ROME AND THE GREEKS: APROPOS OF A RECENT WORK

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When T. Quinctius Flamininus proclaimed Freedom for the Hellenes at the Isthmian Games in 196 BC, he little knew what a legacy of uncertainty in regard to the character of Roman imperialism he was bequeathing to future generations. Rome's policy towards the Greek East from the turn of the third to the mid-second century cannot be measured entirely by the history of the previous half-century: although it was Sicilian Greeks as much as Carthaginians who precipitated the start of it all in the mid-third century, the Eastern policy was clearly something less than the outright annexation of Sicily, Sardinia, Corsica and Spain, but equally clearly something more than the punitive treaty but nothing else imposed on Carthage. Modern theories about Rome's motivations in the East have explored just about every possible permutation and combination — economic expansion, power for power's sake, glory and booty, philhellenism, fear of neighbours, accidental involvement —, but it is fair to say that no one theory has commanded general acceptance. E. Badian broke new ground when he sought to uncover the major instrument of imperialism.¹ P. Veyne thinks that Rome's quest for security led her to seek the elimination of all rivals.² W.V. Harris postulates an amalgam of militarism, profit, compulsive expansionism and a natural love of war.³ The present writer has recently argued for the 'growth' motif as shaped with the assistance of the Scipionic lawyers.⁴ Most recently another new approach has been tried by E.S. Gruen.⁵ Certain questions raised in Gruen's book are the subject of this paper.

Gruen believes that the way forward does not lie through Rome, but through Greece. His subject, he says, is not Roman "imperialism" (Gruen's quotation marks) but the Roman experience in Hellas and the Hellenic experience under the impact of Rome, and the investigation focuses on "the adaptations of the two peoples to the novel situation of Roman presence in the Hellenistic East".⁶ It is not quite clear what this bifocal inspection is supposed to demonstrate. We know how Polybius reacts to the Roman presence, but his reaction is essentially an assessment of Roman "imperialism", whatever meaning we choose to give to that word. We also know how contemporary Aetolians, Macedonians, Athenians, Rhodians and others reacted, but the very diversity of those reactions militates against any homogeneity in the Hellenic experience of Rome. However, Gruen is entitled to be judged on his own terms, not on how someone else thinks the book should have been written.
The work is divided into three parts — the institutional conventions that shaped the confrontation of East and West, the presuppositions and expectations that the two sides brought to their encounters, and an account of Roman penetration into certain specific Greek communities. A discussion of the whole work is not possible here, and a selection must be made. The third part is a collection of pieces which are interesting enough in themselves but do not contribute much to the overall theme, and the choice lies between the other two parts. Gruen nails his colours to the mast in the first part and it is proposed to concentrate on that. The part in question (‘The Instruments of Diplomacy’) examines both formal treaties and informal links as mechanisms regulating the confrontation of Rome and Hellenistic Greece. It is claimed that Rome used treaties only sparingly and ad hoc in the first half of the second century, and such treaties as were struck were based on Greek rather than on Italian models. The sparing use of treaties may be correct, but the exclusive use of Greek models is not. The informal links investigated are amicitia, arbitration, ‘The Freedom of the Greeks’ and clientela. The theme of Rome’s mere adoption of Greek precedents is pressed as vigorously here as in the discussion of formal treaties. This theme of the conqueror who exerts his authority according to the prescriptions of the conquered is basic to the whole book, but the case made out for it is not a persuasive one, especially on the two most important aspects of the supposed Greek initiatives, formal treaties and clientela. Our focus will be on those two aspects.

