

# ESCAPE FROM THE BATTLEFIELD AND ITS IMMEDIATE PUNISHMENT IN THE OATH OF THE SAMNITE LINEN LEGION (LIV. 10.38)\*

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## PART 1

### ABSTRACT

In the account of the Third Samnite War (298–290 BC), Livy records a special commitment of the Samnite Linen Legion that faced the Romans at Aquilonia in 293 BC. The oath of this élite formation required discipline and sacrifice to a greater extent than the obligations of the other Samnite troops and the Roman military oath of these times. According to Livy, the Linen Legion's soldiers swore not to flee the battlefield and to instantly kill anyone from among themselves who would try to run away. Threatening soldiers to kill them on the spot in case of desertion in the face of the enemy and issuing such an order during battle was a widespread practice in the Roman army as well as in other armies of different epochs. It appears that in the Samnite picked troops, it was the military oath itself that included the obligation to punish the *fugientes* immediately. Strengthening military discipline and soldiers' sworn commitments was a systemic solution aimed at enhancing combat effectiveness of the army in situations of extreme danger. Analogies can be drawn between the Samnite case and examples of Greek and Roman military oaths reinforced in the face of an invader. The peculiar clause of the Linen Legion's oath may be seen as one of such systemic measures. The article examines the reasons for its use by the Samnites and attempts to demonstrate the credibility of this detail given by Livy.

**Keywords:** Samnites, Third Samnite War, Linen Legion, escape from the battlefield (desertion in the face of the enemy), military oath, *sacramentum*, military discipline, rituals of war, punishment for desertion.

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Livy's account in the tenth book of his *History of Rome* is the only preserved source which describes exceptional steps taken by the Samnites to resist subjugation by the Romans after the defeat of the anti-Roman coalition at Sentinum (295 BC) during the Third Samnite War (298–290 BC).<sup>1</sup> In the well-known passage (10.38), the historian relates general mobilisation and Samnite rituals of war before the battle of Aquilonia (293 BC), focusing on the oath of an élite formation, the Linen Legion.<sup>2</sup> As our knowledge on military customs of Italic peoples is scarce, Livy's narrative, though highly coloured, is particularly valuable.<sup>3</sup> It is widely assumed that it does contain some grains of truth, survivals of authentic information on Samnite military rituals and practices.<sup>4</sup>

<sup>1</sup> On the Samnite Wars, the series of conflicts between Rome and the Samnites, traditionally dated between 343 and 290 BC, see e.g. E. T. Salmon, *Samnium and the Samnites*, Cambridge 1967; T. Cornell, "The Conquest of Italy" [in:] *CAH*, vol. VII, part 2, 1989, pp. 351–419; A. La Regina, "I Sanniti" [in:] *Italia omnium terrarum parens. La civiltà degli Enotri, Choni, Ausoni, Sanniti, Lucani, Bretti, Sicani, Siculi, Elimi*, ed. G. Pugliese Carratelli, Milano 1989, pp. 374–426 (topographical aspects); S. P. Oakley, *A Commentary on Livy, Books VI–X*, vols. I–IV, Oxford 1997–2005; L. Grossmann, *Roms Samnitenkriege. Historische und historiographische Untersuchungen zu den Jahren 327 bis 290 v. Chr.*, Düsseldorf 2009. Concise information is provided in T. Cornell, *The Beginnings of Rome: Italy and Rome from the Bronze Age to the Punic Wars (c. 1000–264 BC)*, London–New York 1995, pp. 345–363; G. Tagliamonte, *I Sanniti. Caudini, Irpini, Pentri, Carricini, Frentani*, Milano 2005, pp. 136–150. On criticism of the modern division into the three Samnite Wars: T. Cornell, "Deconstructing the Samnite Wars: An Essay in Historiography" [in:] *Samnium: Settlement and Cultural Change*, ed. H. Jones, Providence 2004, pp. 115–131; L. Grossmann, *Roms Samnitenkriege*, pp. 25–27.

<sup>2</sup> We know this name from Livy, 10.38.12.

<sup>3</sup> The oath of the Linen Legion was analysed primarily as an archaic religious and military ritual closely related to the Roman *sacramentum militiae*, e.g.: M. S. Popławski, *Bellum Romanum. Sakralność wojny i prawa rzymskiego*, Lublin 1923, pp. 327–330; S. Tondo, "Il 'sacramentum militiae' nell'ambiente culturale romano-italico," *Studia et Documenta Historiae et Iuris* 1963, no. 29, pp. 70–123; D. Briquel, "Sur les aspects militaires du dieu ombrien Fisis Sancius," *Mélanges de l'École française de Rome – Antiquité* 1978, vol. 90, no. 1, pp. 133–152. Filippo Coarelli considered it as an example of Italic military initiation: F. Coarelli, "Legio linteata. L'iniziazione militare nel Sannio" [in:] *La Tavola di Agnone nel contesto italico*, ed. L. Del Tutto Palma, Isernia 1996, pp. 3–16. The rituals of war at Aquilonia were examined in a larger context of the Samnite warfare in C. Saulnier, *L'armée et la guerre chez les peuples samnites (VI<sup>e</sup>–IV<sup>e</sup> s.)*, Paris 1983, pp. 90–100. The scholars also investigated symbolic and ideological aspects of the Livian description, e.g.: A. Rouveret, "Tite-Live, Histoire Romaine IX, 40: la description des armées samnites ou les pièges de la symétrie" [in:] *Guerre et sociétés en Italie aux V<sup>e</sup> et IV<sup>e</sup> siècles av. J.-C.*, eds. A.-M. Adam, A. Rouveret, Paris 1986, pp. 91–120; G. Tagliamonte, "Arma Samnitium," *Mélanges de l'École française de Rome – Antiquité* 2009, vol. 121, no. 2, pp. 381–394; M. Członkowska-Naumiuk, "Candore tunicarum fulgens acies. Lniany Legion i wizerunek Samnitów w IX i X księdze *Ab Urbe condita* Liwiusza," *Nowy Filomata* 2017, vol. XXI, no. 2, pp. 211–242.

<sup>4</sup> Certain elements of the Livian vision of the Linen Legion may originate from an antiquarian tradition based on iconographic sources contemporary to these events, see F. Coarelli, "Legio linteata." The literary tradition on *insignia arma Samnitium* (splendid arms of the Samnites) is firmly supported by archaeological and iconographic evidence, see e.g. C. Saulnier, *L'armée et la guerre*; G. Tagliamonte, "Dediche di armi nei santuari sannitici," *Cuadernos de Prehistoria y Arqueología* 2002–2003, vol. 28–29, pp. 95–125; idem, "Arma Samnitium". Finally, in the description of the rituals at Aquilonia one can identify some universal features of the rituals of war practiced by many Indo-European and Near-Eastern peoples, see e.g. D. Segarra Crespo, "Il faut s'allier avant la bataille. Sur certaines pratiques « sacrificielles » face au danger," *Revue de l'histoire des religions* 1998, vol. 215, no. 2, pp. 195–216.

According to Livy, the oath taken by the Samnite nobles, which is believed to have been binding on the entire Linen Legion, not only forbade soldiers to escape from the field of battle,<sup>5</sup> but also obligated them to kill instantly anyone who would try to flee. Ancient authors describe many instances of Roman commanders' radical actions to stop or eliminate soldiers fleeing the battlefield. These were, however, *ad hoc* measures taken in extreme situations during combat. In the sources concerning the Roman army – historical narratives, legal texts and military treatises – there is no information about any general rule in this regard. Against the background of Roman military customs, the Samnite case appears to be unique as the only example in Italo-Roman history of inclusion directly in the military oath of the obligation to kill immediately any soldier trying to run away from the battlefield.

Is this just an invention of the Roman tradition or Livy, an element of “that dire oath” (10.41.3), one of the drastic steps taken by the Samnites before a decisive battle, as imagined by the Romans? Or – the grain of truth, a real commitment of the Samnite picked troops?

It is worth examining this specific obligation of the Linen Legion's soldiers which has never been central to the analyses. This article intends to explain possible reasons for its inclusion in the military oath and to demonstrate that this particular of Livy's account should not be definitely dismissed as a kind of “literary exaggeration.”<sup>6</sup>

## ESCAPE FROM THE BATTLEFIELD IN THE ROMAN ARMY<sup>7</sup>

For the study of the Samnite case, it would be of crucial interest to see which were the soldiers' obligations resulting from military oaths and how escape from the ranks during combat was handled in other Italic armies, but due to the lack of evidence on

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<sup>5</sup> As an act contrary to the warrior's honour and the duty of a soldier-citizen, escape from the battlefield has been for centuries one of the most heinous military crimes in the European armies. Today it is qualified as cowardice and desertion or misbehaviour in the presence of the enemy, see e.g. Code de justice militaire 2020 (France), Art. L321-13 à L321-16: “De la désertion à l'ennemi ou en présence de l'ennemi”; Codice penale militare di guerra (Italy), Art. 144 : “Diserzione in presenza del nemico”; Armed Forces Act 2006 (UK), Chapter 52, First Group of Parts: “Discipline,” Part 1, Section 2: “Misconduct on operations”; United States Code – Uniform Code of Military Justice, Section 899, Art. 99: “Misbehavior before the enemy.”

