

SUB UMBRA FOEDERIS AEQUI

DONALD WALTER BARONOWSKI

THE ROMANS commonly established a legal basis for international relations by making treaties with other states. In republican times, the Latin and other Italian allies generally possessed treaties of military alliance with Rome, and this was often the case for allies outside of Italy. Another major type of *foedus*, of course, is the peace treaty, which sometimes included elements of military alliance. Armed conflict was often but not invariably ended by these means.¹

The Romans themselves distinguished two broad classes of treaty. The *foedus aequum* guaranteed more honourable and favourable terms for the allies, while other treaties placed them at a disadvantage in relationship

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The following works will be cited by author's name alone: E. Badian, *Foreign Clientelae* (264–70 B.C.) (Oxford 1958); J. Beloch, *Der italische Bund unter Roms Hegemonie: Staatsrechtliche und statistische Forschungen* (Leipzig 1880); W. Dahlheim, *Struktur und Entwicklung des römischen Völkerrechts im dritten und zweiten Jahrhundert v. Chr.* (Munich 1968); H. Galsterer, *Herrschaft und Verwaltung im republikanischen Italien: Die Beziehungen Roms zu den italischen Gemeinden vom Latinerfrieden 338 v. Chr. bis zum Bundesgenossenkrieg 91 v. Chr.* (Munich 1976); J. Gaudemet, "Maiestas populi Romani," in *Syntelesia Vincenzo Arancio-Ruiz* 2, ed. A. Guarino and L. Labruna (Naples 1964) 699–709; E. S. Gruen, *The Hellenistic World and the Coming of Rome* (Berkeley 1984); H. G. Gundel, "Der Begriff *Maiestas* im politischen Denken der römischen Republik," *Historia* 12 (1963) 283–320; T. Hantos, *Das römische Bundesgenossenssystem in Italien* (Munich 1983); H. Horn, *Foederati* (Diss., Frankfurt 1930); A. Klotz, *Livius und seine Vorgänger* 1 (Stuttgart 1940); T. Mommsen, *Römisches Staatsrecht* 3 (Leipzig 1888); H. Nissen, *Kritische Untersuchungen über die Quellen der vierten und fünften Dekade des Livius* (Berlin 1863); K.-E. Petzold, "Die beiden ersten römisch-karthagischen Verträge und das *Foedus Cassianum*," *ANRW* I 1 (1972) 364–411; A. N. Sherwin-White, *The Roman Citizenship*² (Oxford 1973); E. Täubler, *Imperium Romanum: Studien zur Entwicklungsgeschichte des römischen Reichs* 1 (Leipzig 1913); A. J. Toynbee, *Hannibal's Legacy* 1 (London 1965); K.-H. Ziegler, "Das Völkerrecht der römischen Republik," *ANRW* I 2 (1972) 68–114. The following special abbreviations will also be used: *RDGE* = R. K. Sherk, *Roman Documents from the Greek East: Senatus Consulta and Epistulae to the Age of Augustus* (Baltimore 1969); *Walbank* 3 = F. W. Walbank, *A Historical Commentary on Polybius* 3 (Oxford 1979).

¹The most recent general surveys of Roman international relations are by Dahlheim and Ziegler.

to Rome. The distinction between the two classes of *foedus* deserves more attention. Standard views about the content and structure of both types tend to be overly speculative, elaborate, and dogmatic. In this paper I hope to show that certain provisions were typical of the *foedera aequa*, whereas a wider range of clauses might render a *foedus* not *aequum*. In earlier times the differences between the two classes of treaty were quite real, and very important to the allies, but ultimately all possessors of *foedera* were treated as subordinate to Rome.

The essential difference between *foedera aequa* and other treaties is identified by Proculus (*Digest* 49.15.7.1), a Roman jurist of the Julio-Claudian period:

*liber autem populus est is, qui nullius alterius populi potestati est subiectus: sive is foederatus est <sive non foederatus>, item sive aequo foedere in amicitiam venit, sive foedere comprehensum est, ut is populus alterius populi maiestatem comiter conservaret. hoc enim adicitur, ut intellegatur alterum populum superiorem esse, non ut intellegatur alterum non esse liberum: et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viribus nobis pares sunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est.*²

That people is free, which is subject to the authority of no other people, whether it is bound by treaty <or not>, and also whether it has entered into friendship (i.e., with Rome) through a *foedus aequum*, or a clause has been included in its treaty stipulating that the people in question must courteously preserve the majesty of the other people (i.e., the Romans). For this clause is added so that it may be understood that one of the peoples is superior, not that the other is not free. Just as we understand that our clients are free men, even though they are equal to us neither in authority nor in rank nor in power, in the same way it should be understood that those peoples are free, who must courteously preserve our majesty.

Proculus distinguishes between a *foedus aequum* and a treaty that contains the majesty clause. A *foedus* of the second type is evidently not *aequum*.

²For this text I have consulted *Corpus Iuris Civilis* 1¹⁷: *Digesta*, ed. T. Mommsen (Berlin 1963), but I have adopted two changes. For *viri boni nobis praesunt* I read *viribus nobis pares sunt*, following the emendation by Haloander (1529) that is cited in the *apparatus criticus*. More crucial is the substitution of *sive is foederatus est* <*sive non foederatus*>, item for Mommsen's {*sive*} *is foederatus est* item. Mommsen, who deleted the first *sive*, interpreted the passage to mean that a free people is also bound by treaty. But the initial *sive* should be retained, and *sive is foederatus est* needs to be balanced by something like *sive non foederatus*, which has dropped out of the manuscripts. This restoration is proposed in *Digesta Justiniani Augusti*, ed. P. Bonfante et al. (Milan 1931). On this interpretation, Proculus declares that a free people may be either *foederatus* or not; and also, if it is *foederatus*, it may have a *foedus aequum* or a treaty containing the majesty clause. Thus Proculus identifies two broad classes of *populi liberi*, namely, those who did and those who did not have *foedera* (see Mommsen 655–658; Horn 8–9).

From this evidence it is generally deduced that the inferior sort of treaty regularly contained the majesty clause.³ This conclusion is unjustified. In contrasting the two classes of treaty, Proculus referred specifically to the majesty clause because the presence of this condition had been viewed by some legal writers as prejudicial to the *libertas* of Rome's allies. The text of Proculus allows the possibility that other clauses might render a *foedus* not *aequum*; it does not prove that the majesty clause was an essential component of the inferior grade of treaty.⁴ Proculus does, however, indicate the essential characteristics of the two classes of treaty. A *foedus aequum* recognized equality of status between the partners, whereas a *foedus* that was not *aequum* acknowledged their inequality.

What did the Romans call the lower type of *foedus*? Modern scholars frequently employ the term *foedus iniquum*.⁵ This practice appears to be founded on a passage in Livy (35.46.10), in which Micythio, a prominent citizen of Chalcis, refused to acknowledge Antiochus III as the liberator of Greece:

nullam enim civitatem se in Graecia nosse, quae aut praesidium habeat, aut stipendium pendat, aut foedere iniquo adligata quas nolit leges patiatur.

For (as he said) he knew of no city in Greece that either held a garrison or paid tribute to the Romans or, being bound by a *foedus iniquum*, endured laws that it did not wish.

Here it is most likely that *foedere iniquo* is not a technical term, but simply means "an unjust treaty." There seems to be no clear example of *foedus iniquum* used as a technical term in the ancient sources, and the Roman propensity for polite euphemism would probably have excluded an expression of that tenor from diplomatic usage.⁶ I therefore propose to avoid using the phrase *foedus iniquum* to denote the lower sort of treaty and, at the cost of sacrificing brevity, to denote the thing by readily intelligible periphrases.

The majesty clause (or a version of it) can be traced from at least the Roman-Aetolian treaty of 189 B.C., and probably from the Gaditane *foedus* of 206, until the time of Proculus. The sources contain some slight

³Beloch 199–200; Mommsen 663–664; Täubler 62–65; Horn 7, 30; Dahlheim 49, n. 58; Ziegler 92; Sherwin-White 122, 184.

⁴Cf. Badian 26–27; Toynbee 262, n. 4; Galsterer 101.

⁵Toynbee 261–265; Dahlheim 49, n. 58, 69; Sherwin-White 119–123, 183–185; Galsterer 101.

⁶Badian 26; E. Meyer, *Römischer Staat und Staatsgedanke*² (Zurich 1961) 513, n. 94; Toynbee 262; Dahlheim 120, n. 21; Ziegler 92, n. 206; Galsterer 101; J. Briscoe, *A Commentary on Livy, Books 34–37* (Oxford 1981) 209. Gruen (14–15) doubts whether *foedus aequum* itself was a technical term, and whether there existed any legal distinction between a *foedus* that was *aequum* and one that was not. Livy 35.46.10 is based on Polybius (see Nissen 174–175; Klotz 13), who had no special reason to reflect technical Latin in this context.

variations in terminology that are ultimately attributable to insignificant differences between the official Latin and Greek versions of treaties.

Proculus, in the text quoted above (346), referred to an inferior class of treaty containing the majesty clause. There is a close resemblance between that text and a passage in the *Pro Balbo* of Cicero in which the orator mentions the renewal in 78 B.C. of a treaty originally made between Rome and Spanish Gades in 206.⁷ Cicero (*Balb.* 35–36) declares of the renewed treaty:

nihil est enim aliud in foedere nisi ut pia et aeterna pax sit . . . adiunctum illud etiam est, quod non est in omnibus foederibus: maiestatem populi Romani comiter conservanto. id habet hanc vim, ut sit ille in foedere inferior . . . deinde cum alterius populi maiestas conservari iubetur, de altero siletur, certe ille populus in superiore condicione causaque ponitur cuius maiestas foederis sanctione defenditur.