Early in the piece Gruen formulates two propositions of doubtful validity. He implies that the investigation should be conducted on historical rather than juridical lines,7 and he rejects the division of treaties into foedera aequa and foedera iniqua.8 Neither of these propositions is secure. It would be perverse to deny the importance of the historical perspective, but it is equally perverse to deny the juridical: divorcing the Rechtsvolk from the Recht is hardly the best way to put the Romans into historical perspective. The point is strikingly illustrated by a passage in Cicero’s De Oratore which specifically links imperial expansion and the law: Crassus extols the virtues of the ius civile to the detriment of Greek law, declaring that the booklet of the XII Tables surpasses all the libraries of the philosophers in auctoritas and utilitas; as much wisdom went into founding the law as into acquiring a mighty empire — ‘tanta sapientia fuisse in iure constitueri putanda est, quanta fuit in his tantis opibus imperii comparandis’; a comparison of Roman law with the laws of Lycurgus, Draco and Solon shows how disordered and almost ridiculous (‘quam sit inconditum ac paene ridiculum’) every other legal system is, especially that of the Greeks (Cic. Orat. 1.195–7). We also note that the all-important maiestas treaty is singled out by Cicero as a document in special need of legal interpretation: ‘verbi genus hoc “conservanto” quo magis in legibus quam in foederibus uti solemus’ (Cic. Balb. 36). Indeed a large part of Cicero’s speech in defence of Cornelius Balbus testifies to the interpretative complexities of this type of treaty.

Gruen’s rejection of the division of foedera runs counter to an impressive body
of modern opinion which accepts the fact, even if not the terminology, of a division into the foedus aequum and the foedus iniquum.9 Gruen argues that the solitary occurrence of foedus iniquum, in Livy 35.46.10, is “clearly without technical significance”.10 But this is too facile. Livy has a Chalcidian leader declare in 192 that no Greek state has a garrison, pays tribute or is bound by an unequal treaty to suffer terms which it does not want: ‘foedere iniquo adligata quas nolit leges patiatur’. The corollary is surely that treaties which did impose unwanted terms were known, even if not eo nomine and even if not yet applied to the Greeks. Moreover, technical uses of both iniquus and aequus are found in legal texts, and we should also be on the alert for double uses — both technical and moral; the phenomenon is common enough with aequus, which can mean both ‘based on the bonum et aequum canon of legal interpretation’ and ‘fair, just’.11 Also, there are expressions other than foedus iniquum which point unmistakably to different kinds of treaty, such as ‘impetravere ut foedus daretur, neque ut aequo tamen foedere, sed ut in dicione populi Romani essent’ (Livy 9.20.8); ‘ut sint illi in foedere inferiores’ (Cic. Balb. 35). The locus classicus is Livy 34.57.7–9 in which a threefold division is attested: ‘esse . . . tria genera foederum; unum, cum bello victis dicerentur leges; alterum, cum pares bello aequo foedere in pacem . . . venirent; tertium . . . cum qui numquam hostes fuerint ad amicitiam sociali foedere inter se iungendum coeant’.12 Finally we note an almost technical use in Livy’s ‘etsi non iniquum, certe triste senatus consultum’ (Livy 25.6.2).

Gruen is not quite sure what he thinks about the foedus aequum.13 On the one hand he says that it has no better claim than foedus iniquum as a technical term; but he has to say this, for if foedus aequum is technical there must be a contrasting type which was also technical. On the other hand he asserts that Livian usage is ambiguous, since it sometimes means a treaty on an equal footing but at other times means no more than one that is ‘fair, just’. By conceding any technical use Gruen virtually concedes defeat, and in any event he fails to appreciate the absence of a clearcut dividing-line between the technical and the approbatory uses of aequum. For example, he admits that ‘aequo foedere cum Romanis essent’ (Livy 28.45.20) refers to a technically equal treaty with the Cameretes, but Cicero’s description of the same treaty as ‘foedus omnium foederum sanctissimum atque aequissimum’ (Cic. Balb. 46) is merely “a rhetorical flourish, not a legal definition”. We cannot be sure that the superlative use of aequum is non-technical in view of ‘sed esse iniquissimum Pomponius ait’ in a legal text (Dig. 17.1.19), and Cicero’s ‘aequissimo iure ac foedere’ with reference to the technical foedus aequum with Heraclea (Cic. Arch. 6) is also suggestive.14 But even if Cicero’s superlatives are non-technical, the point is that they were suggested to him by a technical positive.