<sup>6</sup> S.P. Oakley, *A Commentary on Livy*, vol. IV: *Book X*, Oxford 2005, p. 395 (“Livy's statements ... are exaggerated for literary effect ...”).

<sup>7</sup> The Roman authors used the following words and expressions for escaping from the battlefield: *fugere* – to escape (Liv. 9.44.13; 10.19.19; 10.41.10); *ex acie fugere* – to escape from the ranks (Liv. 10.38.10); which gave *fugientes* – those who are escaping, fleeing (Caes. *BCiv.* 2.35.1; 3.69.4; Liv. 6.9.11; 8.39.2; 8.39.9; 10.38.10; 22.5.5) and *fuga* – the escape (Caes. *BGall.*, 6.8.6–7; Caes. *BCiv.* 1.82.3; 2.35.1; Liv. 7.33.13–16; 9.35.7; 10.3.6; 10.15.2; 10, 28, 11; 10.36.6), *signa relinquere* – to abandon the military standards (Liv. 5.6.14; 27.47.9; Caes. *BCiv.* 3.13.2), *signa deserere* (Liv. 2.44.11; 8.34.10), which gave *desertor signorum* (Liv. 2.59.10), *relinquere ordines* – to leave the ranks (Liv. 2.59.11). In some situations tantamount to escaping was “to lose the standards” – *signa amittere* (Liv. 2.59.11; 10.3.6; 10.4.3–4; 27.13.9; 27.14.3) and “to go away from the standards” – *ab signis abire* (Liv. 28.24.8).

this matter our comparison has to be focused on Roman military customs. One may assume that the way in which the Romans and the Italic peoples reacted to the escape from the battlefield, as well as preventive or penal measures used by them were generally similar.<sup>8</sup> Parallels will also be drawn between the Linen Legion's oath and examples of Greek and Roman military oaths strengthened in situations of extreme danger for the community: one of the oaths from the stele of Acharnae, which might be identified as the "Oath of Plataea" (479 BC),<sup>9</sup> and the Roman military oath reinforced in 216 BC.<sup>10</sup>

The Romans treated any attempt to run away from the battle<sup>11</sup> as desertion. The Latin words *desertor* and *desertio* come from *deserere*, meaning to abandon, to forsake, to leave someone despite obligations to him, to withdraw one's support from somebody, to betray, to desert.<sup>12</sup> The Roman military oath, *sacramentum militiae* (or *militare*), made the citizen a soldier, a member of the community authorised to legitimately fight and kill the enemies,<sup>13</sup> and obliged him to obey his commander and follow him wherever he would lead the army.<sup>14</sup> The legionaries also swore not to abandon the battle line out of fear or flee during combat.<sup>15</sup> The *sacramentum*, like each public oath, was strengthened by religious sanctions. Originally, the consequence of their violation was the exclusion of the oath-breaker from the community

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<sup>8</sup> On Italic warfare, arms and military customs and rituals, see e.g. E.T. Salmon, *Samnium and the Samnites*, pp. 101–112; C. Saulnier, *L'armée et la guerre*; N. Sekunda, S. Northwood, *Early Roman Armies*, Oxford 1995; M.T. Burns, "The Homogenisation of Military Equipment under the Roman Republic" [in:] "Romanization?," eds. A.D. Merryweather, J.R.W. Prag, *Digressus – The Internet Journal for the Classical World*, Supplement 1, 2003, pp. 60–85; O. De Cazanove, "Pratiques et rites de la guerre en Italie, entre Romains et Samnites: le passage sous le joug, la légion de lin samnite" [in:] *Pratiques et identités culturelles des armées hellénistiques du monde méditerranéen*, eds. J.-C. Couvenhes, S. Crouzet, S. Péré-Noguès, Bordeaux 2011, pp. 357–370; M. Piegdoń, "Some Remarks on War Rituals In Archaic Italy and Rome and the Beginnings of Roman Imperialism," *Electrum* 2014, vol. 21, pp. 87–97.

<sup>9</sup> *Greek Historical Inscriptions 404–323 BC*, eds. P.J. Rhodes, R. Osborne, Oxford 2007, no. 88. It would also be interesting to examine other possible Greek influences on Samnite war rituals and practices, e.g. raising élite formations, but such an analysis is beyond the scope of this paper.

<sup>10</sup> Liv. 22.38.1–5.

<sup>11</sup> Such misconduct by Roman soldiers was one of the forms of desertion examined by Catherine Wolff in her insightful study of cases of desertion and defection to the enemy in the Roman army under the Republic: C. Wolff, *Déserteurs et transfuges dans l'armée romaine à l'époque républicaine*, Napoli 2009. The Samnite case is not analysed by the French scholar due to the scope of her work (Roman army).

<sup>12</sup> *OLD*, s.v. *desero*, -ere. See also C. Wolff, *Déserteurs et transfuges*, p. XIII.

<sup>13</sup> Cic. *De off.* 1.36: "... in view of the voidance of his former oath he could not legally fight the foe" (transl. W. Miller); 1.37; Plut. *Quaest. Rom.* 39; C. Nicolet, *Le métier de citoyen dans la Rome républicaine*, Paris 1976, p. 142; on *militia legitima* see e.g. J. Linderski, "Rome, Ahrodisias and the *Res Gestae*: The *Genera Militiae* and the Status of Octavian," *The Journal of Roman Studies* 1984, vol. 74, pp. 74–80.

<sup>14</sup> Dion. Hal. *Ant. Rom.* 10.18.2; 11.43.2; Polyb. 6.21.1–3; see also S.G. Chrissanthos, "Keeping Military Discipline" [in:] *Oxford Handbook of Warfare in the Classical World*, eds. B. Campbell, L.A. Tritle, Oxford 2013, p. 321.

<sup>15</sup> Liv. 22.38.3–4: "fugae atque formidinis ergo non abituros neque ex ordine recessuros"; Frontin. *Str.* 4.1.4.

as an accursed man, *sacer*, who was deprived of all rights and could be killed by anybody with impunity.<sup>16</sup> The soldier who escaped from the battlefield broke all human obligations of the military oath and committed an act prohibited by the religious law – *nefas*,<sup>17</sup> hence he fell under the most severe penalties. Archaic concepts of *nefas* and *sacer* undoubtedly influenced the social perception of deserters.<sup>18</sup>

In the texts from the republican period, we do not find any precise definition of desertion or equivalent misdeeds – although some definitions certainly appeared in theoretical military writings which are not preserved.<sup>19</sup> The sources clearly indicate, however, that one of the most serious offences was that of leaving the military standards, i.e. one's unit (*signa relinquere, deserere*).<sup>20</sup> Such was the essence of

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<sup>16</sup> On *sacramentum, sacratio, sacer* see *RE*, s.v. *Sacramentum*, vol. I A, col. 1668, Stuttgart 1920; M.S. Popławski, *Bellum Romanum*, p. 305–327; É. Benveniste, *Le vocabulaire des institutions indo-européennes*, vol. 2, Paris 1969, chap. 3: *Ius et le serment à Rome*, pp. 111–122; G. Agamben, *The Omnibus Homo Sacer*, Stanford, CA 2017, part II.3: *The Sacrament of Language: An Archaeology of the Oath*, transl. A. Kotsko, pp. 323–335; on *sacramentum militiae* see also: C. Nicolet, *Le métier de citoyen*, pp. 141–143; J. Linderski, “Rome, Ahrodisias and the *Res Gestae*”; S.E. Phang, *Roman Military Service: Ideologies of Discipline in the Late Republic and Early Principate*, Cambridge 2008, pp. 117–119; M.N. Faszczka, *Bunt w późnorepublikańskich armiach rzymskich (88–30 przed Chr.)*, Oświęcim 2017, s. 85–91. On the condition of *homo sacer* see e.g.: M.S. Popławski, *Bellum Romanum*, pp. 310, 319–321; H. Bennett, “*Sacer Esto*,” *Transactions and Proceedings of the American Philological Association* 1930, vol. 61, pp. 5–18; B. Albanese, “*Sacer esto*” [in:] B. Albanese, *Scritti giuridici*, vol. III, Torino 2006, pp. 3–37; R. Fiori, *Homo sacer. Dinamica politico-costituzionale di una sanzione giuridico-religiosa*, Napoli 1996 (esp. pp. 479–506); E. Cantarella, *Les peines de mort en Grèce et à Rome: origines et fonctions des supplices capitaux dans l'antiquité classique*, transl. N. Gallet, Paris 2000, pp. 267–278; R. Fiori, “La condizione di *homo sacer* e la struttura sociale di Roma arcaica” [in:] *Autour de la notion de sacer*, ed. T. Lanfranchi, Rome 2017, pp. 171–227; R. Evêque, “Chronique d'un mort-vivant. Mise en altérité et devenir de l'*homo sacer* romain,” *Droit et Cultures* 2018, no. 76, pp. 31–83.

