

Legal Protection Granted to Soldiers' Partners in the Military Diplomas

Lyuba Radulova

University of Sofia "Sv. Kliment Ohridski"

Contact e-mail: lyuba.radulova@gmail.com

Abstract:

The paper examines the formulas granting *conubium* in the military diplomas, focusing on the problem of soldiers' relationships with women before and after their discharge. Keeping in mind the fact that between Augustus and Septimius Severus a marriage ban was imposed on soldiers in service, the study offers a reconstruction of the way in which soldiers' *de facto* unions were viewed by the authorities and analyzes the legal protection against abandonment granted to soldiers' partners by the imperial constitutions.

Keywords: military diplomas; marriage ban; soldiers; wives; *conubium*; *matrimonium iustum et iniustum*

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The study aims at analyzing the standard formulas used in the military diplomas and focuses on the problem of granting *conubium*, as well as on the relationships which the soldiers used to maintain before and after their discharge from the army. This problem is closely related to the more general problem of the marriage ban imposed on soldiers in active service. Since the military diplomas are a very specific type of source, however, particular attention should be paid to the way they treat both the faculty of the soldiers to conclude a legal marriage and the other attested forms of relationships with women. A closer look at the formulas of the imperial constitutions suggests some hypotheses on the condition of the soldiers' partners and the legal protection offered to them by the authorities.

1. The military diploma as a certificate of granted privileges

Military diplomas are, in fact, extracts from imperial constitutions,¹ which testify the honourable discharge of veterans from military service² and the granting of certain privileges³ depending on the type of the military unit involved. It is important to note that we currently know of diplomas issued to veterans from the Praetorian Guard, the *cohortes urbanae*, the *auxilia*, the *equites singulares* and the navy, but we do not have diplomas issued to legionary veterans.⁴ What is certain is that this absence of legionary diplomas is not acci-

- ¹ LICANDRO, O. *Il diritto inciso: lineamenti di epigrafia giuridica romana*. Catania: Libreria Edizioni Torre, 2002, pp. 175–176. The editors of FIRA (RICCOBONO, S. – BAVIERA, G. et al. (eds.). *Fontes iuris Romani anteiustiniani*. Vol. 1. Firenze: Barbera, 1941) consider them a *lex data*. About the hypothesis that the type of *constitutio principis* varies according to the type of military body, cfr. RADULOVA, L. La forma giuridica dei diplomi militari. *Constitutiones principum e procedure*. In: SLAVOVA, M. – SHARANKOV, N. *Studia Classica Serdicensia 5*. Sofia: St. Kliment Ohridski University Press, 2016, pp. 264–276.
- ² Regarding the possibility to grant privileges to soldiers prior to the honourable discharge, cfr. PFERDEHIRT, B. *Die Rolle des Militärs für den sozialen Aufstieg in der Römische Kaiserzeit*. Mainz: Verlag des Römisch-Germanischen Zentralmuseums, 2002, p. 4. For a short but useful synthesis on the problem, especially regarding the problem of the granting of *conubium* while the soldier is still in service cfr. CASTAGNINO, F. *I milites e i veterani. Condizione giuridica e privilegi nell'età del Principato*. Tesi di dottorato. Milano, 2019, pp. 197–201.
- ³ Regarding the nature, the extension, and the chronology of the privileges, cfr. WOLFF, H. J. The Background of the Postclassical Legislation on Illegitimacy. *Seminar*, 1945, 3, pp. 21–45; NESSELHAUF, H. Das Bürgerrecht der Soldatenkinder. *Historia*, 1959, 8, pp. 434–442; KRAFT, K. Zum Bürgerrecht der Soldatenkinder. *Historia*, 1961, 10, pp. 120–126; WOLFF, H. J. Zu den Bürgerrechtsverleihungen an Kinder von Auxiliaren und Legionären. *Chiron*, 1974, 4, pp. 479–510; ARNAUD-LINDET, M.-P. Remarques sur l'octroi de la *civitas* et du *conubium* dans des diplômes militaires. *Revue des Études Latines*, 1977, 55, pp. 282–312; BEHREND, O. Die Rechtsregelungen der Militärdiplome und das die Soldaten des Prinzipats treffende Eheverbot. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 116–166; LINK, S. Römische Militärdiplome 'für die ganze Familie'. *Zeitschrift für Papyrologie und Epigraphik*, 1986, 63, pp. 185–192; LINK, S. *Konzepte der Privilegierung römischer Veteranen*. (Heidelberger Althistorische Beiträge und Epigraphische Studien, 9). Stuttgart: Franz Steiner Verlag, 1989; MAXFIELD, V. Systems of Reward in Relation to Military Diplomas. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 26–43; WOLFF, H. J. Die Entwicklung der Veteranenprivilegien vom Beginn des 1. Jahrhunderts v. Chr. bis auf Konstantin d. Gr. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 44–115; VITTINGHOFF, F. Militärdiplome, römische Bürgerrechts- und Integrationspolitik der Hohen Kaiserzeit. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 535–555; VARON, P. The *Heredes* of Roman Army Soldiers. In: GROENMAN-VAN WAATERINGE, W. (ed.). *Roman Frontier Studies 1995*. Oxford: Oxbow, 1997, pp. 565–570; PHANG, S. E. *The Marriage of Roman Soldiers (13 B.C. – A.D. 235). Law and Family in the Imperial Army*. Leiden – Boston – Köln: Brill, 2001.
- ⁴ As for the problem about the military units which can be given a *diploma*, cfr. SESTON, W. Les vétérans sans diplômes des légions romaines. *Revue de Philologie*, 1933, 59, pp. 375–399; DEGRASSI, A. Οὐβερανοὶ οἱ χωρὶς χαλκῶν. *Rivista di filologia e istruzione classica*, 1934, 12, pp. 194–200; PASSERINI, A. La tavola dei privilegi di Brigetio e i diplomi militari. *Athenaeum*, 1942, 20, pp. 121–126; KRAFT, K. *Zur Rekrutierung der Alen und Kohorten an Rhein und Donau*. Bern: Aedibus A. Francke, 1951, pp. 129–130; ROXAN, M. M. The distribution of Roman military diplomas. *Epigraphische Studien*, 1981, 12, pp. 265–286; DUŠANIĆ, S. The issue of military diplomata under Claudius and Nero. *Zeitschrift für Papyrologie und Epigraphik*, 1982, 47, pp. 149–172; DUŠANIĆ, S. Pre-Severan Diplomata and the Problem of 'Special Grants'. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 190–240; MANN,

