

Cato, Caesar, and the Germani*

ABSTRACT

In 55 BC, Caesar massacred reportedly 400,000 Usipetes and Tencteri. When a *supplicatio* was proposed in the senate, M. Cato moved instead that Caesar should be surrendered to the enemy. This paper offers a technical analysis of an episode which, while well known, has not always been well understood. What Cato proposed was *deditio* (surrender) on the grounds that Caesar had committed a breach of *fides* (breach of truce and/or mistreatment of ambassadors) and thus an offence against the gods. *Deditio* was a means of expiation, so that Caesar alone should suffer for his crime, as in the famous case of C. Hostilius Mancinus in 136. Cato's motivations were obviously political, but the technical and religious nature of his allegations meant they could not be ignored. Caesar, I argue, felt obliged to respond, and does so in *BG* 4 within particular constraints imposed by the nature of *fides* and *deditio*.

Cato's proposal in 55 BC to surrender Caesar to the German tribes has been described as 'too well-known to need recounting'¹ and often receives no more than a footnote in modern accounts.² As a result, it has not been given the attention it deserves or even fully understood,³ despite the fact that most scholars – including Caesar's admirer Mommsen⁴ – acknowledge the justice of Cato's complaint. This paper re-examines the episode on a technical footing. It may have been political animosity and moral outrage at the massacre of so many Usipetes and Tencteri that prompted Cato's action, but it was the technical and religious nature of his allegations that

* This paper was originally presented at the conference of the Australasian Society for Classical Studies in Melbourne, 2012. I am grateful to Luca Grillo, Sarah Lawrence, Sascha Morrell, Martin Stone and Kathryn Welch for commenting on written versions, and to *Antichthon's* anonymous readers for their useful suggestions. The text of Caesar used throughout is Seel's 1961 Teubner edition. All translations are my own.

¹ Lee (1969) 100. Cf. e.g. Brennan (2009) 180; Morstein-Marx (2007) 161.

² For instance, neither Collins (1972) nor Riggsby (2006) mentions Cato's proposal, while *CAH*² does so only in a footnote (Wiseman [1992] 400 n. 118). Rambaud (1966) 118-22, Szidat (1970) 61-5, and Kremer (1994) 172-5 are primarily interested in Caesar's self-justification, and Cornell (2013) 3.494 in Tanusius' account. Among the few scholars to consider Cato's proposal in any depth are Gelzer (1961) 46-53 and Fehrle (1983) 175-80, who rightly emphasise that it should not be dismissed as an empty ploy, though neither offers a corresponding analysis of Caesar's response.

³ E.g. see n. 21 on the lack of consensus regarding the basis of Cato's proposal.

⁴ Mommsen (1871) 310, 379.

meant they could not be ignored. What Cato proposed was the *deditio* (surrender) of Caesar on the grounds that he had committed a breach of faith, whether breach of truce and/or mistreatment of ambassadors (or similar). To illuminate this, I explore the nature of *deditio* and its connection with *fides publica*; its function, I suggest, was both religious and ethical. Next, I argue that Caesar's account of his dealings with the Usipetes and Tencteri (*BG* 4.7-15) responds directly to Cato's allegations, and does so within particular constraints imposed by the nature of *deditio*. While Cato's proposal was obviously political, the fact that Caesar felt compelled to respond suggests it should not be dismissed simply as Catonian histrionics.

I

The background to this episode is the 'German war' narrated in Book 4 of Caesar's *Gallic Wars*, which ended (as Caesar frankly records) in a massacre of the Usipetes and Tencteri after their leaders had been detained in Caesar's camp. The fullest account of the aftermath in Rome is in Plutarch's *Cato Minor* (51.1-2), although mistakenly placed after Cato's consular campaign in 52:⁵

. . . Γερμανοῖς δὲ καὶ σπονδῶν γενομένων δοκοῦντος ἐπιθέσθαι καὶ καταβαλεῖν τριάκοντα μυριάδας, οἱ μὲν ἄλλοι τὸν δῆμον ἠξίουσαν εὐαγγέλια θύειν, ὁ δὲ Κάτων ἐκέλευεν ἐκδιδόναι τὸν Καίσαρα τοῖς παρανομηθεῖσι, καὶ μὴ τρέπειν εἰς αὐτοὺς μηδ' ἀναδέχεσθαι τὸ ἄγος εἰς τὴν πόλιν. (2) 'οὐ μὴν ἀλλὰ καὶ τοῖς θεοῖς' ἔφη 'θύομεν, ὅτι τῆς τοῦ στρατηγοῦ μανίας καὶ ἀπονοίας τὴν δίκην εἰς τοὺς στρατιώτας οὐ τρέπουσιν, ἀλλὰ φεῖδονται τῆς πόλεως.'

. . . when it was believed that [Caesar] had attacked the Germani while a truce was in place and killed 300,000, the rest thought it appropriate that the people should offer sacrifices for good tidings, but Cato urged them to surrender Caesar to those he had wronged, and not turn upon themselves or allow the city to suffer the pollution. 'But indeed let us sacrifice to the gods,' he said, 'because they are not turning the penalty for the general's frenzy and madness upon the soldiers, but are sparing the city.'

The corresponding account in the *Life of Caesar* (22.4), where it is correctly placed in 55, makes clear that this debate occurred in the senate. The story is found also in the *comparatio* of Nicias and Crassus (4.3) and in Appian's *Celtica* (18). Suetonius' notice confirms that what was proposed was *deditio*.⁶ Suetonius does not name Cato, but *nonnulli* suggests that he had some support, if only from his own circle. The ultimate source for Plutarch's and Appian's accounts, and probably Suetonius' as well, is

⁵ Cf. Pelling (1980) 127-8; Cornell (2013) 3.494.

⁶ Suet. *Iul.* 24.3: *nonnulli dedendum eum hostibus censuerint* ('Some moved that he [Caesar] be surrendered to the enemy'). See below on the process.

Tanusius Geminus,⁷ a contemporary of Cato and Caesar, and possibly an eye-witness to the debate in the senate.⁸ He appears to have treated Cato's proposal and its aftermath in some detail, and in a manner highly critical of Caesar,⁹ but there is no reason to doubt the basic outline of what must have been a well-known episode.¹⁰

Deditio, in this context, was the surrender of a Roman citizen to an enemy who had been wronged. It was a religious rather than a legal process, involving a vote by the senate and a decision by the fetial priests, who would then deliver the guilty party to the enemy bound in chains.¹¹ The wrong in question was a breach of *fides*. We hear of *deditio* carried out for violation of treaties, truces, and the rights of ambassadors, all of which were founded on good faith.¹² Two of five Roman stories in Valerius Maximus' chapter *De Fide Publica* concern *deditio* (6.6.3, 5). The connection between *deditio* and *fides* is reflected also in the jurisdiction of the fetials: Varro calls them guardians of *fides publica* in international relations.¹³

The basis of Cato's proposal in 55 was that Caesar had committed a breach of *fides* against the Usipetes and Tencteri. The exact nature of the alleged breach is less clear.¹⁴ Plutarch (*Cat. Min.* 51.1) says explicitly that Caesar was thought to have attacked while a truce was in place (σπονδῶν γενομένων); elsewhere he uses παρασπόνδημα,¹⁵ which can mean either breach of truce or breach of faith more generally.¹⁶ Appian refers to 'an

⁷ Both Plutarch (*Caes.* 22.4) and Appian (*Celt.* 18) cite Tanusius, and Suetonius is known to have used him (*Tul.* 9.2). See Cornell (2013) 1.293-4, 3.494, with further references. Gelzer (1961) suggests that Plutarch incorporated additional material from Munatius Rufus. Cf. Ferhle (1983) app. 1.

⁸ Cornell (2013) 1.391-3. Münzer (1932) 2231 suggested that Tanusius was a senator.

⁹ Cornell (2013) 1.391-4, 3.494.