<sup>17</sup> Sen. *Ep.* 15.95.35: “Quemadmodum primum militiae vinculum est religio et signorum amor et deserendi nefas.” See also C. Wolff, *Déserteurs et transfuges*, p. 3; S.G. Chrissanthos, “Keeping Military Discipline,” p. 321.

<sup>18</sup> Ancient perception of deserters as outlawed and infamous individuals (C. Wolff, *Déserteurs et transfuges*, pp. 134–135) “reappeared” in the military law in early modern Europe. Deserters from the battlefield were usually punished with “double death,” as the capital penalty was accompanied by infamy, the civil death, in some respects close to the concept of being *sacer*. A soldier who managed to escape from the ranks was publicly outlawed and could be killed by anyone, see e.g.: W. Winthrop, *Military Law and Precedents*, Washington 1920, p. 910 (*Code of Articles of King Gustavus Adolphus of Sweden (1621)*, Art. 61); K. Łopatecki, “Przestępstwo ucieczki z pola bitwy w Rzeczypospolitej szlacheckiej – z badań nad karą śmierci wymierzaną w trybie pozasądowym” [in:] *Culpa et poena. Z dziejów prawa karnego*, ed. M. Mikuła, Kraków 2009, pp. 194–197, 202–203; Q. Verreycken, *Pour nous servir en l'armée. Le gouvernement et le pardon des gens de guerre sous Charles le Téméraire, duc de Bourgogne (1467–1477)*, Louvain-la-Neuve 2014, pp. 149–182 (punishment for desertion in one of the first standing armies in early modern Europe); on civil death see e.g. R. Evêque, “Chronique d'un mort-vivant,” pp. 31–32.

<sup>19</sup> E.g. in the lost work of M. Porcius Cato the Elder quoted by Frontinus (*Str.* 4.1.16), Aulus Gellius (*Gell. NA* 6.4.5) and Vegetius (*Veg. Mil.* 1.8; 1.13; 1.15; 2.3) or L. Cincius' *De re militari*, quoted int. al. by Aulus Gellius (*Gell. NA* 16.4).

<sup>20</sup> Dion. Hal. *Ant. Rom.* 9.50.7; 10.18.2; 11.43.2: “the law has given the commanders authority to put to death without a trial all who are disobedient or desert their standards” (transl. E. Cary);

desertion. Escape from the battlefield was obviously “leaving the standards” in the face of the enemy.

Certain actions were considered tantamount to desertion. According to Appian one of them was moving away from the trumpet’s sound during the battle,<sup>21</sup> which prevented the soldier from executing orders. The capital penalty could also be inflicted for deserting one’s post,<sup>22</sup> not defending or abandoning the commander,<sup>23</sup> and casting away or losing weapons in combat.<sup>24</sup> Finally, all acts of insubordination were severely punished in combat conditions.<sup>25</sup>

Escape from the battle was the most common form of desertion in the Roman army during the wars waged with external enemies by Rome under the Republic. “Classical,” definitive desertion is very rare in this period. Catherine Wolff found only seven cases of *déserteurs définitifs* in the sources concerning the period from the fifth to the first century BC.<sup>26</sup> All of them occurred between the third and the first century BC, and three of them – during the Hannibalic War. No definitive desertion was recorded by the sources for the first two centuries of the Republic.<sup>27</sup>

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Liv. 2.59.8–11; 5.6.14: “Fustuarium meretur, qui signa relinquit, aut praesidio decedit”; see also *Codex Iustinianus* 12.45.1.3: “Desertor autem habebitur quisquis belli tempore aberit a signis” (late legal sources are additionally quoted, as they contain most of the military regulations of the republican period and show how the early customary law was codified); see also C. Wolff, *Déserteurs et transfuges*, pp. XI–XVII; M. Gueye, “Délits et peines militaires à Rome sous la République: *desertio* et *transfugium* pendant les guerres civiles,” *Gerión* 2013, vol. 31, p. 223. The Roman concept of desertion was close to the ideas of the Greeks: the military service was a citizen’s duty (and privilege), thus a deserter was an anti-citizen, see e.g. G. Velho, “Les déserteurs des armées civiques en Grèce ancienne ou la négation du modèle du citoyen-soldat,” *Les Études Classiques* 2002, vol. 70, no. 3, pp. 239–256.

<sup>21</sup> App. *Pun.* 115.545; C. Wolff, *Déserteurs et transfuges*, p. XVI.

<sup>22</sup> Polyb. 1.17.11; 6.37.11; Dion. Hal. *Ant. Rom.* 11.43.2; Liv. 5.6.14; 24.37.9: “Praesidio decedere apud Romanos capital esse.”

<sup>23</sup> E.g. Liv. 41.18.11; Frontin. *Str.* 4.1.46: the legions operating in Liguria punished by the Senate with a reduction in pay for ineffective protection of the commander (176 BC). See also *Dig.* 49.16.3.22: “Qui praepositum suum protegere noluerunt vel deseruerunt, occiso eo capite puniuntur.”

<sup>24</sup> Polyb. 6.37.11. See also *Dig.* 49.16.3.13: “Miles, qui in bello arma amisit vel alienavit, capite punitur: humane militiam mutat”; Paulus (*Dig.* 49.16.14.1) specifies the parts of the armament whose loss was tantamount to desertion: “si vero [miles] lorica, scutum, galea, gladius [alienavit], desertori similis est.”

<sup>25</sup> The well-known example is the capital punishment of Titus Manlius by the commander who was at the same time his father for leaving his post (340 BC), Dion. Hal. *Ant. Rom.* 8.79.2; Liv. 8.6–8; however, this case was already considered by the Romans to be exceptional and drastic; it was recorded by the historians certainly for this reason; quite different was the case of M. Fabius Rullianus who was not punished for obvious insubordination during the war despite the efforts of his commander, Liv. 8.30–35; on political aspects of this event see e.g. G. Kuleczka, *Studia nad rzymskim wojskowym prawem karnym*, Poznań 1974, pp. 69–76. Of course, the principle of harsh punishment for insubordination in combat conditions continued to be applied in later times, see e.g. *Dig.* 49.16.3.15: “In bello qui rem a duce prohibitam fecit aut mandata non servavit, capite punitur, etiamsi res bene gesserit.”

<sup>26</sup> C. Wolff, *Déserteurs et transfuges*, pp. 8–14.

<sup>27</sup> *Ibid.*, p. 13. Wolff sees two main reasons for this fact. Firstly, soldiers had less reason to abandon the army during the first centuries of the Republic – the wars were usually relatively short and conducted not far from Rome. Secondly, the sources tended to idealise the most ancient history of Rome. Besides, they could not record less important cases. Among other reasons one may add common benefits of war

For the republican period, Wolff identified many more short-term desertions or their equivalent: sixteen instances of escape from the battlefield and eleven other cases such as deserting the post, not maintaining designated positions, or failure to defend the commander.<sup>28</sup>

Of various reasons for running away from the battlefield, panic was presumably the most common.<sup>29</sup> The flight of soldiers due to panic might be seen as a special case: it differed from typical desertion and insubordination mainly because it was not an intentional action, it did not result from bad will, but from a sudden, strong impulse – unmanageable fear.<sup>30</sup> Typically, it caused a short-term abandonment of the unit, often an attempt to take refuge in the soldiers' own camp, but even escape to the camp was treated as desertion.<sup>31</sup>

Individual desertion in its various forms was usually punished by death. Moreover, for breaking the oath the deserter was outlawed, excluded from the community. Discipline had, among other things, to be the remedy for intense fear during a battle. Thus the penalty for desertion had to be severe, inevitable and deterrent. From Livy we know that a soldier who abandoned the ranks or his post was punished by flogging (*fustuarium*) which almost always led to death.<sup>32</sup> This punishment was meted out by all the soldiers, as the guilty put the entire community at risk. Another form of execution, probably older, was decapitation with an axe.<sup>33</sup>

If an entire unit acted in a cowardly way, various penalties were applied depending on the circumstances. Units that fled from the field of battle had, for example, to camp outside the walls and without tents.<sup>34</sup> In certain situations they could be decimated,<sup>35</sup> but this harsh punishment was probably used rarely.<sup>36</sup> Due to pragmatic reasons, including the fact that the soldiers were also citizens and electorate, repub-

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campaigns, commanders' authority, and social condemnation and exclusion of deserters as perjurers and traitors. Escape from the army was a gross violation of the duty of the Roman citizen, for whom military service was not only an obligation, but also a privilege.

