

MORE ON THE ETHICS OF RECIPROCITY IN ROMAN INTERNATIONAL LAW: THE *IURA COMMUNIA* IN THE ALLIANCES BETWEEN THE ANCIENT PEOPLES OF THE MEDITERRANEAN

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ABSTRACT: If in the most recent settings the state and war are conceived as phenomena directly dependent on each other is because the two concepts have evolved in this way. It should be noted, however, that this has not always been the case: in ancient civilizations, war was not a purely public matter, it was not an attitude of politics, distinct from the concept of peace. The State has, as a first way of identifying itself, a body of laws that necessarily provide for the rules that must manage the war, in all its aspects. As in any set of practical actions, the war also provides for a series of tacit agreements and unwritten laws that manage certain aspects of it that cannot be the subject of state legislation: Often these are very general rules to which we must adapt or rules established for individual events. The relationship between war and society ends in a written and unwritten corpus of rules, which sanction behaviour. History is historical analysis and this cannot be detached from a precise context, which is space and time, social relationship and specific personality. Although it is not always possible to make a distinction between the Greek and the Roman world, some distinctive features mark its civilizations. From a general point of view, scholars continue to be cautious about the genesis of war and the way in which it must be studied: according to the "bellicistic" opinion, relations between states of the ancient world were essentially warlike and hostile; a second theory, "pacifist", is in polemical opposition to the first: the relations would have been tendentially hostile as positive and therefore the positions between the States must be analyzed time by time; finally according to the method of the "genetic" theory The study of war must start from its genesis without neglecting the evolution of public institutions (evidently identifying war and state). Reflecting on the different experiences gained in Greece and Rome, which will be read through the testimony of Thucydides and Virgil, we will try, in the possible traits, to verify the possible points of coincidence and differentiation.

KEY WORDS: ethics of reciprocity – *iura communia* - diplomatic relations

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1. Introduction

It is not necessary to support the theory about the natural enmity between peoples and the foreigners' rights - applied by Mommsen² to the Roman legal experience - in order to justify the existence of treaties or differently shaped relationships between themselves. After the studies of Heus - which showed that there wasn't a typical *amicitia* treaty with the purpose to remove the natural enmity's *status* and that the *bellum iustum* could subsist even against peoples with which there wasn't a preexisting juridical relationship - Phillipson, Catalano, De Martino, Cimma, Sini, the idea of people's natural hostility was outdated³.

² T. Mommsen, *Römisches Staatsrecht* III.1 (Leipzig 1887) 590 ff.

³ The organic reconstruction of Mommsen is questioned by the studies of A. Heus, *Die völkerrechtlichen Grundlagen der römischen Aussenpolitik in republikanischer Zeit* (Leipzig 1993) 4 ff.; C. Phillipson, *The international Law and Custom of Ancient Greece and Rome* II (London 1991) 113 ff.; P. Catalano, *Cic. 'de off.' 3.108 e il così detto diritto internazionale antico*, in *Syntelesia* V. Arangio-Ruiz (Napoli 1964) 373 ff.; Id., *Linee del sistema sovranazionale romano* I (Torino 1965) 8 ff. and 51 ff.; Id., *Diritto e Persone. Studi su origine e attualità del sistema romano* I (Torino 1990) XIV, in which he defines the theory about the original «lack of foreigners' rights» as a self-projection of the moderns and more 16 ff.; F. De Martino, *Storia della costituzione romana* II (Napoli 1973) 13 ff.; Id., *L'idea della pace a Roma dall'età arcaica all'Impero. VIII Seminario internazionale di studi storici 'Da Roma alla terza Roma'*, 21-22.4.1988 [=Roma Comune a. 12 n. 4-5 (1988) 86 ss.] See also M.R. Cimma, *Reges socii et amici populi Romani* (Milano 1976) 11 ff. 23 ff., on the difficulties in combining Mommsen's theory with the Roman concept of *amicitia*, Id., *Reges socii et amici*, in *Diritto@storia* 3 (2004) 2 f.; J. Gaudemet, *Les institutions de l'antiquité* (Paris 1991) 203 ff., that agrees with P. Catalano's reconstructive hypothesis; as well as F. Sini 'Bellum nefandum'. *Virgilio e il problema del diritto internazionale antico* (Sassari 1991) 28 ff.; C. Baldus, *Regelhafte Vertragsauslegung nach Parteirollen im klassischen römischen Recht und in der modernen Völkerrechtswissenschaft* (Frankfurt am Main 1998) 260 f., nt. 27; Y. Garlan, *La guerre dans l'antiquité* (Paris 1972) 17 ff., distances himself from the two theories (the pacifist and the warmongering ones), by suggesting a genetic interpretation of the war in the people's relationships. Recently A. Zack *Studien zum "Römischen Völkerrecht". Kriegserklärung, Kriegsbeschluß, Beeidung und Ratifikation zwischenstaatlicher Verträge, internationale Freundschaft und Feindschaft während der römischen Republik bis zum Beginn des Prinzipats* (Göttingen 2001) 1 ff., especially 167 ff. (and more Id., *Forschungen über die rechtlichen Grundlagen der römischen Außenbeziehungen während der Republik bis zum Beginn des Prinzipats. I. Fragen an Sextus Pomponius: Quellen- und sachkritische Untersuchungen zu Pomponius 37. lib ad Muc. 49,15,5 in Göttinger Forum für Altertumswissenschaft* 14 (2011) 47 ff.) questioned the prevailing doctrine's opinion and, even though he didn't come back to the Mommsen's theory of natural hostility, he resumed the 'voluntaristic' theory of the international law, based on the conclusion of constitutive agreements for the relationships between peoples, drawing the attention on the *foedera pacis, amicitiae causa* attested by sources. It seems to me that a consideration about the relationships between the ancient peoples cannot be enclosed in categories that limit, without sufficiently accounting, the several variables attested by the sources. In regard to the relationships between Rome and the foreign communities, indeed, the testaments, both literary and juridical, reference to, as we'll see *infra*, not only the treaties' conclusion but also the existence of *amicitia* relationships, different from the *foedus amicitiae causa*, highlighting an essential distinction between the two elements, which can unlikely explained with different forms of contractual relationships. In some occasions, the *amicitia* relationships were concluded with the simple diplomatic exchange (see. L. Loreto rec. to A. Zack, *Studien zum "Römischen Völkerrecht"* cit., in *Gnomon* 75 (2006) 85 ff.). But it would be enough to refer to what's reported in the text about the P. Catalano's thought, *Linee del sistema sovranazionale romano* I cit., pass; and to the "blended" conclusion of P. Frezza, *Il momento 'volontaristico' e il momento 'naturalistico' nello sviluppo storico dei rapporti 'internazionali' nel mondo antico*, in *SDHI* 32 (1966) 299 ff. that, despite the stretch in interpreting

In particular, Catalano⁴ perceives the Roman juridico-religious system in notionally universal terms realized in a sphere of relationships (with *reges*, *populi* or individual foreigners) the existence of which is independent both from particular agreements and a ethnic commonality. Within this system, more restricted spheres of relationships takeshapes, on the basis of pacts with other peoples or unilateral acts. The system is, as such, supranational in the sense that it, by expanding with the ethnic groups, devises them in increasingly ample synthesis, with the political will that tends to an universal society.

The well-known passages from the III book of Cicero's *de officiis* (3.108) would showthis:

Regulus vero non debuit condiciones pactionesque bellicas et hostiles perturbare periuro. Cum isto enim et legitimo hoste res gerebatur, adversus quem et totum ius fetiale multa sunt iura communia.

The respect for the oath sworn by the Carthaginians to the consul Atilius Regulus isthe starting point for Cicero's thought. The event is well noted: the consul, capturedduring an expedition in Africa in the first Punic War, was sent to Rome in order tonegotiate the prisoner exchange, after swearing that, if the prisoners captured by theRomans hadn't been returned, he would come back to Carthage. Atilius Regulus,placing the common good before his own, advised against the restitution ofCarthaginian prisoners, by coming back in Africa, in accordance with the sworn oath. Cicero, mentioning the episode as an example of the prisoner consul's nobility ofspirit, draws attention to the observance of the oath's sacredness, that concerns theconditions and the war's pacts concluded with the enemy⁵.

Within this universal system Rome devises an initial policy of alliances, especially military, in which the ones related with the ethnic situations are of particular importance.

2. *Societas* in the ancient alliances

It is well-known that the most ancient relationships between Rome and the italic peoples were shaped on *societas*. It appears as a military alliance, of a basically perpetual nature, established between two or more communities⁶, with defensive and offensive purposes, with the requirement to provide military contingents, troops or ships to the ally.

the P. Catalano's conception as 'voluntaristic', explains the historical development of the ancient world's international relationships in the dialectal co-presence of the 'naturalistic' element with the 'voluntaristic' one.

⁴ See the previous note.

⁵ Cic., *off.* 3.107: «*est autem ius etiam bellicum fidesque iuris iurandi saepe cum hoste servanda*».

⁶ T. Mommsen, *op. cit.*, 651 ff., excludes the possibility that there may be between a community and an individual.

In this early structure the *societas* relationships - as Mommsen⁷ noticed - reveals the phases of the Roman hegemonic policy founded on the preservation of the autonomy for the single communities militarily linked with Rome.

In literary sources the distinction between the Latins (*Latinum nomen*) and the italic *socii* is reported in an asyndetic⁸ locution with which the Romans stated their allies in Italy, distinguishing them from the extraitalic *socii*.

The peculiarity of the italic alliances compared to the transmarine ones is summarized in an articulate expression contained in the epigraphic agrarian law of the 111 B.C. (lin. 21): *civis Romanus sociumve nominisve Latini, quibus ex formula togatorum [milites in terra Italia inperare solent]*⁹. The statement, in which it is possible to read the ultimate expression of the italic alliance's juridical awareness¹⁰, relates the asyndeton *socii nominisve Latini* with two conditions that contribute to isolate the detail of these ancient connections: the position in the italic land and the regulation of their military contribution according to the *formula togatorum*.

This last expression - that is mentioned in its complete form only in the agrarian law's text, but to which some Livy's passages and a Polybius¹¹ testament expressly refer - states the assimilation of the italic people in the roman military organization, making their contribution, identified with the criteria stated in the formula, fundamental for the Roman army, instead of the potential extra-italic allies' assistance¹².

The reference to the *toga*, from which *togati*, refers to the Roman citizenship's core, interpreted by someone as the symbol of the Roman cultural *koiné* that *cives* increases with the military contribution for the Latins before and the peninsula's Italics after, conceived by others as the reference to the conscription list¹³. Most likely the formula included both the list of the allied communities and

⁷ T. Mommsen, *op. cit.*, 645 ff.

⁸ For an examination of the sources see. T. Mommsen, *op. cit.*, 661; P. Catalano, *Linee del sistema sovranazionale romano* I cit., 283 ff.; W.V. Harris, *Roman Foedera in Etruria*, in *Historia* 14 (1965) 282 ff.; W. Dahlheim, *Struktur und Entwicklung des römischen Völkerrechts im dritten und zweiten Jahrhundert v. Chr.* (München 1968) 117 ff.; M. Wegner, *Untersuchungen zu den lateinischen Begriffen socius und societas* (Göttingen 1969) 95 ff.

⁹ The same formula is also mentioned in the fiftieth line of the law.

¹⁰ V. Ilari, *Gli italici nelle strutture militari romane* (Milano 1974) 22.

¹¹ Liv. 22.57.10 (216 B.C.); 27.10.2-3 (209 B.C.); 29.15.6 and 12-13 (204 B.C.); 34.56.6-6 (193 B.C. without the declared reference to the term *formula*). Polyb. 2.23-4, in particular 2.24.10, in which there is a reference to some enrollment lists during the mobilization against the Gauls in the 225 B.C.

¹² About the meaning of the *formula togatorum* I refer to the Ilari's detailed study, V. Ilari, *Gli italici* cit., 57 ff. and Id., 4 ff., nt. 11 on the term *togati*. It is certain that the reference to the *toga* reports the belonging by right to the Roman community and it is not useless to highlight that - as L.R. Taylor observed in *Roman voting assemblies from the Hannibalic war to the dictatorship of Caesar* (Ann Arbor 1966) 39, starting from the analysis of some coins that contained the vote's procedures in the *comitia* - it is considered the fundamental element for voting in the *comitia*, the original assembly of citizens in arms, establishing a close relationship between the *toga* and the exercise of *civis Romanus* rights.

¹³ T. Mommsen, *op. cit.*, 674 ff., considers that the southern Italy's Greeks would have been excluded from the concept of *togati*, because of the shown propensity for the Greek national garment, the pallium. Their exclusion from the formula *togatorum* would be coherent with the

the criterion for determining the amount of the military contingent - the requirement that would have distinguish this formula from the *sociorum* one (the list of extra-italic associates) and from the *formulaamicorum* (the list of friendly communities). In other terms, while the *socii et amici populi romani* in the Middle Republic had no predetermined military obligations, the italic associates, in accordance with the formula *togatorum*, had a responsibility already assumed with Rome on the military contribution cooperating with Rome in her military campaigns¹⁴.

The established relationship between Romans and allies would have contributed to define the Roman hegemony's geographical theater. Indeed, it was observed that Rome was one of the few ancient people that didn't employ mercenaries in their conquest wars, choosing to create an army institutionally funded on the integration between *cives* and italic allies. It cannot be excluded that after the 338 B.C. about half of the Roman army was constituted by italic allies and that the integration policy matched with an expansion plan of the Roman hegemony confirmed by its following history¹⁵.

Since the III Century B.C. it is possible to attest some relationships with extra-italic peoples qualified as *societas* and generally related with the *amicitia* - *socii*

sending of only naval contingents and not also by the ground, that instead the italic allies were supposed to provide according to the formula *togatorum*. Such a reconstruction was generally criticized (see H. Horn, *Foederati: Untersuchungen zur Geschichte ihrer Rechtsstellung im Zeitalter der römischen Republik und des frühen Principats* (Frankfurt am Main 1930) 82 ff.; P. Catalano, *Aspetti spaziali del sistema giuridico-religioso romano. Mundus, templum, urbs ager, Latium, Italia* in *ANRW II/16.1* (Berlin - New York 1978) 539 ff.; O. Sacchi, *Regime della terra e imposizione fondiaria nell'età dei Gracchi. Testo e commento storico-giuridico della legge agraria del 111 a.C.* (Napoli 2006) 324 ff.; L. de Ligt, *Roman manpower and recruitment during the middle Republic*, in P. Erdkamp, *A Companion to the Roman army* (Oxford 2007) 114 ff. on the basis of the lack in the sources of a distinction between *socii togati*, with reference to the ground troops and *socii* that were not *togati*, as for the naval contingent and considering that the notion of *togati* goes beyond the tangible elements of the clothes, having an extensively comprehensive cultural and meta-juridical value. Recently E. Lo Cascio, *I togati della formula togatorum*, in *AIS 12* (1991-94) 309 ff., showed a different interpretation of the expression *ex formula togatorum*, with reference to the roman use to confer the *toga virilis* to the youngs who were over the age of seventeen and that were therefore available for the enrollment. He identifies more specifically an age range from 17 to 45 years. Contra L. De Ligt, *Peasants, citizens, soldiers. Studies in the demographic history of Roman Italy BC- AD 100* (Cambridge 2012) 63 f., who recognizes only the minimum of 17 years. In both cases the formula would indicate a category of individuals, equated by the age instead of the clothes, that represents the contingent of available military forces.

¹⁴ A.J. Tounbee, *Hannibal's legacy I. Rome and her neighbours before Hannibal's entry* (London 1965) 424 ff.; P.A. Brunt, *Italian manpower 225 BC-AD 14* (Oxford 1971) 545 ff.; V. Ilari, *Gli italici cit.*, 57 ff., lastly on the measure of the *auxilia* see D.W. Baronowski, The '*formula togatorum*', in *Historia* 33 (1984) 248 ff. It's not possible to certainly establish the date when the *formula togatorum* began to operate as military serial number, even if it is probable that Polyb. 2.23-24, by reporting the event of the italic mobilization against the Gauls in 225 B.C. and by referring to the enrollment list, alluded exactly to our *formula*. On this point see D.W. Baronowski, *Roman military forces*, in 225 B.C (Polyb. 2. 23-4), in *Historia* 42 (1993) 181 ff.

¹⁵ On the point see A. Rawlings, *Army and battle during the conquest of Italy (350-264 BC)* in P. Erdkamp, *op.cit.*, 52 f.; W. Broadhead, *Migration and Hegemony: Fixity and Mobility, in Second-Century Italy*, in L. De Ligt, S.J. Northwood, *People, Land and Politics. Demographic Developments and their Transformation of Roman Italy 300 BC - AD* (Cambridge-Leiden 2008) 452 ff.; J.R.W. Prag, *Provincial governors and auxiliary soldiers*, in N. Barrandon, T. Kirbihler, *Les gouverneurs et les provinciaux sous la République romaine* (Remmes 2011) 20.

et amici, societas et amicitia: the two terms are often used in a fungible manner, sometimes the term *amicus* is used, sometimes *socius*, some other times *socius et amicus*, in order to qualify the same situation - based on an ancillary military partnership with Rome, generally perpetual, that would imply the submission of the foreign people¹⁶ - as evidenced by the terminological exchange of the original *formula amicorum* with the *formula sociorum*¹⁷.

The examination of literary and epigraphic statements on the international relationships from the III century B.C. on, allows to describe a clear framework of the roman expansion in the Mediterranean basin¹⁸.

The most ancient statement relates with the Roman campaign for Sicily's conquest, gradually removed from the Carthaginian influence. In order to ward off the sort of other Sicilian cities fallen in the power of Rome, Hieron II of Syracuse came to terms with the Romans before they arrived outside Syracuse. The peace was concluded around the 263 B.C.: all the conquests were given to the Romans, in addition to a war indemnity and an annual tribute; half of his ancient territory was recognised to Hieron with the obligation to support Romans in the war against the Carthaginians, previous Syracusans' allies¹⁹. Some literary sources, in the face of a not-univocal²⁰ picture, define the relationship so established between Rome and Syracuse as founded on friendship and alliance²¹. A few decades later Rome began her expansion toward the eastern Mediterranean: in the problematic balance between the local dynasties the Romans integrated, by creating a game of alliances that, moving the power's focal point toward the west, will be increasingly characterized as instruments for the Roman hegemony's exercise. In this framework the Roman promise for *amicitia and societas* to Seleucus II Callinicus, King of Syria²² takes place, probably between 247 and 226 B.C., that supports the Romans' try to insert in the thorny relationship between the Seleucids and the Ptolemies; in addition to the renewal of the treaty of

¹⁶ T. Mommsen, *op. cit.*, 650.

¹⁷ T. Mommsen, *op. cit.*, 651; P.C. Sands, *The Client Princes of the Roman Empire under the Republic* (Cambridge 1908) 40 ff.; E. Badian, *Foreign Clientelae (264-70 B.C.)* (Oxford 1958) 12 and nt. 4; De Martino, *Storia della costituzione II cit.*, 34; A. Valvo, *Formula amicorum, commercium amicitiae φιλίας κοινωνία*, in M.G. Angeli Bertinelli, L. Piccirilli, *Serta antiqua et mediaevalia IV. Linguaggio e terminologia diplomatica dall'antico oriente all'impero bizantino* (Atti Genova 1998) (Roma 2001) 135 ff.

¹⁸ For the sake of completeness I refer to the list suggested by E.S. Gruen, *The Hellenistic world and the coming of Rome* (Berkeley- Los Angeles - London 1984) 47 nt. 178, that references in turn to P.C. Sands, *The Client Princes of the Roman Empire* cit., 12 ff. See also s.v. «amicus» in *ThLL* (Lipsiae 1900) 1909 f.; s.v. «amicitia», *Id.*, 1983 f.

¹⁹ G. Brandi Cordasco Salmena, *La tradizione Greca nelle relazioni interstatuali quale paradigma dei trattati romano-cartaginesi. Taluni aspetti diplomatici e di diritto pubblico nella romanizzazione del Mediterraneo*, in *Studi sull'Oriente Cristiano* 25.2 (supplement 6) with the preface of Gian Luca Gregori, ff. 1-77.

²⁰ Eutrop. 2.19; Zon. 8.16.

²¹ Polyb. 1.16.5-9; App. Sic. 2.2. For a description of the open problems on the historians' testimonies related to this event, I refer to P.C. Sands, *The Client Princes* cit., f. 26, f. 36; W. Dahlheim, *op. cit.*, 127 ff.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 37 ff.

²² Suet. Claud. 25.3 See. M. Holleaux, *Rome, la Grèce et les monarchies hellénistiques au III siècle avant J.-C (273-205)* (Paris 1921) 46 ff.; E.S. Gruen, *The Hellenistic world* cit., 64.

συμμαχία και φιλία between Rome and Pharus in 229/9 (219/8) B.C.²³, at the time of the first Illyrian War solved with the crucial Roman intervention. The war against the Carthaginians catalyzes the military and diplomatic efforts in the following years²⁴: this is the context in which the relationship - sometimes identified as friendship, sometimes as *societas* and some other times *amicitia et societas* - takes place, established in the scope of an easy policy of alliances, by Syphax, King of Masaesyli Numidians (213 a.C.)²⁵ with Rome. After the defeat of the father and his death, Symphax's son, Vermina requests to the Roman people to be considered *rex socius et amicus*, but the Romans reply that this denomination is an honor that Romans grant with a high price, requesting him to first ask for peace and accept the serious conditions that were imposed. In addition, the treaty that Romans concluded during the second Punic War with the Aetolians (212 B.C.)²⁶ against Philip of Macedon pursuant to which *in amicitiam societatemque populi Romani venire*. Furthermore it is added that, if the Eleans, the Lacedaemonians, Attalus, Pleuratus and Scerdilaidas²⁷ wanted to join Rome and the Aetolians in the war against the Macedonian King, they would have become, as well as the Aetolians, friends and allies of the Roman people (*eodem iure amicitiae*²⁸). The treaty between Rome and the Attalus I, King of Pergamum (211 B.C.)²⁹ is the concrete evidence of the implementation of the provision added to the treaty with the Aetolians.

In a different scenario, the second Macedonian War's one, Philip V of Macedon, after he was subjected to heavy peace's conditions following the battle of Cynoscephalae (197 B.C.), sends in Rome messengers *ad societatem amicitiamque petendam* with the purpose to renegotiate the relationship with

²³ On the inscription that contains the treaty's text, its reconstruction and interpretation I refer to A.M. Eckstein, *Pharos and the Question of Roman Treaties of Alliance in the Greek East in the Third Century B.C.E.*, in *Classical Philology* 94 (1999) 395 ff., who tends to exclude that the treaty actually referred to two relationships (friendship and alliance), referring rather to a sort of friendship between communities.

²⁴ Even before the second Punic War the relationships between Rome and the Spanish cities north of the Ebro are shaped by relationships of friendship and alliance (Polyb. 3.97.5): I refer to the examination of R. Bernhardt, *Die Entwicklung römischer Amici et Socii zu Civitates Liberae in Spanien*, in *Historia* 24 (1975) 414.

²⁵ Liv. 24.48.2-3:31-11-13, See P.C. Sands, *The Client Princes* cit.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 41 ff.; A. Zack, *Studien zum "Römischen Völkerrecht"* cit., 184 ff.

²⁶ Liv. 26.24.8-9; 31.21.20. E. Täubler, *Imperium Romanum: Studien zur Entwicklungsgeschichte des römischen Reichs, I: Die staatsverträge und Vertragsverhältnisse* (Leipzig 1913) 210 ff.; A. Heus, *op. cit.*, 37 ff.; W. Dahlheim, *op. cit.*, 181 ff.; E. Badian, *op. cit.*, 55 ff.; R.G. Hoptal, *Le traité romano-aetolien de 212 avant J.-C.*, in *RhDFE* 42 (1964) 18 ff., 204 ff.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 55 ff.

