ASPECTS OF ROMAN LAW CONCERNING THE INSTITUTION OF *HERES* ON FUNERARY MONUMENTS BELONGING TO MILITARY PERSONNEL STATIONED IN ROMAN OLTENIA

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Abstract. *Born out of a selective individual memory, the funerary monument stands as a symbolic instrument of remembrance, bringing the past into the present, proving to be destined more for this world than the afterlife. The so called "military monuments" distinguish themselves from the more general group of sepulchral memorials by dealing with a distinctive political, social and legal category, the Roman soldier. The particularities that come with a dangerous career in the service of Rome, a high pay and social prestige, are also visible concerning legal matters, in our case, matters concerning the rights of sepulcher. One question arises, who were the ones entitled by law to raise monuments for the military? Narrowing down our epigraphic analysis to the territory of modern Oltenia, from the limited number of examples we can discern that there are no substantial differences between this area and other parts of Dacia regarding who were the people that had the responsibility of completing the funerary rites for these soldiers. In addition, by always referring to a thorough study of ancient legal texts, we can discern thatthe military enjoyed a remarkable liberty in drawing wills, known restrictions in civil law don't apply in cases concerning soldiers. Even though raising funerary monuments was a peacetime activity, drawing wills wasn't necessarily the same and emperors made every effort to assure that the soldiers who risked their lives every day protecting Rome will have a guarantee that their property will be handed down to their appointed heirs, regardless of their legal inexperience.*

Rezumat. *Fiind produsul memoriei individuale selective, monumentele funerare reprezintă un instrument simbolic de comemorare, aducând trecutul în prezent, dovedind a fi mai degrabă destinate acestei lumi decât celei de Apoi. Aşa numitele „monumente militare" se deosebesc de restul monumentelor sepulcrale prin faptul că fac referire la o categorie cu totul deosebită, atât din punct de vedere social, politic dar şi juridic, şi anume a militarilor romani. Particularităţile care vin cu alegerea unei cariere periculoase în slujba Romei, o soldă substanţială şi prestigiu social, se revăd şi în ceea ce priveşte problematica juridică, în cazul nostru, referitoare la dreptul de înmormântare. Apare astfel o întrebare, cine erau persoanele îndreptăţite prin lege să ridice monumente funerare militarilor? Reducând analiza epigrafică la teritoriul Olteniei romane, din numărul limitat de exemple putem deduce faptul că nu avem de-a face cu diferenţe majore între această zonă geografică şi restul teritoriului Daciei privitor la identitatea persoanelor ce aveau responsabilitatea de a duce la capăt ritualurile sepulcrale pentru aceşti soldaţi. Mai mult, coroborând datele cu un atent studiu al textelor juridice antice, putem determina faptul că soldaţii se bucurau de o libertate remarcabilă în scrierea testamentelor, restricţiile cunoscute în legea civilă nefiindu-le aplicabile. Cu toate că ridicarea de monumente funerare era o activitate pe timp de pace, scrierea unui testament nu era neapărat una asemănătoare, iar împăraţii fac eforturi considerabile în a se asigura că soldaţii ce îşi riscă viaţa în protejarea lumii romane vor avea o garanţie sigură că bunurile lor vor ajunge la moştenitorii desemnaţi, fără a se ţine cont de lipsa lor de experienţă juridică.*

Keywords: *Roman law, soldiers, legal texts, iusse pulchri, military testaments.*

Cuvinte cheie: *drept roman, militari, texte juridice, ius sepulchri, testamente militare.*

A funerary monument's main purpose was to make the passerby stop, think and remember the past by bringing it to the present, stimulating both collective memory and the common past[1]. The monuments, seen as selective statements of individuality[2], were born from individual memory, as an integral part of social memory, their physical presence being the main focus of funerary practice, by evoking the deceased's past into the world of the living[3]. Nevertheless, human memory is always fickle, we forget as quickly as we remember, and what we remember is forever subjective and open to outside manipulation. The considerable efforts made by individuals

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[1] For a more developed discussion concerning this subject see Valerie M. Hope, *Remembering Rome. Memory, funerary monuments and the Roman Soldier*, in Howard Williams (ed.), *Archaeologies of Remembrance. Death and Memory in Past Societies*, New York, 2003, p. 119.