<sup>28</sup> Ibid., pp. 14–27.

<sup>29</sup> Ibid., pp. 19–20, 27, 67–72, 85.

<sup>30</sup> G. Kuleczka, *Studia nad rzymskim wojskowym prawem karnym*, p. 93: „żołnierz podjął działanie zgodne z rozkazem i działał tak długo, jak jego wola walki nie została złamana uczuciem strachu bądź instynktem samozachowawczym” (“the soldier took action in accordance with the order and acted as long as his will to fight was not broken by a feeling of fear or instinct of self-preservation”).

<sup>31</sup> C. Wolff, *Déserteurs et transfuges*, pp. 7, 14–23.

<sup>32</sup> Liv. 5.6.14; Polyb. 6.37.1–11; G. Kuleczka, *Studia nad rzymskim wojskowym prawem karnym*, p. 102; P. Kołodko, “Chłosta jako kara w rzymskim wojskowym prawie karnym,” *Studia Prawnoustrojowe* 2007, no. 7, pp. 64–65; C. Wolff, *Déserteurs et transfuges*, p. 115.

<sup>33</sup> E.g. Dion. Hal. *Ant. Rom.* 8.79.2; Liv. 8.6–8.

<sup>34</sup> Liv. 10.3.6–7, punishment inflicted on the Roman cohorts that fled before the Etruscans in 302 BC.

<sup>35</sup> Polyb. 6.38.1–3; Dion. Hal. *Ant. Rom.* 9.50.7; C.E. Brand, *Roman Military Law*, Austin 1968, p. 73, 38; S.E. Phang, *Roman Military Service*, pp. 123–127; C. Wolff, *Déserteurs et transfuges*, pp. 116–126.

<sup>36</sup> G.R. Watson, *The Roman Soldier*, London 1969, pp. 120–121; C. Wolff, *Déserteurs et transfuges*, pp. 119–126.

lican commanders avoided putting a significant number of them to death.<sup>37</sup> Wolff identified ten cases of decimation recorded in the preserved sources concerning the period of the Republic, eight of which fall in the first century BC.<sup>38</sup> It is symptomatic that one of the two earlier decimations occurred during the Third Samnite War. In 297 BC the consul Q. Fabius Rullianus decimated two legions that had not withstood the enemy attack: he “chose men by lot and beheaded them in sight of their comrades.”<sup>39</sup> This fact illustrates the importance of wars with the Samnites; for the Romans, the Samnites posed such a great threat that the exceptional steps taken by the commanders were commonly approved. However, decimation was hardly acceptable for the community: the next infliction of this punishment is recorded only in 71 BC.<sup>40</sup>

Despite the lack of bad will on the part of the soldiers, escape from the battle was punished with particular severity. The first task of the army was to fight the enemy, cowardice and escape of soldiers undermined this. Moreover, leaving the unit in the face of the enemy, in extreme danger, was a serious offence against other soldiers.<sup>41</sup> It was not only a violation of loyalty and a breach of the unit’s cohesion, but it could cause confusion and panic, which had disastrous consequences. Flight usually turned into a slaughter of the defeated.<sup>42</sup> Even the escape of a single soldier was dangerous because it led to panic. Therefore, whoever caused it was harshly punished.

The only legal reference in the preserved Roman sources concerning precisely the punishment of fugitives from the battlefield is a statement in a late source – the Justinian’s “Digest”: “He who was the first to take to flight in battle must be put to death in the presence of the soldiers, by way of example.”<sup>43</sup> However, it concerns most probably a punishment meted out after the battle, in the camp. It seems that there were no regulations regarding actions taken against the *fugientes* during combat, for

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<sup>37</sup> The importance of aspects related to the civic nature of the army is highlighted in C. Nicolet, *Le métier de citoyen*, chap. 3: *Militia. L’armée et le citoyen*, pp. 122–149; chap. 4: *Arma et toga. Armée et société politique*, pp. 150–172.

<sup>38</sup> C. Wolff, *Déserteurs et transfuges*, pp. 124–125. Probably in the 1<sup>st</sup> century BC decimation was no longer a legal punishment, M.N. Faszczka, “*Vitis centurionis*, czyli o okolicznościach nadania centurionom symbolu ich rangi,” *Przegląd Historyczno-Wojskowy* 2015, vol. 16, no. 2, p. 13, n. 36; M.N. Faszczka, “Problemy badawcze związane z rzymską dyscypliną wojskową okresu republiki i pryncypatu,” *Res Historica* 2016, no. 42, p. 20; M.N. Faszczka, “The Social Perception of the Spartacus Revolt and the Decimation of Crassus’ Soldiers in 71 BC” [in:] *Spartacus: History and Tradition*, ed. D. Słapek, Lublin 2018, pp. 85–98.

<sup>39</sup> Frontin. *Str.* 4.1.35 (transl. C.E. Bennett); C. Wolff, *Déserteurs et transfuges*, pp. 119–120. Livy does not mention this decimation.

<sup>40</sup> Decimation of the legions fighting against Spartacus for their inefficacy, App. *B.c.* 1.118.550; M.N. Faszczka, “Problemy badawcze,” p. 20; M.N. Faszczka, “The Social Perception of the Spartacus Revolt.”

<sup>41</sup> C. Wolff, *Déserteurs et transfuges*, pp. XXVI, 137; M. Gueye, “Délits et peines militaires,” p. 225.

<sup>42</sup> A.K. Goldsworthy, *The Roman Army at War: 100 BC–AD 200*, Oxford 1998, pp. 223–224; P. Sabin, “The Face of Roman Battle,” *The Journal of Roman Studies* 2000, vol. 90, pp. 5–6.

<sup>43</sup> *Dig.* 49.16.6.3: “Qui in acie prior fugam fecit, spectantibus militibus propter exemplum capite puniendus est” (transl. S.P. Scott). Similar behaviour is also penalised in today’s armies (obviously, punishments are not so harsh anymore), see e.g. the Italian “Codice penale militare di guerra,” Art. 110: “Manifestazioni di codardia” concerning punishment of soldiers who start or spread panic.



such cases were considered as extraordinary and “extrajudicial” measures applied in a situation of higher necessity.

When writing about Roman military discipline, the ancient authors describe only the punishments inflicted on soldiers *post factum*, after a summary judgment of the guilty and issue of the verdict by the commander.<sup>44</sup> In these passages they do not explain how the Romans dealt with deserters on the battlefield, because – as said above – it was a special case, different from regular punishment after the return to camp. We can learn how the Romans reacted to cowardice during combat only from the descriptions of particular battles.

Penalties meted out *post factum* to entire units did not have to be very drastic. Much greater severity was applied in combat conditions, since during the battle any failure of a soldier could lead to defeat. As Cato the Elder said, misconduct during the fight is irreparable.<sup>45</sup> The battle accounts confirm the use of a widespread measure applied in many armies: when all methods of persuasion failed, the commander ordered that deserters be killed instantly, or at least some of them, to cow those who followed. A threat or an order was often sufficient to stop the flight.

Before passing to the oath of the Samnite Linen Legion, it is interesting to see an example of such an *ad hoc* measure taken by a Roman commander just one year before the battle of Aquilonia.

#### A ROMAN CASE: THE ORDER ISSUED DURING BATTLE TO KILL FLEEING SOLDIERS IMMEDIATELY

In 294 BC, on the way to Luceria in Apulia, the Romans fought a hard battle with the Samnites, during which the Roman infantrymen fled before the enemy. The Romans suffered greater losses than the Samnites.<sup>46</sup> At Sentinum in 295 BC, the consul Fabius Rullianus vowed a temple to Jupiter Victor to get his help in defeating enemies;<sup>47</sup> it is

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<sup>44</sup> Or by “a court-martial composed of all the tribunes” in Polybius’ times, Polyb. 6.37 (transl. W. R. Paton).

<sup>45</sup> Veg. *Mil.* 1.13: “sicut ait Cato . . . proeliorum delicta emendationem non recipiunt.”

