

THE HELVETIANS:  
FROM FOEDERATI TO STIPENDIARIII\*

CICERO'S PRO BALBO AND THE LEGAL STATUS  
OF THE HELVETIANS

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The following sources supply information on the status of the Helvetians under Roman rule:

1. *Caesar's de Bello Gallico*

After defeating the Helvetians in 58 B.C., Caesar proceeded as follows: those who tried to escape after the surrender were "treated as enemies". From the remainder he demanded hostages, weapons and fugitive slaves, after which he accepted their surrender. He ordered them to reoccupy the dwelling-area which they had vacated. Caesar explains that it was his intention to prevent the creation of a second "deserta Helvetiorum" south of the Rhine.<sup>1</sup> Otherwise there would have been nothing to prevent the Germans from crossing the Rhine, which would have made them neighbours of the Roman province of Gallia Narbonensis and of the Allobroges.<sup>2</sup>

2. *Cicero's Pro Balbo*

Caesar does not provide any further information on his treatment of the Helvetians. However, in Cicero's *Pro Balbo*, delivered in 56 B.C.,<sup>3</sup> we find the following statement: "Etenim quaedam foedera

\* After this paper had been prepared for the press a highly instructive article was published by R. Frei-Stolba, "Bemerkungen zum Helvetier-foedus", *SZG* 25 (1975), 127-141.

<sup>1</sup> The "deserta Helvetiorum" was the area in Southern Germany, called ἡ τῶν Ἑλουητίων Ἔρημος by Ptolemaeus Geographicus (II 11, 6), where most of the Helvetians lived until the third and second centuries B.C. After the Helvetian migrations across the Rhine this area remained "*dubiae possessionis solum*" (Tacitus, *Germania* 28 en 29, 4; cf. Staehelin pp. 28-29).

<sup>2</sup> Caesar, *Bellum Gallicum*, I 28.

<sup>3</sup> For the dating of Cicero's *Pro Balbo*, cf. *RE* IV, s.v. L. Cornelius Balbus (Münzer), p. 1263; the speech was certainly delivered in 56, after April. It is likely that considerable time passed between the indictment and the beginning of the trial. Matthias Gelzer argues that Cicero made his speech in September ("Die Datierung von Cicero's Rede de Haruspicum Responso",

exstant, ut Cenomannorum,<sup>4</sup> Insubrium, Helvetiorum, Iapydum, nonnullorum item ex Gallia barbarorum, quorum in foederibus exceptum est ne quis eorum a nobis civis recipiatur".<sup>5</sup>

### 3. *Pliny*

Pliny's *Naturalis Historia* mentions the Helvetians in the catalogue of tribes in *Gallia Comata* without further qualifications.<sup>6</sup>

### 4. *The inscription CIL XIII 5089*

An inscription dated A.D. 103-115 shows the epithet "Foederata" as the last element in the name of the colony of Aventicum.<sup>7</sup>

The above sources have been interpreted in various ways. Mommsen assumed that the foedus, mentioned by Cicero in 56 B.C., was concluded with the Helvetians by Caesar in 58 B.C. These acquired thereby the status of "foederati", rarely granted to communities outside Italy.<sup>8</sup> The fact that Helvetians were excluded from Roman citizenship gave them, according to Mommsen, a high degree of independence, for they were spared the gradual infiltration which the granting of citizenship to the most influential individuals among subjugated peoples usually entailed. According to this interpretation the Helvetians were to become a more or less independent buffer-state between the Germans across the Rhine and Gallia Narbonensis. The honorary title of Aventicum "foederata" served as a reminder of this foedus. The special clause ruling out the granting of Roman citizenship to the Helvetians was, according to Mommsen, abolished following the second subjection of the Helvetians in 52 B.C.<sup>9</sup> This would explain the fact that, from the time

*Klio* 30 (1937), pp. 8-9 = *Kleine Schriften* II, pp. 236-237 (Wiesbaden, 1963). See also: R. Gardner, *The Trial of L. Cornelius Balbus*, Loeb Classical Library edition of Pro Balbo *inter alia*, p. 618.

<sup>4</sup> "Cenomannorum" is Madvig's reading of "genumanhorum" P<sup>1</sup>GE and "germanorum" P<sup>2</sup>BH *rell.* Cf. ed. Peterson (Oxford, 1966).

<sup>5</sup> Cicero, *Pro Balbo* 14, 32.

<sup>6</sup> Plinius Maior, *Naturalis Historia* IV 17, 106.

<sup>7</sup> CIL XIII 5089 = E. Howald and E. Meyer, *Die römische Schweiz* (Zürich, 1940), No 198.

<sup>8</sup> For this status see Th. Mommsen, *Staatsrecht*, III, pp. 686ff.; Heinrich Horn, *Foederati* (Frankfurt, 1930); A. N. Sherwin-White, *The Roman Citizenship*, (Oxford, 1973<sup>2</sup>, pp. 174ff.).

<sup>9</sup> Mommsen, "Schweizer Nachstudien", *Hermes* 16 (1881), pp. 447ff. = *Ges. Schriften*, V. Band, pp. 392ff.

of Augustus onward, Roman citizenship was, in fact, granted individually to Helvetians.<sup>10</sup> M. Gelzer again considered the granting of citizenship to Helvetians and incompatibility thereof with Cicero's information. He also pointed out that Helvetians paid tribute, while *civitates foederatae* ought to be free from such payments. This led him to assume that the foedus of the Helvetians was cancelled entirely in 52 as a form of punishment.<sup>11</sup> In reply to Gelzer H. Horn speculated that the clause on exclusion from Roman citizenship was an anachronistic formula, included in the older treaties with the Cenomanni. These would have served as a model in 58 and thus the problematic clause would have been taken over automatically in the foedus with the Helvetians. Thus the intention would never have existed to apply this provision in practice. Horn believes that the provision was included in the older treaties and actually implemented at that time because then it would have been considered necessary to keep the circle of Roman citizens free from members of communities as yet uncivilized. According to Horn the provision was an expression of contempt for those to whom it applied. From this it appears, writes Horn, that the type of *foedus* which included such a clause was, on the whole, relatively unfavourable for the peoples concerned.<sup>12</sup> Unlike Gelzer Horn assumes that the Helvetians remained *foederati* after 52 B.C. This he learns from the title "foederata" of the colony of Aventicum on the inscription of the 2nd century A.D. (even though it could not refer to a favourable foedus). Thus Pliny would erroneously have failed to mention them as *foederati*.<sup>13</sup>

P. Frei rightly points out that this title of the colony Aventicum appears exclusively on the inscription from the time of Trajan. An older inscription, dating to the seventies A.D., shortly after the foundation of the colony, gives all the colony's titles but there the title "foederata" is missing. Frei concludes that this inscription antedates the grant of the honorary title "foederata", which must have been added to the colony's names as a reminder of the foedus

<sup>10</sup> F. Staehelin, *Die Schweiz in römischer Zeit* (Basel, 1948<sup>3</sup>), p. 146ff.

<sup>11</sup> *Phil. Wochenschr.*, 48 (1928), p. 497.