¹⁰ Drummond (in Cornell [2013] 1.394) pronounces Tanusius 'a peculiarly uncritical historian', but Cato's proposal was made in the senate, before many witnesses, and presumably was recorded in other histories, if not the *acta senatus* (Cornell [2013] 1.393; Gelzer [1961] 48). The variation in the later sources regarding the nature of Caesar's breach of faith probably reflects the fact that Cato made a number of allegations (see below).

¹¹ For the process, see Liv. 9.8-10; Cic. *de or.* 1.181; Broughton (1987) 50-62; Rich (2011) 196-9; cf. e.g. Val. Max. 6.6.3, 6.6.5. As Rich notes, it is surely accidental that the fetials go unmentioned in some sources (e.g. Vell. 2.1.5; App. *Hisp.* 83). Both Varro (cited in Non. Marc. 850L) and Cic. *leg.* 2.21 refer explicitly to the jurisdiction of the fetials in such matters (cf. Dion. Hal. 2.75.2). Possibly, then, what Cato proposed, formally, was that the senate should refer the matter to the fetial priests. In Mancinus' case (see below), a law was also passed, *ex s.c.* and supported by Mancinus himself (Cic. *rep.* 3.28, *off.* 3.109).

¹² Cf. Gruen (1982) 68.

¹³ Varro *LL* 5.86: fetiales, quod fidei publicae inter populos praeerant. Cf. Cic. *off.* 3.108. On the fetials, see, recently, Santangelo (2008) and Rich (2011), with bibliography.

¹⁴ Cf. Cornell (2013) 3.494; Szidat (1970) 67.

¹⁵ Plut. *comp. Nic. et Crass.* 4.3; *Caes.* 22.4.

¹⁶ See Wheeler (1988) 46.

unholy deed against those who had sent ambassadors'.¹⁷ In addition, Caesar's account suggests that he was accused of violating the *ius legatorum*.¹⁸ On balance, it seems likely that Cato made a variety of allegations against Caesar,¹⁹ including mistreating ambassadors and attacking during a truce, or at any rate during negotiations, to which similar rules applied.²⁰ Any of the above amounted to a breach of *fides* and thus grounds for *deditio*.²¹

The purpose of *deditio* was to spare the city from divine punishment for the wrong by surrendering the individual responsible.²² Thus Livy's fetial says to the Samnites, in the aftermath of the Caudine Forks disaster, 'I surrender these men to you, that the Roman people may be freed from an impious crime,'²³ namely, repudiation of treaty arrangements which had been made without authorisation. Cicero states the same principle in the *pro Caecina*, delivered about fifteen years before Cato's proposal: *ut religione civitas solvatur, civis Romanus deditur*.²⁴ In other words, *deditio* is fundamentally religious: the wrong in question, while committed against

¹⁷ App. *Celt.* 18: ὡς ἐναγῆς ἔργον ἐς διαπρεσβευσσάμενους ἐργασάμενον.

¹⁸ See below.

¹⁹ Cf. Cornell (2013) 3.494, suggesting comparison with Cicero's attack on L. Calpurnius Piso (*Pis.* 84-5; *prov. cons.* 4-5).

²⁰ Caesar himself attests that attacking during a *conloquium*, like attacking during a truce, amounted to a breach of the accepted rules of war (*BC* 1.85.3; cf. 1.46.5).

²¹ Most scholars identify Caesar's alleged wrong as breach of truce, breach of *fides*, violation of the rights of ambassadors, or some combination of these. See e.g. Radin (1916) 25; Szidat (1970) 67 n. 315; Collins (1972) 234; Brunt (1978) 182; Fehrlé (1983) 177-8; Broughton (1987) 53; Lieberg (2006) 421; Ando (2008) 497 n. 16; Santangelo (2008) 80; Brennan (2009) 180; Ramsey (2009) 45; Pelling (2011) 252; Rich (2011) 199; Cornell (2013) 3.494. Compare Michel (1980) 677-8, who thinks the basis of Cato's proposal was that Caesar had made war without authorisation; Cato probably did make such an allegation (see below), which could have formed the basis of *maiestas* or *repetundae* charges (*Cic. Pis.* 50), but it was not grounds for *deditio*. Similarly, the mass killing of the Usipetes and Tencteri likely added pathos to Cato's attack (cf. Rice Holmes [1911] 99) but was not in itself cause for religious or legal proceedings, or indeed a breach of *ius gentium* as the Romans understood it. Cf. Szidat (1970) 67, who emphasises that Caesar was criticised not so much for his military proceedings as his treatment of the German ambassadors.

²² Cf. Rich (2011) 197.

²³ Liv. 9.10.9: ob eam rem quo populus Romanus scelere impio sit solutus hosce homines uobis dedo. Cf. Broughton (1987) 54 n. 10; Ando (2008) 498 n. 19. On the question of historicity (or otherwise), see e.g. Crawford (1973); Rich (2011) 196-7.

²⁴ *Cic. Caec.* 98 ('to free the city from religious pollution, a citizen is surrendered'); see Lintott (2008) 80 on the date. *Religio* is difficult to translate (see e.g. Muth [1978] esp. 349), but here means something like pollution or impediment of a supernatural nature (cf. *OLD* s.v. *religio*). The effect of *religio* was very strong. By way of illustration, the one point on which all parties agreed during the debate over Ptolemy Auletes in 56 was that, on account of the *religio* (the Sibylline prophecy), he could not be restored with an army – even though Cicero, and evidently others, considered the prophecy a sham: *Cic. fam.* 1.1.3 (SB 12), 1.2.1 (SB 13), 1.4.2 (SB 14); *Q. fr.* 2.2.3 (SB 6); cf. Siani-Davies (2001) 24-5, 31-2, 121.

an enemy, was an offence against the gods, and it is the gods' wrath that is to be averted. The process is expiatory or purgative rather than punitive.²⁵ Actions that were grounds for *deditio* might also be grounds for legal proceedings, but the two are conceptually distinct and – importantly, in Caesar's case – the defences available in a criminal court did not apply within the religious framework of *deditio*.²⁶

Cato appears to have made much of the religious aspect.²⁷ According to Plutarch, Cato 'declared his opinion that Caesar must be surrendered to the barbarians, thus purging the city of pollution for the breach of faith and turning the curse upon the guilty man.'²⁸ Indeed, Plutarch reports that Cato proposed an alternative *supplicatio* 'because [the gods] are not turning the penalty for the general's frenzy and madness upon the soldiers, but are sparing the city.'²⁹ The use of the present tense is significant: Romans were traditionally wary of 'delayed' punishment.³⁰ A breach of *fides* created the threat of future harm to Rome; *deditio* (like an 'expiatory' *supplicatio*) was a means of averting that harm. Thus, while Caesar might claim his victories as evidence of the gods' approval,³¹ at the same time it was no obstacle to Cato's proposal that he had, *so far*, enjoyed only success. Indeed, Caesar used the same argument elsewhere, telling Divico in Book 1 of the *Gallie War* that 'the immortal gods are accustomed to grant those they wish to punish for their wickedness a more favourable state of affairs in the meantime and a lengthy

²⁵ For this reason, translating *deditio* as 'extradition' (as e.g. Michel [1980]) confuses the point somewhat, since the modern function of extradition is to facilitate trial in a different jurisdiction.

²⁶ See below.

²⁷ The political use of religion was typical of Cato's circle; note e.g. Bibulus' sky-watching in 59 (Cic. *dom.* 39; *har. resp.* 48; Suet. *Iul.* 20.1, etc.) and Cato's attempt to obstruct voting on the *lex Trebonia* by claiming to hear thunder (Plut. *Cat. Min.* 43.4). The fact that Caesar was Pontifex Maximus may have made the religious angle particularly appealing.

