further information to Cicero, *de off.* 1. 36:

Popilius imperator tenebat provinciam in cuius exercitu Catonis filius tiro militabat. Cum autem Popilio videretur unam dimittere legionem, Catonis quoque filium, qui in eadem legione militabat, dimisit. Sed cum amore pugnandi in exercitu remansisset, Cato ad Popilium scripsit, ut, si eum patitur in exercitu remanere, secundo eum obliget militiae sacramento, quia priore amisso iure cum hostibus pugnare non poterat.

Most editors bracket this passage as either an interpolation or Cicero's own earlier version which his posthumous and *pious editor* could not bring himself to excise.<sup>7</sup> This passage is followed by another one of similar content, less detailed but stylistically much superior (1. 37):

Marci quidem Catonis senis est epistula ad Marcum filium, in qua scribit se audisse eum missum factum esse a consule cum in Macedonia bello Persico miles esset. Monet igitur ut caveat ne proelium ineat; negat enim ius esse, qui miles non sit cum hoste pugnare.

There are some discrepancies between these two versions,<sup>8</sup> but their legal message is identical: only the person who had sworn the *sacramentum* is a *miles*. When the legion is dismissed the soldiers are automatically released from their military oath. A person who in

<sup>3</sup> As H. H. Scullard writes, Scipio's preparations for his expedition to Africa are 'shrouded in doubt' (*Scipio Africanus* (1970), 111). For the story itself, see A. Passerini, *Le coorti pretorie* (1939), 6 ff.

<sup>4</sup> The custom of providing *vicarii* may have come into being during the civil wars, but it is doubtful if any conclusions can be drawn from the story in Macrobius 2. 4. 27 (brilliantly elucidated by C. Cichorius, *Römische Studien* (1922), 282-5): 'exclamavit ingenti voce veteranus: at non ego, Caesar, periclitante te Actiaco bello vicarium quaesivi sed pro te ipse pugnavi'.

<sup>5</sup> On the *cohortes voluntariorum*, see K. Kraft, *Zur Rekrutierung der Alen und Kohorten an Rhein und Donau* (1951), 82-95, who criticizes the idea of G. L. Cheesman, *The Auxilia of the Roman Imperial Army* (1914), 65-7, 186-7, that the majority of these units

were the *cohortes libertinorum*. The inscription of the 'captor of Decebalus' clearly supports Kraft's view; cf. M. Speidel, *JRS* 60 (1970), 151.

<sup>6</sup> The Greek sense of ἀντιστρατιώτης is not in dispute: 'soldier of the enemy', as *LSJ* duly records. The Roman development thus parallels that of ἀντιστράτης from 'enemy's general' to 'acting commander' or 'governor'. But 'acting soldier' does not take us very far: see below in the text.

<sup>7</sup> cf. C. Atzert in his Teubner edition, pp. xxviii-xxix.

<sup>8</sup> In any case Cato will not have written two identical letters, one in 173 when his son served as a *tiro* in Liguria under the consul M. Popillius Laenas, and the other in 168 when Licinianus was in the army of Aemilius Paullus and took part in the battle of Pydna. Cf. Drumann-Groebe, *Geschichte Roms* v, 160-1.

this sense ceased to be a *miles* cannot *iure* engage in combat, for the killing of a *hostis* would then amount to murder and would not be a legitimate act of war (cf. Plut., *Quaest. Rom.* 39). Combining Sallust and Cicero, Mommsen deduced the status of the person who stayed with the army without valid *sacramentum*: he acted *pro milite*. Mommsen's explanation is brilliant at first sight, but lame on closer scrutiny. Cicero does not use the expression *pro milite*, and for a very good reason: the person who was not under oath was not a soldier at all, neither *miles* nor *pro milite*. He was a civilian.

It is surprising that Mommsen did not feel in this place any need to consider the context in which Sallust's fragment was recorded. And the context is this: in his commentary *ad Aen.* 2. 157 Servius attempts to explain the *militiae tria genera*. About one of them he writes:

plerumque enim 'evocati' dicuntur, et non sunt milites, sed pro milite: unde Sallustius 'ne quis miles neve pro milite', item ipse 'ab his omnes evocatos et centuriones' (*Cat.* 59. 3).