<sup>12</sup> Horn, *op. cit.*, pp. 54-55.

<sup>13</sup> *Ibid.*, pp. 59-60. Staehelin, *op. cit.*, pp. 83-4; 222-3 does not discuss Pliny's omission. Howald and Meyer, *op. cit.*, p. 257 agree with Horn.

of 58 B.C. Frei agrees with Horn in assuming that this treaty remained valid after 52 B.C. Furthermore Frei associates the title "foederata" with an extensive reorganization of the *civitas Helvetiorum* by Vespasian, simultaneously with the foundation of the colony. According to Frei this reorganization may have been formalized by a second *foedus*. This would have revived the memory of the first *foedus* of 58 B.C., which had never been formally cancelled.<sup>14</sup>

All the above hypotheses are based on the assumption that, in 58 B.C., Caesar sent the Helvetians home as *foederati*, immediately after their subjugation. This is assumed because Cicero's *Pro Balbo* which discusses the *foedus*, was delivered by Cicero in 56 B.C. It would imply, however, that in 58 special treatment had been afforded the Helvetians, since the other tribes in Gallia Comata were, by that date, not yet formally incorporated into a province.

It may be instructive to examine the relationship with Caesar, during his campaigns of 58-50 B.C., of other Gallic tribes, known to have had privileged status after their incorporation into the empire. We shall concentrate on *Gallia Belgica*, which included the territory of the Helvetians.<sup>15</sup> In his *Naturalis Historia* Pliny gives a description of Gallia Comata based mainly on Augustus' census lists.<sup>16</sup> These must reflect the organization of Gaul after the conquest.<sup>17</sup> Pliny divides the Gallic tribes into three categories: *foederati*, *liberi* and tribes without predicate. The latter must have been *stipendiarii*, as appears from Pliny's description of other regions.<sup>18</sup> In the case of the Treveri a change in the status of a people is registered.<sup>19</sup>

<sup>14</sup> P. Frei, "Zur Gründung und zur Rechtsstellung der römischen Kolonie Aventicum", *Bulletin de l'association Pro Aventico*, 20 (1969), pp. 19-20, with extensive references to secondary literature. For the older literature, see Staehelin, pp. 222ff. According to E. Meyer, *Provincialia Festschrift für R. Laur-Belart* (Basel, 1968), 382ff. the Helvetians remained *foederati* until 15 BC.

<sup>15</sup> See Staehelin, p. 116.

<sup>16</sup> See the article by W. Kroll, "C. Plinius Secundus der Ältere", *RE* XXI<sup>1</sup>, p. 304. For Pliny's description of Gaul, see *N.H.* III 4, 31-37 (*Gallia Narbonensis*) and IV 17, 105-19, 109 (*Gallia Comata*).

<sup>17</sup> For Augustus' division of Gallia Comata, see Staehelin, pp. 116-7.

<sup>18</sup> For Pliny's remarks on the administrative division of Spain, see III 3, 23 to 3, 28 and IV 22, 117-118; cf. Mommsen, *Staatsrecht*, III<sup>1</sup>, p. 657.

<sup>19</sup> *N. H.* IV 18, 106.

Caesar himself provides us with information on his subjugation of most of the tribes, described by Pliny as being privileged.<sup>20</sup> Significantly Caesar nowhere mentions any specific legal status granted to the recently subjugated tribes. Of the 32 *civitates* in *Gallia Belgica*, mentioned in the *Naturalis Historia*, 11 are not mentioned in Caesar's work on the Gallic war. Of the 22 mentioned in both sources 14 are *stipendiariae*, 4 *liberae* and 2 *foederatae*.

### *Civitates foederatae*

It appears from Caesar's notes that he had reasons to feel obliged towards the *Remi* and the *Lingones*, the two *civitates foederatae* in *Gallia Belgica*. In 58 B.C. the *Lingones*, at Caesar's request, withheld all material support from the defeated and exhausted Helvetians. This served to accelerate their surrender.<sup>21</sup> Shortly afterwards, during Caesar's campaign against Ariovistus, the *Lingones* supplied Caesar's troops with corn.<sup>22</sup> In 57 B.C. the *Remi* were the only tribe among the *Belgae* which surrendered immediately to Caesar. They offered generous assistance and information.<sup>23</sup> Caesar expressed his gratitude.<sup>24</sup> The other *Belgae* decided first of all to punish the *Remi* severely for this, even before turning against Caesar himself.<sup>25</sup> When in 54 B.C. Labienus found himself in danger in the territory of the *Treveri*, the *Remi* conveyed the message of a victory of Caesar in time for the *Treveri* to be discouraged from taking the offensive.<sup>26</sup> In 52 B.C. the *Remi* and *Lingones* were the only tribes in the whole of *Gallia Comata*, who "*quod amicitiam Romanorum sequebantur*" dissociated themselves from the rebellion led by Vercingetorix.<sup>27</sup>

<sup>20</sup> For Caesar's negotiations with the Gauls see: J. Szidat, *Caesar's Diplomatische Tätigkeit im Gallischen Krieg*, *Historia*, Einzelschrift 14 (Wiesbaden, 1970).

<sup>21</sup> Caesar BG I 26. For the *Remi* as *foederati*, see also *CIL* X 1705; XII 1855 and 1869.

<sup>22</sup> BG I 40

<sup>23</sup> BG II 3ff.

<sup>24</sup> BG II 5. For other negotiations between Caesar and the *Remi*, see Szidat, *op. cit.*, pp. 52-4.

<sup>25</sup> II 6-7: the *Belgae* besiege Bibrax, a city of the *Remi*, "(...) paulisper apud oppidum morati agrosque Remorum depopulati, omnibus vicis aedificiisque quos adire potuerant incensis, ad castra Caesaris omnibus copiis contenderunt (...)".

<sup>26</sup> BG V 53.

<sup>27</sup> BG VII 63

The year after that the *Remi* and *Lingones* supplied Caesar with large numbers of cavalry troops in a precarious situation.<sup>28</sup> On that occasion the *Remi* suffered heavy losses.<sup>29</sup> It is clear that the Romans had good reasons to grant these two tribes the privileged status of *foederatae*: from 58-50 B.C. they had persistently supported the Romans.

### *Civitates liberae*

Pliny describes the following civitates as *liberae*: *Nervii*, *Suessiones*, *Ulmanectes* (not mentioned by Caesar), *Leuci* and *Treveri* (*liberi antea*). Unlike the *Remi* and *Lingones* the four also mentioned by Caesar took up arms against him; some of them more than once. Of the *Suessiones* it should be noted that they were closely related to the *Remi*. After a relatively brief struggle in 57 they surrendered and the *Remi* pleaded their cause with Caesar.<sup>30</sup> Although Caesar had to use force to subjugate the *Treveri*, he could always depend on the support of a number of pro-Roman leaders with whom he was on friendly terms.<sup>31</sup> Like the *Lingones* and the *Remi*, the *Treveri* also refused to support Vercingetorix, not so much because they favoured Caesar, but rather because they had been attacked by Germans.<sup>32</sup> It is not unlikely that the Romans rewarded this neutrality in 52 B.C., even though it had been involuntary. All we know of the *Leuci* is that, like the *Lingones*, they also supplied Caesar's troops with corn in the campaign against Ariovistus.<sup>33</sup> This may be significant in itself. They are not named by Caesar as participants in the rebellion of Vercingetorix, which may be an indication that they did not take part in it.