The most important compact of the foedus iniquum type is the maiestas treaty which obliges the ally to preserve the maiestas of the Roman people.15 Gruen tries to minimise its importance — understandably, because it undercuts his theories about treaties and threatens his position on clientela as well. In fact at least two
types of formula are attested for the maiestas treaty: that with Gades in 206 stipulated ‘maiestatem populi Romani comiter conservanto’, while that with the Aetolians in 189 stipulated ‘imperium maiestatemque populi Romani gens Aetolorum conservato sine dolo malo’; the two different formulas, comiter and sine dolo malo, reflect either different degrees of severity that it was desired to use towards the ally or the replacement of an original sine dolo malo by comiter in the renewal of the Gaditan treaty in 78; as for the omission of the word imperium from the Gaditan treaty, it probably reflects an earlier stage before the implications of maestas populi Romani as the focal point of the Roman imperial idea had been fully worked out. The Aetolian treaty was their second with Rome, having been preceded by a foedus aequum in 212/11. The most important discussion of the maestas treaty is that given by Proclus, a jurist who headed one of the two law schools at Rome in the mid-first century AD:

Non dubito, quamvis foederati et liberi nobis externi sint, nec inter nos atque eos posstiminium esse: etenim quid inter nos atque eos posstiminium opus est, cum et illi apud nos et libertatem suam et dominium rerum suarum acque atque apud se retineant et eadem nobis apud eos contingant? Liber autem populus est is, qui nullius alterius populi potestati est subiectus: is foederatus est 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 alterum populum non esse liberum: et quamadmodum 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. At fiunt apud nos rei ex civitatis foederati et in eos damnatos animadvertimus.

Proclus is discussing postliminium in pace, a variant of the usually hostis-oriented doctrine. The variant had been propounded by Aelius Gallus, a Republican jurist who compiled a legal dictionary and was probably related to the Aelii Paetii, the Scipionic lawyers who worked on international law with special reference to Greece in the first half of the second century. Gallus had sought to apply the postliminium doctrine ‘cum populis liberis et cum foederatis et cum regibus’ (Fest. s.v. postliminium), but Proclus rejects that view and allows the doctrine to apply only cum hostibus. In the course of his argument Proclus draws an analogy between clientela and the position of the ally under a maestas treaty. We shall advert to that analogy again, and at this stage direct our attention to the contrast drawn by Proclus. He does not divide treaties into foedera aequa and iniqua, but into foedera aequa and maestas treaties. In other words, to Proclus the maestas treaty is the foedus iniquum. This may not always have been the case, for the special clauses which followed the maestas clause in the Aetolian treaty of 189 suggest that a foedus iniquum could have been constituted without a maestas clause, but that would have probably been prior to the third century, when Rome’s perception of her imperial destiny prompted her to formulate the concept of maestas populi Romani.
The last sentence in the Proculus passage, regarding the criminal jurisdiction of Roman courts over the maiestas ally, is relevant both to the maiestas treaty and to clientela. Proculus is not attesting an express term of the treaty; he is describing a practice which had grown up on the analogy of the position under clientela. Laws punishing breaches of the patron’s fides and of the client’s pietas as treason (proditio) — and conferring jurisdiction on the patron in his domestic court — were attributed both to Romulus and to the XII Tables, and there was a similar sanction at the treaty level, though the fact that the patron, Rome, was called to account just as much as the client is not immediately obvious. Criminal proceedings against allied communities are fairly thick on the ground in the late fourth century (probably prior to the introduction of maiestas treaties), when breaches of pietas were alleged against Tusculans, Satricans and Capuans. Concurrently with this Roman commanders were being punished for breaches of fides towards allies. In these matters individuals stood trial on behalf of their communities; in the case of Rome consuls and other imperium-holders were held responsible. That the practice was originally de facto rather than de jure is shown most clearly by the charge of ‘Having wished to make war’ against which Cato defended the Rhodians in 167, at a time when there was no treaty of any sort in existence. The procedure was carried over to the maiestas ally. Thus, during the Third Macedonian War three Aetolian leaders were accused and sent to Rome for trial; they were condemned despite the claim by Polybius’ source that false charges were brought against them, and their fate alerted the Epirots to the dangers inherent in a Roman alliance (Pol. 27.15.10–14). It is probable that the Aetolians were specifically charged with maiestas p.R. minuta, which had been charged alongside the older charge of perduellio since the mid-third century. Later on, when maiestas p.R. minuta was given statutory formulation under the lex maiestatis, breaches by maiestas allies may well have been included in the lex, and after that charges of maiestas p.R. minuta against defaulting allies are quite frequent both in the Late Republic and in the Early Principate; the patrocinial aspect is still prominent.