Should we conclude hastily that ἀντιστρατιώτης = *evocatus*? *Festina lente!* For what does Servius understand by the term *evocatus*? To answer this question we have to investigate the doctrine of the *genera militiae*. Servius' comments on *Aen.* 7. 614 and 8. 1 also belong here. The former passage corresponds almost verbatim to Isidorus, *Etym.* 9. 3. 53-5; part of the same tradition is extant in Donatus' *Commentum Terenti, Eun.* 772 (vol. 1, p. 434 Wessner). Here is the synopsis of this antiquarian theory of the *tria genera militiae*:

(a) the *militia legitima* (8. 1). It was the *plena militia*: it lasted twenty-five years (2. 157; Isid.).<sup>9</sup> The soldiers were *sacramento rogati* (2. 157, cf. 8. 1); they took their oath individually (8. 1 'singuli iurabant'; 7. 614 and Isid., 'iurat unusquisque miles'). They swore 'pro republica se esse facturos' (8. 1, cf. 2. 157) and 'non recedere, nisi praecepto consulis post completa stipendia' (7. 614 and Isid., who omits 'praecepto consulis'). The individual oath appears as the most characteristic feature of the *militia legitima*: 'sacramentum vocabatur' (8. 1). In two other passages (7. 614 and Isid.) the term *sacramentum* is used *tout court* to denote this *genus* of service.<sup>10</sup>

(b) the *coniuratio* (8. 1; 7. 614 and Isid.). It occurs *in tumultu*, i.e. 'Italico bello et Gallico (7. 614; 8. 1) quando vicinum urbis periculum singulos iurare non patitur (7. 614 and Isid.; cf. 8. 1), sed repente colligitur multitudo' (Isid.). The person who was to lead the army (8. 1: 'qui fuerat ducturus exercitum', hence not necessarily a magistrate) 'pedites evocabat' (and equites) saying 'qui rem publicam salvam esse vult, me sequatur', et qui convenissent simul iurabant: et dicebatur ista militia coniuratio' (8. 1). The soldiers so assembled were called "'tumultuarii", hoc est qui ad unum militabant bellum' (2. 157).

(c) the *evocatio* (8. 1; 7. 614 and Isid.; Donat.). It occurs *in tumultu* (8. 1; Donat.) or in the case of a *subitum bellum* (7. 614 and Isid.). The consul (7. 614 and Isid.) or *dux* (Donat.; hence again not necessarily a magistrate) 'alloquitur cives (Donat.) "qui rem publicam salvam esse vult me sequatur"' (7. 614 and Isid.; cf. Donat.). The *evocati* were not *milites* but only *pro milite* (2. 157); on the other hand Isid. reports that 'non solum miles sed et ceteri evocantur'. To achieve this 'ad diversa loca diversi propter cogendos mittebantur exercitus' (8. 1: a clear allusion to the *conquisitores*). Quite characteristically no oath is mentioned.

It does not require any perspicacity to see that our antiquarians distinguished rather successfully between the *militia legitima* and the two other *genera*, but failed miserably to make clear what really differentiated *coniuratio* from *evocatio*.

Their modern colleagues did not fare much better: Mommsen thrice reshuffled the ingredients of this antiquarian puzzle without really solving it;<sup>11</sup> and three more permut-

<sup>9</sup> Clearly a later addition reflecting imperial practice. R. E. Smith, *Service in the Post-Marian Roman Army* (1958), 29-33, rightly observes that until Augustus the length of service was not explicitly specified and the *sacramentum* contained no reference to it.

<sup>10</sup> cf. *Bell. Alex.* 56. 4; Tac., *Ann.* 16. 13. 3; *Hist.* 1. 5. 1; Flor., 1. 22. 23; Iuv., 16. 35-6.