It seems clear why the Romans granted a favorable status to the *Suessiones*, *Treveri* and *Leuci*, without rewarding them as generously as the *Remi* and *Lingones*. On the other hand the fourth *civitas libera*, the *Nervii*, opposed the Romans continuously. However,

<sup>28</sup> BG VIII 11.

<sup>29</sup> *ibid.* 12.

<sup>30</sup> BG II 3 and 12, 3; cf. VIII 6: "socios optime de re publica meritos".

<sup>31</sup> BG I 37; II 24; V 2-4. See also the negotiations in 54 BC.: Szidat, *op. cit.* pp. 75-7.

<sup>32</sup> BG VII 63: "Ab hoc concilio (...) Treveri afuerunt: (...) quod aberant longius et ab Germanis premebantur, quae fuit causa quare toto abessent bello et neutris auxilia mitterent".

<sup>33</sup> BG I 40.

their leaders maintained good relations with Rome.<sup>34</sup> In 54 Q. Cicero's wintercamp and Caesar's relief force survived thanks to the actions of a Nervian nobleman Vertico. On both occasions he saw to it that vital information was conveyed to the Romans.<sup>35</sup> It is conceivable that the Romans wished to reward the *Nervii* because of the services rendered by Vertico and in view of the good relationship with other prominent members of that tribe.<sup>36</sup> There is, however, a second possibility: since Pliny derived his information from census lists from the time of Augustus, we must also reckon with the possibility that the *Nervii* had been declared *liberi* after Caesar's time. It appears from Livy, *per.* CXLI for the year 11-10 B.C. that two Nervians distinguished themselves during one of Drusus' campaigns in *Germania*. Dio reports that during this campaign Drusus' army only just managed to escape the fate which later befell Varus' legions.<sup>37</sup> The fact that two Nervians apparently played an important role in saving a Roman army may have been a reason for Augustus to reward the tribe as a whole.

#### *Haedui and Carnutes foederati*

In Gallia Comata Pliny mentions two more tribes as *foederati*, namely the "*Aedui*" and "*Carnutem*".<sup>38</sup> The *Haedui* enjoyed this status as early as 121 B.C. and Caesar apparently allowed them to keep it. They maintained particularly good relations with the Romans.<sup>39</sup> Caesar makes it clear that, although the *Haedui* took part in the revolt of Vercingetorix, several prominent members of this tribe remained loyal to him.<sup>40</sup> He always tried to protect them<sup>41</sup> and after the revolt had been suppressed treated them leniently,<sup>42</sup>

<sup>34</sup> BG V 41.

<sup>35</sup> BG V 45 and 49.

<sup>36</sup> For similar motives in Caesar's favourable treatment of the *Carnutes*, see p. 18. After their first subjection they were treated well, cf. Szidat, *op. cit.*, p. 56.

<sup>37</sup> Dio LIV 33.

<sup>38</sup> Pliny IV 18, 107; we will refer to these tribes by their more usual names, "*Haedui*" and "*Carnutes*".

<sup>39</sup> See BG I 33, 2; 35, 3-5; 43; VII 40; Horn, *op. cit.*, p. 54.

<sup>40</sup> BG VII 39 and 54.

<sup>41</sup> BG VII 43, 4; 54; 63: here Caesar mentions extenuating circumstances for their conduct.

<sup>42</sup> *Ibid.* VII 89, 5-90.

since they remained the most powerful tribe in Gallia.<sup>43</sup> Furthermore this was in line with his general policy after the revolt, as recorded by Hirtius. It is not unlikely that a general amnesty was proclaimed once the battle had come to an end.<sup>44</sup> As for the *Carnutes*, they were among the fiercest enemies of the Romans and surrendered only after the suppression of the revolt of 52 B.C.<sup>45</sup> Horn, accordingly, doubts whether Pliny is correct in naming them as *foederati*.<sup>46</sup> We should nevertheless bear in mind that Caesar had initially had good relations with their leader Targetius. Only after the latter had been murdered by political opponents, the *Carnutes*, originally clients of the *Remi foederati*, adopted an anti-Roman policy.<sup>47</sup> Caesar subdued them vigorously. Thereafter, however, the only person to be executed was the instigator of the revolt, and even this was done with a certain amount of reluctance.<sup>48</sup> Caesar speaks of the *Carnutes* in moderate and sympathetic terms.<sup>49</sup> It is possible that the behaviour of the tribe was considered as having been caused by the temporary predominance of "nationalist rebels", whose removal was sufficient to restore good relations.<sup>50</sup> It can be said, therefore, that there are elements in Caesar's comments on the *Carnutes* and their behaviour which might explain their being granted the status of *foederati* if indeed this is what they were.

Summarizing it can be said that Caesar's *Bellum Gallicum* pro-

<sup>43</sup> BG VIII 46 and 54. Caesar granted citizenship to several Haeduan noblemen, cf.: A. Gilboa, *Eshkolot* 7 (1962), 142-3 (Hebrew). See also Szidat, *op. cit.*, p. 86ff. and 146.

<sup>44</sup> BG VIII 3: "Bituriges, cum sibi viderent clementia Caesaris reditum patere in eius amicitiam finitimasque civitates sine ulla poena dedisse obsequia atque in fidem receptas esse (...)" ; see also VIII 49. For similar conclusions: Szidat, *op. cit.*, p. 147.

<sup>45</sup> BG VII 2; 3 etc.

<sup>46</sup> *op. cit.* p. 59.

<sup>47</sup> BG V 25.

<sup>48</sup> BG VIII 5.

<sup>49</sup> BG VIII 38.

<sup>50</sup> In 58 the loyalty of the *Haedui* was endangered by the conflict between the two brothers Dumnorix and Diviciacus (BG I 16-20; cf. Plutarch, *Caesar* XXV 2). Note also Caesar's acceptance of the apologies of the *Bituriges* when the guilty few were surrendered (BG VII 12), cf.: Szidat, *op. cit.*, p. 86 and above n. 35. The loyalty of allies could always be jeopardized by internal party struggles. An example is the defection by the *Brigantes* in A.D. 69 after Queen Cartimandua had been dethroned by her former husband Venutius (Tac., *Hist.* III 45; *Ann.* XII 40, 2; Statius, *Silvae* V 2, 140).



vides us with an insight in the Roman motivations for granting the *civitates foederatae* and *liberae* listed by Pliny and discussed here their favourable status. In many cases there appears to be a correlation between the attitudes of various Gallic tribes in the fifties B.C. and their legal status in the empire, as recorded by Pliny.<sup>51</sup>