²⁸ Plut. *Caes.* 22.4: ὡς ἐκδοτέον ἐστὶ τὸν Καίσαρα τοῖς βαρβάροις, ἀροσιουμένους τὸ παρασπόνδημα ὑπὲρ τῆς πόλεως καὶ τὴν ἄρὰν εἰς τὸν αἴτιον τρέποντας. Note also τὸ ἄγος (religious pollution) at *Cat. Min.* 51.1.

²⁹ Plut. *Cat. Min.* 51.2 (above). Note that 'Cato' uses θύω, the same verb used to describe the *supplicatio* for Caesar's victory (εὐαγγέλια θύειν: 51.1). *Supplicationes* were employed not only as thanksgivings for victory but more generally for expiatory or propitiatory purposes (e.g. Liv. 27.23, 40.19); cf Halkin (1953), though recent scholarship has rejected his rigid distinctions between the different functions (e.g. Barton [2001] 55-6; Pittenger [2008] 128). Note also that *supplicationes* were never voted to an individual but always *dis immortalibus*; only late Republican usage referred (imprecisely) to supplications 'to' the general himself (see e.g. Cic. *prov. cons.* 27; Hickson-Hahn [2000] 253).

³⁰ See e.g. Liv. 29.18-19 and below on Mancinus. Flaws in religious procedure, too, often manifested themselves at a later date. Cf. Beard (2012) 33-4 on the 'distinctive temporality of divinatory time'.

³¹ E.g. Caes. *BG* 1.40.13 (quoted below). Cf. e.g. Cic. *leg. Man.* 47-8; Feldherr (1998) 54-6; Riggsby (2006) 168.

impunity, that they may suffer more gravely from their change of circumstances.³²

A useful illustration of the nature of *deditio* is the famous case of C. Hostilius Mancinus (cos. 137) in 136. Mancinus was actually handed over to the Numantines after the senate refused to endorse an unfavourable treaty he had made. Although the treaty was not technically binding on Rome, as it had not been ratified, nonetheless Mancinus had created an obligation, the breach of which would be a breach of *fides* and an offence against the gods.³³ Therefore, to avoid both the treaty obligations and divine punishment, Mancinus was offered up essentially as a scapegoat for the Roman state.³⁴

Mancinus' failure in Numantia was itself an example of delayed divine punishment for breach of *fides*. Its roots lay in the treaty made by Q. Pompeius (cos. 141) a few years earlier, which the senate had disregarded.³⁵ As Rosenstein shows, Mancinus argued that his defeat was the result of divine anger over the earlier neglect of Pompeius' treaty.³⁶ Reports of adverse omens accompanying Mancinus' departure for Spain were perhaps invented by Mancinus' supporters after the fact to support their argument.³⁷ At any rate, the senate accepted this interpretation and in 136 bills were proposed for the *deditio* of Pompeius as well as Mancinus and his officers:³⁸ Pompeius to atone for the earlier wrong and Mancinus as a preventive measure.

II

Cases like Pompeius' and Mancinus' were solid precedents for Cato's proposal.³⁹ Eighty years had passed since Mancinus was conducted to

³² Caes. *BG* 1.14.5: *consuesse enim deos immortales, quo gravius homines ex commutatione rerum doleant, quos pro scelere eorum ulcisci velint, his secundoiores interdum res et diuturniorem impunitatem concedere.* I am grateful to *Anthichthon's* anonymous reader for drawing this passage to my attention. Cf. 1.12.6 where Caesar suggests that his ambush of the Tigurini might be seen as divine punishment for their attack on L. Cassius Longinus' army in 107.

³³ Cic. *off.* 3.107-9 explains that an oath sworn to an enemy is binding, and that this is the reason for the *deditio* of generals who make treaties without authorisation. See above on the religious aspect.

³⁴ So e.g. Liv. *per.* 56: *ad exsolvendum foederis Numantini religione populum Mancinus, cum huius rei auctor fuisset, deditus Numantinis non est receptus* ('To release the people from the *religio* of the Numantine treaty, its author Mancinus was handed over to the Numantines, but not accepted'). Cf. Rosenstein (1990) 148.

³⁵ Cic. *rep.* 3.28; *off.* 3.109. This amounted to a breach of *fides* by the Roman state as a whole: Rosenstein (1986) esp. 243.

³⁶ App. *ib.* 83; Rosenstein (1986) esp. 239-41, 245. Mancinus' campaign therefore had been doomed from the start and technically *contra auspicia*.

³⁷ Rosenstein (1986) 246, with references. Note that Ti. Gracchus (tr. pl. 133), Mancinus' quaestor, was probably already an augur (239 n. 28).

³⁸ Cic. *rep.* 3.28, *off.* 3.109; Plut. *Ti. Gracch.* 7.3; Rosenstein (1986) 245-6. Only the bill regarding Mancinus was passed.

³⁹ Cf. Wiedemann (1986) 489.

Numantia in chains, but the affair was well known – it is mentioned in Cicero's *de oratore*, written the year that Cato made his proposal,⁴⁰ and Mancinus himself had commissioned a statue commemorating his surrender.⁴¹ Other evidence shows general awareness in the late Republic of *deditio* as an appropriate remedy when Romans mistreated foreigners,⁴² and it is possible there were more recent examples. The *Digest* records a *responsum* of Q. Mucius Scaevola (cos. 95) concerning the *deditio* of persons who had mistreated ambassadors.⁴³ Indeed, there is evidence that *deditio* had been discussed in the senate very shortly before Cato made his proposal. Gelzer adduces the important evidence of Cicero's *in Pisonem*, delivered a few months earlier.⁴⁴ In the speech, Cicero charged Caesar's father-in-law, L. Calpurnius Piso (cos. 58), with crimes similar to those Cato subsequently alleged against Caesar, including the mistreatment of foreigners and *nefarium bellum*.⁴⁵ In Piso's case, Cicero could already point to the consequences: he describes the plague which had afflicted Piso's army as divine retribution for the general's actions.

This passage should be read with Cicero's comments on Piso in *de haruspicum responso*, delivered in 56.⁴⁶ The haruspices had attributed an ominous rumbling noise to various misdeeds, including the murder

⁴⁰ Cic. *de or.* 1.181. The work was probably nearing completion in mid-November 55 (Cic. *Att.* 4.13.2 [SB 87]; Fantham [2004] 9-15). Like the *in Pisonem* passage below, this raises the question: did Cicero or Cato make *deditio* topical in 55?

⁴¹ Plin. *NH* 34.18.

⁴² E.g. Cic. *Verr.* 2.5.49 assumes common knowledge of *deditio* and its function; cf. Broughton (1987) 61.

⁴³ *Dig.* 50.7.18.pr. Cf. Broughton (1987) 54-9, citing Diod. 36.15, who suggests that Saturninus was threatened with *deditio* c. 101. Conceivably, this might have been the occasion for Scaevola's *responsum*.

⁴⁴ Gelzer (1961) 52-3. He dates Cicero's attack on Piso to September and Cato's proposal (which he associates with the *altercationes* of Cic. *Att.* 4.13.1 [SB 87]) to mid-November; cf. Gelzer (1968) 131. In fact the dramatic date of the *in Pisonem* appears to be early August: Marshall (1975). Cato made his proposal in the context of the debate on Caesar's *supplicatio*, which was voted after his return from Britain (Caes. *BG* 4.38.5), so perhaps in September or October (cf. Stein [1930] 46). On the other hand, Cicero's speech was revised for publication and the reference to *supplicationes* (*Pis.* 59) might indicate a date after Cato's proposal: Lintott (2008) 211. On balance, it is likely Cicero's accusations against Piso predate Cato's proposal, especially as Cicero seems to have hinted at something similar in 56 (see below), but Cato went further in actually proposing *deditio*.