[2] *Ibidem*, p. 137.

[3] Howard Williams, *Death, memory and time: a consideration of the mortuary practices at Sutton Hoo*, in Chris Humphrey and W. M. Ormrod (eds.), *Time in the Medieval World*, Woodbridge, 2001, p. 39.

throughout time stand as confirmation to the concept of how easily one could be forgotten, because funerary monuments were an instrument to be remembered by in this world and not in the afterlife[4].

Sepulchral monuments, by combining visual, textual and ritual elements, are nothing more than symbols of the deceased, guardians of their physical remains and, at the same time, of several carefully selected aspects of the deceased's and the survivors' identity, because the monument is their last attempt at keeping individual memory alive[5]. Moreover, the funerary monument had its own role in public life, by capturing the general public's attention and triggering its memory.

The so called "military monuments"[6] detach themselves from the whole array of sepulchral manifestations, by referring to a distinctive social group, with its own political, social and legal particularities. They offered a selective and idealized view of the commemorated person, how they wished to be seen after death[7], to be exact, occupying a privileged position, the prestige of being soldiers of Rome, always putting their life at risk in the service of the Roman army.

As related epigraphic studies reflect, the majority of those commemorated on funerary monuments are not the result of death in battle, raising stone memorials being a peace time activity[8]. Nevertheless, military identity was paramount in the message destined for posterity, this being a testament of military life and of being an active part of the Roman world. Independent of their origin, commemoration of the deceased comrades was a unifying act for those recruited from different parts of the Empire[9].

Nevertheless, regardless of their association with either the civilian or military milieu, the question which draws our attention in the present study is who had the right or, more exactly, the responsibility of carrying out the funerary rituals and obligations?

Marcus Tullius Cicero, in the second book of his legal treaty *De legibus*[10], specifies the fact that funerary sacrifices are kept for posterity to be handed down to the family descendants, the pontiffs insisting on the aspect that these have to be transmitted to the next generations, so as the memory of the departed will not perish with the death of the ancestors, these responsibilities should be taken by those inheriting the estates:

> *[Marcus]:* Indeed, even this subject, which is of somewhat wider importance, can be reduced to one basic principle; namely, that these rites shall ever be preserved and continuously handed down in families, and, as I said in my law, that *they must be continued for ever.*
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> Clearly our present laws on the subject have been laid down by the authority of the pontiffs, in order that the performance of the rites may be imposed upon those to whom the property passes, so that the memory of them may not die out at the death of the father of the family[11].

The same author refers to the pontiff Scaevola, who defined five instances in which a person was obligated to carry out the funerary rituals, namely: as the heir, who practically takes the role of the deceased in public life. Next comes the legatee, who can receive either by a death-bed wish or by will even as much as the heirs. Thirdly, in the case there is no heir, the obligation goes to the person who receives the largest part of the estate after the succession has taken place. Fourthly, if nobody acquires the property through possession, then the obligation falls upon the creditor who holds the greater part of the estate. And lastly, if there was a person who owed the deceased money that he did not return, he holds the responsibility to perform the funerary rituals, as it is considered that he received the money directly from the estate[12].

The roman orator, by referring to the older authorities, simplifies the schema to three instances in which a person was responsible to complete the funerary sacrifices *sub causa iustissima*: as an heir, secondly, as a legatee who receives the largest part of the estate and, finally, as a creditor who holds the largest amount owed, in the case the estate is bequeathed[13].

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[4] Valerie M. Hope, *op. cit.*, pp. 120-122.
[5] *Ibidem.*
[6] Regarding this concept, see Maria Alexandrescu-Vianu, *Conceptul de artă militară*, in SCIVA, 33, 2, 1982, pp. 209-215.
[7] Valerie M. Hope, *op. cit.*, p. 123.
[8] Idem, *Constructing Identity. The Roman Funerary Monuments of Aquileia, Mainz and Nîmes*, in BAR Int. S., 960, 2001, p. 39.
[9] Idem, *Remembering Rome...*, p. 130.
[10] Cicero, *De leg.*, II, pp. 47-48.
[11] English translation by Clinton Walker Keyes (trans.), *Cicero: De re Publica (On the Republic). De Legibus (On the Laws)*, Loeb Classical Library, 213, Cambridge, Massachusetts, 2000, p. 431.
[12] Cicero, *De leg.*, II, pp. 48-49.
[13] *Ibidem*, p 49.