### *Caesar and the Helvetians*

In Caesar's work we have no record whatsoever of sympathetic feelings or friendly words towards the Helvetians. Caesar's report of his campaign against them makes repeated mention of the defeat of the Romans in their battle against the Helvetians in 107 B.C. We are not allowed to forget that Roman soldiers had been forced to pass under the yoke.<sup>52</sup> The leader and spokesman of the Helvetians was, in fact, the same as in 107.<sup>53</sup> In their negotiations both commanders referred extensively to past events.<sup>54</sup> Caesar speaks of a personal feud between himself and the Helvetians because the *Tigurini*, a Helvetian *pagus*, had killed his father in law's grandfather in 107.<sup>55</sup> As *aedilis* in Rome Caesar had previously revived

<sup>51</sup> In *Gallia Lugdunensis* Pliny, *NH* IV 18, 107 names as *liberi*: *Neldi* and *Secusiani* (= *Segusiavi*). Caesar does not mention the first. Of the latter he indicates only that they were neighbours of *Narbonensis*. The colony of Lugdunum was founded on their territory. In *Aquitania* Pliny *NH* IV 19, 108-9 describes as *liberi*: the *Santoni*, two groups of *Bituriges* and the *Arverni*. For the *Santoni* see: BG I 10-11; III 11; VII 75. The *Bituriges* were, according to Caesar very powerful (BG VIII 2). From BG VIII 4 it appears that they were friends of the Romans who, after participating in the revolt of Vercingetorix, gave hostages and surrendered without punishment of any kind. See also above n. 49. The second most important tribe in Gaul was of the *Arverni* (BG I 31). They had been subdued in 121 BC but kept their suzerainty (BG I 45). There were friends of the Romans among them (BG VII 4; VIII 4), but Caesar did not consider the tribe as a whole friendly. Vercingetorix was an Arvernian and had his most important base of support among them (e.g. BG VII 77). After the revolt they had to surrender many hostages (BG VII 90). On the Haedui and Arverni, see: O. Hirschfeld, *Kleine Schriften* (Berlin, 1913.), 186ff.

<sup>52</sup> BG I 7; 12; 14. For Caesar's negotiations with the Helvetians, see: Szidat, *op. cit.*, p. 15ff; his conclusion, p. 144: "Seine gesamte Verhandlungstaktik ist also darauf abgestellt, sie möglichst in einem Kampf zu verstricken, um dann durch ihre völlige Niederwerfung ein grösseres politisches Manövriertfeld zu bekommen".

<sup>53</sup> BG I 13.

<sup>54</sup> *Ibid.* 13-14.

<sup>55</sup> *Ibid.* 12.

the memory of these events by restoring the *tropaea* erected to commemorate Marius' victory over Iugurtha and the *Cimbri* and *Teutones*.<sup>56</sup> The continuity Marius-Caesar, emphasized by Cicero in his "*de provinciis consularibus*", can be found in Caesar's *Commentarii* as well.<sup>57</sup> The migrations of 58 were presented in Rome as a repetition of those in the second century. There is an essential difference between Caesar's comments on the campaign against the Helvetians and on the struggle of other Gauls: whereas the latter offered justifiable resistance against Roman "pacification", the Helvetians were considered aggressors and enemies of the state for the second time. Caesar claims emphatically that he came to the assistance of the *Haedui* and *Allobroges*, after these had been attacked by the Helvetians.<sup>58</sup> When declaring their gratitude the leaders of these peoples referred to the fact that Caesar had revenged past Roman humiliations and, at the same time, rendered the Gauls a great service.<sup>59</sup>

It is highly unlikely that Caesar's revenge consisted in immediately granting the Helvetians the same privileged status as their victims, the *Haedui*. The other victims, the *Allobroges*, loyal allies of the Romans were not, apparently, *foederati* (they are not mentioned by Pliny at all). Suetonius writes of Caesar: "Omnem Galliam (. . .) praeter socias ac bene meritas civitates in provinciae formam redegit".<sup>60</sup> As shown above, Caesar did not consider the Helvetians either *socii* or *bene meriti* and they must, accordingly, have been incorporated into the new province.

Another point has to be considered. If we assume that Cicero's remark of 56 B.C. on a treaty between the Romans and the Helvetians refers to a treaty concluded by Caesar, than this must have been ratified immediately after the surrender in 58. In his speech

<sup>56</sup> Suetonius, *Divus Iulius* 11. On Caesar's relations with Marius, see R. Syme, *The Roman Revolution* (Oxford, 1960), p. 25.

<sup>57</sup> Cicero, *de Prov. Cons.* 13,32: "Ipse ille C. Marius, cuius divina atque eximia virtus magnis populi Romani luctibus funeribusque subvenit, influentis in Italiam Gallorum maximas copias repressit, non ipse ad eorum urbis sedisque penetravit".

<sup>58</sup> BG I 11; 14; 28.

<sup>59</sup> BG I 30: "(...) Intellegere sese, tametsi pro veteribus Helvetiorum iniuriis populi Romani ab his poenas bello repetisset, tamen eam rem non minus ex usu terrae Galliae quam populi Romani accidisse".

<sup>60</sup> *Divus Iulius* 25, 1; for a similar wording, see Appian, *BC* I 11, 102.

"*de provinciis consularibus*", delivered shortly before the "*Pro Balbo*",<sup>61</sup> Cicero leaves no doubt that at that moment Caesar had not taken definitive measures regarding the subjugated Gallic tribes: "Bellum in Gallia maximum gestum est; domitae sunt a Caesare maximae nationes, sed nondum legibus, nondum iure certo, nondum satis firma pace devinctae".<sup>62</sup> Cicero clearly refers to the Helvetians as well: "Itaque cum accerrimis nationibus et maximis Germanorum et Helvetiorum proeliis felicissime decertavit, ceteras conterruit, compulit, domuit, imperio populi Romani parere adsuefecit (. . .)".<sup>63</sup> Not until the winter of 51-50 is any mention made of tribes being honoured and rewarded.<sup>64</sup> It can not, in fact, be argued that Caesar concluded treaties in 58 B.C. Caesar, moreover, did not have the authority to do so. Concluding treaties with other peoples, conquered or not, was a privilege reserved for the senate. The Emperor Claudius, a hundred years after Caesar's Gallic war, was the first to be authorized to conclude treaties (in Britain), by virtue of a special decision of the senate.<sup>65</sup> We know from Dio that Caesar did not receive a mandate to pursue foreign policy, without first consulting the senate, until he was ruling as a dictator, in 48 B.C.<sup>66</sup> The status of Gaul immediately after the conquest has been described by C. E. Stevens as follows: "Caesar, as an executive commander, was entitled to make that form of treaty comprising un-

<sup>61</sup> Namely in June 56, cf. M. Gelzer, in *RE* VII A<sup>1</sup> s.v. *M. Tullius Cicero, der Redner*, p. 941ff.

<sup>62</sup> *De prov. cons.* 8, 19.

<sup>63</sup> *Ibid.* 13, 33. For another interpretation of this passage, see: E. Meyer, *op. cit.* (above n. 13), pp. 382-4.

<sup>64</sup> BG VIII 49: "(...) honorifice civitates appellando, principes maximis praemiis adficiendo (...)".

