



Ius Militare – Military Courts in the Roman Law (I)

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Abstract

Military courts in ancient Rome belonged to the so-called *inconstant coercions (coercitio)*, they were respectively treated as “special circumstances courts” excluded from the regular Roman judicial system and performed criminal justice implementation, strictly in conditions of war. To repress the war torts, as well as to overcome the soldiers’ resistance, which at moments was violent, the king (*rex*) himself at first and the highest new established magistrates i.e. consuls (*consules*) afterwards, have been using various constrained acts. The authority of such enforcement against Roman soldiers sprang from their “military imperium” (*imperium militiae*). As most important criminal and judicial organs in conditions of war, responsible for maintenance of the military courtesy, were introduced the military commander (*dux*) and the array and their subsidiary organs were the cavalry commander, military legates, military tribunals, centurions and regents. In this paper, due to limited available space, we will only stick to the main military courts in ancient Rome.

Keywords: military camp; tribunal; dux; recruiting; praetor.

1. Introduction

“[The Romans...] strictly cared about punishments and awards of those who deserved praise or lecture... The military courtesy was grounded at the fear of laws, and god – for people, weapon, brad and money are the power of war! ...It was nothing more than an army, that is well trained during muster; it was no possible for one to be defeated, who knows how to apply it!” [23].

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The enclosed **military camp** (*castrum* or *castra*) was thought to be the biggest support to the Roman legions in war operations. They were erected by specially trained engineers, according to strictly defined plans, and used as attacking camps or sanctuaries in case of withdrawal. At the same time, these camps were the places where legionnaires themselves spent their early lives and youthfulness, for constant wars the Romans waged on, which in ancient times were considered as aggressive and warlike people. These “wolf children and ancestors of Mars” had the perception of peace primary as a social condition in which both the legal constitution and the hierarchy of values, defined by laws, are truly respected. Their ideal was a well-organized state which internally secures order (*ordo*) and peace (*pax*), and externally awes its neighbors and enemies (*hostis*) [1]. And this awe that barbaric people in the surroundings truly felt was maintained by such buildings of fortification and temporary camps, whose construction included the entire military machinery. They were designed to have four doors or gates: main or front gate (*porta principalis*), that overlooks the enemy; furthermore a back gate (*porta decumana*), which opposed the front gate, and also two side gates (*porta principalis dextra* and *porta principalis sinistra*). The tracks that lead to these gates intersected themselves at the central opening of the squared camp, whereas the *courtroom* was located and the trials were conducted [2].

Since the age of the Kingdom, the place where soldiers were put on trial or the place where the commander addressed to the legionnaires was called the **tribunal** (*tribunal*). Unlike the magistrate’s wooden tribunal, which existed during peacetime, the military camp tribunal was most often a ledge made of beaten soil and a wedge of tussock, whereas the military commander stood during trials. This platform was used for holding leaders’ military speeches, for sentencing and awarding, as well as many other official events or ceremonies. Titus Livius retells an episode of a trial conducted in the enemy’s camp - when the king of Clusium - Lars Porsena, who, by the way waged war against Romans and held the city of Rome under siege, judged the young Roman *assassinator* Gaius Mucius Scaevola who after the death of Brutus, the first Roman consul, who died in a battle, with a Senate’s permission was sent on a special secret mission to liquidate the enemy’s leader. He cannily managed to sneak in the enemy’s camp, and using the weapon hidden in his clothes, managed to kill the scribe instead the king, for the scribe himself was dressed as same as the king. After killing the scribe he ran away “making his own way with the blood-stained sword through the horrified crowd“:

For the noise [that was risen] the king’s escorts arrived running, and caught and dragged him in front of the king’s tribunal. With so many threats of destiny, instead of trembling, he dismayed the others shouting: ‘I am a Roman citizen, my name is Gaius Mucius. As an enemy I only wanted to kill [the Roman’s enemy]; having as much courage to die as I had to kill! To make a great deed [for the state] and be responsible for it is a Roman virtue... We, the Roman youth, declare this war! Never be afraid from no different armies and no such battle – everything could happen between you and one Roman’. The king, angry and frightened from the danger that overhangs, ordered that he would be given away to fire if not immediately tell what threats he carries. [At this] Mucius said him: ‘Look, if you could only know how little the body appreciated is, by those who think of a great glory’. And put his right hand into the fire that burnt as a sacrifice. After his arm burnt, and as if no feeling dwells in his soul, the stupefied king stood up of his seat and ordered the youngster to move back from the altar: ‘Go away! You, who dare to a greater villainy against you, than against me! If this bravery was meant for my homeland, I would say may your bravery be blessed. And now, according to the military law, you are free to go liberated and safe [from me]’ [3].

According to the Roman military law (*ius militare*), the military criminal acts were known under the term **military delicts** (*delicta militum*) and they were oriented against the military courtesy (*disciplina militaris*) or against the military morality, respectively in the frame of the so-called *military criminal* was included “everything that was done in the name of a soldier” [4]. Such specific acts included: insubordinate behavior and disobedience of the higher ruling staff; refusing an order given by higher officer (*contumacia*); laziness and sloth (*segnitia*); carelessness; negligence in accomplishing orders (*desidia*); people disturbance (*turbator pacis*); fights; drunkenness etc [5].

The other **military punishments** included: verbal warning i.e. degrading in front of the line and fellow soldiers; giving additional punishments such as physical activities (cleaning, digging, sentry, unloading, wood cutting, cooking etc.); redeployment in other military unit; fines or wage default, as well as excluding from sharing goods that were looted; whipping (*castigatio*); penal servitude in various mines, as well as different humiliating acts. The most severe punishment was death sentence. The new recruits (*tirones*) were sometimes granted an amnesty [6].

2. Commander

According to many notable law historians, the Roman state managed to create such a society that in his complexity and exactness was thought to be in a higher position than any other slave states [7]. Since the founding of the City (*ab urbe condita*), the Roman community was structured as a military state. The possession and wearing weapons (*arma*) was considered as a basic theory of a pride of a man, and the pacifistic maxima that “peace is the best blessing” (*pax optima rerum*), unfortunately didn’t existed in Roman’s time [8]. The military reign, that the highest Roman magistrates - praetors, consuls and dictators - managed to achieve on the battlefield, was called **military imperium** (*imperium militiae*) and it was significantly more powerful than the regular civil imperium (*imperium domi*) that existed in peacetime. The border difference (*limes*) of the magistrates’s peacetime activities was defined with the religious boundary (*pomerium*) – approximately in a radius of about 1,5 kilometers around the city of Rome. Everything that was undertaken out of this first milestone (*milliarium*) came under the already mentioned military regime [9]. So, only after his leaving the city “pomerium”, the magistrate became *milites*, but not automatically, for such special imperium of a kind had to be given by the people (*populous*), which gathered in Centuria commissions (*Comitia centuriata*) – the same one that made final decisions in declarations of war by special acts (*lex specialis*). Only after this ceremonial procedure - which frankly was not always strictly respected - the civil magistrate became “military commander” in the full sense of the word, for only then could he freely use his military authorities: to draft recruits; to appoint and dismiss commanders; to punish or award soldiers; to give a lead of war expeditions, campaigns or military operations etc. Before getting out of the City, followed by a crowd of people, the military leader pledged to Jupiter (Iuppiter Optimus Maximus), the king of the gods, in the temple that was situated at the top of Capitol – with his full military equipment, also wearing his famous cloak (*paludamentum*), and the lictors in his escort, wearing the cult symbol fasces (*fasces cum securi*) on their left shoulder. His authorities were much bigger, so that he, for example, was able to give death sentences (*poena capitales*) in which the soldier-citizen had no right of appeal, could not announce provocation (*provocatio ad populum*), which was considered as usual peacetime law remedy; furthermore, the military leader could make truce (*indutiae*), to sign peace treaty

and make alliances with other tribes or people (*foedera*); and could also pass constitutional laws in the newly conquered territories, laws that regulate their status as special acts of constitutional character (so-called *leges datae*).