<sup>46</sup> The sources are certainly reliable when they speak about fear, non-successes and defeats of the Roman army during the Third Samnite War, such situations would not have been invented, e.g. Liv. 10.14.5–9; 10.26.7–13; 10.32.5–9; 10.33.6–7; 10.35.2–7. Temples vowed by the commanders to deities linked with war and salvation are hard evidence that during the Samnite Wars the Romans were facing extreme danger. On vowing temples by the Romans during battles see A. Ziółkowski, *The Temples of Mid-Republican Rome and their Historical and Topographical Context*, Roma 1992, pp. 193–203; R.D. Weigel, “Roman Generals and the Vowing of Temples, 500–100 B.C.,” *Classica et Mediaevalia* 1998, vol. 49, pp. 119–152; E.M. Orlin, *Temples, Religion and Politics in the Roman Republic*, Boston–Leiden 2002, pp. 45–75; J.-L. Bastien, “Les temples votifs de la Rome républicaine: monumentalisation et célébration des cérémonies du triomphe” [in:] Roma illustrata. *Représentations de la ville*, ed. P. Fleury, O. Desbordes, Caen 2008; M. Aberson, “Dire le vœu sur le champ de bataille,” *Mélanges de l’École française de Rome – Antiquité* 2010, vol. 122, no. 2, pp. 493–501.

<sup>47</sup> Liv. 10.29.14.

significant that at Luceria the consul M. Atilius Regulus also vowed a temple, but to Jupiter Stator who stops fleeing armies.<sup>48</sup>

From the beginning of the military campaign in 294 BC, the Samnites fiercely defended their land.<sup>49</sup> Livy perfectly depicts the declining morale of the Romans and their panic attacks. With such an army, Regulus set out across enemy territory to besiege Luceria.

The Samnites met the Romans at the Lucerine frontier; the first battle which ensued, “was one of shifting fortunes and doubtful issue . . . The consequence of this was such a panic in the camp as, had it come over them whilst they were fighting, must have led to a signal overthrow.”<sup>50</sup> The next day, the Samnites approached the camp certainly with the intention of attacking.<sup>51</sup> The morale of the Romans was still weak: “in a long and straggling column, discouraged and almost beaten, they advanced towards the enemy.”<sup>52</sup> Livy tells us that the Samnites were not very enthusiastic about the fight either and both sides “would have gone off in opposite directions, scatheless and unhurt, had they not been afraid that, if they retired, their enemies would advance.”<sup>53</sup> It is more likely, however, that it was the Romans that were terrified. The consul sent a few troops of cavalry against the enemy, but “of these the most part were unhorsed, and, the rest being thrown into confusion, there was a rush on the part of the Samnites to dispatch the fallen and on that of the Romans to save their comrades.”<sup>54</sup> Soon panic broke out among the Romans:

. . . the Samnites had charged somewhat more briskly and in greater numbers, and the disordered cavalry, their horses becoming terrified, rode down their own supports, who began a flight that spread to the whole Roman army. And now the Samnites were on the backs of the fugitives, when the consul, galloping on before to the gate of the camp, posted there a guard of horse and commanded them whosoever should make for the rampart be the Roman or Samnite to treat him as a foe. He likewise threatened the men himself, and stopped them as they made in disorder for the camp. Where are you going, men? He shouted: Here too you will find arms and soldiers, and while your consul lives you shall not enter the camp, except as victors. Choose, therefore, whether you would sooner fight with fellow-citizens or enemies! As the consul spoke these words, the cavalry gathered round the infantry and levelling their spears bade them return into the battle.<sup>55</sup>

<sup>48</sup> Liv. 10.36.11; 10.37.14–16; A. Ziółkowski, *The Temples of Mid-Republican Rome*, pp. 87–91; E.M. Orlin, *Temples, Religion and Politics*, p. 55; G. Tagliamonte, “*Arma Samnitium*,” p. 389.

<sup>49</sup> Livy’s narrative about that year campaign begins with a description of their daring attack on the Roman camp, Liv. 10.32.5 – 33.7; they “charged in by the decuman gate in the rear of the camp” (transl. of all quotations from Book 10: B.O. Foster).

<sup>50</sup> Liv. 10.35.1–3.

<sup>51</sup> Livy’s version is not very convincing: “As soon as it grew light they [the Samnites] wished to retire without giving battle. But there was only one road, and this led past their enemies, And when they had started to go that way, they looked as if marching straight to attack the camp” (Liv. 10.35.4).

<sup>52</sup> Liv. 10.35.17.

<sup>53</sup> Liv. 10.36.3. Stephen Oakley (*A Commentary on Livy*, vol. IV, p. 362) remarks that “the information that neither side wishes to fight allows the reader to take an ironical view of the ensuing narrative,” but this irony had only to attenuate the shame of Roman unsuccessful fighting.

<sup>54</sup> Liv. 10.36.5.

<sup>55</sup> Liv. 10.36.6–9. See also Frontin. *Str.* 4.1.29.

The situation was so dangerous for the Romans that “the consul lifted up his hands to heaven, and . . . vowed a temple to Jupiter the Stayer, if the Roman army should stay its flight.”<sup>56</sup> The Romans finally repulsed the enemy, but it was a Pyrrhic victory.<sup>57</sup>

In the sources related to external wars in the republican period we find descriptions of other battles in which Roman commanders manage to stop the soldiers fleeing and make them return to the fight.<sup>58</sup>

During the battle of Lake Regillus in 499 BC, the dictator ordered his cohort to treat deserters as enemies, which prompted the soldiers to take up the fight.<sup>59</sup> According to Dionysius of Halicarnassus, the dictator threatened the soldiers before the battle that those fleeing would be killed and left without a burial.<sup>60</sup>

In 381 BC, during the battle with the Volsci, Camillus, military tribune with consular power, together with his reserve unit blocked the way of escaping soldiers and declared he would receive in camp no one who was not victorious.<sup>61</sup>

In 190 BC at Magnesia, when M. Aemilius, military tribune,

saw the flight of his men, he met them with his entire guard and ordered them first to halt and then to return to the battle, taunting them with fear and disgraceful flight; then he uttered threats that they were rushing blindly to their own deaths if they did not obey his orders; finally, he gave the signal to his own men to kill the first of the fugitives and with steel and wounds to drive against the enemy the mass of those that followed. This greater fear prevailed over the lesser; driven by terror in front and rear they first halted; then they too returned to the fight, and Aemilius with his own guard – they were two thousand gallant men – boldly withstood the onrushing king.<sup>62</sup>

At Numantia in 133 BC, Scipio Aemilianus induced the retreating army to return to the battlefield threatening that anyone who would flee to the camp would be treated as a foe.<sup>63</sup> According to Valerius Maximus similar menace was used by Q. Caecilius Metellus Macedonicus at Contrebia in 142 BC to force his soldiers, driven down from a steep escarpment, to face the enemy.<sup>64</sup>

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<sup>56</sup> Liv. 10.36.11.

<sup>57</sup> Liv. 10.36.14–15: “The number of the [Samnite] captives was seven thousand eight hundred, who were all stripped and sent under the yoke: the slain were reported at four thousand eight hundred. Even the Romans had no joy of their victory, for the consul found, on reckoning up the two days’ casualties, that he had lost seven thousand eight hundred men.” On this peculiar case of *sub iugum mittere* applied by the Romans at Luceria, see O. de Cazanove, “Pratiques et rites de la guerre,” p. 362. Livy (10.37.14–16) informs us on different versions of this year events preserved in his sources; Fabius Pictor, the closest in time to these events, “writes that both consuls fought in Samnium and at Luceria; that the army was led over into Etruria – by which consul he does not state – and that at Luceria both sides suffered heavy losses; in the course of the battle a temple was vowed to Jupiter Stator.”

<sup>58</sup> C. Wolff, *Déserteurs et transfuges*, pp. 14–26 (*déserteurs temporaires*).

<sup>59</sup> Liv. 2.20.4–5; C. Wolff, *Déserteurs et transfuges*, pp. 14, 20.

<sup>60</sup> Dion. Hal. *Ant. Rom.* 6.9.4.

<sup>61</sup> Liv. 6, 24; Frontin. *Str.* 2, 8, 6; Plut. *Cam.* 37, 3, 4; C. Wolff, *Déserteurs et transfuges*, pp. 15, 20.

<sup>62</sup> Liv. 37.43.1–5 (transl. E.T. Sage); App. *Syr.* 36; see also C. Wolff, *Déserteurs et transfuges*, pp. 16, 20.

<sup>63</sup> Frontin. *Str.* 2.8.7; C. Wolff, *Déserteurs et transfuges*, pp. 17, 20.

<sup>64</sup> Val. Max. 2.7.10; Frontin. *Str.* 4.1.23; C. Wolff, *Déserteurs et transfuges*, pp. 17, 21.