²⁷ *The second one is the first one's father, king of Illyria (Thrace?)* in J. & Th. Dymoch, *Bibliotheca classica: or a Classical Dictionary* (London 1833) 759. But see Liv. 26.24.8: «*conscriptae condiciones, quibus in amicitiam societatemque populi romani venirent, additumque, ut, si placeret vellentque, eodem iure amicitiae Elei Lacedaemoniique et Attalus et Pleuratus et Scerdilaidus essent, Asiae Attalus, hi Thracum et Illyriorum reges ...*».

²⁸ W. Dahlheim, *op. cit.*, 221 ff.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 57 ff., on the relevance of the provision added to the treaty.

²⁹ Liv. 26.24.8 See P.C. Sands, *The Client Princes* cit., 184; M.R. Cimma, *Reges socii et amici populi Romani* cit., 68 f.; A. Zack *Studien zum "Römischen Völkerrecht"* cit., 205 ff.

Rome³⁰. After the victory over Philip, the consul Flamininus declares during the Isthmian Games in 196 B.C., the freedom of the greek populations, of which Rome is the guarantor. Every attempt or threat to this freedom is indeed protected by Romans: some examples are both the war against the Spartan tyrant, Nabis (195 B.C.), to start which Flamininus refers to a previous relationship of *amicitia* and *societas* lawfully concluded with the King Pelops, of whom Nabis wasn't recognised as a legitimate successor³¹; and the relationships with Antiochus III, King of Syria, who in 193 B.C. sends to the Romans a delegation ad *amicitiam petendam iungendamque societatem*³².

The Roman interventions in Asia become more frequent in the following decades and refer to previous relationships of friendship and alliance: in the 163 B.C., Ariarathes V of Cappadocia asks to renew the friendship and the alliance with Rome³³; during the conflict between Attalus II and Prusias II³⁴ (154 B.C.) the Romans, in order to force the king of Bithynia to desist to the intent to continue the hostilities, by referencing to their friendship and alliance relationship with Prusias, just as they use the same phrase to identify the relationship with the king of Pergamon³⁵. Around the middle of the II century B.C., the translation of a letter of the praetor M. Aemilius addressed to Magnesia and Priene in Minor Asia, refers to the relationship of friendship and alliance, sometimes of friendship only with the roman people³⁶; additionally, the greek translation of a *senatusconsultum* reveals that the cities of *Narhesium* and *Melitaea* were Roman people's excellent friends and allies³⁷. Analogously, in an inscription from the 155 B.C., the king Ptolemy VIII Euergetes II defines his relationship with Rome as *φιλία και συμμαχία*³⁸; probably the relationship of enduring *φιλία και συμμαχία*, by ground and sea, between Rome and Maronea on the coast of Thrace dates back to the same period, with equal conditions³⁹. The sources attest before the 92 B.C. the conclusion of a friendship and alliance's treaty between the Romans and Mithridates VI king

³⁰ Liv. 33.35.5. See P.C. Sands, *The Client Princes* cit., 182 f.; W. Dahlheim, *op. cit.*, 260 ff.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 59 ff.; E.S. Gruen, *The supposed alliance between Rome and Philip V of Macedon*, in *California Studies in Classical Antiquity* 6 (1973) 123 ff., on the reinterpretation of the Roman alliances' policy with the extra-italic peoples that would have been connected to Rome with more flexible relationships, such as the friendship even adaptable in instituting unbalanced relationships; E.S. Gruen, *The Hellenistic world* cit., 22.

³¹ Liv. 34.31.5; 34.32. E. Täubler, *op. cit.*, 217 f.; A. Heus, *op. cit.*, 44 ff.; E. Badian, *op. cit.*, 81 f.; W. Dahlheim, *op. cit.*, 221 ff.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 98 f., nt. 171; E.S. Gruen, *The Hellenistic world* cit., 20.

³² E.S. Gruen, *The Hellenistic world* cit., 23.

³³ Diod. 31.19.8; Polyb. 31.13-14.; P.C. Sands, *The Client Princes* cit., 28; M.R. Cimma, *Reges socii et amici populi Romani* cit., 146 f., nt. 113. See A.M. Eckstein, *op. cit.*, 409 f., on the limitation of friendship in the treaty's content.

³⁴ Polyb. 33.12.5. See P.C. Sands, *The Client Princes* cit., 16; A. Heus, *op. cit.*, 48; E. Badian, *op. cit.*, 104 f.; W. Dahlheim, *op. cit.*, 270 f.; M.R. Cimma, *Reges socii et amici populi Romani* cit., 138 f. nt. 93.

³⁵ App. Mithr. 3. See P.C. Sands, *The Client Princes* cit., 36; E. Badian, *op. cit.*, 104 f.; W. Dahlheim, *op. cit.*, 270 f.

³⁶ SIG. 679, 2b. See A.M. Eckstein, *op. cit.*, 407.

³⁷ SIG. 674 See A.M. Eckstein, *op. cit.*, 407.

³⁸ SEG. 9.7. On the relationships between Rome and Egypt, see L.H. Neatby, *Romano-Egyptian Relations during the third Century B.C.*, in *Transactions and Proceedings of the American Philological Association* 81 (1950) 89 ff.; A.M. Eckstein, *op. cit.*, 407.

³⁹ I refer to E.S. Gruen, *The Hellenistic world* cit., 738 ff.

of the Pontus⁴⁰ and with his son, king of Paphlagonia⁴¹. In the 81 B.C. in the wake of the Mithridatic War, Sulla, in a letter to the city of Stratonikeas in Caria⁴² appreciates the friendship and the alliance of the population toward Rome; in the 56 B.C, the friendship and the alliance between Rome and the city of Issa⁴³ is stated.

With this rapid gallery, I wanted to report only some of the many testimonies on the instrument of the treaty of friendship and alliance that characterizes the relationship between Rome and the Mediterranean people since the III century B.C⁴⁴. Although the framework is incomplete⁴⁵, it however allows us to focus on a not secondary phenomenon in the supranational relationships, whose novelty, related to the spatial context in which the friendship and alliance's relationship develops, clearly emerges even by means of the comparison with the different and more ancient structure of the relationships between Rome and the Italic peoples.

3. The state of the doctrine

From an initial flattening of the relationship between *amicitia* and *societas* on the *amicitia* tout court, defined in the monumental Mommsen's construction, we have reached, with some more recent contributions, its technical range's appreciation, by relating it with Rome's political growth.

As I said, Mommsen⁴⁶ places near, on the basis of a formal similarity, the *amici* peoples and the *socii et amici*⁴⁷ ones. Even though he actually introduced a tripartition in the supranational relationships - *amici*, *socii* and *socii et amici* - Mommsen doesn't take care of explaining further the nature of this halfway type between friends and allies. However, moving the focus focal point on the friendship relationship and so on a condition of equality between the parts, rather than the relationships of subjection that connects Rome with the *socii*⁴⁸ peoples, allows yet to shape the situation of the peoples *socii et amici* as equal.

⁴⁰ App. Mithr. 12 See P.C. Sands, *The Client Princes* cit., 13; and M.R. Cimma *Reges socii et amici populi Romani* cit., 198 nt. 29.

⁴¹ CIL. VI/4 30922. See P.C. Sands, *The Client Princes* cit., 36.

⁴² OGI 441. See A.M. Eckstein, *op. cit.*, 407 f.

⁴³ A.M. Eckstein, *op. cit.*, 408.

⁴⁴ For a more accurate list I refer to P.C. Sands, *The Client Princes* cit., 10 ff.

⁴⁵ In this framework, it is necessary to add the testament of Diod. 34-35.36 on the conferment of the titles *socius et amicus populi Romani* to Contoniatius, king of Iontora in Gaul in 110 B.C. See M.R. Cimma, *Reges socii et amici populi Romani* cit., 213.

⁴⁶ T. Mommsen, *op. cit.*, 593 nt. 2, about a formal «*Gleichbehandlung der beiden Kategorien der blossen amici und der socii et amici*». The french translation of Girard mistakenly expresses «*la similitude théorique des règles qui concernent les simples socii et les socii et amici*».

⁴⁷ Even M. Holleaux, *op. cit.*, 47 nt. 1, 50 nt.1, follows this interpretation, considering that the composite phrase is a reinforcing; A. Heus, *op. cit.*, 26 nt. 1, who defines the use of the term Σύμμαχος next to φίλος in the sources as a simple pleonasm. C. Baldus, *op. cit.*, 219, highlights the two institutes' affinity «*Die amicitia wird seit der hohen Republik gern in Zusammenhang mit der societas genannt; häufig erscheinen beide Institute als synonym*». Conversely, H. Horn, *op. cit.*, 12 f., claims that the hendiadys refers to *socius* or *societas*.

⁴⁸ T. Mommsen, *op. cit.*, 649 f.; 663 f.

At the beginning of the last century, the interest for the matter re-emerges in two contributions, nearly contemporary, of Matthaei⁴⁹ and Sands⁵⁰. The first one, starting from the Mommsen's insight, considers that the denomination *socius et amicus* is nothing but the official title used by Romans for the friends⁵¹, supposing that on the occasion of the request of friendship's renewal a friend people voluntarily assumed the commitment to provide military support, adding the *societas* to the *amicitia* relationship⁵².

Differently from Mommsen, however, the scholar considers necessary to trace back the analysis on the supranational relationships to the dual track of the *amici* on one side and the *socii* on the other, having discovered no traces of the actual existence of a specific third class of relationships (*socii et amici*)⁵³. Within these reference limits Matthaei traces the event of the Rome's supranational relationships; from the original military bond with the Latin peoples - *socii* - Rome, during the second Punic War, would have opened herself to relationships with the Mediterranean peoples, using the *amicitia* or the *amicitia et societas* - this last treaty's form would have been shaped as a compromise between the Roman need to establish durable relationships (*amicitia*) and the foreign people's, in particular the Greeks, need to secure military alliance aimed to the current military needs (*societas*)⁵⁴. In concrete terms, of course, the condition of the *socii* would imply a series of binding obligations for the associated community that would be excluded instead from the condition of *amicus*⁵⁵.

⁴⁹ L.E. Matthaei, *On the classification of Roman allies*, in *Classical Quarterly* 1 (1907) 185.

⁵⁰ P.C. Sands, *The Client Princes* cit., 10 ff.

⁵¹ L.E. Matthaei, *op. cit.*, 185.

⁵² L.E. Matthaei, *op. cit.*, 184: «we may suppose that on such an occasion as the revision of a treaty, an *amicus* might under-take to give military help: he would acquire *societas* in addition to his original *amicitia*, i.e. he would become *amicus et socius*»; Id., 185 f.: «the position was this: the *socius* was obliged to send year in, year out, a fixed contingent to the Roman army: the *amicus* was never obliged to do so: he might, however, if he liked, give voluntary military assistance to Rome during any particular war. This for him was supposed to be a privilege, and hence arose the phrase *socius et amicus*, originally a title of honour, then simply the official designation for the friend who gave voluntary military help»; Id., 191: «the difference between the two classes is, that a *socius* was bound to send, year in, year out, a fixed amount of military help, which was under the absolute command of Rome: whereas an *amicus* was only bound to neutrality: if he sent help, he sent it of his own free will alone, determined the amount himself and the time during which it should be available, and it was not subject to Roman command, except by special and temporary arrangement»; Id., 200: «to sum up: the *socii*, by their *foedera*, were forever bound to send a fixed number of troops or ships annually, which should be absolutely under Roman command. The *amici*, whether *foederate* or non *foederate*, were not bound to more than neutrality: if they sent troops etc. they did so voluntarily, fixed the numbers themselves and the time during which they should be available; nor were these troops directly under Roman command. These distinct and important privileges of the *amici* suggest that military status was the test which divided an *amicus* from a *socius*».

⁵³ L.E. Matthaei, *op. cit.*, 185.

⁵⁴ L.E. Matthaei, *op. cit.*, 200 ff., «hence the rise of the *amicitia* or *amicitia societasque*, which was in its nature a compromise: it preserved the Roman principle of perpetuity by being a friendship without fixed termination - *amicitia* - and the Greek principle of temporary alliances, by the aid only offered in times of stress - *et societas*. The scholar (Id., 203) questions moreover on the reason why this supranational relationship's form didn't emerge from the contact with the Greek peoples in Magna Graecia. The Matthaei's attempt to respond is quite feeble and lies on the naturalization of Greeks in southern Italy, in addition to a supposed operation's difference concretely of the treaties of *societas* with these peoples.

⁵⁵ In this regard the schematization suggested by E. Täubler, *op. cit.*, 47, can be read.

Sands - as he observes himself⁵⁶ - comes, although with a different method, to the same conclusion of Matthaëi on the sameness of the *socii et amici* with the *amici*, who would have no obligation to provide Rome military contingents. The composite phrase would have been used with increasingly regularity starting from the II century B.C., in connection with Rome's political and military power's growth, to emphasize the condition of inferiority of the *amici*, until the final transformation into *socii*⁵⁷.

This last observation, based on the attention for the power relations in the Mediterranean, was approved by following authors - I refer, in particular, to Dahlheim⁵⁸, De Martino⁵⁹ and Cimma⁶⁰ - who, conversely to Matthaëi and Sands, mostly notices⁶¹ the technicality of the friendship and alliance's relationship, by reading in it the reflection of a modification of the original friendship's relationships into a more burdensome relation for the foreign peoples that requested, along with the duty to preserve the peace toward Rome, her friends and allies, the responsibility to collaborate to the hegemonic power's military feats. Such a circumstance, even if it didn't compromise juridically the sovereignty of the Roman people's friend and allied community, put it under its political sphere of influence⁶².

So the question can be summarized with the observations of Maria Floriana Cursi, who noticed the existence of supranational relations designed as alliance and friendship, developed on the occasion of Rome's emergence on the Mediterranean and strictly dependent on its political weight⁶³.

In any case, what is certain is that the perspective from which the phenomenon was examined is the Roman one: Rome expands in the Mediterranean and builds, according to her own methods, relationships with foreigners⁶⁴.

⁵⁶ P.C. Sands, *The Client Princes* cit., VI.

⁵⁷ P.C. Sands, *The Client Princes* cit., 42 ff., especially; Id., 46: «though it has just been said that the help rendered to Rome by the kings was in theory voluntary, yet a king, who consented to be called the friend and ally of a vastly superior power, found it difficult to refuse assistance when it was requested, whereas the superior power by reason of its strength did not lie under the same necessity of lending its assistance ... when a king, then, accepted from Rome the title 'friend and ally' he accepted therewith a position of inferiority».

⁵⁸ W. Dahlheim, *op. cit.*, 260 ff. In a paragraph titled «*die praktische Auswirkung der römischen Suprematie auf ihre Rechtsstellung*» the author writes «*Die in beiden Makedonischen Kriegen Rom durch den Zwang der historischen Tatsachen mehr aufgedrängte als aus eigener Initiative angestrebte inhaltliche Veränderung de amicitia zur amicitia et societas wurde im hellenistischen Osten bis 168 v. Chr. das beherrschende Charakteristikum der völkerrechtlichen Beziehungen Roms ...*».

⁵⁹ De Martino, *Storia della costituzione romana* II cit., 33. In a rapid passage the scholar claims that «basically the Roman power's rise turned the politically subjected peoples' friendship condition into the *socii* one».

⁶⁰ M.R. Cimma, *Reges socii et amici populi Romani* cit., 177 ff.

⁶¹ The stated reference to the *socii et amici* in De Martino's treatise misses.

⁶² In particular M.R. Cimma, *Reges socii et amici populi Romani* cit., 180 ff.

⁶³ M.F. Cursi, *Diritto Internazionale e espansionismo romano. «Amicitia» e «societas» tra Roma e gli antichi popoli del Mediterraneo*, in *Index* 41 (2013), 195-223 ff.

⁶⁴ For a general and descriptive literature's framework, see R. Bernhardt, *Rom und die Städte des hellenistischen Ostens* (3. - 1. Jahrhundert v. Chr.) *Literaturbericht* 1965-1995, in L. Gall (Hrsg.), *Historische Zeitschrift*, in SH XVIII (München 1998) 11 ff.

4. Diplomatic relations in the Near East

The analysis on the supranational relationships in the Mediterranean basin let several testaments of friendship and alliance treaties emerge and, actually, these ones predated Rome's coming in that area.

As testified by the archives of Mari, the Amarna letters and later the Hittite documents, already in the Second Millenium B.C the Near and Middle East was animated by intense diplomatic exchanges which imply a formalized system of international relationships, shaped on the interpersonal relations, in which the metaphors of brotherhood and father-son's relationships are often employed to qualify the relations between the kings of different communities⁶⁵.

Usually two classes of treaties are recognised: the ones with which vassalage bonds are created and the ones concluded on equal terms. The first ones - that probably denote an early phase of the relationships between eastern peoples⁶⁶ - have for the most part an unilateral nature and are based on the promises that the vassal does under oath to the sovereign community⁶⁷; the second ones, most likely more recent and more articulate, refer to solidarity forms expressed through "brotherhoods", which contribute to create a mood of friendship between peoples without actual advantages both from the military and business point of view⁶⁸.

The sources testify some recurring terms to express the alliance: *salimum* (peace, reconciliation, friendship) and *athūtum* or *ahhūtum* (brotherhood). The

⁶⁵ M. Liverani, *Prestige and Interest. International Relations in the Near East ca. 1600-1100 B.C.* (Padova 1990) 197 ff.; P. Karavites, T. Wren. *Promise-giving and Treaty-making. Homer and the Near East* (Leiden-New York-Köln 1992) 49 f.; M. Liverani, *The Great Powers' Club*, in R. Cohen, R. Westbrook, *Amarna Diplomacy, The Beginnings of International Relations* (Baltimore 2000) 15 ff.; F. Gazzano, *La diplomazia nelle «Storie» di Erodoto. Figure, temi, problemi*, in L. Piccirilli, *La retorica della diplomazia nella Grecia antica e a Bisanzio* (Roma 2002) 14; B.R. Foster, *Water under the Straw: Peace in Mesopotamia*, in K.A. Raaflaub, *War and Peace in the Ancient World* (Oxford 2007) 68 ff.; and R.H. Beal, *Making, Preserving and Breaking the Peace with the Hittite State*; Id., 83 with reference to the relationship of «brotherhood» testified in the treaty between Ramses II, Pharaoh of Egypt and Hattusili III king of Hittite, around the 1280 B.C.

⁶⁶ J.G. Heintz, *Nouveaux traités d'époque babylonienne ancienne et formules d'alliance de la Bible hébraïque. Remarques préliminaires*, in E. Frézouls, A. Jacquemin, *Les Relations Internationales*, in *Actes Strasbourg 15-17.6.1993* (Paris 1995) 70 f., describes the event of alliance's relations, starting from unilateral treaties of sovereign imposed to vassal states; forms of alliance of Old-Babylonian age with a ternary structure; and lastly more elaborate formulas of relations that begin to emerge among the Hittite, maybe under the Semitic influence. On the different structure of the egyptian treaties - generally unilateral - and the hittite ones - bilateral even if not necessarily equal - see also C. Zaccagnini, *The forms of Alliance and Subjugation in the Near East of the Late Bronze Age*, in L. Canfora, M. Liverani, C. Zaccagnini, *I trattati nel mondo antico. Forma, ideologia, funzione* (Roma 1990) 51 ff.; and M. Liverani, *Terminologia e ideologia del patto nelle iscrizioni reali assire*; Id., 113 ff., on the same treaties' structural distinction in unilateral and bilateral, which marks the international relation's transformation among the Assyrian.

⁶⁷ R. Westbrook, *International Law in the Amarna Age*, in R. Cohen, R. Westbrook, *Amarna Diplomacy* cit., 39 f.

⁶⁸ R. Cohen, R. Westbrook, *Conclusion. The Beginnings of International Relations*, in R. Cohen, R. Westbrook, *Amarna Diplomacy* cit., 233 f.

first term could indicate both the equal relationships between kings that called themselves “brothers”, and the relationship between sovereign peoples and subdued peoples, respectively “fathers” and “sons”. *Ahhūtum* expressed the nature of the *salimum*, and referred both to friendly relationships that preceded the alliance and the new bond following the *salimum* itself⁶⁹.

From a formal point of view, a recurring feature in this kind of treaty’s qualification consists in the use of hendiadys to describe their content. A particularly widespread phrase, which refers to the concept of peace and friendship as preconditions for the agreement is *ahhūtu u’ ra amūtu* (friendship and love). This, according to the doctrine, would have frozen in the Hurrian-Hittite sphere around the middle of the Second Millennium and from here it would pass to the Achaeans, until it was standardized by the Greeks in the formula *φιλία και συμμαχία*, expressed by the Romans as *amicitia etsocietas*⁷⁰.

This last assertion, by tracing a continuity between the eastern part of the ancient world and the western one, offering a glimpse of the intense relations between the peoples in the Mediterranean basin, opens to a new study perspective on the antiquity of the western world’s diplomatic models, that would have acquired just through the contacts with the eastern peoples, and not creating in an original way, systems of international relations stabilized by the practice.

⁶⁹ H. Tadmor, *Alleanza e dipendenza nell’antica Mesopotamia e in Israele: terminologia e prassi*, in L. Canfora, M. Liverani, C. Zaccagnini, *I trattati nel mondo antico* cit., 19.

⁷⁰ M. Weinfeld, *Covenant Terminology in the Ancient Near East and its Influence on the West*, in *Journal of the American Oriental Society* 93 (1973) 191 ff.; Id., *The Common Heritage of Covenantal Traditions in the Ancient World*, in L. Canfora, M. Liverani, C. Zaccagnini, *I trattati nel mondo antico* cit., 176 ff. So also P. Karavites, T. Wren, *op. cit.*, 48 ff., on the affinity between the eastern world’s brotherhood and the Greek *φιλότης*, highlighting even the profiles of discontinuity between the two elements; spec. *ibid* 57: «like brotherhood, *φιλότης* was an extremely complex and always positive concept. Both expressed the declaration of peaceful and friendly intentions of the parties bound by this state of affairs. Brotherhood had a variety of meanings chiefly within the social and political sphere, but it seems to have obtained exclusively between men (no brotherhood between women is mentioned) in the social field and between rulers politically; in contrast *φιλότης* could obtain between men and women, at least socially. Within the political sphere brotherhood seems to have denoted a variety of relationships and therefore seems to have been a technical term with a specified number of uses, not all of which implied political or military parity. *φιλότης*, on the other hand, remained a less technical term, and owing to its lack of formality was capable of expressing a wide variety of relationships in the political, social and sexual area»; F. Gazzano, *La diplomazia nelle «Storie» di Erodoto* cit., 14 f., on the continuity between the Near East and the Greek *poleis* in the friendship and blood relation which remember the eastern metaphors. This commonality seems to characterize not only the relationships between Greeks, but also the ones between Greeks and non-Greek - as it emerges from the Herodotean episodes of the delegation sent by Croesus in 548 B.C to Sparta in order to stipulate a friendship and alliance’s pact (Her. 1.69. 1-3 in H. Bengston, *Die Staatsverträge des Altertums* II (München 1975) 12, nt. 113). Tracking this continuity event, we should remember even the history of the diplomat contacts between the eastern Slavs and the Roman Empire, stereotyped in treaties of “peace and love” or “peace and friendship”, within which there is the conclusion of the treaty of peace and friendship between the Rus’ of Kiev and the Empire in the IX-X century A.C. (See A.N. Sacharov, *I trattati tra la Rus’ e l’Impero romano d’Oriente nel contesto storico-politico del X secolo*, in A. Carile, A.N. Sacharov, *I trattati dell’antica Russia con l’impero romano d’Oriente* (Roma 2011) XXI ff.; also A. Carile, *I Rus’ nelle fonti romano-orientali del IX-X secolo*; Id., LXII f., on the notion of friendship).

5. The treaties of φιλία και συμμαχία in the Greek world

The sequence of events that led to the formation of treaty obligations in the Greek world is reconstructable with greater margin of certainty⁷¹.

In the most ancient phase, especially in epic contexts, the use of the term φιλότης is attested to indicate the relation that connects, through a certain act, two individuals. In an international perspective, this kind of relationship appears as a sort of hospitality and protection's relation that bonds the foreigner to a community's member and that makes the two contractors φίλοι⁷².