<sup>11</sup> *Römische Forschungen* II (1879), 247-57; *Eph. Ep.* 5 (1885), 142-5 = *Ges. Schr.* VIII, 446-9; *StR* 1<sup>3</sup> (1887), 695-6.

ations were offered by Johann Schmidt,<sup>12</sup> Salvatore Tondo<sup>13</sup> and Jochen Bleicken.<sup>14</sup> Bleicken perspicaciously recognized two and only two forms of the levy: the regular *militia* based on *dilectus* and the individual oath, *sacramentum*; and the irregular *coniuratio*, the voluntary and joint oath of those who banded together to follow the call 'to save the republic'. But his treatment of *evocatio* was not entirely satisfactory: the scraps ('Fetzen') of Sallust in Servius, *ad Aen.* 2. 157 would refer to the late republican *evocatio*, 'the recalling of veterans to active service'.

This is true of *Cat.* 59. 2-3, but in this passage Sallust does not characterize the *evocati* as *pro milite*, and in the fragment from the *Histories*, while juxtaposing *miles* and *pro milite*, he does not mention the *evocati* at all. It is the antiquarians who arbitrarily connected these two separate enunciations. It is apparent that they confused the late republican *evocatio* of veterans with the old institution of *coniuratio*. But how did this confusion arise?

Now *sacramentum* is a form of oath, and *coniuratio*, strictly speaking, is another form of oath, and not a form of levy. The *sacramentum* follows upon *dilectus*,<sup>15</sup> and the *coniuratio* upon the call to arms 'Qui rem publicam salvam . . .'. The *dux* (whether a *privatus* or a magistrate) *vocat* or *evocat* the citizens to defend the republic. What was the name of this call? *Evocatio*, certainly. The most characteristic element of *evocatio*, and one that constituted it as a *militia*, was the joint oath, the *coniuratio*. The *evocati* assemble, and *iurant* or *coniurant*. What did they swear? They swore to follow their leader *ad bellum unum*, the war at hand. At the end of the war they had to be automatically dismissed. On the other hand, in the formula of *sacramentum* the length of service was not specified; the dismissal of the soldiers was in the free *arbitrium* of the senate and the commander.<sup>16</sup> The *sacramentum* could be sworn only in the *verba* of the legitimate *imperium*-holder;<sup>17</sup> the oath of *evocatio* also in the *verba* of a *dux privatus*. Those who 'sacramento dixerunt' were regular soldiers, *milites*; those who joined in a military *coniuratio* served *pro milite*.

Now, just as *sacramentum* was occasionally used as the code-word for the regular service, so also *evocatio* received from the form of the oath its own code-word, *coniuratio*. In fact in its original sense the *evocatio* lived on in the antiquarian tradition only, but the antiquarians split the *evocatio/coniuratio* into two separate (but hardly distinguishable) forms of tumultuary levy. The oath they assigned, quite naturally, to the *coniuratio*. Thus when the *coniuratio* gained its antiquarian independence and ascendancy, the *evocatio* was consigned to a shadowy and uncertain existence. Next the antiquarians confounded this denuded, oathless *evocatio* with the *evocatio* of veterans. Their modern successors took this false coin for solid gold and concluded that the *evocati*, the picked soldiers of the triumphal armies, were bound by no military oath.<sup>18</sup> But an oathless *miles* is an impossibility. A gloss (*CGL* v, 195, 15) explains the *evocati* as 'qui militant sine sacramento'. The lack of *sacramentum* presupposes the existence of another oath, the oath of *coniuratio*.

The Italy of the civil wars from Marius to Actium was filled with irregular armies raised without express authorization by the senate or the assembly, and thus enjoying at best the ambiguous status of *evocati/coniurati*. It was also filled with the *evocati*, the veterans

<sup>12</sup> 'Die Evocati', *Hermes* 14 (1879), 322-31.

<sup>13</sup> 'Il *sacramentum militiae* nell'ambiente culturale romano-italico', *SDHI* 29 (1963), 1-25.

<sup>14</sup> 'Coniuratio', *Jahrb. f. Numismatik u. Geldgeschichte* 13 (1963), 51-70.

<sup>15</sup> On *dilectus*, see the brilliant exposition by P. A. Brunt, *Italian Manpower* (1971), 625-44. But cf. also the objections by E. Rawson, *PBSR* 39 (1971), 15 ff.