The consul, the highest regular patrician-plebeian peacetime Roman magistrate was also called “big praetor” (*praetor maximus*), which in conditions of war became **military commander** or *dux (dux)*, also known as the main leader of the entire Roman army and the highest military judge on the battlefield. In Ancient Rome there wasn't a single appointed military leader, as contemporary supreme commander, but each war was lead by strictly appointed military leader, appointed by the Senate, with a special mandate only for the given military mission, which in concerto stood on the top of the Roman military machinery. This was for it was often possible to have several wars in progress at the same time, until the age of the Empire, when the emperor actually undertook the role of the highest military commander. The profile of an average Roman military leader was thought to be as the following: he was an ancestor of a wealthy aristocratic family represented by the Senate and was actually either former or current consul. When both consuls were sent in a same war, the supreme command changed daily according to the so-called *tenet of rotation* – so that until the end of the expedition the command was divided between them per days. When commanding, the leader wore purple cloak (*lacerna*) which was fastened on the shoulder with a brooch, that divided him from the other lower commanders in the hierarchy. Maybe due to the fact that Roman commanders themselves were not such professionals, but civil magistrates who among others had also military duties – the Romans lacked such genius leaders as Alexander the Great of Macedon or Hannibal the Carthaginian, although as for Scipio or Caesar, their commanding talent could never be disputed. Romans more often managed to win the battles thanks to their persistence, well organization and efficient engineering, than their fearless offensives and courage. For example, the battle of Alesia (*oppidum Alesia* / September 56 BC), in which the resistance of Gauls was broken, it was won thanks to the chapped hands and blisters of soldiers in digging trenches and erecting defending walls, than their wild brave attacks [10].

The seat of the military leader in the camp was called **praetorium** (*praetorium*) and was situated on the central crossroad, the spot where both main roads *via decumana* and *via principalis* met. As for the main tent of the commander, which was thought to be a kind of religious temple, and due to risks of attacks, it also had several secret entrances and exits, and was called *augural*. Precisely here, on this spot, the highest commanders in the general headquarters held their secret meetings, and also made plans and decisions about liquidations of the leaders of rebel and problematic soldiers [11].

Speaking about Aulus Vergilius and Titus Vetusius's consulship, in 493 B.C. Livius reminds us that in the process of **recruiting** (*dilectus*), the consuls, standing on the top of the *tribunal*, also “had the right to implement extreme measures” (*ius puniendi*) i.e. to punish citizens who in a token of revolt about severe poverty and exploitation, avoided to enlist and join the armed forces:

The warned consuls [from the Senate] promised not to work neither leniently nor calmly from that was asked by the senators – so they decided to make recruit as much exact as could be [for they thought that] unemployment makes people spoilt. [So,] after they canceled [the council of] Senate, the consuls stood at the top of the tribunal

and read the names of the youngsters – but no one responded [them]!? The people gathered as in congress, hailed that they could no more be cheated...The consuls bewared of what they had promised to the senators, but [were left by themselves and] none of those who clearly spoke among the walls of the Curia, did not come to take part of their hatred. The conflict against the people was more and more obvious [12].

After such unexpected *boycott* and the obvious resident but planned people's rebellion, and also after repeated Senate's consultation, the consuls approached to completing the draft under "highest austerity":

The stood up [again] on the tribunal and [encouraged] ordered to be summoned one of those who were present. But he [decisively] stood silently, with people gathering around him – sparing him from attacks [or being arrested]. The consuls sent lictor for him. When the crowd chased away the lictor, the senators around the consuls hailed 'dirty crime' and ran to the tribunal to help the lictor. But only then, the attack was directed not to the lictor - who was obstructed to caught the man - but to the senators themselves! The rebellion subsided under consuls mediation [and intervention]. Nevertheless, it ended with no stones and arrows, more with shouting [curse] and anger, than violence. The Senate was called loudly, more loudly the meeting was arranged... The decisions were made violently, not by voting, but by shouting and noise [13].