The sources let records to emerge, and they would draw attention to the objective relational and social character of the mutuality's bond, to which the reference to friendship and love's interpersonal relationships seems to remain unrelated⁷³. The φιλότης, as it was said⁷⁴ «is not the object of the pact, it doesn't represent its 'content': it rather represents the pact itself», whose solemn and binding character is highlighted by the oath, the call to loyalty, the perpetuity of the obligation.

In the most ancient lexicon of the international treaties φιλότης is attested, within the sphere of the diplomat agreement of συμμαχία⁷⁵, as a synonym of φιλία⁷⁶ - terms that later, in classical age treaties, will definitely replace φιλότης, testifying the tight bond between the two words (φιλότης and φιλία)⁷⁷.

⁷¹ For further analysis I refer to G. Brandi Cordasco Salmena, *Sybaris e gli Alleati. L'egemonia del Timpone della Motta nel trattato di Olimpia con i Seràioi*, with the preface of Marianne Kleibrink (Cassano allo Jonio 2013).

⁷² E. Benveniste, *Le vocabulaire des institutions indo-européennes I* (Paris 1969) = *Il vocabolario delle istituzioni indoeuropee I* (Torino 1976) 262 ff.

⁷³ M. Giangiulio, *La φιλότης between Sybaritics and Serdaioi* (Meiggs-Lewis, 10) in *ZPE* 93 (1992) 37. Contra P. Karavites, T. Wren, *op. cit.*, 57; G. Herman, *Ritualised Friendship and the Greek City* (Cambridge 2002) 18.

⁷⁴ M. Giangiulio, *op. cit.*, 38. The conception of φιλότης in the interpretation of M. Scott, 'Philo, Philotes' and 'Xenia', in *Acta classica* 25 (1982) 15 ff., as neutral absence of enmity or positive friendship relation; P. Karavites, T. Wren, *op. cit.*, 48 f., as a state of good relationships prodromal to the conclusion of agreements; V. Alonso, *War, Peace and International Law in Ancient Greece*, in K.A. Raaflaub, *op. cit.*, 209 ff.; who defines the φιλότης «a pact of reconciliation and friendship which originates in the sphere of penal law and early o comes to be applied at the international level».

⁷⁵ M. Giangiulio, *op. cit.*, 31 ff., on the alliance and friendship between Sybaritics and Serdaioi, before the 510 B.C. in H. Bengston, *op. cit.*, 15, nt. 120. And also the treaty between Cyrene and Amasis concerning φιλότης and συμμαχία around the 565 B.C. (Her. 2.181.1) on which V. Alonso, *op. cit.*, 214.

⁷⁶ It highlights the presence of the combination φιλία και συμμαχία in the classical age P. Karavites, T. Wren, *op. cit.*, 56 f.

⁷⁷ G. Panessa, *Introduzione*, in Id., *Philiai. L'amicizia nelle relazioni interstatali dei Greci I. Dalle origini alla fine della guerra del Peloponneso* (Pisa 1999) XV; XII, he ascribes the introduction of the term φιλία to Pythagoras in the VI century B.C., by noticing the semantic anachronism of some literary sources which defines relational aspects prior to the introduction of the term became canonical in the diplomatic lexicon since the classical period on. This simplifying interpretation which standardizes all the relations on the φιλία involves even the συμμαχία; so much so that later authors such Diodorus Siculus or Pausania ended up qualifying every kind of relationship as φιλία. The first epigraphic source in which the term φιλία appears is the alliance decree between Aneti and Metapi the dated to around 550 B.C., found in Olympia (H. Bengston, *op. cit.*, 10 nt. 111).

From its employment in the hospitality relations between individuals, with characteristics similar to the ξενία and that refers to the φιλότης, the notion of φιλία begins to be used even to define the relations between communities especially from the VI century B.C, after the widespread establishment of the term in the Greek social life, ascribable to the divulgation of the Pythagorean school in addition to the emergence of the «colonialism⁷⁸ and the event of the Olympic sanctuary's regulatory function», assigned to the greek treaties⁷⁹ conceptual, lexical and technical elaboration. From the VI century B.C. a transformation process started and it led the φιλία to take on an increasingly theoretical content, related with the growing political-ideological of the term⁸⁰.

In this perspective, it is not accidental that -as it was noticed⁸¹- Thucydides⁸² makes Pericles say, in the funeral speech for the first Athenian deads in the Peloponnesian War, that the sign of Athens' generosity toward the other Greek cities lies in the fact that she takes the initiative in friendships, by giving benefits and not asking for them. And this would cause a sense of gratitude in the friend community that would guarantee the people relationship's stability and safety.

The combination with the συμμαχία intervenes to support the diplomatic function of the φιλία, at the beginning used most of all to promote the business contacts between the Mediterranean⁸³ peoples: an alliance provided for in a treaty of defensive and offensive⁸⁴ character - does not limit, such as the ἐπιμαχία only to the allied territory⁸⁵-generally egalitarian⁸⁶ and with fixed terms

⁷⁸ G. Panessa, *Introduzione cit.*, XXVI on the benefit of a close friendship between the natives and the Greek settlers to whom the possibility to move women from that place was given.

⁷⁹ G. Panessa, *Introduzione cit.*, XVIII; XXII.

⁸⁰ M. Giangiulio, *op. cit.*, 40. See also P. Karavites, T. Wren, *op. cit.*, 56, on the replacement of the original φιλότης with the φιλία and Id., 204, on the loss of the original personal character - typical of the period when the international relations were between kings - of the φιλότης, to the advantage of the strictly political connotation of φιλία. G. Panessa, *Introduzione cit.*, XV, observes that the originally moderate use of the term φιλία would have been supplanted after the V century and even more in the hellenistic period, by the term's recurrence as a hollow formula in countless Greek honorary decrees.

⁸¹ G. Panessa, *Introduzione cit.*, XXX

⁸² Thuc. 2.40.4

⁸³ G. Panessa, *Introduzione cit.*, XXVI ff. In this context there is even the first Punic-Roman - that Polybius passes on in Greek with the term φιλία.

⁸⁴ On the συμμαχία see M. Martin, *La vie internationale dans la Grèce des cités* (VI-IV s. av. J.-C.) (Paris 1940) 121 ff.; P. Bonk, *Defensiv-und Offensivklauseln in griechischen Symmachieverträgen* (Bonn 1974) *passim*; E. Lévy, *Le vocabulaire de l'alliance chez Polybe*, in E. Frézouls, A. Jacquemin, *Les Relations Internationales cit.*, 397 ff.

⁸⁵ V.A. Troncoso, *Algunas consideraciones sobre la naturaleza y evolución de la Symmachía en época clásica*, in *Gerión* 2 (1989), 165 ff.

⁸⁶ E. Bikerman, *Remarques sur le droit des gens dans la Grèce classique*, in *RIDA* 3 (1950) 101 and nt.10, distinguishes, on the basis of Liv. 34.57.6, two forms of contractual συμμαχία: the one that assures a mutual assistance and the one that states the subjection of one of the parts. It is true that the subdivision of the *genera foederum* is ascribed by Livy to the words of Menippus, Antiochus III messenger in Rome, but it is also true that the risk we run by creating such a συμμαχία bipartition is to flatten its dynamics on a paradigm that, although it can formerly be non roman, doesn't account on the peculiarities of the event that in the centuries has led to the Greek συμμαχία.

that, with time, became the principal instrument of Greek Hegemony's construction⁸⁷.

It wouldn't be a casual choice: the hendiadys would express the will not only to conclude a military alliance, but even to establish a condition of good relationships⁸⁸, potentially open to further mutual advancements⁸⁹. Such that the two term's frequent recurrences to define the content of the agreement leads to believe that it is an obligated syntagm⁹⁰ in which - as it was said⁹¹ - the friendship's treaty represents the alliance's prerequisite.

The interesting fact for us, beyond the event related with the meaning of the twoterms, is their use as hendiadys. As in the Near East, the friendship and alliance relationship is expressed by coining a phrase that resembles the eastern one, of which it maybe is the translation, and that takes on the characteristics of a stylistic feature that is reproduced in time almost unchanged in its form, even if with different contents variable depending on the historic and geographical context. Already around the VI century B.C. attestations of φιλία/φιλότης (or ξενία⁹²) και συμμαχία in the Greek world⁹³; think of the treaty that the tyrant Thrasybulus of Miletus and the king of Lydia Alyattes, concluded around the 600 B.C., in which they reconcile agreeing to be each other friends and allies⁹⁴. The offer of alliance that Athens proposes to the King of Egypt, Amasis dates between the 560 and the 526 B.C., during the war against the Persian, as a token of gratitude for the help provided by Amasis to the Athenians throughout a famine which had occurred in Athens and what the sending of wheat by Amasi allowed to overcome. So Athens and Amasis stipulated a pact of mutual friendship and alliance⁹⁵. Moreover, the

⁸⁷ E. Baltrusch, *Symmachie und Spondai. Untersuchungen zum griechischen Völkerrecht der archaischen und klassischen Zeit* (8.-5. Jahrhundert v. Chr.) (Berlin - New York 1994) 7 ff.; J.M. Hall, *International Relations*, in P. Sabin, H. van Wees, M. Whithy, *The Cambridge History of Greek and Roman Warfare I* (Cambridge 2008) 101 ff.

⁸⁸ In this sense the φιλία doesn't necessarily imply a formal friendship treaty (G. Panessa, *Introduzione cit.*, XXVII). Contra, E. Lévy, *op. cit.*, 397 ff.

⁸⁹ G. Panessa, *Introduzione cit.*, VIII.

⁹⁰ E. Lévy, *op. cit.*, 388, limited to the dual concept's recurrence in Polybius.

⁹¹ E. Baltrusch, *op. cit.*, 7 ff.

⁹² As G. Panessa noticed, *Introduzione cit.*, XV ff., the term indicated the bilateral pact of hospitality between individuals that Omero testified yet in the VI B.C., bound to be replaced by the φιλία, esp. XXV, in which it is noticed «the strong characterization of ξενία from a tyranny's perspective, on one side, the too close and intergenerational involvement between the parts in a period of accentuated social mobility on the other and lastly the pact's air of sacredness that ended up to automatically involve even the descendants to whom its reasons could be unknown, they all represented elements of incentive for the emergence of a different kind of bilateral relationship: the φιλία».

⁹³ So D. Konstan, *Friendship in the Classical World* (Cambridge 1997) 83 ff. In the classical period φίλος is very common in the meaning of foreign ally; overlapping σύμμαχος, making the distinction between the two terms difficult.

⁹⁴ Her. 1.22.3-4. See H. Bengston, *op. cit.*, 4 f., nt. 105; G. Panessa, *Introduzione cit.*, XXIII.

⁹⁵ G. Panessa, *Philiai cit.*, 71 f., nt. 22. The source mentioned is the Scholiast to the Aristophanes' *Plutus* (Tzetz, in Aristoph. *Plut.* 178, 56 L. Massa Positano) who, by commenting the term συμμαχία used by Aristophanes with reference to the military help offered by Athens against the Persian in the 390 or 389 B.C. refers to a more ancient friendship and alliance, in line with the hellenistic tradition to renew old friendships. G. Panessa supposes that the most ancient relation between Athens and Egypt was nothing but a stretch of the pro-athenian sources on the traditionally good relations between the two communities.

φιλότης και συμμαχία treaty between Amasis and Cyrene around the 565 B.C. falls within the framework of Persian expansionism' containment, and it was characterized by tangible signs of φιλότης such as the sending of a votive offering to Cyrene; in order to set the conditions for a relation that, by overcoming the military partnership, allowed a pact's reinforcement even taking in consideration the marriage between Amasis and Ladice, daughter of the Cyrene's king, that encouraged forms of epigamy between Egyptian and Cyrenean prominent figures⁹⁶. Analogously, but with more independence from the interpersonal relation's feature, the treaty between Croesus, King of Lydia and Sparta, considered the most powerful community in Greece, concluded between the 550 and the 546 B.C. in which Croesus, on the advice of the Delphic Oracle, asks for friendship and alliance of the Spartans, that reciprocated⁹⁷. In the same lapse, before the 546 B.C. a friendship and alliance treaty between Colophon, city of Asia's Ionia and Lydia - to which Philarco connects the weakness of Colophon's customs⁹⁸ - was concluded.

The alliance and friendship (συμμαχία και φιλία) between Sybarites and Serdaioi dates back before the 510 B.C., probably it was a people from Magna Graecia⁹⁹, which is thus formally acquired in the sybaritic sphere of alliances.

The inscription coming from Sparta's acropolis - attesting to the treaty of friendship (?), peace and alliance between Sparta and Aetolians Erxadieis between the 500 and the 470 B.C. - appears fairly incomplete. The reference to peace leads to contextualize the treaty at the end of a war that opens to the two relations: the first is the most uncertain one, hypothesized to fill a text's gap, the other one is more certain, probably in order to annex the Aetolians' small community to the Peloponnesian league¹⁰⁰.

The friendship and alliance treaty between Knossos and Athens - or rather the projection in the treaty's form of the two cities' good relations - probably dates back to 450 B.C. and it was proposed by Epimenides called from Crete to Athens by Nicia, daughter of Niceratus, in order to purify the city from the plague. After the operation, instead of collecting a reward from the Athenians, Epimenides requested to conclude a pact between Knossos and Athens, that fits into the context of a political-military cooperation introduced by Athens and Argo, whose connection with Crete brings with it the Athens' approach to Crete¹⁰¹. There is some evidence related to relations that occurred between Athens and Sitalces king of Thrace and Perdicas II King of Macedon in 431 B.C. which fits in the Athenian expansionist policy in Macedonian territory. In particular, the relationship between Athens and Sitakles of Thrace is defined by Thucydides¹⁰² συμμαχία, even if we must consider probable that the treaty,

⁹⁶ Her. 2.181.1. See G. Panessa, *Philiai* cit., 73 ff. nt. 23.

⁹⁷ Her 1.69.1-3 See H. Bengston, *op. cit.*, 12, nt. 113; G. Panessa, *Introduzione* cit., XXIII ff., on the role of the Delphic Oracle who suggested the Lydians to become Spartans' φίλοι, by moving the discourse from the theoretical diplomatic formula to the concrete of the reference to men, spec. Id., *Philiai* cit., 76 ff., nt. 24; V. Alonso, *op. cit.*, 214.

⁹⁸ Phyl. ap. Ath. 12.31 p. 526 A (= FGrH. 81 F 66) See G. Panessa, *Philiai* cit., 82 ff., nt. 25.

⁹⁹ M. Giangiulio, *op. cit.*, 31 ff.

¹⁰⁰ G. Panessa, *Philiai* cit., 108 ff. nt. 30.

¹⁰¹ G. Panessa, *Philiai* cit., 148 ff. nt. 40.

¹⁰² Thuch. 2.29.1. ff.

according to the Diodorus¹⁰³ testimony was rather a *φιλία*, which also contemplated a military cooperation between the parts, the one that the epigraphic sources state as *φιλία και συμμαχία*¹⁰⁴. In the 425 B.C. the Sparta's offer of peace, alliance, friendship and good relations with Athens is testified¹⁰⁵. The opportunity is provided by the naval engagements between Spartan and Athenians in front of Pylus, in the southwestern Peloponnese, during which some Spartans become prisoners in the Island of Sphacteria. The draft treaty, actually, is part of the more general political framework, that can be deduced by the treaty's content itself: Sparta, outlining the likely future scenario given by the political hegemony of the union of Sparta and Athens over the rest of the Greek world, calls upon Athens to the agreement in a crescendo of options that subtend their relations' stabilization¹⁰⁶.

Most likely we can date back to the same laps the friendship and alliance's extension that Perdikkas II king of Macedon incurred with Athens to Arrhabaeus king of Lyncestis, in turn friend and allied of Athens. Even in this mutual relations' context, the standardized formula 'friendship and alliance' recurs¹⁰⁷. The formula also appears in the misleading proposal made by Arsace, lieutenant of Tissaphernes in the 442 B.C. to the Delian exiles in Adramyttium¹⁰⁸. The friendship and alliance's treaty between Athens and the Bottiaea also dates back to the 442 B., at the end of a hostility's period between the two cities¹⁰⁹. In the treaty text, survived full of gaps, the Athenians' situation actually appears less demanding than the Bottiaea's one, given that while these last ones promise friendship and alliance, the Athenians are limited to the alliance, because the honor to be called Athens' friends is not granted to everyone. Finally, Xenophon testifies the promise of friendship and alliance mentioned, on the occasion of the Spartan offensive in Minor Asia in the 395 B.C. by the Persian satrap Pharnabazus to the Spartan King Agesilaus¹¹⁰.

At the end of this rapid examination of the main testimonies related to the friendship and alliance treaties concluded already in the VI century B.C. in the Greek world, the hendiadys' use to indicate a specific contract type emerged with undeniable certainty's margins.

6. Resumption: The exact content of *amicitia* and *societas* in Roman

¹⁰³ Diod. 12.50.3.

¹⁰⁴ G. Panessa, *Philiai* cit., 189 ff., nt. 49.

¹⁰⁵ Thuch. 4.19.1 ff.

¹⁰⁶ G. Panessa, *Philiai* cit., 227 ff., nt. 59.

¹⁰⁷ IG. I 89, II 55-59 = SEG. X.86; SEG. XII.16; G. Panessa, *Philiai* cit., 250 ff., nt. 66 (H. Bengston, *op. cit.*, I 109 ff. nt. 186). See E. Baltrusch, *op. cit.*, 64 ff., on the treaties with the so-called «Freund-Feind Klausel». On the provision and the possibility that Rome absorbed it from the Greeks, I refer to the examination of L. de Libero, 'Ut eosdem quos populus Romanus amicus atque hostes habeant': Die Freund-Feind Klausel, in *den Beziehungen Roms zu griechischen und italischen Staaten*, in *Historia* 46 (1997) 270 ff., that leaves open the question.

¹⁰⁸ Thuch. 8.108.4. See G. Panessa, *Philiai* cit., 254 ff., nt. 67.

¹⁰⁹ IG. P 17 76 = SEG. X 89 (= G. Panessa, *Philiai* cit., 257 ff. nt. 68 = H. Bengston, *op. cit.*, 113 ff. nt. 187) See E. Baltrusch, *op. cit.*, 64 ff.

¹¹⁰ Xen. Hell. 4.1.32. See D. Konstan, *op. cit.*, 83 ff.

diplomatic perspectives

The frame outlined as yet on the relations between Mediterranean peoples before Rome's appearance seems to me unambiguous to the point to try not only a reconstruction of the content of friendship and alliance's treaties, but also a reinterpretation of the Roman imperialistic ordeal itself.

Looking from the Roman perspective, the hendiadys *amicitia et societas* used in the treaties with the extra-italic peoples results, during the III century B.C. of course abnormal, considering that in the original history of the relationships with the italic peoples Rome built her hegemony on the basis of military alliances (*socii italicici*).

But if we shift the perspective, by adopting the Mediterranean peoples' viewing angle, we realize not only that, even before the Rome's coming, there was an intense flow and sharing of cultural patterns, but even that such patterns deeply influenced the Roman approach to the Mediterranean, forcing Rome to rethink her original strategy of international relations.

A Greece and Rome's historian like Erich Gruen, in a revisionist study on Roman imperialism, poses among the others the problem of the reference to the 'social' model practiced by Rome with the Latin peoples in order to modulate the new relationship with the Greeks. The ground of the discussion - he warns - is extremely slippery assuming that the aims of the *foedera*, and in particular the *clausula maiestatis* integration, rarely come to light and most often their examination is conditioned by the dichotomy *foedus aequum/foedus iniquum* wrongly used by the doctrine to interpret the phenomenon of Roman supranational relations¹¹¹.

But the observed doubts of formal character lead Gruen to the conclusion, substantial in this case, that Rome didn't use the *clausula maiestatis* as standardized instrument for her hegemonic policy and consequently create politically unequal treaties¹¹².

The scholar retains rather that Romans used the fluid instrument of *φιλία* or *amicitia*¹¹³ to create «informal associations» - reinterpreting the hellenistic schemes for their own purposes¹¹⁴ - setting aside the official treaties that would have played - as Gruen also claims - a small part in the history of the relationships between Rome and Greece¹¹⁵.

¹¹¹ E.S. Gruen, *The Hellenistic World* cit., 14 ff.

¹¹² E.S. Gruen, *The Hellenistic World* cit., 25 ff.

¹¹³ Even though the traditional approach on the origin of Roman *amicitia*, conceived as good relationships along with private protection and military cooperation, A. Coşkun, *Freundschaft, persönliche Nahverhältnisse und das Imperium Romanum. Eine Einführung*, in Id., *Freundschaft und Gefolgschaft in den auswärtigen Beziehungen der Römer (2. Jahrhundert v. Chr. - 1. Jahrhundert n. Chr.)* (Frankfurt am Main 2008) 11, claims that since the II century B.C. friendship became a fluid instrument of alliances' policy.

¹¹⁴ E.S. Gruen, *The Hellenistic World* cit., 54 ff.

¹¹⁵ Even though E.S. Gruen, *The Hellenistic World* cit., 95, recognises that the Roman power's development in Italy would have been marked by a hoarding of *foedera*, with clear duties between the parts.

In other words - the scholar asserts¹¹⁶ - before the III century B.C. the *amicitia* wasn't a diplomatic instrument in use at Romans, that would have imported it from the Greeks¹¹⁷, such as the phrase *amicitia et societas* itself. However, for Greeks friendship merely described a relationships, without being an instrument of power:

«*amicitia* was a presumption of cordiality, not an imposition of duties»¹¹⁸. Not even after the Treaty of Apamea - concluded in 188 B.C between Rome and Antiochus III, after the roman victories in Thermopylae in 191 B.C. and Magnesia the following year

- Rome would have changed the meaning of the formularies already adopted in the Greek world and implemented by the common use. Although the heavy defeat of Antiochus removed any doubt on the Roman military superiority, the *amicitia* wouldn't have appeared as a commitment with mutual obligations, remaining the flexible instrument as ever¹¹⁹. Starting from this period, Rome's authority in the Mediterranean is set to become uncontested and many of her *amici* are actually subdued, but nevertheless the *amicitia* would have retained its original meaning in the footsteps of Greeks¹²⁰. It is not through friendship - Gruen adds - that Romans justified their wars: Roman propaganda moves in other directions, such as the proclamation of Greece's freedom¹²¹.

The hypothesis developed by Gruen is certainly original and, even if not entirely acceptable in its results, offers an insight of great interest on the investigation about the relationships between the Mediterranean peoples, which configures friendship as a diplomatic instrument preexisting to Rome's emergence in the Mediterranean and that Rome would have adopted not earlier than the III century B.C¹²².

¹¹⁶ E.S. Gruen, *The Hellenistic World* cit., 76 ff., and so also R. Billows, *International Relations*, in P. Sabin, H. vanWees, M. Whity, *The Cambridge History of Greek and Roman Warfare I* cit., 318 ff.

¹¹⁷ E.S. Gruen, *The Hellenistic World* cit., 95: «φιλία was a solid Greek institution, established and ubiquitous long before the coming of Rome. It could be grounded on an inscribed compact; it could attend arbitral agreements, *isopoliteia*, *asylia*, peace treaties, royal marriages, or military alliances; it could apply to an equal partnership or a relation between greater and lesser powers; it could signify firm cooperation or slack bonds of amity ... Carthaginians and Greeks brought φιλία to Rome's attention as an element of international accords. Until the late third century it appeared sporadically and insignificantly in her diplomatic relations, and always on the initiative of other powers».

¹¹⁸ E.S. Gruen, *The Hellenistic World* cit., 78.

¹¹⁹ E.S. Gruen, *The Hellenistic World* cit., 88 ff.

¹²⁰ E.S. Gruen, *The Hellenistic World* cit., 93 f., for some specific examples.

¹²¹ E.S. Gruen, *The Hellenistic World* cit., 95.