For there is nothing else in the treaty except that there be sacred and eternal peace . . . That clause is also added, which is not in all treaties: Let them courteously preserve the majesty of the Roman people. This clause has the effect that the former people is inferior in the treaty . . . Also, when it is stipulated that the majesty of one people be preserved, and no mention is made of the other people, certainly that people is placed in a superior rank and position, whose majesty is protected by the sanction of the treaty.

⁷On the treaty of 206 see Livy *Per.* 28, 28.23.6–8, 28.37.10, 32.2.5; Cic. *Balb.* 32–37. Further references may be found in H. H. Schmitt, *Die Staatsverträge des Altertums 3: Die Verträge der griechisch-römischen Welt von 338 bis 200 v. Chr.* (Munich 1969) 277–280, no. 541. R. C. Knapp, *Aspects of the Roman Experience in Iberia 206–100 B.C.* (Valladolid 1977) 15–16, 41, 107, 210, and A. M. Eckstein, *Senate and General: Individual Decision Making and Roman Foreign Relations, 264–194 B.C.* (Berkeley 1987) 226, deny that the Gaditane treaty, concluded with the Roman officer L. Marcus Septimus, was a formal *foedus*; it was rather a “general’s pact” never formally approved at Rome. This, of course, is essentially Cicero’s point (*Balb.* 32–37); the agreement of 206 (and indeed that of 78 as well), which had never been approved as law by the assembly, was not *sacrosanctum*, and therefore not legally binding on Rome. Nevertheless, Cicero repeatedly uses the word *foedus* to describe both agreements, and expressly denies any intention of invalidating them. The orator’s ambivalence arises from a distinction between two requirements of treaty-making. On the one hand, treaties must be validated as international agreements between the contracting parties (ratification); on the other hand, treaties must be validated within each contracting state (domestic approval). For the ancient Romans, exchange of oaths by a magistrate, the senate, or the assembly constituted ratification; there was considerable debate concerning the legal requirements for domestic approval. An alleged defect in this area might in fact nullify an agreement; but the enduring toleration of the Gaditane treaty, not really challenged by Cicero’s tardy theoretical objection, indicates that the *foedus* was considered binding. On ratification and domestic approval of *foedera*, see A. Heuss, “Abschluss und Beurkundung des griechischen und römischen Staatsvertrages,” *Klio* 27 (1934) 14–53; Dahlheim 22, n. 10, 177.

Proculus and Cicero agree that the majesty clause marked the inequality between Rome and an ally. It obliged the latter to respect the superiority of Rome in international relations.⁸ Inequality of status is the essential characteristic of a *foedus* that is not *aequum*, and the majesty clause is only one means of expressing that inequality in a Roman treaty.

The majesty clause occurred in the Gaditane treaty of 78 B.C., the renewal of a *foedus* originally made in 206. The people of Gades wanted to renew their treaty in order to guarantee its validity, not to review the terms (Cic. *Balb.* 34). It is therefore likely that the majesty clause (or a version of it) appeared in the original *foedus*.⁹

The same stipulation (or a version of it) also occurred in the Roman-Aetolian treaty of 189 B.C. The text of Livy (38.11.2) reads *imperium maiestatemque populi Romani gens Aetolorum conservato sine dolo malo*. ("Let the Aetolian people preserve without fraud the dominion and majesty of the Roman people.") Proculus and Cicero, in their discussions of the majesty clause, use only the word *maiestatem*, whereas Livy writes *imperium maiestatemque*. The reason for this discrepancy is that Proculus and Cicero accurately employed the standard language of documentary texts, while Livy's account of the Roman-Aetolian treaty is based on Polybius.¹⁰ At this point the text of Polybius is incomplete. It reads as follows:

ὁ δῆμος ὁ τῶν Αἰτωλῶν τὴν ἀρχὴν καὶ τὴν δυναστείαν τοῦ δήμου τῶν Ῥωμαίων [— — —].
(Polyb. 21.32.2)

[Let] the Aetolian people [— — —] the primacy and power of the Roman people.

⁸Gundel 295–299; R. A. Bauman, *The Crimen maiestatis in the Roman Republic and the Augustan Principate* (Johannesburg 1967) 1–15. The Roman-Aetolian treaty of 189 contained the majesty clause as well as stipulations imposing unilateral military and political obligations on Aetolia (Polyb. 21.32.2–4). Gaudemet (706) views the latter stipulations (on military and political obligations) as regularly accompanying the majesty clause. This does not seem right, for Cicero (*Balb.* 35) declares that the Gaditane treaty of 78 B.C. contained nothing but the majesty clause and an injunction on the preservation of peace, while the Mytilenean treaty of 25 B.C., which also contained the majesty clause, established a mutual defensive alliance rather than imposed unilateral obligations on Mytilene (*RDGE* 26, col. d; below, 350–351, 355–356, 366).

⁹Gundel 292; below, 368–369. In 199 B.C., writes Livy (32.2.5), *Gaditanis item penitentibus remissum ne praefectus Gadis mitteretur, adversus id quod iis in fidem populi Romani venientibus cum L. Marcio Septimo convenisset*. E. Badian, "The Prefect at Gades," *CP* 49 (1954) 250–252, argues that on this occasion the Romans, notwithstanding a clause of the treaty made by the Gaditanes with Marcus in 206, relinquished their legal right to send a prefect to Gades (cf. Dahlheim 58, n. 25; Knapp [above, n. 7] 209–210). R. A. Bauman, "*Maiestatem populi Romani comiter conservanto*," *Acta Iuridica* (1976) 19–36, at 22, suggests that the reception of the Roman prefect could have been based either on an express condition of the treaty, or on a majesty clause.

¹⁰Livy 38.11.2–9 is based on Polyb. 21.32.2–15 (cf. 21.30.1–2): see Nissen 202–203; Klotz 14–15. Gundel 290 wrongly supposes that Livy (38.11.2–9) used a Latin source and accurately reproduced the terminology of the original Latin treaty.

Livy used two words (*imperium maiestatemque*) because Polybius had used two terms (τὴν ἀρχὴν καὶ τὴν δυναστείαν). *maiestatem* was required by the context, and Livy added *imperium* because the phrase *imperium maiestasque* (along with slight variations) was commonly used in the first century B.C.¹¹ The original Latin expression underlying Polybius' phrase was probably *maiestatem*. The Achaean historian, working from the Latin text of the treaty or from the official Greek version, may have rendered a single word by two in accordance with his predilection for reduplicative utterance, but it is more likely that his phrase occurred in the official Greek translation of the Aetolian *foedus*.¹²

The fragmentary text of a treaty made between Rome and Mytilene in 25 B.C. appears in *RDGE* 26, columns d and e. In most editions and texts, lines 1–2 of column d are interpreted as a guarantee of Mytilenean sovereignty and territorial integrity, and are restored accordingly.¹³ However, the analogy with the Roman-Aetolian treaty points to the majesty clause, and the neglected supplements of Viereck should be adopted:

ὁ [δῆμ]ος ὁ Μυτιληναίων ἀρχή[ν καὶ δυναστείαν τοῦ δήμου τοῦ Ῥωμαίων δια-] φυ-
λασσεῖτω οὕτως ὥς ἂν τι κ[– – –].¹⁴

¹¹Important references include Cicero's statement that in 100 B.C. the consuls were advised by the senate *operam . . . darent ut imperium populi Romani maiestasque conservaretur* (*Rab. Post.* 20), and his description of the senate's decree as *illud summum auxilium maiestatis atque imperi* (*Rab. Post.* 2). The Acta of the Secular Games held in 17 B.C. report a prayer addressed to Juno Regina, [*uti tu imperium*] | *maiestatemque p. R. Quiriti[um] duelli domique auxis, utique semper Latinus obtemperassit . . .*] (G. B. Pighi, *De Ludis Saecularibus Populi Romani Quiritium*² [Amsterdam 1965] 116, lines 126–127, which now replaces *CIL VI 32323 [ILS 5050]*). W. V. Harris, *War and Imperialism in Republican Rome, 327–70 B.C.* (Oxford 1979) 120–122, believes that *imperium maiestasque* was an "old-established official phrase" occurring in the secular prayer as early as 348 B.C. Although the expansionary sentiment expressed by the prayer of 17 B.C. would not be out of place at a much earlier date (Harris 117–127), it is not certain that the words *imperium maiestasque* were used in 348 B.C. Gundel (301–302) and Gruen (283) regard the phrase as an Augustan addition. Livy himself used it at 26.31.1, in a speech attributed to M. Claudius Marcellus, consul in 210: *non adeo maiestatis . . . populi Romani imperique huius oblitus sum . . .*

¹²My analysis follows the line of Badian 85, n. 1. Gundel (290, 295) and Bauman ([above, n. 9] 31, n. 30) argue (wrongly in my view) that the original Latin treaty read *imperium maiestatemque*, which Polybius rendered word for word. The expression ἀρχή (or ἡγεμονία) καὶ δυναστεία appears frequently in Polybius (e.g., 1.3.10, 1.63.9, 2.21.9, 3.33.6, 8.2.4, 15.9.2, 15.10.2, 21.16.8, 30.2.9).