<sup>16</sup> It is important to keep apart the length of the legal obligation to serve and the length of the actual service. Only the soldiers whose *stipendia* were *emerita* or *confecta* had a legal claim to a *missio*; cf. Livy 34. 56. 9; 39. 19. 4; 39. 38. 12; 40. 35. 11; 43. 14. 9, and the passages adduced by Smith, *Service*, 35 n. 3, whose illuminating discussion (27 ff.) dispersed many common misconceptions. See also Brunt, *JRS* 52 (1962), 80-2; *Manpower*, 399 ff.; J. Harmand, *L'armée et le soldat à Rome de 107 à 50 avant notre ère* (1967), 245 ff. The idea of the twenty *legitima stipendia* in the late Republic has no source authority.

<sup>17</sup> And moreover this *imperium*-holder had to be authorized by the senate (or the people) to hold the levy. Mommsen believed (*StR* I<sup>3</sup>, 119) that the magistrate *cum imperio* did not need any permission from the senate for *dilectus*, but see the convincing critique of this theory by Brunt, *ZPE* 13 (1974), 162 ff. The antiquarians connect *coniuratio* with *tumultus*, but in the annalistic tradition tumultuary levies are as a rule ordered by the senate, and the *militēs tumultuarii* are often *sacramento rogati*, cf. esp. Livy 32. 26. 10-12; 40. 26. 7; 41. 5. 11 (in conjunction with 41. 5. 4). We can put forth the following scheme: the regular *dilectus* was always accompanied by *sacramentum*; the tumultuary *dilectus* was accompanied by a *sacramentum* when it was conducted on express orders from the senate by a magistrate *cum imperio*. The *coniuratio* comes into the picture when a magistrate acted on his own initiative or when the *dux* was a *privatus*.

<sup>18</sup> cf. O. Fiebiger, *RE* 6 (1909), 1146; A. Neumann, *Der Kleine Pauly* 2 (1975), 471.

recalled to the ranks. These two categories, more often than not, coincided with each other, for it was the *veterani* to whom the call to save the republic (and promote a leader) was most frequently addressed. This is the *fons* and *origo* of ancient and modern confusion.

But verbal and legal puzzles remain barren unless implanted in the soil of history. And there is no richer or darker soil than that from which Octavian sprang. But while the statement of the *Res Gestae*, 'exercitum privato consilio et privata impensa comparavi', has enjoyed all scholarly attention, few questions have been asked about the status of Octavian's followers. In October 44 Octavian visited the colonies of veterans at Calatia and Casilinum and won them over by promising five hundred denarii apiece to those who would join him.<sup>19</sup> Early in November he stepped forward as *dux privatus* and raised the standard of *evocatio*.<sup>20</sup> He assembled at Capua his followers from Casilinum, Calatia, and other places in Campania. He divided them into centuries,<sup>21</sup> and they undoubtedly swore by centuries<sup>22</sup> a joint oath. And he paid out the promised money. Not counting the money, these are all the traditional acts of *evocatio/coniuratio*, the assembling 'in formam iusti exercitus' (cf. Vell. 2. 61. 1-2). Cassius Dio (45. 12. 3) describes the veterans who in 44 answered Octavian's call as τὸ τῶν ἡσοκάτων σύστημα. He also avers (55. 24. 8) that under the empire the *evocati* formed a separate corps (this is correct), and that this institution goes back to the time when Augustus summoned to arms the former soldiers of Caesar. Here Cassius Dio is guilty of a grave but venial inaccuracy. He confused the imperial *evocati*<sup>23</sup> with the republican emergency soldiers. The followers of Octavian were the *evocati* in both senses of the word: the veterans who rejoined the ranks and the *coniurati* who banded together to defend the republic.