⁴⁵ Cic. *Pis.* 85: tua scelera di immortales in nostros milites expiaverunt; qui cum novo genere morbi adfligerentur neque se recreare quisquam posset, qui semel incidisset, dubitabat nemo quin violati hospites, legati necati, pacati atque socii nefario bello lacessiti, fana vexata hanc tantam efficerent vastitatem. ('For your wrongs the immortal gods took vengeance on our soldiers; they were struck down by a new kind of disease from which no-one, once affected, was able to recover. Nobody doubted that the mistreatment of foreigners, the murder of ambassadors, the provocation of peaceful peoples and allies in an impious war, and the violation of sacred places brought about such great destruction.') Cf. *Pis.* 84, *prov. cons.* 5.

⁴⁶ Cic. *har. resp.* 35. Gelzer does not consider this passage.

of ambassadors.⁴⁷ This was likely an allusion to the murder of the Alexandrian ambassadors who had come to Rome to oppose the restoration of Ptolemy Auletes,⁴⁸ but Cicero asserts that Piso, too, ‘had polluted the name of the Roman people with so great an evil that it cannot be expiated other than by the sacrifice (*supplicium*) of the perpetrator’.⁴⁹ He is referring to the death of the Macedonian ambassador Plator, reportedly murdered on Piso’s orders. *Supplicium* here might suggest *deditio*, while the rumbling sound hinted at divine punishment if Rome failed to act. Cicero’s comments were politically motivated,⁵⁰ and he did not go so far as actually to propose *deditio*, but his line of attack shows that the *ius legatorum* (and its divine sanctions) had political cache around the time of Cato’s proposal.

I am not suggesting there was any real likelihood that the senate would have voted to surrender a victorious general to the enemy. Cicero attests Cato’s propensity for extreme but ultimately fruitless pronouncements,⁵¹ and this one probably went no further than his own *sententia*.⁵² Yet, closer consideration suggests that he had identified a weak spot and attacked it through an accepted and well-precedented avenue, the religious and technical nature of which made it potentially more dangerous to Caesar than conventional criminal or political allegations. Perhaps Cato thought it was worth a try, though more likely his strategy was to draw critical attention to Caesar’s activities – that is, his *methods* as well as his achievements – with a view to a future trial.⁵³ Cato repeatedly threatened to prosecute Caesar as soon as he laid down his *imperium*, probably for *maiestas*.⁵⁴ It is worth reiterating, however, that *deditio* was a completely

⁴⁷ Cic. *har. resp.* 34: oratores contra ius fasque interfectos ‘ambassadors have been killed contrary to law and religion’ Cf. §36: fidem iusque iurandum neglectum *fides* and oath have been neglected’.

⁴⁸ Cic. *har. resp.* 34; cf. Dio 39.12-14.

⁴⁹ Cic. *har. resp.* 35: nomen quidem populi Romani tanto scelere contaminavit ut id nulla res possit nisi ipsius supplicio expiari.

⁵⁰ In fact, the political exploitation of the haruspices’ report, like the Sibylline oracle a few months earlier, underscores the importance of religious matters within Roman politics (cf. Beard [2012]). Gelzer ([1968] 131 n. 2), for one, thought Cato meant his warning earnestly.

⁵¹ Cic. *Att.* 4.18.4 (SB 92).

⁵² Probably delivered as part of the debate on Caesar’s *supplicatio*. There is no evidence that Cato’s proposal was put to the vote, though Suet. *Iul.* 24.3 indicates that others concurred with him (*censeo* typically introduces a *sententia*: Ryan [1998] 92).

⁵³ Cf. Ramsey (2009) 45.

⁵⁴ Suet. *Iul.* 30.3: M. Cato identidem nec sine iure iurando denuntiaret delaturum se nomen eius, simul ac primum exercitum dimisisset (‘Cato habitually declared, and indeed swore an oath, that he would prosecute [Caesar] as soon as he dismissed his army’). Plut. *Cat. Min.* 49.1: ὄρμησεν ὁ Κάτων ὑπατεῖαν παραγγέλλειν, ὡς ἀφαιρεσόμενος εὐθύς τὰ ὄπλα τοῦ Καίσαρος ἢ τὴν ἐπιβουλὴν ἐξελέγξων (‘Cato hastened to stand for the consulship, so that he might immediately deprive Caesar of his arms or convict him of treachery’). Ἐπιβουλὴ here probably points to a *maiestas* charge: Bauman (1967) 229 n. 99a; cf. chap. 6 and Gelzer (1968) 104 n. 3. Note also that *maiestas* could have a religious aspect (e.g.

separate institution, religious rather than legal and not dependent on the decision of a court (or vice versa). That the *deditio* proposal in itself was a blow to Caesar's *dignitas* is suggested by his response: a letter to the senate, denouncing Cato in terms of the highest invective.⁵⁵ Moreover, Plutarch observes that Crassus' Parthian war would have been judged very differently if he had enjoyed Caesar's success.⁵⁶ Cato's proposal, too, might have been received differently if Caesar had failed in Gaul.⁵⁷ Indeed, it is likely Caesar came under greater pressure to justify his actions following Ambiorix's revolt in 54-3.⁵⁸

Cato might also have hoped to produce a reaction among Caesar's subordinates.⁵⁹ Caesar himself reports the difficulty he experienced in 58 when his officers spread fear and disobedience among the soldiers.⁶⁰ According to Dio, the officers were motivated not only by fear of the enemy, but by their concern 'that they were undertaking a war neither proper nor authorised on account of Caesar's personal ambition'.⁶¹ Caesar does not mention this aspect explicitly, but his speech to the centurions in Book 1 seems to confirm the existence of moral unease about the war they were fighting.⁶² It is likely these misgivings were stirred up by Caesar's

App. *BC* 2.24). The role of Cato's threats in the outbreak of civil war cannot be considered here, but Caesar's 'fear of prosecution' should not be dismissed lightly. Most recently, Ramsey (2009) 48 has argued that 'the threat of prosecution was certainly to be reckoned with'; cf. e.g. Brunt (1986) 18; Stanton (2003). *Contra*: Shackleton Bailey (1965) 38-40; Ehrhardt (1995) 30-41; Morstein-Marx (2007).

⁵⁵ Plut. *Cat. Min.* 51.2-3. Cornell (2013) 3.494 would date the letter (and Cato's response) not long after the *deditio* proposal.

⁵⁶ Plut. *comp. Nic. et Crass.* 4.3-4.

⁵⁷ Cf. Rosenstein (1986) 249; Mancinus' failure 'showed that Pompeius' accusers had been right all along'.

⁵⁸ That is, Caesar's struggles could be interpreted as divine vengeance for the earlier massacre, though Book 4 was probably composed prior to the revolt: Powell (1998) 123-4 with n. 36. Cf. e.g. App. *Ib.* 60-1, where Viriathus' successes are portrayed as punishment for Rome's breach of faith (*ἀπιστία*) towards the Lusitanians.

⁵⁹ Certainly, at the outbreak of the civil war, the defection of just one of Caesar's officers (T. Labienus) was considered a coup for his opponents: Cic. *Att.* 7.12.5 (SB 135), 7.13.1 (SB 136).

⁶⁰ Caes. *BG* 1.39-40. Caesar specifies (1.39.2) that the trouble began with his prefects, military tribunes and those who had accompanied him *amicitiae causa*, presumably young aristocrats.

⁶¹ Dio 38.35.2: καὶ ἐθρύλουν ὅτι πόλεμον οὐτε προσήκοντα οὐτε ἐνηφιζόμενον διὰ τὴν ἰδίαν τοῦ Καίσαρος φιλοτιμίαν ἀναροῖντο. They threatened to desert him if he did not change his ways (ἂν μὴ μεταβόληται). Cf. 38.37.1, 38.41.1.