<sup>65</sup> Dio LX 23, 6. For treaties concluded by emperors, see: E. Täubler, *Imperium Romanum* (Leipzig, 1913), p. 157ff. The usual procedure in the time of the Republic is clearly illustrated by the case of Gades. The defeat and death of the two Scipiones in Spain in 211 BC marked the beginning of difficult years for the Romans there. In 206 BC Gades surrendered to Lucius Marcus Septimus. On that occasion the first treaty was apparently concluded between Gades and Rome. Since the treaty was not formally ratified, it was never recognized *de jure*. A formal treaty was not concluded and ratified until 78 BC (Livy XXVIII 23; 30; 31; 37; Cicero, *Pro Balbo* 15, 34). Cicero states: "(...) de quo foedere populus Romanus sententiam non tulit, qui iniussu suo nullo pacto potest religione obligari".

<sup>66</sup> Dio XLII 20, 1. For Caesar's treaties see: Täubler, *op. cit.* p. 159ff.

conditional surrender known as "*deditio*".<sup>67</sup> The inhabitants of the area become "*dediticii*", their land comes under the "dominium" of the Roman people and is thus liable to tax (...). The provisional would normally harden into the actual with the ratification of Caesar's arrangements by the senate, and the despatch of a senatorial commission which would bring the area "in formam provinciae" under a Roman governor (who would not necessarily be Caesar).<sup>68</sup> Stevens has argued that, in March 56, plans were discussed but not executed to send *decem legati* in order to prepare the conversion of conquered Gaul into a province of the Roman Empire.<sup>69</sup> From all this it is clear that the Helvetians remained *dediticii* following their surrender until the whole of Gaul was organized as a province.

Returning to Caesar's own statements concerning his relationship with the Helvetians, we find no evidence of preferential treatment: "reductos in hostium numero habuit; reliquos omnes obsidibus, armis per fugis traditis in deditionem accepit". This means no more than that the runaway *Verbigeni* were *captivi* and the other Helvetians *dediticii*.<sup>70</sup> In Caesar's words we find no trace of leniency, no indication of special treatment. This would fit Pliny's classification of the Helvetians as *stipendiarii*. Tacitus noted that the Helvetians maintained a garrison at their own expense.<sup>71</sup> The existence of a fort manned by Helvetians cannot be interpreted as a privilege or as an indication of the independent position of the Helvetians.<sup>72</sup> Caesar reports that before their subjugation the Helvetians were fighting almost daily with the Germans either defending their own lands or attacking on German territory.<sup>73</sup> All we can learn from Tacitus is that Caesar instructed the Helvetians to protect their territory against German attacks from across the Rhine. This was, of course, also in their own interest, but cannot be considered a privilege.

<sup>67</sup> *Deditio* is not now considered a form of treaty, see: K. H. Ziegler, *ANRW* I, 2, pp. 94-5.

<sup>68</sup> *Antiquity* 21 (1947), p. 7.

<sup>69</sup> *Latomus* 11 (1952), pp. 12-4; cf. Mommsen, *Staatsrecht* III, 65; 1166-8. For a recent discussion of the concept of *deditio*, see: Ziegler, *loc. cit.*

<sup>70</sup> I 27-28; see p. 11 above.

<sup>71</sup> *Historiae* I 67. On this passage, see Staehelin, 145-146 and 192.

<sup>72</sup> BG I 1.

<sup>73</sup> According to Staehelin's interpretation, p. 84, note 1; see also note 65.

*Cicero's remarks on foedera with the Helvetians and others*

As pointed out above, the only evidence we have for a Caesarean *foedus* with the Helvetians is Cicero's reference to a treaty in his *Pro Balbo* speech of 56 B.C. Cicero's remark needs re-examination. Cicero refers to treaties with, in this order, the *Cenomanni*, *Insubres*, *Helvetii*, *Iapydes* and unspecified "barbarians from Gaul". First the meaning of "*foedera exstant*" ought to be determined: whenever "exstare" refers to written records it appears that in Cicero's speeches this verb is synonymous with "memoriae traditum esse, praesto esse".<sup>74</sup> The phrase "*foedera exstant*" therefore means no more than that the treaties were still known and available for inspection in the *aerarium*. Cicero's words do not necessarily imply that the treaties were still in force in his time or legally valid. We shall now attempt to show that not all the treaties mentioned can have been applicable in Cicero's time.

*Cenomanni*

The *Cenomanni*, a Gallic tribe south of the Alps, proved themselves to be good friends of the Romans as early as 225 B.C., during the great Gallic war of those years. In the second Punic war they supported Rome again.<sup>75</sup> After this war had ended they took sides with their Gallic neighbours in the struggle against Rome. Before the end of the revolt, however, they deserted the Gauls and joined the Romans.<sup>76</sup> In 197 B.C. C. Cornelius held a triumph over them and the *Insubres*.<sup>77</sup> Thereafter they ceased to play an important role.<sup>78</sup> The *Cenomanni* will have concluded their treaty with the

<sup>74</sup> See: H. Merguet, *Lexikon zu den Reden des Cicero* (Jena, 1880), pp. 283-284, s.v. *exsto* and *Thesaurus Linguae Latinae*, V<sup>2</sup>, s.v. *exsto*, p. 1933, IIA 2b: leg. agr. II 88: *exstant litterae publicae, sunt (syn.) senatus consulta*; Flacc. 34: *exstant Acmonensium litterae*; Verr. II 1, 115; *testamentum, quod tum non exstaret*; V 148: *scriptum exstat in isdem litteris*; Font. 38: *exstant orationes*; 39: *exstat oratio*; leg. agr. II 41: *auctoritatem senatus exstare* (cf. har. resp. 16: *senatus exstare consulta*); dom. 137: *litterarum exstare monumentum*.

<sup>75</sup> Polybius II 23; 24; 32; Strabo V 216.

<sup>76</sup> Livy XXXI 10; XXXII 29-30 etc.

<sup>77</sup> CIL I<sup>2</sup>, p. 174; see also CIL VI 31630 = I<sup>2</sup>, p. 341; Livy XXXIII 23.

<sup>78</sup> In 187 BC an incident occurred whereby the weapons of the innocent *Cenomanni* were taken away by the praetor M. Furius who in this way thought to have gained an easy victory. Afterwards the Senate reversed this measure (Livy XXXIX 3; Diodorus XXIX 14).

Romans either after their defeat in 197 B.C. or earlier, in or before the second Punic war.<sup>79</sup> In this war they were, according to Polybius, the only tribe in the area supporting the Romans.<sup>80</sup> It seems plausible that the Romans granted the privileged status of *foederati* to the *Cenomanni* when they were their loyal allies rather than after their defection and defeat.