¹³Paton restored ἀρχή[ν τὴν αὐτοῦ – – –] in *IG XII.2 35*, col. d, line 1, following T. Mommsen, "Das Potamon-Denkmal auf Mytilene," *SBPreuss* (1895) 895, no. 4.2. V. Arangio-Ruiz, "Senatus Consulta Silaniana de Mytilenensibus," *RFIC* 70 (1942) 130, restores ἀρχή[ν καὶ ἐπικρατείαν ἣν μέχρι νῦν ἔσχεν], which is adopted by Sherck (*RDGE* 26); cf. Gruen 744, n. 73.

¹⁴P. Viereck, *Sermo Graecus* (Göttingen 1888) 47, no. 23b; cf. Täubler 64–65. The compound verb [δία]φυλασσεῖτω (lines 1–2) seems right, for in line 1 it produces a line of

Let the Mytilenean people preserve the [primacy and power of the Roman people] in such a way as [— — —].

As the Mytilenean treaty appears to contain the phrase ἀρχὴν καὶ δυναστείαν in a majesty clause, that expression is likely to be the official Greek equivalent of *maiestatem*, and it is likely to have occurred in the Greek version of the Roman-Aetolian treaty. Therefore Polybius probably consulted the official Greek text of this *foedus*.¹⁵

Proculus and Cicero read *comiter*, while Livy has *sine dolo malo*. Again, Proculus and Cicero reproduce documentary language, of which Livy himself was aware (*hospitalia comiter conservata*, 42.24.10), but Livy depends on Polybius for the terms of the Roman-Aetolian treaty. For that reason, Livy 38.11.2 can be used to reconstruct the lacuna in Polyb. 21.32.2. Something corresponding to *conservato sine dolo malo* must be restored there. As *sine dolo malo* at Livy 38.11.5 is the Latin equivalent of χωρὶς δόλου in Polyb. 21.32.7, χωρὶς δόλου may be restored at Polyb. 21.32.2. That phrase may be Polybius' term for *comiter* in the original Latin text (or its equivalent in the official Greek version), but it is more likely to be a faithful reproduction of the official Greek version. Livy would naturally have rendered the phrase χωρὶς δόλου as *sine dolo malo*. In the so-called Piracy Law of 100 or 99 B.C., for instance, the expression ἄνευ δόλου πονηροῦ appears to be the equivalent of *sine dolo malo*, a term occurring in positive contexts of mandatory action. However, on four occasions ἄνευ δόλου πονηροῦ in this text is misused for the Latin (*sciens*) *dolo malo*, a term occurring in negative contexts of prohibition.¹⁶

The wording of the Mytilenean treaty further suggests the restoration of διαφυλαττέτω in Polyb. 21.32.2. The whole lacuna may now be restored διαφυλαττέτω χωρὶς δόλου, the supplement proposed by Hultsch in his edition of Polybius.¹⁷ In view of the appearance of [δια]φυλασσέτω in the

57 letters, an appropriate length for the non-indented lines of col. d. Lines 3, 7, and 12 (non-indented) have the following lengths in *RDGE* 26, col. d: 61, 60, 56 letters.

¹⁵Gundel (290) believes that Polybius (21.32.2) accurately reproduced the terminology of the official Greek version of the *foedus*.

¹⁶On the text and the date of the Piracy Law see M. Hassall, M. Crawford, and J. Reynolds, "Rome and the Eastern Provinces at the End of the Second Century B.C.: The So-Called 'Piracy Law' and a New Inscription from Cnidus," *JRS* 64 (1974) 195–220, with *SEG* 33 (1983) no. 868; G. V. Sumner, "The 'Piracy Law' from Delphi and the Law of the Cnidus Inscription," *GRBS* 19 (1978) 211–225; A. Giovannini and E. Grzybek, "La *Lex de piratis persequendis*," *MusHelv* 35 (1978) 33–47. On ἄνευ δόλου πονηροῦ in this text see E. Badian, "Two Notes on the Roman Law from Cnidus, 2: *Dolus malus*," *ZPE* 35 (1979) 161–167. Bauman (above, n. 9, 25–26) believes that *comiter* and *sine dolo malo* were either used concurrently in different treaties as official terms, or that *comiter* replaced *sine dolo malo* at some time between 189 and 78.

¹⁷*Polybii Historiae*, ed. F. Hultsch (Berlin 1870–1892); cf. Täubler 63. Polybius on several occasions uses the verb διαφυλάττω with ἀρχήν in the sense of "preserve or retain

Mytilenean treaty, that phrase probably stood in the official Greek version of the Roman-Aetolian *foedus*, and was probably copied accurately by Polybius from an authentic copy of the treaty.

Täubler discerned traces of the majesty clause in the treaty made between Rome and Cnidus probably in 45 B.C. However, speculation upon those exiguous remains is best left out of the discussion.¹⁸

Thus the majesty clause (or a version of it) can be traced from at least the Roman-Aetolian treaty of 189 B.C., and probably from the Gaditane *foedus* of 206, until the time of Proculus. This stipulation made a *foedus* not *aequum*.

The text of Proculus, however, suggests that it was not only the majesty clause that could have this effect. Cicero and Proculus both make it clear that the inferior class of treaty recognized the inequality between Rome and the ally. Several Latin texts expressly indicate or clearly imply that various forms of inequality could distinguish a *foedus* as being not *aequum*.

In 317 B.C., for instance, the people of Teanum Apulum *impetravere ut foedus daretur neque ut aequo tamen foedere sed ut in dicione populi Romani essent* (Livy 9.20.8). This *foedus*, which was not *aequum*, placed Teanum Apulum *in dicione populi Romani*. The term *dicio*, which appears frequently in Latin texts, is not capable of precise legal definition. It is a rather vague expression denoting Rome's power or authority over other states. For instance, the word can refer to Rome's control over *dediticii* (Livy 1.38.2; Dahlheim 13, n. 9) or the provinces (Cic. *Prov. Cons.* 22), to Roman hegemony over the Italian *socii* (Livy 41.6.12), or to the power of Rome exercised throughout the world (Livy 37.54.15; Vergil *Aen.* 1.236). In *CIL* I² 2.1 583, section 1, *dicio* appears in a group of terms (*arbitratus, dicio, potestas, and amiticia*) collectively expressing Rome's superior position in the world. Commenting on Livy 9.20.8, Badian writes, "In what the *dicio* consisted . . . we do not know" (28). The imprecision of the term rules out a categorical definition.¹⁹ The most we can safely say is that the people of

rule or kingship" (e.g., 7.3.8; 7.8.3; 15.3.6). See A. Mauersberger, *Polybios-Lexicon* (Berlin 1956-) s.v. διαφύλαττα.

¹⁸Täubler 450-454, fr. A, lines 11-13. On the date see C. Cichorius, "Ein Bündnisvertrag zwischen Rom und Knidos," *RhM* 76 (1927) 327-329. In 43 B.C., P. Cornelius Lentulus Spinther, acting governor of Asia, asked the Rhodians for military aid in accordance with their treaty as renewed in 51 B.C. Lentulus prudently endured their refusal and studied rudeness, *deminutionemque maiestatis non solum iuris nostri sed etiam imperi populi Romani* (Cic. *Fam.* 12.15.2). From this passage Bauman (above, n. 9, 36, n. 133) concludes that the majesty clause occurred in the Rhodian treaty of 51, and possibly in the original treaty of 165/4 as well. But surely in Roman eyes the act of disregarding treaty obligations and insulting a Roman magistrate in itself constituted derogation of Rome's *maiestas* (cf. Gundel 293-312; Gaudemet 701-705).

¹⁹The difficulty of trying to define the term *dicio* is well illustrated by Livy's account of the *Foedus Cassianum*. Although that treaty was itself *aequum* (8.4.2), the Latins

Teaunum Apulum accepted a treaty that in some way declared them to be under Roman control.

In 340 B.C. the Romans demanded that the Latins desist from their war against the Samnites (Livy 8.3.8, 8.5.1). Anticipating this demand, L. Annius, one of the Latin praetors (federal commanders), explained to his people that in the present circumstances they had two alternatives, utter subjection to Rome or complete equality:

nam si etiam nunc sub umbra foederis aequi servitutem pati possumus, quid abest quin proditis Sidicinis non Romanorum solum sed Samnitium quoque dicto pareamus respondeamusque Romanis nos, ubi innuerint, posituros arma? sin autem tandem libertatis desiderium remordet animos, si foedus, si societas aequatio iuris est ... cur non omnia aequantur? (Livy 8.4.2-3; cf. 7.12.7, 8.5.4-6)

For if even now, under the semblance of a *foedus aequum*, we are able to endure servitude, once the Sidicini have been betrayed how far are we from obeying the command not only of the Romans but also of the Samnites, and from replying to the Romans that we will put down our arms when they give the signal? But now, if a desire for liberty stirs your hearts, if the treaty and the alliance mean equality of legal status ... why is everything not made equal?

Annius protests that the Latins, despite their *foedus aequum*, may accept subjection to Rome, which presumes to dictate Latin foreign policy. The implication is that the Romans should not interfere in this way with an ally possessing a *foedus aequum*, but that such interference could be sanctioned by a treaty of the lower sort. On this occasion the Roman attempt to control Latin foreign policy was resisted, and resulted in the Latin War of 340-338. After this time the Romans normally controlled the foreign policy of all their Italian allies, whether their *foedera* were *aequa* or not. Political reality took precedence over the technical distinctions that persisted between the two classes of treaty.