dental, since a papyrus from Judaea⁵ clearly attests that not only was it not common for the legionary veterans to receive a military diploma, but it was also impossible for them to have one issued even when explicitly requested. Thus, if the ex-legionaries insisted on having a certificate of honorable discharge, they had to order an authenticated copy of the imperial constitution which put an end to their service on their own initiative and at their expense. This copy had to be signed by several witnesses or by a representative of the Roman authorities⁶ and was physically different from the military diplomas.

This asymmetrical issuing of military diplomas to only certain types of veterans suggests that the primary function of this type of document was to testify not so much the honorable discharge of the veteran but rather the eventual additional privileges granted to the veterans of some specific units. The nature of these additional privileges will be discussed later.

2. The marriage ban

Due to contradictions and ambiguities in the sources, the problem of the faculty of the soldiers to conclude a legal marriage during their service and of the possible chronology of the marriage ban has been a subject of scientific debate for more than a century. As this paper is not focused specifically on the marriage ban but intends to use it only as a starting point for the analysis, we will give here only a summary of the main hypotheses and will specify those which we accept, without presenting the details of the arguments.

Many scholars⁷ deny the very existence of a marriage ban and insist that the sources attest only a ban for the soldiers to cohabit with their wives.⁸ Others⁹ believe that from

J. C. – ROXAN, M. Discharge Certificates of the Roman Army. *Britannia*, 1988, 19, pp. 341–347; LINK, *op. cit.*, p. 20; ALSTON, R. Roman Military Pay from Caesar to Diocletian. *Journal of Roman Studies*, 1994, 84, pp. 112–123; FRIEDL, R. *Der Konkubinat im kaiserzeitlichen Rom: Von Augustus bis Septimius Severus*. Stuttgart: Franz Steiner Verlag, 1996, p. 261; PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, pp. 54, 61.

⁵ Pap. Soc. Ital. 1929, IX I026. The source contains the correspondence between a group of legionary veterans and the provincial governor. The veterans ask to be given a military diploma, but the governor denies the request saying that *Veterani ex legionibus instrumentum accipere non solent*.

⁶ ILS 9059, 94 AD and ILS 9060, 122 AD, both from Philadelphia. Cfr. PASSERINI, *op. cit.*, pp. 121–126; MANN, J. C. ‘Honesta Missio’ and the Brigetio Table. *Hermes*, 1953, 81, 4, pp. 496–500; MANN – ROXAN, Discharge Certificates of the Roman Army, pp. 341–347.

⁷ MISPOULET, J. B. Le mariage des soldats romains. In: MISPOULET, J. B. (ed.). *Etudes d’Institutions Romaines*, Paris: A. Durand et Pedone Lauriel, 1887, pp. 224–245; SCIALOJA, V. Il papiro giudiziario Cattaoui e il matrimonio dei soldati romani. *Bullettino dell’Istituto di diritto romano*, 1895, V, 8, Roma, pp. 154–168; TASSISTRO, P. Il matrimonio dei soldati romani. *Studi e documenti di storia e diritto*, 1901, 22, pp. 3–82; CASTELLO, C. Sul matrimonio dei soldati. *Rivista italiana per le Scienze Giuridiche*, 1940, 15, pp. 27–119; FIORI, R. La struttura del matrimonio romano. *Bullettino dell’Istituto di diritto romano Vittorio Scialoja*, 105, 2011, pp. 197–233; ONIDA, P. P. Il matrimonio dei militari in età imperiale. *Diritto@Storia. Rivista internazionale di Scienze Giuridiche e Tradizione Romana*, 2016, 14. [online]. Available at: <http://www.dirittoestoria.it/14/tradizione/OnidaMatrimonio-militari-eta-imperiale.htm>. [accessed on 29.01.2022].

⁸ The opposite opinion is offered by Willmans (WILLMANS, G. *Étude sur le camp et la ville de Lambèse*. Paris: E. Thorin, 1884, pp. 21–30), who believes that the soldiers are allowed to have relationships of the kind of *matrimonium iniustum*.

⁹ MOMMSEN, T. Dispositiones de militibus civibus romanis. In: *CIL*, III, Berlin: Apud Georgium Reimerum 1873, pp. 905–913; MARQUARDT, J. *De l’organisation militaires chez les Romains*. Paris: E. Thorin, 1891. VOLTERRA, E. Un’osservazione in tema di *tollere liberos*. In: *Festschrift Fritz Schulz*. Weimar,

Augustus to Septimius Severus there existed a ban on concluding a legal marriage only for the soldiers from the legions, whereas the *peregrini* serving in the auxiliary forces and in the navy were free to conclude marriages according to their own *ius peregrinum*.

However, in the last decades,¹⁰ Campbell and Phang have been insisting that in the period between the 1st and the 3rd century AD a complete ban on concluding a legal marriage¹¹ was enforced both on the legionaries and on the soldiers in the other army units. The hypothesis of a complete marriage ban is accepted also by Eck and Speidel.¹² However, they question the dissolution of the ban under Septimius Severus and believe that the ban was still in existence in the 4th century AD.