The motive of threatening soldiers to treat them as enemies may seem to be a literary *topos*, but it must have reflected a common practice on the battlefields. What is also worth noting is the use by the commanders of the most faithful units to stop other soldiers from escaping and, if necessary, to kill the *fugientes*. Such a measure was also used by the Macedonians.<sup>65</sup>

The sources clearly show that cowardice in the face of the enemy was a frequent problem in the Roman army which was not as disciplined as *communis opinio* says. The ancient authors also record unsuccessful efforts of commanders who failed to stop fleeing soldiers and restore discipline. For the period from the fifth to the first century BC the number of such cases in our sources is slightly higher than the number of successful actions of commanders.<sup>66</sup>

It is important to remember why escape from the battlefield was so dangerous – not only from the commander’s point of view – and why defeat was so feared. The ancient commanders were fully aware that an army in panic is unable to fight and cannot be manoeuvred.<sup>67</sup> Panic spreads rapidly and usually causes defeat, because those who succumb to it are unable to think and act rationally. Being under the influence of strong, instinctive fear, they are unreasoning, uncontrollable.<sup>68</sup> At Luceria the Roman infantrymen were running blindly back to the camp, they were not reacting to orders, and could only be stopped by harsh methods.

The severity with which the soldiers fleeing were treated resulted largely from the need for radical prevention of the catastrophic effects of panic, which was the main cause of military defeats. The French colonel, Charles Ardant du Picq, who might be considered the *de facto* precursor of studies on the *face of battle*,<sup>69</sup> emphasized the decisive role of fear on the battlefields<sup>70</sup> and a characteristic feature of ancient battles – the tendency to “knock down” the defeated which resulted in disproportionately high casualty rate among the losing troops.<sup>71</sup> Those who were defeated, even if they gave

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<sup>65</sup> E.g. Frontin. *Str.* 2.8.14 (Philip II). Interesting analogies may also be found in early modern armies, e.g. special category of non-commissioned officers (*towarzysze zajeżdżający*) in some Polish regular formations in the 17<sup>th</sup> century, whose task was to ensure discipline during combat and to prevent soldiers from escaping, see e.g. K. Łopatecki, “Przestępstwo ucieczki z pola bitwy,” pp. 199–201.

<sup>66</sup> Liv. 2.58.6–59.11; 5.19.4; 10.3.6–7; 25.15.9–13; 27.14.13–14; Frontin. *Str.* 2.8.11; Val. Max. 2.7.9; see also C. Wolff, *Déserteurs et transfuges*, pp. 14–19.

<sup>67</sup> In order to avoid confusion and panic during combat, the Greek commanders sometimes allowed “reluctant” soldiers not to go to the battle, e.g. Polyaeus *Strat.* 2.3.3 (Epaminondas); but they also used harsh methods to restore discipline: Clearchus ordered to treat as enemies and kill the soldiers who were spreading panic in the camp at night, Polyaeus *Strat.* 2.2.10.

<sup>68</sup> Which was perfectly known to good commanders, see e.g. Caes. *BCiv.* 3.72.4; *BAlex.* 18.2.

<sup>69</sup> Term coined by John Keegan (J. Keegan, *The Face of Battle*, London 1976): practical mechanics of battle and its real face, as seen from the point of view of the soldiers, with stress put on psychological aspects. Keegan refers to the work of Ardant du Picq, “who made in the middle of the nineteenth century a strikingly novel approach to the study of battle via the study of human behaviour” (p. 70). The main aim of the French author was “d’étudier sur le vif l’homme dans l’action du combat,” C. Ardant du Picq, *Études sur le combat*, Paris 1880, p. 1.

<sup>70</sup> *Ibid.*, Première partie: “Le combat antique.”

<sup>71</sup> *Ibid.*, pp. 56–60; 80: “Les vainqueurs perdent très peu de monde et les vaincus sont exterminés”; see also P. Sabin, “The Face of Roman Battle,” p. 8: “The losers could suffer appalling casualties in the

up, could not expect a merciful treatment.<sup>72</sup> One reason for this was the fact that the goal of the victors was chiefly to obtain booty, including arms.<sup>73</sup> For the Roman commanders, the requirements regarding the number of enemies killed, allowing a triumph, were also of considerable importance. To vanquish the enemy meant to inflict severe losses, and those fleeing the battlefield were most often massacred. In Livy's account there are several cases of *caedes* or *strages fugientium*.<sup>74</sup> Moreover, panic could cause auto-destruction, like at Sentinum where "many of the [Roman] first line were trodden underfoot" by the cavalry in panic,<sup>75</sup> or at Dyrrachium where a part of Caesar's soldiers and officers were "overwhelmed at the ditches and lines of investment and river-banks in the panic and flight of their comrades."<sup>76</sup>

In this context, the importance of the soldiers' fortitude, bravery and moral strength so praised by ancient writers, is understandable. The army that showed greater self-confidence and intrepidity had more chance of winning.<sup>77</sup> According to the logic of battle, the most important thing was to ensure the combat capability of the unit and prevent general panic, *la contagion de la fuite*.<sup>78</sup> Thus, the elimination of the *fugientes*, especially the first who started to flee, may be seen not exactly – or not only – as a punishment, but as a harsh preventive measure.

From a socio-legal point of view, a deserter from the battlefield, who had broken the military oath and violated his loyalty, lost the status of a soldier and even of a citizen, and was no longer protected by law.<sup>79</sup> Moreover, since the escaping soldiers left the unit at a critical moment, and so could endanger the rest of the army, they were

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battle itself or in the ensuing pursuit, but the victors rarely suffered more than 5 per cent fatalities even in drawn-out engagements"; A.K. Goldsworthy, *The Roman Army at War*, pp. 223–224, 263; C. Wolff, *Déserteurs et transfuges*, p. XII.

<sup>72</sup> A.K. Goldsworthy, *The Roman Army at War*, pp. 223, 263.

<sup>73</sup> C.E. Brand, *Roman Military Law*, p. 61; S.P. Oakley, "The Roman Conquest of Italy" [in:] *War and Society in the Roman World*, eds. J. Rich, G. Shipley, London–New York 2002, p. 14; G. Tagliamonte, "Arma Samnitium".

<sup>74</sup> E.g. Liv. 6.9.11; 8.39.9.

<sup>75</sup> Liv. 10.28.9–11.

<sup>76</sup> Caes. *BCiv.* 3.71.2; 3.69.3 (transl. A.G. Peskett); see also: *BAlex.* 76.2; *BGall.* 8.48.7.

<sup>77</sup> It is stressed by Goldsworthy (who closely follows Ardant du Picq): "Moral, far more than physical, factors were of most importance in determining the course of the fighting. The formations adopted by units were determined far more by the need to prevent soldiers from running away, than by the practical requirements of manoeuvre and weapons usage. The appearance of force and confidence, even if it were only a façade, was more important than the actual fighting power of a unit. An attack failed if the defenders stayed in their position, and appeared to be steady," A.K. Goldsworthy, *The Roman Army at War*, pp. 244–245; C. Ardant du Picq, *Études sur le combat*, pp. 44–46.

<sup>78</sup> *Ibid.*, p. 68.

<sup>79</sup> S.G. Chrissanthos, "Keeping Military Discipline," p. 322; deserter's condition remained close to that of the archaic *homo sacer*, who was totally outlawed, see: M.S. Popławski, *Bellum Romanum*, pp. 310; 320; R. Fiori, *Homo sacer*, pp. 66–72; 73–100; E. Cantarella, *Les peines de mort*, pp. 277–278, B. Albanese, "Sacer esto," p. 36 („*homo sacer* – come soggetto 'scomunicato' e lasciato alla divinità – senza tutela delle leggi umane"); R. Fiori, "La condizione di *homo sacer*," pp. 217–219.

treated not only as deserters, but as enemies (*pro hoste habentur*),<sup>80</sup> hence they had to be killed.

To conclude, in order to prevent or stop panic during combat and force soldiers to fight, Roman commanders usually issued an order that those who were trying to flee be killed on the spot. In similar circumstances such a measure was certainly also taken by Italic commanders.

### SPECIAL DISCIPLINE IN THE SAMNITE LINEN LEGION: THE OBLIGATION TO KILL DESERTERS ON THE BATTLEFIELD AS PART OF THE MILITARY OATH

According to Livy, the Samnites<sup>81</sup> went a step further by including the obligation to kill fleeing soldiers in the military oath of their picked troops. Some time after the defeat at Sentinum, they made an all-out effort to face the Romans once again and defend Samnium: they conscripted all men capable of fighting:-

. . . they held a levy throughout Samnium under this new ordinance, that whosoever of military age did not report in response to the proclamation of the generals, or departed without their orders, should forfeit his life to Jupiter.<sup>82</sup>

Forfeiting a person who had violated a law to Jupiter (*sacratio capitis*, making somebody *sacer*) was characteristic of archaic sacred laws (*leges sacratae*)<sup>83</sup> which

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<sup>80</sup> E.g. Liv. 2.20.5; 10.36.7; 37.43.1–5; Val. Max. 2.7.10; Frontin. *Str.* 4.1.23; 2.8.7; C. Wolff, *Déserteurs et transfuges*, pp. 14–17, 20–21.