According to Livy 42.25.1, in 172 B.C. three Roman envoys were sent to Perseus, king of Macedonia, *ad res repetendas ... renuntiandamque amicitiam regi*. On this occasion the king repudiated the treaty of peace made with the Romans in 196 by his father, Philip V, a treaty that he himself had renewed upon his succession in 179 (Livy 42.25.10; cf. 40.58.9). In its place Perseus suggested that a new treaty be concluded:

novum foedus si secum facere vellent, convenire prius de condicionibus debere; si in animum inducerent, ut ex aequo foedus fieret, et se visurum, quid sibi faciundum esset, et illos e re publica consulturos. (Livy 42.25.11)

until their defection had been *sub dicione populi Romani* (8.2.11), *in potestate* (8.2.12), and *sub Romano imperio* (8.4.10), a condition at variance with the distinction between the two types of treaty made at 9.20.8, concerning Teaunum Apulum.

If they wanted to make a new treaty with him, there ought first (he said) to be an agreement on terms; if they resolved that a treaty be made on conditions of equality, he would see what he ought to do, and they would deliberate in the interest of the (*sc.* Roman) state.

Livy implies that Perseus requested a *foedus aequum* to replace the existing treaty, and he says that the king did this after being accused by the Roman envoys of violating the agreement of 196. The envoys had alleged numerous infringements of particular clauses of that treaty:

foedus cum Philippo ictum esse, cum ipso eo post mortem patris renovatum, in quo diserte prohiberi eum extra fines arma efferre, prohiberi socios populi Romani lacessere bello. (Livy 42.25.4–5)²⁰

(They said that) a treaty had been struck with Philip, and renewed with the (present) king himself after the death of his father, in which it was expressly forbidden for him to bear arms beyond his boundaries or to assail the allies of the Roman people in war.

Thus in Livy's account the treaty of 196 had imposed unilateral restrictions of foreign policy on Macedonia, and for that reason the *foedus* was not *aequum*. In reality, as the stipulations cited by the Roman envoys in this passage are annalistic fabrications, they do not prove that the *foedus* actually was not *aequum*.²¹ Nevertheless, Livy 42.25.4–5, 10–11 does allow us to make a general observation: unilateral restriction of the ally's foreign policy would mark a *foedus* as not *aequum*.

In 184 B.C., the Achaeans were having trouble with Lacedaemon, first incorporated into their League in 192.²² As the Romans showed sympathy for the Lacedaemonians, Lycortas, *strategos* of the League, protested to Ap. Claudius, head of the Roman delegation sent to Achaea:

²⁰Cf. Livy 42.11–13; RDGE 40.

²¹Livy 42.25 is based on a Roman annalistic source, and the embassy is probably a patriotic fiction (Nissen 246–247; Klotz 67–68; P. Jal, *Tite-Live: Histoire romaine, Livres 41–42* [Paris 1971] 75, n. 4). A version of the restrictive clauses cited at Livy 42.25.4–5 occurs in 33.30.6, 9 as part of the senatorial decree of 196 concerning peace with Philip v. Livy's account of this decree (33.30), although based primarily on Polybius (18.44), contains spurious terms derived from the Roman annalists (Nissen 144–146; Klotz 7–8; F. W. Walbank, *A Historical Commentary on Polybius* 2 [Oxford 1967] 609–610; J. Briscoe, *A Commentary on Livy, Books 31–33* [Oxford 1973] 306). E. S. Gruen, "The Supposed Alliance between Rome and Philip v of Macedon," *CSCA* 6 (1973) 122–136, demonstrates that the Romans did not make a treaty of alliance with Philip v after 196 (cf. Polyb. 18.48.4); the *foedus* mentioned in Livy 42.25 and elsewhere is the peace treaty of 196.

²²On the incorporation of Lacedaemon into the Achaean League see Livy 35.37.1–3; 38.31.5; 38.34; 39.37.6–7, 15; Plut. *Phil.* 15.4–5; 16.3; Paus. 7.8.4–5; 8.51.1, with Walbank 3.1, 64.

si foedus ratum est, si societas et amicitia ex aequo observatur, cur ego, quid Capua capta feceritis Romani, non quaero, vos rationem reposcitis, quid Achaei Lacedaemoniis bello victis fecerimus? . . . specie, inquis, aequum est foedus: re apud Achaeos precaria libertas, apud Romanos etiam imperium est. (Livy 39.37.10, 13)

If the treaty is valid, if the alliance and friendship are observed on terms of equality, why do I not inquire what you Romans did after the capture of Capua, while you demand an account of what we Achaeans did after the Lacedaemonians were defeated in war? . . . In appearance, you say, the *foedus* is *aequum*: in reality, the Achaeans have insecure liberty, but the Romans have even dominion.

Although the speech attributed to Lycortas may show evidence of Livian embellishment, the Latin author based his account on that of Polybius, who must have given an accurate report of his father's words.²³ Lycortas complained that the Romans, despite the *foedus aequum* of Achaea, presumed to interfere within the internal affairs of the League. The implication is that the Romans should not interfere in this way if the ally possesses a *foedus aequum*, but that such interference might be sanctioned by a treaty of the lower grade. Nevertheless, the Romans were inclined to disregard such distinctions, and an interesting section of Polybius (24.11–13) reveals that the Achaean statesman Philopoemen had tried to keep Roman demands within the limits of the Roman-Achaean *foedus*.

To sum up, treaties of the lower class recognized inequality of status between the Romans and their allies, whereas *foedera aequa* legally acknowledged the equality of the parties. On certain fundamental issues, however, the Romans tended to ignore legal distinctions, and ultimately the formal differences between the two classes of treaty came to have little practical significance.

Several passages will demonstrate the essential nature of the *foedus aequum*. It has already been noted that in 340 B.C. the Romans ordered the Latins to desist from their war against the Samnites (Livy 8.3.8, 8.5.1), but that this act contravened the *foedus aequum* of the Latins (Livy 8.4.2–3). This inference is corroborated by what we know of the *Foedus Cassianum*, made traditionally in 493 B.C. between Rome and the Latin League.²⁴ It

²³Nissen 224; Klotz 16. The accuracy of Polybius concerning Lycortas is evident from his willingness to report facts that were unflattering or damaging to his father: see, for instance, Polyb. 22.9; 23.15; 28.6.1–7.1, with G. A. Lehmann, *Untersuchungen zur historischen Glaubwürdigkeit des Polybios* (Münster 1967) 197–202.

²⁴On the *Foedus Cassianum* see P. Catalano, *Linee del sistema sovranazionale romano* 1 (Turin 1965) 248–270; Petzold 364, n. 1, 402–411; F. de Martino, *Storia della costituzione romana* 2² (Naples 1973) 73, n. 2; Galsterer 84–87; M. Humbert, *Municipium et civitas sine suffragio: L'Organisation de la conquête jusqu'à la guerre sociale* (Rome 1978) 68–72; Hantos 150–151; T. J. Cornell, "Rome and Latium to 390 B.C.," in *CAH*

was a treaty of mutual defensive alliance, prohibiting war between the parties, forbidding either party to grant aid or transit to enemies of the other, and obliging each party to assist the other if attacked by a third party. The parties agreed, moreover, to establish a federal army under Roman command.²⁵ Thus in going to war against the Samnites, the Latins technically were not violating any specific condition of their treaty with Rome, although of course they were placing their Roman alliance under severe strain, for the Romans had made a treaty with the Samnites obliging them to help the latter against aggressors. If the Romans were to give such help, there would be a clash between Rome and the Latins (Livy 8.1.7–2.11). Although in principle each of Rome's allies (if it had a *foedus aequum*) retained the right to an independent foreign policy, on this occasion the Romans attempted to prevent the Latins from waging war against the Samnites, and after this time the Romans normally would not in practice permit their allies to fight among themselves. But Annius was technically and legally right when he protested Rome's demand concerning the Samnite War.

In 341 the Samnites had asked Rome to make the Latins stop the war:

7².2 (Cambridge 1989) 264–281; T. J. Cornell, "The Recovery of Rome," in *CAH* 7².2 (Cambridge 1989) 309–323. The chief ancient sources are Livy 2.33.9; Cic. *Balb.* 53; Dion. Hal. *Ant. Rom.* 6.95.2; Festus (ed. Lindsay) p. 166, s.v. *Nancitor*; p. 276, s.v. *Praetor*. These and related texts are collected in H. Bengtson, *Die Staatsverträge des Altertums 2: Die Verträge der griechisch-römischen Welt von 700 bis 338 v. Chr.* (Munich 1962) 22–26, no. 126 (to which add Dion. Hal. *Ant. Rom.* 8.15.2). Citations from the treaty appear to be derived from a reconstruction of the ancient document made in the time of Cicero.