This paper accepts as more plausible the thesis of Campbell and Phang, namely that all types of Roman soldiers were forbidden both to marry during their service and to maintain any legal marital relationships concluded before enlisting in the army. It also accepts their thesis that this ban was dissolved by Septimius Severus.

3. Formulas referring to the soldiers' wives

Against the background of these more general observations on the regulation of the marriages of soldiers before and after their discharge, the formulas of the military diplomas allow reaching some more specific conclusions as to the way in which the Roman authorities navigated the complex problem of the soldiers' relationships during their service.¹³

Any analysis of the information contained in the military diplomas should use as a starting point the fact that they were issued to different types of military units, in which the soldiers had both different backgrounds and different lifestyles. Those who served in the praetorian and the urban cohorts were traditionally recruited among men born as Roman citizens,¹⁴ and spent most of their service in the barracks in Rome. The *auxiliarii*, the *equites singulares* and the navy soldiers, on the other hand, were mainly of peregrine origin¹⁵ and received Roman citizenship as a special privilege granted at the end of their

H. Böhlhaus Nachfolger, 1951, pp. 388–398; VOLTERRA, E. L'acquisto della cittadinanza romana e il matrimonio del peregrino. In: CARNELUTTI, F. *Studi in onore di Enrico Redenti nel XL anno del suo insegnamento*. Milano: Giuffrè 1951, pp. 403–422.

¹⁰ CAMPBELL, J. B. The Marriage of soldiers under the Empire. *The Journal of Roman Studies*, 1978, 68, pp. 153–166; PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, pp. 115–137.

¹¹ According to Campbell and Phang (ibid.) the marriage ban also lead to the annulation of any marriages concluded prior to the soldiers' enlistment in the army. Behrends (BEHREND, *op. cit.*, pp. 116–166) however believes that the ban regarded only the marriages concluded while in service, whereas the preexisting marriages were not annulled but only temporarily frozen.

¹² ECK, W. Septimius Severus und die Soldaten. Das Problem der Soldatenehe und ein neues Auxiliardiplom. In: ONKEN, B. – ROHDE, D. (eds.). *Omni historia curiosus. Studien zur Geschichte von der Antike bis zur Neuzeit. Festschrift für Helmuth Schneider zum 65. Geburtstag*. Wiesbaden: Harrassowitz, 2011, pp. 63–77; SPEIDEL, M. A. Les femmes et la bureaucratie. Quelques réflexions sur l'interdiction du mariage dans l'armée romaine. *Cahiers Du Centre Gustave Glotz*, 2013, 24, pp. 205–215.

¹³ Regarding the way in which the soldiers and their partners viewed their relationships cfr. SCIALOJA, *op. cit.*, pp. 154–168; PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, pp. 23–52; 142–196.

¹⁴ PHANG, S. E. Military Documents, Languages, and Literacy. In: ERDCAMP, P. (ed.). *Companion to the Roman Army*. Malden: Wiley–Blackwell, 2007, pp. 286–306, especially 287.

¹⁵ SADDINGTON, D. B. Classes. The Evolution of the Roman Imperial Fleets. In: ERDCAMP, P. (ed.). *Companion to the Roman Army*. Malden: Wiley–Blackwell, 2007, pp. 201–219, especially 212; HERZ, P. Finances and Costs of the Roman Army. In: ERDCAMP, P. (ed.). *Companion to the Roman Army*. Malden: Wiley–Blackwell, 2007, pp. 306–323, especially 307. After 140 AD the increasing number of

service. As for their lifestyle, the first two groups were quite sedentary and lived mostly in their *castra*, while the third group used to travel continuously. This means that after the discharge the *status civitatis* of all veterans was technically the same but the road to achieving this status was different.

Back to the problem of the relationships of acting of ex-soldiers with women and the way they were treated by the authorities, it is important to remind that all types of military diplomas contained a formula which granted a *conubium* to the soldiers.¹⁶ However, as specified above, after their discharge all veterans possessed Roman citizenship of which the *conubium* was an indispensable part.¹⁷ Here comes the question why it was considered necessary to grant a separate *conubium* to men who already had one integrated in the *civitas Romana*.

A text from Ulpian, however, shows clearly that the addressee of the privilege was not in fact the veteran himself. The jurist claims that: 3. *Conubium est uxoris iure ducendae facultas*. 4. *Conubium habent cives Romani cum civibus Romanis; cum Latinis autem et peregrinis ita, si concessum sit*. 5. *Cum servis nullum est conubium*.¹⁸ The source states that the right to conclude a legal marriage, contained in the Roman citizenship, could only be used for concluding a legal marriage with a woman who was herself a Roman citizen, or with a woman who possessed a *conubium* of her own.

Thus, the *de facto* addressee of the *conubium* granted to the veteran was the potential peregrine wife whom he would decide to marry, which means that the veteran himself was nothing more than a carrier of this privilege. What is interesting is that the veterans were not always free to choose the woman to whom they would pass the *conubium*. It is in this freedom, or lack of freedom, of choice that we observe a kind of legal protection granted by the Roman authorities to the soldiers' partners as well as the major differences between the privileges granted to the different army units.

Roman citizens brought to the enlistment of *cives* also in the traditionally peregrine army units, which can be observed in the change of the formula in the diplomas from *imperator ... civitatem dedit to civitatem Romanam qui eorum non haberent dedit*. Cfr. ARNAUD-LINDET, *op. cit.*, pp. 282–312; WOLFF, Zu den Bürgerrechtsverleihungen, pp. 479–510; ROXAN, M. M. Observations on the Reasons for Changes in Formula in Diplomas circa AD 140. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 265–292, especially 271.