¹²² E.S. Gruen, *The Hellenistic World* cit., 69 f. «the expression φίλοι καὶ σύμμαχοι to designate partners in a military alliance was, of course, very common throughout Greece and throughout Greek history. φιλία alone could also serve as a shorthand expression for a collaborative agreement involving partnership in war. It has been recognized that even the term συμμαχία could be applied loosely to cover cooperative enterprises not based on a formal treaty of alliance. Hence, when Livy employs without discrimination the terms amici, socii, and amici et socii, he is not guilty of imprecision or ignorance. The overlapping character of this phraseology is firmly rooted in Greek as well as Roman practice». See also A. Zack, *Studien zum "Römischen Völkerrecht"* cit., 239 ff. has brought out the dense diplomatic exchanges between the Mediterranean peoples before Rome's coming, nevertheless without - as L. Loreto, *Rec. a. A.*

It is worthwhile to proceed in stages. Gruen highlights the interpretative conditioning of the dichotomy *foedus aequum/foedus iniquum*: there is no doubt that it isn't usable, at least terminologically, for the Roman experience. The category of *foedus iniquum* doesn't arise in the Roman reflection but in the later one based on the contribution of a fine connoisseur of Roman international relations of the caliber of Hugo Grotius, who reinterprets Roman sources in the field of unequal treaties by the notion of *foedus inaequale*, semantically comparable to *foedus iniquum*, built in opposition to situations of full preservation of the *summum imperium*¹²³.

But having said that, it's important to distinguish the formal data from the substantial one. In the latter perspective, it shouldn't be concealed that Romans concluded treaties framed on a range of unequal relations, tending to, over time, the gradual unification of the conditioned *deditio*. If we wanted to fix some dates, it cannot be excluded that - as Luraschi observes¹²⁴ - this situation results, before the expansion next the second Punic War, in the adoption of specific clauses that would have dictated case-by-case the inferiority's conditions; from the treaty with Aetolians in 189 B.C. on, in the *clausula maiestatis* insertion, that would have formalized the inferiority status of the people allied to Rome¹²⁵. But we can go further than this and hypothesize, with Ferrary¹²⁶, that there wasn't a specific clause and that the condition of inequality between the parties was made evident by the heavy provisions imposed by Rome, for example on military cooperation.

It seems to me that the attempt to reframe the issue of the different *foedera* types in its original substantial dimension, by avoiding its merely terminological analysis, leads to see in the increasing hegemonic role of Rome the political-military condition at the base of the generally supranational relation's standardization. Even if the dichotomy *foedera/aequa/foedera iniqua* is not formalized, Roman jurists examine the political phenomenon in a distinction that is not negligible, framing the relations between Rome and the Mediterranean peoples.

This kind of approach is also reflected in the *amicitia* use. In the absence of statements before the III century B.C. on the Roman *amicitia* origin in

Zack, *Studien zum "Römischen Völkerrecht"* cit., 86 critically notices - drawing the right conclusions on the *amicitia* derivation. More recently A. Zack, *Forschungen* cit., 54.

¹²³ M.F. Cursi, *Il carattere paradigmatico della classificazione dei «foedera»: dalla partizione di Livio alla sistematica di Grozio*, in L. Labruna (dir.), *Tradizione romanistica e Costituzione II* (Napoli 2006) 1574 ff.

¹²⁴ G. Luraschi, 'Foedus', 'Ius Latii', 'Civitas'. *Aspetti costituzionali della romanizzazione in Transpadania* (Padova 1979) 33 ff. See also M.R. Cimma, *Reges socii et amici populi Romani* cit., *passim*, on the reconstruction of the relationships between Rome and her allies, according to the line marked now.

¹²⁵ To this break G. Luraschi, *Foedus* cit., 33 ff. traces back the legitimacy of the employ of the two types of *foedera*, justified, on his point of view, by ease of reference. Although without agreeing with the *ratio* that led the author to use the bipartition *foedus aequum/foedus iniquum*, I believe that the division into periods mentioned above can be accepted, tracing the event of the transformation of the *foedera* content between the Romans and the other communities.

¹²⁶ J.-L. Ferrary, *Traité et domination romaine dans le monde hellénique*, in L. Canfora, M. Liverani, C. Zaccagnini, *I trattati nel mondo antico* cit., 217 ff.

international relations¹²⁷ and while admitting, on the basis of the treaties preceding Rome's emergence on the Mediterranean, that Rome adapted to the formularies in use at eastern peoples as for the modulation of relations with the Eastern Mediterranean¹²⁸ communities themselves, I believe though, differently from Gruen, that the Roman hegemonic policy was spread not only by propagandistic instruments, but also by the international treaties themselves. And not only by the ones in which the *clausula maiestatis* appears, but even by a new interpretation of the relationships of *φιλία και συμμαχία* used for their own expansionist purposes that appear numerous stated in the sources mentioned above¹²⁹.

7. The Roman reinterpretation of Greek international patterns

From this perspective, we can try to explain the Roman jurists' conclusions on the relationships between Rome and foreign peoples.

First of all a Pomponius' fragment¹³⁰, that probably reports the opinion of Quintus Mucius, in which the jurist deals with the postliminium's application conditions. As is well known, when a *cives* of his *res* came into contact with a community outside Rome - whether it be enemy or simply foreign - upon returning home the *postliminium*¹³¹ begins, as a form of reintegration in the

¹²⁷ De Martino, *Storia della costituzione* II cit., 29 ff. The statement is inventive especially if we think about the testimonies related to *amicitia* in the Roman treaties already in the period of Etruscan Monarchy. It cannot be excluded that, as E.S. Gruen, *The Hellenistic World* cit., 55 ff., suggests, the historians of Greek language - I think of Dionysius - may have made the concept of the good relationships between Rome and other peoples with a term in use in the Greek world, but unrelated to the period in which the treaty was concluded in the Roman cultural context. Different is the picture emerging from the epigraphic sources: in the Latin sources' collection neither *amicus* nor *amicitia* appear (M. Hartmann, *Die frühlateinischen Inschriften und ihre Datierung* [Bremen 2005]), in the first volume of *Corpus Inscriptionum Latinarum* the events of the two terms are in late Republican contexts: CIL. I 1981 (*Lex Acilia repetundarum*); CIL. I 200, 75; 80 (*lex agraria*); CIL. I 2041, 7 (*lex Antonia de Termessibus*); CIL. I 2037 (*sc. de Asclepiade*); CIL. I 1017; 1008; 1267; 1203; 1422; 1062 - all inscriptions on friendship between individuals of uncertain date but, in any case, fairly recent.

¹²⁸ In this perspective C. Auliard, *La spécificité des premiers contacts diplomatiques de Rome avec les monarchies hellénistiques avant la fin du III siècle av. J.C.*, in Frézouls, A. Jacquemin, *Les Relations Internationales* cit., 452, by referring to the special caution with which the Romans approached the Hellenistic world.

¹²⁹ For the difference between roman treaties and greek ones I refer, in general terms, to E. Täubler, *op. cit.*, 419 ff.; E. Baltrusch, *op. cit.*, 7. The problem of the continuity of the patterns between Rome and the Greece is treated, although by acknowledging an original use of the instruments inherited from the Greek experience, by K.E. Petzold, *Griechischer Einfluß auf die Anfänge römischer Ostpolitik (Überlegungen zum Kontinuitätsproblem)*, in *Historia* 41 (1992) 205 ff.

¹³⁰ D. 49.15.5.2 (Pomp. 37 ad Q. Mucium): *in pace quoque postliminium datum est: nam si cum gente aliqua neque amicitiam neque hospitium, neque foedus amicitiae causa factum habemus: hi hostes quidem non sunt: quod autem ex nostro ad eos pervenit, illorum fit, et liber homo noster ab eis captus servus fit et eorum. Idemque est, si ab illis ad nos aliquid perveniat: hoc quoque igitur casu postliminium datum est.*

¹³¹ I do not agree with A. Zack, *Forschungen* cit., 77 ff., that the postlimonium's application is conditioned by the expression provision in a treaty. An example would be the clause in the second treaty between Rome and Carthage, which allowed the foreigner bound with Rome by a peace treaty, captured by the Carthaginians, to regain freedom if landed in a Roman port. See also M.F.

community of belonging. In our case the jurist brings attention to a postliminium's twofold declination depending on the application in the occasion of a wartime event, or in the absence of a war¹³².

I'm focusing now on the *postliminium in pace* and in particular on its application criterion: *nam si cum gente aliqua neque amicitiam neque hospitium, neque foedus amicitiae causa factum habemus: hi hostes quidem non sunt...*¹³³.

The postliminium, as Pomponius writes, can find application only when the foreign community isn't bonded with Rome neither by *amicitia* nor by *hospitium* or a *foedus amicitiae causa*. Here the jurist, by using the term *pax*, etymologically refers not to the *pactio* aimed to establish a relationship between peoples or to impose the end of hostilities, but rather to an absence of war situation in contraposition to the ritually declared hostility, that is the *bellum*. Therefore in the lack of any relationship between peoples, that in case of rupture of relation would lead the declaration of war, any occurrences of violent apprehension would imply the postliminium application according to a logic of an assimilation of the *postliminium in pace* with the *in bello* one.

Such a reading could be used to support the thesis - applied by Mommsen to the Roman juridical experience - on the natural hostility between peoples and the lack of rights for the foreigner: that is, it could be argued that the *postliminium* applies *in pace* in situations similar to the *in bello* one, and that is normal that a roman citizen, abroad, becomes *servus* of the other people (or vice versa). Actually the passage doesn't allow us to draw such conclusions. Pomponius not only states that the people with which there isn't any kind of relationship is not an enemy people (... *hi hostes quidem non sunt*) - expression that could be interpreted as simply purposed to distinguish the *postliminium in pace* between the *in bello* one - but most of all he doesn't state a principle of general character, that is that every *civis* in foreign land becomes *captus*; but he only provides for the possibility of such a circumstance¹³⁴.

Cursi, *La struttura del postliminium nella Repubblica e nel Principato* (Napoli 1996) 153 f., the relationship of friendship and alliance with a foreign peoples allow to fictitiously extend the Roman community's territorial borders. In the treaty between Rome and Carthage the postliminium application is not agreed, but it just establishes that in compliance with such a criterion the foreign that was friend and allied of Rome, captured by Carthaginians and landed in a roman port, will be free. But since he didn't go back home, for his liberation the "laying on of hands" of a *civis Romanus*, in order to attest the relation that connects Rome with the community to which the *captivus* belongs. In all this a contractual functioning of the *postliminium* doesn't seem recognizable to me: the *ius postliminii* is established by *ius gentium* and as such approved among all the peoples. In this case only a particular procedure is concretely agreed, taking into consideration the situation's peculiarity. The same applies for the treaty provisions between Rome and the Lycia, in which the same criterion of roman border's expansion is applied (Id., 84 ff.).

¹³² M.F. Cursi, *La struttura del postliminium* cit., 155 ff.; L. D'Amati, *Civis ab hostibus captus: profili del regime classico* (Milano 2004).

¹³³ For a more detailed examination on the testimony I cross-refer to M.F. Cursi, *La struttura del postliminium* cit., 126 ff. The hypothesis of text's corruption doesn't seem to me sufficiently argued: moreover recently C. Baldus, *op. cit.*, 257 ff.

¹³⁴ On the possibility of imprisonment in a peacetime, I refer to M.F. Cursi, *La struttura del postliminium* cit., 131 ff. Specifically, it seems to me that the episodic character of the violent apprehension of the *civis* is confirmed on a formal level by the phrase '*in pace quoque postliminium datum est*', to indicate an extension of the most frequent hypothesis' range (*in bello*)

And we come to the relationships mentioned by Pomponius, whose absence can legitimate the capture in foreign land: among these obligations the *hospitium publicum* is included. Regardless of the individual reconstructions – Mommsen includes it among the ancient perpetual relations¹³⁵, Täubler interprets it as the prisoner of war condition who, set free, remains his own guarantor¹³⁶ for the ancient enemy - the institution has very ancient origins, probably borrowed from similar hospitality forms present in the ancient Greece's culture¹³⁷, and of course, lacking of actual applications at the time when Pomponius writes - if we believe the historical reconstruction that the doctrine suggested for the institution¹³⁸, encouraging in this way the hypothesis of the Pomponius text's layering and its direct ascription, in this part, to Quintus Mucius.

In the imperial age, indeed, with the extent of the Roman influence that reduces more and more the range of peoples independent to its domain's sphere, the *hospitium* would have lost its original typical structure, ending up to confuse with the *amicitia*, having taken the form of the unilateral concession with privileges similar to the *hospitium*¹³⁹ ones.

The *amicitia* is mentioned in two forms: the one that bonds two communities in the absence of a specific treaty and that could be attributed to a good relation's condition - probably not different from the Gruen's interpretation of

to more infrequent situations (capture *in pace*). Even, if we wanted to read the "*aliquid*" in the last phrase in the strict sense, by referring it not also to the *homines*, but only to the *res*, one could assume that for the Roman the general rule was the respect for Rome's *extranei* always and no matter what, independently from the reciprocity of treatment given to the Romans by the foreign *populus* - and this would coherently be part of the frame, outlined by the most recent doctrine, of general cogency of Roman *ius fetiale* beyond the other peoples' behavior.

¹³⁵ T. Mommsen, *op. cit.*, 591.

¹³⁶ E. Täubler, *op. cit.*, 402 ff.

¹³⁷ For the *hospitium* correlation with Greek culture, I cross-refer to L.J. Bolchazy, *Hospitality in early Rome. Livy's concept of its humanizing force* (Chicago 1977) *passim*, even if the event outlined by the author - between the phase previous the institution's introduction and the successive one, designed to overcome a form of 'magical-religious xenophobia' - seems to be questionable. The contribution of J. Nicols, *Hospitium and political friendship in the late Republic*, in M. Peachin, *Aspects of friendship in the Graeco-Roman world* (Portsmouth 2001) 99 ff., is more descriptive.

¹³⁸ M. Marchetti s.v. «*Hospitium*» in *DE III* (Roma 1906) 104 ff., who claims that the *hospitium publicum* is the first step toward the *ius gentium* development, by constituting its early stage. The hospitality bond necessarily had to precede the other forms of international conventions such as the *societas* and the *foedus*, remembering the institution's validity between Servius and the Latins, between the second Tarquinius and the Etruscan, as testimonies of international conventions between Rome and the neighboring peoples from a period prior to the most ancient treaties. See also C. Lécrivain, s.v. «*Hospitium*», in *DAGR III.1* (Paris 1900) 298 ff.; P. Catalano, *Linee cit.*, I 192; C. Baldus, *op. cit.*, 218.

¹³⁹ M. Marchetti, s.v. «*Hospitium*», *op. cit.*, 1049. On the relation between *hospitium* and *ius gentium* see DeMartino, *Storia della costituzione II cit.*, 23; V. Ilari, *L'interpretazione storica del diritto di guerra romano fra tradizione romanistica e giusnaturalismo* (Milano 1981) 11 f. On the relations between *amicitia* and *hospitium* see M.R. Cimma, *Reges socii et amici populi Romani cit.*, 21 f.; and lastly L. Capogrossi Colognesi, *Ius commercii, conubium, civitas sine suffragio. Le origini del diritto internazionale privato e la romanizzazione delle comunità latino-campane*, in *AA.VV., Le strade del potere* (Catania 1994) 3 ff., on the unitary character of the private and public *hospitium* see E. Täubler, *op. cit.*, 402 ff., on the religious relevance of the commitment with the *hospitium publicum* see 415 ff. See also J. Gaudemet, *Les institutions de l'antiquité* (Paris 1991) 203 ff.

the Greek φίλιá. And furthermore the friendship was based on a *foedus* that could be interpreted as a Roman adaptation - in a perspective of a ritualization of the relationship and its results - of the good communities' relations.

Regarding the latter friendship's form, Livy is the one who formalized the tripartition of *genera foederum* with which the peoples can make a relationship of friendship:

Liv. 34.57.8. 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 est, si quarum turbata 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.

Through the mouth of Menippus, one of the delegation's chiefs sent in 193 B.C. by Antiochus III king of Syria to Romans *ad amicitiam petendam iungendamque societatem*, in a generally exhaustive classification, the three forms of *foedera* through which the foreign peoples contracts a friendship's bond¹⁴⁰ are expressed: or because the war outbreak brings them together, as it happens in the two first hypotheses, or because the parties decide by common accord to establish among themselves a friendship and alliance's relationship. The logic behind the distinction is of course political-military: the war - or better the end of the hostilities or its absence - is the keystone around which the classification revolves.

In this perspective, the first two cases refer to the *foedera* that the two belligerent peoples can conclude at the end of the hostility. In the first hypothesis, when the tide of the war have clearly identified a defeated and a winner, the latter imposes to the first its conditions: Livy, indeed, writes that at the time that the destiny on everything is entrusted to the one who was the winner, to establish what remains to the defeated and what's sized from them is a winner's right. A power which is qualified by the Paduan historian with the locution '*dicere leges*'¹⁴¹.

¹⁴⁰ M.R. Cimma, *Reges socii et amici populi Romani* cit., 80 ff.; see also B. Paradisi, *L'amicitia internazionale nella storia antica*, in '*Civitas maxima*'. *Studi di storia del diritto internazionale I* (Firenze 1974) 296 ff.; K.H. Ziegler, *Das Völkerrecht der römischen Republik*, in *ANRW I.2* (Berlin- New York 1972) 88 ff; G. Luraschi, *Foedus* cit., 30 ff.; L. Labruna, *Romanizzazione, «foedera», egemonia*, in *Admincula* (Napoli 1995) 19 ff.

¹⁴¹ Of course the expression is technical, given that it's not the first time that it appears in this meaning in legal and literary sources. In fact, skimming the ThLL, s.v. «Lex» VII.2 (Lipsiae 1956-79) 1243 f., we find attested the use of the expression *lex, in negotiis pacis, foederis* to indicate, at least in most cases, a relation established between several communities with the purpose to

The return of the things is not uniquely provided in the case of victory of one community against the other, but it is testified even in hypotheses in which belligerent peoples achieve peace with equal conditions: in that case - Livy writes - there is the habit of asking and giving the *res* on the basis of an agreement and, if some ownerships' changes occur as a result of war actions, the original positions are restored according to the ancient law's formulas or according to a mutual advantage's formula¹⁴². This is the second *genus foederum*, through which foreign peoples, previously enemies, can conclude a friendship's pact and that configures a sort of *reciperatio* following the war¹⁴³.

The third kind of treaty is placed outside the war logic and testifies, in response to a need to completeness, a further possibility reserved for the communities to make a friendship's deal. The *foedus* at issue, in fact, is defined *sociale* - distinguished by *leges*, precisely because the contracting parties' condition is neither that of the defeated and nor that of the winner -, and brings attention to the peoples' will to make the friendship, independently from any occasion of necessary contact (the war).

If we compare the three contractual types, there is no doubt on the homogeneity of the first two to the political-military logic, to which the third remains unrelated instead. The principal division is between *foedera amicitiae causa* concluded after the war and the ones defined in the absence of war. The *sociale foedus*, that is the one concluded in the absence of war, is the only one that refers to the *societas* relation in terms that are functional to the *amicitia* establishment. And probably, considering what we said until now, it's not by chance¹⁴⁴. Livy states the practice that the treaties have contributed to reveal:

impose unilaterally peace conditions to the defeated enemy (see also, even if there isn't a specific reference to the international relations, the contribution of G. Tibiletti, *Leges dictae*, in *Studi giuridici in memoria di A. Passerini* (Milano 1955) 170 ff. and moreover on the different sense of the term *lex* see F. Serrao s.v. «Legge [dir.rom]» in *ED XXIII* (Milano 1973) 794 ff., now in *Classi, partiti e legge nella repubblica romana* (Pisa 1974) 5 ff.). The content of the *leges* is clarified by the following reference to the war prey and to the winner's authority to establish what is held by the winner or, conversely, returned to the defeated people and by the latter recovered on the basis of the right of *postliminium*.

¹⁴² G.L. Luzzatto, *Procedura civile romana II* (Bologna 1948) 231 ff.; G. Broggin, *Iudex Arbiterve*' (Köln-Graz 1957) 48.

¹⁴³ The emphasis is placed, even in this case, on the asset recovery whose original ownership was upsetted by the war - but starting from a condition different from the one shaped on the relationship defeated/winner, because the competition sanctioned the equality, on the military level, of the two communities (*pares bello*) allowing so to achieve peace and friendship through an *aequum foedus*. The equity that characterizes it - as it is evident - relates to the equal force shown on the battlefield and results in the possibility to recover the war prey, in respect to the original ownership, based on previous agreements or, in lacking, on the general *ius gentium* rule which allows to recover by *postliminium* - as we saw - the *res amissae*. The *formula antiqui iuris*, aimed at the *res* recovery, would refer, according to G. Fusinato, *Dei Feziali e del diritto feziale. Contributo alla storia del diritto pubblico esterno di Roma* (Roma 1884) 109, an alliance treaty concluded before the hostilities' beginning. The scholar makes such an assumption, by developing a rapid comment on Livy's passage, mentioned by M. Voigt, *Das 'jus naturale aequum et bonum' und 'jus gentium' der Römer II. Das 'jus civile' und 'jus gentium' der Römer* (Leipzig 1858) 134 nt. 116, that glosses the latin historian's text, interpreting the expression *ex formula iuris antiqui* as a reference to a previous treaty.

¹⁴⁴ A. Coşkun, *Rückkehr zum Vertragscharakter der amicitia? Zu einer alt-neun Forschungskontroverse*, in Id., *Freundschaft und Gefolgschaft* cit., 222, that attributes the «Symmachieverträge» to the Hellenistic influence.

the close connection between *amicitia et societas*. The historian however doesn't just compare the two conditions: he makes the *societas* instrumental to the *amicitia*. It is not implausible to read in this specific structure a Roman customization of the Mediterranean practice, The Romans, right from the beginning, shape their relationships with the foreign peoples in terms of military alliance, the meeting with Mediterranean cultural patterns introduces Rome to the *amicitia* related with the *societas* but Romans model the relation preferring, for military purposes, the *societas* - as it however appears stated by the replacement of the *formula amicorum* with the *sociorum* one.

Instead nothing emerges with regard to the balance of powers between the parties in the conclusion of this *socialis foedus*, on the contrary Livy offers an international relations' framework based on the equality or disparity of conditions derived from the same or different political-military weight of the involved parties, without considering the actual political weight in the actual international relations' development. With a very effective stylistic choice, Livy makes one of the Antiochus III delegation's chiefs

- and not a Roman individual - theorize the *foedera tripartition*, in order not to fall into the temptation to make the dominant Rome's role heavy.

From a completely different perspective, a Proculus' testimony arises, making the Roman hegemony the focus point of the juridical problems' treatise:

D. 49.15.7.1 (Proc. 8 epist.). Liber autem populus est is, qui nullius alterius populi potestati est subiectus, sive 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 populum superiorem esse, non ut intellegatur alterum non esse liberum: et quemadmodum clientes nostros intellegimus liberos esse, etiamsi neque auctoritate neque dignitate neque viri boni nobis praesunt, sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est.

Proculus provides a concept of *populus* freedom which emerges in two senses: in the residual terms of the missed subjection to another people's power or in the terms of the relationship established through a *foedus*, by distinguishing in this last category the federated who have contracted a *foedus aequum*, from the one that, instead, have provided, burden on one of the parts, the commitment to respect the other one's *maiestatis*, in the same way as the relation between patron and client. On the latter contractual type the jurist lingers mainly in order to clear the field from the feeling that the people that accepted the *clausula maiestatis* didn't appear free. And here he restates - taking as example the relationship between patron and client¹⁴⁵ in which the client, while

¹⁴⁵ Rereading the thesis of E. Badian, *op. cit.*, *passim*, in view of the theory of E.S. Gruen, *The Hellenistic World* *cit.*, *passim*, P.J. Burton, *Clientela or Amicitia? Modeling Roman International*

respecting the patron, retains his freedom - that the provision, actually, only contained the commitment to respect Rome's superiority - as Cicero already stated on the meaning of the *clausula maiestatis* included in the treaty between Rome and Cadiz. This latter contractual type was renamed by the doctrine *foedus iniquum*, probably searching for a symmetry within the classification of genera foederum listed by the jurist, of which only the first one is expressly defined *aequum*.