²⁵Festus (ed. Lindsay) p. 276, s.v. *Praetor* is usually interpreted as evidence that the federal command alternated between Rome and the Latin League, but Mommsen (618–619) argued that this passage merely indicates that the Romans commanded the federal army whenever it was marshalled. The terms presented by Dion. Hal. *Ant. Rom.* 6.95.2 (where no mention occurs of the federal army) closely resemble those appearing in treaties of mutual defensive alliance made between Rome and Hellenistic states in the second and first centuries B.C. The following examples are known from epigraphical texts: *OGIS* 762 (Cibyra); D. Triantaphyllos, "Συμμαχία Ῥωμαίων καὶ Μαρονείων," *Θρακικὴ Ἐπετηρίς* 4 (1983) 419–446 (Maronea); *IG* XII.2 510 (Methymna); *RDGE* 16B (Astypalaea); *IG* IX².1.2 242 (Thyrrhæum); *ILLRP* II 516 (Callatis); *RDGE* 26, columns d and e (Mytilene). Literary sources provide evidence for the treaties of Rome with Heraclea Pontica (Jacoby, *FGH Hist* 434 F 18.10) and Rhodes (Polyb. 30.5.9–10; 30.31.16–20; Cic. *Fam.* 12.15.2; Appian *BCiv.* 4.66–70). On the Rhodian treaty also see above, n. 18, and below, n. 37. That the Roman-Achaean treaty belongs to the series of mutual defensive alliances is evident from Livy 35.48.8–9 and Polyb. 23.9.12 (cf. Polyb. 23.17.3). On the Achaean treaty also see below, notes 37 and 44. The Roman *foedus* with Judaea of 161 B.C. closely resembles the Hellenistic ones (*I Macc.* 8:23–30; Josephus *AJ* 12.417–418, with E. Schürer, *The History of the Jewish People in the Age of Jesus Christ (175 B.C.–A.D. 135)* 1, ed. G. Vermes and F. Millar [Edinburgh 1973] 171, n. 33; D. Timpe, "Der römische Vertrag mit den Juden von 161 v. Chr.," *Chiron* 4 [1974] 133–152). On the Roman-Hellenistic treaties see Gruen 13–53, 731–744; on relations between Rome and the Jews see Gruen 42–46, 745–751.

Latinos Campanosque, si sub dicione populi Romani essent, pro imperio arcerent Samniti agro: sin imperium abnuerent, armis coercerent. (Livy 8.2.11)

(The Samnites asked that the Romans) keep the Latins and Campani away from Samnite territory by virtue of their authority, if those peoples were under the control of the Roman people; but if they rejected (sc. Roman) authority, (the Samnites asked that the Romans) restrain them by force of arms.

The Senate declared that Capua would be compelled to desist from war, but that

in foedere Latino nihil esse quod bellare cum quibus ipsi velint prohibeantur. (Livy 8.2.13; cf. 8.1.9–2.3)²⁶

(The Senate replied that) in the Latin treaty there was no clause that (the Latins) were prohibited from waging war against any states that they themselves wished.

On this occasion the Romans adhered to the strictest interpretation of the *Foedus Cassianum* because they were reluctant to admit that the Latins were no longer under their control (Livy 8.2.12, 8.4.9–10). Thus Livy 8.2.12–13 and 8.4.2–3 agree that the *Foedus Cassianum*, a *foedus aequum*, in principle guaranteed the right of the Latins to an independent foreign policy. Livy 8.2.11–13 suggests that before 341 the Romans had in practice exercised a control over the Latins that was not warranted by the treaty; after the Latin War such control was the norm in relations between the Romans and their allies in Italy.

Attacked by the Volsci in 489, the Latin League asked for military aid. As the Romans themselves had just been raided by Coriolanus, they permitted the Latins “to enrol their own army and to send out their own military commanders until they themselves (i.e., the Romans) should dispatch a military force. For in the treaty that they (i.e., the Romans) had made with them (i.e., the Latins) concerning friendship, both of these practices were forbidden” (Dion. Hal. *Ant. Rom.* 8.15.2).²⁷

This passage appears to say that the Latins were strictly forbidden to raise a separate army under their own commanders, but its real significance is likely to be quite the opposite of this. According to the *Foedus Cassianum*, the Romans were bound to assist their Latin allies when the latter were the victims of attack, and in those circumstances the aggressor was to be opposed by a federal army under Roman command. In 489 the Romans, unable to fulfil their obligations, permitted a departure from the required

²⁶On the text of Livy 8.2.13 now see the Budé edition by R. Bloch and C. Guittard, *Tite-Live: Histoire romaine, Livre 8* (Paris 1987).

²⁷Dion. Hal. *Ant. Rom.* 8.15.2: ἡ βουλὴ ... ἀπεκρίνατο ... αὐτοῖς δ' ἐκείνους ἐπιτρέπειν τὴν ἑαυτῶν στρατιὰν καταγράφειν καὶ ἡγεμόνας τῆς δυνάμεως ἰδίους ἐκπέμπειν ἕως ἂν αὐτοὶ ἐκπέμψωσι δυνάμιν. ἐν γὰρ ταῖς συνθήκαις αἷς ἐποιήσαντο πρὸς αὐτοὺς περὶ φιλίας ἀπόρρητον ἦν τούτων ἐκάτερον.

procedure. This passage does not prove that the Latins were in general prohibited from marshalling their own army, and it is consistent with the observations made earlier about the *Foedus Cassianum* (above, 355-357).

When trapped in the Caudine Forks by the Samnites in 321 B.C., the Romans asked for a *pacem aequam* (Livy 9.4.1-2). Pontius, the Samnite commander, replied:

inermes (sc. Romanos) cum singulis vestimentis sub iugum missurum; alias condiciones pacis aequas victis ac victoribus fore: si agro Samnitium decederetur, coloniae abducerentur, suis inde legibus Romanum ac Samnitum aequo foedere victurum; his condicionibus paratum se esse foedus cum consulibus ferire. (Livy 9.4.3-5)

(He replied that) he would send them (i.e., the Romans) unarmed, each wearing a single garment, under the yoke; the other terms of peace would be equal for the defeated and the victors: if there was a (sc. Roman) withdrawal from Samnite territory, and if the colonies were removed, thenceforth the Roman and Samnite (people), each using its own laws, would live under a *foedus aequum*; on these terms he was prepared to make a treaty with the consuls.

Apart from the humiliation of the first clause, this *foedus* was to be *aequum*, with each party recognizing the autonomy and territorial integrity of the other.

In 193 B.C. Menippus, an envoy of Antiochus III, asked the Romans to make a treaty with the king (Livy 34.57.4-6). His request was accompanied by a lecture on the classification of treaties:

esse autem tria genera foederum, quibus inter se paciscerentur amicitias civitates regesque: unum, cum bello victis dicerentur leges; ubi enim omnia ei, qui armis plus posset, dedita essent, quae ex iis habere victos, quibus multari eos velit, ipsius ius atque arbitrium esse; alterum, cum pares bello aequo foedere in pacem atque amicitiam venirent; tunc enim repeti reddique per conventionem res et, si quarum turbato bello possessio sit, eas aut ex formula iuris antiqui aut ex partis utriusque commodo componi; tertium esse genus, cum, qui numquam hostes fuerint, ad amicitiam sociali foedere inter se iungendam coeant; eos neque dicere nec accipere leges; id enim victoris et victi esse. (Livy 34.57.7-9)

(He said that) there were three types of treaty by which cities and kings agreed upon friendships among themselves. There was one type, when conditions were laid down for peoples defeated in war; for when everything has been surrendered to the party that is stronger in arms, what the latter wishes the defeated to have from among those things, and what he wants them to be deprived of, these are questions subject to his own power and decision. There was a second type, when parties equal in war entered into peace and friendship through a *foedus aequum*; for in that situation, restitution is sought and reparation is made by agreement and, if possession of any properties has been disturbed by war, questions involving such properties are settled either on the basis of pre-existing legal rights or on the basis of mutual advantage. There was a third type, when peoples who have never

been enemies come together to enter into friendship by a treaty of alliance; such parties neither lay down nor receive conditions, for that procedure is appropriate for a victorious and a defeated party.

Menippus classified treaties not according to their contents but according to the circumstances and manner in which they were made. In the first situation one party dictates terms to the other; in the second and third situations the parties agree on terms. However, underlying this analysis of circumstances are assumptions about the sort of treaty that emerges in each case. Actually, a *foedus aequum* could be made in any of the three circumstances outlined by Menippus, but naturally a treaty of the better sort was more likely to arise in the second and third. Menippus in Livy's account associates a *foedus aequum* particularly with the second situation because he has just described circumstances likely to result in a treaty of the lower type.²⁸ The Seleucid envoy proceeded to insist that the Romans make a treaty with Antiochus in a manner and on terms appropriate to the actual situation (corresponding to the third situation according to his scheme). But the Romans, impatient of professorial descant, and viewing matters in a different light, insisted on a set of alternatives, either of which (as Menippus realized) would diminish the dignity of the Seleucid kingdom (Livy 34.57.10–59.3).

In 206 B.C., when Scipio Africanus had crushed the revolt of Mandonius and Indibilis in Spain, he omitted to demand the formal surrender expected in these circumstances. Livy (28.34.7) notes:

mos vetustus erat Romanis, cum quo nec foedere nec aequis legibus iungeretur amicitia, non prius imperio in eum tamquam pacatum uti quam omnia divina humanaque dedisset, obsides accepti, arma adempta, praesidia urbibus imposita forent.

It was the ancient practice of the Romans not to exercise authority over a people with which friendship had been established neither by treaty nor by equal terms, as if that people had been pacified, until it had surrendered all its property divine and human, until hostages had been received, arms taken away, and garrisons imposed on the cities.