¹⁶ Regarding the *conubium* as a privilege cfr. LEONHARD, R. *Conubium*. In: WISSOWA, G. (ed.). *Paulys Realencyclopädie der classischen Altertumswissenschaft*. IV/1. Stuttgart: J. B. Metzler, 1900, pp. 1170–1172; VOLTERRA, E. La nozione giuridica del *conubium*. In: ARANGIO-RUIZ, V. (ed.). *Studi in memoria di E. Albertario*. Vol. II. Milano: Giuffrè, 1950, pp. 345–384; BERGER, A. *Encyclopedic Dictionary of Roman Law*. (Transaction of the American Philological Association). Philadelphia: The American Philosophical Society, 1953, p. 415, s.v. *conubium*; p. 578, s.v. *matrimonium*; 579, s.v. *matrimonium iustum*; ARNAUD-LINDET, *op. cit.*, pp. 282–312; CAMPBELL, The Marriage of soldiers under the Empire, pp. 153–166; MANN, J. C. A Note on *Conubium*. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 187–189; MIRKOVIĆ, M. Die Entwicklung und Bedeutung der Verleihung des *Conubium*. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 167–186.

¹⁷ LEONHARD, *op. cit.*, pp. 1170–1172; BERGER, *op. cit.*, p. 389, s.v. *civitas, civitas Romana*; 415 s.v. *conubium*.

¹⁸ Ulp. *Reg.* 5. 2.

3.1 Diplomas for the praetorian and the urban cohorts

As testified by the available epigraphic material, the formulas granting *conubium* to soldiers from the praetorian and the urban cohorts are identical. Moreover, it is not uncommon to find a single imperial constitution issued both to praetorians and to *urbaniciani*.¹⁹ This is not accidental since both units shared a similar profile – they consisted of Roman citizens, who were allowed to carry arms inside the *pomoerium* and lived in barracks in Rome.

The standard formula for granting privileges to these two groups of soldiers was:

*Imperator ... ius tribui conubii dumtaxat cum singulis et primis uxoribus ut etiamsi peregrini iuris feminas in matrimonio suo iunxerint proinde liberos tollant ac si ex duobus civibus Romanis natos.*²⁰

The first thing that grabs the attention here is that the granted *conubium* was explicitly limited, *i.e.*, the veteran was entitled to pass it only to the first woman he was going to marry after his discharge (*singulis et primis uxoribus*). For the veteran this meant that his Roman citizenship allowed him to conclude an unlimited number of consecutive legal marriages with women possessing a Roman citizenship and a *conubium* of their own. In case he wanted to have a *matrimonium iustum* with a peregrine woman, however, he was allowed to conclude such a marriage only once and only if it was his first legal marriage after leaving the army. As far as the peregrine bride is concerned, it is necessary to note that the privilege of *conubium* passed to her by the veteran did not change her peregrine status, but only allowed the marriage to be considered legal so that the children from it would be legitimate, with Roman citizenship and heirs to their father.

The use of the perfect conjunctive in the formula *etiamsi peregrini iuris feminas in matrimonio suo iunxerint*, on the other hand, suggests that the praetorian and the urban soldiers would have had the habit of having long-term monogamous relationships with peregrine women long before their retirement.²¹ The military diplomas refer to these relationships as *matrimonia*, but due to the marriage ban, they would have been only *matrimonia iniusta*.²² The children born from such marriages were considered illegitimate, but, as clear from *proinde liberos tollant ac si ex duobus civibus Romanis natos*, the father could legitimize them after his discharge if he chose to marry their mother.²³

¹⁹ Cfr. CIL XVI 21, 95, 98; RMD I 1, RMD II 124; RMD IV 288 et al. In this paper the references to the military diplomas will be given only as an example and not as a complete list of the published diplomas and will be based only on the principal publications in CIL XVI and RMD.

²⁰ Cfr. CIL XVI 18, 21, 81, 95, 98, 124, 133, 134, 135, 137, 139, 140, 142, 143, 146, 147, 148, 149, 151, 153, 155, 189; RMD I 76, 78; RMD II 132; RMD III 139, 163, 188, 191, 195, 199; RMD IV 213, 302, 303; 308, 309, 310, 313, 315, 318, 319, 322; RMD V 452, 455, 456, 464, 469, 470, 474, 475.

²¹ CAMPBELL, J. B. *The Emperor and the Roman Army*. Oxford: Clarendon Press, 1984, pp. 439–442; LUZZATTO, G. Nota minima sul diploma militare del 306 rilasciato ad un pretoriano di origine italiana. In: AA. VV. *Studi in onore di Biondo Biondi*. II. Milano: Giuffrè, 1965, pp. 95–110; CASTAGNINO, op. cit., pp. 237–241.

²² Cfr. also the use of the term *uxores*, which refers to a kind of marital or quasi-marital relationship.

²³ Regarding the debate about the interpretation of the phrase *liberos tollere*, cfr. VOLTERRA, Un'osservazione in tema di *tollere liberos*, pp. 388–398; VOLTERRA, E. Ancora in tema di “tollere liberum”. *IURA*, 1952, 3, pp. 216–217; CAPOGROSSI COLOGNESI, L. Tollere liberos. *Mélanges de l'École française de Rome. Antiquité*, 1990, 102, 1, pp. 107–127; SHAW, B. D. Raising and Killing Children: Two Roman Myths. *Mnemosyne*, 2001, 54, 1, pp. 31–77; against the hypothesis of a retroactive legitimation of children, cfr. Phang (PHANG), *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, pp. 296–325) who believes that the formula *proinde liberos tollant ac si ex duobus civibus Romanis natos* is related only to

The opportunity for the father to legitimize the children from such a *matrimonium iniustum* was the only protection granted to his wife against the risk of being abandoned after her husband's discharge. In fact, the veteran was free either to marry a Roman citizen or to pass the *conubium* to another peregrine woman. This means that his choice to marry his *uxor iniusta* depended only on his will to do so and/or his wish to legitimize his children.