Beyond the classification's accuracy, it must be said that in both the cases the peoples establish with Rome an *amicitia* relationship: in a case, the *foedus* is *aequum* and it makes we think to Livy's *foedus* in which the communities, at the end of the war, turned out to be *pares bello* or in the interpretation just suggested the *foedus sociale* contracted outside of the war; in the other one, the *foedus* is not equal but imposes the respect for the other one's *maiestatis* in compliance with the scheme of the defeated people's subjection to winner's conditions. Up to this point the analogy between the Livy's classification and the two types of *foedus* which in the interpretation of Proculus qualify the *populus* as *foederatus*: the similarities between the two sources end there. In fact Proculus, differently from Livy, frames the distinction by adopting the Roman hegemony's perspective. In the second type of *foedus*, the jurist qualifies as free the peoples even if, in the relationship established with Rome, are obliged to respect her *maiestatis* (*sic eos, qui maiestatem nostram comiter conservare debent, liberos esse intellegendum est*).

In other terms, the jurist makes the supranational relation's political criterion of equality and inequality obey the Roman expansionist logics. The *amicitia* is the treaty's content but its value is shaped differently depending on the political weight of the people with which Rome establishes the relationship¹⁴⁶. This seems to me the best evidence of the direction's change in political terms of the Greek friendship's concept

- still assuming that the Roman *amicitia* arised from the tracing of the Greek φιλία.

Behavior in the Middle Republic (264-146 B.C.) in *Klio* 85 (2003) 333 ff., brings back to the center of Mediterranean relations in III-II century B.C. the relationships of *amicitia*, rather than the *clientela* one. «Romans in middle Republic used *amicitia* to construct their international relations for reasons apotropaic and prophylactic: *amicitia* was, quite simply, the most congenial and flexible method of negotiating - and constructively mitigating - the prevailing chaos of the Mediterranean international system».

¹⁴⁶ J.L. Ferrary, *Philhellénisme et impérialisme. Aspects idéologiques de la conquête romaine du monde hellénistique, de la seconde guerre de Macédoine à la guerre contre Mithridate* (Rome 1988) 42 f., on the compatibility, in the roman reinterpretation, of the friend and allied's status with the subjection and dependency's one; R. Billows, *op. cit.*, 320 ff., on the different nature of the roman *amicitia* compared to the Greek φιλία. While the latter would presuppose a relations' equality, quite the opposite the roman friendship would state unequal relationships, generally of dependency.

8. φιλία and κοινωνία in Greek interstate patterns

φιλία and κοινωνία represent two ancient matters and, together, of great topical interest. As Luca Grecchi states, in his nice paper *Gli stranieri nella Grecia classica*¹⁴⁷, the classical culture is, for structure and essence, a culture of acceptance, a culture deeply soaked in φιλοξενία rather than in ξενοφοβία¹⁴⁸.

The foreigners, in fact, were always present in the different πόλεις and they were welcomed benevolently:

«in ancient Greece, both in classical and antecedent age (at least since the time of Homer) [...] they were almost always, in the different *polis*, welcomed benevolently; in man families, even, names containing the *xenos* word were given to the babies or - for example as Cimon did (Plutarch, *Life of Cimon*, 10, 7) - names of cities or foreign peoples were given to the sons, in order to show that universalistic vocation, which was typical [...] of Greek humanism»¹⁴⁹.

Furthermore, as it was mentioned, «the *philoxenia* was not but an aspect of the *philantropia*; the guest was always welcomed as if he was sent by the gods, and treated like a family member»¹⁵⁰. Not without reason, since the archaic age, the ξενία was practiced, and it provided for a relationship of assistance between two or more families. It is a private practice which little by little turns into that common public practice that becomes προξενία, through which a foreigner was accepted within the city.

This brief contribution intends to focus attention on two central notions in Aristotelian reflection, such as φιλία and κοινωνία, even by addressing the issue of the «self-sufficiency» (αὐτάρκεια), which from on point of view allows, and from another makes difficult, the pursuit of happiness to the human being.

9. φιλία expresses in many ways: the articulations of «friendship» notion in Aristotle

Starting from the topic of the φιλία, it is pertinent to notice that the first element to keep in mind when we are about to debate the friendship's topic in the ethical

¹⁴⁷ L. Grecchi, *Gli stranieri nella Grecia Classica. Paralleli con il nostro tempo* (Pistoia 2011).

¹⁴⁸ For the topic's in-depth analysis, I refer even to C. Bearzot, *Lo straniero nel mondo Greco: xenoj, apolidi, barbari*, in *Stranieri, profughi e migrant nell'antichità*, in *Nuova Secondaria* 18 (2000), 30-38 nt. 3; M. Moggi, *Greci e barbari: uomini e no*, in *Civiltà classica e mondo dei barbari: due modelli a confronto* (Trento 1991) 31-46.

¹⁴⁹ L. Grecchi, *op. cit.*, 57.

¹⁵⁰ F. Gioia, *L'accoglienza dello straniero nel mondo antico* (Roma 1986) 10.

reflection of the Stagyrite, is that «the broader treatise that a philosopher has ever dedicated to friendship consists of the two books of the *Nicomachean Ethics*»¹⁵¹.

To this broad dissertation on the topic of the *φιλία*¹⁵², contained in the *Nicomachean Ethics* VIII and IX, actually, we should add the two other specific treatises contained in the VII book of the *Eudemian Ethics* and in *Great Ethics* I, 11, and many other references, far less specific, to the question¹⁵³.

The extraordinary vastness¹⁵⁴, as well as the absolute centrality¹⁵⁵, of the *φιλία* notion, actually, implies some difficulties even on the level of the translation of the term into modern languages. As it was noticed, in fact, «the friendship is [...] to be intended [...] in a very wide meaning (within which there are several differences), as the combination of the individual's moral and emotional dispositions toward his own kind. The man does never live and act alone, but he's structurally inclined toward the relation with the others; in fact, it is precisely within this relation that the individual fully realizes his own personality, and it is within it that he realizes his virtue and achieves happiness»¹⁵⁶.

¹⁵¹ E. Berti, *Le emozioni dell'amicizia e la filosofia*, in P. Venditti, *La filosofia e le emozioni*, in *Atti del XXXIV Congresso Nazionale della Società Filosofica Italiana* (Firenze 2003) 137.

¹⁵² «Il est impossible d'examiner en profondeur l'éthique aristotélicienne, sans s'engager dans unediscussion à propos des formes de l'amitié» (P. Kontos, *Le «renversement copernicien» de l'amitié. À propos de l'amitié des sages chez Aristote*, in *Revue philosophique de Louvain* 1 (1999) 441.

¹⁵³ For an overview of some occurrences of the term *φιλία* and its fundamental articulations, I refer to *Indice ragionato dei concetti* in Aristotele, *Le tre Etiche e il trattato Sulle virtù e sui vizi* (with parallel greek text), preface of Maurizio Migliori; full translation from greek, introductory paper, notes, analytic summaries, detailed index of the concepts, index of proper names, bibliography of A. Fermani, *Il Pensiero Occidentale* (Milano 2009) 1230-1232.

¹⁵⁴ «The theory on friendship [...] in the *Nicomachean* expands in a sociological universalistic doctrine of the human relationships' many forms» (W. Jaeger, *Aristoteles. Grundlegung seiner Entwicklung* (Berlin 1923), trad. di G. Calogero, *Aristotele. Prime linee di una storia della sua evoluzione spirituale* (Milano 2004) 327.

¹⁵⁵ «Friendship necessarily has to fall in the Aristotelian ethics' matters, because on one side it appears as an epiphenomenon's virtue, given that the "first friendship" [...] the truest friendship and actually worthy of this name is the one that is established between individuals endowed with the ethical virtue; and on the other side it is provable - and Aristotle takes care of proving it - that even who's happy truly needs bonds of friendship» (P. Donini, *Aristotele. Etica Eudemia*, Roma-Bari1999). «The unbreakable union between happiness and friendship, which appears in this way, is explained by Aristotle as follows: if happiness consists in living, and in living as intensely as possible, that is exercising the activities in which our human life characterizes more, and if hence we are happy to perceive our living and our activities, moreover we will be happy to perceive the living and the activities of the individuals that are friends, which materializes indeed in the cohabitation and in the arguments and thought's sharing» (E. Berti, *Profilo di Aristotele*, Roma1979, 274).

¹⁵⁶ C. Mazzarelli, *Aristotele. Etica Nicomachea* (Milano 1996) 31. «It must be said that "friendship" is not a good translation of Aristotle's term *philia*, though no other English word would be any better, for under this title Aristotle groups together a much wider variety of social relationships than we would. Some of them we would more naturally call "love", such as the love of a mother for her child, or the erotic passion of a lover for his beloved; some are friendships in our usual sense; but some seem more to be mere business relationships, as when I trust and rely on my regular butcher or greengrocers to supply wares of good quality» D. Bostock, *Aristotle's Ethics*, New York 2000, 168). More generally, as it was noticed, by "friendship" Aristotle means the wide range of relationships that imply, various, reciprocation: «Since Aristotle

Among other things the topic of friendship in Aristotle and, in wider terms, in the ancient mindset, constitutes, for its breadth, for its relevance¹⁵⁷ and for its current elements is an extensively studied question, necessitating a comparison, as well as with its various turning points, with the large series of past and recent reflections that, with different approaches and through various gazes, wondered about it.

I will limit myself to a rapid and systematic reconstruction of this rich notion, by quickly enlightening the series of variations and repositionings made by the Stagirite's lecture in this field and the series of scenarios that, on (and starting from) these repositionings, emerge.

10. First "act": friendship as virtue

The first development of φιλία that I will try to reconstruct is the one of friendship as a virtue and, more specifically, as a moral virtue.

uses the term for any affection that expects reciprocation, or that expects and finds reciprocation, no matter how extended or attenuated that affection, it applies it very widely: to families, clubs, clans, and even to reciprocal affections of loyalty and patriotism among citizens» (M. Pakaluk, *Aristotle: Nicomachean Ethics Books VIII and IX*, Oxford 1998, 264). As reminded in *Nicomachean Ethics* VIII, 7, 1158 b 27-28, the «equality (ἰσότης) seems to represent the friendship's specific element». But it is interesting to note how, even in this regard, Aristotle suggests, in the same field, a completely different scenario. In *Nicomachean Ethics* VIII, 14, 1163 b 15 in fact, he states that «friendship request that everything possible is done and the difference in value is not respect», not by chance, as reminded in *Nicomachean Ethics* VIII, 7, 1158 b 29-30: «it is evident that, then, the equality doesn't realize in the same manner as justice and friendship». In a certain sense, so, friendship is based on the equality, and the *isotes* represents the specific and fundamental feature of the *philia*, making it necessary to restore the differences that can be created among those between which the friendship establishes, while, in another respect, it is necessary that friendship does not take into account the differences. On the dissimilarity between the individuals implied in the friendship's relationship see also *Nicomachean Ethics* VIII, 13, 1161 a 30-b 8 and *Politics* I, 6, 1255 b 12-13, in which, albeit in different developments and "gaze", as rightly reminded by C. Viano, *Aristotele. Politica* (Milano 2002) 97, nt.13, the possibility of a friendship's relationship between master and slave is presented. I don't linger, for obvious reasons of space, on the question of friendship between equals and unequals, to which Aristotle dedicates a large treatise (see *Eudemian Ethics* VII, 3 ff. *passim*; *Nicomachean Ethics* VIII, 7 ff. *passim*; *Nicomachean Ethics* VIII, 14 *passim*; *Great Ethics* II, 11 *passim*).

¹⁵⁷ The importance and the extension of the topic within *Nicomachean Ethics* induced W. Tatarkiewicz 1931, pp. 489-503 n. 1, to identify precisely in friendship the basis of one of the "three morals" in the work and, precisely, of the "friendship morals" based on feelings. Ross has found as exactly the topic of friendship constitutes a "corrective" to an ethics, such as the aristotelian one, substantially "egoistic" and, even, in some ways "egocentric" («traces of an egoistic conception are present even in the friendship's exposition, and it could not be otherwise because friendship is not simply kindness, but it requests to be returned» (D. Ross, *Aristotle*, Milano 1971, 220-221): «it's rather surprising to find two entire books of the *Ethics* dedicated to the topic of friendship. But we have to keep in mind that the Greek world has a meaning wider than ours; it can represent any mutual attraction between human beings. This examination is a valuable corrective for an impression that the *Ethics'* remaining part tends to give» (Id., *op.cit.*, 220). But differently from Ross there are those, such as C. Shields, *Aristotle* (London- New-York 2007) 334, who observe, in my opinion very correctly, that the structure of the Stagirite's ethics is only apparently egoistic: «the misimpression is that Aristotle's theory is thoroughly egoistic: we have been focusing on happiness (eudaimonia) and the best way to secure it. It might be natural to conclude on the basis that the ethical theory begins and ends in an account of self-regarding attitudes. The corrective to this misapprehension is Aristotle's treatment of friendship (philia)».

The three lists of moral virtues presented within the three Ethics perfectly agree on this point, making friendship *φιλία* a *μεσότης*, that is a middle way, the happy medium, between the *κολακεία* (adulation) and the *ἀπέχθεια* (hostility)¹⁵⁸.

In *Eudemian Ethics* II, 3, 1221 a 7, in fact, in the ninth place of the virtues' table, this three figures are really situated, as expressions, respectively, of excess, the deficiency and happy medium:

[excess]	[deficiency]	[happy medium]
Adulation (κολακεία)	Hostility (ἀπέχθεια)	Friendship (<i>φιλία</i>)

The question is resumed and clarified in *Eudemian Ethics* III, 7, 1233 b 29-30 where it reads that:

Friendship [...] is a middle point between aversion and adulation (*φιλία δὲ μεσότης ἔχθρας καὶ ἰκολακείας*).

Such a scenario is suggested in *Great Ethics* I, 31, 1193 a 20-27 where we find written that:

Friendship is a middle point (*μεσότης*) between adulation and hostility and it concerns actions and speeches; the adulator, in fact, is the one who ascribes more values than someone deserves or effectively has, while the hostile individual is the one who is malicious and detractor of the truth. Neither of them, therefore, is deservedly praiseworthy, while the friend is in a middle ground between them; he, in fact, will not attribute more values than the actual ones, or praise things that does not deserve it or, on the other hand, diminish, or in the most absolute manner go against whatever he feels fair.

The clear and evident positioning of friendship in the context of the virtue is instituted equivalence, in other sections of the Ethics, between friendship and the *habitus* (*ἔξις*) that is the customary state that constitutes the value's manner and mark.

Such a scenario, on friendship as a virtue, is not only fully confirmed, but even reinforced in other Ethics' pages. In *Nicomachean Ethics* VIII, 1, 1155 a 26-28, for example, we read that «while among friends there is no need for justice, the righteousness, instead, need friendship and the highest level of justice seems to

¹⁵⁸ Actually, as an additional proof of the aristotelian model's exceptional flexibility, it's important to clarify that, differently from what we read in *Great Ethics* and in *Eudemian Ethics*, in *Nicomachean Ethics* IV, 6, 1126 b 19-20, it is not stated that *φιλία* identifies with the moral virtue consisting in the middle point between adulation and hostility, but only that «it is very similar to that» (*ἔοικε δὲ μάλιστα φιλία*).

consist in a feeling close to friendship». So, in a way, friendship even surpasses justice, which is the *summa* of the virtues, the virtue par excellence.

As moral virtue and, rather, to some extent, the noblest of the moral virtues, friendship cannot but constitute a habitual state. Φιλία ἔθικὴ τις εἶναι ἕξις («friendship is a habitual state of the character»), it reads in *Eudemian Ethics* VII, 1, 1234 b 27-28.

In, on the other hand, friendship configures as a virtue and, so, as a habitual state, this would imply its exclusion from the passion's horizon, seeing as the virtue, as retired more than once within the aristotelian text¹⁵⁹, does not consist in a capacity (δύναμις) or in a passion (πάθος) but rather, indeed, in a habitual state (ἕξις).

Friendship is a ἕξις and, so, a *habitus*, and not a passion. To the emphasis of this fundamental trait of the φιλία Aristotle dedicates several passages in his *Ethics*. In *Nicomachean Ethics* VIII, 5, 1157 b 31-32 for example, we read that

the righteous want the good for the ones they love (τοῖς φιλουμένοις) [...] not in the wake of passion (οὐ κατὰ πάθος) but on the basis of a habitual state (ἀλλὰ καθ' ἕξιν)

while even more clearly, in *Nicomachean Ethics* VIII 5, 1157 b 28-29 we literally read:

it seems that, while the affective connection constitutes a passion (ἡ μὲν φίλησις πάθει), friendship is a habitual state (ἡ δὲ φιλία ἕξει).

Friendship, so, differently from the *philesis*¹⁶⁰, that is the affection, does not represent a passion but a *hexis*, that is a habitual state or a disposition or rather, to put it in Berti's words¹⁶¹, that «perfect disposition» which is the virtue. The φιλία, so, is ἀρετή, and the two profiles of friendship and virtue, in this perspective, perfectly correspond.

11. Second “act”: friendship as what is related to the virtue

But elsewhere Aristotle seems to prospect a partially different scenario, within which there is a detachment, even if partial, between the virtue's perspective and the friendship's one. In *Nicomachean Ethics* VIII, 1, 1155 a 3-5, in fact a double interpretation of the friendship seems to be suggested:

Therefore, after that, let us take care of the friendship. This, in fact, is some virtue (ἀρετή τις) or (ἢ) it is related to the virtue (μετ' ἀρετῆς) and it configures as an absolutely essential element for the existence.

¹⁵⁹ *Eudemian Ethics* II, 1-2; *Nicomachean Ethics* II, 5; *Great Ethics* I, 7.

¹⁶⁰ On the characteristics of the φίλησις and on the difference between the latter and friendship see M. Pakaluk, *op. cit.*, 261-264.

¹⁶¹ E. Berti, *Le emozioni dell'amicizia* cit., 139.

The passage outlines, as it's evident, a frame of friendship as virtue, much more veiled compared to the one reconstructed previously.

First of all, in fact, the identification of friendship with virtue seems to be supported, so to speak, with some reservations (as can be seen from the limit represented by the $\tau\iota\varsigma$).

Furthermore, in the passage in question, besides the blurring of the connection between friendship and virtue (that even let someone talk about «quasi-excellence of the friendship»¹⁶²), it seems to be advanced the possibility that friendship is shaped *even* (as evidenced by the conjunction ἢ) as something that is given together with the virtue ($\mu\epsilon\tau'\acute{\alpha}\rho\epsilon\tau\eta\varsigma$), and that is a situation which is connected with the virtue and so, as such, is not, or not *tout court*, the virtue.

Therefore a horizon, in which the virtue's sphere and the friendship's one do not result (or do not perfectly result) superimposable, seems to take shape.

12. Third "act": friendship as passion

But Aristotle does not stop there. The Philosopher's text, in fact, encourages to add to the just reconstructed frame a further and unexpected element.

In *Nicomachean Ethics* II, 5, the Philosopher wonders what the virtue is and if it consists in a passion, a faculty or a habitual state, and with which of those three it corresponds:

Since, therefore, the realities which spring from the soul are three, and that are passions, faculties, habitual states, virtue will be one of these things¹⁶³.

To this programmatic indication, an assertion which puts itself in absolute disagreement with the other previously reconstructed scenarios, follows:

I mean by "passions" ($\lambda\acute{\epsilon}\gamma\omega$ δὲ πάθη) desire, rage, fear, courage, envy, joy, friendship ($\phi\iota\lambda\acute{\iota}\alpha\nu$)¹⁶⁴.

This new and unexpected possibility, therefore, faces us with a friendship expressly called to impersonate passion, that is that "reality" which, as repeatedly mentioned in the *Ethics*, cannot in any way be identified with virtue¹⁶⁵.

The break in continuity compared with the previously presented situation is very evident: friendship is a passion and, as such, it can *not* be considered as a

¹⁶² J. Barnes, *Aristotle* (Torino 2002) 118.

¹⁶³ *Nicomachean Ethics* II, 5, 1105 b 19-21.

¹⁶⁴ *Nicomachean Ethics* II, 5, 1105 b 21-22.

¹⁶⁵ *Nicomachean Ethics* II, 5, 1105 b 28-1106 a 2 «Now, neither virtues nor vices are passions, since we are not called morally honest or nefarious on the basis of passions, but on the basis of virtues and vices, and since we are not praised or blamed on the basis of passions (in fact, we don't praise who is scared or gets angry, or blame who, simply gets angry, but rather we blame who does it in a certain way), but we are praised or blamed on the basis of virtues and vices».

virtue. The fact of experiencing a passion, indeed, as Aristotle recalls, is itself neither to blame nor to praise. If anything, it would be blamable or praisable to confront, respectively, good and evil, a determined passion, that is the virtue or the vice, consisting precisely in the ability to handle (properly in the first case, excessively or insufficiently in the second one) passions. But, if that's the case, friendship, as a virtue and, together, as a passion, appears, at the same time, as *the ability to handle and what must be handled*, as what is experienced, that is, exactly, as passion (*pathos*), and as what allows to experience well this *pathos* (that is as virtue).

Berti exactly refers to this model's duplicity when he states that «*philia* seems to be first of all an *emotion* or "*passion*" (*pathos*) [...] Nevertheless friendship is considered by Aristotle *even as a disposition (hexis)*, that is a habitual state of the spirit, and as such is distinguished from the passion or the emotion, from which it's generated, that is named *philesis* by him: term translatable as "affection" or "emotional feeling"»¹⁶⁶.

In summary, therefore, we can say that, up to this point, it is possible to find three different profiles of the friendship's notion in the aristotelian ethic harangue:

- a. Friendship as virtue;
- b. Friendship as what combines with the virtue;
- c. Friendship as passion.

13. Fourth "act": friendship as what combines with passion

Moreover, it seems possible to juxtapose a further model with the just mentioned figures. And that is what can be learnt, negatively, from *Nicomachean Ethics* IV, 6, 1126 b 22-23 in which Aristotle, discussing about a habitual state that is placed midway between the complaisance and the litigiousness, states that such *hexis*, while similar to friendship, differs from friendship on the fact that it doesn't express together with passion. On this state, he says,

it differs from friendship, because it *doesn't go with a passion* (ἄνευ πάθους).

But, if that is the case, it seems possible to design, positively, a friendship's image that, in the strict sense, doesn't seem to match with any of the previously reconstructed scenarios. In fact, saying that the habitual state in question *is not friendship because it doesn't express with passion* means to claim that, *e contrario*, friendship is what expresses *together* with passion, so implying a separation even with the third scenario, in other words by distancing from the perspective of a friendship that *identifies* with passion.

However if friendship, as it seems to emerge from this rapid reconstruction, is describable even in the terms of what expresses together with passion or what

¹⁶⁶ E. Berti, *Le emozioni dell'amicizia* cit., 137-138.

doesn't express without passion, it follows that the passion itself constitutes an element important enough to appear as a distinctive friendship's feature: where there is no *pathos*, we can't speak of friendship *stricto sensu*.

14. Fifth "act": friendship as a good and friends as exterior goods

But there is a further "gaze" on the friendship, that, while en passant, Aristotle entrusted to the reflection in his *Ethics*. In this case, actually, the gaze is lightly diverted and moved, as it were, from the abstract level to the concrete one, in the sense that the specific object of aristotelian focus is not the *φιλία* but rather the *φίλοι*, the friends.

It seems to me, even so, substantial to reconstruct, even if briefly, this particular profile of the friendship's notion, on the basis of which friends would appear as goods and, more specifically, as "exterior goods".