### *Insubres*

The *Insubres*, the biggest tribe south of the Alps, were among those who took up arms against Rome in 232 B.C.<sup>81</sup> They were defeated in 224. In 223 the Romans opened the attack. A request for peace was made by the Gauls in 222 and rejected by the Romans who then seized their towns of Acerrae, Mediolanum and Comum.<sup>82</sup> This was followed by a defeat near Clastidium, which was decisive, for the time being.<sup>83</sup> After their surrender the *Insubres* are reported to have delivered hostages,<sup>84</sup> paid tribute and ceded parts of their territory.<sup>85</sup> Nevertheless Plutarch speaks of a peace on moderate terms.<sup>86</sup> These arrangements may have been formalized by the foedus, mentioned by Cicero. The foundation of the Latin colonies of Placentia and Cremona in 218 caused the renewal of hostilities which ended again in Roman victory,<sup>87</sup> after earlier losses in 197 and 196.<sup>88</sup> The foedus, mentioned by Cicero, might date to these years but the first surrender in 222 is a much more likely occasion of this treaty.<sup>89</sup>

<sup>79</sup> It is generally argued that the treaty must have been concluded in 197 (see *inter alia* Hülser in RE III s.v. *Cenomanni*, pp. 1899-1900 and Horn p. 53).

<sup>80</sup> Polybius II 32.

<sup>81</sup> Polybius II 17, 4; 21ff.; 28; 30-35; Plutarch: *Marcellus* 3; Orosius IV 13; Dio XII (Zonaras 8, 20).

<sup>82</sup> Polybius II 32ff.

<sup>83</sup> II 34.

<sup>84</sup> II 35; III 40.

<sup>85</sup> Dio *loc. cit.*

<sup>86</sup> *Marcellus* 7, 5.

<sup>87</sup> Livy XXXIV 46; Orosius IV 20; on the foundation of Placentia and Cremona and the attending troubles, see Isaac in *Talanta* III (1971), p. 13ff.

<sup>88</sup> See note 77 above on the triumph in 197; on the triumph in 196, see CIL I<sup>2</sup> p. 174.

<sup>89</sup> Horn (p. 52) and others assume that the treaty was concluded in 194.

Between 194 and 56 B.C., the year in which Cicero delivered his *Pro Balbo* speech, the old tribal structure of the Cenomanni and Insubres completely disappeared. In 89 many of the Cisalpine Gauls obtained Latin rights.<sup>90</sup> In 49 B.C. all the remaining *peregrini* in Cisalpine Gaul were granted full citizenship.<sup>91</sup> The tribes as such had disappeared by that time and had been integrated in Romanized urban centres, although there were still individual representatives of the former tribes.<sup>92</sup> We may conclude that the treaties with the Insubres and Cenomanni were obsolete in Cicero's time. The clause concerning their preclusion from citizenship in particular—the very reason for mentioning the treaty, was irrelevant in the case of peoples who had been Latin citizens for over 30 years and were, without exception, to be given full citizenship only seven years later.

### *The Iapydes*

After a protracted struggle the Iapydes were defeated by C. Sempronius Tuditanus and his legate D. Iunius Brutus in 129 B.C.<sup>93</sup> We know of no other occasion at which a treaty is likely to have been concluded. Appianus speaks of Sempronius' victory in reserved terms and reports that not long afterwards the Iapydes revolted again.<sup>94</sup> Sallustius mentions an invasion into their territory without giving a date.<sup>95</sup> In the twenty years preceding their final subjection by Octavian, the Iapydes overran Aquileia and plundered Tergeste.<sup>96</sup> Dio notes that the Iapydes did not pay

<sup>90</sup> For a discussion on the problems concerning the *lex Pompeia*, see Ursula Ewins, "The Enfranchisement of Cisalpine Gaul", *Papers of the British School at Rome* 23, NS 10 (1955), pp. 75ff.

<sup>91</sup> Dio XLI 36.

<sup>92</sup> On this subject, see *RE IX*<sup>2</sup> s.v. *Insubres* (Philip), p. 1592. Polybius reports that in his time the Gauls had been completely expelled from the Po valley except for some regions at the foot of the Alps (II 35, 4). Strabo (V 213) reports of the Insubres that they "still exist". In Tacitus' work we read the question, posed in 48 AD: "an parum quod Veneti et Insubres curiam inruerint (. . .)?" (*Ann. XI* 23, 4). Pliny refers to the Cenomanni and Insubres as peoples of former times and—like the Helvetii—does not regard them as contemporary *foederati* (*NH III* 17, 124-125; 19, 130).

<sup>93</sup> Livy per. LIX; Pliny III 129; CIL I<sup>2</sup> p. 176.

<sup>94</sup> Appian, *B. Ill.* 2, 10.

<sup>95</sup> Sallust, *Hist.* II 42; maybe in 78-76 BC, cf. *RE IX*<sup>1</sup> s.v. *Iapodes* (Vulić) p. 725.

<sup>96</sup> Appian *B. Ill.* 4, 18; Caesar, *BG VIII* 24.

their tribute, plundered Roman territory and, finally, revolted openly.<sup>97</sup> In 35 B.C. the Iapydes apparently were considered subjects.<sup>98</sup> After Octavian's campaign in 35 the Iapydes were incorporated into the empire as *stipendiarii* (according to Pliny).<sup>99</sup> It is clear, therefore, that by 56 the Iapydes had ceased to be *foederati*, since the treaty concluded with them had been broken decades earlier. We may conclude that the treaties with the *Cenomanni*, *Insubres* and *Iapydes* which Cicero mentioned together with the Helvetian treaty, all had long since become obsolete. None of these peoples are mentioned by Pliny as *civitas foederata*. We should therefore consider whether the Helvetian treaty can also have originated in an earlier period without being connected with Caesar's activities.<sup>100</sup>

We noted above that Caesar frequently refers to an earlier clash between the Helvetians and Romans.<sup>101</sup> During the war with the *Cimbri* and *Teutones* the consul Lucius Cassius and his army were defeated in 107 by the *Tigurini*, a Helvetian *pagus*.<sup>102</sup> Livy (*per.* LXV) reports that the surviving soldiers arranged with the enemy to be released unharmed after giving up hostages and half of all their possessions.<sup>103</sup> The words "pacti sunt" used in the extract from Livy's book might suggest that on this occasion a formal agreement (*pactio*) was actually concluded between the surviving Roman legate and Divico, the Helvetian commander. This is also suggested by the somewhat more extensive version of Livy's text given by Orosius: "C. Publius alter legatus, ne residua exercitus portio, quae in castra confugerat, deleteretur, obsides et dimidiam partem rerum omnium Tigurinis *turpissimo foedere* dedit: qui

<sup>97</sup> Dio XLIX 34, 2.

<sup>98</sup> For a similar attitude towards the *Salassi* at this time, see: R. A. v. Royen, *Talanta* 5 (1973); 65-8.

<sup>99</sup> *NH* III 21, 139 and 18, 127.

<sup>100</sup> Although Mommsen initially adhered to this view (*Die Schweiz in römischer Zeit, Gesammelte Schriften*, V. Band, p. 378), he later rejected it for reasons not altogether clear (*Schweizer Nachstudien, Ges. Schr.*, V p. 392 = *Hermes* p. 447).

<sup>101</sup> See p. 19 above.

<sup>102</sup> For the operations of the *Cimbri* c.s. in the Alpine region, see Staehelin pp. 53-60.

<sup>103</sup> "Milites qui ex ea caede superaverant, obsidibus datis et dimidia rerum omnium parte, ut incolumes dimitterentur, cum hostibus pacti sunt"; cf. Appian, *De Rebus Gallicis*, 3.