3.2 Diplomas for the *auxilarii* and the *equites singulares*

The formulas used in the diplomas for the auxiliary veterans and the *equites singulares*, as already mentioned, were quite different from those analyzed above.

In the first century of the Principate these military units used to recruit men of peregrine status, as clear from the practice to grant them *civitas Romana*²⁴ on their discharge by means of the formula *imperator ... civitatem dedit*. In the middle of the 2nd century however, with the increase of the number of the Roman citizens, these secondary units began to recruit also citizens, as visible from the change in the formula: *imperator ... civitatem Romanam qui eorum non haberent dedit*.²⁵

Thus, the grant of citizenship formally levelled the *status civitatis* of the veterans from the auxiliary units and the *equites singulares* with that of the veterans of the praetorian and the urban cohorts. However, the privileges and restrictions regarding the marriage rights granted to the two groups were quite different.

The imperial constitutions for the *auxilarii* and the *equites singulares* contain one and the same formula: *imperator ... dedit conubium cum uxoribus quas tunc habuissent cum est civitas iis data*.²⁶ The attention is drawn to the use of the term *uxores*, accompanied by the relative clause *quas tunc habuissent*, in which the verb is in *coniunctivus plusquamperfecti*. This makes it clear that this official administrative act explicitly acknowledged the practice of the soldiers to maintain long lasting monogamous relationships despite the marriage ban. Phang²⁷ believes that the term *uxores* should be interpreted as a sign that

children born in a legal marriage, concluded after the praetorian's discharge. Cfr. also VOLTERRA, E. Sulla condizione dei figli dei peregrini cui veniva concessa la cittadinanza romana. In: REDENTI, E. *Studi in onore di Antonio Cicu*. Milano: Giuffrè, 1951, pp. 643–672; WATSON, A. *The Law of Persons in the later Roman Republic*. Oxford: Clarendon, 1967, p. 79; LIEB, H. Die constitutiones für die stadtrömischen Truppen. In: ECK, W. – WOLFF, H. (eds.). *Heer und Integrationspolitik: Die römischen Militärdiplome als historische Quelle*. Köln – Wien: Böhlau Verlag, 1986, pp. 322–346.

²⁴ SHERWIN-WHITE, A. N. *The Roman Citizenship*. Oxford: Clarendon Press, 1973, pp. 23–24; CAMPBELL, B. *The Roman Army, 31BC–AD337. A Sourcebook*. London: Routledge, 1994, p. 20.

²⁵ ARNAUD-LINET, *op. cit.*, pp. 282–312; WOLFF, Zu den Bürgerrechtsverleihungen, pp. 479–510; ROXAN, Observations on the Reasons for Changes in Formula in Diplomas circa AD 140, p. 271.

²⁶ CIL XVI 6, 22, 23, 26, 29, 30, 31, 33, 36, 38, 39, 42, 43, 44, 47, 48, 49, 51, 52, 56, 62, 64, 67, 69, 70, 73, 75, 76, 78, 80, 82, 159, 161, 162, 163, 165, 171, 173, 175, 176; RMD I 2, 5, 6, 14, 22, 24, 35, 39; RMD II 79, 90; RMD III 140, 148, 152, 157, RMD IV 202, 208, 216, 239, 258; RMD V 323, 382 et al.

²⁷ Cfr. also the use of the term *uxor*. PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, pp. 197–204; Regarding the hypothesis that the soldiers' unions should be considered as concubinate, cfr. MEYER, P. M. *Das römische Konkubinat nach den Rechtsquellen und den Inschriften*. Leipzig: Teubner, 1895, p. 93; STARR C. G. *The Roman Imperial Navy 31 B.C.–A.D. 324*. Cambridge: Barnes and Noble, 1960, p. 91; FRIEDL, *op. cit.*, p. 229.

these relationships were mostly considered *matrimonia iniusta*,²⁸ i.e., unions which lead to all social consequences of the legal marriage but did not create its legal effects.

And yet, the fact that the woman had the status of *uxor iniusta* brought to certain changes in her rights and obligations. The husband of an *uxor iniusta* was able to charge her with *adulterium*,²⁹ i.e., the adultery of a married woman. Besides, there existed a kind of legal relation between the parents and the children born from a *matrimonium iniustum*, as these children, though illegitimate, were also considered when granting a *ius liberorum* to their parents with Roman citizenship.³⁰ What is more, the fact that the authorities recognized the specific status of a *uxor iniusta* is visible in some military diplomas in which the names of the wife and the children were explicitly mentioned.³¹ The last evidence for the specific semiofficial status of the *matrimonium iniustum* of the soldiers is the fact that before 140 AD³² the children born from such a marriage and declared by the father³³ were granted the same privileges as those granted to their father after his discharge.³⁴

Until 140 AD the formula analyzed above was followed by the text *aut, si qui caelibes essent, cum iis quas postea duxissent*. The phrase *si qui caelibes essent* is not an unimportant addition, since it took away the veteran's right to pass the *conubium* to any woman of his choice. With this formula the authorities obliged the veteran to use the *conubium* for the woman with whom he already was in a *matrimonium iniustum* and, only if he was not in a long-term relationship, he was free to choose a new woman after his discharge. This means that, in order to avoid the scenario of "disappointed women and abandoned

²⁸ VOLTERRA, E. *Iniustum matrimonium*. In: BISCARDI, A. (ed.). *Studi in onore di Gaetano Scherillo* 2. Milano: Cisalpino-La Goliardica, 1972, pp. 441–470; FIORI, *op. cit.*, pp. 197–233; SANNA, M. V. *Matrimonio e altre situazioni matrimoniali nel diritto romano classico. Matrimonium iustum – Matrimonium iniustum*. Napoli: Jovene editore, 2012; QUADRATO, R. *Maris atque feminae coniunctio: matrimonium e unioni di fatto*. *Index*, 2010, 38, pp. 223–252.