It is already apparent that there is no substance in Gruen’s contention that Rome based her treaties on Greek models rather than Italian. There are no doubt similarities in the foedus aequum (though they may be parallel rather than derivative), but there are no Greek parallels to the maiestas clause and it must be accounted a uniquely Roman institution. It is not surprising that Greek writers were unable to devise a standard equivalent for the word maiestas: there was nothing like it in their experience. Nor was this the only technical Latin term that troubled them, for they were just as much at sea with deditio in fidem populi Romani which was the regular prelude to a foedus iniquum. When the Aetolian envoys made a deditio to M. Acilius Glabrio in 191, Glabrio demanded the surrender of those who had instigated the Aetolian defection, was told by the bewildered envoys (who thought, says Polybius, that fides meant a more complete pardon) that this was not how the Greeks understood deditio in fidem, and curtly replied that he was not the least bit interested in the Greek
interpretation — interpretatio more Romano was what counted. 28 (Glabrio here expressed the same imperial contempt for Greek law as Crassus would do in De Oratore.) Glabrio went on to say that unless the envoys obeyed he would put them in chains; they said that they knew they must obey but had to get confirmation from the concilium Aetolorum; a ten days' truce was granted, but the concilium decided to continue the war. 29 Another striking example of the semantic difficulties experienced by the Greeks is their inability to come to terms with humanitas, and indeed a Roman jurist once stated those difficulties as a general proposition. 30

Gruen, perhaps perceiving the destructive impact of the maiestas clause on his entire position, tries to devalue it by claiming that "a legalistic analysis" is inappropriate, that there are neither Hellenistic nor Roman precedents for the maiestatem conservanto formula, that the clause does not reappear in any subsequent treaty with a Greek state, that the only other example is a treaty with Gades in 78, that the Greek equivalent of sine dolo malo in Herodotus 1.69.2 proves that it is not a technical Latin phrase and reinforces the Hellenic background to Rome's treaties, and that the clause "(cannot) be employed, in juristic fashion, as designating a category of Roman foedera". 31 None of this will stand. The most serious error is the assertion that there was no later treaty of this kind with a Greek state. Such treaties may well have been struck with Cnidian and Mitylene, 32 but we do not have to rely on that in view of the clear and unequivocal proof of a maiestas treaty with Rhodes. In 43 P. Lentulus complained to Cicero that the Rhodians had not assisted him against the hostis Dolabella despite the treaty which had been renewed, under which they were obliged to have the same enemies as Rome; Lentulus condemns their conduct as 'indignitatem diminutionemque non solum iuris nostri, sed etiam maiestatis imperiique populi Romani' (Cic. Fam. 12.15.2). The treaty had originally been struck in 165/4 and was renewed in 51 by the eminent jurist Servius Sulpicius Rufus. 33 We note with interest the extensive interpretation of the obligation to have the same enemies: a Roman under a domestic hostis declaration was encompassed thereby. We also note the implied threat of a prosecution of the ally in a Roman court — 'diminutionem non solum iuris nostri sed etiam maiestatis p.R.' Useful inferences as to the existence of other maiestas treaties are authorised by the trials of the Galatian tetrarch, Deiotarus, and of the community of Cyzicus. 34