Livius also informs us about an early episode, when the Roman consuls in 502 BC ordered a severe massacre of **war hostages** (*obses*) captured in the war against the Italic tribe Aurunci, after "two Latin colonies, Pomertia and Cora, passed on the enemy's side":

As long as the huge army was defeated, the army that severely contrasted the consuls, who entered their territory, the entire war was running to Pomertia. There was no end in killings neither before battle, nor after it – dead outnumbered the captured, and captured were elsewhere murdered! No prisoners, three hundred of them, were saved from a the anger of war. This year Rome celebrated its triumph as well. [...] Nor the capitulation of the city [Pomertia] helped, neither if it was conquered – Aurunian's leaders were everywhere killed with axes, and the citizens [who were taken as hostages] were sold under wreath [as if they were slaves]; the city was looted, and the field sold. More from the heavy revenge, than the praise of the war, the consuls [Opiterus Verginius and Spurius Cassius] finally got [the right of] a triumph [14].

The historian Tacitus writes about a similar episode that happened many centuries aftermath, in the first century A.D., when commander Germanicus (15 BC – 19 AD) ordered sever slaughter of defeated German peoples: "He of his helmet to be easily recognized, cursing his soldiers and pleading for additional killings, for no usefulness the hostages bring – only complete destruction of this tribe could end the war" [15].

The great soldier **triumph** (*triumphus*) was approved only as exception under strict conditions. It had to: be a rightful war (*bellum iustum*) i.e. declared and led under clearly overtaken *auspicious*; at least 5.000 enemy soldiers to be killed; the battle must determine the final result of the war; and the battle to be won on the territory which was given as a province to the magistrate of highest rank. The triumphant procession was formed out of the City, at the field of Mars (*Campus Martius*), whereas the special senate approval was given only as exception – for by means of the approved triumph the winning commander called *triumphator* actually was able

to enter the city of Rome withholding his *imperium militae*.

Often were the situations of **martial rebellions** (*seditio*) within the legion, whose leaders were being liquidated i.e. secretly killed in putsch or conspiracy. Tacitus writes that commander Drusus, the son of the emperor Tiberius, who was inclined to more severe measures about the internal martial discontents, met the leaders of the rebelled Pannonian legions - Percennius and Vibulenus and cowardly ordered to be killed. It was said that they were buried under the commander's tent, or thrown out of the embankment, so that could be seen by everyone. Also when Hauks started a rebellion caused by the vexillifers (*vexillarius*) of disunited legions, which served as defense, they were easily defeated when two soldiers were killed in a token of revanchism. It was ordered by the camp commander Marcus Enius moreover as a good example, than he was empowered to pass such orders [16].

And finally, Livius writes that around 494 B.C. the Latins extradite the *legates* i.e. **diplomatic representatives** sent by other peoples who urged them to make wars, and all about due to heavy defeat in the battle of Lake Rigillus they had. For they, the Latins "were overwhelmed by anger and hatred against everyone who encouraged war, that they could not even control the violence over foreign legates" – which was unusual, because according to the international law the foreign ambassadors were in the beneficiary of indemnity and privilege (*sancti*) so that "they caught the legates of Volsci and brought them into the city of Rome. There they extradite them to the consuls and revealed that the Volsci along with Hernici gather up and take up arms against the Romans" [17].

3. Array

The council of soldiers or the legion *array* arrayed at certain meeting point was a kind of legitimate judicial or corporate military body that in some cases had the authority not only to award, but also to sentence. There are records that this movable "military assembly" i.e. armed military congress was mainly summoned early at dawn as a kind of morning muster, or parade. In this context, Livius records that many years ago in 472 B.C. during the war against Volsci, the fierce consul Appius Claudius lost his final battle due to hatred and boycott of the civil army, so that soldiers "stampede above the heap of dead bodies and weapons, so that the enemy rather canceled the pursuit than Romans themselves the escaping":

At least the soldiers from the disarranged combat line gathered, and the consul, who fruitlessly followed his soldiers with returning call, set up a camp at a secure place – and called [military] council and cursed the soldiers for betraying the military courtesy and leaving the military signs [at the battlefield]: 'Where are the signs? Where is the weapon?' – asked the disarmed soldiers, flag bearers with lost combat flags. Additionally, the centurions and the duplicaries who had left their spots, punished them by beating with rod, and executed with axe. Each tenth [soldier] that remained, throwing dice was chosen to be executed [18].