²⁹ D. 48, 5, 14, 1 (Ulp. 2 de adult.): *Plane sive iusta uxor fuit sive iniusta, accusationem instituere vir poterit: nam et Sextus Caecilius ait, haec lex ad omnia matrimonia pertinet*. D. 48, 5, 14, 2 (Ulp. 2 de adult.): *Sed et in ea uxore potest maritus adulterium vindicare, quae vulgaris fuerit, quamvis, si vidua esset, impune in ea stuprum committeretur*. Cfr. Coll. 4, 5, 1 (Pap. 15 resp.): *Civis Romanus, qui civem Romanam sine conubio sive peregrinam in matrimonio habuit, iure quidem mariti eam adulteram non postulat, sed ei non opponetur infamia vel quod libertinus rem sestertiorum triginta milium aut filium non habuit, propriam iniuriam persequenti*.

³⁰ STEINWENTER, A. *Ius liberorum*. In: WISSOWA, G. (ed.). *Paulys Realencyclopädie der classischen Altertumswissenschaft*. X. Stuttgart: J. B. Metzler, 1919, pp. 1281–1284; Ulp. de off. praet. tut.: *Iusti autem an iniusti sint filii, non requiritur; multo minus in potestate necne sint, cum etiam iudicandi onere iniustos filios relevare Papinianus libro V quaestionum scribat*. CASTAGNINO, *op. cit.*, pp. 157–158.

³¹ CIL XVI 24; 38, 49; 55, 75, 78, 163; RMD III 142; RMD IV 248 et al.

³² ROXAN, *Observations on the Reasons for Changes in Formula in Diplomas circa AD 140*, pp. 265–292.

³³ Regarding the *professio liberorum* and the *testatio liberorum*, cfr. SCHULZ, F. *Roman Registers of Births and Birth Certificates*. *The Journal of Roman Studies*, 1942, 32, 1–2, pp. 78–91; SCHULZ, F. *Roman Registers of Births and Birth Certificates*. Part II. *The Journal of Roman Studies*, 1943, 33, 1–2, pp. 55–64; PESCANI, P. Osservazioni su alcune sigle ricorrenti nelle "Professiones liberorum". *Aegyptus*, 1961, 41, 3–4, pp. 129–140; PURPURA, G. Le dichiarazioni di nascita nell'Egitto romano. *Annali del Seminario Giuridico*, 2004, 49, pp. 151–163; CASTAGNINO, *op. cit.*, pp. 120–123.

³⁴ In this connection it is necessary to mention the interesting hypothesis that, since the Roman marriage consisted of a combination of the will to marry (*affectio maritalis*) and the faculty to conclude a legal marriage (*conubium*), the act of granting *conubium* to the veteran automatically transforms the *matrimonium iniustum* into *matrimonium iustum*. Cfr. VOLTERRA, L'acquisto della cittadinanza romana e il matrimonio del peregrino, pp. 407–417.

children”,³⁵ the Roman authorities took care to transform the status of the wife from *uxor iniusta* to *uxor iusta*. Later, around 140 AD, the state retreated from interfering with the private life of the veterans and omitted the phrase *si qui caelibes essent*, which meant that the veteran was now free to abandon his *uxor iniusta* and to conclude a marriage with another woman. The reform of 140 AD not only left the military wives unprotected but also suspended the practice to grant the children from *matrimonium iniustum* the same privileges as their father.

And lastly, one more detail about the phrase *cum iis quas postea duxissent*. In contrast to the limitations for the veterans of the praetorian and the urban cohorts, i.e. that they were allowed to use the *conubium* only to conclude their first marriage after leaving the army,³⁶ the diplomas of the *auxilarii* and the *equites singulares* did not specify for which marriage they could use the *conubium*.³⁷ They were allowed to “freeze” the *conubium*, to conclude several legal marriages with citizens and later to use it with a peregrine woman of their choice.³⁸

The last part of the formula in the military diplomas, i.e., the limitation *dumtaxat singuli singulas*, remained unchanged with time. Some researchers interpret this phrase as an attempt to prevent the soldiers from using the *conubium* as a means to have more than one wife at a time, especially when this was in line with their ethnic traditions.³⁹ If this was the case, the phrase was aimed at securing the monogamy of the marriages.⁴⁰ However, it is more likely that the phrase was used either to prevent the granting of the privileges to the veteran’s children by more than one mother, or to prevent the veteran from concluding numerous legal marriages with peregrine women one after another.

3.3 Diplomas for the *classiarii*

The situation of the veterans from the navy was quite similar to that of the auxiliary units and the *equites singulares*, as all of these units were predominantly composed of peregrine men who were granted Roman citizenship only after their *honesta missio*. Until 140 AD the formula granting *civitas* and *conubium* to the navy veterans was identical with the one in the diplomas for the *auxilarii*:

*Imperator ... trierarchis et remigibus ... dimissi honesta missione quorum nomina subscripta sunt ipsis liberis posterisque eorum civitatem dedit et conubium cum uxoribus quas tunc habuissent cum est civitas iis data aut si qui caelibes essent cum iis quas postea duxissent dumtaxat singuli singulas.*⁴¹

This means that the *classiarii* were granted *conubium* with the wives (*uxores*), with whom they were in a *matrimonium iniustum* at the moment of their discharge, or, only if

³⁵ PHANG, *The Marriage of Roman Soldiers* (13 B.C. – A.D. 235), p. 60.

³⁶ Such conditions are inconvenient if the first wife were to die. Cfr. KRAFT, *Zur Rekrutierung der Alen und Kohorten an Rhein und Donau*, p. 115; ARNAUD-LINDET, *op. cit.*, p. 88; PHANG, *The Marriage of Roman Soldiers* (13 B.C. – A.D. 235), p. 60.