Gruen's other observations concerning the maiestas treaty are open to equally cogent criticisms. Neither the Aetolians nor Glabrio thought that "legalistic analysis" was inappropriate; its special relevance in the context of imperial expansion has already been demonstrated by the present writer, both here and elsewhere. 35 As for Roman precedents for the Aetolian treaty, the compact with Gades in 78 was simply a renewal of a treaty which had been struck on the occasion of Gades' defection from Carthage in 206; the maiestas clause was designed to concentrate the minds of pro-Carthaginian elements who might try to reverse the defection, but as there had been no Gaditan perfidy towards Rome maiestas p.R. was to be conserved comiter rather than sine dolo malo.
renewal in 78 was requested by the Gaditans themselves (Cic. Balb. 34), and as 'sapientes homines et publici iuris periti' (ib.) they would not have sought a *foedus iniquum* unless one was already in existence; nor, despite his many tactical circumlocutions, does Cicero say that they did seek it for the first time in 78. As for *sine dolo malo*, its Roman legal credentials are beyond dispute, and in any case the particular way in which *maiestas p.R.* had to be conserved (*sine dolo malo* or *comiter*) is only one aspect: the crucial part of the formula is, as Cicero says, *conservando*.

Finally, the statement that the clause was incapable of designating a category of *foedera* would have come as a distinct surprise to Proculus.

We turn now to the other question which we have selected for special consideration, namely Gruen's postulates concerning *clientela*, which is clearly the most important of his informal mechanisms. After making Flamininus' proclamation of 'The Freedom of the Greeks' a mere borrowing from Hellenistic models, Gruen argues for a similar borrowing in respect of *clientela*. The argument is diffuse, but the following appear to be the salient points: (i) evidence making the private relationship of patron and client the model for Rome's international commitments is late and inconclusive; (ii) the patronage of individual Romans over foreign communities is better attested, but the practice was Greek rather than Roman; (iii) by the late second century Greek communities were client states in fact, but again the origins, especially over the crucial period 200–188, were Greek. Gruen's preoccupation with Hellenistic models takes him perilously close to Toynbee's dismissal of Roman history as a mere epilogue in the history of Greece, but that is an unavoidable consequence of the simplistic linear approach. Cultural, legal and linguistic borrowings are as old as man, but the borrowed object seldom remains unchanged in the hands of the borrower. For example, the great aedilician actions protecting the buyer in sale may well have come to the Roman aediles from the Greeks, who in turn got them from Babylon, as Pringsheim has shown, but it took the peculiar casuistic ethos of the Romans to mould it into one of the most effective remedies known to legal science. Similarly, Roman law borrowed dialectical method and abstractions like justice and equity from the Greeks, but the use to which those ideas were put was entirely Roman, as when the essentially Roman concept of *fides* was made the instrument, in the form of * bona fides*, for the development of the epoch-making consensual contracts. Again, the clause in the Gracchan agrarian law prohibiting the alienation of allotments was based on Greek models, but the law was Roman. It was, it seems, not only to human beings that Roman citizenship was capable of being extended; the jurist Ateius Capito was aware of this (Suet. Gram. 22). Cicero knew exactly what he was saying when he had Crassus praise the superiority of Roman law over Greek.