Romam reversus, a Caelio tribuno plebi die dicta eo quod Tigurinis obsides dederat, in exilium profugit".<sup>104</sup> There is no reason to doubt that this is a correct description of the course of events. The senate will have been forced to ratify the treaty concluded by C. Publius because the Tigurini were holding hostages, it could do no more than ban the legate. There are good reasons for assuming that the *Tigurini* did not take part in the struggle against the Romans after the conclusion of the treaty in 107.<sup>105</sup> They were not involved in the battle of Vercellae in 101.<sup>106</sup> Caesar speaks only of the Roman defeat in 107. There is therefore no evidence of warfare between 107 and the fifties.

Caesar's comments on the Helvetians have to be seen against the background of what happened in 107. Both Caesar and Divico, who was already commander of the Helvetians in 107, continuously refer to the past. When Caesar demanded hostages he was told that it was the custom of the Helvetians to receive hostages and not to offer them and that the Roman people was witness thereof.<sup>107</sup> The indignity of the "turpissimum foedus" was obliterated only when, as a formal confirmation of their surrender, the Helvetians delivered "obsides, arma et perfugi".<sup>108</sup> It should be added that this treaty was broken when the Helvetians resumed hostilities.<sup>109</sup>

We may therefore conclude that the Helvetians like all the other

<sup>104</sup> Orosius, *Historiae adversum Paganos* V 15, 23-24.

<sup>105</sup> Livy per. LXVIII; Plutarch, Marius 19; Lucullus 27, 7; Camillus 19, 7; Dio fr. XXVII 91 = V 82-83 pp. 630-633 and others do not mention the Tigurini in this context. Only Eutropius (VI, 1) and Orosius (V 16, 1), mention that the Tigurini took part in the battle of Arausio. However, this is of no significance since these authors report that the *Cimbri*, *Teutones*, *Tigurini*, *Ambrones* and other migrant peoples all took part in this battle side by side, after which, according to them, the Cimbri and Teutones crossed the Alps together, which is obviously a misrepresentation of the facts. For a reconstruction of the course of events, see Staehelin pp. 58-59.

<sup>106</sup> Florus I 37 (3, 3) (after Livy): "Tertia Tigurinatorum manus, quae quasi in subsidio Noricos insederat Alpium tumulos, in diversa elapsa fuga ignobili et latrociniiis evanuit". Cf. Staehelin p. 59, note 6, which includes an outline of the literature on the geographic position of the Norici tumuli and a hypothetical triumph by Sulla over the Tigurini.

<sup>107</sup> BG I 14.

<sup>108</sup> BG I 27-28.

<sup>109</sup> If *foederati* failed to observe the provisions of the treaty, Rome regarded it as cancelled. Cf. Mommsen, *Staatsrecht*, III<sup>1</sup> pp. 686-687. Cf. also the course of events in the case of the Iapydes, p. 26 above.

Gauls subjected by Caesar, remained *dediticii* for the duration of Caesar's war. Cicero mentioned in 56 a number of treaties, including one with the Helvetians, all of them obsolete. The treaty with the Helvetians may have been concluded in 107. Cicero, in other words, did not refer to Caesar's actions in 56 but to a number of treaties which were out of date. This fits in with the tenor of Cicero's *Pro Balbo*. The theme of this speech in the legal discussion from 8, 19 to 24, 55 may be summed up as follows: when Rome concludes a treaty with another nation, this cannot and may not be in any way an obstacle for citizens of these nations to the free acceptance of each other's citizenship.<sup>110</sup> The treaties containing a provision to the contrary are cited by Cicero as exceptions confirming the rule.<sup>111</sup> The exceptional nature of such a clause was emphasized the more since Cicero cited treaties, all of them out of date. The treaty with the Cenomanni mentioned by Cicero is likely to have been concluded before the second Punic war or in 197, the treaty with the Insubres in 222 or 194, that with the Iapydes in 129, that with the Helvetians in 107. All these nations were, at the time, outside the empire and bounded recently conquered territory. They had reasons to fear that Rome might intend to incorporate them into the empire. They were *foederati* in

<sup>110</sup> Cf. Sherwin-White, *op. cit.*, p. 188, note 3: "The doctrine of the *Pro Balbo* is that a man is free to change his *civitas* as he wishes".

<sup>111</sup> At the beginning of 14, 32 the "Etenim" of the MSS is changed by Naugerius into "At enim" (cf. ed. Peterson, *Ciceronis Orationes*, V (Oxford, 1966)). It is true that the reading "Etenim" can hardly be defended in this passage. It occurs at the beginning of a paragraph and there is no causal connection with the text immediately preceding. It may therefore have been used purely elliptically, which only occurs twice in Cicero's discourses and is not plausible in this particular passage. (Cf. *Thesaurus* V<sup>8</sup> s.v. *etenim*, p. 919; *Catil.* I 3, 6 and *leg. agr.* II 8, 22; both are very clear cases). "At enim" as a parallel to Greek ἀλλὰ γάρ, however, is frequently used by Cicero in his speeches (*Thesaurus* II p. 1006, s.v. *at*, 65ff.). Hardy, *op. cit.*, p. 327, and Gardner, *op. cit.*, pp. 667; 720; 726, assume on the basis of the reading "At enim" that Cicero is quoting an argument put forward by the prosecutor. This is not very credible. It would not be appropriate to ascribe an untenable argument to the prosecutor and then to make fun of the assumed ignorance of Cicero's opponent. As a possible counter-argument inserted by Cicero himself, the sentence fits perfectly in his reasoning adopted in *Pro Balbo*. If one accepts this textual amendment "At enim" here means as much as: "But, it will be said, there exist (...) etc." "Etenim" is read also by J. Cousin, *Cicéron, discours*, tome XV, LBL (Paris, 1969) and translated: "En effet, il existe des traités (...)".

the original sense of the word. The development whereby *civitates foederatae* gradually became subject peoples had at that stage not yet taken place.<sup>112</sup>

### *The citizenship clause*

The clause that Roman citizenship could not be granted to individual members of these communities must, following Mommsen, be understood as a measure protecting these peoples against infiltration.<sup>113</sup> The other view holds that it served Rome's interest in preventing it from being obliged to grant citizenship to people it did not want as citizens.<sup>114</sup> This does not fit in with Cicero's own interpretation of the clause. Cicero argued that Rome could grant citizenship to anyone including citizens of *civitates foederatae*, unless the treaty contained a provision excluding grants of citizenship.<sup>115</sup> This implies that the restriction was imposed upon Rome rather than the other party. In the *Pro Balbo* Cicero vividly describes how Rome attracted the best individuals of the allied and friendly states by granting Roman citizenship.<sup>116</sup> In the early years of the principate this process can still be observed among the Helvetians.<sup>117</sup> Another point emphasized by Cicero is the impossibility of dual citizenship.<sup>118</sup> A man who acquired Roman citizenship had to be a Roman only. At most he could assist his former compatriots as a Roman host.<sup>119</sup> Thus foreigners worked

<sup>112</sup> Cf. Mommsen, *Staatsrecht* III, p. 650; Horn pp. 15-16; Sherwin-White p. 156ff. An early date for the Helvetian *foedus* is assumed by J. Cousin, *op. cit.*, p. 260 n. 1; K. H. Ziegler, *op. cit.*, p. 91.