<sup>81</sup> On institutional aspects and political organisation of Samnite peoples see e.g. E. T. Salmon, *Samnium and the Samnites*, pp. 77–101; A. La Regina, “I Sanniti,” pp. 304–361; C. Letta, “Dall’oppidum al’ nomen’: i diversi livelli dell’aggregazione politica nel mondo osco-umbro” [in:] *Federazioni e federalismo nell’Europa antica*, eds. C.S. Bearzot, L. Aigner Foresti, A. Barzanò, L. Prandi, G. Zecchini, Milano 1994, pp. 387–405; G. Tagliamonte, *I Sanniti*, pp. 254–261; F. Senatore, *La lega sannitica*, Capri 2006; E. Bispham, “The Samnites” [in:] *Ancient Italy: Regions without Boundaries*, eds. G. Bradley, E. Isayev, C. Riva, Exeter 2007, pp. 179–223; S. Bourdin, “Les Samnites: perspective historique. Les Samnites en Italie centrale: définition, identité, structure” [in:] *Entre archéologie et histoire: dialogues sur divers peuples de l’Italie préromaine*, eds. M. Abersson, M.C. Biella, M. Di Fazio, M. Wullschleger, Berne 2014, pp. 205–220; idem, “L’organisation politique et territoriale des peuples de l’Italie préromaine vue par Tite-Live,” *Mélanges de l’École française de Rome – Antiquité* 2019, vol. 131, no. 1, pp. 53–64. Abundant bibliography can be found in these works.

<sup>82</sup> Liv. 10.38.2–3: “Dilectu per omne Samnium habito nova lege, ut, qui iuniorum non convenisset ad imperatorum edictum quique iniussu abisset, eius caput Iovi sacraretur.”

<sup>83</sup> Whoever violated a *lex sacrata* was forfeited to the gods; Festus *Gloss. Lat.* p. 328 L.: “sacratae leges sunt quibus sanctum erat ut si quis adversus eas fecisset, sacer alicui deorum esset cum familia pecuniaque”; on *homo sacer*, see n. 16. The best-known Roman sacred law was that establishing the tribes of the plebs in 494 BC, Liv. 2.33.1–3. On *leges sacratae* see e.g. M.S. Popławski, *Bellum Romanum*, pp. 305–337; T. Cornell, *The Beginnings of Rome*, pp. 259–260; A. Ziótkowski, *Historia Rzymu*, Poznań 2004, pp. 97–98; G. Pellam, “*Sacer, Sacrosanctus, and Leges Sacratae*,” *Classical Antiquity* 2015, vol. 34, no. 2, pp. 322–334. Pellam’s conclusion that: “the evidence seems to suggest that

were an ancient Roman and Italic type of law.<sup>84</sup> Other sources confirm, in fact, that the Samnite levy was enforced by a *lex sacrata*,<sup>85</sup> although Livy defines it enigmatically as *nova lex*. It should also be stressed that this kind of extraordinary levy was a custom practised in Italy in extreme danger,<sup>86</sup> as it was the “most effective means of collecting soldiers.”<sup>87</sup> Therefore, the Samnite levy was by no means a new way of raising an army, introduced before the battle of Aquilonia. As a result of general mobilisation among the Samnite peoples, a “federal” army was to be formed. Since the Samnite *ethnos* was not a single “bloc,” but a kind of federation or league of peoples,<sup>88</sup> raising a common army, in particular an élite formation, and ensuring its cohesion must have required a special approach.

When the conscripts had gathered in a fixed place, the Samnite nobles swore a special oath. Livy presents the *ritus sacramenti* as a terrifying ritual:

On the conclusion of the sacrifice the general by his apparitor commanded to be summoned all those of the highest degree in birth and deeds of arms: and one by one they were introduced. Besides other ceremonial preparations such as might avail to strike the mind with religious awe there was a place all enclosed, with altars in the midst and slaughtered victims lying about, and round them a guard of centurions with drawn swords. The man was brought up to the altar, more like a victim than a partaker in the rite, and was sworn not to divulge what he should there see or hear. They then compelled him to take an oath in accordance with a certain dreadful form of words, whereby he invoked a curse upon his head, his household, and his family, if he went not into battle where his generals led the way, or if he either fled from the line himself or saw any other fleeing and did not instantly cut him down. Some there were at first who refused to take this oath; these were beheaded before the altars, where they lay amongst the slaughtered victims – a warning to the rest not to refuse.<sup>89</sup>

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it was normal for archaic laws to include a provision that violators become *sacer*. Perhaps the *lex sacrata* was the earliest form of legitimacy which the Romans found for their laws” (p. 333) is convergent with Popławski’s views according to which all archaic Roman laws were *leges sacratae* (M.S. Popławski, *Bellum Romanum*, pp. 308, 325–326, 337), i.e. the laws whose main feature was the *sacratio capitis* as a consequence of their violation. This large definition of *leges sacratae* seems the most appropriate in the context of early Roman and Italic legislation.

<sup>84</sup> M.S. Popławski, *Bellum Romanum*, see n. 83; S. Tondo, “Il ‘sacramentum militiae’ nell’ambiente culturale romano-italico,” pp. 113–119; T. Cornell, *The Beginnings of Rome*, p. 259; A. Ziółkowski, *Historia Rzymu*, p. 97; G. Pellam, “*Sacer, Sacrosanctus, and Leges Sacratae*,” pp. 332–333. According to Tondo (pp. 113–115), the *leges sacratae* had an Osco-Umbrian origin.

<sup>85</sup> Plin. *Hist. nat.* 34.18.43: “victis Samnitibus sacra lege pugnantibus.” See also S. P. Oakley, *A Commentary on Livy*, vol. IV, pp. 394–395.

<sup>86</sup> Liv. 4.26.3 (Aequi and Volsci); 9.39.5 (Etruscans); 36.38.1 (Ligurians).

<sup>87</sup> Liv. 4.26.3.

<sup>88</sup> On federal organisation of the Samnite peoples see in particular: C. Letta, “Dall’‘oppidum’ al ‘nomen’”; F. Senatore, *La lega sannitica*; S. Bourdin, “Les Samnites: perspective historique”; on aspects related to their ethnic identity see e.g. A. La Regina, “Appunti su entità etniche e strutture istituzionali nel Sannio antico,” *Annali di Archeologia e Storia Antica* 1981, vol. 3, pp. 129–137; E. Dench, *From Barbarians to New Men: Greek, Roman, and Modern Perceptions of Peoples of the Central Apennines*, Oxford 1995, esp. pp. 175–217; R. Scopacasa, *Ancient Samnium: Settlement, Culture and Identity between History and Archaeology*, Oxford 2015.

<sup>89</sup> Liv. 10.38.7–10. See also Cass. Dio 8.36.29: “... they [the Samnites] bound themselves with frightful oaths, each man swearing not to flee from the contest himself and to slay any one who should undertake to do so.” In the Dio’s passage the name of the Linen Legion does not appear.

Then, a separate formation was created with the use of an ancient system of recruitment (*vir virum legere*):

When the leading Samnites had been bound by this imprecation, the general named ten of them and bade them choose every man another, and so to proceed until they had brought their number up to sixteen thousand. These were named the ‘Linen Legion’ from the roof of the enclosure wherein the nobles had been sworn<sup>90</sup> and were given splendid arms and crested helmets, to distinguish them from the rest.<sup>91</sup>

We know very little about the legendary *legio linteata*. It was an élite force of the Samnite peoples, probably consecrated to Jupiter.<sup>92</sup> Although it is mentioned explicitly only in relation to the battle of Aquilonia, it seems that it was raised more than once during the wars against the Romans.<sup>93</sup> In battle, it was placed on the privileged, more prestigious right wing.<sup>94</sup> Its soldiers, distinguished by their clothes and arms, could in fact have been subject to a special religious-military initiation and obliged to fight to the death.<sup>95</sup> Festus recorded that they had committed themselves not to yield to the enemy – *non cessuros se Romano militi iuraverunt*.<sup>96</sup>

Creation of an élite unit in situations of danger was not an isolated case in Italy; in the seventh book Livy tells us about picked troops formed by the Hernici in 362 BC, just before their subjugation by the Romans. Some parallels with the Samnite practices can be drawn:

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<sup>90</sup> Probably also from the white linen tunics of consecrated soldiers, Liv. 9.40.9 (see below, n. 93); 10.38.12; Festus *Gloss. Lat.* p. 102 L.

<sup>91</sup> Liv. 10.38.12. Of course, the recruitment of the Linen Legion soldiers could not have taken place just before the battle, but much earlier, as the troops had to be trained and prepared for fighting.