The result of the aforegoing is that even on Gruen's own terms his conclusions are faulty, for even if everything was borrowed from the Greeks as he says, the borrowings were immediately naturalised in their Roman setting. But in fact Gruen is not entitled to be taken on his own terms at all, for borrowing on the
scale asserted by him simply did not happen. The main thrust of his argument is
against the idea of a general Roman protectorate, a *patrocinium*, over the
Hellenes. Gruen finds that idea as worked out by Badian and others “quite
baseless” because in his opinion it depends on evidence which is both flimsy and
nugatory. Most of Badian’s findings are quite capable of fending for themselves,
but one or two points need to be made here. An important piece of evidence for a
general protectorate is Flamininus’ declaration in 193, that the Roman people will
not abandon the patronage of Greek liberty that it has undertaken and that its
good faith requires it to maintain: ‘populus Romanus susceptum patrocinium
libertatis Graecorum non deserere fidei constantiaeque suae ducit esse’ (Livy
34.58.11). Gruen rejects this evidence on the ground that Flamininus’ interview with
Antiochus’ envoys was held *in camera* and could not have been known to Livy. But
this conclusion is only possible if Flamininus’ words are taken out of context.
In fact Livy states explicitly that Flamininus and the *decem legati* for settling
matters in Greece (including the jurist P. Aelius Paetus*) had been appointed by
the senate to hear the envoys and to give an appropriate reply, and that after the
meeting Flamininus reported fully to the senate on what had been discussed, and
did so in the presence of ‘legationes universas Graeciae Asiaeque’ (Livy
34.57.4–5, 59.4–8). There can be no question of Livy not having had access to
the information; it was known right across the Mediterranean world. Oddly
enough, Gruen elsewhere accepts details of the discussion with Antiochus’
envoys at face value. Livy’s other reference to the protectorate is made by the
Rhodians in 189 (the year of the treaty with the Aetolians which partly owed its
negotiation to the Rhodians*), and is an even more explicit characterisation than
that given by Flamininus: ‘hoc patrocinium receptae in fidem et clientelam
vestram universae gentis perpetuum vos praestare decet’ (Livy 37.54.17). Gruen
argues that Livy is not supported by Polybius, who merely has the whole world
under Roman *fivcria.* There are two answers to this. First, in view of Polybius’
problems with technical Latin terminology, what word should he have used? Second,
and perhaps even more cogently, Polybius has the Rhodians declare that
Rome’s *fivcria* over the whole world was given to her by the gods (Pol. 21.23.4).
Again by inspecting the whole passage we are able to put the matter into proper
perspective, for the supreme gift of the gods in the period of imperial expansion
was *maiestas p.R.*, and the relationship between the *maiestas maior* and the
*minor* was a facsimile of that between a patron and a client. And, as already
observed, the *maiestas* relationship would, very shortly after this appearance of
the Rhodians before the senate, be given formal expression in the treaty with the
Aetolians — and the same Rhodians would figure prominently in the negotiations
leading to that result.

The most important proof of the parallel between the *maiestas maior–minor*
and the patron–client is the analogy drawn by Proculus in the passage which we
have already discussed. Harris, who shares some of Gruen’s scepticism about
international *clientela*, states that the analogy was first used by Proculus and
proves nothing for the Middle Republic. This is a superficial view. A jurist draws
an analogy not because it is an interesting curiosity, but because it is both apposite and compelling; Proculus would not have considered *clientela* relevant unless its rules were, in his view, both logically and necessarily similar to those governing the *maiestas* treaty — and not only in Proculus’ own day but since the beginning. It is no accident that Antistius Labeo, who founded the law school to whose headship Proculus ultimately aspired, was noted for his use of analogy. Moreover, which particular *maiestas* treaty did Proculus have in mind? His language is very similar to Cicero’s in *Pro Balbo*, and Cicero is discussing the treaty with Gades which we know went back to 206. Cicero’s remarks on Menander and *postliminium* in the same speech were known to the second century AD legal historian, Pomponius and it is a safe guess that the speech was known to Proculus; he had a special interest in the Gaditan treaty, for he hailed from Baetica.

Although our conclusions are perfectly consistent with Proculus having been the first to spell out an analogy which had been there for all to see for some two hundred years, was he in fact the first? He may have found a reference to the *maiestas* treaty in Aelius Gallus’ argument on *postliminium in pace* which he was attacking, although such a reference has not come down to us in the fragment from Gallus’ legal dictionary preserved by Festus (Fest. s.v. *postliminium*). When did Gallus compile his *De significatione verborum quae ad ius civile pertinent*? If, as Kornhardt thinks, he did so between 170 and 150 BC, we might argue that if he was not only a relative but also a contemporary of the Aelii Paeti who were so prominent in the development of international law at this time, his citation of the Aetolian treaty in a discourse on *postliminium* is likely enough. Gallus could have used the analogy between *clientela* and the *maiestas* treaty for a purpose diametrically opposed to that for which Proculus uses it, namely to support *postliminium in pace* rather than to deny it: if Gallus was looking at the Aetolian treaty rather than the Gaditan, he might well have detected a firmer basis (*sine dolo malo*) for approximating the *maiestas* ally to the *hostis* than Proculus was able to detect in the Gaditan treaty (*comiter*). Most of this would hold good even if Gallus flourished in the mid-first rather than the mid-second century, in Cicero’s day rather than in that of the Aelii Paeti, in such an event only the contemporary link would be lost.