Here Livy implies that, when the Romans were extending their domination, the customary alternatives for confirming their rule were the treaty of the

²⁸Livy 34.57.4–59.8 is based on Polybius (Nissen 162–164; Klotz 11), but comparison with Diod. 28.15 indicates that the Roman historian elaborated in various ways, including insertion of a reference to a *foedus aequum*. This detail may have been inspired by a Polybian phrase resembling τοῖς ἐξ ἴσου τὴν φιλίαν ποιούμενοις (parties establishing friendship from positions of equality) in Diodorus (28.15.2), who depends on Polybius (see E. Schwarz, "Diodorus von Agyrion," *RE* 5.1 [1903] 689–690). On the phrase ἐξ ἴσου in Polybius see Mauersberger (above, n. 17) s.v. ἴσος. On Livy 34.57.7–9 in general see Hantos 161, n. 33.

lower class, the *foedus aequum*, and *deditio*.²⁹ The text of Livy suggests that *deditio* could be expected after a Roman victory, while a *foedus* (*aequum* or not *aequum*) would follow peaceful adhesion to the *imperium Romanum*. Thus the Romans at some point came to regard even the *foedus aequum* as a means of subordinating their allies to themselves. In crucial matters—particularly foreign and military affairs—the Romans tended to overlook legal distinctions between treaties of the higher and lower type.

Essentially, then, a *foedus aequum* in principle recognized equality of status, rights, and duties between the parties. As Mommsen declared (664), this class of treaty expressed "mutual recognition of the equal sovereignty of the contracting states." But in practice, on fundamental points, the Romans tended to set aside the legal equality of allies possessing a *foedus aequum*. In Italy the result of this process was the so-called Italian Confederation, the union of the whole peninsula under Rome's political and military leadership. The treaties made by Rome with Hellenistic states after 200 B.C., although usually *foedera aequa* in the formal sense, scarcely occasion any doubt concerning Roman domination over those allies (above, note 25). Nevertheless, technical differences between the superior and inferior sort of treaty persisted, and some of the differences must have remained effective. Unfortunately the ancient sources concerning Roman treaties identify only the most basic military stipulations. Moreover, because of their supremacy, the Romans were able to treat all their Italian allies in essentially the same way after the Latin War, and a similar observation can be made of the allies outside of Italy, certainly from the second century B.C. onwards. For these reasons our knowledge of Roman treaties is quite limited, particularly in the case of the Italian *foedera*.

From this rather plain and scanty stuff elaborate theories have been spun. The most detailed model of the two classes of treaty has been constructed by Toynbee (261–265), but the same ideas often occur in other standard works.³⁰ I propose first to discuss Toynbee's schema, which concentrates on the Italian *foedera*, and then to consider that of Täubler, who does the same for the treaties made between Rome and Hellenistic states.

Most of the known treaties of alliance between Rome and Hellenistic states contain basic, standard clauses of mutual defense (above, 355–356, with note 25). Although information about the treaties of Rome with the Italian allies is disappointingly jejune for so important a sub-

²⁹ Other evidence, however, shows that treaties and *deditio* were not absolutely exclusive categories. In 343 Capua, which had surrendered to Rome, received a *foedus aequum*: *adicite ad haec, quod foedus aequum deditis . . . dedimus* (Livy 23.5.9; cf. Florus 1.16.2).

³⁰ Beloch 197–200; Täubler 62–64; Horn 29–30; Meyer (above, n. 6) 229–230; Dahlheim 49, n. 58; Petzold 402–405; Ziegler 92; Sherwin-White 119–123, 183–185; Galsterer 101; Hantos 156.

ject, the evidence suggests that the Italian *foedera* substantially resembled the Hellenistic ones.³¹ The allies were forbidden to assist the enemies of the Romans, and the Romans were subject to a corresponding prohibition (Dion. Hal. *Ant. Rom.* 15.7.3; Livy 7.31.2). The *socii* were obliged to give military or naval assistance to the Romans,³² who assumed a reciprocal duty (Livy 8.2.9–11). That the ancient sources stress the responsibilities of the allies is not surprising for, notwithstanding the formal reciprocity of some treaties, Rome in practice by the early third century B.C. stood at the head of Italian affairs and controlled all the armed forces of the peninsula.³³ The scanty evidence for the contents of the Roman-Italian *foedera* is confined to the most basic stipulations. Moreover, as the Romans essentially came to treat all their Italian allies alike (the same is true of Rome's allies in the Hellenistic east), it is very difficult in most cases to argue from differences in treatment to differences in *foedera*. The situation is essentially this: we know in broad terms how the *foedus aequum* differs from the inferior sort of treaty in principle; we can be reasonably confident about certain basic features of the *foedus aequum*; speculation about the contents of the inferior class of treaty should be restrained; the evidence does not warrant the production of elaborate models for the two kinds of treaty.

These observations may now be applied to a review of Toynbee's models. According to Livy 28.45.13–21, in 205 B.C. Scipio Africanus, denied the right to hold a regular *dilectus*, obtained voluntary contributions of grain, shipbuilding material, arms, soldiers, and sailors from the *socii* in Etruria, Umbria, and other regions of central Italy. The last item of Livy's catalogue reads as follows: *Camertes cum aequo foedere cum Romanis essent cohortem armatum sescentorum hominum miserunt* (28.45.20). From this passage Toynbee derives two conclusions: first, a *foedus aequum* permitted the Italian allies to mobilize their own contingents independently, while the inferior grade of treaty prohibited such action except at Rome's command; second, a *foedus aequum* allowed the allies to determine the size of their contributions, while the lower class treaty did not (Toynbee 264–265).

To begin, it is probably true that a *foedus aequum* in principle permitted the allies to mobilize their own contingents independently and determine the size of their contributions, but it does not necessarily follow that such

³¹On individual Roman-Italian treaties see K. J. Beloch, *Römische Geschichte bis zum Beginn der Punischen Kriege* (Berlin 1926) 292–621, *passim*. Beloch (see prefatory note above, 195) suggests that the *Foedus Cassianum* supplied the model for the Italian *foedera aequa* (cf. Toynbee 263–264).

³²Military assistance: Livy 8.25.3; Dion. Hal. *Ant. Rom.* 15.7.2–3 (cf. Livy 8.11.2); Livy 28.45.20. Naval assistance: Polyb. 1.20.14; Livy 26.39.5; 35.16.3, 8; 36.42.1–2; 42.48.6–7.

³³On the Italian Confederation see Dahlheim 111–125; Galsterer 25–104; Hantos, generally.

actions as a rule were legally prohibited in treaties of the lower sort. In this passage, all the allies providing soldiers acted not independently but in response to a Roman initiative. Independent mobilization, therefore, is not a distinguishing feature in this text. Similarly, the allies providing soldiers are not clearly divided by Livy into a group that did, and a group that did not, determine the size of its contribution. All the allies appear to be acting in the same way in this matter. The preceding observations are valid whether Livy is right in claiming that voluntary contributions are at issue here, or whether Brunt is correct in arguing that Livy 28.45.13–21 concerns a regular levy.³⁴ The Roman initiative causing allied action would be either a request or a command; either the allies all determined the size of their own contingents, or they all supplied numbers dictated by Rome. Therefore the distinctions posited by Toynbee in this passage do not exist in practice.

Nevertheless, *cum aequo foedere . . . essent* must have some point. Perhaps allies bound by a *foedus aequum* were permitted to send contingents that were left intact as national units during the process of the *dilectus* or when volunteers were requested. According to Polybius, the Roman draft proceeded in three stages, and the allied levy was coordinated with the first and third of those stages: (1) Polyb. 6.19.5–21.5; (2) Polyb. 6.21.6–25.11 (cf. Livy 29.1.1); (3) Polyb. 6.26.1–9. At the first stage the consuls instructed the magistrates of the allies to send a stated number of men. Thereupon the *socii* conducted their own levy, dispatching the resulting units under native officers and paymasters (Polyb. 6.21.4–5). The allied forces would appear at the third stage of the *dilectus*, at which time their final organization was undertaken by the *praefecti socium* (Polyb. 6.26.5–9).³⁵ The final disposition of voluntary units is likely to have been handled in a similar way. The allied troops accompanying the legions were organized into cohorts of varying size.³⁶ Although the cohorts tended to be formed of men from a single *civitas* or ethnic group, such as the Perusini (Livy 23.17.11) or the Lucanians (Livy 24.20.1), for practical reasons the military contingents supplied by individual *foederati* must often have been split up or combined. Perhaps favoured allies like Camerinum escaped such plastic reformation (cf. Mommsen 674). As the equality of status guaranteed by a *foedus aequum* became increasingly nominal, the Romans may have extended to their allies informal privileges less weighty than true independence, but not insignificant.

³⁴P. A. Brunt, *Italian Manpower, 225 B.C.–A.D. 14* (Oxford 1971) 655–656.

³⁵In some respects the account of Polybius is anachronistic: see Brunt (above, n. 34) 625–634.

³⁶J. Marquardt, *Römische Staatsverwaltung* 2² (Leipzig 1884) 389–400; J. Kromayer and G. Veith, *Heerwesen und Kriegführung der Griechen und Römer* (Munich 1928) 267.

Toynbee held that both parties to a *foedus aequum* were obliged to assist their ally when the latter was attacked by a third state. Each party judged for itself whether its ally was entitled to assistance. Consequently, possession of a *foedus aequum* exempted a Roman ally from subjection to a *formula togatorum*, which for Toynbee was a fixed schedule listing the maximum number of soldiers that the Romans were entitled by treaty to demand from each ally. Conversely, a treaty of the lower sort bound an ally automatically to aid the Romans whenever the latter went to war, regardless of whether Rome was the aggressor or the victim of aggression. The Romans acknowledged no reciprocal obligation. The allies of this class provided a specified quota of men up to the fixed maximum listed in the *formula togatorum* (Toynbee 261–264).