³⁷ Cfr. *supra*: ... *cum singulis et primis uxoribus, dumtaxat singulis* ...

³⁸ CASTAGNINO, *op. cit.*, p. 236.

³⁹ ALLASON-JONES, L. *Women in Roman Britain*. London: British Museum Publications, 1989, p. 63.

⁴⁰ PHANG, *The Marriage of Roman Soldiers* (13 B.C. – A.D. 235), pp. 412–414.

⁴¹ CIL XVI 1, 12, 13, 14; 15; 16, 17, 24, 32, 37, 66, 72, 74, 79, 177; RMD I 38; RMD III 142; RMD IV 203, 204, 205.; RMD V 353, 354, 358, 381, 383 et al.

they were not in a relationship, with one peregrine woman whom they would marry after the *missio*.

As mentioned above, in 140 AD the text of the auxiliary diplomas was changed in a way that the privileges of the auxiliary veterans were no more extended to their children. The reform did not affect the navy veterans and the formulas in their diplomas remained unchanged. This difference, though not directly related to the problem of their relationships with women, indirectly suggests that the Roman authorities were starting to give different treatment to the relationships which the soldiers from different army units had while still in service.

The text of the imperial constitution for the navy veterans was changed in 158 AD. The change did not affect the grant of *conubium* after their discharge and the *conubium* formula remained almost the same: *dedit ... conubium cum iisdem quas tunc secum habuissent cum est civitas iis data aut si qui tunc non habuissent cum iis quas postea uxores duxissent dumtaxat singuli singulas*.⁴²

The change, however, affected the veterans' illegitimate children and indirectly provides information about the status of the women in relationships with navy soldiers during their service. The formula granting privileges to the veteran and his children born before the *missio* (*ipsis liberis posterisque eorum civitatem dedit*), was replaced by a new more complex formula: *ipsis filiisque eorum quos susceperint ex mulieribus quas secum concessa consuetudine vixisse probaverint civitatem Romanam dedit*.⁴³ The new text clearly shows that the Roman authorities drew a line of distinction between the illegitimate children born to a navy soldier from a temporary relationship and the illegitimate children born from a stable, family-like relationship. Only the latter were entitled to the privileges granted to their fathers. As this distinction is not observed in the case of the auxiliary veterans, it seems highly probable that it was due to the differences in the lifestyles of the different units.

It is well known that the soldiers from the praetorian and the urban cohorts were usually seated in Rome, unless given some special orders. The auxiliary soldiers were also quite sedentary spending their service in permanent *castra* and leaving them only during expeditions or if dislocated elsewhere. The *classarii*, on the other hand, rarely spent the period of their service in the same place. If they were not involved in battles, they used to patrol in the seas, serve as guards of the sea routes, or escort important deliveries.⁴⁴ In this way they often visited different ports which enabled them to have more or less stable relationships with several women.

Such temporary and often polygamous relationships did not fit with the Roman idea of *matrimonium iniustum* which is visible in the terms used in their military diplomas. While until 158 AD the partners of the navy soldiers were referred to as *uxores*, a term associated with marriage, both *iustum* and *iniustum*, after the reform the women were called simply

⁴² Cfr. *infra*.

⁴³ CIL XVI 122, 138, 152; RMD I 73, 74; RMD II 131, 133; RMD III 171, 189, 192, 194, 201a; RMD III 171; RMD IV 277, 307, 311; RMD V 425, 426, 427, 449, 463, 471 et al.

⁴⁴ STARR, C. *The Roman Imperial Navy: 31 B.C.–A.D. 324*. Ithaca: Cornell University Press, 1941, pp. 81–82; CASTAGNINO, *op. cit.*, pp. 165–171. For a very detailed overview of the navy's missions cfr. REDDÉ, M. *Mare nostrum*. Rome: Ecole française de Rome, 1986, pp. 323–453.

mulieres or *eaedem quas tunc secum habuissent*.⁴⁵ Besides, the children born by these partners were no longer called *liberi*, a term used for children born both in *matrimonia iusta* and *iniusta*. They were now called *fili*.⁴⁶ The significant change in terminology testifies a change in the way the authorities looked upon the soldiers' relationships before the discharge. It seems that the authorities were conscious of the fact that these relationships were not in harmony with the concept of *matrimonium iniustum*. At a more practical level, the change can also be interpreted as a reaction to numerous cases of abuse by navy veterans who claimed the grant of privileges for large numbers of children born by different mothers with whom they were not in a long-term monogamous relationship.

In addition to the term *mulieres* in the new formula, there appeared other new concepts as well. The most important but unclear one is the phrase *concessa consuetudo* which is still debated among the scholars. The text of the diplomas states that only children born from a *concessa consuetudo* relationship were entitled to be granted their father's privileges. Some scholars believe that this phrase is a synonym of *matrimonium iustum*,⁴⁷ others are more inclined to consider it a *matrimonium iuris gentium*,⁴⁸ and still others interpret it as concubinate.⁴⁹ Phang,⁵⁰ however, points out that it is impossible to identify the *concessa consuetudo* with any type of marriage, because, if this was the case, an official imperial constitution would undoubtedly have used the correct legal term *matrimonium*. *Consuetudo*, on the other hand, means an extramarital cohabitation⁵¹ and probably should be interpreted in this context as an official permission for the *classarii* to live with their partners.

The hypothesis that there existed some kind of institutional control on this type of cohabitation is supported by the use of the term *probaverint*. In order to use their right to extend their privileges to their children the navy soldiers had to declare before their superiors⁵² an intention to start a long-term monogamous relationship with their partner, and to have it entered in the archives.

Castagnino⁵³ offers a very convincing hypothesis regarding the practical details around the *concessa consuetudo* in question. He observes that in the period of *mare clausum* the navy soldiers usually stayed in the city in which the navy was stationed. In Misenum and Ravenna, the bases of the praetorian fleets, however, there are no traces of barracks which leads to the conclusion that the soldiers were free to live among the civilian population. So, it is quite likely that they were able to obtain an official permission to cohabit with their partners.