This ancient text reflects the complex evolutionof the legal aspects regarding a religious matter, the multitude of legal cases progressively giving way to a multitude of legal solutions meant to grant advantages to one side or the other. Even Cicero himself in the following passage[14] criticizes the two Scaevolas (both the son and the father) for complicating the pontifical law with the subtleties of civil law and replacing the simplicity of ecclesiastical jurisprudence with the never ending technicalities of the civil legislation:

> *[Marcus]:* Now with reference to this and many other matters, I wish to ask the Scaevolae, supreme pontiffs, and the cleverest of men in my opinion, a question: Why do you wish to add an acquaintance with the civil law to your familiarity with the rules of the pontiffs? For by your knowledge of the civil law you have to some extent nullified the rules of the pontiffs. For the rites are connected with the property by the authority of the pontiffs, not by any law. Hence, if you were pontiffs and nothing more, then the authority of the pontifical college would be maintained; but as you are learned in the civil law, you use your learning to evade your own pontifical rules[15].

The work of M. Tullius Cicero regarding the legal instances mentioned above (namely the heir and the responsibility of completing the funerary rites) is even more valuable as it concerns the regulation of a truly exceptional social reality. This legal institution, the heir, has proven throughout a very long period of time its extraordinary importance for the Roman society. It was modeled progressively in different periods of development of the Roman law, beginning with the Republican laws issued by the Senate, continuing with the edicts of the Praetor during the Empire and culminating with the numerous imperial constitutions or rescripts.

As the legal texts that were chosen by the editors of Justinian's Civil Law prove, regulations and solutions regarding the funerary obligations handed down to surviving heirs have enjoyed a long lasting applicability, on the one hand, and a surprising complexity within the multitude of legal cases handled by legal specialists of the time, on the other hand.

A passage belonging to Ulpianus retains our further attention[16], referring to heirs and their responsibility to carry out funerary rites as follows: if the heir appointed by will buries the head of the family before accepting his entitled legacy, the place where he is interred becomes religious, in other words, the sacred rites have been correctly carried out. It is very important to point out, as the ancient text does, that the person in question does not act as a heir when burying the deceased, or so to speak, carrying out the funerary obligations does not bring with it the notion of being heir. The text continues by specifying that if not the heir but somebody else buries the head of the family, the heir being absent from various reasons, again the place is considered religious, or to be more exact, the funerary rites have been completed. Furthermore, Ulpianus refers to a largely common practice at the time, specifically that often the deceased is interred before the heirs accept their legacy, in other words, it was not uncommon that funerary obligations were to be carried out by other parties than those considered by law to be the primary responsible, namely the heirs:

> *[Ulpianus]:* Where a party who was appointed heir buries the body of the head of the family before he enters upon the estate, by doing so he makes the place religious, but no one should think that by this act he is conducting himself as heir; for let us suppose that he is still deliberating as to whether he will enter upon the estate. I, myself, am of the opinion that even though the heir did not bury the body but someone else did, and the heir either took no active part, or was merely absent, or feared that he might be considered as conducting himself as heir, still he makes the ground religious; for very often deceased persons are buried before their heirs appear[17].

Moreover, the institution of the heir has determined concerning sepulchers a differentiation both referring to legal matters and funerary practice. Thus, Gaius sees two distinct tomb categories: family tombs, put together by a *pater familias* for himself and his family, and hereditary tombs, those sepulchers built by

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[14] *Ibidem*, p. 52.

[15] English translation by Clinton Walker Keyes, *op. cit.*, pp. 435-436. For an earlier and different translation see Charles Duke Yonge, *The Treaties of M. T. Cicero*, London, 1853.