Even on this question's aspect there is, in the three *Ethics*, an almost fully consensus. To the more general statement, included in *Eudamian Ethics* VII, 1, 1234 b 31-32, according to which the friend is one of the greatest goods (*τῶν μεγίστων ἀγαθῶν τὸν φίλον εἶναι*), two statements - included respectively in *Great Ethics* and *Nicomachean Ethics* - are related and according to them friends are not only exterior goods, but the greatest of them:

of the goods ... some of them are exterior (*τὰ μὲν ἐκτός*), such as richness, power, honor, friends (*φίλοι*), fame¹⁶⁷.

In *Nicomachean Ethics* IX, 9, 1169 b 9-20 moreover it reads

friends (*φίλους*) ... are generally considered the greatest of the exterior goods (*τῶν ἐκτῶν ἀγαθῶν μέγιστον εἶναι*)¹⁶⁸.

After all friends are considered a good so much essential for the human existence¹⁶⁹ that a great shared misfortune is preferable to a delight enjoyed in solitude, as it reads in *Eudemian Ethics* VII, 12, 1246 a 9-10, at the end of the reflection on the relation between friendship and self-sufficiency:

¹⁶⁷ *Great Ethics* II, 6, 1202 a 30-31.

¹⁶⁸ *Nicomachean Ethics* IX, 9, 1169 b 9-10.

¹⁶⁹ J.M. Cooper, *Aristotle on Friendship*, in A. Rorty Okseberg, *Essays on Aristotle's Rhetoric* (Berkeley 1996) 329-330 «Now on Aristotle's theory of eudaimonia the flourishing human life consists essentially of morally and intellectually excellent activities. So the flourishing person will have a special need to share these activities, if his own interests in life are to be securely and deeply anchored... Hence, a human being cannot have a flourishing life except by having intimate friends to whom he is attached precisely on account of their good qualities of character and who are similarly attached to him: it is only with such a person that he can share the moral activities that are the most central to his life».

a great adversity experienced in company (ἄμα) is <better> than¹⁷⁰ a great joy experienced alone.

These are statements that, as it's evident, can be read in continuity¹⁷¹ with the scenario of friendship as virtue and that, to some extent, can be located within it. Friendship, in fact, as a virtue, is also a good, since all the virtues are even goods and, more specifically, soul's inner goods (τὰ ἐν τῇ ψυχῇ)¹⁷².

Now, if on one side friendship, as a virtue, if a soul's good, friends, that constitutes goods too and, rather, very noble goods, are to be counted into the exterior goods.

On the other hand, attention should be paid on the particular friendship's state, which is an internal good, but, as it was said, is not an "internal state" which then needs to be actualized, but a virtue (and so a good) fundamentally "relational"¹⁷³. So we could say that friendship, that on one side is and can be described as a good of the soul, that is a good *of* the and *in* the individual, on the other side it doesn't express except as good *between* individuals¹⁷⁴.

15. Along the friendship's routes: final considerations

The friendship's figure in Aristotle seems, therefore, to be characterized, in its constitutive plurivocity¹⁷⁵, as deeply polarized around two crucial figures and,

¹⁷⁰ Analogously, in *Eudemian Ethics* VII, 1, 1234 b 32-33, it reads that «to be alone and in solitude is the most terrible thing». On friendship's essentiality for the achievement of freedom see also M. Petrelli, *Philia, eudaimonia, omonimia. Commento a un passo dell'Etica Nicomachea*, in *Rivista internazionale di Filosofia del Diritto* LIX (1982) 1982, 577-594.

¹⁷¹ In this sense, I depart from the "anti-unitary" reading of M. Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy*, in M. Scattola, G. Zanetti, *La fragilità del bene. Fortuna ed etica nella tragedia e nella filosofia greca* (Bologna 1996) 675-676, who notices how, in the aristotelian definition of friendships, there are deviations caused by less or more systematic classifications, as *Nicomachean Ethics* VIII, 1 1155 a 3 ff. would state [«this, in fact, is some virtue or it is related with the virtue»]. Aristotle, in the scholar's opinion, hesitates on considering friendship as a virtue, in «a more systematic classification he regards it as an external good».

¹⁷² *Eudemian Ethics* II, 1, 1218 b 35; *Great Ethics* I, 4, 1184 b 5-6. The soul's goods are different and better than the the body's ones (τὰ δ'ἐκτός) an than the exterior ones (τὰ δὲ ἐν τῷ σώματι). «Besides that the goods can be divided even in another way. Of the goods, in fact, some are of the soul, such as virtue, others are of the body, such as health and beauty, others, instead, are exterior, such as richness, power, honor or another good of this kind. Among these, then, the soul's ones are the best. Moreover the soul's good are divided into: wisdom, virtue, pleasure» (*Great Ethics* I, 3, 1184 b 1-5).

¹⁷³ M. Nussbaum, *op. cit.*, 623 ff., who considers friendship as one of the "relationship's goods".

¹⁷⁴ «Unlike generosity or beneficence, it is not an internal state of character that then comes to be actualized on appropriate occasions. A friendship is relational, something between rather than in a person» (S. Wolf, *Die Suche nach dem guten Leben*, in G. Mancuso, *La filosofia come ricerca della felicità. I dialoghi giovanili di Platone*, ed. it. F. Trabattoni (Milano 2001) 160).

¹⁷⁵ Nevertheless, even in the Greek language, as it was observed, «philia meant as friendship and philia meant as desire constitute two evidently different meanings of the term» (S. Wolf, *op. cit.*, 160).

together, absolutely immovable: the virtue's one on one side and the passion's one on the other¹⁷⁶.

How is it possible, if it is, to get orientation through the directions of this so deeply slippery and unfathomable figure? Is it possible, hence, to explain this variety of explicative models of the *φιλία* notion, by reconciling diametrically different viewpoints and make them coexist in a not contradictory way? It is a matter of listening to the aristotelian text, in order to redesign the overall picture and evaluate the possibility to knot again - without breaking them - the strands of this rich and intricate figure. In this rapid and brief process of framework's reconstruction and, proceeding in an even more schematic way, it seems that, based on the aristotelian text, is possible to state what follows:

- 1) In the first place friendship constitutes, *always* and necessarily, a *passion*. In fact, as we saw, when there is no passion, another kind of relation takes place, and it's very similar to friendship, but it's not friendship strictly speaking;
- 2) moreover, the Aristotelian text allows us to say that, *in some cases*, the *φιλία* takes shape not as passion, but even as a passion experienced in the right way, a well handled passion, that is, in other words, as a *virtue*.

On this specific but fundamental point, that is, more generally on the connection established between friendship and virtue, it's necessary to focus with further attention, in order to try to clarify some aspects of the question.

For this reason, in fact, it's necessary to broaden the subject to that fundamental distinction, introduced by Aristotle in opposition to his Master¹⁷⁷, between different forms of friendship. In fact, there are three objects of friendship, that are the good, the useful and the pleasure, to which three forms of friendship correspond: the virtuous friendship, the pleasing friendship, the useful friendship. In this frame, in fact, the virtuous friendship appears as *one* of the possible friendships, representing that «relationship which has at its center two human beings, while the relationships based on pleasure or usefulness doesn't fundamentally concern individuals but their qualities, their properties»¹⁷⁸.

¹⁷⁶ On the friendship's topic and its connection with love see M. Nussbaum, *op. cit.*, 640 ff.

¹⁷⁷ *Eudemian Ethics* VII, 2, 1236 b 12-26 «But those, since they do not participate in the first friendship, say that they aren't friends: in fact the vicious will commit injustice against the vicious and those who suffer injustice are not friends with each other. Instead if they are friends, even if not based on the first friendship, since nothing prohibits that they are friends based on the other forms. In fact because of the sorrow they support each other even if they are harmed, as it happens in the case in which they are incontinent; but, when they carefully examine the problem, they don't even believe they can be friends among those who are friends because of the pleasure, because their friendship is not the first one. In fact, that is stable, while this is unstable. Quite the opposite, as it was said, it is however a matter of friendship: not the first friendship, but friendship that originates from that one. So, to define the friend only in that way, means to force the facts, and it is inevitable to say paradoxical things; nevertheless it is impossible that all the friendships boil down to the same definition. So the fact remains that, in a sense, only the first form appears as friendship but that, in another sense, they all are friendships, but neither as similar only for the name and having between them only casual relations, nor based on one form only, but rather concerning only one».

¹⁷⁸ C. Danani, *L'amicizia degli antichi. Gadamer in dialogo con Platone e Aristotele* (Milano 2003) 257. «In the friendship between good persons, Aristotle says, each friend desires to be good in an absolute way as well as he is good for the friend [...] Friendship with the good that both friends absolutely presuppose, is what allows and on which the actual friendship is based. Precisely in

In *Nicomachean Ethics* VIII, 5, 1157 b 25 it reads that

friendship is especially (μάλιστα) the one established between virtuous ones,

confirming that the virtuous friendship constitutes the best form of *philia* and the one more worthy to be defined as such, but it's always one of the *φιλία* possible forms achievable between human beings. This means that even friendship is not always a virtue, but rather the virtuous friendship represents an extremely rare and difficulty feasible state of perfection¹⁷⁹.

On the other hand - and this constitutes a further and fundamental movement done by the aristotelian speech - for «virtue» it is understood, in this case, the ability to love the other, as it happens in *Nicomachean Ethics* VIII, 3, 1156 b 8-10, in which, speaking of virtuous friends, it reads that «those [...] as virtuous, wants in the sameway the good for each other and are virtuous in themselves; moreover, those who want their friends' good for themselves, are friends at the highest level».

Therefore:

- a) the perfect friendship, that is the virtuous one, is such because the individuals implied in this relationships wants the each other's good;
- b) Those who establish such a friendly relationship are friends at the highest level.

As it is evident, so, in this context we do *not* mean by «virtue» the ability to deal with passions and feel them in the right way, but rather, through a different regulation of the *ἀρετή* concept, the ability to love others.

If that's the case, as the aristotelian text seems to suggest, it is understandable why and in what sense it is possible to state that

- 1) friendship, in some ways, is a virtue, and it is a *moral virtue*, appearing as a rooted and enduring habitual state¹⁸⁰ and as the right way to deal with

the friendship shared with the good, in fact, friends recognize themselves and choose each other, starting from this similarity» (R. Caldarone, *Eros decostruttore: metafisica e desiderio in Aristotele*, Genova 2001, 110).

¹⁷⁹ And maybe even unreachable, representing an almost ideal condition, with which relate those other forms of friendship, as it reads, for example, in *Great Ethics* II, 11, 1209 b 30-31, they aren't «required» to virtue. «Some commentators have objected that Aristotle's account of friendship sets an absurdly high standard for relationships that, in fact, according to his account, hardly any human relationships would count as true friendship. Aristotle would presumably accept this conclusion: he thinks that true friendship is rare, much as a virtue rare» (M. Pakaluk, *op. cit.*, 271).

¹⁸⁰ In this sense, as rightly recalled, «aristotelian love is not a romantic infatuation, because it's based on the enduring individual's elements. But it shows a strong emotional element, which is fundamental for its continuity; and it's based on the purpose to live and act together in a shared event. For these two reasons, differently from the Kantian practical "love", based on the sense of duty, the aristotelian love can be broken by distance» (M. Nussbaum, *op. cit.*, 648).

passion, without unbalancing toward the excess with the adulation or toward the lack with the hostility;

2) but in some other ways it can be considered as a «virtue's epiphenomenon»¹⁸¹, and deeply characterized by virtue, while not being a virtue, so expressing *met'aretès*, that is «together with the virtue», meaning by «virtue» to want the good for the other.

It is, so, a matter of two explanatory models of virtue's notion, which makes it necessary to differently measure the friendship's concept itself, that hinged on this double notion of virtue.

On the other hand this reading's duplicity about virtue, which give place to different expressions of the friendship's notion itself, seems to be supported by another interesting variance within the aristotelian text, consisting in the fact to state that friendship as virtue is, at the same time, but in different senses, a happy medium and an extreme: "happy medium", μεσότης, since, as we saw at the beginning, friendship constitutes a middle point between hostility and adulation; "excess" inasmuch the perfect friendship represents, as the Stagirite reminds in *Nicomachean Ethics* VIII, 5, 1158 a 5, an ὑπερβολή, that is an extreme:

in fact it seems to be similar to an excess (ἔοικε γὰρ ὑπερβολῇ).

The treatise on self-sufficiency (αὐτάρκεια), to my mind, deserves a separate examination. Trying to proceed quite systematically, it is possible to identify two fundamental scenarios and, within each of them, distinguish various joints.

16. Self-sufficiency as "to live and stand alone"

The first scenario is the one based on the most evident and effective¹⁸² αὐτάρκεια meaning, that is to «be on your own» and, closely related to this, the «ability to stand alone».

That the *autarkeia*'s notion can be intended, in general, even by the meaning of «solitary life» (albeit, Aristotle precises, it is not the sense that it have to get in the ethical-political sphere¹⁸³) clearly results in *Nicomachean Ethics* I, 7, 1097 b 8-9:

¹⁸¹ «Friendship must necessarily be included in the aristotelian ethics' subjects, because on one hand it appears as a virtue's epiphenomenon, since the "first friendship" [...], the true friendship and worthy of this name, is the one which is established between persons gifted with the ethical virtue; on the other and it is provable - and Aristotle takes care to prove it - that even who's happy truly needs friendship's bonds» (P. Donini, *op. cit.*).

¹⁸² This ethical-political meaning is the one that, not by chance, the term *autarkia* has in *Politics*, where we find 8 of the 16 total occurrences of the term.

¹⁸³ In *generatione animalium* (IV 8, 776 b 8-9), for example, Aristotle defines «autarchic» those animals that brings with them their necessary food. It is, as it's evident, a self-sufficiency meaning which cannot be advanced on a reflection about the human being.

by “self-sufficiency” we don’t mean the fact that a single individual lives a solitary life (τῷ ζῶντι βίον μονώτην).

Not coincidentally solitude (ἀφιλία), that is the absence of social and emotional bonds, the Philosopher reminds in *Nicomachean Ethics* III, 6, 1115 a 11, is a harm to be afraid of, in step with disease and death¹⁸⁴. And if the human being, as a «political animal»¹⁸⁵ cannot live alone, is because he’s not self-sufficient. In that sense, there is a very well-known statement in *Politics*, according to which

Therefore it is clear that the city is by nature and that it’s prior to the individual because, if the individual, as such, is not self-sufficient (μὴ αὐτάρκης), he will be in regard to the whole everything in the same relation in which the other parts are. So who cannot become part of a community or who doesn’t need anything, by standing alone, is not part of a city, but a beast or a god¹⁸⁶.

The perspective outlined in *Ethics* is alike. For example, in *Eudemian Ethics* VII, 10, 1242 a 7-8, it reads that

it is believed that human beings are brought together because they were not self-sufficient (διὰ γὰρ τὸ μὴ αὐτάρκειν).

But if, on one side, in an ethical-political sphere this self-sufficiency’s meaning cannot be applied, the same need to exclude from the ethical reflection this profile of the *autarkeia*’s notion, it means exactly that this represents *one of the meanings of the questioned notion*¹⁸⁷.

In this field, therefore, we have to say that the human being, *as such*, is not self-sufficient, in the sense that he cannot live a solitary life. In fact «one cannot achieve his own good without being part of a family or a political community»¹⁸⁸, that is without being part of a *polis*. But this *polis*, in turn, embodies, although on a different level, the self-sufficiency’s notion¹⁸⁹. In *Nicomachean Ethics* V, 6,

¹⁸⁴ «We fear all the harms such as disgrace, poverty, solitude, death» (*Nicomachean Ethics* III, 6, 1115 a10-11).

¹⁸⁵ *Nicomachean Ethics* III, 6, 1097 b 11.

¹⁸⁶ *Politics* I, 2, 1253 a 25-29.

¹⁸⁷ As it reads in *Politics*, I, 2, 1253 a 28 *autarches* mean 1) to be needy of nothing; 2) to have everything necessary. Only after, especially through Stoicism, this is overlapped by the ascetic sense of non-need (see F. Ritter, 1983, p. 59).

¹⁸⁸ *Nicomachean Ethics* VI, 8, 1142 a 9-10.

¹⁸⁹ In fact as J. Annas, *The Morality of Happiness*, in L. Andolfo, *La morale della felicità in Aristotele e nei filosofi dell’età ellenistica* (Milano 1998) 209, reminds «Aristotle identifies the development’s level on which he focuses, saying that it’s only in the context of a city-state that men can achieve “self-sufficiency” (*autarkeia*)».

1134 a 26-27 in fact, it reads that individuals join and live together «in order to achieve self-sufficiency» (πρὸς τὸ εἶναι αὐτάρκειαν)¹⁹⁰.

But going back to the human beings as individual, it must be said that he couldn't live if he didn't have a series of essential condition to lead his existence:

there even will be a need for material well-being, since we are human beings; in fact our nature is not self-sufficient (οὐ γὰρ αὐτάρκης φύσις) [...] but it is necessary that the body is in good health, feeded and receives any other care¹⁹¹.

The good health, the body's care, the fact of living together with others, constitute so the human being's normal condition who, by nature, as just said, cannot be self-sufficient, and that «needs such things *to live as a human being* (πρὸς τὸ ἀνθρωπεύεσθαι)»¹⁹².

Then there is also a figure, the wise man's one who, *as a human being*, is certainly not self-sufficient while, *as such*, dedicates himself to contemplation.

he will be able to contemplate even on his own (καθ' αὐτόν), and the more is wise the more he does it¹⁹³.

The wise man, immediately after¹⁹⁴ defined αὐταρκέστατος, that is «self-sufficient at the highest level» he lives, so, a condition that is not human, in the

¹⁹⁰ Even if it's very interesting, the question cannot be analyzed herein. I only remind that, even from a strictly political perspective, the Aristotelian speech presents the possibility of different autarchy's levels.

¹⁹¹ *Nicomachean Ethics* X, 8, 1178 b 33-1178 a 35.

¹⁹² *Nicomachean Ethics* X, 8, 1178 b 6-7 «a self-sufficient person's life if it misses nothing, that, as Aristotle states, is conciliable with the fact that the agent has a wide range of needs dependent and resulting from a life that results, so to speak, "imprisoned" in familiar and social settlements, because the cornerstone of self-sufficiency's notion doesn't consist in the ability to be without everything and everyone, in the vein of Robinson Crusoe, but rather in the ability to be independent from a specific range of influences and needs, which can be considered external to the kind of life that the individual chooses. Hence, my life can be self-sufficient, even if, as a parent, my well-being depends on my sons' one, as long as having children and taking care of them is one of the life's purposes that I've chosen. [...] In other terms, the fact that a life doesn't miss anything, does not imply that it contains *everything*, that would be absurd, and even that it contains everything that, actually, is worth having. Quite the opposite, it has to contain what is requested for projects that are constitutive for this life and product of deliberation. Life can still be self-sufficient, even if it doesn't contain an element that makes it depend to something else, for example children, as long as this element springs from relationships and projects that are "object" of this life's fundamental deliberations» (J. Annas, *op. cit.*, 64-65).

¹⁹³ *Nicomachean Ethics* X, 7, 1177 a 33-34.

¹⁹⁴ *Nicomachean Ethics* X, 1177 b 1.

sense that, for his specific activity, he doesn't need anything and anybody¹⁹⁵, except his wisdom. Actually, we are not facing a contradiction with the system outlined as yet, because it is a matter of two completely different levels, which require different treatises, as Aristotle states with example clearness. In *Nicomachean Ethics* X, 8, in fact, after he compared the eudaimonistic scenarios of first and second level¹⁹⁶, and after he stated that a happy life is based on moral virtues and there is «a need of many things (πολλῶν δεῖται), and all the more if actions will be great and beauty»¹⁹⁷, it is reminded that quite the opposite, for the one who contemplates, there will be no need for anything similar to act but, so to speak, *they even stand in the way of contemplating*.

If this is what has to be said on the wise man's activity, and if this is the autarchy's scenario that has to be outlined about such a figure and his activity, however we must remind, as the Philosopher does immediately after, that the wise man is a human being and as such, a completely different reasoning counts and must count for him:

On the other side, yet, *since he is a human being and lives together with the others*, he chooses to live in accordance with virtue; so he will need such things to live as a human being¹⁹⁸.

The human being's nature, so, is such as it doesn't allow him to be «self-sufficient as compared to the contemplation»¹⁹⁹.

So: the human being, since he contemplates, is self-sufficient, but he is not such *for contemplating*²⁰⁰. And he is not such, so to speak, neither downstream nor upstream:

a) neither upstream, because in order to contemplate he needs goods which allow him, at least, to live and sustain himself²⁰¹;

¹⁹⁵ Quite the opposite, for the "common man", solitude is a harm, together with poverty, disease and disgrace (see *Nicomachean Ethics* III, 6; 1115 a 10-11).

¹⁹⁶ A. Fermani, *L'etica di Aristotele. Il mondo della vita umana* (Brescia 2018).

¹⁹⁷ *Nicomachean Ethics* X, 8, 1178 b 1-2, «La morale n'est elle qu'une partie de la politique: l'homme complet, c'est le citoyen, et la théorie du bonheur de l'homme est celle du bonheur du citoyen» (O. Hamelin, *La morale d'Aristote*, in *Revue de Métaphysique et de Morale* 30 (1923) 498).

¹⁹⁸ *Nicomachean Ethics* X, 8, 1178 b 5-7.

¹⁹⁹ *Nicomachean Ethics* X, 8, 1178 b 33-34.

²⁰⁰ Instead the reflection of M. Margueritte, *La composition du livre A de l'Éthique à Nicomaque*, in *Revue d'histoire de la philosophie*, 4 (1930) 236, seems to be grounded on the missed recognition of these two scenarios, when he claims that «Aristote précise que, par le terme αὐταρκές, il n'entend pas ce qui suffit à un homme seul, à celui qui mène une vie solitaire... puisque l'homme, par nature, est fait pour appartenir à une cité [...] Mais c'est là un point qu'il faudra examiner plus tard. Les interprètes sont très embarrassés pour identifier cet examen que promet Aristote. Il est clair qu'Aristote, en précisant ce qu'il faut entendre par le terme αὐταρκές a en vue une conception fautive de cette suffisance qui fait le bonheur. Quelle est cette conception? Ne serait-ce pas celle du contemplateur solitaire?».

²⁰¹ «The same must be said even on things that are life and good's cause; when it is impossible that the good and life exist without there being determined things, these are necessary and this cause is a necessity» (Aristotle, *Metaphysics* V, 5, 1015 a 20-26).

b) nor downstream because, besides achieving the height of happiness, in a solitary state (and so, in some way, non-human), the wise man needs to «live as a man», to compose a deep and varied net of social relationships, as it emerges very clearly in *Nicomachean Ethics* VIII, 5, 1157 b 20-22:

even those who live happily desire to spend their time in company; in fact to be solitary does not belong to them at all.

As has been mentioned, in fact, for Aristotle

intellectual activity is not enough. Men are not solitary individuals, and human excellences cannot be practiced by solitary hermits [...] “Man - Aristotle says - is by nature a social animal” [...] This remark is not a random aphorism, but it’s included in the biological theory. “Social animals are those who have a certain shared activity between them [...] men, bees, wasps, ants, cranes²⁰² are such²⁰³.”

Therefore, the regular human condition consists, according to Aristotle, of a life founded in many ways on *κοινωνία*.

More specifically it should be noted that the term *κοινωνία* means «community», «relationship», «participation», «communality», «society». The term, evidently related to *κοινός*, means «to have something in common». On the other hand the term *coena* (dinner) - that is precisely the «common meal»²⁰⁴ - is meaningfully related to *κοινός*. In fact as remembered by Giovanni Reale²⁰⁵, the term *κοινωνία* takes on a technical meaning in the Platonic metaphysics, by designing the relationship between ideas and perceivable realities as well as the relationship between ideas on which the dialectic is based. Moreover it’s also the term with which Platonic communism is designed. More generally, in addition, the *koinonia* indicates the various union’s forms between human beings and, more generally, it indicates «to pool something».

The classical philologist Werner Jaeger started from this idea, when he wrote that it’s exactly on the *κοινωνία* that the *παιδεία*, that is the education, is grounded, and for the Greeks it was not an «individual matter», but, for its nature, is proper of the community and direct emanation of a human community’s living consciousness.