Toynbee is probably right about the bilateral, defensive, and discretionary character of the *foedus aequum*, in theory. On the other hand, his description of the lower type of *foedus* as unilateral, unlimited, and automatic appears too categorical, for there were different ways to render a *foedus* not *aequum*. Here Toynbee was thinking of the stipulation requiring an ally to have the same (friends and) enemies as Rome, which occurred in some treaties instead of clauses of mutual assistance in defensive wars.³⁷

³⁷On the history of this type of clause in Greek treaties, see T. Pistorius, *Hegemoniestreben und Autonomiesicherung in der griechischen Vertragspolitik klassischer und hellenistischer Zeit* (Frankfurt 1985) 78–118; cf. Gruen 26–29. Closely related to it is the stipulation binding the inferior ally to follow where the other leads, which implied political as well as military subordination (Pistorius 119–134). The best-known Roman example of the “same (friends and) enemies” clause occurs in the Aetolian treaty of 189 B.C. (Polyb. 21.32.4; Livy 38.11.3). According to Dion. Hal. Ant. Rom. 15.7.2, Roman envoys asserted in 327 B.C. that the *foedus* of the Samnites (i.e., the one renewed in 341 [Livy 8.2.1–4]) compelled them to have the same friends and enemies as Rome. This statement, if indeed it was made, must be false: see E. T. Salmon, *Samnium and the Samnites* (Cambridge 1967) 191–203; note especially Livy 7.30.4, 8.2.3). In the autumn of 192 B.C., before the opening of hostilities between Rome and Antiochus III, the Achaeans declared *eosdem genti Achaeorum hostes et amicos, quos populus Romanus censuisset* (the same peoples to be enemies and friends to the Achaean nation as the Roman people had judged to be enemies and friends: Livy 35.50.2). This statement is a declaration of solidarity with Rome, not an allusion to a provision of the Achaean treaty: see below, n. 44). P. Cornelius Lentulus Spinther, acting governor of Asia in 43 B.C., declared that the treaty of the Rhodians, as renewed in 51, obliged them to have the same enemies as Rome (Cic. Fam. 12.15.2). Originally concluded in 165/4 (Polyb. 30.31), this *foedus* required both parties to help each other in defensive wars (Polyb. 30.5.9–10, 30.31.16–20). These conditions also appeared in the treaty as renewed by Julius Caesar, probably in 48 (Appian BCiv. 4.66–70). Spinther must have cited the *foedus* inaccurately. He appears to refer to the “same (friends and) enemies” clause, but that stipulation did not occur in the original treaty, and as the Rhodians had demonstrated unimpeachable loyalty to Rome between 165 and 51 B.C., there is no particular reason to think that their *foedus* was downgraded in this period. Moreover,

An obligation of that sort would, of course, certainly make a *foedus* not *aequum*.

There is no categorical evidence based on the treaties themselves that possession of a *foedus aequum* or a *foedus* of the lower type determined whether or not an ally participated in the *formula togatorum*. Indeed, that schedule was not a formal part of any treaty, but a customary usage giving effect to Rome's Italian alliances. The important distinction among Rome's allies was that between the group normally providing soldiers and the group normally providing ships and crews. In practice, members of the first group, without distinction, were liable to the *formula*. The heart of this institution was an annual schedule listing military quotas of variable size required by the Romans of their *socii*.³⁸

The application of the *formula* to allies possessing *foedera aequa* was the result of Roman supremacy in Italy, definitely achieved after the Pyrrhic War. In practice those allies, too, went to war automatically, even when the Romans were not patently the victims of attack. On the question of grounds for waging war, fetial procedure required at most a demand for restitution, but this practice did not necessarily involve genuine grievances, fair claims, or predominantly defensive motives.³⁹ To that extent all Roman wars could

Caesar did not impose a "same (friends and) enemies"-clause on the Rhodians, despite their support of Pompey during the civil war (Cic. Att. 9.9.2). It therefore seems most unlikely to me that the treaty of 51 contained that stipulation. On the Rhodian *foedus* see Täubler 208–209; Horn 63–64; H. H. Schmitt, *Rom und Rhodos: Geschichte ihrer politischen Beziehungen seit der ersten Berührung bis zum Aufgehen des Inselstaates im römischen Weltreich* (Munich 1957) 171–185.

³⁸See D. W. Baronowski, "The *Formula togatorum*," *Historia* 33 (1984) 248–252. E. T. Salmon, *The Making of Roman Italy* (London 1982) 171, suggests that the *formula togatorum* was instituted in the years following 338 B.C.

³⁹Dahlheim 171–180; Ziegler 102–104; Harris (above, n. 11) 163–175; Hantos 154–155. Fetial procedure in the preliminaries of war was changed at least as early as 238 B.C., when the *fetiales* were replaced by messengers and senatorial *legati*. The revised procedure did not (it seems) follow an invariable pattern, but it might include a form of *rerum repetitio*. On the new procedure see F. W. Walbank, "Roman Declaration of War in the Third and Second Centuries," *CP* 44 (1949) 15–19; J. W. Rich, *Declaring War in the Roman Republic in the Period of Transmarine Expansion* (Brussels 1976, Collection Latomus 149) 56–118; S. Albert, *Bellum iustum: Die Theorie des "gerechten Krieges" und ihre praktische Bedeutung für die auswärtigen Auseinandersetzungen Roms in republikanischer Zeit* (Kallmünz 1980) 12–36. T. R. S. Broughton, "Mistreatment of Foreign Legates and the Fetial Priests: Three Roman Cases," *Phoenix* 41 (1987) 50–62, discusses the special connection of the *fetiales* with the protection of the sanctity of envoys. T. Wiedemann, "The *Fetiales*: A Reconsideration," *CQ* NS 36 (1986) 478–490, argues that the original purpose of the *fetiales* was to promote harmonious relations between Rome and neighbouring states; hence they were involved in the making of treaties and in procedures designed to avert conflict between the Romans and their *foederati*, e.g., *rerum repetitio*. But the originally pacific functions of the *fetiales* were liable to

be represented as defensive in nature, and Rome's interpretation of such matters was unlikely to be challenged openly by the *socii*. In practice, then, even allies possessing a *foedus aequum* were subject to unilateral, unlimited, automatic military obligations ascribed by Toynbee strictly to *socii* whose treaties were of the inferior grade.

Toynbee (264) declares that both parties to a *foedus aequum* were free to wage their own wars, but Roman allies bound by the lower class of treaty were not. The first part of this statement appears to be true, at least in theory, but the relationships of other states to either of the parties limited the parties' freedom of action in practice, for the Romans would not allow one of their allies to fight against another ally. A good example of this is the case of the Latin treaty, in which the Latins, although possessing a *foedus aequum*, were ordered by Rome to stop their war against the Samnites, who were also Roman allies.⁴⁰ The second half of Toynbee's statement is too categorical. A clause restricting a Roman ally's right to wage war certainly would have made a *foedus not aequum* (Livy 42.25.4-5, 10-11, and above, 353-354), but other stipulations could have the same effect. Despite any formal differences between the two classes of treaty, in practice the distinction posited by Toynbee did not exist, at least from the time of the Latin War, for the Romans did not permit the Italian allies to wage their own wars.

To sum up, Toynbee proposes an excessively elaborate and dogmatic model for the two classes of treaty. In some instances there is no evidence at all for the distinctions that he draws, while in other cases distinctions are possible in theory but not observed in practice. Although some *foedera* were *aequa*, in matters of the greatest importance the Romans treated all their allies as if they had treaties of the lower sort. This situation emerged as the result of Roman supremacy in Italy, achieved during the period between the Latin and Pyrrhic Wars. Toynbee himself enunciated a good principle (262): "It is, indeed, probably a mistake to assume that there were two standardized forms of treaty." I would venture to suggest that most of the Italian *foedera* established mutual defensive alliances representing the

subversion. Wiedemann (490) admits that legal processes "overseen by the *fetiales* could be exploited to the advantage of Rome." In his review of Harris (above, n. 11), A. N. Sherwin-White, "Rome the Aggressor?," *JRS* 70 (1980) 177, concedes that "in later times the procedure of *rerum repetitio* became a mere formality by which the Romans sought to establish a nominal justification for warfare when no 'just cause' existed." The Roman concept of *bellum iustum*, best known from Cicero's writings, appears to entail observance of *fetial* procedure and possession of a just cause informing the *rerum repetitio*; but the Roman notion of "just cause" did not preclude essentially aggressive motives: see W. V. Harris's review of Albert (above), *Gnomon* 54 (1982) 703-705.

⁴⁰ Livy 8.1.7-2.13, 8.3.8, 8.4.2-3, 8.5.1, with E. T. Salmon, "Rome and the Latins—2," *Phoenix* 7 (1953) 124-125, and Petzold 404-405.

parties as equals in most or all respects, but that political reality in time imposed on all the *socii* the conformity of subjection.

Similar objections can be raised against Täubler's schema for the Roman-Hellenistic treaties. A *foedus aequum*, he writes, created reciprocal obligations. This class of *foedus*, which he called a treaty of alliance, or equal treaty, created a mutual defensive alliance (Täubler 5-6, 44-62; above, note 25). Conversely, a *foedus* of the lower type marked the inequality existing between the Romans and their allies. Täubler called it a treaty of clientship, or unequal treaty. According to him, this kind of *foedus* contained the majesty clause; in addition, the allies were forbidden to assist the enemies of Rome, and they were obliged to aid the Romans in all their wars, but Rome was not bound by reciprocal duties (Täubler 5-6, 62-66; above, note 37). The model for this class of treaty is the Roman-Aetolian *foedus* of 189 B.C. (Polyb. 21.32.1-4).