[16] *Dig.*, XI, 7, 4: *Scriptus heres prius quam hereditatem adeat patrem familias mortuum inferendo locum facit religiosum, necquis putet hoc ipso pro heredeeum gerere: fingeenim adhuceum deliberare de adeunda hereditate; ego etiamsi non heres eum intulerit, sed qui visalius heredecess ante vel absente velverente ne pro heredeger erevideatur, tamen locum religiosum facere puto: plerum queenim defuncti ante sepeliuntur, quam quis heresies existet.*

[17] English translation by Samuel, Parsons Scott, *The Civil Law*, Cincinnati, 1932, online First Volume: 2002/06/19 - Last Volume: 2003/01/10 - Last updated: 2015/3/15, accessed March 15th 2015, http://www.constitution.org/sps/sps.htm. For a more recent translation see Alan Watson (ed.), *The Digest of Justinian*, 4 vol., Philadelphia, 2009.

the head of the family for himself and his heirs[18], or those obtained by him through a legacy, as Ulpianus states[19]. Even though the occurrence of the latter case is much less substantial than the former, this is proof enough to state that the heirs are not always direct descendants of thetestator's bloodline.

If this was the case with civilian society, what were the realities of the military milieu? An epigraphic study completed approximately twenty years ago by P. Varon[20], concentrating on the large inscription corpuses *CIL X, XI* and *Année Épigraphique*, pointed out that the soldiers deceased during their service will appoint as heirs their comrades, officers had a balanced equilibrium between family, freedmen and comrades, while the majority of veterans had members of their family named as heirs. A similar analysis was recently made, centered this time on the heirs of military personnel stationed in Dacia[21], stating that in appointing heirs, as was observed by analyzing the epitaphs, soldiers from this province chose comrades (especially those within the age group of 30-40 years old, deceased during their military service), rarely family members or freedmen, the latter encountered as heirs especially in epitaph dedicated to centurions. The soldiers belonging to auxiliary troops stationed within the Dacian provinces appoint as heirs mainly fellow comrades, while veterans sought as heirs family members, especially their children, but also compeers or freedmen, there are even cases when the names of the wife and children are mentioned together with the heirs, without being part of this legal category.

In the following lines we chose to concentrate only on the territory of modern Oltenia, which was under Roman rule, where the epigraphic examples are few in number but altogether quite remarkable and important for our present discussion.

Firstly, coming most probably from Sucidava is the fragmented funerary *stela* dedicated to a centurion whose only surviving name is *Ferox*[22], who served in the army for twenty five years, from which eighteen in the cavalry, the monument being raised by his brother and heir, Marcus Pompeius Proculus, also a soldier, a beneficiary of the legate Tiro.

Nevertheless, most of these examples come from Drobeta, the largest Roman city belonging to Dacia Superior, outside the Carpathian arch. One such example is fragmentary funerary monument[23] (a rectangular stone bloc, a constituent part of a more complex monument such as a *Pfeilerförmiger Grabaltar*[24]) dedicated to a beneficiary of the tribune of *Cohors III Campestris*, namely LiccaiusVinentis, raised by his heir, a woman, Linda Severus, without any additional information on her social status.

There is also a fragmented funerary altar dedicate to the *centurio frumentarius* of the Forth Flavian Legion, Caius Titius Ianuarius, raised with the care of his freedman and heir, Caius Titius Epipodius[25]. The same type of heirs, freedmen, we encounter on the fragmentary funerary monument belonging to a veteran of the Fifth Macedonian Legion, Aelius Bassus, the freedman and also heir of the deceased, Aelius Helpizon, raising the monument for his former master[26]. Another similar situation is recorded in the epitaph carved on the funerary monument dedicated to Publius Aelius Diophatus, veteran of *Cohors V Gallorum*, this time the

[18] *Dig.*, XI, 7, 5: *Familiaria sepulchral dicuntur, quae quissibi familiae que suae constituit, hereditaria autem, quae quissibi heredibus que suis constituit* ("The family burying place" means one set apart by some one for himself and his household; but an "hereditary burial-place" is one which a man provides for himself and his heirs", English translation by Samuel Parsons Scott, *loc. cit.*).

[19] *Dig.*, XI, 7, 6: *Vel quod pater familias iure hereditario adquisiit* ("Or where the head of the household acquired it by hereditary right", trans. by Samuel Parsons Scott, *loc. cit*).

[20] P. Varon, *The heredes of Roman Army soldiers*, in W. Groenman-van Waateringe, B. L. van Beek, W. J.H Willems, S. L. Wynia (eds.), *Roman Frontier Studies 1995. Proceedings of the XVIth International Congress of Roman Frontier Studies*, Oxford, 1997, pp. 565-570.