⁶² Caes. *BG* 1.40.12-13: scire enim quibuscumque exercitus dicto audiens non fuerit, aut male re gesta fortunam defuisse aut aliquo facinore comperto avaritiam esse convictam. suam innocentiam perpetua vita, felicitatem Helvetiorum bello esse perspectam. (. . . he [Caesar] knew well that, whenever an army had disobeyed its commander, either adverse events had shown *fortuna* lacking, or *avaritia* had been proved by the exposure of some crime. His own *innocentia* was evident from the whole course of his life, and his *felicitas* from the war against the Helvetii.) Cf. Grillo (2012) 41-3.

opponents in Rome, Cato among them.⁶³ Indeed, a little further on, Caesar suggests that the ‘*nobiles* and *principes* of the Roman people’ were actually in league with Ariovistus.⁶⁴ Although on this occasion Caesar was able to reassure his soldiers (*BG* 1.41.1), presumably the potential for trouble remained if he were thought to have acted criminally.

Even viewed as a political stunt, however, Cato’s proposal tells us something about the standards of conduct to which Caesar had to be seen to measure up. Such an attack could only be made with reference to communally agreed principles – here, the ethics of war and the framework of state religion.⁶⁵ In cases like those of Mancinus and of Sp. Postumius in 321, *deditio* was employed as a means of avoiding treaty obligations;⁶⁶ however, the institution was supposed to uphold moral standards. Cicero says in *de officiis* that the *ius fetiale* and many other laws common to all nations regulate dealings with enemies. ‘Were this not so,’ he adds, ‘the senate would never have delivered up illustrious men in chains to the enemy.’⁶⁷ In other words, a ‘code of conduct’ governed Roman dealings with foreigners,⁶⁸ and *deditio* was the guarantee of that code. Cato’s proposal should be understood in this light. His religious argument was perhaps somewhat cynically adopted,⁶⁹ but the same need not apply to the

⁶³ Cf. Bauman (1967) 110–11 and Powell (1998) 128 with n. 46, who suggests comparison with attempts to subvert Crassus’ army on his departure for Parthia. Cato, who seems to have believed that Crassus had no just cause for war (Cic. *fin.* 3.75), may well have collaborated with the tribune C. Ateius Capito on this occasion, as he did in opposition to the *lex Trebonia*: Dio 39.34–5; cf. Fehrlé (1983) 180. Suet. *Iul.* 24.3 suggests that Cato accused Caesar of *iniustum bellum* in 55 (cf. Cornell [2013] 3.494).

⁶⁴ Caes. *BG* 1.44.12: quodsi eum interfecerit, multis se nobilibus principibusque populi Romani gratum esse facturum – id se ab ipsis per eorum nuntios compertum habere –, quorum omnium gratiam atque amicitiam eius morte redimere posset (‘If he [Ariovistus] should kill him [Caesar], he would win favour with many nobles and leaders of the Roman people – this he knew for certain from the men themselves, through their messengers – by Caesar’s death he could gain the favour and friendship of them all’). This amounts to an allegation of treason against Caesar’s opponents.

⁶⁵ Cf. Rosenstein (1990) 87 n. 113; Gruen (1982) 54 n. 18.

⁶⁶ As Roman sources frankly acknowledge: e.g. Liv. 9.8; *per.* 56 (above); Cic. *off.* 3. 109. Indeed, it is possible Mancinus’ non-acceptance by the Numantines was arranged in advance: see Badian (1968) 10–11; Rosenstein (1986) 251; Brennan (2004) 54. On the other hand, the view attributed to the Numantines by Velleius (2.1) – ‘that a national breach of faith should not be atoned for by the blood of one man’ (publicam uiolationem fidei non debere unius lui sanguine) – might reflect Roman unease with too cynical an attitude to *fides publica*.

⁶⁷ Cic. *off.* 3.108: cum iusto enim et legitimo hoste res gerebatur, aduersus quem et totum ius fetiale et multa sunt iura communia. quod ni ita esset, numquam claros viros senatus victos hostibus dedidisset. Cf. *rep.* 2.31 where Cicero states that any war fought contrary to the *fetialis religio* is *iniustus* and *impius*.

⁶⁸ See Griffin (2008) 86–8.

⁶⁹ Especially if Cato subscribed to the common Stoic view that the gods do not punish humans (see e.g. Cic. *off.* 2.12, 3.102; Sen. *ep.* 95.49, *de ira* 2.27.1, though Chrysippus, for one, seems to have taken a different view: *SVF* 2.1175–6).

principles behind it. Throughout his career, Cato championed the cause of ethical conduct towards enemies and allies.⁷⁰ By proposing in the senate that Caesar should be handed over to the enemy, he drew critical attention to the practice of Roman imperialism.⁷¹ To this end, his proposal was probably more effective for its sensationalism.

III

The best indicator of the seriousness of Cato's charges is Caesar's own account of his dealings with the Usipetes and Tencteri in Book 4 of the *Gallic War*. The book ends with a notice of the twenty-day supplication decreed by the senate *his rebus gestis*.⁷² If the commentaries were published in instalments, as seems most probable,⁷³ it will have been written and circulated not long afterwards. Moreover, Cicero attests frequent dispatches and messengers from Caesar publicising his achievements in Rome, so it is likely that Caesar's version of events was disseminated promptly in one form or another.⁷⁴ Certainly his defensive tone in this part of Book 4 suggests a more-or-less immediate response to criticism of

⁷⁰ See esp. Cic. *fam.* 15.4 (SB 110) and Cato's reply, *fam.* 15.5 (SB 111). Cato's interest in provincial governance will be explored in detail in my monograph *Pompey, Cato, and the Governance of the Roman Empire*, to appear with Oxford University Press. Cf. e.g. Afzelius (1941) 122-8; Gelzer (1963) 265; Stem (1999) 23-59, esp. 31, on Cato's public image as 'the conscience of the empire'.

⁷¹ Cato's proposal formed part of a broader debate on Roman imperialism in 55, a year which also witnessed controversy over the legitimacy of military intervention in Egypt and Parthia – controversy in which Cato and friends played a leading role. See Dio 39.59-60.1; Cic. *fam.* 1.9.20 (SB 20), *Pis.* 48-50 on criticism in 55 of Gabinius' Egyptian expedition, and Cic. *fam.* 1.1.3 (SB 12); Dio 39.14.1; Plut. *Cat. Min.* 35.4 for the earlier involvement of Cato and friends in the 'Egyptian question'. On Cato's opposition to the *lex Trebonia* and Crassus' Parthian campaign, see e.g. Dio 39.34-5, 39; Cic. *fin.* 3.75.

⁷² Caes. *BG* 4.38.5: *his rebus gestis ex litteris Caesaris dierum viginti supplicatio ab senatu decreta est*. Caesar does not mention Cato's proposal; neither does he specify which achievements the *supplicatio* recognised. Normally, the decree of a *supplicatio* specified a single war (see e.g. Liv. 27.51.8; Cic. *prov. cons.* 27; Hickson-Hahn [2000] 252-3). Possibly Caesar's *supplicatio* in 55 was voted for all his successes that year; however, Dio (39.53.1-2) refers it to the invasion of Britain, and Plutarch, less plausibly, to the destruction of the Usipetes and Tencteri (*Cat. Min.* 51.1, *Caes.* 22.1-4, *comp. Nic. et Crass.* 4.3). It is possible, therefore, that the terms of the decree passed over, or dealt very carefully with, the massacre. By reporting the supplication as he does, Caesar, however, implies senatorial approbation of his acts *in toto*. Further – and tellingly – of Caesar's three notices of supplications, this is the only one to specify that the *supplicatio* was decreed *ab senatu* (cf. *BG* 2.35.4, 7.90.8).

⁷³ Wiseman (1998) 1-9 argues strongly for serial publication (annual until 54-53). This is certainly the impression given by Caesar's continuator Hirtius (*BG* 8.48.10). Kraus (2009) 160 inclines to the view that the books were composed serially 'but finished off as a unitary narrative'.