Although Täubler's statement about the *foedus aequum* appears to be correct, at least in theory, his model for the lower type of treaty is too categorical and elaborate. Various clauses could make a *foedus* not *aequum* (cf. Horn 7). Moreover, Täubler's rigid classification leads him to describe the Roman-Mytilenean treaty (*RDGE* 26, col. d) as belonging to a mixed type because it combines the majesty clause with reciprocal terms of defensive alliance. Täubler's hybrid is more economically explained as an example of a *foedus* that is not *aequum*.

The ancient evidence does not permit us to make confident statements about the comparative frequency of the two grades of treaty, or about the classification of most individual treaties. For convenience, I list the treaties of alliance that are known to be either *foedera aequa* or treaties of the inferior grade.

FOEDERA AEQUA

<i>Foedus Cassianum</i>	Livy 8.4.2-3	493 B.C.
Massilia	Justinus 43.5.10	probably 386 B.C. or soon afterwards ⁴¹
Capua	Livy 23.5.9	343 B.C.
Samnites	Livy 9.4.1-5	321 B.C. ⁴²

⁴¹Justinus (43.5.10) places the *foedus aequum* after the Gallic sack of Rome (386 B.C.), but at 43.5.3 he claims that a treaty existed soon after the foundation of Massilia (ca 600 B.C.). Dahlheim (138-141) argues that a treaty of alliance was made in the years 227-225 B.C.; he attributes the references in Justinus to Massaliote patriotism. C. Ebel, *Transalpine Gaul: The Emergence of a Roman Province* (Leiden 1976) 5-25, defends the authenticity of both *foedera* mentioned by Justinus; he argues that they were concerned with trade. Polybius (3.95.6-7), at any rate, notes the inception of an active Roman-Massaliote alliance at the time of the Second Punic War.

⁴²On the *Pax Caudina* also see Livy 9.4.6-5.6, 9.5.11-6.2, 9.8.1-11.9, with Broughton (above, n. 39) 59, n. 33.

Heraclea	Cic. Arch. 6-7; Balb. 50	278 B.C.
Camerinum	Livy 28.45.20; Cic. Balb. 46; CIL XI 5631	before 205 B.C. ⁴³
Achaean League	Livy 39.37.10, 13	probably 194-193 B.C. ⁴⁴

FOEDERA THAT WERE NOT AEQUA

Teaenum Apulum	Livy 9.20.8	317 B.C.
Aetolian League	Polyb. 21.32; Livy 38.11	189 B.C.
Gades	Cic. Balb. 35	78 B.C., and probably the original treaty of 206
Mytilene	RDGE 26, columns d and e	25 B.C.

The treaties of mutual defensive alliance made between Rome and Hellenistic states (excluding Mytilene) may provisionally be regarded as *foedera aequa*.⁴⁵

Theodor Mommsen, with only slight exaggeration, pronounced all of Rome's allies to be subjects.⁴⁶ The *foedus aequum* came to sanction relations of dependence, notwithstanding the appearance of formal equality (Mommsen 663-665). The true situation, I would further suggest, is revealed in Livy 28.34.7, where both *editio* and the *foedus*—whether *aequum* or not—are said to bring a nation within the scope of the *imperium Romanum*.⁴⁷

Why do less powerful states so persistently embrace transparent shams of this kind? It is not a secular propensity for popular self-delusion, or even

⁴³Livy 9.36.7-8 erroneously attributes to the Camertes of Camerinum a treaty made with the Camertes of Clusium in 310: see P. Veyne, "Foederati: Tarquinies, Camérinum, Capène," *Latomus* 19 (1960) 429-436, at 430, n. 2.

⁴⁴Negotiations concerning the Achaean treaty, which began in 198 B.C. (Livy 32.23.1-3), were temporarily suspended in 196, when the senate referred the issue to Flamininus (Polyb. 18.42.6-7). The *foedus* is attested in the period 191-188 (Polyb. 24.11-13; Livy 38.32.8), in 184 (Livy 39.37.10, 13), and in 174 (Livy 41.23.5, 9; 41.24.16). Two passages demonstrate that it was a treaty of mutual defensive alliance (Livy 35.48.8-9; Polyb. 23.9.12; cf. 23.17.3; also see Gruen 34-35). E. Badian, "The Treaty Between Rome and the Achaean League," *JRS* 42 (1952) 76-80, assigns this *foedus* to the period 192-191, showing that it must have been made before the spring of 191, and arguing *ex silentio* that it could not have been concluded before the autumn of 192. In my view, only the first part of Badian's thesis is persuasive, and the treaty was made probably in the winter of 194-193, when the senate received embassies from all over the Greek world prior to ratifying the *acta* of Flamininus (Polyb. 18.42.6-7; Livy 34.57.1-59.8; Diod. 28.15). On the date of the treaty see A. Aymard, *Les premiers rapports de Rome et de la Confédération achaienne (198-189 avant J.-C.)* (Bordeaux 1938) 261-269; for a bibliographical survey see Gruen 34, n. 108.

⁴⁵For a list of these states see above, n. 25.

⁴⁶Mommsen 645-764; cf. Täubler 6-8; Badian 28; Sherwin-White 182-189.

⁴⁷Cf. A. Lintott, "What was the 'Imperium Romanum'?", *G&R NS* 28 (1981) 53-67.

the need of political regimes for prestige, that accounts for these specious agreements, but the invincible claim of all peoples to equity or dignity. Less powerful states cling to or grasp at these revealing but attenuated concessions when their *amour-propre* has been injured by the encroachment of more powerful neighbours.⁴⁸ But all too often, in relations between unequal partners, the seductive allure of formal reciprocity confirms existing inequalities. When they have the power to do so, nations must defend what makes them vital and distinct.

DEPARTMENT OF CLASSICS
UNIVERSITY OF SASKATCHEWAN
SASKATOON, SASKATCHEWAN S7N 0W0

APPENDIX: THE HISTORY OF THE MAJESTY CLAUSE

F. W. Walbank (3.131–132) rightly declares that “there is no reliable contemporary evidence for the use of *maiestas* in a Roman treaty before the first century, and the treaty with Gades in 78 B.C.” Agreeing with Mommsen (664–665), Badian (26) views the majesty clause as a late development unattested in any Italian treaty. According to him, the *maiestas* clause “appears to have been first used at the time of the Aetolian treaty,” that is, in 189 B.C.

A version of the majesty clause certainly appeared in the Aetolian *foedus* (above, 349–352). The question essentially is whether the word *maiestas* occurred in the original Latin version of the treaty. In turn, the possibility of this being the case depends on whether the concept of *maiestas populi Romani* existed at the beginning of the second century B.C.

It has been argued that the expression *imperium maiestasque populi Romani* occurred in the prayer offered during the Secular Games of 348 B.C., but this suggestion lacks a secure foundation (above, note 11). The phrase *maiestas populi Romani* does not appear in literary and epigraphical sources until the first century B.C.⁴⁹ However, several scholars infer that the concept and the term originated in the third century, after the Romans consolidated their power in Italy.⁵⁰ Arguments drawn from the field of Roman law provide a stronger basis for this conclusion.

⁴⁸R. Bernhardt, *Polis und römische Herrschaft in der späten Republik (149–31 v. Chr.)* (Berlin 1985), stresses the efforts of Greek cities to promote their interests during the late Roman Republic; D. Nörr, *Imperium und Polis in der hohen Prinzipatszeit*² (Munich 1969), outlines the survival and decline of the *polis* and its ideals during the early Roman Empire; Galsterer discusses the local autonomy of Italian communities until the Social War; W. Eck, *Die staatliche Organisation Italiens in der hohen Kaiserzeit* (Munich 1979), treats the same topic during the early principate.

⁴⁹Badian 85, n. 1, 118–119; Gundel 289, 301–307; Gaudemet 699–707.

⁵⁰Gundel 316–319; Gaudemet 703–704.

Probably in 103 B.C. L. Appuleius Saturninus, as *tribunus plebis*, sponsored a *Lex Appuleia de maiestate minuta*.⁵¹ His law created a permanent *quaestio* to deal with that crime. Thus the concept of *maiestas populi Romani* goes back at least to the late second century. R. A. Bauman argues cogently that, starting in the middle of the third century, the crime of *maiestas* became a distinct "fragment" of *perduellio*. Accordingly, wrongful acts belonging to the category of *maiestas* could henceforth be prosecuted either in the *comitia tributa* under the charge of *maiestas* or (as previously) in the *comitia centuriata* under the charge *perduellio*. Saturninus' law of 103 placed the *maiestas* fragment of *perduellio* under the jurisdiction of a permanent *quaestio* (Bauman [above, note 8] 16–33). Although the sources may contain some inaccuracies,⁵² Bauman has established a strong case based on the existence of alternative venues and penalties. If the concept of *maiestas populi Romani* goes back at least to the mid-third century, it is possible to ascribe the word *maiestas* to both the Gaditane treaty of 206 and the Aetolian *foedus* of 189, where at any rate versions of the majesty clause appeared (above, 348–352).

⁵¹G. Rotondi, *Leges Publicae Populi Romani* (Milan 1912) 329–330; T. R. S. Broughton, *The Magistrates of the Roman Republic* 1 (New York 1951) 563; Bauman (above, n. 8) 34–58, with *CIL* I² 2.1 582 (cf. *CIL* I² 2.4, p. 907).

⁵²Cf. P. Garnsey, review of Bauman (above, n. 8), *JRS* 59 (1969) 282–284.