

Soldiers' Legal Privileges
in the Empire

by R.L. Porter

In our society there are no legally privileged groups or classes. The law in theory is applied equally to all and the wealthy only have the edge over the poor because they can hire better legal counsel - no small advantage this! But, in Roman society in the Empire there came to be two distinct classes of people which the law in certain instances treated differently, the honestiores (upper class) and the humiliores (lower class). Of course the upper class had the better lawyers; the poor were likely to have none at all (no legal aid). The honestiores included members of the high senatorial and equestrian classes as well as some others such as certain bureaucrats and professors. The lower classes, the overwhelming bulk of the population, had little legal recourse against their privileged masters, though they might expect some justice in disputes among themselves. The exception to this legal disadvantage of the lowly were the soldiers.

1. The Right to Control Property. Roman sons, filiifamilias, were in Roman law and custom under the complete control of their fathers, patresfamilias. The father in fact owned all the son's property and had full legal right over the son's estate. Augustus, however, ruled that wealth gained on military service (peculium castrense) was in the exclusive control of the son, and could be disposed of or left in an inheritance in whatever way the son desired. Yet the soldier-son might possess other property which was not excluded from the father's control since it had accrued from a civilian source. Obviously Emperors were interested in granting privileges to one huge group of humiliores, the soldiers ranking from private to centurion, some 300,000-400,000 strong. It is not hard to figure out why this was so. The Imperial throne rested on the backs of the soldiers.

2. The Military Will. Julius Caesar was the first to grant his soldiers privileges in this regard since he allowed his troops to make emergency battlefield wills (testamentum in procinctu) in an informal yet legally binding way. Not until Flavian times (69-96 A.D.) did this become a formal concession to all serving soldiers even when not on the battlefield (testamentum militare). We hear of the Emperor Trajan confirming the soldiers' right to make informal wills because, he says, of their "simple-mindedness", simplicitas! Now soldiers are no denser than civilians by and large, and we must once again suspect Imperial indulgence aimed at making military service more attractive and aiding morale and loyalty. Rules governing civilian wills were most complex and they had to be drawn up properly. A soldier could make his will anyway he wished, in writing, verbally before two witnesses, in blood on his shield, whatever. He could leave his property to a non-citizen (probably his common-law wife) or a childless person (a comrade), something a civilian could not do. However, he was not allowed to leave his property to a prostitute, the Emperor guarding his simple-minded boys from scheming gold-diggers. After discharge the soldier was given one year's grace to draft a proper civilian will.

3. Civil Suits. Because of the Emperor's interest in not having soldiers leave their camps and posts to attend civil court cases in the cities, it became customary for Roman magistrates to appoint as trial judges other soldiers (probably tribunes and centurions) and have the cases heard in the camps themselves. A civilian, his knees knocking in trepidation, would not expect a friendly, unbiased reception in such a venue when he came to reclaim a donkey requisitioned forcefully from him after a grim chance encounter with a couple of brutal privates on the highway. Meeting Roman soldiers this way for a common man was not unlike running into a band of bikers in a dark alley in Detroit.

By the time of Septimius Severus (c. 200 A.D.) the ordinary Roman soldier had surpassed the normal limitations of the humiliores, and because of his value to the state had won a very privileged position for himself. Septimius Severus was the first emperor to allow the soldiers to legally marry. He paid them well, gave them fat discharge bonuses, and even allowed them to wear the gold ring previously restricted to the equestrian aristocracy. In the later Empire laws were passed making it illegal for local administrators to run off and join this fine military club.