The army led by a *dux privatus* could not be bound by *sacramentum*. When the 'milites veterani qui . . . pro republica arma ceperant volebant sibi ab illo imperari', and when the 'legio Martia et legio quarta ita se contulerant ad auctoritatem senatus . . . ut deposcerent imperatorem et ducem C. Caesarem' (Cic., *Phil.* 11. 20), they must have sworn some sort of oath of allegiance to the republic and Octavian, but whatever they called it, formally it was a private compact only. They formed a *coniuratio*. Depending on their success they would be branded as brigands or praised as courageous citizens. Of course they acted 'optimo in rem publicam consensu' (Cic., *Phil.* 5. 46; cf. 3. 7, 31, 38); a deft phrase, for *consensus* has a noble ring and avoids the hallowed but sinister implications of *coniuratio*.<sup>24</sup> To legalize their position, on 1 January Cicero moved a decree *de exercitu Caesaris* (*Phil.* 5. 53). In his motion he distinguished carefully between the *milites veterani*, who followed the *auctoritas* of (the young) Caesar (observe that they were civilians when they joined Octavian) and the Legio Martia, Legio quarta and the soldiers 'of the second and thirty-fifth legions who joined the consuls C. Pansa and A. Hirtius and gave in their names'. In Cicero's decree there is a remarkable provision: 'easque legiones bello confecto missas fieri placere'; a similar provision with respect to the *milites veterani* is conspicuously absent. Apparently they did not need any formal *missio*. This is correct: there was no formal release for *coniurati*; the presumption was that they would automatically be dismissed *bello confecto*.<sup>25</sup> Thus Cicero draws a line between those soldiers who were

<sup>19</sup> For sources and discussion, see H. Botermann, *Die Soldaten und die römische Politik in der Zeit von Caesars Tod bis zur Begründung des zweiten Triumvirats* (1968), 36 ff.

<sup>20</sup> Appian (*BC* 3. 40) reports that the veterans collected by Octavian in Campania marched ὑφ' ἐνὶ σημαίῳ, under one *vexillum*: a fair description of a *manus tumultuaria*.

<sup>21</sup> On 4 November 44 Cicero wrote (*Att.* 16. 9): Octavian 'rem gerit palam, centuriat Capuae, dinumerat'. A. Alföldi, *Oktavians Aufstieg zur Macht* (1976), 108 n. 401, maintains that 'centuriat Capuae' does not refer to the formation of military units at all: 'Centuriare und dinumerare sind Ausdrücke der stadtrömischen Wahlbestechung'. This is true of *decuriatio* (cf. J. Linderski, *Hermes* 89 (1961), 106 ff.), but *centuriare* is not attested in this sense. The explanation in *OLD* (s.v. 'dinumero'): he 'is giving the soldiers their pay' is marred by 'pay', which introduces a wrong emphasis. D. R. Shackleton

Bailey's rendering is exemplary (*Cicero's Letters to Atticus* vi, 189): 'he's . . . forming companies at Capua and paying out bounties'.

<sup>22</sup> cf. Livy 22. 28. 1: 'inter sese decurii equites, centuriati pedites coniurabant'; Caes., *BC* 1. 76. 3: 'centuriatim producti milites idem iurant'.

<sup>23</sup> On the *evocati* under the empire, in addition to the works of Mommsen, Schmidt and Fiebiger quoted in notes 11, 12, and 18, see A. v. Domaszewski, *Die Rangordnung des römischen Heeres* (1908; 2nd ed. by B. Dobson, 1967), 75-8; M. Durry, *Les cohortes prétorienne* (1938), 117-26; E. Birley, *ZPE* 43 (1981), 25-9.

<sup>24</sup> cf. R. Syme, *Roman Revolution*, 160-1; J. Helleguarc'h, *Le vocabulaire latin des relations et des partis politiques sous la république* (1963), 95-7, 123-5.

<sup>25</sup> Brunt, *JRS* 52 (1962), 81, reads (through a *lapsus calami*) 'bello confectae' (sc. *legiones*), which of course affected his argument.

*sub sacramento* and those who were not. The former soldiers of Antonius Cicero apparently regarded as bound by their *sacramentum* to the republic, and thus their oath as still valid. In fact the formula of *sacramentum* seems to have contained the phrase 'pro republica se esse facturos' (Serv., *ad Aen.* 8. 1). But it also contained the sacred words 'se iussu consulum conventuros neque iniussu abituros' (Livy 3. 20. 3; 22. 38. 3), which is what they did when they left Antonius and embraced Octavian. No problem: they did not abandon a consul; they abandoned an enemy of the state. 'Iure laudantur' (Cic., *Phil.* 5. 3-4; cf. 4. 3-6; 12. 8).