Also, as well as the education, philosophy was originally a «community practice» and the *φιλοσοφείν*, as Aristotle remembers, constitutively appeared as a *συμφιλοσοφείν*²⁰⁶.

²⁰² Aristotle, *Historia animalium* I, 1, 488 a 8-10.

²⁰³ J. Barnes, *op. cit.*, 119.

²⁰⁴ Item *κοινός* in I. Gobry, *Vocabolario Greco della filosofia* (Milano 2004) 128.

²⁰⁵ G. Reale, *Storia della filosofia antica*, V vol. (Milano 1993-1995) 150-151.

²⁰⁶ The verb, which constitutes a hapax legomenon within the corpus Aristotelicum (and that recurs in the form *φιλοσοφάσιν* in *Nicomachean Ethics* 1172 a 5) is used for the first time by Aristotle. But it refers to a notion by now traditional for the philosophical practice of IV century B.C.; at least since the age of sophists and Socrates philosophy was practiced together, in the

what in which the existence consists for everyone, or what someone lives for, is exactly what in which they want to spend their time with friends; because of this they drink together, some others play dice, some others do gymnastic together or hunt together or *do philosophy* together, and each of them spend his day doing what, among everything that characterizes the existence, love above all; in fact, since they want to live together with friends, they do that and share those activities in which, according to them, living together consists²⁰⁷.

So, if it is true that every friendship is based on a community²⁰⁸, and that one cannot achieve his good without being part of a family or a political community²⁰⁹,

In that case, it must be even said that

it is certainly absurd to make the content individual a solitary; in fact, nobody would choose to have all the goods at the risk of enjoying them alone; the human being, in fact, is a political animal and he naturally has an aptitude for living together with the others²¹⁰.

Human happiness, so, is necessarily shaped as sharing, as pooling and so, once again, as constitutive *κοινωνία* of experiences and thoughts:

So even the friend's existence must be felt together and this will happen by living together and sharing reasonings and thoughts. In fact it seems that the life together which characterizes human beings is described exactly in these terms and not as grazing together, which is proper of beasts²¹¹.

Then, in conclusion, it can be said that Aristotle reminds us that, even if in some moments we are able to reach wisdom, that is the «science that owns the most excellent realities' foundation (ὡσπερ κεφαλὴν ἔχουσα ἐπιστήμη τῶν τιμιωτάτων)»²¹² or rather what is, on some level, the utmost happiness' guarantor, it is still true that «we still remain human beings. It is a matter of exercising wisdom and justice as though we were men who have family, who

city and in gymnasium in V century, more and more indoor in places like the Academy or the Lyceum in IV century, with important exceptions, such as the cynics, that remains "street philosophers".

²⁰⁷ *Nicomachean Ethics* IX, 12, 1172a 1-7.

²⁰⁸ *Nicomachean Ethics* VIII, 12, 1161 b 11.

²⁰⁹ *Nicomachean Ethics* VI, 8, 1142 a 9-10.

²¹⁰ *Nicomachean Ethics* IX, 9, 1169 b 16-19.

²¹¹ *Nicomachean Ethics* IX, 9, 1170 b 10-14.

²¹² *Nicomachean Ethics* VI, 7, 1141 a 19-20.

find pleasure in food and good wine, who can laugh and make laugh, who love beauty and everything is human»²¹³.

This healthy and beautiful realism is a pool of values suggested by the classical world, an always topical world, because it says “true” things.

That’s why we can also say, with Giacomo Leopardi, that classical world with its eternal “freshness” represents a heritage as unlimited as it’s undeniable:

Albeit over time and with the mutation of the studies and the spirit in Italy, the study of the language, and the classics, waned, several words and phrases fell into - and still falls into - disuse, but nevertheless they remain fresh and thriving, although in actual fact really ancient [...] and until the language will preserve its spirit and its nature... the patrimony of these treasures will last forever [...]. *So it cannot renounce its treasures, without renouncing its nature and itself*²¹⁴.

17. The original character of Rome’s “international law”. Characteristics of expansionism

In the most recent approach, State and war are conceived as directly depending on each other, since the two notions have evolved in this way. But it wasn’t always so: in ancient civilizations, war wasn’t merely a public matter, it wasn’t an independent political stance, clearly distinguished from peace’s concept. The State has, as its first identifying feature, a body of law, which necessarily provides rules about war in its entirety. As in every practical measure’s set, also the war provides unspoken agreements and unwritten laws, which manages the aspects that cannot be included in State’s legislation: they’re often general rules to adapt to or rules for individual cases. Garland²¹⁵ assumes that the relation between war and society is contained in a written and unwritten *corpus* of rules, which enshrines a behavior. History is historical analysis and it cannot be independent of specific context, that is space, time, social connection and

²¹³ J. Vanier, *Le gout du bonheur. Au fondement de la morale avec Aristote* (Paris 2001) 134-135.

²¹⁴ G. Leopardi, *I Pensieri*, in A. Ranieri, *Opere* (Firenze 1845).

²¹⁵ Y. Garland, *L’uomo e la guerra. L’uomo greco* (en tr. The man and the war, the Greek man) (Bari 2012); Id., *Guerra e società nel mondo antico* (en tr. War and society in the ancient world) (Bologna 1985), in which his positions are different from mine. The ancient man, particularly the Greek one, would have been used to war. He notices a war’s frequency enough to realize that classical Athen devoted itself to war on average two years out of three, without ever enjoying peace for ten consecutive years.; added to this is the chronic insecurity caused by more or less legal forms of violence on the mainland and by the sea (acts of retaliation, rights on shipwrecks, private, semi-public and state piracy). From an archeological point of view, we remember the fortifications built around the principal residence and power centers (trying to imagine what it meant to live in a “close” city) and the ones of various kind in the countryside (watchtowers, checkpoints, shelters) - without forgetting that the vast majority of monuments and artwork, which adorned largest memorials and public places, were nothing but winners’ offers. The epigraphic documentation shows the temporary and precarious feature of the treaties that put an end to enmities for a limited period of five, ten or thirty years, almost as if peace was perceived, from the very first moment, precarious, if not even a prolonged ceasefire.

distinctive personality. Although the distinction between the Roman and Greek world is not always possible, some distinctive features mark their civilizations. From a general point of view, the scholars keep being wary with war's origin and with the way it should be studied: according to the "warmongering" view, relationships between ancient world's states were basically warlike and hostile; a second view, the "pacifist" one is in polemical contrast to the first one: these relationships would have been both hostile and positive, so the positions between States need to be analyzed each time; lastly, according to "genetical" theory's method, the study of war needs to start with its beginning, without neglecting the development of public institutions (obviously identifying, war and State). However, war is a general phenomenon, so the ancients didn't relate civil war with it. With reference to what we partly said, the first experience on the relationship between law and war- about what we can talk with a fair knowledge - needs to be searched in the homerian world, although there was still no presence of a strong State, able to regulate and bind private matters. There were still no organs that were suited to manage disputes. So settling disputes could be itself a ground for war, such as every other conflict. The way to fight seems to be extremely individualistic, such as to justify the idea that there was no institution strong enough to regulate the army. The exemple that we take from the myth is the hero: a man with particular powers, who acts in the name of ideas that are not always publicly relevant. Even in the Roman world, war is something that accompanies everyday life. And as in the Greek world it's hard to say to what extent, at the beginning, the distinction between war mongering and private disputes, inside clans and families, so with Rome we have the example of the war against Veii, which is exclusively managed by *gens* Fabia. War is not a moral valueless event, but often a clash between Gods, between powers, between armies. In the ancient world it has a triple meaning: religious and moral, ritual and, last of all, political. As a confirmation of this, there's the fact that every war, before it even began, must be screened by oracles and soothsayers, who have to proclaim it lawful or not, in the sight of Gods. History takes place in a continuity of events that doesn't allow an autonomous interpretation. Roman and Greek societies are deeply inspired by a pre-state condition, by placing in a certain field the so-called "ritual wars" that are repeated over time and are held in the same places. The most famous cases are the clashes between Argo and Sparta, and Chalcis against Eretria, which proves that ritual requests, so it can be celebrated, a temporal and spatial regularity: repetitiveness of activities in space and time; purposes' pretext; lack of decisive battles; marked symbolism in fighting (haircut for Spartans and Argives); agonal rules; the need to form a self-identified and close-knit social group. Given the lack of sources, one might ask what suggests this interpretation: there isn't a reason to consider these wars as preliminary to a more mature conflict, there was no intent to train the youngs in fighting and the already-said symbolic forms point to the need to mark specific social features, the recurrence of these wars over time, the need to build a firm social strength. Not for nothing, the Panhellenic Games, such as the olympics, took place with combat modules that were similar to the ritual ones. And this phenomenology does not remain delimited to private wars in the homerian world: in Greece, such as in Rome, brigandage and piracy appear on several occasions. Indeed, for Rome it was a question of making waters free, in order to enable a more and more accurate army's management. The birth of law brings us back to the problem of State's

origin, as a guarantor of order and public disputes' settlement. If the private ones, brigandage and piracy, are banned, it's because the State has been strengthened. But, as these alternative forms to public justice are the legacy of a world yet unstructured in states, the same applies for some important laws' birth. Law is possible if there's a local identity's accurate idea, law is exactly one of the features that makes such a citizen. One of the unwritten rules, following these disputes, takes place in the principle that an injustice enduring authorizes a claim. This right is exercised according to the injured party's discretion and that's not always approved by who's required to strive. Only when the State completely became the disputes' guarantor, these problems weren't solved, but of course resized. Another form of unwritten law - on which the state institution will place - is the right of shipwreck.

If these unwritten rights are setting rules only for private individuals, the same may not apply for the international law's birth. The right to initiative arises spontaneously and, somehow, is directly linked to the state institution's beginning: it was exercised by an assembly, which setted off the beginning and the ending of the war; it had been called periodically, in order to decide how and when to continue or end the conflict. Contrary to what one may consider, the community had great significance within the State's foreign policy. In particular, in the democratic Athen, the assembly had a critical importance. In Rome, the Centuriate Assembly had the power to establish the beginning and the end of the war. And once the international law took shape, once the State became stronger, here further problems came: the foreign policy needed envoys and diplomats, who acted as intermediaries between the different forces in the field. As we know, in the homerian period there was an oligarchic government, which was strongly tied to the aristocracy and the king. This meant that the diplomatic body was composed of ruling families' relatives or trustees: *therapontes*. Into this system, still very tied to family concepts, there were no controls on diplomats. Their tasks were limited to a message's transmission, clearly, accurately and dutifully. In the classic period, it's possible to observe a better diplomatic body's effectiveness: then arises the need to know other states' willingness, with the assembly's presence, diplomats are no more subjected to an individual (private) power, but bound by the assembly itself, to which they have to account: with plainness of speech, intelligence, wisdom. Only during the hellenistic period, diplomats return to being king's trustees. Similar situations evolved in Rome.

In the event of victory over the enemy, the winner had the chance to use in an absolute way the conquered state's land and people. This right's justification is taken for granted by great thinkers: Xenophon, Plato, Aristotle and Livy say, in several passages, that the winner has the right to rule the defeated territory, as he sees fit. Places of worship and gods have the same regime. Winners could, as they saw fit, make a ritual stop, catch the Gods, move or submit them, by placing them in their pantheon. Sharing out the spoils was the problem immediately following the victory. This process varied with the times. In Greece, during the homeric age, there was a tendency to do an overall distribution of conquered goods, according to the deciding chief's will. In the classic age, with the citizen egalitarianism's principle, more importance was given to the goods' fair distribution, anyway most of the loot needed to bankroll state coffers.

Basically, the winners tried not to destroy conquered civilizations' productive assets, both for respect and for taking advantage. Regarding every other part of the winner's domain activities, it had no bounds with goods and citizens, who were seen as bargaining chips: the conquered citizens could be executed, enslaved or gratuitously released.

In this context, Francesco Sini²¹⁶ had addressed the war and peace's issue in the Roman legal-religious system, also exploring the use that Virgil makes of some diplomatic categories, which were unique to the ancient international law and from which I'm going to start too. Regarding the *hostes*, the *bellum* and the *pax*, those "*lecturae virgilianae*" provide strong topics to criticize some deep-rooted beliefs in Romanist doctrine: I am referring to the positions of those who theorized a permanent enmity between people and the lack of foreigner's rights, as fundamental conditions in relationships between men. As a result, there's the belief that, usually, ancient peoples considered war (and not also peace) as "international" relationships' natural state, every time there was no ethnic community or there was still no conclusion of a treaty.

We cannot proceed with a doctrine's brief, which is supporting this idea; it has established itself thanks to the support of Theodor Mommsen and Eugen Täubler, who didn't just accept the theory on "international" relationships' natural hostility («Der Staatsfremde gilt rechtlich als Feind. Der einzelne wie der Staat tritt erst durch eine Rechtshandlung, den Vertrag, aus dem Zustande der natürlichen Feindschaft in den der Verkehrsgemeinschaft»), he went so far as tracking down the international treaties' origin in overcoming the primitive custom of killing the defeated enemies. On the other hand, as I have already said, in recent times an influential part of the doctrine kept considering the natural enmity and the lack of foreigners' legal protection as the oldest Roman legal experience's typical features.

The Mommsen and his many followers' thesis, disproved in the late eighteenth or early nineteenth century, has been criticized by Alfred Heus; he, on the grounds of a sources' review, came to the conclusion that the Romans considered current a certain number of legal relationships with other people, regardless of treaties' conclusion; in particular, he shows that: 1) there were no friendship treaties in order to end natural hostility; 2) *bellum iustum* was deemed necessary, even in case of war against people with whom there were no treaties; 3) in the *indictio belli*'s formula and ritual there was no reference to treaties' breach. Along these lines, Francesco De Martino²¹⁷ placed himself in

²¹⁶ F. Sini, *Ut iustum conciperetur bellum: guerra "giusta" e sistema giuridico-religioso romano*, in *Diritto@Storia* 2 (2003) (= in A. Calore, *Guerra giusta? La metamorfosi di un concetto antico*, *Seminari di storia e di diritto*, 3, Milano 2003); see among the others Id., *Sua cuique civitati religio. Religione e diritto pubblico in Roma antica*, *Pubblicazioni del Seminario di Diritto romano dell'Università di Sassari* 13 (Torino 2001) 24 ff.

²¹⁷ F. De Martino, *Storia della costituzione romana* (Napoli 1973) 13 ff., part. 39 ff., 46 ff. «It seems to us that at the time of the great aristocratic formations, war causes had to be by far rarer than after; the most frequent occasion was supposed to be the aristocratic revenge's one, which however required that each group was certain on its need, that is the acknowledgement of an universal, religious and juridical, order. The commonly accepted opinion on the original character of Rome's international relations, so, must be revised, both for general reason and because Rome derived from the common Indo-European family, as well as other Italic peoples,

1954, publishing his volume two's first edition of *Storia della costituzione romana* (eng tr. History of the Roman constitution). He radically challenged «the commonly accepted view about the original character of Rome's international relationships»>>; he reaffirmed that in 1988, in his report, dedicated to *L'idea della pace a Roma dall'età arcaica all'impero* (eng tr. the peace's idea in Rome from the archaic age to the empire). Later, Pierangelo Catalano's²¹⁸ researches on roman supra-national system, accepted and supported by De Martino himself, had proved the virtual universality of roman legal-religious system and that this "universalistic law's concept" is in contrast "to modern and contemporary theories, according to which war is the natural (or "primitive") state in relationships between people. And as well noted by Karl-Heinz Ziegler in his review about *Völkerrecht der römischen Republik*, the objections to the legal exclusivism of natural hostility, gained acceptance from researchers. Some of these actually changed their minds; it's the case of Paolo Frezza who, by the introduction of limits on Mommsen's thesis, admitted the existence of inter-tribal relationships, albeit in a dialectal part, which sees the «"voluntaristic" moment deeply permeated with the "naturalistic" one».

In the same line as the thesis supported by Heus, there's the monograph that Werner Dahlheim dedicated to the study about structure and development of international roman law, in which the rejection of natural hostility's thesis is very clear: even though, the german scholar actually seems not completely grasping the value of *ius fetiale*. By analyzing the legal condition of *socii nominisve Latini and Italics*, Virgilio Ilari found the same way: «today, the theory's same assumptions appear overcome. After Heus' criticism, the natural hostility's idea and lack of foreign's rights became unbearable»; also, the scholar considers overcome «the idea about international relationships' absence, in the lack of a legal commonality, made up of historical bonds or perpetual treaties », the foundations are laid «for a so-called "voluntaristic conception" of both relationships between Rome and Italy and italic alliance's legal nature ». Lastly, although he doesn't specifically address the issue on his work about the juridical analysis of Alcàntara's bronze tablet, Dieter Nörr follows the samethough, when he says about Rome's international law «*die Existenz einer gemeinschaftlichen Normenordnung*». It seems to me that Giorgio Luraschi and MariaFloriana Cursi move in the same direction.

and it's not plausible that, with time, this legacy was missed, when it resisted in other social and juridical life's fields>> (14-15). See also G. Brandi Cordasco Salmena, *La tradizione* cit., 35 ff., in particular for the treaties between Rome and Carthage, to which I refer for the remaining bibliography. See F. De Martino, *L'idea della pace a Roma dall'età arcaica all'impero*, in *VIII Seminario Internazionale di Studi Storici «Da Roma alla Terza Roma»*, 21 aprile 1988, in *Roma Comune*, 12 (45) (april-may 1988) 86 ff.

²¹⁸ P. Catalano, *Linee del sistema sovranazionale romano* (Torino 1965) 30 ff., part. 37 nt. 75; Id., *Aspetti spaziali del sistema giuridico-religioso romano. Mundus, templum, urbs, ager, Latium, Italia*, in *Aufstieg und Niedergang der römischen Welt* II.16.1 (Berlin-New York 1978) 445 ff; G. Lombardi, *Persecuzioni, laicità, libertà religiosa. Dall'Editto di Milano alla Dignitatis Humanae* (Rome 1991) 34 ff. Generally on the <<juridical system>> concept see for all R. Orestano, *Diritto. Incontri e scontri* (Bologna 1981) 395 ff.; Id., *Le nozioni di ordinamento giuridico e di esperienza giuridica nella scienza del diritto*, in *Rivista trimestrale di Diritto Pubblico* 4 (1985) 959 ff., in part. 964 ff.; Id., *Introduzione allo studio del diritto romano* (Bologna 1987) 348 ff. and P. Cerami, *Potere ed ordinamento nell'esperienza costituzionale romana* (Torino 1996) 10 ff.

Therefore, in conclusion of this topic, it seems reasonable to state that in the ancient writers what clearly emerges is the huge distance between Roman conceptions about war and peace and the modern thesis about natural hostility.

In this respect, it will be quite enough to suggest a Virgil's testimony; as far as the argument would demand a more general consideration about research potential inherent in the systemic use of the so-called literary sources by Romanists.

In the poet's instances what clearly emerges is the belief that war, far from being the human relationships' natural condition, forms a religion and law's breach: a painful necessity to resort to, after the Gods have found - by means of repeating over time rituals - the unfairness' existence and men's refusal to fix it. Regarding Virgil's conceptions about peace and war, it's necessary to underline their perfect coincidence with Roman priests' legal and theological elaborations, as can be seen in the instance of words related to peace's archaic institutes, such as *amicitia*, *hospitium*, *foedus* and the rules about war.

The term *amicitia* appears only twice in Virgil's works (Aen. 7.546; 11.320-322), but in both the passages the word is used by the poet in relation with *foedus*, with the weighty legal-religious meaning of "friendship between peoples".

With regard to *hospitium*, it was noticed that, although in Virgil's passages there are no «references to *hospitium*'s legal framework», nevertheless there is «a hint of the age-old religious protection», with the relevant reference to *Jupiter*'s function of «*dare hospitibus iura*».

In the use of the term *foedus*, «when, recounting alliances' establishment between several ethnic groups, he doesn't hesitate to evoke, for all of them, the typical fetial ritual and point as the one who *foedera fulmine sancit*». Virgil expresses, once again, his full adherence to the official terminology, to the theological concepts and to Roman priests' case law.

And it's precisely in priestly processing, as Francesco De Martino had shown, that

«the age-old mind, the people's religious-political calling, whose ultimate purpose is peace and friendship with foreign people» has been substantially preserved in its original integrity.

18. Mutuality's diplomatic implementation in Rome's foreign policy.

Virgil's testimony

Hostis apud maiores nostros is dicebatur, quem nunc peregrinum dicimus

As far as in late Republican era's Latin, the term *hostis* had already acquired «*le sens d'ennemi en général, de même que inimicus s'emploie pour hostilis*»,

the ancient meaning of this world remained however well clear both in legal culture and in antiquity's sciences. The Twelve Tables preserved its original meaning, even through the linguistic form of the First Century B.C.: the term *hostis* identifies generically the stranger man, as evidenced by a well-known passage of Cicero's *De officiis*

Cicero, De off. 1.37: Hostis enim apud maiores nostros is dicebatur, quem nunc peregrinum dicimus. Indicant duodecim tabulae: aut status dies cum hoste itemque adversus hostem aeterna auctoritas. Quid ad hanc mansuetudinem addi potest, eum, quicum bellum geras, tam molli nomine appellare? Quamquam id nomen durius effecit iam vetustas; a peregrino enim recessit et proprie in eo, qui arma contra ferret, remansit.

It's also related with the ancient meaning of *hostis* the oath's formula of *militēs*, that was transcribed by Aulus Gellius in the sixteenth book of "Ancient nights" and, as is well known, mentioned in the fifth book of the jurist L. Cincius's *De re militari*

Aulus Gellius, Noct. Att. 16.4.3-4: Militibus autem scriptis dies praefinibatur, quo die adessent et citanti consuli responderent; deinde ita concipiebatur iusiurandum, ut adessent, his additis exceptionibus: "nisi harunce quae causa erit: funus familiare feriaeve denicales, quae non eius rei causa in eum diem conlatae sunt, quo is eo die minus ibi esset, morbus sonticus auspiciumve, quod sine piaculo praeterire non liceat, sacrificiumve anniversarium, quod recte fieri non possit, nisi ipse eo die ibi sit, vis hostesve, status conductusve dies cum hoste; si cui eorum harunce quae causa erit, tum se postridie, quam per eas causas licebit, eo die venturum aditurumque eum, qui eum pagum, vicum, oppidumve delegerit".

This ancient meaning also appears in another attestation in the Paul the Deacon's epitome

Festi ep., p. 72 L.: Exesto, extra esto. Sic enim lictor in quibusdam sacris clamitabat: hostis, vincetus, mulier, virgo exesto; scilicet interesse prohibebatur.

We are looking at the formula with which the Lictor pushed away certain groups of persons from some religious ceremonies; this formula, by means of Sextus Pompeius Festus's *De verborum significatu*, can be related to Verrio Flacco's antiquary science. Even Varro, in *De lingua latina*, in order to expose the case of words that «*aliud nuncostendunt, aliud ante significabant*», quoted as an example the term *hostis* Varro, *De ling. Lat.* 5.3

Quae ideo sunt obscuriora, quod neque omnis impositio verborum extat, quod vetustas quasdam delevit, nec quae extat sine mendo omnis imposita, nec quae recte est imposita, cuncta manet (multa enim verba licet eris commutatis sunt interpolata), neque omnis origo est nostrae linguae e vernaculis verbis, et multa verba aliud nunc ostendunt, aliud ante significabant, ut hostis: nam tum eo verbo dicebant peregrinum qui suis legibus uteretur, nunc dicunt eum quemtum dicebant perduellem.

In its original meaning, still found in Plautus comedies and undoubtedly inferred from the current linguistic usage, *hostis* means the stranger «*qui suis legibus uteretur*» and to whom it is recognized the equality with Roman people's *ius*

Festus, De verb. sign., v. Status dies <cum hoste>;: Status dies <cum hoste> vocatur qui iudici causa est constitutus cum peregrino; eius enim generis ab antiquis hostes appellabantur, quod erant pari iure cum populo Romano, atque hostire ponebatur pro aequare.