The evidence propels us towards the conclusion that Rome did indeed profess to exercise a *patrocinium* over the Greeks; it was an application at the international level of the principles underlying the age-old Roman institution of *clientela*; it neither needed nor wanted any Greek parallels; for the most part the *patrocinium* arose de facto, as it did in the domestic sector, but sometimes the relationship was formalised by being incorporated in a *maiestas* treaty, as with the Aetolians who would rather entrust themselves to an explicit document than to *fides p.R.*, and with the Rhodians who had long sought a treaty but only got one when their *pietas* was called in question; finally, the formal link gave the ally more than he had bargained for, because his subsumption under Roman criminal jurisdiction meant that *maiestatem p.R. conservando* was, like *maiestas p.R.*
minuta, so susceptible to interpretation that he could never be sure that he had carried out his obligations: how could the Rhodians know that a domestic hostis declaration created an external enemy, or Deiotarus of Galatia that maiestatem p.R. conservanto meant supporting Caesar, not Pompey? 65

Gruen’s unconvincing approach to treaties and clientela makes a serious breach in his entire position. When to this is added his treatment of some of the topics in Part II, notably his mistaken belief that virtually no experts in Eastern affairs were available on the Roman side66 and his denial of a Roman consciousness of empire in the early second century despite the clear evidence to the contrary,67 we are forced to conclude that although he has assembled much valuable material and incorporated it in a number of interesting discussions, Gruen has not succeeded in laying a secure foundation for his theories. Rome did not stumble into empire; she strode into it.

NOTES

7. Ib. 13: “The issue, too often approached on juridical lines, has to be treated in its historical dimension.”
11. For a technical use of foedus aequum see the Proculus passage (Dig. 49.15.7) below. On bonum et aequum see W.W. Buckland, A Text-Book of Roman Law from Augustus to Justinian¹, Camb. 1963, 55; H.F. Jolowicz & B. Nicholas, Historical Introduction to the Study of Roman Law³, Camb. 1972, 410; M. Kaser, Römisches Privatrecht⁵, Munich 1976, 141. On iniquus in legal texts see for example Dig. 17.1.19, 40.5.31.4. See also below. For generally apposite uses of our expressions see Oxford Lat. Dict. s.vv foedus¹ 1c, aequus¹ 6, iniquus 4. The double potential of aequum is clearly brought out by Buckland (loc. cit.), who points out that equitable doctrines borrowed from the Greeks “tend to interpretation according to intent, rather than literal . . . and to such interpretation as gives a fair result, which is not quite the same thing”.
12. The threefold division has suffered the same fate as all other attempts by the sources to enlighten us as to the principles of international law developed by Rome. For criticisms of the passage and an attempt to refute them see Bauman, Lawyers in Rom. Rep. Pol. 119 n. 177.
14. Even iurisconsultissimus occurs: Gell. 1.13.10. But it is clearly non-technical. Nevertheless if words like maximus and optimus are technical the whole question of superlatives may need reconsideration.


17. See Hopital, RHDFE 42 (1964), 18, 204.

18. Dig. 49.15.7. The text is given with the emendations noted in the Mommsen-Krüger edition.


20. In both Polybius and Livy the maiestas clause stands first and is followed by special clauses — not to give passage or support to Rome's enemies, to have the same enemies (but not the same friends) as Rome, to surrender Roman deserters and prisoners, to pay an indemnity, to give hostages, to abandon all claim to Aetolian territory annexed by Rome, to concede Acamania's claim to Oeniadae. Pol. 21.32, Livy 38.11. The maiestas clause added to the ally's burdens, since his performance of every special term was measured against maiestatem p.R. conservare.