⁷⁴ Cic. *prov. cons.* 22. Plut. *Cat. Min.* 51.4 records that Caesar's letter responding to Cato's proposal was read in the senate by his friends. It is probably best to think of multiple strategies of dissemination (and multiple audiences: see e.g. Wiseman [1998]; Hall [1998]; Riggsby [2006] 12-15, 211).

his actions. Even if written later, however, I argue that Caesar is (in part) responding specifically to Cato's charges in 55.⁷⁵

Though often remarked upon for its frankness, scholars have noted apologetic tendencies in the *Gallic War*, and Book 4 has attracted considerable attention in this regard.⁷⁶ Here I focus specifically on what I take to be Caesar's response to the *deditio* proposal, as opposed to the justification of the 'German war' more generally,⁷⁷ or his 'defence in advance' against any future legal challenge.⁷⁸ *Deditio* required special treatment, since the sort of defence that was available against criminal charges – that he had acted out of necessity or *rei publicae causa*⁷⁹ – did not apply against the religious offence constituted by a breach of *fides*. One could hardly bring divine vengeance upon the state for the sake of the state! Thus Caesar's statements about the unreliability of the Gauls and the need for swift action are not strictly relevant.⁸⁰ Instead, he was obliged to refute Cato's allegations on the facts, and that, I think, accounts for the vagueness and literary sleight of hand detectable at points in Book 4.⁸¹ Naturally Caesar could not hope to change Cato's mind, but his response might well have persuaded senators not firmly committed either to himself or to Cato.⁸²

First, breach of truce:⁸³ since our evidence is essentially Caesar's word against Cato's, it is useful to compare Book 4 with Caesar's earlier account of the conference with Ariovistus. In Book 1 Caesar describes in detail the exchange of ambassadors (*legati*), the negotiations for a conference (*conloquium*), the conditions agreed upon to ensure the leaders' safety, and

⁷⁵ Cato probably maintained his charges. Note that Plut. *Cat. Min.* 51.1-2 places his proposal in 51, while in 52 Cato stood for the consulship with the avowed intention of recalling Caesar and bringing him to trial (Plut. *Cat. Min.* 49.1).

⁷⁶ E.g. Taylor (1949) 142; Gelzer (1968) 131-2; Lee (1969); Szidat (1970) 66-7; Powell (1998); Kremer (1994) 174-5; Cornell (2013) 3.494. It was not only Caesar's treatment of the Usipetes and Tencteri that required justification: see e.g. Riggsby (2006) chap. 6 (esp. 176) and Gelzer (1968) 104 on Caesar's treatment of his campaign against the Helvetii. Cf. James (2000) 63-4 on Caesar's careful construction of an 'impression of truthful openness' that in fact conceals important details.

⁷⁷ On this see e.g. Szidat (1970) 61-7; Kremer (1994) 174-5.

⁷⁸ See Bauman (1967) chap. 6; Gelzer (1968) 104 n. 3.

⁷⁹ As Gabinius argued at his extortion trial: Cic. *Rab. Post.* 20.

⁸⁰ Caes. *BG* 4.5-6, 13 (though he doubtless expected most readers to be persuaded by them). Cf. Szidat (1970) 66-7, who rightly draws a distinction between the justification of the German war and the justification of the detention of the ambassadors, but does not explain why the latter required a different explanation or relate this to the nature of *deditio*.

⁸¹ He could not resort to flat denial or blatant fabrication: see Powell (1998) 111 on the potential for 'authoritative contradiction' of Caesar's version of affairs in Gaul. Cf. Cornell (2013) 3.494; Pelling (2011) 252: 'Evidently unfavourable reports were reaching Rome, and C. did not have total control of the flow of information . . . The same impression is left by C.'s evasive language . . . : he could not pretend that the 'truce' issue had not arisen at all.'

⁸² Cf. Hall (2000); Riggsby (2006) 15.

⁸³ For the background to these negotiations, see Caes. *BG* 4.1-8.

Ariovistus' abuse of the *conloquium* to attack the Roman troops (1.34-5, 42-6). Caesar does not precisely say that Ariovistus had violated the agreement, but he draws a pointed contrast with his own good faith, explaining that he ordered his men not to retaliate, so the enemy could not claim that they had been entrapped *per fidem in conloquio* (1.46.3).

In Book 4, by contrast, Caesar seems deliberately vague about what was actually agreed.⁸⁴ At the initial meeting (4.9), the German envoys request a delay (*mora*) in hostilities.⁸⁵ Caesar replies that he cannot grant the request.⁸⁶ When the envoys return, they again ask Caesar not to proceed further and, when he refuses, they ask that he instruct his cavalry not to open hostilities (4.11.1-3). They also request an interval (*spatium*) of three days in which to send an embassy to the Ubii (4.11.3) – that is, a truce (*indutiae*), as Caesar makes clear in the following chapter.⁸⁷ Caesar states that the envoys' real intention was to stall until their cavalry could return, but nonetheless 'he said that he would proceed no further than four miles that day in search of water'⁸⁸ and sent messengers to instruct his cavalry not to provoke the enemy.⁸⁹ Finally, when the German leaders come to his camp after the cavalry engagement, Caesar says they proposed to excuse themselves for starting a battle 'in contravention of what had been said and what they themselves had requested' (*contra atque esset dictum et ipsi petissent*: 4.13.5).

Reading between the lines, these passages strongly suggest that Caesar had agreed to a truce. Plutarch thought so,⁹⁰ and the complacency of the Roman forces at the time of the cavalry engagement strengthens that conclusion.⁹¹ Caesar, however, obscures both the existence and the nature of the agreement, despite the fact that he accuses the enemy of breaking it. Breach of truce was a serious allegation which we would expect Caesar to

⁸⁴ Cf. e.g. Rambaud (1966) 119, Pelling (2011) 251, and Cornell (2013) 3.494 on Caesar's vagueness; Szidat (1970) 63-4 on his use of selective omission; and Görler (1976) 118-19 on his adoption of a more limited perspective than in previous books.

⁸⁵ This probably meant a truce; cf. Sall. *Iug.* 29.4 (*mora indutiarum*) and below on *spatium*.

⁸⁶ Caes. *BG* 4.9.3: hos exspectari equites atque eius rei causa moram interponi arbitrabatur.

⁸⁷ Caes. *BG* 4.12.1 (below).

⁸⁸ Caes. *BG* 4.11.4-5: se non longius milibus passuum quattuor aquationis causa processurum eo die dixit.

⁸⁹ Caes. *BG* 4.11.6. It is not clear whether the messengers arrived before the fighting broke out.

⁹⁰ Plut. *Caes.* 22.2, citing Caesar's commentaries, says the Germani were sending ambassadors to him under truce (διὰ πρεσβευόμενοι πρὸς αὐτὸν ἐν σπονδαῖς) when the cavalry battle occurred.

⁹¹ Caes. *BG* 4.12.1: nihil timentibus nostris, quod legati eorum paulo ante a Caesare discesserant atque is dies indutiis erat ab his petitus ('... our men fearing nothing, since their legates had left Caesar shortly beforehand having sought that day for a truce'). Compare Pelling (2011) 251, who argues that Caesar's 'evasive language' is designed to create the impression of a truce, despite his earlier refusal, in order to accuse the Germani of breaking it.

exploit in an account which consistently stresses the faithlessness of the enemy.⁹² His failure to do so, eschewing the precision of Book 1 in favour of vague passive formulations like ‘what was said’ and ‘what had been sought’,⁹³ casts doubt on his own *fides*. After all, we have only Caesar’s word that it was the Germani who attacked first.⁹⁴ Cato, for one, thought otherwise, and probably with good reason: according to Caesar, the Germani attacked with just 800 cavalry against a Roman force of 5,000.⁹⁵ Moreover, if there had been a truce, which the enemy had broken, why not say so plainly – unless the latter point were in doubt?