[21] Atalia Ștefănescu-Onițiu, *Social Relations if the Soldiers in Roman Dacia (I). Heirs*, in *Scripta Classica. Radu Ardevan sexagenario dedicata*, Cluj-Napoca, 2011, pp. 365-369. For an extended discution concerning this matter, regarding military personnel stationed in the Roman provinces of Dacia, Upper and Lower Moesias see Ioana Crețulescu, *Monumentele funerare ale militarilor în provinciile Moesia și Dacia (secolele I-III)*, Bucharest, 2013, University of Bucharest dissertation.

[22] IDR, II, 644: *---] / \(centurio) Ferox mil/itavit an(nos) XXV / eq(ues) an(nos) XVIII vix(it) / an(nos) VIIL M(arcus) Pomp/[ei]us Proculus / frater benef(iciarius) / Tironis leg(ati) / h(eres) bene mere/ntiposuit.*

[23] IDR II, 45: *D(is) M(anibus) / Liccaius / Vinentis / mil(es) coh(ortis) III / camp(estris) b(ene)f(iciarius) trib(uni) / mil(itavit) annis XIX / vix(it) annis XL / Linda Se/verus / h(eres?) b(ene) m(erenti) p(osuerunt?).*

[24] Concerning this specific type of funerary monument and others encountered in Dacia Superior see Carmen Ciongradi, *Grabmonument und sozialer Status in Oberdakien*, Cluj-Napoca, 2007.

[25] IDR II, 35: *D(is) M(anibus) / [C(aio)? T]itio C(ai) f(ilio) / [Vi]ctrice(nsi) / [Ia]nuario / [\(centurioni)] leg(ionis) IIII F(laviae) fr(umentario) / [v]ix(it) ann(os) LVI / [C(aius)?] TitiusEpipo/[di]us lib(ertus) et heres / [opt]imopatro/[no] b(ene) m(erenti) f(aciendum) c(uravit) / [h(ic)] s(itus) e(st).*

[26] IDR II, 40: *D(is) M(anibus) / [Ae]l(ius) [B]assus / vet(eranus) leg(ionis) V Mac(edonicae) / vix(it) ann(is) LXVI / [m(ensibus)] X dieb(us) XVI / [Ae]l(ius) Helpizon / [l]ibert(us) et her(es) / eius posuit.*

monument being raised by two women, both heirs of the deceased, the daughter Aelia Ammis and the freed woman Aelia Eutychia[27].

A reveling example concerning heirs from outside the family is the funerary monument dedicated to the veteran Caius Iulius Verecundus, *decurio alae I Claudiae*, raised by his friend and heir Claudius Longinus, without any indication that his friend might be also a soldier like the deceased[28].

The only example known in Roman Oltenia which attest with certainty the existence of a will belonging to the deceased, in this case, a soldier, is the funerary *stela* dedicated to a veteran of *legio V Macedonica*, Caius Domitius Alexander, a former standard bearer (*signifer*), raised by the freedman Domitius Nicostratus, *augustalis* of Drobeta, in conformity with the wish of the deceased stated in his will, as the final lines of the epitaph show[29].

Thus we arrive with our discussion to a very special category regarding testamentary successions, namely the military wills.

Ulpianus presents us in a succinct fashion the evolution of this special kind of wills from the Republican era[30], they being mentioned for the first time during Caesar's reign, but only with a temporary applicability. Titus and Domitian in their turn give soldiers special testamentary rights, but this time the regulation has a more permanent character, while firstly Nerva followed by Trajan offered military personnel the greatest indulgences concerning this matter. Thus, from that moment on, imperial edicts would state the fact that soldiers will beneficiate from facilitations meant to compensate their lack of legal experience and avoid disputes in confirming their wills, indicating to how easily they could now draw their testaments. In other words, soldiers could draw wills in any form, as best they can, and these documents will be valid, because every wish expressed by the testator in these wills is considered legally enough to allow the distribution of their property after death:

> *[Ulpianus]*: It has come to my notice that wills executed by our fellow-soldiers have been frequently presented which would be the subject of dispute if the laws were strictly applied and enforced; so, in accordance with the benevolent promptings of my mind with reference to my excellent and most faithful fellow-soldiers, I have thought that indulgence should be extended to their inexperience, so that no matter in what way they may draw up their wills, they shall be confirmed. Let them, therefore, draw them up in whatever form they desire, in the best way that they can, and the mere wish of the testators will be sufficient for the distribution of their estates[31].