⁴⁵ BERGER, *op. cit.*, p. 588, s.v. *mulier*; p. 757, s.v. *uxor*; CASTAGNINO, *op. cit.*, p. 168.

⁴⁶ Regarding the distinction between the terms *liberi* and *fili* cfr. WEISS, P. Zwei Diplomfragmente aus dem Pannonischen Raum. *Zeitschrift für Papyrologie und Epigraphik*, 1990, 80, p. 149.

⁴⁷ STARR, *op. cit.*, p. 88–94, especially 92, cfr. the interpretation of PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, p. 81.

⁴⁸ SANDER, E. Das Recht des Römischen Soldaten. *Rheinisches Museum für Philologie*, 1958, 101, 2, pp. 151–191, especially p. 161; WATSON, G. R. *The Roman Soldier*. Ithaca: Cornell University Press, 1969, pp. 136–138.

⁴⁹ ARNAUD-LINDET, *op. cit.*, p. 296; CAMPBELL, *The Marriage of soldiers under the Empire*, p. 165.

⁵⁰ PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, p. 81.

⁵¹ MIRKOVIĆ, *op. cit.*, pp. 181–182; PHANG, *The Marriage of Roman Soldiers (13 B.C. – A.D. 235)*, p. 81.

⁵² According to Eck (ECK, W. Septimius Severus und die Soldaten, pp. 63–77, especially p. 64) the superiors in question are the *praefecti classis*.

⁵³ CASTAGNINO, *op. cit.*, pp. 171–172.

The situation of the partners of navy soldiers can be summarized as follows:

Before 158 AD the women having a stable monogamous relationship with *classiarii* were considered *uxores iniustae*. If the relationship was still existing at the moment of discharge of the veteran, he was obliged to pass the *conubium* granted to him to his *uxor iniusta*, thus making her *uxor iusta*. Only if the veteran was not in a *matrimonium iniustum* he was free to use the *conubium* for a newly-met woman. Just as with the veterans of the auxiliaries it seems that the navy veterans were not obliged to use the *conubium* in their first marriage, in case they decided to marry a citizen, but could save it for an eventual later marriage to a peregrine woman.

After 158 AD the usual polygamy of the navy soldiers brought to the downgrading, according to the authorities, of their relationships from *matrimonium iniustum* into *consuetudo* and their partners lost the status of *uxor iniusta*. Still, the requirement to register this kind of relationships indicates that it was considered more marriage-like than the concubinate. This is clear also from the fact that the authorities offered a serious protection to the soldiers' partners by linking the privilege of *conubium* with this formally registered cohabitation. This meant that if at the moment of the *missio* the veteran was living in a *concessa consuetudo* with a peregrine woman, he was not able to choose the woman to whom he would pass it but was obliged to use it with his current partner.

4. A hypothetical reconstruction of the general picture

The following picture emerges from the analysis made above.

- Between the reigns of Augustus and Septimius Severus there existed an official ban for soldiers in service to conclude legal marriages. The ban, however, was not intended to deprive the men from having a private and a family life. On the contrary, the Roman authorities were well aware of the practice of many soldiers to have relationships with women and to father children. The military diplomas indicate that these relationships were recognized by the authorities and the women involved were even given some legal protection. The attitude of the authorities, however, was different and depended on the type of the military unit.
- The diplomas for the praetorian and urban soldiers clearly show that the Roman authorities officially recognized their stable monogamous relationships as *matrimonia iniusta*. They did not, however, provide any direct legal protection to the *uxores iniustae*. The veterans were only encouraged indirectly to use the granted *conubium* for their stable partners, since this was the only way to have their children by these women legitimized.
- The relationships of the auxiliaries and of the *equites singulares* were also recognized as *matrimonia iniusta*. Until 140 AD the *uxores iniustae* were protected explicitly by a clause which obliged the veteran to pass the *conubium* to the partner he had had before his discharge. After the reform the veterans from these units were relieved from this obligation and were allowed to pass the *conubium* to any woman of their choice.
- The navy soldiers enjoyed the same regime as the auxiliaries until 158 AD, *i.e.*, their relationships were considered *matrimonia iniusta* and their wives were officially protected from abandonment. The specific lifestyle of the *classiarii* and their propensity towards temporary and polygamous relationships, however, induced the authorities to downgrade these relationships from *matrimonium iniustum* to a registered cohabitation. Although the sailors' partners lost the status of *uxor iniusta*, they still enjoyed the same

protection from the authorities, as the veterans remained obliged to use the *conubium* for their registered partners.

- Clearly, the measures taken by the authorities to protect the soldiers' partners against the risk of abandonment did not depend on the type of the relationship nor on the status of the women. In fact, the *uxores iniustae* of the praetorian and urban soldiers were left almost unprotected, whereas both the *uxores iniustae* of the auxiliaries and the cohabiting non-wives of the navy soldiers were directly protected by the provision that their abandonment led, in practice, to a loss of the *conubium*.
- The analysis reveals a strong connection between the extent to which the partner was protected and the social status of the soldiers. Among the different military units examined above, the soldiers from the praetorian and the urban cohorts enjoyed the highest status, which also meant a shorter period of service and a much higher pay. The prestige of the auxiliaries was moderate, whereas the navy soldiers were at the bottom of the social scale. So, it is possible to conclude that the partners of the soldiers of higher status were left least protected by the authorities. This is understandable as the protection given to the women corresponded to respective limitations of the right of the veterans to dispose of the granted *conubium*. For this reason, the authorities gave stronger protection to the partners of the less prestigious troops but were reluctant to impose excessive restrictions on the most privileged veterans.