<sup>113</sup> Mommsen, *op. cit.*, p. 698; *Die Schweiz* p. 378; *Nachstudien* 393.

<sup>114</sup> According to Horn (p. 55) the purpose of the treaty was "dass man stammfremden Barbaren den Eintritt in die Bürgerschaft verschliessen wollte, oder was wohl dasselbe ist, dass durch diese Bestimmung die italischen Gallier aus dem Kreis der Togati ferngehalten werden sollten". Staehelin (p. 84, note 1) agrees with this view.

<sup>115</sup> 14, 32: "Quod si exceptio facit ne liceat, ubi non sit exceptum, ibi necesse est licere". (text according to Madvig, cf. ed. Peterson).

<sup>116</sup> 9, 22: "Atqui si imperatoribus nostris, si senatui, si populo Romano non licebit propositis praemiis elicere ex civitatibus sociorum atque amicorum fortissimum atque optimum quemque ad subeunda pro salute nostra pericula, summa utilitate ac maximo saepe praesidio periculosis atque asperis temporibus carendum nobis erit" etc. up to and including 24; see also 10, 25.

<sup>117</sup> See p. 13 above with note 10.

<sup>118</sup> *Pro Balbo* 11, 28.

<sup>119</sup> 18, 41-43 (Balbus and the Gaditani).

for the benefit of Rome and became Romans while retaining their influence among their former compatriots. According to Cicero it was one of the main purposes of treaties between Rome and other states to encourage this.<sup>120</sup> Such agreements as the *ius mutandae civitatis*, *ius exilii* and *postliminium* allowing the free change of domicile and citizenship could be included in a treaty in order to stimulate the process.<sup>121</sup> Cicero emphasizes that any willingness to military or other collaboration would be eliminated if *civitates foederatae* were to prohibit their citizens from accepting Roman rewards (i.e. *civitas romana*).<sup>122</sup> It is therefore clear from Cicero's text that we have to see the citizenship-clause in the treaties with the Helvetians and others in this light.

Roman citizenship was of value only to those who without it would be rightless subjects of the Roman empire. For autonomous peoples, as the Helvetians, Insubres a.o. were in the third and second centuries B.C., the acquisition of Roman citizenship was no great advantage. Consequently, we find that, in 90 B.C., Heraclea and Neapolis hesitated to accept an offer of Roman citizenship.<sup>123</sup> For the same reason Fulvius Flaccus in 125 B.C. was willing to allow those "qui civitatem mutare noluisent", the right of *provocatio*.<sup>124</sup>

There is another reason why the citizenship-clause must have been a restriction imposed upon Rome. If Rome did not wish to grant citizenship to any particular person or group of persons, it could simply refrain from doing so. There was no need to state this in a treaty, since no consent was needed from the party which would not receive citizenship. In *Pro Balbo* 8, 19-22 Cicero argues that the granting of Roman citizenship concerned only Rome itself. Rome granted citizenship through legislation; this was therefore a unilateral act. The beneficiary was free to decide whether or not he wished to accept the offer. This, however, was considered a generous

<sup>120</sup> 12, 29: "(...) ut quaeque nobiscum maxime societate amicitia sponsione pactione foedere est coniuncta, ita mihi maxime communionem beneficiorum praemiorum civitatis contineri videt".

<sup>121</sup> On these concepts, see Sherwin-White, pp. 32-33; Max Kaser, *Das römische Privatrecht*, I (Munich, 1955), pp. 31 and 242.

<sup>122</sup> 10, 26; cf. 21, 49.

<sup>123</sup> 8, 21: cf. Sherwin-White, p. 138.

<sup>124</sup> Valerius Maximus IX 5,1. Cf. *Lex Acilia Rep.* 78; G. H. Stevenson, "Cn. Pompeius Strabo and the franchise question", *JRS* 9 (1919) p. 98.

concession on the part of Rome and not a right anybody could claim as a matter of course.<sup>125</sup> The granting of *civitas romana* was Rome's own privilege, and so was the non-granting of it, apart from cases where the other party obtained a promise in writing (in a treaty), that Rome would not offer citizenship. There are no grounds for the assumption that Rome needed to protect itself against undesirable claims of would-be citizens. Till the war of 91-89 B.C. no nation anywhere had a claim upon Rome to be granted citizenship, if there was no provision to that effect in a treaty.<sup>126</sup>

### Conclusion

We have attempted to show that the Helvetians were *foederati* possibly from 107 B.C. onward and certainly not after 58. A provision had been included in their treaty stipulating that they would not be offered Roman citizenship. After Caesar's campaign against the migrating Helvetians these lost their status as *foederati*. In 56 B.C., when Cicero defended Balbus, the Helvetians as well as the other conquered peoples in *Gallia Comata* were still *dediticii*. Cicero therefore refers to an earlier treaty, possibly dating to 107. When the Romans determined the duties and possible rights of the subjugated Gauls they had no reason to grant the Helvetians

<sup>125</sup> Cicero was certainly correct in his description of Rome's status as the party granting *civitas*. It is on the legal position of the beneficiary that he disagrees with the prosecutor. The latter holds that the granting of individual citizenship in the case of a *civitas foederata* concerns the *civitas* as a whole: "negat ex foederato populo quemquam potuisse, nisi is populus fundus factus esset, in hanc civitatem venire". (8, 19; for "fundus fieri" in the sense of the formal acceptance of an offer, see *Thesaurus* VI<sup>1</sup>, p. 1580). The prosecutor here means that states which Rome recognized as independent do not have the *duty* to accept the applicability of the Roman law in their favour, but have the right to be heard on this matter. Cicero gives a distorted interpretation of this thesis where he suggests that this would mean foreign interference in Roman legislation and where, from 9, 22, he makes it appear as though the granting of citizenship to *foederati*, according to the prosecutor, is not only subject to ratification by the other party but is in fact completely prohibited. In 14, 33 Cicero himself even starts from the assumption that resolutions by the Roman popular assembly can declare any provision in any treaty null and void. For other interpretations of this passage of *Pro Balbo*, see J. S. Reid, "The so-called *Lex Iulia Municipalis*", *JRS* 5 (1915), p. 239; E. G. Hardy, *Some problems in Roman History* (Oxford, 1924), *Cicero's argument in Pro Balbo*, 8, 19-22, pp. 326-330; R. Gardner, *op. cit.*, *The Structure of the Pro Balbo*, p. 718ff.; see also Sherwin-White, *loc. cit.*; J. Cousin, *op. cit.*, p. 213ff.

<sup>126</sup> Cf. Horn, p. 55.

a privileged status. On the contrary, the Romans' defeat in the recent past and the memory of the "turpissimum foedus" will have been reason to make them *stipendiarii*. This establishes the correctness of Pliny's information. The relationship between the Gallic tribes and Rome at the time of the conquest shows why Pliny knew the Remi, but not the Helvetians, as foederati.