The way Caesar handles the question of ambassadors is still more striking. Up until the cavalry battle, Caesar repeatedly refers to the German envoys as *legati*.⁹⁶ Subsequently, however, he denies them the status and even the name of ambassadors. Caesar signals this to the reader (but not to the enemy⁹⁷) when he writes that ‘he decided that neither should he now give audience to *legati* nor accept terms from those who, by deceit and snares, had sought peace, then made war unprovoked.’⁹⁸ This seems to mean that Caesar would not regard any Germani who subsequently came to him as legitimate ambassadors. Accordingly, the German leaders and elders who arrive next in Caesar’s camp are referred to not as *legati* but only as *Germani frequentes*, ‘a throng of Germani’.⁹⁹ Indeed, Caesar says that he had already decided to fight before they arrived.¹⁰⁰

The Germani were unarmed – Caesar would say so, if otherwise¹⁰¹ – and they surely would not have walked into Caesar’s camp unless they

⁹² See below; cf. Lee (1969); Szidat (1970) 64–7.

⁹³ On Caesar’s evasive use of the passive, see e.g. Grillo (2012) 81.

⁹⁴ Caes. *BG* 4.12.1, 4.13.5. Cf. Fehrle (1983) 177.

⁹⁵ Caes. *BG* 4.12.1. Despite their superior numbers, Caesar reports 74 of his men killed in the battle (4.12.3); he does not specify the number of German casualties. His earlier explanation that German cavalry were prepared to attack much larger forces of saddle-using opponents (4.2) may be part of the *apologia*, both for the casualties and for the episode as a whole.

⁹⁶ Caes. *BG* 4.7.2, 4.9.1, 4.11.1, 4.12.1.

⁹⁷ There is no evidence Caesar ever communicated his decision to the Germani; indeed Dio’s account (39.48.1) suggests that he deliberately misled them into thinking they were being received as ambassadors (see below).

⁹⁸ Caes. *BG* 4.13.1: hoc facto proelio Caesar neque iam sibi legatos audiendos neque condiciones accipiendas arbitrabatur ab iis, qui per dolum atque insidias petita pace ultro bellum intulissent.

⁹⁹ Caes. *BG* 4.13.4. Cf. Powell (1998) 126.

¹⁰⁰ Caes. *BG* 4.13.4: consilio cum legatis et quaestore communicato, ne quem diem pugnae praetermitteret (‘He had communicated to his legates and quaestor his decision that he would not let slip any day for battle’).

¹⁰¹ That is, as evidence of their treachery. In fact Caesar (*BG* 4.13.4–5) states that their intention in coming was merely to secure a truce – albeit, he says, through deceit and for ulterior motives – rather than (for example) espionage or a surprise attack.

believed they were being received as ambassadors. Further, Caesar writes that they employed the same methods as before.¹⁰² The natural conclusion is that these Germani, too, were ambassadors in everything but the name Caesar gives to them, and ought to have been inviolable, even if their motives were suspect. Again, it is useful to compare Book 1, where Ariovistus' ambassadors remain *legati*, even after Ariovistus violated the *conloquium*.¹⁰³ Caesar refuses another conference on this basis, but he continues to refer to the messengers as *legati* and treats them as such. In Book 4, however, Caesar denies the Germani both the name and the rights of *legati* and detains them in his camp¹⁰⁴ – which, according to Caesar himself, was a violation of the *ius legatorum* warranting the most serious punishment.¹⁰⁵

Another instructive comparison comes from Book 3, where Caesar turns his officers into ambassadors by an inverse manipulation of language.¹⁰⁶ The prefects and military tribunes of 3.7.3 appear, *once detained* by the Veneti, as inviolable *legati*.¹⁰⁷ The purpose, as Ando observes, is to justify Caesar's treatment of the Veneti: he executed their senate and sold the rest into slavery as exemplary punishment, he says, for violation of the *ius legatorum*.¹⁰⁸ Caesar's hypocrisy is not hard to spot; indeed, Powell suggests that Cato might have been turning Caesar's own arguments against him in 55.¹⁰⁹

Not only does Caesar's recasting of the German ambassadors in Book 4 strain credibility; in fact, the *Germani frequentes* came at his request. In chapter 11 Caesar instructs the Germani 'to assemble the following day in full strength (*frequentissimi*), that he might learn what they were requesting'.¹¹⁰ Some scholars have taken this to mean that Caesar was

¹⁰² Caes. *BG* 4.13.4: eadem et perfidia et simulatione.

¹⁰³ Caes. *BG* 1.47.1; cf. Szidat (1970) 65.

¹⁰⁴ Caes. *BG* 4.13.6 (below).

¹⁰⁵ Caes. *BG* 3.9.3 (see below). Note that the same verb (*retineo*) is used in this passage and in 4.13.6.

¹⁰⁶ Ando (2008) 496-7.

¹⁰⁷ Caes. *BG* 3.9.3: legatos, quod nomen apud omnes nationes sanctum inviolatumque semper fuisset, retentos ab se et in vincula coniectos ('They [the Veneti] had detained *legati*, whose name among all nations has always been sacred and inviolable, and put them in chains').

¹⁰⁸ Caes. *BG* 3.9.3 (as above), 3.16.4: in quos eo gravius Caesar vindicandum statuit quo diligentius in reliquum tempus a barbaris ius legatorum conservaretur. itaque omni senatu necato reliquos sub corona vendidit.

¹⁰⁹ Powell (1998) 126; cf. Rich (2011) 199. On the serial view of publication, Book 3 would have been circulated prior to Cato's proposal, and in any case it is likely that report of Caesar's actions against the Veneti had been disseminated in some form by this time.

¹¹⁰ Caes. *BG* 4.11.5: huc postero die quam frequentissimi convenirent, ut de eorum postulatis cognosceret. Possibly Caesar is describing a *conloquium*, but he avoids technical language.

laying a trap.¹¹¹ At any rate, it was the following day (4.13.4) that the German leaders came to his camp, where he promptly had them detained. According to Dio, he did so by means of a further deceit.¹¹² *Neque iam sibi legatos audiendos* (4.13.1), then, might refer not to any *legati* but specifically those *legati* whom Caesar had *told* to come to him.¹¹³ Caesar claimed that the intervening cavalry attack justified his change of heart, but that was no excuse against a premeditated trap. If that is what it was, Caesar was guilty of bad faith at least as heinous as he alleges against the enemy.

What follows has the ring of a plan well executed: ‘Delighted they had come into his path (*quos sibi Caesar oblatos gavisus*), Caesar ordered them to be detained.’¹¹⁴ Scholars have remarked on the extraordinary word *gavisus*.¹¹⁵ *Offero* is intriguing too: though not explicitly reflexive, it suggests that the Germani had, in a sense, offered themselves to Caesar.¹¹⁶ In any case, he took full advantage of this ‘most convenient’ turn of events.¹¹⁷ He massacred reportedly 400,000 or more of the enemy without losing one of his own men,¹¹⁸ largely thanks to the absence of the leaders he had detained, as Caesar himself tells us (4.14.2). Yet he contrives that ‘[his] *clementia* has the last word’:¹¹⁹ he freed those he had detained (*his Caesar libertatem concessit*: 4.15.5), but they chose to remain with him, out of fear of the Gauls.

IV

Caesar’s *fides* is doubtful at best. Perhaps for this reason, he emphasises the bad faith of the enemy, repeatedly and in powerful language: *dolus*, *insidiae*, *perfidia*, *simulatio*. He insists that they only requested a truce by way of a ploy (4.9, 11, 13) and were responsible for opening hostilities (4.12).

¹¹¹ Rice Holmes (1911) 97; Collins (1972) 934; cf. Murphy (1977) 238; Riggsby (2006) 248 n. 95. Indeed, Collins, who argues that Caesar was not interested in self-justification, sees this as an *admission* of prior intent to capture the German leaders. I would argue, on the contrary, that Caesar here is particularly keen to explain his actions, but Collins may nonetheless be right about his intentions.