Paulus confirms this statement by indicating the fact that in case of a soldier who draws an imperfect will, this should be considered perfect, the testament being in reality an expression of his direct wishes[32].

From Gaius's *Institutions* we find out that this kind of will could be executed only during military service, during his encampment, and not during leave of absence or at home, otherwise or after discharge, the military testament was no longer valid, being subjected to civil law and not military regulations[33]. Moreover,

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[27] IDR, II, 46: *D(is) M(anibus) / P(ublio) Ael(io) Diophan/to vet(erano) coh(ortis) / V Gal(lorum) vixit / an(nos) LXXXVI / h(ic) s(itus) e(st) / Aelia Ammis fil(ia) / et Aelia Eutychia / lib(erta) heredes / fecer(unt).*

[28] IDR II, 43: *D(is) M(anibus) / C(aio) Iul(io) Ve/recun/do vet(erano) / ex dec(urione) al(ae) / Cl(audiae) Cl(audius) Lon/ginus ami/cus et he/res p(o?)s(uit?).*

[29] AÉ 2005, 1303: *D(is) M(anibus) / C(aius) Domit[ius] / Ale[x]an[der] / vet(eranus) leg(ionis) V Ma[c(edonicae)] / [e]x sig(nifero) v[i]x(it) a[nn(os)] / LXX C(aius) Dom[i]/tius Nicos/tratus Aug(ustalis) / [c]ol(oniae) Sept(imiae) D(robetensium) / p[a]trono / secundum / [voluntatem] / [testam]e[nti].*

[30] *Dig.*, XXIX, 1, 1: *Militibus liberam testament factionem primus quidem divus iulius Caesar concessit: sede a concessio temporalis erat posteavero primus divus titus dedit: post hoc domitianus: poste a divus nerva plenissimam indulgentiam in milites contulit: eamque traianus secutus est.* ("The Divine Julius Caesar was the first who granted to soldiers free power to make a will, but this concession was only temporary. The first after him to confer this power was the Divine Titus, and then Domitianus. The Divine Nerva subsequently conceded the greatest indulgence to soldiers in this respect, and Trajanus followed his example", trans. by Samuel Parsons Scott, *loc.cit.*).

[31] *Dig.*, XXIX, 1, 1: *"Cum in notitiam meam prolatum sit sub inde testamenta a commilitonibus relicta proferri, quae possint in controversiam deduci, si ad diligentiam legume revocenturet observantiam: secutus animi ei integritudinem ergaoptimos fidelissimos que commilitones simplicitati eorum consulendum existimavi, ut quo quomodo testatifuissent, rata esset eorum voluntas faciantigitur testamenta quo modovolent, faciant quo modo poterint sufficiat quead bonorum suorum divisionem faciendam nuda voluntas testatoris"*, trans. by Samuel Parsons Scott, *loc. cit.*

[32] *Dig.*, XXIX, 1, 35: *Milessi testamentumim perfectum relinquat, scriptura quae profertur perfecti testament potestate moptinet: nam militis testamentum sola perficitur voluntate.* ("Where a soldier leaves an imperfect will, the instrument when offered has the effect of a perfect one, for the testament of a soldier is perfected by the mere statement of his wishes", trans. by Samuel Parsons Scott, *loc. cit.*).

[33] Gaius, *Inst.*, 2, 11, 3, see also commentary on the ancient text by Edward Poste, *Gai Institutiones or the Institutes of Roman Law by Gaius*, ed. IV, Oxfort, 1904, p. 182.

a will executed without the usual formalities (under military law) was considered valid no more than a single year after discharge, fact confirmed by Gaius[34] but also by Ulpianus[35]. A rescript belonging to emperor Antonius Pius specifies that a will written by a person before entering military service is subjected to military law (*ius militari*) and is considered valid only if the person dies during their service and hasn't drawn up another testament in the meanwhile[36].