When the fateful year of the two consuls who fell in battle began, the *evocati* of Octavian ceased to be a private army, but did not automatically become a regular one: they were now the emergency soldiers, the *coniurati* in the service of the republic. On 2 January 43 their *dux* received from the senate the command *pro praetore*; <sup>26</sup> and his *dies imperii* was 7 January, when he assumed the *fasces*. It is logical to suppose that on this day the soldiers who remained under Octavian's command (the Fourth and the Martian legions were probably taken over by Hirtius <sup>27</sup>) swore the *sacramentum* in his *verba*; and it is not implausible that the veterans and the new recruits were organized as the now formally reconstituted seventh and eighth legions.<sup>28</sup> The veterans obviously retained their quality of *evocati*, but were now regular soldiers: they began a new round of *militia legitima*.

Repetition justifies and perfects illegality. Not for nothing did Cicero hold up for the senate and Octavian the example of Pompey, the original *adulescentulus carnifex*: 'great honours were paid to Cn. Pompeius though he was a young man, and indeed rightly; for he came to the assistance of the state' (*Phil.* 5. 43). He assembled an army of volunteers; <sup>29</sup> technically they were the *coniurati* and he a *dux privatus*.

In 32 B.C. Octavian repeated his early steps on a grand scale. It was now not merely the soldiers of the Fourth and the Martian legions who 'deposcerent imperatorem et ducem C. Caesarem', but 'tota Italia'. Which student of the *Res Gestae* has not pondered over these two chapters:

Milia civium Roma[no]rum [sub] sacramento meo fuerunt circiter [quingen]ta. (3. 3).

Iuravit in mea verba tota Italia sponte sua, et me be[lli] quo vici ad Actium ducem depoposcit; iuraverunt in eadem ver[ba provin]ciae Galliae, Hispaniae, Africa, Sicilia, Sardinia. Qui [sub signis meis tum] militaverint, fuerunt senatores plures quam DCC, in ii[s qui vel antea vel pos]tea consules facti sunt ad eum diem, quo scripta su[n]t haec, LXXXIII, sacerdo[tes ci]rc[iter] CLXX (25. 2-3).

This is not the place for dissecting the opinions and interpretations of Kromayer, v. Premerstein, Syme, Herrmann and of scores of other scholars; <sup>30</sup> I wish merely to point out that these passages make perfect sense and find a coherent explanation within the doctrine of the *genera militiae*.

In the first passage we deal with the regular military oath, the *sacramentum*. As there is no mention of *sacramentum* in the other passage, and the context is unmistakably military, we are there in the presence of a military oath of a different sort. We know of only one such other oath, the oath of *coniuratio*. Now *iurare in verba* appears in Livy as a virtual synonym of *sacramentum*, but it is important to note that this very meaning can in each instance be ascertained only from the context.<sup>31</sup> In the phrase itself there is nothing that

<sup>26</sup> P. A. Brunt and J. M. Moore, *Res Gestae Divi Augusti* (1967), 38-9, opt for 1 January, but see the discussion by P. Stein, *Die Senatssitzungen der ciceronischen Zeit* (Diss. Münster, 1930), 80-3.

<sup>27</sup> App., *BC* 3. 65; cf. Cic., *Phil.* 14. 26-7; *Fam.* 10. 30. 1; 11. 19. 1.

<sup>28</sup> Botermann, *Die Soldaten*, 42, 202-3; Brunt, *Manpower*, 481-2.

<sup>29</sup> Livy, *Per.* 85; Plut., *Pomp.* 6. 3-4.

<sup>30</sup> J. Kromayer, *Die rechtliche Begründung des Prinzipats* (1888), 16 ff.; Syme, *Rom. Rev.*, 284 ff.; A. v. Premerstein, *Vom Werden und Wesen des Prinzipats* (Abh. Münch., 1937), 36 ff.; P. Herrmann, *Der römische Kaisereid* (1969), 78 ff. (cf. J. Briscoe, *CR* 21 (1971), 260-3); Brunt-Moore (above, n. 26),

67-8; V. Fadinger, *Die Begründung des Prinzipats* (1969), 18 ff.; H. Benario, *Chiron* 5 (1975), 301-9.