¹¹² Dio 39.48.1: ὁ δὲ τούτους μὲν ὡς καὶ ἀπόκρισιν τινα αὐτοῖς οὐκ ἐξ μακρὰν δόσων κατέσχευεν (‘He detained them on the ground that he would give them an answer before long’).

¹¹³ Cf. Pelling (2011) 251.

¹¹⁴ Caes. *BG* 4.13.6: quos sibi Caesar oblatos gavisus, illos retineri iussit.

¹¹⁵ E.g. Powell (1998) 125; Collins (1972) 935.

¹¹⁶ Cf. *OLD*, s.v. *offero* 1b-c.

¹¹⁷ Caes. *BG* 4.13.4: opportunissime res accidit.

¹¹⁸ Caes. *BG* 4.15.3 states that 430,000 were in the camp; he does not specify the number of dead, though 4.15.1-2 implies that all the German fighting men either were killed or threw themselves into the river. These figures are likely exaggerated, but it is clear that a vast number of Germani perished. Plut. *Caes.* 22.5 and App. *Celt.* 18.1 give a figure of 400,000; 300,000 at Plut. *Cat. Min.* 51.1 and *comp. Nic. et Crass.* 4.3 is probably a slip: Pelling (2011) 253. The lack of Roman casualties is an implicit claim to divine favour – though not a guarantee against delayed punishment (see above).

¹¹⁹ Lee (1969) 103.

Conveniently, we have only Caesar's word for what the Germani thought or Caesar knew. But, even if we accept it, did bad faith on the part of the enemy excuse Caesar's conduct?

Cicero's *de officiis* indicates that there was some debate on this question.¹²⁰ The better view, however, was that a Roman acted in good faith *irrespective* of the *fides* of the enemy. That is the point of Valerius Maximus' account of the *deditio* of L. Minucius and L. Manlius.¹²¹ Similarly, Livy has Scipio declare that 'although not only the *fides* of the truce but even the *ius gentium* with respect to ambassadors had been violated by the Carthaginians, he would take no steps against them unworthy of the institutions of the Roman people and his own *mores*.'¹²² Appian makes the same point when he writes that Galba in Spain in 150 'was avenging bad faith with bad faith in a manner not worthy of Romans but imitating barbarians.'¹²³ In other words, traditional morality expected a Roman to show *fides* towards enemies, even if they acted in bad faith. That is what we would expect in view of the religious aspect of *fides*, and Cicero confirms that the principle held good in the late Republic.¹²⁴

Of course, that did not mean Caesar was obliged to observe a truce once it was broken,¹²⁵ but neither did (alleged) bad faith by the enemy entitle him to use the same sort of snares or to disregard the *ius legatorum*. In accounting for his treatment of the Usipetes and Tencteri, however, Caesar implies that a breach of faith by the enemy nullified the usual obligations of *fides*. He could not and does not claim that *fides* was unimportant – indeed, *fides* (or lack thereof) is central to Caesar's presentation of the Germani – but rather that there was no duty of *fides* to the enemy in this case,¹²⁶ hence no breach and no grounds for *deditio*.

¹²⁰ Cic. *off.* 3.102-6, refuting a hypothetical argument that M. Atilius Regulus need not have honoured his oath to the Carthaginians.

¹²¹ Val. Max. 6.6.3, from *de fide publica*. Cf. Liv. 38.42.7 for the incident, in 188 BC.

¹²² Liv. 30.25.10: quibus Scipio etsi non indutiarum fides modo a Carthaginiensibus sed ius etiam gentium in legatis uiolatum esset tamen se nihil nec institutis populi Romani nec suis moribus indignum in iis facturum esse cum dixisset.

¹²³ App. *Ib.* 60: ἀπιστία μὲν ἄρα ἀπιστίαν μετιών, οὐκ ἄξιός δὲ Ῥωμαίων μιμούμενος βάρβαρος. Cic. *Brut.* 89 confirms that the key issue was breach of *fides*.

¹²⁴ Cic. *off.* 3.102-8 (if less strictly observed than in Regulus' day: 3.111). Cicero's argument is complicated by its Stoic framework, which maintained (in contrast to Roman state religion) that the gods do no harm (see n. 69); cf. Dyck (1996) 627-8, who argues that this passage reflects both Stoic influence and 'the attenuated religiosity of Cicero's time'. In fact the proposition Cicero rejects – that *fides* must be observed on pain of divine punishment (§102) – was fundamental to the institution of *deditio*.

¹²⁵ Naturally breach of truce or other agreement by one side released the other from its obligations (see e.g. the fetal prayer which called for Rome to be punished if Rome was *first* to break a treaty: Liv. 1.24.8) but other obligations of *fides* existed as a matter of course and (according to e.g. Livy's Scipio, above) *despite* breach of truce.

¹²⁶ When Caesar says that to delay battle would be utter madness (*summae dementiae esse iudicabat*: *BG* 4.13.1), he is effectively saying that to keep his word would be madness (cf. Plut. *Caes.* 22.3). Scholars have seen this as Caesar's answer to Cato's allegations

In so doing, he is modifying the traditional moral code in favour of what Riggsby calls ‘the common moral logic of tit-for-tat’.¹²⁷ This technique stands in contrast to the overall programme of the work, where, as Riggsby argues, Caesar appeals to conventional standards of just war and the good general.¹²⁸ I submit that Caesar’s alternative logic in Book 4 should be seen as part of his response to Cato: as well as disputing Cato’s allegations on the facts, Caesar is actually rewriting the rules of *fides*.

CONCLUSION

Deditio, with its religious implications, was an acute choice of instrument. No one was really going to surrender Caesar to the enemy, yet he could not afford to ignore Cato’s challenge. Neither was invective an adequate response, nor military expediency, nor even the conventional rhetoric of just war; he had to answer Cato’s allegations on their own terms. In attempting to do so, Caesar is reduced to obfuscation and even to deformation of the accepted principles of *fides publica*. This layering of multiple strategies of justification reveals Caesar under pressure to explain his actions. Of course, the senate had voted not surrender but a supplication of unprecedented length, and probably most contemporaries were little interested in the justification of events that produced Roman victory.¹²⁹ Still, Cato’s protest was not without effect. He could not help the unfortunate Germani, but his actions in 55, as at other points in his career, served to keep the ethics of imperialism in the spotlight. Caesar’s careful response, even after the *supplicatio* had been voted, is a measure of Cato’s success.

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(e.g. Collins [1972] 234; Powell [1998] 199 n. 64), and no doubt many readers would have been satisfied. (It is possible, indeed, that Caesar is turning Cato’s language to his own purposes: note ‘μωνίας καὶ ἀπονομίας’ in ‘Cato’s’ speech at Plut. *Cat. Min.* 51.2.) In the eyes of the gods, however, it was no defence that a breach of faith was committed for the benefit of the state (here, the security of Roman control in Gaul). Therefore, Caesar denies that there was any duty of *fides* owed to the enemy on this occasion, in view of their prior bad faith. Cf. Cic. *off.* 3.107 for the view that no obligation of *fides* applies in dealings with pirates.

¹²⁷ Riggsby (2006) 189.

¹²⁸ Riggsby (2006) chaps 6-7, esp. 175-80 and 205-7; cf. Gelzer (1968) 104.

¹²⁹ As Griffin (2008) 99 puts it, ‘Caesar clearly counted on getting away with murder because of the glory and booty he secured for Rome.’ Cf. Brunt (1978) 178-83; Hall (2000) 81; Riggsby (2006) 189 with n. 95; Bellemore (2012) 45. It is worth reiterating, however, that Cato had some supporters, and according to Suetonius the senate voted to send a commission of inquiry to Gaul (Suet. *Iul.* 24.3; cf. Gelzer [1968] 131). Tanusius, too, seems to have taken up Cato’s cause enthusiastically.

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