The original meaning of *hostis* appears entirely different in the last century of the Republic, in conjunction with the extent of *peregrin*'s semantic value, which went on to design a particular legal status in the very first centuries of the Empire. In this perspective, some verses in which Virgil uses the term *hostis* in its strictly legal meaning appear very interesting: that is, to identify an enemy against whom there is a lawful state of war.

Vergilius, Georg. 3.30-33: Addam urbes Asiae domitas pulsumque Niphaten / fidemque fuga Parthum versisque sagittis / et duo rapta manu diverso ex hoste tropaea bisque / triumphatas utroque ab litore gentis.

In the verses just mentioned, the legal value of *hostis* is made understandable by the poet through the use of the expression *triumphatas gentes*; because, as Aulus Gellius says, most likely the passage is taken from Massurius' *Memorialium libri*:

Aulus Gellius, Noct. Att. 5.6.21: Ovandi ac non triumphandi causa est, cum aut bella non rite indicta neque cum iusto hoste gesta sunt, aut hostium nomen humile et non idoneum est, ut servorum piratarumque,

aut, deditione repente facta, inpulverea, ut dici solet, incruentaque victoria obvenit.

Only if they had fought for a *bellum rite indictum* against enemies classified as *iusti hostes*, the Public Roman Law legitimised the winner magistracies for the honor of the triumph. Another meaningful Virgilian *exemplum* can be read in the first book of the Aeneid's verses

Vergilius, Aen. 1.378-380: Sum pius Aeneas, raptos qui ex hoste penatis/classe veho mecum, fama super aethera notus./Italiam quaero patriam et genus ab love magno.

Aeneas implicitly acknowledges the enemy's lawfulness, when he introduces himself as a deliverer *ex hoste* from the Penates of Troy. With the salvation of Penates Gods, the trojan hero has averted the religious and juridical extinction of his people, threatened right by their status of enemies' *iustii et legitimi hostes*. For the Roman Public Law, in the event of military victory, only the *iustus hostis* condition gave to the winner the chance to subdue, with full right, a city, a people and (eventually) put to an end its juridical and religious existence.

In this respect, it seems to me that the ancient *deditio urbis* formula - according to eminent scholars, traced on the *Fetiales* priests' documents themselves - has meaningful value. Livy has preserved the prime example of Romans' surrender of the ancient Collatia: a city without any importance already in the early Republican age, which vanished without a trace.

Livius 1.38.2: Deditosque Collatinos ita accipio eamque deditionis formulam esse; rex interrogavit: "Estisne vos legati oratoresque missi a populo Collatino ut vos populumque Collatinum dederetis?" – "Sumus." – "Estne populus Collatinus in sua potestate?" – "Est." – "Deditisne vos populumque Collatinum, urbem, agros, aquam, terminos, delubra, utensilia, divina humanaque omnia, in meam populi que Romani dicionem?" – "Dedimus." – "At ego recipio".

After all, for the Roman jurists, not only the ending but also the beginning of a city's juridical existence (*principium urbis*) is based on the fulfillment of a solemn juridico-religious act, the foundation rite, the details of which, based on *etruscus ritus*, are well-known from the Varro's description

Varro, De ling. Lat. 5.143: Oppida condebant in Latio Etrusco ritu multi, id est iunctis bobus, tauro et vacca interiore, aratro circumagebant sulcum (hoc faciebant religionis causa die auspicato), ut fossa et muro essent muniti. Terram unde exculpserant, fossam vocabant et introrsum iactam murum. Post ea qui liebat orbis, urbis

pricipium; qui quod erat post murum, postmoerium dictum, eo usque auspicia urbana finiuntur.

The etruscan processing of the city's foundation rite (and its adoption by Rome's religion and law) shall be dated in a fairly remote period; not without reason, Macrobius states that, in this ceremony, the vomer used for tracing the pomerial line had to be necessarily bronze. Regarding the *hostes*, all that remains is to relate to the Roman legal thought

D. 50.16.118 (Pomponius libro secundo ad Quintum Mucium): 'Hostes' hi sunt, qui nobis aut quibus nos publice bellum decrevimus: ceteri latrones aut praedones sunt

D. 50.16.234 pr. (Gaius libro secundo ad legem duodecim tabularum): Quos nos hostes appellamus, eos veteres "perduelles" appellabant, per eam adiectionem indicantes, cum quibus bellum esset.

The *hostes* legal status, therefore, cannot be separated from the *bellum iustum* persistent relevance, that is a *bellum publice decretum*; without this condition, the strict *ius belli* discipline requests that Rome's enemies are considered as simple *latrones* or *praedones*. The consequences of this distinction are not insignificant from a law perspective, as Ulpianus testifies, presenting the case of a man *qui a latronibus captus est*

D. 49.15.24 (Ulpianus libro primo institutionum): Hostes sunt, quibus bellum publice populus Romanus decrevit vel ipsi populo Romano: ceteri latrunculi vel praedones appellantur. Et ideo qui a latronibus captus est, servus latronum non est, nec postliminium illi necessarium est: ab hostibus autem captus, ut puta a Germanis et Parthis, et servus est hostium et postliminio statum pristinum recuperat.

Precisely on the basis of *latrones* status, the jurist argues that the lawful servitude (that is covered by *ius gentium*) should not be applied towards the prisoner (*servus latronum non est*); not even in the case of release it won't be necessary to resort to the *postliminium* institution.

Virgilian occurrences

A Virgil's passage describes, maybe better than every other ancient text, the "roman" concept of peace, intended with its distinguishing features²¹⁹.

*Vergilius, Aen. 6.847-853: Excudent alii spirantia
mollius aera/(credo equidem), vivos ducent de
marmore voltus,/orabunt causas melius, caelique
meatus/ describent radio et surgentia sidera dicent:/tu
regere imperio populos, Romane, memento/(hae tibi
erunt artes) pacique imponere morem,/parcere
subiectis et debellare superbos.*

Mutuality is the first evidence that comes out from the verses, as the bilateral and peremptory feature of *pax*. As regards the peremptory feature, both the term *mos* - related to *lex* in the Servius' commentary «*pacis morem leges pacis*» - and the verb *imponere* are significant. The *pax* observance seems to be a necessary condition for distinguishing between *subiecti* and *superbi*, by securing the lawfulness of *parcere* towards the first ones and the «destruction with the war » against the others. The religious and juridical reasons of *imperium populi Romani* universal significance lie in the peace and its protection. The peace's bilateral feature seems to be manifest even in the explanations given by jurists and antique dealers, who emphasized the etymological connection between the term *pax* and the words *pactio* and *pactum*. Such is the case of the expression that Verrius Flaccus ascribes to the Augustan antique dealer Sennius Capito

*Festus, De verb. sign., p. 260 L.: Pacem a pactione
condicionum putat dictam Sennius Capito, quae utrique
inter se populo sit observanda*

or the one that Justinian's compilers took from Ulpianus' fourth book *ad edictum*

²¹⁹ Virgil's epic reveals a clearly negative connotation of war «*nulla salus bello (Aen. 12.362); crimina belli (Aen. 7.339); scelerata insania belli (Aen. 7.461)*». *Bellum* is qualified each time as «*horridum (Aen. 6.86; 7.41; 11.96), asperum (Aen. 1.14), crudele (Aen. 8.146; 11.535), dirum (Aen. 11.21)*». On the religious level *bellum* belongs to *nefas (Aen. 2.217-220; 10.900-902)*, which justifies the employ of adjectives like *nefandum* and *infandum (Aen. 7.583; 12.572, 804)*; the term *bellum* is never accompanied with locutions proper of the juridical or religious lexicon, such as *Justum, pium, felix*. See for all H. Merguet, *Lexikon zu Vergilius* (Leipzig 1912) (repr. an. Hildesheim-New York, 1969), 88 ff.; M. Gigante, *Lecturae Vergilianae*, III vol. (Napoli 1981-1983). See for all G. Luraschi, *Foedus nell'ideologia virgiliana*, in *Atti del III Seminario Romanistico Gardesano. Promosso dall'Istituto Milanese di Diritto Romano e Storia dei Diritti Antichi, 22-25 Ottobre 1985* (Milano 1988) 279 ff. Cfr. M. Bellincioni, s.v. *Amicitia*, in *Enciclopedia Virgiliana*, 1 (Roma 1984) 135 ff. The several statements of this meaning are included in *Thesaurus Linguae Latinae* (v. *amicitia*) 1, 1900, coll. 1893 ff. Some reflections of M.R. Cimma, *Reges socii et amici populi Romani* cit., 27 ff., are dedicated to the use of the term *amicitia* in latin sources, but it is missing of references to Virgil's texts; see also Spielvogel, *Amicitia und res publica: Ciceros Maxime während der innenpolitischen Auseinandersetzungen der Jahre 59-50 v. Chr.* (Stuttgart 1993) 5 ff. See F. De Martino, v. *Hospes/hospitium*, in *Enciclopedia Virgiliana*, 2 (Roma 1985) 858 ff.

*D. 2.14.1.1-2 (Ulpianus libro quarto ad edictum):
Pactum autem a pactione dicitur (inde etiam pacis
nomen appellatum est) et est pactio duorum pluriumve
in idem placitum et consensus.*

This etymology, accepted by many modern linguists too, relates *pax* with the Indo-European root *pak*, alternating with *pag*, whence also the archaic *pacere* in the Twelve Tables²²⁰, *pacisci*, *pacio*, *pactio*. *Pax*, a feminine action's noun, indicates the act of drawing up an agreement, or rather the formalities needed for preserving a condition of peace; therein lies the difference between *pax* and its matching greek term: the latin *pax* plainly signifies a matter's presupposition and precondition, rather than the matter itself.

Considering the real meaning of the *pak* root «to reinforce, harden» it can be assumed that originally *pax* had signified something physically determined: in this regard, the Marta Sordi's proposition - from what source the archaic *pax* would be connected, through *pax deorum*, to the ancient "clavum pangere" ceremony appears stimulating: the ritual nail's driving «*dextro lateri aedis lovis optimi maximi*» attested by Livy²²¹. The juridical definition of peace, both bilateral and preemptory, completely expresses the «original sacred meaning of *pax*»: agreement between conflicting parties (an "act", therefore, aimed to peace and not to the "peace condition" that does follow), that nevertheless prefigures, similarly to *pax deorum*, a hierarchization of relationships between contracting parties, even in the presence of "*idem placitum et consensus*". In closing, drawing some final conclusions, I cannot but notice that an historical question's analysis is nothing but the other face of a linguistic question. In the ancient world, war had been a religious and political practice that gained its own autonomy, only with the passing of thousand of years. Furthermore, it is managed by Greeks and Romans in the major difference between the man and the citizen, who do not identify themselves. Those who are not members of a community that acknowledges its citizen's rights, are marginalized as defenseless individuals. The citizen is directly qualified by the rights he has in his *polis*, in his home state: this remains the same both in wartime and peacetime. Sure is that, as recently Gian Luca Gregori noticed, Rome had taken, from the

²²⁰ The verb *pacere* appears in two Decemvirate code's fragments; one of them is in *Tab. I.6-7* «*Rem ubi pacunt, orato. Ni pacunt in comitio aut in foro ante meridiem causam coiciunto*» (*Fontes Iuris Romani Anteiusianiani*, 1, cit 28); about the text see C. Gioffredi, *Diritto e processo nelle antiche forme giuridiche romane*, (eng. tr. Law and process in the ancient Roman juridical forms) (Rome 1955), 151; Id., *Rem ubi pacunt orato: XII Tab. 1, 6-9* (for the decemvirate code's criticism), in *BIDR* 76 (1973), 271 ff.; H. Lévy-Bruhl, *Recherches sur les actions de la loi*, Paris 1960, 206 ff.; G. Pugliese, *Il processo civile romano*, I. *Le legis actiones* (eng. tr. The Roman civil trial) (Rome 1962), 402 ff.

²²¹ Liv. 7.3.3-6 «*Itaque Cn. Genucio L. Aemilio Mamerco iterum consulibus, cum piaculorum magis conquisitio animos quam corpora morbi adlicerent, repetitum ex seniorum memoria dicitur pestilentiam quondam clavo a dictatore fixo sedatam. Ea religione adductus senatus dictatorem clavi figendi causa dici iussit. Dictus L. Manlius Imperiosus L. Pinarium magistrum equitum dixit. Lex vetusta est, priscis litteris verbisque scripta, ut, qui praetor maximus sit, idibus Septembribus clavum pangat; fixa luit dextro lateri aedis lovis optimi maximi, ex qua parte Minervae templum est. Eum clavum, quia rarae per ea tempora litterae erant, notam numeri annorum fuisse ferunt eoque Minervae templo dicatam legem, quia numerus Minervae inventum sit*».

Mediterranean's older forms, a mutuality's ethics able to justify the very close bond, mainly juridical, between war and peace, or rather between the military victory and the *paci imponere morem*, which had to stand for the main point of peaceful and universalistic aptitude pursued by the *populus Romanus*, even through an history of incessant warfare.

CONCLUSIONS

War as breach in the natural mutuality between peoples

In order to reconstruct a more accurate Roman conception of war, Virgil's testimony assumes, once again, a significant relevance. Although they are negatively characterized, as mentioned above, the almost two hundred occurrences of *bellum* are interesting to make arguments on their juridical and religious peculiarities. In these one it's possible to notice rituals, perfectly adhering to roman priests' theology and case law, albeit with some anachronism: so much so that the memory of the original *duellum* remained only in the works of scholars and antique dealers, who were keepers of latin language's remaining archaic forms. The ancient term *duellum* kept being used in solemn formulas of the more conservative priestly language: it should be enough to read the *acta* about Augustus' *Ludi saeculares* and that ones which were celebrated by Septimius Severus, to see that the concepts of war and peace were still expressed by priests in an archaic manner with *duellum* and *domus*. But, even among the antique dealers, about the *bellum* word's etymology, the arguments are contradictory: this applies both for the *bellum a belius* interpretation by Festus (and Verrius Flaccus), attested by Paul the Deacon, and for the procedure (*bellum a nulla re bella*) reported by Servius. However, in the first century B.C current meaning, *bellum* meant both a military conflict between *hostes* - defined by specific religious and legal rules - and the period required to end the hostilities, in antithesis to peacetime.

In the end, in the relationship between law and war, it's safe to assume that war in the ancient world was an event both religious and political:

1) This has led to the two elements getting together in a specific combination. Some religious practices were essential for the war and, without them, fighting would have not been possible. At every stage, identified as such, matched specific rites. First of all, it was necessary that propitiatory rites were done, in order to verify the war's suitability or not.

2) Valid reasons were needed to wage war, given that if it had been unfair, it would be punished, not necessarily by the enemies, but by the gods. Once again, the religious topic mixes with the political one: hence the need for a *casus belli*, that was reason enough for conflict. The "lawful" war cases were several: invocation for Gods' defense (wickedness and injustice towards a god), invocation for a damage received by the community (attack on land, people), invocation for allies' defense (attack on these ones, invasion, violated allies' interests). As we can see, these reasons cover a broad range of possibilities, all capable of turning to the conquest more than to the defense, focused on the concept of damage and retaliation, of which I have spoken several times.

3) If a people wanted to join the war with a *casus belli*, then the messengers

were sent. They had to place the State's demands and listen to the enemies' statements. They demanded to settle old scores. However, it could happen that fighting took place, without waging war diplomatically.

4) After the messengers returned (if the demands had not been fulfilled) they proceed with the rites that were subsequent to the declaration of war: they were of different kind and mainly specific for the city, an example was making a lamb cross the borders, because it represented the way the enemy would get at the end of the battle. Sometimes, on such occasions, human sacrifice was practiced. In Rome, the cult that preceded the fight was entrusted to fetials. They had to perform a complicated ritual and, with its outcome, they could start with war operations. Later, the ritual's value faded, also because the fetials acted only when the city's borders were at stake. When the greatness of Rome became widespread, the ritual lost its purpose and senators were delegated to carry out different, simpler and less ideological events.

5) War wasn't necessarily one ongoing event, it could be interrupted for a variable period. They could suspend it for several reasons and in different forms: break, treaty and surrender.

6) The underlying problem about the treaties, breaks and agreements' diplomacy is that, if they wanted it, deals could be broken very easily, without consequences on the one who broke the deal. Nevertheless, as we know, only a few violations happened. It's true that, on one hand, the presence of hostages setted limits but, especially in Greece, they were chosen in the lowest social classes, so their possible loss would not have caused problems. And once again the religious idea is the background: the oaths were accompanied by specific rites and, as such, they made a large impact on ancient man's mindset, if it's true that Numa Pompilius established the *fides* cult in 274 B.C.

7) Typically, the winner tended to not destroy the productive assets and he tried to create a certain production activity on the conquered ground.

Legally, war was always conceived by Roman as a traumatic breaking in the people's natural relationships: as Francesco De Martino says «it therefore needed a justification, it had to be *bellum iustum piumque*, that is a just cause». The awareness that the warfare put the *miles* in contact to something "unholy" and that, in any case, the unnecessary use of violence was in danger to cause divine wrath, pushed Rome - which regarded itself as the most religious-minded in the humankind (*religione, id est cultu deorum, multo superiores*) - to worry, since ancient time, about including in the *fas* field even the war itself; by using theoretical tools offered by the thoughts of their sacerdots. Therefore, the formulas of *ius fetiale* and *ius pontificium* were worked out with main function of setting soldier-citizens free from the fear of bloodshed, of helping them with religion and overcoming the terror facing the *furor*, a sign of holding that takes men's freedom and, lastly, delivering them from the concern to commit God's unwelcomed actions. Even the time signature was setted following what Bayet defined «le rythme sacré de la guerre». Indeed, we need to understand in this respect the march and october festivals on the Roman Ancient Calendar; they were related to war activities' beginning and ending, so they were actual «rites saisonniers de sacralisation et désacralisation militaires».

In this way, we can explain the reasons behind the religious and juridical extreme caution, that surrounded the whole subject of war by individuals who, as Cato warns, were allowed to fight only as *milites*.

Cicero, De off. 1.36-37: [Popilius imperator tenebat provinciam in cuiusexercitu Catonis filius tiro militabat cum autem Popilio videretur unam dimittere legionem Catonis quoque filium qui in eadem legione militabat dimisit. Sed cum amore pugnandi in exercitu remansisset Cato ad Popilium scripsit ut si eum patitur in exercitu remanere secundo eum obliget militiae sacramento quia priore amisso iure cum hostibus pugnare non poterat. Adeo summa erat observatio in bello movendo]. Marci quidem Catonis senis est epistula ad Marcum filium in qua scribit se audisse eum missum factum esse a consule cum in Macedonia bello Persico miles esset. Monet igitur ut caveat neproelium ineat; negat enim ius esse, qui miles non sit, cum hoste pugnare.

Therefore, as Virgil makes Aeneas detect, the subject of war belongs to the *nefas* field, because of its death's devastating consequences.

Vergilius, Aen. 2.717-720: Tu, genitor, cape sacra manu patriosque penatis;/me, bello e tanto digressum et caede recenti,/attrectare nefas, donec me flumine vivo/ abluero

In the verses above, the poet seems to refer, more than to a general ritual purification, to the priests' ablutions, maybe with the purpose of giving greater solemnity or for better emphasizing Aeneas' priestly role: the use of the verb *attrectare* reflects this, because it takes on positive meaning only if it's referred to *sacerdotes populi Romani*, instead if it's used for any other community member it takes on the negative meaning of «defiling». Therefore, one couldn't blame a soldier killing someone in the battle, actually the fact was considered useful and even honorable; nevertheless, for the religion the *miles* becomes *impiatus*, with the resulting need to purify. These are the religious reasons due to which soldiers, returning from the battle, entered the city bringing laurel branches; there are such reasons behind the *armilustrium* ceremony, that was being celebrated on the 19th october, as a general purification for the army, at the end of war season. The remarks exposed till now explain the religious casuistry with which *sacerdotes Fetiales*, as well as law and political theorists, decided what kind of war could be lawfully waged: that is, the ones that had the *bellum iustum* properties. The ancient records, regarding the *bellum iustum* definition, doesn't seem to be aligned to an abstract morality's principles, they rather relate, as in Varro's case, to some compliance assessments with *ius fetiale* religious and ritual field.

Varro, De ling. Lat. 5.86: Fetiales, quod fidei publicae inter populos praeerant: nam per hos fiebat ut iustum

conciperetur bellum, et inde desitum, ut foedere fides pacis constitueretur. Ex his mittebantur, ante quam conciperetur, qui res repeterent, et per hos etiam nunc fit foedus, quod fidus Ennius scribit dictum.

In addition, the Isidore of Seville's definition claims to *rerum repetitio*

Isidorus, Orig. 18.1.2: iustum bellum est, quod ex edicto geritur de rebus repetitis aut propulsandorum hostium causa;

At the same time, though it refers to a non-Roman environment, the *bellum iustum* concept enunciated by Livy appears significantly based on *necessitas*, source of *ius* for roman jurists

Livius 9.1.10: iustum est bellum, Samnites, quibus necessarium, et pia arma quibus nulla nisi in armis reliquitur spes.

After all, a substantial part of Greek and Roman culture in the Second and First centuries B.C challenged the *bellum iustum* concept, by theorizing the mismatch between *bellum* and *iustitia*. This matter seems to be deeply connected to the historical-judicial thinking about the Roman "global" hegemony's lawfulness; but, at the same time, it's part of the debate on the natural law theories, within the framework of Greek and Roman philosophical tradition²²². Cicero, in the Lucius Furius Philus' speech, by his own admission based on Carneades' teaching, uses the war's example to explain *quantum ab iustitia recedat utilitas*:

Cicero, De re publ. 3.20: Cur enim per omnes populos diversa et varia iura sunt condita, nisi quod una quaeque gens id sibi sanxit, quod putavit rebus suis utile? Quantum autem ab iustitia recedat utilitas, populus ipse Romanus docet, qui per fetiales bella indicendo et legitime iniurias faciendo semperque aliena cupiendo atque rapiendo possessionem sibi totius orbis comparavit

Among the ancient writers, the one that had shown the largest interest in the "lawful war" definition was, undoubtedly, Cicero. In the impossibility to conduct an accurate examination of text references, it will be enough to discuss two important passages, taken from the *De re publica*, which describes some *bellum iustum* kinds, although they are negatively shaped, by qualifying war as wrongful and unholy.

²²² M. Pohlenz, *Die Stoa. Geschichte einer geistiger Bewegung* (Göttingen 1959) (en. tr., *The history of a spiritual movement*, 1) (Florence 1967), 535 ff. For a general overview of the western culture from which flows rights widely recognized as inspiring for all humankind's life, see L. Di Santo, *Teoria e pratica dei diritti dell'uomo* (en. tr. theory and practice of human rights) (Neaples 2002).

Cicero, *De re publ.* 2.31: [Tullus Hostilius] *cuius excellens in re militari gloria magna que extiterunt res bellicae, fecitque idem et saepsit de manubis comitium et curiam, constituitque ius quo bella indicerentur, quod per se iustissime inventum sanxit fetiali religione, ut omne bellum quod denuntiatur indictumque non esset,*

Cicero, *De re publ.* 3.35: *Illa iniusta bella sunt quae sunt sine causa suscepta. Nam extra <quam> ulciscendi aut propulsandorum hostium causa bellum geri iustum nullum potest. id iniustum esse atque inpium iudicaretur.*

According to Cicero the *bellum*, in order to be deemed *iustum*, needs therefore, procedural and substantive requests. The first ones results from the proper observance of *ius fetiale* rituals and procedures; the precept ascribed to the King Tullus Hostilius can be positively turned: «*ut omne bellum denuntiatur indictum esset*». The substantive requests had to consist of some effectively identifiable reasons: objectively recognizable, then, as such by the gods and by the men.

In brief, while principle of «*illa iniusta bella sunt quae sunt sine causa suscepta*» curbs Rome's greed and arbitrariness, at the same time it ensures the universal *imperium*'s religious legitimacy.