<sup>31</sup> Livy 2. 32. 1; 3. 20. 3-5. See also 28. 29. 12, where the phrase *in verba iurare* refers (as follows from 28. 27. 4 and 12) to the renewal of *sacramentum*. The *iurare in verba* and *dilectus*: 6. 2. 6; 22. 11. 9. Cf. also 7. 16. 8; 45. 2. 10. At 22. 53. 12 the phrase does not refer to *sacramentum*, but to an oath of the type 'ut victor revertar', and in four other passages it appears in a non-military context (6. 22. 7; 7. 5. 5; 32. 5. 4; 41. 15. 11). Cf. Herrmann, (above, n. 30), 42 n. 75; 81 n. 89. On Tac., *Ann.* 1. 7. 2 (the oath *in verba Tiberii Caesaris*), see the judicious remarks by F. R. D. Goodyear, *The Annals of Tacitus* 1 (1972), 138-9.

would connect it exclusively with *sacramentum*. The person who is *sacramento rogatus* and the person who joins in a military *coniuratio* both swear to follow their commanders. But the *sacramentum* presupposes a general obligation to military service; it is connected with the *dilectus*. Its function was to transform this general obligation to serve into concrete military service. Although it could be taken voluntarily, it was not a voluntary oath. The conscript could not refuse to swear it; if he did he was severely punished (cf. Livy 4. 53. 9). In their capacity as *militēs* the citizens had no influence upon the choice of their commanders; this choice was reserved for them only indirectly, in their earlier hypostasis as citizen voters, when they cast their votes at the consular or praetorian elections (cf. Livy 24. 8. 19). In a word the *sacramentum* presupposes an *imperium*-holder in whose *verba* it was sworn, but in this chapter Augustus is conspicuously reticent about his official position. The *imperium*, so prominently displayed at the outset of the *Res Gestae*, here receives no mention.

On the other hand, the oath of *evocatio/coniuratio* was formally a voluntary and, in the case of a *dux privatus*, legally constitutive oath: it established the leader and his followers as the *bona fide* saviours of the republic. A *coniuratio* need not have been an illegal or—to use a more ambiguous and hence a more appropriate word—extra-legal affair; it could be initiated by a competent magistrate or the senate. In 52 B.C., after the death of P. Clodius, the senate decreed, lest the urban riots spread throughout Italy, ‘ut omnes iuniores Italiae coniurarent’ (Caes., *BG* 7. 1). How this was accomplished we do not know, but two decades later, as we gather from Suetonius (*Aug.* 17. 2), the *coniurationes* (this time of *tota Italia*, and hence, militarily speaking, of all *iuniores* and *seniores*) were organized locally in each community of Italy: Augustus ‘Bononiensibus quoque publice, quod in Antoniorum clientela antiquitus erant, gratiam fecit coniurandi cum tota Italia pro partibus suis’.

The controversy whether the oath of 32 was a *Treueid* or a military oath appears barren: every military oath was an oath of allegiance as well. One thing, however, is clear: the oath of 32 was not an oath of allegiance in the sense of the later *Kaisereide*. The imperial oaths of allegiance expressed the perpetual allegiance of the population to the princeps and imperator. On the other hand, the men of Italy and the western provinces swore in 32 their allegiance to Octavian solely in his capacity as *dux* in the war at hand; *ad bellum unum*, as a Roman constitutional expert would have described it. The end of the war would mark the end of their obligation. As they did not swear the *sacramentum*, but only the *ius iurandum* of a *coniuratio*, technically they were not *militēs*; to use the idiom of Sallust, the antiquarians and the *senatus consultum de Aphrodisiensibus*, those who then actually served with the standards did it *pro milite*.

The documents from Aphrodisias restore to life the antiquarian distinction between the *militia legitima* and *coniuratio*, between *militēs* and *pro milite*. They illuminate the quality of mind that made the Romans pay attention to these legal distinctions, even in time of war. They illuminate the young Octavian’s *arcana imperii*.

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