Legal texts also reveal special exceptions of which soldiers beneficiated in appointing testamentary legateesand heirs, having the possibility to choose aliens or citizens of Latin right, who otherwise would have been excluded from these opportunities, the two legal categories not being allowed to accept legacies within civil law. Moreover, celibate persons or without any children were also allowed in military wills to inherit properties, otherwise exclude from this right in civil law either completely or partially (the latter, persons without children, could only inherit up until half the estate)[37]: "Celibates also, whom the lex Julia disqualifies for taking successions or legacies, and childless persons whom the *lex Papia* prohibits from taking more than half a succession or legacy, are exempt from these incapacities under the will of a soldier"[38]. Ulpianus further ads to this general idea, stating that deported people and almost all persons without testamentary capacity can be appointed as heirs in military wills, with the exception of penal slaves[39].

Furthermore, military wills open the way to liberation from servitude of those appointed as heirs by their patrons as military testators. Paulus specifies that if a slave was supposed to inherit a legacy in conformity to a will under military law, he can appeal for freedom[40], further emphasizing this aspect by stating that a slave will receive his freedom by virtue of being appointed as heir[41].

In conclusion, soldiers, by the simple fact that they were risking their lives for Rome, dedicating their entire existence defending the Roman world from outside danger, they could benefit not only from pecuniary advantages through their regular substantial salaries, but especially legal advantages, the legal exceptions they were entitled to beneficiate from in drawing their wills being an earned right by virtue of their dangerous careers. Nevertheless, in addition to the legal texts of the time, we rarely encounter palpable traces that stand proof of the existence of these exceptions, epigraphic evidence offering us only one somewhat limited version of judicial realities reflected in funerary practices. This is tributary to the fact that the surviving funerary examples reflect a very narrow category of military personnel stationed in one area or another, namely those who succeeded in raising a funerary monument, which, in their turn, are subjected to the ever fickle laws of providence, as no one can really control what survives time and what doesn't. Nonetheless, a thorough analysis of the existing material will definitely offer a glimpse, however small, of the everyday life of the ancient Romans.

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[34] *Ibidem.*

[35] *Dig.*, V, 2, 8, 4: *Si quis in militia fecerit testamentum et intra annum post militiam decesserit, dubito an, quia ad hoc usque temporis iure militari testamentum eius valet, que rellain officiosicesset: et potest dici que rellamin officiosicessare*, ("Where a soldier makes a will while in the army, and dies a year after he is discharged, I doubt whether a complaint for inofficiousness will be allowed, because his will is valid up to this time, in accordance with military law", trans. by Samuel Parsons Scott, *loc. cit.*).

[36] Ulpianus, *Dig.*, XXIX, 1, 15, 2: *Testamentum ante militiam factum a milite, si in militia decesserit, iure militari valere, si militis voluntas contraria non sit, divus pius rescripsit*, ("The Divine Pius stated in a Rescript that a will executed by a soldier before entering the army is valid by military law, provided the testator died in the service, and did not change his mind afterwards", trans. by Samuel Parsons Scott, *loc. cit.*).

[37] Gaius, *Inst*, 2, 11.

[38] English translation by Edward Poste, *op. cit.*, p. 181.

[39] *Dig.*, XXIX, 1, 13, 2: *Et deportati et fereomnes, qui testament factionem non habent, a milite heredes institui possunt. Sed si servum poenae heredem scribat, institutio non valebit*, ("Persons who have been deported, and almost all those who have not testamentary capacity, can be appointed heirs by a soldier. If, however, he should appoint as his heir someone who had become a penal slave, the appointment will not be valid", trans. by Samuel Parsons Scott, *loc. cit.*).

[40] *Dig.*, XXIX, 1, 40, 1: *Idem respondit ex testament eius, qui iure military testatu sesset, servum, qui licet sub condicione legatum meruit, etiam libertatem posse sibi vindicare*, ("It was also held that where a slave was entitled to a legacy (although under a condition), by a will drawn up in accordance with military law, he could also demand his freedom", trans. by Samuel Parsons Scott, *loc. cit.*).

[41] *Dig.*, XXIX, 1, 40, 2: *Respondi intellegendum militem, qui ancillam suam heredem instituerat, ignorasse posse ex ea institutione etiam libertatem ei competere*, ("The answer was, that it should be understood that the soldier did not know, at the time when he appointed his female slave his heir, that she would obtain her freedom by virtue of her appointment", trans. by Samuel Parsons Scott, *loc. cit.*).

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