The aforementioned *corporate death sentencing* of every tenth soldier, which often wrongly interpreted, is actually known under the term **decimation** (*decimatio*). The strong military courtesy that helped Roman military machinery to function was regularly maintained by exact system of punishments and awards. So, after certain military unit had cowardly ran away from the battlefield, a decimation was automatically applied: it was actually

performed on a way that the names of all cowards were put in a kind of urn and ten names of the soldiers were additionally drawn (1/10 i.e. 10%). Those “lucky” soldiers whose names were publicly announced stepped out of the line and were immediately killed in front of their comrades. In order to be saved from decimation and spared to become victims, sometimes several names were secretly drawn from the urn, for they have been good soldiers [19].

Tacitus also speaks about another aftermath operation, which was performed after the Roman soldiers embarrassingly left the battle against the Numidian deserter Tacfarinas (died 24 A.D.) in North Africa during the reign of princeps Tiberius (42 B.C – 37 A.D.). After the Roman cohort, commanded by Decrius, was surrounded in front of the fortress near the river Pagida, Decrius himself mustered the military line in front of the camp and encouraged the soldiers to make an opportunity for battle at the opened battlefield, where he actually thought he could grasp the chance for victory. But when the cohort was defeated in the first battle, he bravely ran through the arrows, followed the soldiers who were trying to escape, cursed the flag bearers (*signifires*) for them, such brave Roman legioners showing such weakness to a crowd of rebels. Despite all wounds he got, with only one eye left, he never stopped fighting against the enemy “and never he left the battle until dying abandoned by his own fellows”:

When informed of this, [Licius] Apronius, furious of the shame of his own people, than the success of the enemy - by means of the ancient method that was then applied - each tenth soldier was drawn out of the cohort and executed by beating with rod. This cruelty helped the legion of approximately five hundred veterans in [the upcoming] defeat over the same units of Tacfarinas, who [now] attacked the fortress of Tela [20].

On the other hand, the excessive severity of the commanding staff often caused rebellion among soldiers. Therefore the history of wars shows us situations of violent **lynching** of either the body or the life of certain obnoxious officer who maltreated the soldiers [21]. Tacitus describes an episode of rebelled German legions which during the reign of the emperor Tiberius were stationed along the river Rhine, which then was actually the border between Galicia and Germany, whose participants went so mad that:

...Suddenly the panic-stricken soldiers attacked the centurions with their swords. This was the oldest reason for hatred of a soldier and a beginning of becoming wild. Put on ground they were beaten with rods, sixty strikes soldier, so that the number of a centurions within a legion becomes leveled; uglified, half dead were thrown in front of the embankment or the [river] Rhine... Neither the tribune, nor the camp prefect could withhold their reign; the [frenzied] soldiers divided the guards and posts, and self-organized in case of any other urgent need [22].

4. Conclusion

The transition to the republican form of political order in Rome was the final consolidation of the Roman statehood and even then was made the definitive separation of normative social order of *fas, mos* and *ius* – i.e. the distinction between religion, traditions and law; and between secular and clerical power of one, and civilian and military government on the other side. In fact, in Roman times, the triple-division of the state bodies in

accordance with their position in the government - legislative, executive and judicial - is not exist! Namely, during the Republic (*Res publica Romana*), which lasted from the beginning of VI to the second half of the I century BC, all state organs - the Senate, the popular assemblies and the magistrates - more or less participated in the performance of all three functions of the state power. This paper in particular deals with military power (*imperium militiae*) and the right to punish (*ius puniendi* or *ius coercendi*) which possess the higher Roman magistrates, a referring to the Roman 'Courts in special circumstances', which tried in military or extraordinary conditions.

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