22. FIRA 1.4-5, 62.


27. Bauman, Crimen Maiestatis 1, apropos of Polybius' τὴν ἀρχὴν καὶ τὴν διοίκησιν για Livy's imperium maiestatemque. For a reply to Badian's suggestion that maiestas be Livy's rendering of Polybius' rendering of an unknown phrase in the Latin original see Bauman, Maiestatem p.R. conservamento 31 n.30. Gruen thinks that Polybius may reflect an official Greek version. See also n.30.

29. Pol. 20.10.7–17; Livy 36.28.6–30.1. It was only after a tortuous series of further negotiations that a treaty was eventually struck, in 189. The events in the text create a problem in the light of Bellini’s description of the maiestas treaty as the synallagmatic formalisation of deditio in fidem p.R. Bellini, 455–6. Did Glabrio release the envoys from a perfected deditio, or did he simply agree that without ratification by the Aetolian concilium there had not been a perfected deditio? Presumably the set questions and answers in Livy 1.38.2 were followed in the interview between Glabrio and the envoys, though 36.28.1–2 merely summarises that discussion. The best answer is, I think, that the Aetolian misunderstanding of fides (Pol. 20.9.10–12) showed that the parties were not ad idem. Cf. Glabrio’s urgent ‘etiam atque etiam videite, Aetoli, ut ita permittatis’, 36.28.2. There is no trace of a further deditio prior to the striking of a treaty in 189, but if deditio was a sine qua non to a maiestas treaty as Bellini seems to think, a further deditio must be assumed, presumably as part of the final negotiations.


32. Bauman, Maiestatem p.R. conservanto 26, inclining to the view of Täubler and Sherwin-White and pointing out that if these were maiestas treaties there will have been a third criterion, ‘just as the Roman people would have preserved it’, alongside comiter and sine dolo mało.


34. Cf. n.26.


36. On Cicero’s special pleading in Pro Balbo see Bauman, Maiestatem p.R. conservanto pass.


38. Cf. after n. 8 above.


41. That the actio redhibitoria and the a. quanti minoris of Roman-Dutch Law, for example, are the equal of anything devised by non-Civil Law systems is readily demonstrable.


44. Cf. after n. 8 above.


46. Ib. 176.


50. Gruen, 176.

51. H.J. Mason, Greek terms for Roman institutions, Toronto 1974, 6 notes κλίνως amongst words “which can be barely described as Greek”, but does not list any other words pertaining to clientela. On κηδεμόνα (patronus) see Mason, 151–2. His other equivalents for patronus are no better for Polybius’ purpose. He does not list any equivalents for patriodium (nor for maiestas p.R.). There are no pertinent equivalents in R.K. Sherk, Roman documents from the Greek East, Baltimore 1969. It must be concluded that Polybius was no better off than Modestinus. Cf. n. 30.

52. Bauman, Crimen Maiestatis 4–6, 6–11.

53. Cf. n. 49.
54. Harris, War and Imperialism 135 n.2.
56. Ibid.
58. Watson, Law of Persons 238–42.
59. See A.M. Honoré, TR 30 (1962), 472–509. See also my forthcoming Lawyers in Roman Imperial Politics.
62. So P. Krüger, Geschichte der Quellen und Literatur des römischen Rechts¹, Leipzig 1912, 76; Hanslik, K.P. 1.87; Dulckeit-Schwarz-Waldstein, Römische Rechtsgeschichte¹, Munich 1981, 155; Bauman, Lawyers in Rom. Trans. Pol. 113, 116. The difficulties in an early date are whether there was enough published legal writing in the mid-second century to justify a dictionary, and whether cum regibus alongside cum populis liberis et cum foederatis in Gallus' discussion (Fest s.v. postliminium) — cum regibus is not in Proculus — requires a first century date. But Massilienses nostri clientes (Cic. Rep. 1.42) may take care of that; cf. Timpe, Hermes 90 (1962), 357 n.1; contra Harris, War and Imperialism, 135 n.2.
63. Cf. nn.28, 29.
65. Cf. n.26 and after n.33.
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