<sup>92</sup> D. Briquel, “Sur les aspects militaires du dieu ombrien Fisis Sancius,” pp. 142–143. It may be confirmed by the fact that the armour of the defeated Samnites from the Linen Legion was used to make a statue of Jupiter in the Capitol, Plin. *Hist. nat.* 34.18.43: “fecit et Sp. Carvilius Iovem, qui est in Capitolio, victis Samnitibus sacrata lege pugnantibus e pectoralibus eorum ocreisque et galeis.” As Pliny says, the statue was made of bronze parts of body armour of the Samnites (breastplates, greaves and helmets). According to Agnès Rouveret, it might be a “reconnaissance de la part des Romains, de la consécration religieuse de la troupe d’élite . . . Ces *arma* semblent tabou . . . Elles sont, en quelque sorte, la propriété de la divinité et doivent le rester,” A. Rouveret, “Tite-Live, Histoire Romaine IX, 40: la description,” p. 116.

<sup>93</sup> Most probably, the Linen Legion fought also in 309 (310) BC, Liv. 9.40; 10.39.13; S.P. Oakley, *A Commentary on Livy*, vol. III: Book IX, Oxford 2005, pp. 504–528. In 9.40.1–3 Livy describes the armament of two Samnite troops, one of which can be identified with the Linen Legion: “The enemy, besides their other warlike preparations, had made their battle-line to glitter with new and splendid arms. There were two corps: the shields of the one were inlaid with gold, of the other with silver . . . The tunics of the gilded warriors were parti-coloured; those of the silver ones were linen of a dazzling white” (transl. of all quotations from Book 9: B.O. Foster).

<sup>94</sup> Liv. 9.40.9; see also S. P. Oakley, *A Commentary on Livy*, vol. III, pp. 519–520; S. Northwood, “Restorations in Livy 9.40: A Reassessment,” *Classical Quarterly* 1996, vol. 46, no. 1, pp. 310–311.

<sup>95</sup> C. Saulnier, *L’armée et la guerre*, pp. 94–95. The commitments of the Linen Legion should not be seen as a kind of collective *devotio* which was close to a ritual suicide (cf. Decius’ *devotio*, Liv. 10.28); from the military point of view, it would be unacceptable to “devote” thousands of soldiers; *sacriati* meant that they were fighting under a *lex sacrata* and had a special status, but their primary task was to fight, not to seek death or commit mass suicide which would go against their military aims.

<sup>96</sup> Festus *Gloss. Lat.* p. 102 L.



... aware that the forces of their adversaries had been augmented, they also strengthened theirs. All who bore the name of Hernici and were of military age were called upon, and eight cohorts were formed, each numbering four hundred of their best men. This choice flower of their manhood they inspired with additional hope and courage by a decree which allowed them double pay. They were exempted, also, from military tasks, in order that, being reserved for the one labour of fighting, they might be sensible of an obligation to exert themselves beyond the capacity of ordinary men. Finally, they were assigned a post in the battle outside the line, to make their bravery the more conspicuous.<sup>97</sup>

As clearly shown in this passage, in some critical situations the Italic peoples strengthened their forces to face the augmented forces of the Romans. In this context, it may be worth reconsidering the information given by Livy on the strength of the Samnite select “linen” troops. Many scholars believe the figure of sixteen thousand soldiers to be erroneous, excessive for an élite formation. One of the solutions to this problem proposed by Christiane Saulnier is that four cohorts of four hundred men were raised,<sup>98</sup> but since the Hernici, a less numerous people, had raised eight picked cohorts of four hundred men each, why would the Samnites have raised only four? Compared to the forces of the Hernici, formed seventy years earlier, the number of the Linen Legion’s soldiers perhaps should not be deemed puzzling. Nicholas Sekunda and Simon Northwood hypothesise that it may have resulted from a structure corresponding to the four Roman consular legions.<sup>99</sup>

The Hernici raised an élite formation to defend their land. It is likely that the mission of the Samnite “linen” troops was the same, at least at the end of the fourth and at the beginning of the third century – to defend Samnium against external enemies. This may be confirmed by the fact that the Linen Legion is not mentioned at Sentinum in 295 BC.

The fate of the Linen Legion during and after the bloody struggle at Aquilonia is unknown. The battle itself is not described in detail, perhaps due to insufficient information in the sources, but also because Livy focuses his account on religious, moral and ideological aspects of the fight. According to him, the Samnites “resisted, but sluggishly, like men whom cowardice restrained from running,”<sup>100</sup>

for their eyes beheld all that array of the secret rite, and the armed priests, and the mingled slaughter of men and beasts, and the altars spattered with the blood of victims – and with that other blood – and they could hear the baleful execrations (*dira exsecratio*), and that dire oath framed to invoke perdition on their families and on their stock. These were the chains that stayed them from flight, and they feared their countrymen more than they feared their foes.<sup>101</sup>

And finally most of the Samnites were forced to flee – “the sworn and the unsworn fled alike.”<sup>102</sup>

<sup>97</sup> Liv. 7.7.4–6 (transl. B.O. Foster); see also C. Saulnier, *L’armée et la guerre*, pp. 112, 124.

<sup>98</sup> *Ibid.*, p. 94.

<sup>99</sup> N. Sekunda, S. Northwood, *Early Roman Armies*, pp. 44–47.

<sup>100</sup> Liv. 10.41.4.

<sup>101</sup> Liv. 10.41.3–4.

<sup>102</sup> Liv. 10.41.10.

However, we do not have a reliable account of the battle, but only a view from the perspective of the victors. Livy says that some of the enemies fled, but one might suppose that at some point the Samnite commanders gave a signal to retreat to save a part of the army.<sup>103</sup> This would have been in line with the *stratégie de repli* preferred by the Samnites, including quick retreat to safe places in the mountains, consistent with the tactics of irregular (*guerilla*) warfare.<sup>104</sup> It is supported by the fact that even after the general victory, the Romans were still afraid of the enemy lurking in the area.<sup>105</sup> Of course, it is doubtful whether the élite soldiers could also have been ordered to retreat. Although Livy asserts that *irati milites* were among those who fled, we should not exclude that the major part of the Linen Legion was annihilated. The number of Samnites killed at Aquilonia, though presumably inflated, indicates their enormous losses.<sup>106</sup> Livy admits that “the battle was fought fiercely.”<sup>107</sup> As Christiane Saulnier points out, each time the Samnites had accepted a pitched battle, the fighting seemed to have been deadly.<sup>108</sup> Very high number of casualties at Aquilonia may have resulted from bitter resistance of the “linen cohorts” and their real commitment to fight to the end, which can also be confirmed by the huge amount of armour of the Linen Legion soldiers used by the Romans to erect a colossal statue of Jupiter.<sup>109</sup> Did the Samnites actually kill any *fugientes* from their own ranks? We will never know. However, given their determination and fighting spirit attested in many passages of Livy’s narrative,<sup>110</sup> we have every reason to believe that despite the tone of the Roman – or Livian – version of the battle acts of cowardice were rare. The suggestion on the part of Livy that the best Samnite troops, for whom the battle at Aquilonia was probably a last stand, have fled before the Romans, may be seen as another way to discredit the military valour of the enemy.

## END OF PART 1

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<sup>103</sup> Liv. 10.41.11; 10.42.4.

<sup>104</sup> C. Saulnier, *L’armée et la guerre*, pp. 84–86, 123. See e.g. Liv. 9.43.8–9: “The enemy [the Samnites] had blockaded all the roads and seized the practicable passes, to prevent supplies being brought up anywhere. But though the consul offered battle daily, he could not entice them to fight. It was quite apparent that the Samnites would not accept an immediate engagement.”

<sup>105</sup> Liv. 10.42: in the evening, the Roman consul intended to withdraw the army from Aquilonia, “for the sun was now rapidly sinking in the west, and night coming on apace made all things dangerous and suspect, even to the victors.”

<sup>106</sup> Liv. 10.42.5; 10.43.8: at the battle of Aquilonia 20,340 Samnites were killed, while at Cominium – around 4,880.

<sup>107</sup> Liv. 10.41.1.

<sup>108</sup> C. Saulnier, *L’armée et la guerre*, pp. 94, 113; e.g. Liv. 10.31.5–7; Diod. 20.90.4.

<sup>109</sup> Plin. *Hist. nat.* 34.18.43, see n. 92.

<sup>110</sup> E.g. Liv. 10.14.12: “in the struggle of infantry the enemy were yielding not an inch”; 10.14.16: “The Samnite line held firm against their [of the Romans] galloping squadrons, and could at no point be forced back or broken” (297 BC). Perhaps it was during these struggles that Fabius Rullianus decimated two legions that had retreated, Frontin. *Str.* 4.1.35; see n. 39.

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